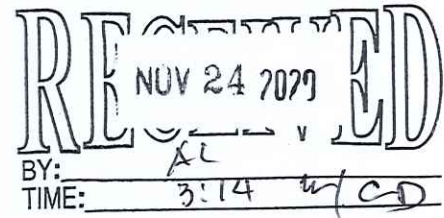


Republic of the Philippines
PRESIDENTIAL ELECTORAL TRIBUNAL
 Manila



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

CONSOLIDATED REPLY

Protestant **FERDINAND "BONGBONG" R. MARCOS, JR.** ("protestant Marcos"), through the undersigned counsels, unto this Honorable Presidential Electoral Tribunal ("PET"), most respectfully alleges the following:

1. On **05 October 2020**, protestant Marcos, through the undersigned counsels, received a copy of this Honorable Tribunal's *Resolution* dated 29 September 2020, which directed the Commission on Elections ("COMELEC") and the Office of the Solicitor General ("OSG") to file their respective *Comments* to the issues related to the Third Cause of Action of Annulment of Elections in the above-entitled case, within a non-extendible period of *twenty (20)* working days from receipt of a copy of the said *Resolution*.

2. To be more specific, the COMELEC and the OSG were directed to **COMMENT** 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.

3. Meanwhile, the COMELEC was also directed by this Honorable Tribunal to **REPORT** where petitions for failure of elections were filed in the provinces of Maguindanao, Lanao Del Sur, and Basilan during the 2016 National and Local Elections. The COMELEC was ordered to provide what its corresponding resolution was – that is, whether these petitions were granted or denied. If failure of elections was declared and special elections conducted, the COMELEC is likewise ordered to provide the results of the special elections.

4. Aside from that, the COMELEC was further directed to **COMMENT** on the following:

- A. Whether or not there is merit to the allegation that the Voters Identification Division of the COMELEC-ERSD concluded that the "2016 National, Local and ARMM Elections has (sic) been marked with different forms of election fraud such as massive substituted voting."
- B. Whether or not the results in the revision and appreciation of votes with respect to the Protestant's second cause of action moots or renders unnecessary the consideration of the Protestant's Third Cause of Action;
- C. Whether or not the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action;
- D. Assuming that the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action which is not mooted by the results of

Tribunal's findings with respect to the second cause of action:

- i. What are the filing rules and requirements that a party must observe if he or she seeks the relief of annulment of elections before the Presidential Electoral Tribunal?
 - ii. What is the threshold of evidence that is required to prove failure or annulment of elections?
 - iii. What percentage of votes/precincts needs to be proven as having been affected by the grounds for failure or annulment of elections?
 - iv. Will the threshold apply per province or to all Three (3) provinces? Can there be failure or annulment in some but not all three (3) Provinces?
 - v. Should a similar pilot testing rule be equally applied in annulment of election cases?
- E. Assuming that the Presidential Electoral Tribunal is convinced that there is basis to find for the Protestant in the Third Cause of Action:
- i. Will this mean that the elections for all the elective positions in the ballot be nullified with all its attendant legal consequences?
 - ii. Can our declaration as the Presidential Electoral Tribunal or the Supreme Court be a bar for any question relative to any present and future electoral protest involving the same area and for any position?
 - iii. Will it be necessary to call for special elections for the position of Vice President? If so, who has the competence to call for such elections?

- iv. Will this mean “recovery” for the Protestant under Rule 65, which will, in turn, mean revision of all his contested precincts nationwide?
- v. What will be the effect of the Tribunal’s ruling on Protestant’s Third Cause of Action on protestee’s counter protest?

5. In compliance thereto, the OSG filed and served its *Comment* on **02 November 2020**. The COMELEC, on the other hand, filed and served its *Compliance* on **03 November 2020**.

6. Pursuant to this Honorable Tribunal’s *Resolution* dated 29 September 2020, the parties in this case are directed to **SUBMIT** their replies within a non-extendible period of fifteen (**15**) working days from receipt of the copies of the respective comments of the OSG and the COMELEC.

7. In view thereof, both parties are given until 25 November 2020 to submit their respective *Replies* to the *Comment* of the OSG. On the other hand, the parties have until 26 November 2020 to submit their respective *Replies* to the *Compliance* of the COMELEC. The submission of this *Consolidated Reply* is therefore timely filed.

8. Protestant Marcos will reply to the comments of the OSG and the COMELEC in *seriatim*.

I.

WHETHER OR NOT THE PRESIDENTIAL ELECTORAL TRIBUNAL IS EMPOWERED BY THE CONSTITUTION TO DECLARE ANNULMENT OF ELECTIONS WITHOUT SPECIAL ELECTIONS.

9. Both the OSG and the COMELEC agree that the PET is empowered by **Article VII, Section 4** of the **1987 Constitution** and the **2010 Rules of the Presidential Electoral Tribunal (A.M. No. 10-04-29-SC)** to declare annulment of elections without special elections **WITHOUT INFRINGING** upon the mandate and authority of the COMELEC as provided by **Article IX-C of the 1987 Constitution**.

10. Protestant Marcos concurs with the shared comment of the OSG and COMELEC that the PET has the power to declare annulment of elections without special elections and the exercise of such authority shall not infringe upon the powers and functions of the COMELEC. He also repleads the legal authorities and jurisprudential doctrines cited by the OSG and the COMELEC in support thereof.

11. Actually, this issue was already resolved by the Supreme Court in the case of *Harlin C. Abayon v. House of Representatives Electoral Tribunal (HRET) and Raul A. Daza*¹ ("Abayon case") when it categorically declared that **electoral tribunals, having the exclusive jurisdiction to decide all election contests, have the sole prerogative to annul elections.**

12. The Supreme Court further explained that the **Constitutional duty of electoral tribunals to decide election contests necessarily includes those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections.** Necessarily therefore, electoral tribunals shall be the sole judge of all contests relating to the "election, returns and qualifications" of members over which it has jurisdiction.

13. The Supreme Court defined the phrase "election, returns and qualifications" in its totality as "referring to all matters affecting the validity of the contestee's title." The Supreme Court concluded that **if in the electoral tribunal's determination, fraud, terrorism or other electoral irregularities existed to warrant the annulment of the elections, it may annul the election results.** Thus:

The Court agrees that the power of the HRET to annul elections differ from the power granted to the COMELEC to declare failure of elections. The Constitution no less, grants the HRET with exclusive jurisdiction to decide all election contests involving the members of the House of Representatives, which necessarily includes those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections. To deprive the HRET the prerogative to annul elections would undermine its constitutional fiat to decide election contests. The phrase "election, returns and qualifications" should be interpreted in

¹ G.R. No. 222236 and 223032, May 3, 2016.

its totality as referring to all matters affecting the validity of the contestee's title.

Consequently, the annulment of election results is but a power concomitant to the HRET's constitutional mandate to determine the validity of the contestee's title.

The power granted to the HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature. Thus, the HRET, as the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, may annul election results if in its determination, fraud, terrorism or other electoral irregularities existed to warrant the annulment. Because in doing so, it is merely exercising its constitutional duty to ascertain who among the candidates received the majority of the valid votes cast.²

14. In annulment of elections, **the electoral tribunals shall only annul the election results connected with the election contest under its jurisdiction** in order to determine who among the candidates garnered a majority of the legal votes cast. Hence, there is no necessity to call for a special election.

