

Republic of the Philippines  
**PRESIDENTIAL ELECTORAL TRIBUNAL**  
Manila

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

-versus-

**PET Case No. 005**

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

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**COMMENT**

**THE OFFICE OF THE SOLICITOR GENERAL,** in compliance with the Honorable Tribunal’s Resolution dated September 29, 2020, respectfully states:

**THE ANTECEDENTS**

1. In the May 9, 2016 National and Local Elections, the candidates for Vice President received the following number of votes based on the Certificates of Canvass (COCs):

|                          |                      |
|--------------------------|----------------------|
| Cayetano, Allan Peter S. | 5,903,379            |
| Escudero, Francis Joseph | 4,931,962            |
| Honasan, Gregorio II B.  | 788,881              |
| Marcos, Ferdinand Jr. R  | 14,155,344           |
| Robredo, Maria Leonor G. | 14,418,817           |
| Trillanes, Antonio IV F. | 868,501 <sup>1</sup> |

2. Consequently, on May 30, 2016, Congress, sitting as the National Board of Canvassers (NBOC), proclaimed protestee Maria Leonor G. Robredo as the duly elected Vice President of the Republic of the Philippines.<sup>2</sup>

<sup>1</sup> See PET Resolution dated August 29, 2017, p. 8.  
<sup>2</sup> *Id.* at 8; see also PET Resolution dated October 15, 2019, p. 2.

3. On June 29, 2016, protestant Ferdinand "Bongbong" R. Marcos, Jr. filed before the Honorable Tribunal an Election Protest dated June 28, 2016 against protestee Robredo.<sup>3</sup> Protestant Marcos alleged the following causes of action:

**VI**  
**GROUND IN SUPPORT OF THE ELECTION PROTEST**

**A.**  
**(First Cause of Action)**

**The proclamation of protestee Robredo as the duly elected Vice President is null and void because the COCs generated by the CCS are not authentic, and may not be used to determine the number of votes that the candidates for Vice-President received for the following reasons:**

**(1) The reliability of the system employed to canvass the votes received by the candidates for Vice-President was not established before the elections, which was exploited to favor Robredo.**

(a) The mandatory requirements of Republic Act No. 8436, as amended, were not shown to have been complied with.

(b) The use of the AES supplied by Smartmatic violated Republic Act No. 8436, as amended.

**(2) Other violations of Republic Act No. 8436, as amended, as well as the confluence of irregularities and breaches of protocols and procedures severely undermined the integrity and credibility of the entire electoral exercise, particularly the COCs on the basis of which protestee Robredo was proclaimed as duly elected Vice-President.**

(a) The COMELEC acted unlawfully by issuing and implementing certain resolutions relating to the SD cards of the VCM.

(b) The COMELEC acted unlawfully by reconfiguring 30 CCS of 4 provinces and 26

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<sup>3</sup> Protestant Marcos' Election Protest dated June 15, 2016.

cities/municipalities contrary to its own contingency procedure.

(c) Smartmatic introduced a new program into the Transparency Server in breach of protocol and without proper authority, and betraying the fact that a software was used in a component of the AES without being subjected to review by political parties and candidates as required by Republic Act No. 8436, as amended.

(d) An intermediary/queue serve was unlawfully utilized in gross violation and disregard of Republic Act No. 8436, as amended, and COMELEC Resolution No. 10057.

(e) The AES supplied by Smartmatic was a vulnerable system as reported by SysTest Labs, Inc. (SLI).

**B.**  
**(Second Cause of Action)**

**Massive electoral fraud, anomalies, and irregularities, such as but no limited to terrorism, violence, force, threats,... intimidation, pre-shading of ballots, vote-buying, substitution of voters, flying voters, pre-loaded SD cards, misreading of ballots, unexplained, irregular, and improper rejection of ballots containing votes for protestant Marcos, malfunctioning VCM, abnormally high unaccounted votes/undervotes for the position of Vice-President compromised and corrupted the conduct of elections and the election results for the position of Vice-President in the protested precincts.<sup>4</sup>**

4. Protestant Marcos prayed that the Honorable Tribunal:

(1) Upon the filing of this Election Protest, to immediately **ISSUE a PRECAUTIONARY PROTECTION ORDER** directing the Commission on Elections, the Election Officers, City/Municipal Treasurers, the Bangko Sentral ng Pilipinas (BSP), Smartmatic-Total Information Management (TIM) Corporation, IP Converge Data Services, Inc. and all data centers, Smart Communications, Inc., Globe Telecom,

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<sup>4</sup> *Id.* at 927-929.

Inc., PLDT Inc., Digitel Mobile Philippines, Inc. (Suncellular), and all telecommunications, Broadband Global Area Network (BGAN) and Very Small Aperture Terminal (VSAT) providers during the 9 May 2016 National and Local Elections (i) to take precautionary measures to preserve the integrity and safety of the following: (a) all the ballot boxes and their contents, including the ballots, voter's receipts, and election returns; (b) the list of voters, particularly the Election Day Computerized Voter's List (EDCVL), and voters registration records (VRRs), and the books of voters; (c) the audit logs, transmission logs, and all log files; and (3) all other documents or paraphernalia used in the elections, including the automated election equipment and records such as the Vote Counting Machines (VCM), Consolidation and Canvass System (CCS), Secure Digital (SD) cards (main and back-up), and the other data storage devices containing electronic data and ballot images, evidencing the conduct and the results of the elections in ALL of the **ninety two thousand five hundred nine (92,509)** clustered precincts that functioned during the 9 May 2016 National and Local Elections; and (ii) to ensure that the said documents and paraphernalia will not be tampered with pursuant to **Rule 36** of the **PET Rules**;

**On the First Cause of Action:**

(2) After due proceedings: (a) to DECLARE as "unauthentic" the Certificates of Canvass on the basis of which both Houses of Congress proclaimed protestee Ma. Leonor "Leni Daang Matuwid" Robredo as the winning candidate for Vice-President of the Philippines during the 9 May 2016 National and Local Elections, and, accordingly, to NULLIFY and SET ASIDE the proclamation of the protestee Ma. Leonor "Leni Daang Matuwid" Robredo as the duly elected Vice-President of the Philippines during the 9 May 2016 National and Local Elections; and (b) thereafter, on the basis of proceedings which the Tribunal may prescribe, determine the candidate who received the "highest number of votes";

