

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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**MOTION FOR RECONSIDERATION**  
**(with Leave of Court)**

**THE OFFICE OF THE SOLICITOR GENERAL (OSG)** respectfully seeks leave of the Honorable Tribunal to submit this Motion for Reconsideration of the Resolution dated November 17, 2020 on the following grounds:

**I.**

**THE SOLICITOR GENERAL IS JUSTIFIED IN INVOKING HIS ROLE AS THE PEOPLE'S TRIBUNE TO PROTECT THE INTEREST OF FILIPINO PEOPLE.**

**II.**

**R.A. NO. 1793 AND B.P. NO. 884 MANDATE THE HONORABLE TRIBUNAL TO DECIDE THE PROTEST WITHIN A LIMITED PERIOD.**

**III.**

**THE OMNIBUS MOTION PRESENTED CLEAR GROUNDS TO WARRANT HONORABLE**

**ASSOCIATE JUSTICE MARVIC M.V.F.  
LEONEN'S INHIBITION.**

**DISCUSSION**

**I. The Solicitor General is justified in invoking his role as the People's Tribune to protect the interest of Filipino people.**

1. In its Resolution dated November 17, 2020, the Honorable Tribunal denounced the Solicitor General's invocation of its role as the Tribune of the People in this case. According to the Honorable Tribunal, such invocation is only proper when the Republic of the Philippines is a party and the present case "involves private individuals only."<sup>1</sup>

2. With utmost respect to the Honorable Tribunal, the Solicitor General begs to differ.

3. In its Resolution, the Honorable Tribunal, citing Section 35, Chapter 12, Book IV, Title III of the Revised Administrative Code, defined the People's Tribune as follows:

[A]n instance when the Solicitor takes a position adverse and contrary to the Government's because it is incumbent upon him to present to the Court what he considers would legally uphold government's best interest, although the position may run counter to a client's position.<sup>2</sup>

4. Again, with due respect, the Honorable Tribunal seems to have inaccurately quoted the contents of the provision of Section 35, Chapter 12, Book IV, Title III of the Revised Administrative Code pertaining to the role of the Office of the Solicitor General as the Tribune of the People. The provision, in its entirety, reads:



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**SECTION 35. Powers and Functions.** — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

(2) Investigate, initiate court action, or in any manner proceed against any person, corporation or firm for the enforcement of any contract, bond, guarantee, mortgage, pledge or other collateral executed in favor of the Government. Where proceedings are to be conducted outside of the Philippines the Solicitor General may employ counsel to assist in the discharge of the aforementioned responsibilities.

(3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court.

(4) Appear in all proceedings involving the acquisition or loss of Philippine citizenship.

(5) Represent the Government in all land registration and related proceedings. Institute actions for the reversion to the Government of lands of the public domain and improvements thereon as well as lands held in violation of the Constitution.

(6) Prepare, upon request of the President or other proper officer of the National Government, rules and guidelines for government entities governing the preparation of contracts, making of investments, undertaking of transactions, and drafting of forms or other writings needed for official use, with the end in view of



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entered into or prepared conformably with law and for the best interests of the public.

(7) Deputize, whenever in the opinion of the Solicitor General the public interest requires, any provincial or city fiscal to assist him in the performance of any function or discharge of any duty incumbent upon him, within the jurisdiction of the aforesaid provincial or city fiscal. When so deputized, the fiscal shall be under the control and supervision of the Solicitor General with regard to the conduct of the proceedings assigned to the fiscal, and he may be required to render reports or furnish information regarding the assignment.

(8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts, and exercise supervision and control over such legal Officers with respect to such cases.

(9) Call on any department, bureau, office, agency or instrumentality of the Government for such service, assistance and cooperation as may be necessary in fulfilling its functions and responsibilities and for this purpose enlist the services of any government official or employee in the pursuit of his tasks.

Departments, bureaus, agencies, offices, instrumentalities and corporations to whom the Office of the Solicitor General renders legal services are authorized to disburse funds from their sundry operating and other funds for the latter Office. For this purpose, the Solicitor General and his staff are specifically authorized to receive allowances as may be provided by the Government offices, instrumentalities and corporations concerned, in addition to their regular compensation.

(10) Represent, upon the instructions of the President, the Republic of the Philippines in international litigations, negotiations or conferences where the legal position of the Republic must be defended or presented.

(11) Act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of justice may require; and

(12) Perform such other functions as may be provided

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5. On the other hand, the definition of People's Tribune quoted by the Honorable Tribunal could have been obtained from the following decisions of the Honorable Supreme Court:

(a) *Pimentel v. Comelec*:

True, the Solicitor General is mandated to represent the Government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. However, the Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position.<sup>3</sup>

(b) *Republic v. Cortez*:

The exception to this rule is when it acts as the "People's Tribune." As such, it represents the best interests of the State, and may take an adverse position from the government agency under litigation. In *Pimentel, Jr. v. Commission on Elections*:

True, the Solicitor General is mandated to represent the Government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. However, the Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position.<sup>4</sup>

(c) *Orbos v. Civil Service Commission*

The Solicitor General is the lawyer of the government, its agencies and instrumentalities, and its officials or agents including petitioner and public respondent. This is so provided under Presidential Decree No. 478:



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**SECTION 1. *Functions and Organization.***

— (1) The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. ....