15. It bears emphasis that in the *Abayon* case, the Supreme Court explained that the annulment of elections shall result in the nullification of the votes received by both the protestant and protestee in the concerned precincts or municipalities or provinces. And after deducting the votes which were nullified, the winner in the election protest shall be determined based on who garnered the highest number of valid votes based on the remaining precincts which were not annulled.

II.

WHETHER OR NOT THE PRESIDENTIAL ELECTORAL TRIBUNAL IS EMPOWERED BY THE CONSTITUTION TO DECLARE FAILURE OF ELECTIONS AND THEN ORDER THE CONDUCT OF SPECIAL ELECTIONS

AND

WHETHER OR NOT THE TRIBUNAL'S DECLARATION OF FAILURE OF ELECTIONS AND THEN ORDERING OF SPECIAL ELECTIONS, WILL INFRINGE UPON THE COMMISSION ON

² *Id.*; citations omitted; emphasis supplied.

**ELECTION'S MANDATE AND POWERS PROVIDED FOR IN
ARTICLE IX-C (SEC.2) OF THE CONSTITUTION.**

16. The OSG opined that the PET has the power to declare failure of elections without infringing upon the authority of the COMELEC. On the other hand, the COMELEC contended that this Honorable Tribunal cannot declare failure of elections because the same is within the exclusive jurisdiction of the COMELEC.

17. Protestant Marcos agrees with the COMELEC's position on this matter.

18. The PET has no power to declare failure of elections because such power is vested upon the COMELEC pursuant to **Section 6 of the Omnibus Election Code.**³

Sec. 6. Failure of elections - If, on account of force majeure, violence, terrorism, fraud or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, **the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect** on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.⁴

³ Batas Pambansa Bilang 881, approved on 03 December 1985.

⁴ Id.; emphasis supplied.

19. The exclusive jurisdiction of the COMELEC to declare failure of elections is echoed in **Section 4 of Republic Act No. 7166**,⁵ thus:

SEC. 4. *Postponement, Failure of Election and Special Elections.*
— **The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members.**
The causes for the declaration of a failure of election may occur before or after the casting of votes or on the day of the election.

In case a permanent vacancy shall occur in the Senate or House of Representatives at least one (1) year before the expiration of the term, the Commission shall call and hold a special election to fill the vacancy not earlier than sixty (60) days nor longer than ninety (90) days after the occurrence of the vacancy. However, in case of such vacancy in the Senate, the special election shall be held simultaneously with the next succeeding regular election.⁶

20. **The power of the COMELEC to declare failure of elections, and concurrently, to call for special elections, is an exercise of its administrative function** as explained by the Supreme Court also in the *Abayon* case, thus:

Thus, the COMELEC exercises its quasi-judicial function when it decides election contests not otherwise reserved to other electoral tribunals by the Constitution. The COMELEC, however, does not exercise its quasi-judicial functions when it declares a failure of elections pursuant to R.A. No. 7166. Rather, the COMELEC performs its administrative function when it exercises such power.

R.A. No. 7166 was enacted to empower the COMELEC to be most effective in the performance of its sacred duty of ensuring the conduct of honest and free elections. Further, a closer perusal of Section 6 of the Omnibus Election Code readily reveals that it is more in line with the COMELEC's administrative function of ensuring that elections are free, orderly, honest, peaceful, and credible, and not its quasi-judicial function to adjudicate election contests. The said provision reads:

Sec. 6. Failure of elections - If, on account of force majeure, violence, terrorism, fraud or other analogous causes the election in any polling place has not been held on the date fixed, or had been

⁵ An Act Providing For Synchronized National And Local Elections And For Electoral Reforms, Authorizing Appropriations Therefor, And For Other Purposes, approved on 26 November 1991.

⁶ Id.; emphasis supplied.

suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, **the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect** on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.[Emphasis Supplied]

In *Sambarani v. COMELEC*, the Court clarified the nature of the COMELEC's power to declare failure of elections, to wit:

Section 2(1) of Article IX(C) of the Constitution gives the COMELEC the broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall." Indisputably, the text and intent of this constitutional provision is to give COMELEC all the necessary and incidental powers for it to achieve its primordial objective of holding free, orderly, honest, peaceful and credible elections.

The functions of the COMELEC under the Constitution are essentially executive and administrative in nature. It is elementary in administrative law that "courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies." **The authority given to COMELEC to declare a failure of elections and to call for special elections falls under its administrative function.** [Emphasis Supplied]

Consequently, the difference between the annulment of elections by electoral tribunals and the declaration of failure of elections by the COMELEC cannot be gainsaid. *First*, the former is an incident of the judicial function of electoral tribunals while the latter is in the exercise of the COMELEC's administrative function. *Second*, electoral tribunals only annul the election results connected with the election contest before it whereas the declaration of failure of elections by the COMELEC relates to the entire election in the concerned precinct or political unit. As such, in annulling elections, the HRET does so only to determine who among the candidates garnered a majority of the legal votes cast. The COMELEC, on the other hand, declares a failure of elections with the objective of holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect. When COMELEC declares a failure of elections, special elections will have to be conducted.

Hence, there is no overlap of jurisdiction because when the COMELEC declares a failure of elections on the ground of violence, intimidation, terrorism or other irregularities, it does so in its administrative capacity. In contrast, when electoral tribunals annul elections under the same grounds, they do so in the performance of their quasi-judicial functions.⁷

21. Both the OSG and the COMELEC are in agreement, however, that the PET has no concomitant power to order the conduct of special elections.

22. Protestant Marcos agrees with the OSG and the COMELEC that the PET has no power to order the conduct of special elections.

23. According to the ***Abayon*** case as well as the jurisprudential authorities cited by the COMELEC in its *Compliance* dated 03 November 2020, the Supreme Court consistently ruled that **it is the COMELEC *En Banc* which has the power to declare a failure of election or to call for a special election** as part of its administrative function.

24. However, the OSG correctly pointed out that “the Omnibus Election Code does not expressly confer upon the COMELEC the power to conduct a special election in cases of vacancy in the presidential or vice-presidential seats.”

25. Now with regard to the special election for President and Vice-President mentioned in **Section 14** of the **Omnibus Election Code** and **Section 10, Article VII** of the **1987 Constitution**, the said provisions are **APPLICABLE** only in case a vacancy occurs in the offices of the President **AND** Vice-President. The Omnibus Election Code and the Constitution are both **SILENT** with respect to the conduct of a special election in case the vacancy occurred in the office of the Vice-President only.

26. Be that as it may, it bears stressing that there is no necessity to call for a special election in this case since what is involved is the annulment of elections, and NOT a petition to declare a failure of elections, in the provinces of Maguindanao, Lanao Del Sur, and Basilan.

⁷ Supra note 1, citations omitted.

27. In annulment of elections, **the electoral tribunals shall only annul the election results connected with the election contest under its jurisdiction** in order to determine who among the candidates garnered a majority of the legal votes cast. Hence, there is no necessity to call for a special election.

28. The OSG wisely asserted 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; and, the ultimate winner, or the one with the majority (or plurality) of the valid votes cast, is easily determinable.

III.
**REPORT ON THE STATUS OF THE PETITIONS FOR FAILURE
OF ELECTIONS FILED BEFORE THE COMELEC INVOLVING
THE PROVINCES OF MAGUINDANAO, LANA DEL SUR, AND
BASILAN DURING THE 2016 NATIONAL AND LOCAL
ELECTIONS AND THE CORRESPONDING RESOLUTIONS
THEREFOR.**

29. According to the COMELEC, all the petitions to declare failure of elections, which were cited in its Compliance, were dismissed by the COMELEC *En Banc*, and that, except for SPA No. 16-114 (FE), all cases were issued their respective Certificates of Finality. Hence, no special elections were held or conducted in the Provinces of Basilan, Lanao Del Sur, and Maguindanao in connection with the 2016 National and Local Elections.