**On the Second Cause of Action:**

(3) After due proceedings, to **ANNUL** the election results for the position of Vice-President in the provinces of **MAGUINDANAO, LANA DEL SUR, and BASILAN** on the ground of terrorism, intimidation, and harassment of voters as well as pre-shading of ballots in **ALL** of the **two thousand seven hundred fifty six (2,756)** protested clustered precincts that functioned in the aforesaid areas;

(4) To **DIRECT** the **COLLECTION, RETRIEVAL, TRANSPORT** and **DELIVERY** of **ALL** the (a) ballot boxes and their contents, including the ballots, voter’s receipts and election returns; (b) the lists of voters, particularly the Election Day Computerized Voter’s List (EDCVL), and voter’s registration records (VRRs), and the books of voters; (c) the audit logs, transmission logs, and all log files; and (d) all other documents or paraphernalia used in the elections, including the automated election equipment and records such as the Vote Counting Machines (VCMs), Consolidation and Canvass System (CCS) units, Secure Digital (SD) cards (main and back-up), and the other data storage devices containing electronic data and ballot images, evidencing the conduct and results of the elections in **ALL** of the **thirty six thousand four hundred sixty five (36,465)** clustered precincts that functioned during the 9 May 2016 National and Local Elections, subject of the **MANUAL RECOUNT, JUDICIAL REVISION, TECHNICAL EXAMINATION, and FORENSIC INVESTIGATION** prayed for in this election protest;

(5) To **DIRECT** the immediate **RE-OPENING** of the ballot boxes in **EACH** of the **thirty six thousand four hundred sixty five (36,465)** clustered precincts that functioned during the 9 May 2016 National and Local Election in the following protested areas: **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;**

(6) To **CONDUCT** a **MANUAL RECOUNT** and **JUDICIAL REVISION** of the paper ballots and/or the ballot images as well as an **EXAMINATION, VERIFICATION, and ANALYSIS** of the voter’s receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the Election Day Computerized Voter’s List (EDCVL), and voter’s registration records (VRRs), the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the Vote Counting Machines (VCMs), Consolidation and Canvass System (CCS) units, Secure Digital (SD) cards (main and back-up), and the other data storage devices containing electronic data and ballot

images in **ALL** of the **thirty six thousand four hundred sixty five (36,465)** protested clustered precincts pursuant to **Rule 38 to 45** of the **PET Rules**;

(7) To **CONDUCT a TECHNICAL EXAMINATION and FORENSIC INVESTIGATION** of the paper ballots and/or the ballot images, the voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the Election Day Computerized Voter's List (EDCVL), and voter's registration records (VRRs), the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the Vote Counting Machines (VCMs), Consolidation and Canvass System (CCS) units, Secure Digital (SD) cards (main and back-up), and the other data storage devices containing electronic data and ballot images in **ALL** of the **thirty nine thousand two hundred twenty one (39,221)** protested clustered precincts pursuant to **Rule 46 to 51** of the **PET Rules**; and

(8) To **DETERMINE** the candidate who received the highest number of valid votes for the position of Vice-President after the **ANNULMENT** of the election results in the provinces of Lanao del Sur, Maguindanao and Basilan, and/or after the conduct the **MANUAL RECOUNT** and **JUDICIAL REVISION** of the paper ballots and/or the ballot images in the following protested areas: **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.**

Finally, after the conclusion of all proceedings, to render/promulgate a **DECISION** that **ANNULS** and **SETS ASIDE** the proclamation of protestee **MARIA LEONOR G. ROBREDO** as Vice-President, and **DECLARES** protestant **FERDINAND R. MARCOS** the duly elected and rightful Vice-President of the Republic of the Philippines for having obtained the highest number of valid votes cast for the said office during the 9 May 2016 National and Local Election.

Other reliefs, just and equitable under the premises, are also prayed for.<sup>5</sup>

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<sup>5</sup> *Id.* at 1039-1043.

5. The election protest was docketed as PET Case No. 005.

6. On July 12, 2016, the Honorable Tribunal issued a Resolution "ISSU[ING] SUMMONS and GRANT[ING] the prayer of the protestant for a Precautionary Protection Order pursuant to Rule 36 of the 2010 Rules of the Presidential Electoral Tribunal."<sup>6</sup>

7. Meanwhile, protestee Robredo filed her Verified Answer with Special and Affirmative Defenses and Counter-Protest dated August 12, 2016,<sup>7</sup> alleging the following grounds:

#### GROUND

##### I.

**THE *ELECTION PROTEST* FAILED TO STATE, WITH DETAILED SPECIFICITY, THE ACTS OR OMISSIONS COMPLAINED OF SHOWING THE ELECTORAL FRAUDS, ANOMALIES, OR IRREGULARITIES IN THE PROTESTED PRECINCTS, IN ACCORDANCE WITH RULE 17 OF THE 2010 RULES OF THE PRESIDENTIAL ELECTORAL TRIBUNAL.**

##### II.

**THE *ELECTION PROTEST*, WHICH IS IN THE NATURE OF A PRE-PROCLAMATION CASE, SHOULD HAVE BEEN INITIATED WITH THE NBOC, AND NOT WITH THE HONORABLE TRIBUNAL.**

##### III.

**THE ALLEGATIONS IN THE *ELECTION PROTEST* ARE NOT HINGED ON FACTS AND LAW.<sup>8</sup>**

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<sup>6</sup> PET Resolution dated July 12, 2016.

<sup>7</sup> Protestee Robredo's Verified Answer with Special Affirmative Defenses and Counter-Protest dated August 12, 2016.

<sup>8</sup> *Id.* at 12-13.

8. Protestee Robredo prayed that:

1. A Preliminary Hearing be CONDUCTED on the Special and Affirmative Defenses of protestee Robredo;

2. After a Preliminary Hearing, DISMISS the *Election Protest* for lack of jurisdiction and being insufficient in form and substance;

3. Pending the resolution of the Special and Affirmative Defenses, HOLD IN ABEYANCE the collection and transfer of the ballot boxes subject of the *Election Protest*;

4. In the alternative, GRANT the Counter-Protest and IMMEDIATELY ISSUE a Precautionary Protection Order directing the concerned Provincial Election Supervisors and/or Treasurers to take the necessary precautionary measures to protect the integrity of the ballot boxes and other election documents and paraphernalia, including the Election Day Computerized Voter's List in the said Thirteen (13) provinces;

5. After due hearing and evaluation of evidence:

5.1. DISMISS the *Election Protest* for lack of merit; and

5.2. AFFIRM the proclamation of protestee Maria Leonor G. Robredo as the winning candidate for Vice-President in the 09 May 2016 National and Local Elections.

