

REPUBLIC OF THE PHILIPPINES  
**PRESIDENTIAL ELECTORAL TRIBUNAL**  
Manila

**FERDINAND "BONGBONG" R.  
MARCOS, JR.,**

*Protestant,*

- versus -

PET Case No. 005  
FOR: Election Protest  
Vice President

**MARIA LEONOR "LENI DAANG  
MATUWID" G. ROBREDO,**

*Protestee.*

X - - - - -X

**COUNTER-MANIFESTATION  
[ON THE MANIFESTATION AND MOTION  
(IN LIEU OF COMMENT) DATED 04 JULY 2018 FILED  
BY THE OFFICE OF THE SOLICITOR GENERAL]**

PROTESTEE **MARIA LEONOR G. ROBREDO**, by the undersigned counsel, to the Honorable Tribunal, respectfully states:

1. The latest submission of the Office of the Solicitor General ("OSG") confirms that:

1.1. The threshold percentage used in the 09 May 2016 National and Local Elections was twenty five percent (25%); and

1.2. In Election Protests involving the revision, recount and re-appreciation of ballots, the **correct** threshold percentage being used and applied is twenty five percent (25%).

2. While the Commission on Elections ("COMELEC") has yet to formally submit its Comment to the Honorable

Tribunal, it has now become clear that the application of the twenty five percent (25%) threshold percentage should be applied in the ongoing revision, recount and re-appreciation of ballots.

3. Meanwhile, the Manifestation and Motion (In Lieu of Comment) is premature.

4. COMELEC has not formally made known to the Honorable Tribunal its position regarding the application of the twenty five percent (25%) threshold percentage in the ongoing revision, recount and re-appreciation of ballots.

**Inapplicability of the  
jurisprudence cited by the  
Office of the Solicitor  
General.**

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5. In **Pimentel v. Commission on Elections, et al.**,<sup>1</sup> as cited by the Office of the Solicitor General ("OSG"), a Minute Resolution was issued by COMELEC.

5.1. OSG disagreed with the issuance of the Minute Resolution.

5.2. While the Supreme Court affirmed that the *Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position.*

5.3. This is not the case here.

5.4. For emphasis, COMELEC has yet to issue any Comment on the applicability of the twenty five

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<sup>1</sup> G.R. No. 126394, April 24, 1998.



percent (25%) threshold percentage in the revision, recount and re-appreciation of ballots.

6. Meanwhile, in **Constantino-David v. Pangandaman-Gania**<sup>2</sup> citing **City Warden of the Manila City Jail v. Estrella**<sup>3</sup>, the Supreme Court, while recognizing the authority of the Solicitor General to act as the "People's Tribune" also cautioned it from wantonly executing by itself the verification and certificate of non-forum shopping:

"We recognize the occasions when the OSG has difficulty in securing the attention and signatures of officials in charge of government offices for the verification and certificate of non-forum shopping of an initiatory pleading. This predicament is especially true where the period for filing such pleading is non-extendible or can no longer be further extended for reasons of public interest such as in applications for the writ of *habeas corpus*, in election cases or where sensitive issues are involved. This quandary is more pronounced where public officials have stations outside Metro Manila.

But, this difficult fact of life within the OSG, equitable as it may seem, does not excuse it from *wantonly* executing by itself the verification and certificate of non-forum shopping. If the OSG is compelled by circumstances to verify and certify the pleading in behalf of the a client agency, the OSG should at least endeavor to inform the courts of its reasons for doing so, *beyond instinctively* citing *City Warden of the Manila City Jail v. Estrella* and *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*"

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<sup>2</sup> G.R. No. 156039, August 14, 2003.

<sup>3</sup> G.R. No. 141211, August 31, 2001.

7. In **Orbos v. Civil Service Commission**<sup>4</sup> ("Orbos"), at the core of the issues presented to the Supreme Court is the extent of the authority of the Civil Service Commission on appointments and the appearance of the OSG on behalf of the Department of Transportation and Communications ("DOTC").

7.1. Admittedly, the Supreme Court affirmed the appearance of OSG on behalf of DOTC in Orbos.

7.2. However, the facts in Orbos are not in all fours with the present case.

7.3. In Orbos, two (2) government offices have different positions and the OSG is mandated under the law to represent them.

7.4. The OSG, in this case, took the position of DOTC as against the Civil Service Commission, another government office it represents.

7.5. This is not the case here.

7.6. After all, unlike in Orbos, protestant Ferdinand R. Marcos, Jr. (hereafter "Marcos" for brevity) is a private person.