30. With all due respect, the dismissal of these petitions to declare failure of elections involving the provinces of Maguindanao, Lanao Del Sur, Basilan during the 2016 National and Local Elections is **IRRELEVANT and IMMATERIAL** to the case at bar.

31. Protestant Marcos did not file a petition to declare failure of elections in the afore-stated provinces. What he included in his election protest is the annulment of elections in the Provinces of Basilan, Lanao Del Sur, and Maguindanao in connection with the 2016 National and Local Elections.

32. There is a stark difference between the annulment of elections by electoral tribunals and the declaration of failure of elections by the COMELEC. Again, this matter was explained by the Supreme Court in the ***Abayon*** case, thus:

First, the former is an incident of the **judicial function of electoral tribunals** while the latter is in the exercise of the **COMELEC's administrative function**. *Second*, electoral tribunals only **annul the election results connected with the election contest before it** whereas the declaration of failure of elections by the COMELEC relates to the **entire election in the concerned precinct or political unit**. As such, in annulling elections, the HRET does so only **to determine who among the candidates garnered a majority of the legal votes cast**. The COMELEC, on the other hand, declares a failure of elections with the objective of **holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect**. When COMELEC declares a failure of elections, special elections will have to be conducted.⁸

33. Although the petitions to declare failure of elections in the provinces of Maguindanao, Lanao Del Sur, and Basilan were dismissed in connection with the 2016 National and Local Elections, it does not necessarily follow that there is no basis to annul the election results in these provinces. This is because even if the elections were held in the provinces of Maguindanao, Lanao Del Sur, and Basilan during the last 2016 National and Local Elections, if the conduct thereof was attended by terrorism, intimidation, harassment of voters, massive substituted-voting, pre-shading of ballots, and other electoral frauds then the election results from these provinces may be nullified by the concerned electoral tribunals like the PET, subject to compliance with the requisites mandated by the ***Abayon*** case for annulment of elections.

IV.

WHETHER OR NOT THERE IS MERIT TO THE ALLEGATION THAT THE VOTERS IDENTIFICATION DIVISION OF THE COMELEC-ERSD CONCLUDED THAT THE "2016 NATIONAL, LOCAL AND ARMM ELECTIONS HAS (SIC) BEEN MARKED WITH DIFFERENT FORMS OF ELECTION FRAUD SUCH AS MASSIVE SUBSTITUTED VOTING."

⁸ Supra note 1.

34. On **22 November 2018**, protestant Marcos was informed by former Sulu Vice Governor Abdusakur Tan ("Tan") that the Voters Identification Division of the COMELEC-Election Records and Statistics Department (ERSD) conducted a technical examination on the signatures and/or thumbprints appearing on the Voter's Registration Records (VRRs) as against the Election Day Computerized Voter's List with Voting Records (EDVCLs) pertaining to the provinces of Maguindanao, Lanao Del Sur, and Basilan during the last 2016 elections.

35. Apparently, former Sulu Vice Governor Tan filed an election protest against Mujiv S. Hataman before the COMELEC Second Division, which was docketed as **EPC Case No. 2016-37**. Coincidentally, protestee Robredo's Lead Counsel is the counsel of Hataman in **EPC Case No. 2016-37**.

36. During the pendency of Tan's election protest, he filed a *Motion for Technical Examination* of the signatures and/or thumbprints appearing on the VRRs and EDCVLs used during the last 2016 elections in the provinces of Maguindanao, Lanao Del Sur, and Basilan. The allegation of massive substituted voting is so serious that this Motion for Technical Examination was duly granted by the COMELEC Second Division.

37. Hence, the Voters Identification Division of the COMELEC-ERSD conducted a technical examination on the signatures and/or thumbprints appearing on the VRRs as against the EDVCLs of **Five Hundred Eight (508)** established precincts having a total of **Eighty-Two Thousand Three Hundred Sixteen (82,316)** registered voters in the **One Hundred Twenty-Seven (127)** barangays of the provinces of Lanao Del Sur, Basilan and Maguindanao.

38. According to the **Dactyloscopic and Questioned Document Reports** dated 5 June 2018, the results of the technical examination conducted by the Voters Identification Division of the COMELEC-ERSD would reveal that there are **FORTY THOUSAND FIVE HUNDRED TWENTY-EIGHT (40,528) SIGNATURES AND THREE THOUSAND TWO HUNDRED NINETY-FIVE (3,295) THUMBPRINTS ON THE EDCVLs USED IN THE FIVE HUNDRED EIGHT (508) ESTABLISHED PRECINCTS OF THE PROVINCES LANA DEL SUR, BASILAN AND MAGUINDANAO DURING THE LAST 2016 ELECTIONS, WHICH ARE NOT IDENTICAL WITH**

THE ORIGINAL AND GENUINE SIGNATURES AND/OR THUMBRINTS OF THE REAL AND LEGITIMATE VOTERS AS REFLECTED ON THE RELEVANT VRRs IN THE SAID PROTESTED AREAS.

39. As a consequence of the findings cited above, the Voters Identification Division of the COMELEC-ERSD concluded that the **"2016 National, Local and ARMM Elections has (*sic*) been marked with different forms of election fraud such as massive substituted voting."**⁹

40. It is pertinent to note that the existence of this **Dactyloscopic and Questioned Document Reports** dated 5 June 2018 is **ADMITTED BY THE COMELEC**. In fact, the COMELEC categorically declared in its *Compliance* dated 03 November 2020 that **the said document from the COMELEC-ERSD was submitted and became part of the records** in the election protest case entitled "Abdusakur M. Tan vs. Mujiv S. Hataman" docketed as EPC No. 2016-37 filed before the COMELEC Second Division. A copy of the **Dactyloscopic and Questioned Document Reports** dated 5 June 2018 was attached and made an integral part of protestant Marcos' *Extremely Urgent Manifestation of Grave Concern with Omnibus Motion* dated 10 December 2018.

41. Although Tan's election protest was dismissed due to mootness since the term of office of the Regional Governor of the ARMM expired on 30 June 2019, it cannot be denied that based on the **Dactyloscopic and Questioned Document Reports** dated 5 June 2018, which was prepared by the Voters Identification Division of the COMELEC-ERSD, there are **FORTY THOUSAND FIVE HUNDRED TWENTY-EIGHT (40,528) SIGNATURES AND THREE THOUSAND TWO HUNDRED NINETY-FIVE (3,295) THUMBRINTS ON THE EDCVLs USED IN THE FIVE HUNDRED EIGHT (508) ESTABLISHED PRECINCTS OF THE PROVINCES LANA DEL SUR, BASILAN AND MAGUINDANAO DURING THE LAST 2016 ELECTIONS, WHICH ARE NOT IDENTICAL WITH THE ORIGINAL AND GENUINE SIGNATURES AND/OR THUMBRINTS OF THE REAL AND LEGITIMATE VOTERS AS REFLECTED ON THE RELEVANT VRRs IN THE SAID PROTESTED AREAS.**

⁹ Emphasis and underscoring supplied.