Protestee prays for such other reliefs as may be just and equitable under the premises.<sup>9</sup>

9. A preliminary conference was conducted by the Honorable Tribunal on July 11, 2017.<sup>10</sup>

10. On August 29, 2017, the Honorable Tribunal issued a Resolution dismissing protestant Marcos' First Cause of Action "for judicial economy and for the prompt disposition of this case." The Honorable Tribunal noted that "even if the protestant succeeds in proving his First Cause of Action, this will not mean that he has already won the position of Vice

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<sup>9</sup> *Id.* at 534.

<sup>10</sup> PET Resolution dated July 11, 2017.



President as this can only be determined by a manual recount of all votes in all precincts. And if this is a relief protestant has clearly stated he is not praying for, then, allowing the First Cause of Action to continue would be an exercise in futility and would have no practical effect."<sup>11</sup>

11. Thus, in its Preliminary Conference Order, which was contained in the same Resolution dated August 29, 2017, the Honorable Tribunal limited the issues in the protest to the following:

A. For protestant

*Second and Third Causes of Action – Judicial Recount and Revision and Annulment of Election Results*

1. Whether there existed massive electoral fraud, anomalies, and irregularities, such as, but not limited to, terrorism, violence, force, threats, intimidation, pre-shading of ballots, vote-buying, substitution of voters, flying voters, pre-loaded SD cards, misreading of ballots, unexplained, irregular, and improper rejection of ballots containing votes for protestant, malfunctioning VCM, and abnormally high unaccounted votes/undervotes for the position of Vice President, that compromised and corrupted the conduct of elections and the election results for the position of Vice President in the protested precincts;

2. Whether the election results in the provinces of Lanao del Sur, Basilan, and Maguindanao should be annulled due to widespread terrorism, violence, force, threats, intimidation, pre-shading of ballots, and substitution of voters thereat; and

3. Whether protestant should be proclaimed as the duly elected and rightful Vice President of the Republic of the Philippines for having obtained the highest number of valid votes cast for the said office during the May 9, 2016 National and Local Elections.

B. For protestee

*Second Cause of Action (Judicial Recount of Ballots)*

1. Whether the "protest all the clustered precincts" type of protest, contesting ALL the clustered precincts of the

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<sup>11</sup> PET Resolution dated August 29, 2017, pp. 2-3.

Provinces of 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, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Lanao del Sur, Maguindanao, and Basilan, and the highly urbanized cities of Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City, and Zamboanga City, is a petition to declare a failure of election and hence beyond the jurisdiction of the Tribunal; or in the alternative:

a. Whether the recount, revision, and re-appreciation of the ballots will confirm the victory of the protestee as the winning candidate for Vice President;

b. Whether the alleged electoral frauds, anomalies, and irregularities affected the results of the elections for Vice President during the May 9, 2016 National and Local Elections;

c. Whether undervotes or overvotes are valid votes that could be a ground to contest the results of the elections; or, whether the presence of undervotes or overvotes are badges or signs of electoral frauds, anomalies, and irregularities;

d. Whether the alleged unaccounted votes contain valid votes for protestant;

e. Whether there is a discrepancy in the voter's receipt vis-à-vis the ones contained in the official ballots; and

f. Whether there is a discrepancy in the voter's receipt vis-à-vis the votes received by the parties.

*Third Cause of Action (Annulment of the Results of the Elections)*

1. Whether there is sufficient evidence to support the protest for annulment of elections

a. Whether more than fifty percent (50%) of the votes cast in the Province of Lanao del Sur were affected by the alleged electoral frauds, anomalies, and irregularities.

b. Whether more than fifty percent (50%) of the votes cast in the Province of Maguindanao were

affected by the alleged electoral frauds, anomalies, and irregularities.

c. Whether more than fifty percent (50%) of the votes case in the Province of Basilan were affected by the alleged electoral frauds, anomalies, and irregularities.<sup>12</sup>

12. As indicated in the Preliminary Conference Order, the pilot provinces for the protest are Camarines Sur, Iloilo, and Negros Oriental.<sup>13</sup> The revision of the ballots would begin with these three provinces, which shall serve as "test cases" by which the Honorable Tribunal will determine whether to proceed with the revision of ballots of the remaining contested clustered precincts.<sup>14</sup>

13. As for protestee (counter-protestant) Robredo's counter-protest, the issues were summarized by the Honorable Tribunal as follows:

A. Proposed issues for Counter-Protest

Whether the counter-protestee, his supporters, and cohorts committed massive electoral frauds, anomalies, and irregularities during the May 9, 2016 National and Local Elections in the counter-protested clustered precincts

1. Whether counter-protestant, in view of the massive electoral frauds, anomalies, and irregularities in the counter-protested clustered precincts, should have garnered more votes.

2. Whether the counter-protestant should have been credited with more votes had the VCMs not misread, miscounted, and misappreciated the reading of the ballots in the counter-protested precincts.

3. Whether the revision, recount, and re-appreciation of the ballots from the counter-protested clustered precincts will show a systematic decrease in the votes received by counter-protestant.

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<sup>12</sup> *Id.* at 18-20.

<sup>13</sup> *Id.* at 22.

<sup>14</sup> PET Resolution dated October 15, 2019, p. 20.

4. Whether the proclamation of counter-protestant as the winning candidate for Vice President during the May 9, 2016 National and Local Elections should be affirmed.<sup>15</sup>

14. As indicated in the Preliminary Conference Order, the pilot provinces for the counter-protest are Capiz, Sulu, and North Cotabato.<sup>16</sup>

15. The revision of ballots for the pilot protested provinces of Camarines Sur, Iloilo, and Negros Oriental commenced on April 2, 2018 and was concluded on February 4, 2019.<sup>17</sup> After the revision, the revised ballots were appreciated. The appreciation of the revised ballots from the pilot protested provinces started on January 14, 2019 and was completed on August 14, 2019.<sup>18</sup>

16. On October 15, 2019, the Honorable Tribunal issued its Resolution containing the results of the revision and appreciation of ballots in the pilot protested provinces. The Honorable Tribunal also directed protestant Marcos and protestee Robredo to submit their respective memoranda containing their comments on the report on the revision and appreciation of votes relating to the three pilot protested provinces, as it relates to the Second Cause of Action, as well as their position on issues related to the Third Cause of Action.<sup>19</sup>

17. Protestant Marcos filed his Memorandum dated December 12, 2019, praying that:

ACCORDINGLY, it is most respectfully prayed of this Honorable Tribunal to RECONSIDER, REVIEW, and RE-EXAMINE the Preliminary Appreciation conducted on the pilot protested provinces of Camarines Sur, Iloilo, and Negros Occidental; to immediately PROCEED with the Third Cause of Action notwithstanding the pendency of the Resolution of the Second Cause of Action; to DIRECT the COMELEC handwriting experts to CONDUCT the TECHNICAL

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<sup>15</sup> PET Resolution dated August 29, 2017, pp. 18-20.