**Importance of the Random  
Manual Audit vis-à-vis the  
manual recount of ballots.**  
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8. Both protestant Marcos and OSG do not dispute that COMELEC has applied the twenty five percent (25%) threshold percentage in the Random Manual Audit ("RMA").

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<sup>4</sup> G.R. No. 92561, September 12, 1990.



9. However, by their submissions, both protestant Marcos and OSG belittled, if not completely missed the importance of the RMA vis-à-vis a manual recount of ballots.

10. Republic Act No. 9369<sup>5</sup>, Section 24 provides:

"Section 24. A new Section 29 is hereby provided to read as follows:

"SEC. 29. *Random Manual Audit.*  
- Where the AES is used, there shall be a random manual audit in one precinct per congressional district randomly chosen by the Commission in each province and city. Any difference between the automated and manual count will result in the determination of root cause and initiate a manual count for those precincts affected by the computer or procedural error."

11. Thus, consistent with the mandate of the law, the purpose of the RMA is:

"The RMA aims to test the accuracy of the machine count and to determine whether there is systematic error in the automated vote count process, through a manual or visual verification of the ballots from randomly selected sample precincts. The actual process involved examining each ballot and checking the votes against the figures reflected in the election return (ER), the report generated by the counting machine. The resulting difference or variance would

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<sup>5</sup> An Act Amending Republic Act No. 8436 entitled "An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, To Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, As Amended, Republic Act No. 7166 and Other Related Election Laws, Providing Funds Therefor and For Other Purposes.

then serve as a basis to determine if there's systematic or pervasive error in the system."<sup>6</sup> [Emphasis supplied.]

12. Meanwhile, protestant Marcos, in seeking the manual recount and judicial revision of ballots in his protested provinces alleged:

"7.50. The following electoral frauds, anomalies and irregularities were prevalent in the said protested area during election day: vote-buying, substitution of voters, presence of flying voters, **pre-loaded SD cards, misreading of ballots, malfunctioning and tampered VCM and CCS, and abnormally high numbers of unaccounted votes/undervotes for the position of Vice-President.**

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**7.55. Malfunctioning/tampered VCM and CCS units, and other technical anomalies were also prevalent in the thirty six thousand four hundred sixty five (36,465) protested clustered precincts which functioned in Cebu Province, Leyte, Negros Occidental, Negros Oriental, Masbate, Zamboanga Del Sur, Zamboanga Del Norte, Bukidnon, Iloilo Province, Bohol, Quezon Province, Batangas, Western Samar, Misamis Oriental, Camarines Sur, 2<sup>nd</sup> District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Iloilo City, Bacolod City, Cebu City, Lapu-lapu City, and Zamboanga City.**

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<sup>6</sup> 2016 National and Local Elections Random Manual Audit Report.



7.56. Relative thereto, this Honorable Tribunal should take note of 10 May 2016 issue of the Philippine Daily Inquirer, specifically its headline entitled "*Machine glitches mar automated polls*", and the 10 May 2016 issue of the Philippine Star, particularly the article entitled "*150 machines bog down; voters complain of long wait.*"

7.57. These malfunctioning/tampered VCM and CCS and the occurrence of technical glitches in each of the protested clustered precincts caused the widespread misreading of ballots and the abnormally high turn out of unaccounted votes/undervotes for the position of Vice-President in the protested areas.

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7.62. The **3,919,337 unaccounted votes/undervotes** for the position of Vice-President is **abnormally high** if not **statistically improbably** given that the Vice-President position is a single-choice contest. This abnormally high turn-out of unaccounted votes/undervotes for the vice-presidential position is a manifest indication of an election irregularity in an AES, which needs to be addressed, verified and investigated for and on account of this Election Protest."

13. These allegations on the perceived electoral frauds, anomalies and irregularities pertaining to the accuracy in the reading and counting of ballots by the Vote Counting Machines (VCM) was repeated by protestant Marcos in his Election Protest.

14. Clearly, protestant Marcos, in seeking the manual recount and judicial revision of ballots in his protested provinces, is questioning the accuracy of the VCM.

15. It is precisely for this reason that the Honorable Tribunal directed the revision, recount and re-appreciation of ballots in the three (3) pilot provinces of protestant Marcos.

16. Further, **Rule 62 of the Presidential Electoral Tribunal Revisor's Guide for the Revision of Ballots Under the Automated Election System** even confirms the verification of the total votes received by the parties:

*"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."



17. Notwithstanding, OSG claimed that an Election Protest is a different process from the RMA.

18. In doing so, OSG recklessly and baselessly asserts that the rules in the *Random Manual Audit* do not apply to the PET election contest.

