



Republic of the Philippines
Presidential Electoral Tribunal
Baguio City

NOTICE

Sirs/Mesdames:

Please take notice that the Tribunal issued a Resolution dated APRIL 10, 2018, which reads as follows:

**“PET Case No. 005 – FERDINAND “BONGBONG” R. MARCOS, JR.,
protestant, versus MARIA LEONOR “LENI DAANG MATUWID” G.
ROBREDO, protestee.**

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RESOLUTION

Protestee’s Urgent Ex Parte Motion to Direct the Head Revisors to Apply the Correct Threshold Percentage as Set by the Commission on Elections in the Revision, Recount and Re-Appreciation of the Ballots, in Order to Expedite the Proceedings dated April 5, 2018 (Ex Parte Motion)

In her Ex Parte Motion, protestee claims that the threshold percentage in determining the validity of votes during the 2016 National and Local Elections was 25% and not 50%.¹ Protestee thus moves that the Tribunal direct its Head Revisors to use the 25% threshold percentage in determining valid votes.²

In support of her claims, protestee cites the Random Manual Audit Visual Guidelines³ and the Random Manual Audit Report.⁴ Protestee also claims that Rule 43(1) of the 2010 PET Rules has been superseded by the 2018 Revisor’s Guide. Rule 43(1) of the 2010 PET Rules states:

RULE 43. Conduct of the revision. – The revision of votes shall be done through the use of appropriate PCOS machines or manually and visually, as the Tribunal may determine, and according to the following procedures:

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¹ Ex Parte Motion, par. 13.

² Ex Parte Motion, p. 7.

³ Id. at par. 14.

⁴ Id. at par. 15.

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- (l) In looking at the shades or marks used to register votes, the RC shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. Any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the PCOS machine, and not by human determination.

Protestee's Ex Parte Motion is denied.

Protestee's claim that the Commission on Elections (COMELEC), as purportedly confirmed by the Random Manual Audit Guidelines and Report, applies the 25% threshold percentage in determining a valid vote is inaccurate.

The Court is not aware of any COMELEC Resolution that states the applicability of a 25% threshold; and the Tribunal cannot treat the Random Manual Audit Guidelines and Report as proof of the threshold used by the COMELEC. In fact, COMELEC Resolution No. 8804, as amended by COMELEC Resolution No. 9164, which is COMELEC's procedure for the recount of ballots in election protests within its jurisdiction, does not mention a 25% threshold. Prior to the amendment in Resolution No. 9164, Rule 15, Section 6 of Resolution No. 8804 states that any shading less than 50% shall not be considered a valid vote. The wording is in fact the same as Section 43(l) of the 2010 PET Rules. COMELEC Resolution No. 9164, however, removed the 50% threshold but did not impose a new threshold.

This is the same with the 2018 Revisor's Guide and the 2010 PET Rules. Although Rule 43(l) of the 2010 PET Rules states the 50% threshold, the 2018 Revisor's Guide did not impose a new threshold. In this regard, Rule 62 of the 2018 Revisor's Guide provides that any issue on whether a mark or shade is within the threshold is to be resolved by the assigned Revision Supervisor in the following manner:

RULE 62. Votes of the Parties. -- After the segregation and classification of ballots, the Head Revisor shall count the total number of ballots for the Protestant, Protestee, Other Candidates, and with Stray Votes and record said matter on the appropriate spaces of the Revision Report.

In examining the shades or marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. Any issue as to whether a certain mark or shade is within the threshold shall be resolved by the assigned

Revision Supervisor. Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.

In making mention of a threshold in the 2018 Revisor's Guide, this was in reference to the 50% threshold in the 2010 PET Rules. This is because COMELEC has not provided any other threshold which the Tribunal can take cognizance of. In fact, the Random Manual Audit Guideline itself indicates the impossibility of using a 25% threshold if humans were to determine the compliance with such threshold, thus:

One of the source of variance, therefore, is the difference between humans and machines in distinguishing if a partially shaded oval is a vote or not. To determine with machine exactitude if a mark covers 25 to 30 percent of a voting oval is impossible for a human eye; and to consistently interpret such judgment over a number of instances is another impossibility. Presented with a situation wherein a mark borders between a vote and no-vote, the auditor is likely to decide in favor of the former.⁵

All told, the Tribunal has no basis to impose a 25% threshold in determining whether a vote is valid.

Further, protestee's claim of a systematic reduction of her votes is without basis and shows a misunderstanding of the revision process.

The 2018 Revisor's Guide enumerates the objectives of the revision proceedings as follows:

RULE 4. *Objectives of Revision.* – The objectives of revision proceedings are:

- a. To verify the physical count of the ballots;
- b. To recount the votes of the parties;
- c. To record the objections or claims of the parties with respect to ballots under revision; and
- d. To mark the ballots objected to or claimed by the parties for purposes of identification, in preparation for their examination by the Tribunal and for the reception of evidence in support of the objections and claims of the parties, when necessary.

Thus, if there are any ballots that are segregated by the Head Revisor resulting in a variance with the results in the election returns, such questioned ballots can be objected to or claimed by protestee following Rule 4(c). These ballots will be marked accordingly and the Tribunal will examine these ballots and the corresponding objections and/or claims as reflected in the Revision Reports. During the revision proceedings, there is (

⁵ RMA Guidelines, p. 25.

yet no final reduction or even addition of votes. Such final reduction or addition of votes may only take place after the Tribunal has ruled on the objections and/or claims and after reception of evidence of the parties, if necessary.

Issuance of Show Cause Order

In a Resolution dated February 13, 2018, the Tribunal ordered the parties to **strictly** observe the *sub judice* rule pending the proceedings of the instant case. This was reiterated in the Tribunal's Resolution dated March 20, 2018.

However, despite these stern directives of the Tribunal, several news reports have shown that the parties, their counsels and/or representatives, have nonetheless continued to disclose sensitive information regarding the revision process to the public, in clear violation of the aforementioned resolutions. To be sure, the statements of the parties with respect to matters or concerns already referred to or pending resolution of the Tribunal, as well as statements and remarks pertaining to the integrity of the revision process are within the clear ambit of the *sub judice* rule. In this regard, to preserve the sanctity of the proceedings, both parties are hereby directed to show cause and explain why they should not be cited in contempt by the Tribunal.

IN VIEW OF THE FOREGOING, the Tribunal resolves to:

- (a) **DENY** Protestee's Urgent Ex Parte Motion to Direct the Head Revisors to Apply the Correct Threshold Percentage as Set by the Commission on Elections in the Revision, Recount and Re-Appreciation of the Ballots, in Order to Expedite the Proceedings for lack of merit; and
- (b) **DIRECT** the parties to **SHOW CAUSE** and **EXPLAIN**, within ten (10) days from receipt hereof, why they should not be cited in contempt for violating the Resolutions dated February 13, 2018 and March 20, 2018.

The Tribunal further resolves to:

- (c) **NOTE** Protestee's Manifestation of Grave Concern and **REFER** the same to the PET Commissioners for appropriate action." 7

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Sereno, C.J. and Del Castillo, J., on leave. Reyes, Jr., J., on official leave. (1)

Very truly yours,


EDGAR O. ARICHETA

Clerk of the Tribunal *mdmc*

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