<sup>16</sup> *Id.* at 23.

<sup>17</sup> PET Resolution dated October 15, 2019, p. 31.

<sup>18</sup> *Id.* at 39.

<sup>19</sup> *Id.* at 54-55.

EXAMINATION of the voter's signatures appearing on the Election Day Computerized Voter's List (EDCVL) as against the voters' signatures appearing on the Voters Registration Records (VRRs) in each of the two thousand seven hundred fifty-six (2,756) clustered precincts of Maguindanao, Lanao del Sur, and Basilan relative to the Third Cause of Action; to CONDUCT another Preliminary Conference for the Third Cause of Action; to NOTE and ADMIT the foregoing Memorandum and CONSIDER the same in resolving the pending incidents in the above-entitled case.

Other reliefs, just and equitable under the premises, are also prayed for.<sup>20</sup>

18. Protestee Robredo submitted her Memorandum dated December 19, 2019, praying that:

WHEREFORE, PREMISES CONSIDERED, it is respectfully prayed of the Honorable Tribunal that:

1. With the failure of protestant Ferdinand R. Marcos, Jr. to show any substantial recovery in his pilot provinces, the above-captioned Election Protest be IMMEDIATELY DISMISSED; and, in the alternative,

2. Notwithstanding the clear result of the revision, recount, and re-appreciation from the pilot provinces, the Election Protest will still proceed to the Third Cause of Action, DIRECT protestant Marcos to justify resort to a technical examination of the Election Day Computerized Voter's List vis-à-vis the Voter's Registration Records.

Protestee Robredo prays for such other reliefs as may be just and equitable under the premises.<sup>21</sup>

19. In its Resolution dated September 29, 2020, the Honorable Tribunal resolved to furnish the COMELEC and the OSG with a copy of its Resolution dated October 15, 2019, as well as copies of the parties' memoranda.

20. The COMELEC was likewise ordered to (a) report where petitions for failure of elections were filed in the provinces of Maguindanao, Lanao del Sur, and Basilan during

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<sup>20</sup> Protestant Marcos' Memorandum dated December 12, 2019.

<sup>21</sup> Protestee Robredo's Memorandum dated December 19, 2019.

the 2016 National and Local Elections; (b) provide the corresponding resolutions, that is, whether the petitions were granted or denied; and, (c) if failure of elections was declared and special elections conducted, provide the results of the special elections.

21. In addition, the COMELEC was directed to comment, within a non-extendible period of 20 working days, several issues related to the Third Cause of Action of annulment of elections on the grounds of terrorism, intimidation, harassment of voters, and pre-shading of ballots in the provinces of Maguindanao, Lanao del Sur and Basilan.

22. The OSG and the COMELEC were further directed to comment, within a non-extendible period of 20 working days, on the following issues:

I. Whether or not the Presidential Electoral Tribunal is empowered by the Constitution to declare:

- a) annulment of elections without special elections;  
and
- b) failure of elections and then order the conduct of special elections.

II. Whether or not the Presidential Electoral Tribunal's declaration of failure of elections and then ordering of special elections will infringe upon the Commission on Election's mandate and powers provided for in Article IX(C) (Sec. 2) of the Constitution, which reads:

Section 2. The Commission on Elections shall exercise the following powers and functions:

- 1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.
- 2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by

trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions

constituting election frauds, offenses, and malpractices.

7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to, its directive, order, or decision.

9) Submit to the President and the Congress, a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.<sup>22</sup>

23. On October 5, 2020, the OSG received a soft copy of the Resolution dated September 29, 2020 through electronic mail. On October 6, 2020, the OSG was served with a hard copy of the resolution.

## **ARGUMENT**

### **I.**

**THE PRESIDENTIAL ELECTORAL TRIBUNAL HAS THE POWER TO DECLARE THE ANNULMENT OF ELECTIONS OR A FAILURE OF ELECTIONS WITHOUT INFRINGING UPON THE AUTHORITY OF THE COMMISSION ON ELECTIONS.**

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<sup>22</sup> PET Resolution dated September 29, 2020, pp. 3-4.



## II.

### **THE PRESIDENTIAL ELECTORAL TRIBUNAL HAS NO CONCOMITANT POWER TO ORDER THE CONDUCT OF SPECIAL ELECTIONS.**

## **DISCUSSION**

### **I. The Presidential Electoral Tribunal has the power to declare the annulment of elections or a failure of elections without infringing upon the authority of the Commission on Elections.**

24. The Presidential Electoral Tribunal (PET) is empowered to declare the annulment of elections or a failure of elections pursuant to Section 4(7), Article VII of the 1987 Constitution, which states:

The Supreme Court, sitting *en banc*, shall be the **sole judge** of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.<sup>23</sup>

25. Prior to 1987, Section 1 of both R.A. No. 1793<sup>24</sup> and B.P. Blg. 884<sup>25</sup> summarily state that there shall be an independent PET, composed of Supreme Court Justices, which shall be the sole judge of all contests relating to the election, returns, and qualifications of the President and the Vice President of the Philippines.

26. The jurisdiction of the Supreme Court, as defined by Section 4(7), Article VII of the 1987 Constitution, does not include cases directly brought before it questioning the

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<sup>23</sup> Emphasis supplied.

<sup>24</sup> An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice-President-Elect of the Philippines and Providing for the Manner of Hearing the Same.