42. In the same manner, the conclusion of the Voters Identification Division of the COMELEC-ERSD that the "**2016 National, Local and ARMM Elections has (sic) been marked with different forms of election fraud such as massive substituted voting**"¹⁰ cannot likewise be denied as the same is contained in the aforementioned **Dactyloscopic and Questioned Document Reports** dated 5 June 2018.

43. Moreover, the **Dactyloscopic and Questioned Document Reports** dated 5 June 2018 is considered as a **PUBLIC DOCUMENT** since this is a written official act, or record of the official bodies and tribunals, and public officers in the Philippines. As mentioned earlier, the **Dactyloscopic and Questioned Document Reports** dated 5 June 2018 was prepared by the Voters Identification Division of the COMELEC-ERSD. Being a public document, the **Dactyloscopic and Questioned Document Reports** dated 5 June 2018 is **prima facie evidence of the facts stated therein**.

V.

WHETHER OR NOT THE RESULTS IN THE REVISION AND APPRECIATION OF VOTES WITH RESPECT TO THE PROTESTANT'S SECOND CAUSE OF ACTION MOOTS OR RENDERS UNNECESSARY THE CONSIDERATION OF THE PROTESTANT'S THIRD CAUSE OF ACTION;

44. According to the COMELEC, the jurisprudential doctrine established in the case of **Abayon** applies in the above-entitled case. This means that the results in the revision and the preliminary appreciation of the ballots with respect to the protestant's Second Cause of Action **will not render moot or unnecessary** the consideration of Marcos' Third Cause of Action for the annulment of election results in the provinces of Maguindanao, Lanao Del Sur, and Basilan.

45. The enumeration of protestant's Causes of Action as reflected in the *Preliminary Conference Guide* readily shows that the annulment of election results in the provinces of Maguindanao, Lanao del Sur and Basilan on the ground of terrorism, intimidation and harassment of voters as well as pre-shading of ballots in the 2,756 protested clustered precincts is **separate and distinct** from the Second Cause of Action.

¹⁰ Emphasis and underscoring supplied.

46. The ruling of the HRET in the case of *Abayon* persuades that a cause of action on the annulment of election results can stand on its own.

47. In its **Resolution No. 15-052** dated **24 September 2015**, relevant to the election protest case of Raul A. Daza ("Daza") docketed as **HRET Case No. 13- 023**, the HRET ruled that the dismissal of a protest under **Rule 37** (which is the equivalent to **Rule 65** of the **2010 PET Rules**) contemplates a situation where the protest alleges and prays for the recount and revision of ballots so that dismissal follows if no substantial recovery is made. **A dismissal of the entire protest under this rule does not apply where a separate and distinct cause of action for annulment of election results in certain identified precincts on the ground of terrorism is pleaded both in the body and relief of the protest – as in this case. The protest can and must proceed independently of the result from the recount, revision and re-appreciation of ballots.**

48. The HRET, in the same *Resolution*, even stressed that the Tribunal has long recognized that protestant's cause of action to annul the election results in the clustered precincts enumerated in the election protest is **distinct, separate and independent** from his other distinct cause of action which involves a recount and revision of the ballots cast in the clustered precincts also enumerated in the election protest. A certified true copy of **HRET Resolution No. 15-052** dated **24 September 2015** was attached and made an integral part of protestant's *Memorandum* dated 19 December 2020 as **Annex "B"** thereof.

49. Just like the present Marcos protest, the election protest filed by Daza against Abayon for the position of Member of the House of Representatives for the First Legislative District of the Province of Northern Samar was grounded on **two (2)** causes of action: *first*, **manual recount of the ballots** in selected protested precincts in the Municipalities of Biri, Capul and San Isidro; and *second*, **annulment of the results of the elections** for the contested position of Member of the House of Representatives in the selected protested precincts in the Municipalities of Lavezares, Catarman and Victoria. A certified true copy of Daza's **Election Protest dated 31 May 2013** was attached and made an integral part of protestant's *Memorandum* dated 19 December 2020 as **Annex "C"** thereof.

50. It must be stressed that **Rule 37** of the **2011 HRET Rules**, which is the same rule that was mentioned in **HRET Resolution No. 15-052** dated **24 September 2015**, provides for the Post-Revision Determination of the Merit or Legitimacy of Protest Prior to Revision of Counter-Protest, as follows:

RULE 37. *Post-Revision Determination of the Merit or Legitimacy of Protest Prior to Revision of Counter-Protest; Pilot Precincts; Initial Revision.* – Any provision of these Rules to the contrary notwithstanding, as soon as the issues in any contest before the Tribunal have been joined, the Protestant, in case the protest involves more than 50% of the total number of precincts in the district, shall be required to the state and designate in writing within a fixed period at most twenty five (25%) percent of the total number of precincts involved in the protest which said party deems as best exemplifying or demonstrating the electoral irregularities or fraud pleaded by him; and the revision of the ballots or the examination, verification or re-tabulation of election returns and/or reception of evidence shall begin with such pilot precincts designated. Otherwise, the revision of ballots or the examination, verification of re-tabulation of election returns and/or reception of evidence shall begin with all the protested precincts. The revision of ballots or the examination, verification of re-tabulation of election returns in the counter-protested precincts shall not be commenced until the Tribunal shall have determined through appreciation of ballots or election documents and/or reception of evidence, which reception shall not exceed ten (10) days, the merit or legitimacy of the protest, relative to the pilot protested precincts. Based on the results of such post –revision determination, the Tribunal may dismiss the protest without further proceedings, if and when no reasonable recovery was established from the pilot protested precincts, or proceed with the revision of the ballots or the examination, verification or re-tabulation of election returns in the remaining contested precincts.

51. The counterpart provision of **Rule 37** of the **2011 HRET Rules** in cases cognizable by this Honorable Tribunal is found in **Rule 65** of the **2010 PET Rules**, thus:

Rule 65. *Dismissal, when proper* - The Tribunal may require the protestant or counter-protestant to indicate, within a fixed period, the province or provinces numbering not more than three best exemplifying the frauds or irregularities alleged in his petition and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof and after making reasonable allowances, the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest

may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest.

The preceding paragraph shall also apply when the election protest involves correction of manifest errors. (R63)

52. With all due respect, this Honorable Tribunal should be guided by the pronouncement of the HRET with regard to the application of its counterpart provision on the post-revision determination of the merit or legitimacy of the protest.

53. The dismissal of the entire protest under **Rule 65** of the **2010 PET Rules** will only apply if the cause of action of the protestant is limited to the judicial recount and revision of ballots. However, if the election protest was grounded on another cause of action, such as the annulment of election results, which is separate and distinct from revision and recount, then the **protest can and must proceed independently of the result from the recount, revision and re-appreciation of ballots.**

54. In fact, in the election protest case of Daza docketed as **HRET Case No. 13-023**, the protestant was allowed to **WITHDRAW HIS OTHER SEPARATE, DISTINCT AND INDEPENDENT CAUSE OF ACTION FOR THE RECOUNT, REVISION AND RE-APPRECIATION OF THE BALLOTS** even though the recount, revision and re- appreciation of ballots were already completed. Moreover, Daza in **HRET Case No. 13-023** was further allowed to move for the **DISMISSAL** of Abayon's **COUNTER-PROTEST** in view of the withdrawal of his cause of action for the recount, revision and re-appreciation of ballots. Certified true copies of Daza's *Urgent Manifestation and Omnibus Motion (Re: August 3, 2015 Resolution No. 15-033)* dated **3 September 2015**; *Urgent Manifestation and Motion (Re: On the Issue of Revision of Ballots of Counter-Protested Precincts)* dated **4 November 2015**; *HRET Resolution No. 15-058* dated **14 December 2015**; and *HRET Resolution No. 16-004* dated **21 January 2016** were attached and made integral parts of protestant's *Memorandum as Annexes "E" to "H"* thereof.