19. With due respect, this reckless and baseless conclusion of OSG merely shows its misunderstanding of the ongoing revision, recount and re-appreciation of ballots.

**OSG has no personal knowledge to conclude that the application of the 50% threshold will not disenfranchise the voters.**  
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20. At no instance has OSG, any of its representatives and/or lawyers attended and observed the ongoing revision, recount and re-appreciation of ballots.

21. Thus, OSG has no basis to once more make a reckless conclusion that the application of the fifty percent (50%) threshold percentage does not disenfranchise the voters.

22. Once more, in making this reckless conclusion, OSG has revealed to the Honorable Tribunal its lack of knowledge on the ongoing revision, recount and re-appreciation of ballots.

23. Admittedly, both the COMELEC Resolution No. 10088 and the official ballots reminded the voters to fully shade the oval beside the name of the candidates of their choice.

24. Notwithstanding, there were still voters who were not able to fully shade the ovals.

25. However, in those instances where the ovals were not fully shaded but still met the twenty five percent (25%) threshold percentage, the VCMs still read and counted the votes cast.

26. Thus, to now disregard these valid votes previously read and counted by the VCMs will result to a massive disenfranchisement of voters.

27. Plainly speaking, the previously valid votes read and counted by the VCMs are now being disregarded as not valid votes or as stray votes.

28. How can OSG now claim that the continued application of the fifty percent (50%) threshold percentage is not resulting to a disenfranchisement of voters?

29. Effectively, OSG wants to disregard the integrity of the automated election system (AES) and the results of the elections by applying a new rule.

#### **Jurisdiction of COMELEC and the Presidential Electoral Tribunal.**

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30. There is no question as to the jurisdiction of COMELEC and the Honorable Tribunal.

31. However, protestant Marcos and OSG must be reminded – COMELEC has been designated by no less than the 1987 Constitution to *enforce and administer all law and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall*<sup>7</sup>.

32. Thus, the system as adopted by COMELEC must be taken cognizance of.

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<sup>7</sup> Article IX, C, Section 2 (1), 1987 Constitution.



33. This means, the application of the twenty five percent (25%) threshold percentage used in the reading and counting of votes by the VCM must be taken cognizance of.

34. Otherwise, OSG is taking a dangerous position where the results of the elections will be changed by way of an election protest.

35. Simply put, OSG is now providing a venue for losing candidates to disregard the sovereign will of the electorate by applying different rules from those adopted and used during the elections by COMELEC.

36. This simply must not be done. This erroneous position taken by OSG will erode the very foundation of our democracy.

37. The whims of one person cannot outweigh the overwhelming choice of the electorate.

RESPECTFULLY SUBMITTED.

Pasig City for Manila. 12 July 2018.

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### **EXPLANATION**

Due to unavailability of messengers and the distance of the parties, a copy of the herein "Counter-Manifestation" were sent to the above-named parties by registered mail.



**ATTY. ANTONIO CARLOS B. BAUTISTA**



Republic of the Philippines )

PASIG CITY )

**VERIFIED DECLARATION OF COMPLIANCE WITH THE  
EFFICIENT USE OF PAPER RULE**

I, **LAILA T. ENDIC**, hereby declare that the Counter-Manifestation [On the Manifestation and Motion (In Lieu of Comment) Dated 04 July 2018 Filed by the Office of the Solicitor General] submitted electronically by use of compact disc in accordance with the Efficient Use of Paper Rule are complete and are true copies of the Counter Manifestation [On the Manifestation and Motion (In Lieu of Comment) Dated 04 July 2018 Filed by the Office of the Solicitor General] filed with the Presidential Electoral Tribunal.


Pasig City. 12 July 2018.

  
**LAILA T. ENDIC**  
Secretary

*Sardillo Sardillo Salom Law Office*

**SUBSCRIBED AND SWORN TO BEFORE ME**, a notary public in and for Pasig City, this 12<sup>th</sup> day of July 2018 by affiant **LAILA T. ENDIC** who is personally known to me, and appeared with her SSS ID with NO. 3438031871 issued by Social Security System Office, known to me as the same person who personally signed the foregoing attestation before me and acknowledged that she executed the same.

Doc. No. 266 ;  
Page No. 54 ;  
Book No. 16 ;  
Series of 2018.

  
**GAUDENCIO A. BARBOZA, JR.**  
NOTARY PUBLIC  
Cities of Pasig, San Juan and  
In the Municipality of Pateras, Metro Manila  
Until December 31, 2018  
PTR No. A-3742910 / 01/03/2018 Taguig City  
IBP No. 018326 / 12/22/2017 RSM  
ROLL No. 41869  
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Appointment No. 26