<sup>25</sup> Independent Presidential Electoral Tribunal (December 3, 1985).

qualifications of a candidate for the presidency or vice-presidency before the elections are held.<sup>26</sup>

27. Jurisprudence has established and recognized the PET's sole and exclusive power to hear election protests involving the President and Vice President, as illustrated in the case of *Macalintal v. PET*, thus:<sup>27</sup>

The Supreme Court, as a Presidential Electoral Tribunal (PET), the Senate Electoral Tribunal (SET) and House of Representatives Electoral Tribunal (HRET) are electoral tribunals, each specifically and exclusively clothed with jurisdiction by the Constitution to act respectively **as "sole judge of all contests relating to the election, returns, and qualifications" of the President and Vice-President, Senators, and Representatives.** In a litany of cases, this Court has long recognized that these electoral tribunals exercise jurisdiction over election contests only after a candidate has already been proclaimed winner in an election. Rules 14 and 15 of the Rules of the Presidential Electoral Tribunal provide that, **for President or Vice-President, election protest or quo warranto may be filed after the proclamation of the winner.**<sup>28</sup>

28. An election protest is a contest between the defeated and winning candidates on the ground of frauds or irregularities in the casting and counting of the ballots, or in the preparation of the returns. It raises the question of who actually obtained the plurality of the legal votes and therefore is entitled to hold the office.<sup>29</sup>

29. To carry out its mandate as the sole and exclusive arbiter to hear election protests involving the President and Vice President, the PET is allowed by the Constitution to promulgate its rules for the purpose of deciding election contests. Thus, if the current PET rules do not provide for a specific set of rules relating to the current electoral protest, the PET can supply the rules that need to be promulgated and used, considering that it is vested by the Constitution with the exclusive mandate to settle presidential and vice-presidential election protests.

<sup>26</sup> *Tecson v. Comelec*, G.R. No. 161434 and 161824, 424 SCRA 277 (2004).

<sup>27</sup> G.R. No. 191618, November 23, 2010, citing *Tecson v. Comelec*, G.R. Nos. 161434, 161634, and 161824, March 3, 2004.

<sup>28</sup> Emphases supplied.

<sup>29</sup> *Samad v. COMELEC*, G.R. No. 107854 and G.R. No. 108642, July 16, 1993.

30. Corollary thereto, the 2010 Rules of the Presidential Electoral Tribunal (A.M. No. 10-4-29-SC) provide the following:

RULE 3. *Construction.*— These Rules shall be liberally construed to achieve a just, expeditious, and inexpensive determination and disposition of every contest before the Tribunal.

RULE 7. *Express and implied powers.* — The Tribunal shall exercise all powers expressly vested in it by the Constitution or by law, and such other powers as may be inherent, necessary or incidental thereto for the accomplishment of its purposes and functions.

31. The Supreme Court, sitting as the PET, is responsible for deciding presidential and vice-presidential contests. The PET is authorized to exercise powers similar to those conferred upon courts of justice, including the issuance of *subpoena*, taking of depositions, arrest of witnesses to compel their appearance, production of documents and other evidence, and the power to punish contemptuous acts and hearings.<sup>30</sup>

32. This principle was likewise expressed in the case of *Buac v. Comelec*,<sup>31</sup> where the Supreme Court declared:

Fourth. An eye contact with our Constitution and related laws **will reveal that only contests relating to the elections, returns and qualifications of elected officials are subject to the exercise of judicial power of our courts or quasi-judicial power of our administrative agencies**, thus: (a) contests involving elective municipal officials are tried and decided by trial courts of general jurisdiction, while those involving barangay officials are tried and decided by trial courts of limited jurisdiction; in both cases, however, the COMELEC exercises appellate jurisdiction; (b) contests involving all elective regional, provincial and city officials fall within the exclusive original jurisdiction of the COMELEC in the exercise of its quasi-judicial power; (c) contests involving members of the House of Representatives fall within the exclusive original jurisdiction of the House of Representatives Electoral Tribunal in the exercise of quasi-judicial power; (d) contests involving members of the Senate fall within the exclusive original

<sup>30</sup> Macalintal v. PET, supra at 27..

<sup>31</sup> G.R. No. 155855, January 26, 2004.

jurisdiction of the Senate Electoral Tribunal in the exercise of quasi-judicial power; and, (e) **contests involving the President and the Vice President fall within the exclusive original jurisdiction of the Presidential Electoral Tribunal, also in the exercise of quasi-judicial power.**<sup>32</sup>

33. Furthermore, Justice Marvic M.V.F. Leonen, in his Separate Opinion in *Rivera v. COMELEC*,<sup>33</sup> upheld the exclusive nature of the PET's jurisdiction over election contests involving the President and Vice President, to wit:

.... Rather than having to await the consummation of all such occurrences, it suffices that a candidate for member of the House of Representatives shall have been proclaimed a winner in order for contests relating to the election, returns, and qualifications of any such member to be within the exclusive jurisdiction of the House of Representatives Electoral Tribunal. **Parenthetically, this is also true of senators in relation to the Senate Electoral Tribunal, and the President and Vice President in relation to the Presidential Electoral Tribunal.**<sup>34</sup>

34. Case law also emphasizes the restrictions set for the COMELEC as regards election-related contests. *Abes v. COMELEC*<sup>35</sup> states:

The boundaries of the forbidden area into which Comelec may not tread are also marked by jurisprudence. **That Comelec is not the proper forum to seek annulment of an election based on terrorism, frauds and other illegal practices, is a principle emphasized in decisions of this Court. Expressive of this rule is the following culled from Nacionalista Party vs. Commission on Elections, 85 Phil. 149, 155-158:**

What are the implications of the power vested in the Commission to enforce and administer all laws relative to the conduct of elections and to insure free orderly, and honest elections? *Does it include the power to annul an election which way not have been free, orderly, and honest?*

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<sup>32</sup> Emphases supplied.

<sup>33</sup> G.R. Nos. 210273 & 213069, April 19, 2016.

<sup>34</sup> Emphasis supplied.

<sup>35</sup> G.R. No. L-28348, December 15, 1967, citing *Nacionalista* (85 Phil. 149, 155-158).

It seems clear that the context of the constitutional provision in question as well as from other provisions already quoted above [Secs. 8 and 166, Revised Election Code] that such power is *preventive* only and *not curative* also; that is to say, it is intended to prevent any and all forms of election fraud or violation of the Election Law, **but if it fails to accomplish that purpose it is not the Commission on Election[s] that is charged with the duty to cure or remedy the resulting evil but some other agencies of the Government.** We note from the text that the power to decide questions involving the right to vote is expressly withheld from the Commission although the right to vote is provided in the Election Law, the enforcement and administration of which is placed in the exclusive charge of the Commission. **Parallel to the withholding of such power from the Commission is the vesting in other agencies of the more inclusive power to decide all contests relating to the election, returns, and qualifications of the members of Congress, namely, the Electoral Tribunal of the Senate in the case of the senators and the Electoral Tribunal of the House of Representatives in the case of the members of the latter....**<sup>36</sup>

35. The above quoted excerpt concludes that the powers of the COMELEC are fundamentally executive and administrative in nature. This is the reason why the question of whether or not there was terrorism, vote-buying or other irregularities in the elections should be ventilated in regular election protests. Definitely, the COMELEC is not the proper forum for deciding such protests.<sup>37</sup>

36. The same ruling was reached by the Supreme Court in the earlier case of *Nationalista Party v. COMELEC*<sup>38</sup> where one of the issues raised was whether a given election could be annulled in an action brought exclusively for such purpose, without any election protest therefor. The Supreme Court ruled in the negative and held that **"the power to decide election contests necessarily includes the power to determine the validity or nullity of the votes questioned by either of the contestants."**

37. Similarly, in the case of *Borromeo v. COMELEC*,<sup>39</sup> the Supreme Court held that an "action to annul an election"

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<sup>36</sup> Emphasis supplied.