55. Based on the foregoing, it is crystal clear that the results in the revision and appreciation of votes with respect to the protestant's Second Cause of Action will **NOT RENDER** moot or unnecessary the consideration of the Third Cause of Action of protestant Marcos. On the contrary, since the Third Cause of Action

for the annulment of the election results is a separate, distinct and independent cause of action, the same **can and must proceed independently of the result from the recount, revision and re-appreciation of ballots.**

57. *Second.* The scope and areas involved in protestant's Second and Third Causes of Action are **DIFFERENT**.

58. The Second Cause of Action for Judicial Recount and Revision of Ballots is limited to 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, 2nd District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City and Zamboanga City.**

59. On the other hand, the Third Cause of Action for Annulment of Election Results covers only the **TWO THOUSAND SEVEN HUNDRED FIFTY-SIX (2,756)** protested clustered precincts of the Provinces of **Maguindanao, Lanao Del Sur and Basilan.**

60. *Third.* **The results in the appreciation of the ballots in the pilot precincts are not mathematically insurmountable as to render the Third Cause of Action moot and academic.** It is clear that in the **Third** Cause of Action, protestant seeks the annulment of the election results in the **two thousand seven hundred fifty-six (2,756)** protested clustered precincts of *Lanao Del Sur, Maguindanao, and Basilan* on the ground of terrorism, force, violence, threats and intimidation which facilitated the batch-feeding of pre-shaded ballots in favor of protestee Robredo in these provinces.

61. As demonstrated in the Table below, protestee Robredo's **FOUR HUNDRED SEVENTY-SEVEN THOUSAND NINE HUNDRED EIGHTY-FIVE (477,985)** votes in the provinces of Lanao Del Sur, Maguindanao and Basilan are subject of nullification pursuant to protestant's Third Cause of Action.

Protested Areas		VOTES SUBJECT OF ANNULMENT	
		Marcos	Robredo
1.	Lanao del Sur	56,243	180,539
2.	Maguindanao	80,591	220,125
3.	Basilan	32,326	77,321
Total		169,160	477,985

62. At this juncture, it must be recalled that the presumptive winning margin of protestee Robredo against protestant Marcos is only **TWO HUNDRED SIXTY-THREE THOUSAND FOUR HUNDRED SEVENTY-THREE (263,473)** votes. Consequently, if the annulment of election results in the provinces of Lanao Del Sur, Maguindanao and Basilan prospers, protestant Marcos will easily surpass protestee’s over-all vote margin since protestee Robredo stands to lose **FOUR HUNDRED SEVENTY-SEVEN THOUSAND NINE HUNDRED EIGHTY-FIVE (477,985)** votes pursuant to the Third Cause of Action.

63. *Fourth.* **Protestant’s right to prove and establish his Third Cause of Action is substantive in nature and the denial of the same will impair his right to due process.** The jurisdiction of the Honorable Tribunal as the sole judge of all contests relating to election, returns and qualifications of the President or Vice-President is constitutionally rooted.¹¹ As such, its power to decide election contests **embodies the determination of the validity or nullity of the votes questioned by either of the contestants, thereby necessarily including endowment of relief for the annulment of election results within the precepts of law.**¹²

64. In the present case, the set of facts giving rise to protestant’s **Third Cause of Action** was pleaded and alleged with **particularity and sufficiency** in his *Protest*. In fact, since the same was reflected in the *Preliminary Conference Guide*, it is evident that this Honorable Tribunal took cognizance of the same.

¹¹ Section IV, Article VIII, 1987 Constitution

¹² *Supra* note 1; see City Board of Canvassers vs. Moscoso, L-16365, September 30, 1963, Borromeo v. COMELEC, G.R. No. L-29369, July 24, 1969

Marcos v. Robredo
PET Case No. 005
Consolidated Reply
20 | Page

65. There can be no doubt that protestant has the substantive right to seek relief for the annulment of election results from this Honorable Tribunal. To reiterate, such right is constitutionally imbedded and hence, should be recognized by this Honorable Tribunal.

66. While it has been demonstrated that the **Third** Cause of Action is **separate and distinct** from the **Second** Cause of Action and can in fact stand on its own and that the numbers are in protestant's favor, equally significant is the inevitable fact that protestant is entitled as a matter of **substantive** right to prove his **Third** Cause of Action.

67. The Supreme Court has adopted the following definitions of substantive law and right (*Bustos vs. Lucero*,* (46 Off. Gaz., January Supp., pp. 445, 448; G.R. No. 2068; 20 October 1948), to wit:

"Substantive law creates substantive rights and the two terms in this respect may be said to be synonymous. Substantive rights in a term which includes those rights which one enjoys under the legal system prior to the disturbance of normal relations. (60 C.J. 980.)

Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions (36 C.J. 27; 52 C.J.S. 1026)."

68. Considering that "a substantive law creates, defines or *regulates rights concerning life, liberty or property, or the powers of agencies or instrumentalities for the administration of public affairs, whereas rules of procedure are provisions prescribing the method by which substantive rights may be enforced in courts of justice*" (Moran, Comments on the Rules of Court, Vol. I, 1963 ed., p.79 citing 36 C.J. 963; *Primicias v. Ocampo*, 49 O.G. 2230.), it is most respectfully posited that protestant's right to be heard on his Third Cause of Action should not be barred by Rule 65 which is adjective in nature. Hence, it is strongly submitted that Rule 65 could not have been couched to diminish protestant's substantive right. To rule otherwise would impair his substantive right and his right to due process.

VI.
WHETHER OR NOT THE PRESIDENTIAL ELECTORAL
TRIBUNAL HAS THE COMPETENCE TO RESOLVE THE THIRD
CAUSE OF ACTION;

69. The Supreme Court, in the case of *Abayon* categorically declared that **electoral tribunals, having the exclusive jurisdiction to decide all election contests, have the sole prerogative to annul elections.**

70. The Supreme Court further explained that the Constitutional duty of electoral tribunals to decide election contests necessarily includes those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections. Necessarily therefore, electoral tribunals shall be the sole judge of all contests relating to the "election, returns and qualifications" of members over which it has jurisdiction.

71. The Supreme Court defined the phrase "election, returns and qualifications" **in its totality as "referring to all matters affecting the validity of the contestee's title."** The Supreme Court concluded that **if in the electoral tribunal's determination, fraud, terrorism or other electoral irregularities existed to warrant the annulment of the elections, it may annul the election results.** Thus:

The Court agrees that the power of the HRET to annul elections differ from the power granted to the COMELEC to declare failure of elections. The Constitution no less, grants the HRET with exclusive jurisdiction to decide all election contests involving the members of the House of Representatives, which necessarily includes those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections. To deprive the HRET the prerogative to annul elections would undermine its constitutional fiat to decide election contests. The phrase "election, returns and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title.

Consequently, the annulment of election results is but a power concomitant to the HRET's constitutional mandate to determine the validity of the contestee's title.