<sup>37</sup> *Suhuri v. Comelec*, G.R. No. 181869, October 2, 2009.

<sup>38</sup> 85 Phil. 149, 155.

<sup>39</sup> G.R. No. L-29369, July 24, 1969.

is a "remedy [that] may be granted only as an incident to an election contest."

38. Also, in *Pasandalan v. COMELEC*,<sup>40</sup> the Supreme Court declared that the petitioner therein should have "filed an election protest to substantiate his allegations of electoral anomalies, not a petition to declare a failure of election" before the COMELEC.

39. On the other hand, the power of the PET to declare a failure of elections is also implicit in its mandate under the Constitution as the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President to the exclusion of others.

40. In *Abdusakur Tan v. COMELEC*,<sup>41</sup> the Supreme Court ruled that the COMELEC cannot hear a petition for declaration of failure of elections "since the electoral anomalies alleged in the petitions should have been raised in an election protest, not in a petition to declare a failure of election."

41. In his concurring opinion in *Velasco v. Belmonte*,<sup>42</sup> Justice Leonen explained that election contests consist of either an election protest or a *quo warranto* which, although two distinct remedies, would have one objective in view, i.e., to dislodge the winning candidate from office<sup>43</sup> and to establish who is the actual winner in the election.<sup>44</sup> The action puts in issue the validity of the incumbent's claim to the office.<sup>45</sup>

42. The PET's power to determine, via an electoral protest, the actual winner in the election for President and Vice-President, or who between the candidates received the majority of the valid votes cast, necessarily includes the determination of whether there was a failure of elections. This

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<sup>40</sup> G.R. No. 150312, July 18, 2002.

<sup>41</sup> G.R. Nos. 166143-47, November 20, 2006.

<sup>42</sup> G.R. No. 211140, January 12, 2016.

<sup>43</sup> Citing *Tecson v. Comelec*, G.R. No. 161434, March 3, 2004.

<sup>44</sup> Citing *Lerias v. House of Representatives Electoral Tribunal*, 279 Phil. 877, 898 (1991)

<sup>45</sup> *Velasco v. Belmonte*, G.R. No. 211140

is also consistent with the Supreme Court's interpretation of the phrase election, returns, and qualification as referring to all matters affecting the validity of the contestee's title.<sup>46</sup>

43. Thus, the conferment of additional jurisdiction to the Supreme Court to decide election protests involving presidential and vice-presidential candidates includes the means necessary to carry it into effect under the doctrine of necessary implication.<sup>47</sup> The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges, or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis*. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. This is so because the greater includes the lesser, expressed in the maxim, *in eo plus sit, semper inest et minus*.<sup>48</sup>

44. A contrary interpretation would run counter to the essence of the PET as the sole arbiter of election contests involving presidential and vice-presidential candidates. Statutory construction should not kill but give life to the law.<sup>49</sup>

45. The foregoing rules on construction and the PET's express and implied powers is associated with the PET's express and inherent power to "[c]ontrol its processes and amend its decision, resolutions or orders to make them conformable to law and justice."<sup>50</sup> This power of control, suffice it to state, is supported by Section 6, Rule 135 of the Rules of Court that allows courts to employ means to carry its jurisdiction into effect. The provision reads:

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<sup>46</sup> Tañada, Jr. v. Comelec, G.R. Nos. 207199-200, October 22, 2013.

<sup>47</sup> Macalintal v. Presidential Electoral Tribunal, G.R. No. 191618, November 23, 2010.

<sup>48</sup> Chua v. the Civil Service Commission, G.R. No. 88979, February 7, 1992.

<sup>49</sup> DAR v. Sps. Romana, G.R. No. 183290, July 9, 2014.

<sup>50</sup> 2010 Rules of the PET, Rule 8(e).

Section 6. *Means to carry jurisdiction into effect.* — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.

46. Thus, if, upon the exercise of its functions to hear a protest case, like the one at bar, the PET finds that there are indeed grounds to declare either (a) the annulment of elections or (b) a failure of elections, it must not shirk from its duty to have the election therein nullified or set aside.

47. Surely, the framers of the Constitution did not intend the PET to operate *in vacuo*, that is why when the Constitution vested it with the exclusive authority, it means that it is also empowered to promulgate whatever rules are needed in order to fulfill its mandate.

## **II. The Presidential Electoral Tribunal has no concomitant power to order the conduct of special elections.**

48. The PET does not have the power to call for special elections. Its mandate under the Constitution is clear -- to be the **"sole judge of all contests relating to the election, returns, and qualifications of the President or Vice President...."**

49. The Constitution speaks of the PET's duty to try issues relating to an election that has happened. The Constitution is, however, silent as to whether the PET has the power to order the conduct of special elections by reason of its findings, or as incident to or an adjunct of its function as the PET. The same appears to be *ultra vires*.



50. Section 4(7), Article VII of the 1987 Constitution limits the jurisdiction of the PET to *contests* relating to the elections of the President and Vice President:

The Supreme Court, sitting *en banc*, shall be the sole judge of all **contests** relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.<sup>51</sup>

51. This is affirmed in Rule 13 of the 2010 PET Rules, which states:

Rule 13. *Jurisdiction.* – The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice President of the Philippines.

52. In *Tecson v. COMELEC*,<sup>52</sup> the Supreme Court clarified that the word "contest" means a *post-election scenario, viz:*

**Ordinary usage would characterize a "contest" in reference to a post-election scenario. Election contests consist of either an election protest or a *quo warranto* which, although two distinct remedies, would have one objective in view, i.e., to dislodge the winning candidate from office. A perusal of the phraseology in Rule 12, Rule 13, and Rule 14 of the "Rules of the Presidential Electoral Tribunal," promulgated by the Supreme Court *en banc* on 18 April 1992, would support this premise -**

"Rule 12. *Jurisdiction.* - The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines.

"Rule 13. *How Initiated.* - An election contest is initiated by the filing of an election protest or a petition for *quo warranto* against the President or Vice-President. An election protest shall not include a petition for *quo*

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<sup>51</sup> Emphasis supplied.

<sup>52</sup> G.R. Nos. 161434, 161634, & 161824, March 3, 2004; Citations omitted.

*warranto*. A petition for *quo warranto* shall not include an election protest.

"Rule 14. *Election Protest*. - Only the registered candidate for President or for Vice-President of the Philippines who received the second or third highest number of votes may contest the election of the President or the Vice-President, as the case may be, by filing a verified petition with the Clerk of the Presidential Electoral Tribunal within thirty (30) days after the proclamation of the winner."

**The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice-President", of the Philippines, and not of "candidates" for President or Vice-President. A *quo warranto* proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. In such context, the election contest can only contemplate a post-election scenario. In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post-election scenario.**<sup>53</sup>

53. Likewise, in *Tecson*, Chief Justice Reynato S. Puno, in his Separate Opinion, stated categorically:

The Court is unanimous on the issue of jurisdiction. It has no jurisdiction on the *Tecson* and *Valdez* petitions. Petitioners cannot invoke Article VII, Section 4, par. 7 of the Constitution which provides:

"The Supreme Court, sitting *en banc* shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice President and may promulgate its rules for the purpose."

**The word "contest" in the provision means that the jurisdiction of this Court can only be invoked after the election and proclamation of a President or Vice President. There can be no "contest" before a winner is proclaimed.**<sup>54</sup>

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<sup>53</sup> Emphases supplied.

<sup>54</sup> Emphasis supplied.

54. The jurisdiction of the PET can therefore only be invoked after an election has been held. Upon rendering a decision on a protest filed before the PET, its jurisdiction corollarily ends.

55. It would thus be fair to conclude that the jurisdiction of the PET, as defined by Section 4(7), Article VII of the 1987 Constitution, would not include the power to call for special elections. The reason is obvious: what if the losing candidate in such special elections will again question the result of the elections? It will be a vicious and never-ending cycle.

56. *Expressio unius est exclusio alterius*. This is a known and basic principle in statutory construction that when one or more things of a class are expressly mentioned, others of the same class are excluded. It is all too clear that the enumerated function or duty of the PET pertains to an election that has passed. It is not empowered by any law, rule, or analogous jurisprudence to direct the conduct of special elections. There is no legal basis for such power.

57. In other words, the PET does not have the power to call for special elections, and, in theoretical terms, after the conduct of one, it has no power to act as a board of canvassers, which power is lodged solely in Congress.

58. Significantly, the PET's power is akin to that of a court of justice, which exercises judicial power.

59. Jurisprudence has declared that the PET, as intended by the framers of the Constitution, is to be an institution independent, *but not separate*, from the judicial department.

60. In *Macalintal v. PET*,<sup>55</sup> the Supreme Court shed light on the nature of the PET, *viz*:

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<sup>55</sup> G.R. No. 191618, November 23, 2010.

Republic Act No. 1793 did not create a new or separate court. **It has merely conferred upon the Supreme Court the functions of a Presidential Electoral Tribunal.** The result of the enactment may be likened to the fact that courts of first instance perform the functions of such ordinary courts of first instance, those of court of land registration, those of probate courts, and those of courts of juvenile and domestic relations. It is, also, comparable to the situation obtaining when the municipal court of a provincial capital exercises its authority, pursuant to law, over a limited number of cases which were previously within the exclusive jurisdiction of courts of first instance.

....

**By the same token, the PET is not a separate and distinct entity from the Supreme Court, albeit it has functions peculiar only to the Tribunal. It is obvious that the PET was constituted in implementation of Section 4, Article VII of the Constitution, and it faithfully complies – not unlawfully defies – the constitutional directive.** The adoption of a separate seal, as well as the change in the nomenclature of the Chief Justice and the Associate Justices into Chairman and Members of the Tribunal, respectively, was designed simply to highlight the singularity and exclusivity of the Tribunal's functions as a special electoral court.<sup>56</sup>

61. Bolstering the PET's limited judicial power is the ruling in *Macalintal* where the Supreme Court cited the interpellations of the Constitutional Commission. The relevant portions of said hearing are found below:

MR. SUAREZ. Thank you. Would the Commissioner not consider that violative of the doctrine of separation of powers?

**MR. CONCEPCION. I think Commissioner Bernas explained that this is a contest between two parties. This is a judicial power.**

**MR. SUAREZ. We know, but practically the Committee is giving to the judiciary the right to declare who will be the President of our country, which to me is a political action.**

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<sup>56</sup> *Ibid.*; Emphases supplied.

**MR. CONCEPCION. There are legal rights which are enforceable under the law, and these are essentially justiciable questions.**

....

MR. VILLACORTA. Thank you very much, Madam President. I am not sure whether Commissioner Suarez has expressed his point. On page 2, the fourth paragraph of Section 4 provides:

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.

May I seek clarification as to whether or not the matter of determining the outcome of the contests relating to the election returns and qualifications of the President or Vice-President is purely a political matter and, therefore, should not be left entirely to the judiciary. Will the above-quoted provision not impinge on the doctrine of separation of powers between the executive and the judicial departments of the government?

MR. REGALADO. No, I really do not feel that would be a problem. This is a new provision incidentally. It was not in the 1935 Constitution nor in the 1973 Constitution.

MR. VILLACORTA. That is right.

MR. REGALADO. We feel that it will not be an intrusion into the separation of powers guaranteed to the judiciary because this is strictly an adversarial and judicial proceeding.

**MR. VILLACORTA. May I know the rationale of the Committee because this supersedes Republic Act 7950 which provides for the Presidential Electoral Tribunal?**

**FR. BERNAS. Precisely, this is necessary. Election contests are, by their nature, judicial.** Therefore, they are cognizable only by courts. If, for instance, we did not have a constitutional provision on an electoral tribunal for the Senate or an electoral tribunal for the House, normally, as composed, that cannot be given jurisdiction over contests.<sup>57</sup>

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<sup>57</sup> Emphases supplied.

62. It cannot therefore be denied that the intention of the framers of our Constitution is to limit the power of the PET to resolving judicial controversies.