The power granted to the HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature.²⁸ Thus, the HRET, as the sole judge of

all contests relating to the election, returns and qualifications of members of the House of Representatives, may annul election results if in its determination, fraud, terrorism or other electoral irregularities existed to warrant the annulment. Because in doing so, it is merely exercising its constitutional duty to ascertain who among the candidates received the majority of the valid votes cast.

To the Court's mind, the HRET had jurisdiction to determine whether there was terrorism in the contested precincts. In the event that the HRET would conclude that terrorism indeed existed in the said precincts, then it could annul the election results in the said precincts to the extent of deducting the votes received by Daza and Abayon in order to remain faithful to its constitutional mandate to determine who among the candidates received the majority of the valid votes cast.

Moreover, the passage of R.A. No. 7166 cannot deprive the HRET of its incidental power to annul elections in the exercise of its sole and exclusive authority conferred by no less than the Constitution. It must be remembered that the COMELEC exercises quasi-judicial, quasi-legislative and administrative functions. In *Bedol v. COMELEC*, the Court expounded, to wit:

The powers and functions of the COMELEC, conferred upon it by the 1987 Constitution and the Omnibus Election Code, may be classified into administrative, quasi-legislative, and quasi-judicial.

The quasi-judicial power of the COMELEC embraces the power to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies; and of all contests relating to the elections, returns, and qualifications. Its quasi-legislative power refers to the issuance of rules and regulations to implement the election laws and to exercise such legislative functions as may expressly be delegated to it by Congress. Its administrative function refers to the enforcement and administration of election laws. In the exercise of such power, the Constitution (Section 6, Article IX-A) and the Omnibus Election Code (Section 52 [c]) authorize the COMELEC to issue rules and regulations to implement the provisions of the 1987 Constitution and the Omnibus Election Code.

The quasi-judicial or administrative adjudicatory power is the power to hear and determine questions of fact to which the legislative policy is to apply, and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. [Emphases Supplied]

Thus, the COMELEC exercises its quasi-judicial function when it decides election contests not otherwise reserved to other electoral tribunals by the Constitution. The COMELEC, however, does not

exercise its quasi-judicial functions when it declares a failure of elections pursuant to R.A. No. 7166. Rather, the COMELEC performs its administrative function when it exercises such power.¹³

72. In view of the foregoing, the competence of this Honorable Tribunal to resolve the Third Cause of Action is **UNQUESTIONABLE**.

73. The COMELEC even affirmed in its *Compliance* dated 03 November 2020 that indeed the PET, being the sole judge of all contests relating to the elections, returns, and qualifications of the President or Vice-President, has the competence to resolve all questions relating thereto, including the annulment of election results.

74. The ruling in the ***Abayon*** case, which was penned by retired Honorable Supreme Court Associate Justice Jose Catral Mendoza, was **concurring in by Honorable Supreme Court Associate Justice Estela M. Perlas-Bernabe, Honorable Supreme Court Associate Justice Marvic Mario Victor F. Leonen and Honorable Supreme Court Associate Justice Alfredo Benjamin S. Caguioa**, among others. Honorable Supreme Court Chief Justice Diosdado M. Peralta did not take part because he was a Member of the HRET which decided **HRET Case No. 13-023**.

75. Incidentally, the respective counsels for Daza and Abayon are also the counsels for the protestant and protestee in this case. Daza, who was the protestant in **HRET Case No. 13-023** was represented at that time by **MAGNO SARDILLO AGUILAR LITONJUA LAW OFFICES**, who is now a collaborating counsel for the protestee. On the other hand, Abayon, who was the protestee in that case, was represented then by **Atty. George Erwin M. Garcia**, who is now the lead counsel for protestant Marcos.

VII.

ASSUMING THAT THE PRESIDENTIAL ELECTORAL TRIBUNAL HAS THE COMPETENCE TO RESOLVE THE THIRD CAUSE OF ACTION WHICH IS NOT MOOTED BY THE RESULTS OF TRIBUNAL'S FINDINGS WITH RESPECT TO THE SECOND CAUSE OF ACTION:

- i. What are the filing rules and requirements that a party must observe if he or she seeks the relief of

¹³ *Supra* note 1.

annulment of elections before the Presidential Electoral Tribunal?

- ii. What is the threshold of evidence that is required to prove failure or annulment of elections?
- iii. What percentage of votes/precincts needs to be proven as having been affected by the grounds for failure or annulment of elections?
- iv. Will the threshold apply per province or to all three (3) provinces? Can there be failure or annulment in some but not all three (3) provinces?
- v. Should a similar pilot testing rule be equally applied in annulment of election cases?

76. After the determination that, indeed, the Presidential Electoral Tribunal has competence to decide protestant's Third Cause of Action, the first issue to be addressed is as to the filing rules and requirements that a party must observe if he or she seeks the relief of annulment of elections before the Presidential Electoral Tribunal.

77. Protestant Marcos agrees with the COMELEC that the prevailing filing rules and requirements for the institution of election protest shall govern as it sufficiently covers the cause of action for annulment of elections.

78. As to the threshold of evidence that is required to prove failure or annulment of elections, it is submitted that the ruling in the case of ***Abayon*** is instructive on this matter, thus:

It must be remembered that "[t]he power to declare a failure of elections should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the law had been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever, or that the great body of the voters have been prevented by violence, intimidation and threats from exercising their franchise." Consequently, a protestant alleging terrorism in an election protest must establish by clear and convincing evidence that the will of the majority has been muted by "violence, intimidation or threats.

xxx xxx xxx

There are two (2) indispensable requisites that must concur in order to justify the drastic action of nullifying the election:

(1) The illegality of the ballots must affect more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein; and

(2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots.¹⁴

79. As shown above, there are only two (2) indispensable requisites that must concur in order to justify the drastic action of nullifying the election:

(1) The illegality of the ballots must affect more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein; and

(2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots.

80. The third requisite mentioned by the COMELEC that "there must be clear, convincing and strong evidence showing that the protestee is the one responsible for the unlawful acts complained of" is **ERRONEOUS**. At best, the same is a mere *obiter dictum*, and as such, it lacks the force of an adjudication and is not binding as a precedent.

81. As to the percentage of votes/precincts that needs to be proven as having been affected by the grounds for annulment of elections, the above discussion in the ***Abayon*** case shall find application, to wit:

There are two (2) indispensable requisites that must concur in order to justify the drastic action of nullifying the election:

(1) The illegality of the ballots must affect more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the entire municipality, more

¹⁴ *Supra* note 1.

than fifty percent (50%) of its total precincts and the votes cast therein; and

(2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots. xxx

82. As to whether the threshold will apply per province or to all **three (3)** provinces, protestant Marcos concurs with the COMELEC's position. It can be inferred from the ruling in the case of **Abayon** that if the annulment of the election results involves an entire municipality or province, the illegality of the ballots must affect more than fifty percent (50%) of the total precincts of the municipality or province concerned. Hence, the failure or annulment will depend on the compliance with the threshold evidence required for each province involved, *i.e.*, more than fifty percent (50%) of the total precincts and the votes cast of the province/s involved.

83. As to whether there can be failure or annulment in some but not all **three (3)** provinces, the answer will depend on whether there is compliance with the threshold of evidence that is required to prove annulment of elections and the percentage of votes/precincts that needs to be proven as having been affected by the grounds for annulment of elections. If there is compliance for **ALL** the **three (3)** provinces then the elections results for the position of Vice-President in these 3 provinces shall be annulled.