63. Anent the authority of the COMELEC to order the conduct of special elections, it bears pointing out that the Omnibus Election Code does not expressly confer upon the COMELEC the power to conduct any special election in cases of vacancy in the presidential or vice-presidential seats.<sup>58</sup> It is submitted that the COMELEC's authority is possible only for a specific political unit, but not for the elections in the national level, i.e., senatorial, vice-presidential, and presidential elections. **This must be so because the declaration of a failure of elections in the national level does not *ipso facto* result in a failure to elect.**

64. The 1987 Constitution mentions regular elections only, insofar as the election of the President and Vice President is concerned. Unless otherwise provided by law, the regular elections for President and Vice-President shall be held on the second Monday of May.

65. Under the 1987 Constitution, there is an explicit requirement of a *direct* vote from the people. This rule cannot be replaced by a mere statute or act of legislation.<sup>59</sup>

66. Section 14 of the Omnibus Election Code on Special Election for President and Vice President has been amended or superseded by Section 10, Article VII of the 1987 Constitution.

67. Section 10, Article VII of the 1987 Constitution, however, speaks of special elections *in the event of vacancy*. In case a vacancy occurs in the offices of the President and Vice President, there shall be a special election that shall be called by Congress for that purpose. The procedure for

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<sup>58</sup> See Sections 6 and 14, Omnibus Election Code.

<sup>59</sup> Omnibus Election Code with Rules of Procedure and Jurisprudence in Election law by Josue N. Bellosillo, Jose Midas P. Marquez, Emmanuel L.J. Mapili, 2007, p. 23.

enacting the same law is provided under Section 10, Article VII of the 1987 Constitution.<sup>60</sup>

68. In the case at bar, it is indubitable that even if the votes cast in the provinces of Maguindanao, Lanao del Sur, and Basilan are declared null and void, there is no failure to elect to speak of. On the contrary, the ultimate winner, or the one with the majority (or plurality) of the valid votes cast, is easily determinable.

69. All told, it is respectfully submitted that the Honorable Tribunal has the power to declare the annulment of elections or a failure of elections without infringing upon the COMELEC's authority, but it has no concomitant power to order the conduct of special elections.

## PRAYER

The OSG consequently prays that the Honorable Tribunal:

1. **CONSIDER** this Comment as **SUFFICIENT COMPLIANCE** with the Resolution dated September 29, 2020; and

2. **CONSIDER** the instant protest submitted for **IMMEDIATE RESOLUTION** after the parties shall have filed their respective replies to the respective Comments of the COMELEC and the OSG.

RESPECTFULLY SUBMITTED.

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<sup>60</sup> *Id.* at p. 24. The constitutional provision reads: "SECTION 10. The Congress shall, at ten o'clock in the morning of the third day after the vacancy in the offices of the President and Vice-President occurs, convene in accordance with its rules without need of a call and within seven days enact a law calling for a special election to elect a President and a Vice-President to be held not earlier than forty-five days nor later than sixty days from the time of such call. The bill calling such special election shall be deemed certified under paragraph 2, Section 26, Article VI of this Constitution and shall become law upon its approval on third reading by the Congress. Appropriations for the special election shall be charged against any current appropriations and shall be exempt from the requirements of paragraph 4, Section 25, Article VI of this Constitution. The convening of the Congress cannot be suspended nor the special election postponed. No special election shall be called if the vacancy occurs within eighteen months before the date of the next presidential election."

Makati City for the City of Manila, October 30, 2020.

*//..Signatories next page...//*





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MCLE Exemption No. VII-OSG000228, 11-08-19



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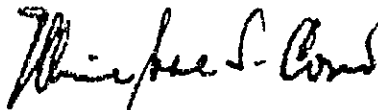
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MCLE Exemption No. VII-OSG000212, 11-05-19



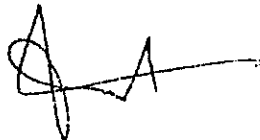
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MCLE Exemption No. VII-OSG000216, 11-05-19



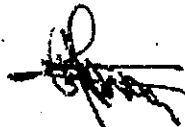
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MCLE Exemption No. VI-000882, 09-17-18



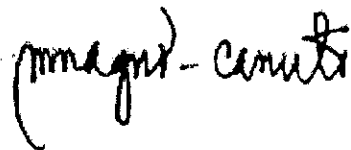
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IBP Lifetime Membership No. 02113

MCLE Exemption No. VII-OSG000211, 11-05-19



**PENA FRANCIA C. CARPIO-DEVESA**

Assistant Solicitor General

Roll No. 37203

IBP Lifetime No. 018148, 11-07-17

MCLE Exemption No. VII-OSG000136, 09-10-19



**ALEXANDER S. SALVADOR**

Assistant Solicitor General

Roll No. 42940

IBP Lifetime No. 013968

MCLE Exemption No. VII-OSG002146, 12-19-19



**JOSEPH L. GUEVARRA**

Assistant Solicitor General

Roll No. 36854

IBP Lifetime No. 010364, 01-06-12

MCLE Exemption No. VII-OSG002606, 07-20-20




**DIANA H. CASTAÑEDA-DE VERA**

Assistant Solicitor General

Roll No. 42914

IBP Lifetime No. 08543

MCLE Exemption No. VI-0023365, 04-25-19



**GILBERT U. MEDRANO**

Assistant Solicitor General

Roll No. 47392

IBP Lifetime No. 03598/07-04-2004

MCLE Exemption No. VI-0021105/03-26-19



**JAMES LEE CUNDANGAN**

Assistant Solicitor General

Roll No. 47481, IBP Lifetime No. 09142, 04-29-10

MCLE Compliance No. VI-0023137, 04-11-19

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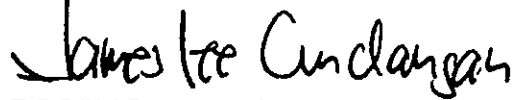
**COMMISSION ON ELECTIONS**

Intramuros, Manila

Email: [mntcasingal@gmail.com](mailto:mntcasingal@gmail.com)

## **EXPLANATION**

Filing in court and service on the other parties are being done by email as allowed by Paragraph 4 of S.C. Administrative Circular No. 41-2020 and Rule 13 of the Rules of Court, as amended by A.M. No. 19-10-20-SC.

A handwritten signature in black ink, reading "James Lee Cundangan". The signature is written in a cursive style with a large initial "J".

**JAMES LEE CUNDANGAN**

Assistant Solicitor General