84. As to whether a similar pilot testing rule be equally applied in annulment of election cases, the position of the COMELEC is correct. The **pilot testing rule applies only if the cause of action involves the judicial revision and recount of ballots**. No pilot testing is necessary in annulment of election results given that the evidence to be presented consists of evidence *aliunde* and the result of the technical examination.

VIII.

ASSUMING THAT THE PRESIDENTIAL ELECTORAL TRIBUNAL IS CONVINCED THAT THERE IS BASIS TO FIND FOR THE PROTESTANT IN THE THIRD CAUSE OF ACTION:

- i. Will this mean that the elections for all the elective positions in the ballot be nullified with all its attendant legal consequences?

- ii. Can our declaration as the Presidential Electoral Tribunal or the Supreme Court be a bar for any question relative to any present and future electoral protest involving the same area and for any position?
- iii. Will it be necessary to call for special elections for the position of Vice President? If so, who has the competence to call for such elections?
- iv. Will this mean "recovery" for the Protestant under Rule 65, which will, in turn, mean revision of all his contested precincts nationwide?
- v. What will be the effect of the Tribunal's ruling on Protestant's Third Cause of Action on protestee's counter protest?

85. Assuming that this Honorable Tribunal is convinced that there is basis to find for protestant Marcos in the **Third** Cause of Action, the first issue raised is whether the elections for all the elective positions in the ballot will be nullified with all its attendant legal consequences.

86. The COMELEC is correct in stating that the case of ***Abayon*** is instructive on this matter. In the said case, the Supreme Court explained that the proposition of an Election Protest is for the ouster of the winning candidate from office, and that it is "**strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds or irregularities**", and that its aim is to determine who between them has actually obtained the majority of the legal votes cast and, therefore, entitled to hold the office. According to the Supreme Court, **electoral tribunals only annul the election results connected with the election contest before it** as opposed to the declaration of failure of elections by the COMELEC which relates to the entire election in the concerned precinct or political unit. As such, in annulling elections, the HRET or in this case, the PET, does so only to determine who among the candidates garnered a majority of the legal votes cast.

87. As to whether the Honorable Tribunal's declaration as the Presidential Electoral Tribunal or the Supreme Court be a bar for any question relative to any present and future electoral protest involving

the same area and for any position, the COMELEC submitted that it is on a case-to-case basis.

88. Protestant Marcos agrees. The application shall be on a case-to-case basis taking into account the identity of the factual antecedents and cause/s of action raised by the protestant.

89. As to the necessity of calling for a special election for the position of Vice-President, and the competence to call for such elections, it is submitted that there is no necessity to call for special elections for the position of Vice-President. The COMELEC accurately pointed out that the case of ***Abayon*** is again on point.

90. In annulment of election results, the compliance with the required threshold of evidence and percentage of votes/precincts to prove failure or annulment of elections shall result in the nullification of the votes received by the protestant and protestee in the concerned precincts or municipalities or provinces. **And after deducting the votes which were nullified, the winner in the election protest shall be determined based on who garnered the highest number of valid votes based on the remaining precincts which were not annulled.** To advocate that there should be a special election would place the entire electoral contest in an absurd situation, as another conduct of special election opens the door to another election protest. Such proposition feeds the pernicious "grab the proclamation prolong the protest" technique.

91. The issue as to who has the competence to call for such elections is rendered moot and unnecessary given that there is no need to call for a special elections as discussed above.

92. As to whether this will mean "recovery" for the protestant under **Rule 65**, which will, in turn, mean revision of all his contested precincts nationwide, the answer is **NO**.

93. The COMELEC agrees with the position of protestant Marcos that the annulment of election results is **separate and distinct** from the judicial revision, recount and re-appreciation of ballots under **Rule 65 of the 2010 PET Rules**. Hence, Rule 65 finds no application to protestant's Third Cause of Action.

94. Finally, as to the effect of the Honorable Tribunal's ruling on Protestant's Third Cause of Action on protestee's counter protest, again, it goes without saying that since the protestant's Third Cause of Action is a separate, distinct and independent cause of action, the resolution thereof will not affect the protestee's counter-protest given that the latter is dependent on the protestant's Second Cause of Action which is for the judicial revision, recount, and re-appreciation of ballots.

95. It is humbly submitted by protestant Marcos that the withdrawal and/or dismissal of his Second Cause of Action for the judicial revision, recount, and re-appreciation of ballots should consequently result to the dismissal of protestee Robredo's counter-protest.

96. On a last note, regarding the COMELEC's suggestion for this Honorable Tribunal to revisit its rules and the case of ***Abayon*** to fill in the gaps in order to preserve the true will of the electorate in every protest lodged before it, protestant Marcos humbly submits that any amendment of the prevailing procedural rules and/or modification of the ***Abayon*** doctrine should not retroactively apply to the present case as that will grossly violate his constitutional right to due process of law. Any amendment of the prevailing procedural rules and/or modification of the ***Abayon*** doctrine should therefore be applied prospectively to future election protest cases.

PRAYER

ACCORDINGLY, it is most respectfully prayed of this Honorable Tribunal to **UPHOLD** and **AFFIRM** the competence of this Honorable Tribunal to resolve the Third Cause of Action; to immediately **PROCEED** with the Third Cause of Action notwithstanding the pendency of the resolution on the Second Cause of Action; to **DIRECT** the COMELEC handwriting experts to **CONDUCT** the **TECHNICAL EXAMINATION** of the voters' signatures appearing on the Election Day Computerized Voter's List (EDCVL) as against the voters' signatures appearing on the Voters Registration Records (VRRs) in the protested clustered precincts of *Lanao Del Sur*, *Maguindanao*, and *Basilan* relative to the Third Cause of Action; to **ADMIT** and **CONSIDER** the **Dactyloscopic and Questioned Document Reports** dated 5 June 2018, which shows that there are **FORTY THOUSAND FIVE HUNDRED TWENTY-EIGHT (40,528)**

SIGNATURES AND THREE THOUSAND TWO HUNDRED NINETY-FIVE (3,295) THUMBPRINTS ON THE EDCVLs USED IN THE FIVE HUNDRED EIGHT (508) ESTABLISHED PRECINCTS OF THE PROVINCES LANA DEL SUR, BASILAN AND MAGUINDANAO DURING THE LAST 2016 ELECTIONS, WHICH ARE NOT IDENTICAL WITH THE ORIGINAL AND GENUINE SIGNATURES AND/OR THUMBPRINTS OF THE REAL AND LEGITIMATE VOTERS AS REFLECTED ON THE RELEVANT VRRs IN THE SAID PROTESTED AREAS, in the disposition of this case; to **CONDUCT** another Preliminary Conference for the Third Cause of Action and thereafter to **PROCEED** with the presentation of evidence for the Third Cause of Action; to **NOTE** and **CONSIDER** the foregoing *Consolidated Reply*; and, to **RESOLVE ALL PENDING INCIDENTS** in the above-entitled case.

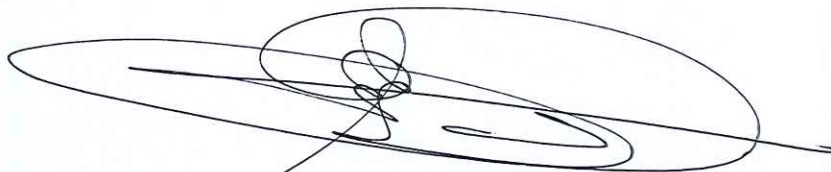
Other reliefs, just and equitable under the premises, are also prayed for.

City of Manila, Philippines, **23 November 2020.**

G.E. GARCIA LAW OFFICE

Lead Counsel for the Protestant
Ground Floor, LAIKO Building
Cabildo St., Intramuros, Manila 1002
Tele/Fax No. (02) 8527-7261
Email: geglaw.office@gmail.com

By:

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by 'E. M. Garcia'.

GEORGE ERWIN M. GARCIA

Roll of Attorneys No. 44950
PTR OR No. 9132121; 01-03-20; City of Manila
IBP Lifetime Membership No. 02652; Cavite Chapter
MCLE Compliance No. VI-0006563; 02-19-2018



JOAN M. PADILLA

Roll of Attorneys No. 54079

PTR OR No. 9269736; 01-02-2020; Quezon City

IBP Lifetime Membership No. 07416; Makati Chapter

MCLE Compliance No. VI-0005694; 01-10-2018

-in collaboration with-

M & ASSOCIATES

30/F Ore Central Tower

31st Street corner 9th Avenue

Bonifacio Global City, Taguig 1634

inquiry@m-associates.com

Telephone No. +63 (02) 8863 0601

By:



NERISSA N. DE JESUS

Roll of Attorneys No. 64201

PTR OR No. A-5009176/ 10-27-20/Taguig City

IBP Lifetime Membership No. 015694/Bulacan

MCLE Compliance No. VI-0016032/12-07-18

Copies furnished to:

ATTY. ROMULO B. MACALINTAL

Lead Counsel for Protestee Robredo

c/o Sardillo Sardillo Salom Law Office

Unit 802, Taipan Place, F. Ortigas Avenue,

Ortigas Center, Pasig City

TR #: TR 412 953 305 22

LBC #: 1270 3318 3182

THE SOLICITOR GENERAL

134 Amorsolo Street

Legaspi Village, 1229 Makati City

LBC #: 1270 3318 3192

Marcos v. Robredo

PET Case No. 005

Consolidated Reply

32 | Page

THE COMMISSION ON ELECTIONS

Palacio Del Gobernador Building
General Luna St., Intramuros Manila

LBC #: 1270 3318 3200

EXPLANATION

[Pursuant to Rule 30 and 31 of the Presidential Electoral Tribunal in relation to Supreme Court Administrative Circular No. 45-2020 dated 18 August 2020]

Copies of the foregoing *Consolidated Reply* were personally and electronically filed before this Honorable Tribunal and served to the above-mentioned parties by registered mail and/or electronic mail, personal service being impractical due to distance, time and manpower constraints.



GEORGE ERWIN M. GARCIA

AFFIDAVIT OF FILING AND SERVICE

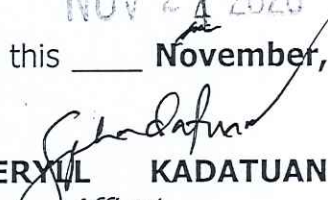
I, **SHERYLL KADATUAN**, of legal age, Filipino, *Executive Assistant* of **G.E. Garcia Law Office**, Ground Floor, LAIKO Building, Cabildo Street, Intramuros, Manila, Philippines, after having been duly sworn to in accordance with law, depose and state:

That today, **November 24, 2020**, I caused the **E-filing** of the **CONSOLIDATED REPLY** in the pdf format in **PET CASE No. 005** entitled, "*Ferdinand "Bongbong" R. Marcos, Jr. vs Maria Leonora "Leni Daang Matuwid" G. Robredo*" with the Office of the Presidential Electoral Tribunal, through **efile_jro@sc.judiciary.gov.ph**.

Likewise, the same were served upon the parties through their respective email address and through private courier and registered mail, thus:

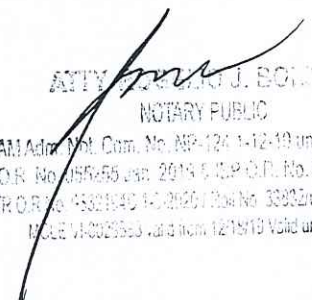
<u>Names and Addresses</u>	<u>Email/LBC/Registry Receipt Nos.</u>
THE COMMISSION ON ELECTIONS c/o LAW DEPARTMENT Palacio Del Gobernador Building General Luna St., Intramuros Manila	<i>Email Add:</i> <u>law@comelec.gov.ph</u> <i>LBC No.:</i> <u>1270 3318 3200</u>
THE SOLICITOR GENERAL 134 Amorsolo Street Legaspi Village, 1229 Makati City	<i>Email Add:</i> <u>efile@osg.gov.ph</u> <i>LBC No.:</i> <u>1270 3318 3192</u>
ATTY. ROMULO B. MACALINTAL <i>Lead Counsel for Protestee Robredo</i> c/o Sardillo Sardillo Salom Law Office Unit 802, Taipan Place, F. Ortigas Avenue, Ortigas Center, Pasig City	<i>Registry Receipt No.:</i> <u>RE 412 953 305 22</u> <i>LBC No.:</i> <u>1270 3318 3182</u>

IN WITNESS WHEREOF, I have hereunto set my hand this 24 **November**, 2020 at the Manila City, Philippines.


SHERYLL KADATUAN
Affiant

SUBSCRIBED AND SWORN to before me this NOV 24, 2020 day of November, 2020. Affiant exhibiting to me her Employees ID card bearing her signature and photograph as competent proof of her identity.

Doc. No. 51
Page No. 5
Book No. 2
Series of 2020.


ATTY. ROMULO B. MACALINTAL
NOTARY PUBLIC
AM Adm. Not. Com. No. NP-124 1-12-19 until 12-13-2020
IBP O.R. No. 055455 Jan. 2019 S.C.P. O.R. No. 006956 Jan. 2020
PTR O.R. No. 4532140 1-2-2021 No. 333321011F 120-371-000
SOLE VOUCHER and from 12/18/19 Valid until 04/14/22

VERIFIED DECLARATION

I, **SHERYLL KADATUAN**, an Executive Assistant of the G.E. GARCIA Law Office with office address at Ground Floor, LAIKO Bldg., Cabildo St., Intramuros, City of Manila, hereby declare that the document/s (and annexes thereof) hereto submitted electronically in accordance with the Efficient use of Paper Rule is/are complete and true copy/ies of the document/s **"CONSOLIDATED REPLY"** in **PET CASE No. 005** entitled **"FERDINAND "BONGBONG" R. MARCOS, Protestant, -versus- MARIA LEONOR "LENI DAANG MATUWID" G. ROBREDO, Protestee"**, filed with the Supreme Court.

Signature: _____

Printed Name: **Sheryll Kadatuan**

Position: Executive Assistant

Date: November 24, 2020

SUBSCRIBED AND SWORN to before me this 24th day of November, 2020. Affiant exhibiting to me her Employees ID card bearing her signature and photograph with ID No. GEGLAW-006 as competent proof of her identity.

Person Administering Oath

Doc. No.: 23;
Page No.: 5;
Book No.: 2;
Series of 2020.

ATTY. ROBERTO S. SOLAR
NOTARY PUBLIC
AMANN. Not. Com. No. NP 124 : 12-19 until 12-13-2020
IBP O.R. No. 056255 Jan. 2019 & IBP O.R. No. 064206 Jan. 2020
PTR O.R. No. 9332194C 1-3-2020 / Roll No. 33632/ITIN# 129-871-000
MCLE VI-0029583 valid from 12/18/19 Valid until 04/14/22