In the discharge of this task, the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law. When confronted with a situation where one government office takes an adverse position against another government agency, as in this case, the Solicitor General should not refrain from performing his duty as the lawyer of the government. It is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position. In such an instance the government office adversely affected by the position taken by the Solicitor General, if it still believes in the merit of its case, may appear in its own behalf through its legal personnel or representative.<sup>5</sup>

**(d) *Constantino-David v. Pangandaman-Gania:***

Hence, there was no necessity for the verification and certificate of non-forum shopping to be executed by the City Warden himself. To be sure, it would have been awkward and irregular for the City Warden to do so given that his position was not the same as those reflected in the petition of the OSG. No doubt, the real party-in-interest is the OSG itself as representative of the State. In *Pimentel v. Commission on Elections* we held –

x x x the Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position x x x x As we commented on the role of the Solicitor General in cases pending before this Court, "This Court does not expect the Solicitor General to waver in the performance of his duty. As a matter of fact, the Court appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his

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opinion inconsistent with the Government or any of its agents he is expected to represent. The Court must be advised of his position just as well."<sup>6</sup>

(e) *Republic v. Court of Appeals:*

However, in *Secretary Oscar Orbos vs. Civil Service Commission, et al.*, G.R. No. 92561, 12 September 1990, We stated:

In the discharge of this task, the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law. When confronted with a situation where one government office takes an adverse position against another government agency, as in this case, the Solicitor General should not refrain from performing his duty as the lawyer of the government. It is incumbent upon him to present to the court what he considers should legally uphold the best interest of the government although it may run counter to a client's position. In such an instance the government office adversely affected by the position taken by the Solicitor General, if it still believes in the merit of its case, may appear in its own behalf through its legal personnel or representative.<sup>7</sup>

6. As the Solicitor General stated in his Omnibus Motion, his office represents the Government of the Philippines, its agencies and instrumentalities, and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers.<sup>3</sup> The exception to this rule is when it acts as the "People's Tribune." As such, it represents the best interests of the State, and may take an adverse position from the government agency under litigation.

7. The rationale for the OSG's role as Tribune of the People was explained in *Gonzales v. Hon. Chavez*, as follows:



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Indeed, in the final analysis, it is the Filipino people as a collectivity that constitutes the Republic of the Philippines. Thus, the distinguished client of the OSG is the people themselves of which the individual lawyers in said office are a part.<sup>9</sup>

8. That the Filipino people is the ultimate client of the OSG is even supported by the Honorable Tribunal when it stated:

The Office of the Solicitor General is the law office of the government. Its default client is the Republic of the Philippines, but ultimately, "the distinguished client of the Office of the Solicitor General is the people themselves." Its status as People's Tribune is properly involved only if the Republic of the Philippines is a party litigant to the case.<sup>10</sup>

9. While the Honorable Tribunal is in agreement with the Solicitor General that the latter's ultimate client is the Filipino people, the Honorable Tribunal nevertheless posits that the Solicitor General cannot invoke its role as the Tribune of the People because the Republic of the Philippines is not a party and that the present case "involves private individuals only."<sup>11</sup>

10. The present case, however, is not just a private contest between two individuals claiming to have won in the elections. We must not lose sight of the fact that what is at stake is the determination of the expression of the will of the Filipino people when they cast their votes in 2016 for the Vice Presidency. **It is imbued with public interest.**

11. In *Pacanan Jr v. COMELEC*,<sup>12</sup> citing *Barroso v. Ampig, Jr.*,<sup>13</sup> the Honorable Supreme Court ruled that election contests are imbued with public interest and are not simply an adjudication of private interests:

It has been frequently decided, and it may be stated as a general rule recognized by all courts, that statutes

<sup>9</sup> 282 Phil. 858 (1992).

<sup>10</sup> PET Resolution, *supra*, page 28.

<sup>11</sup> *Id.*



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providing for election contests are to be liberally construed to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. **An election contest, unlike an ordinary action, is imbued with public interest since it involves not only the adjudication of the private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the office within their gift.** Moreover, it is neither fair nor just to keep in office for an uncertain period one whose right to it is under suspicion. It is imperative that his claim be immediately cleared not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure which protract and delay the trial of an ordinary action.<sup>14</sup>

12. The paramount public interest in election contests was further highlighted when the Honorable Tribunal, in its Resolution dated September 29, 2020, directed the Solicitor General to comment on the following issues pertinent to this case, to wit: .

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...

13. Thus, after filing the required Comment, the Solicitor General merely pursued what he deemed best not only for the government, but more importantly, for its distinguished client, the Filipino People.



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14. No less than the Honorable Supreme Court, in **Orbos v. CSC**,<sup>15</sup> mandated the Solicitor General to do no less for his clients. The Honorable Supreme Court described the OSG's role in this wise:

This Court does not expect the Solicitor General to waver in the performance of his duty. As a matter of fact, the Court appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the Government or any of its agents he is expected to represent. The Court must be advised of his position just as well.

15. The prime moving factor of the Solicitor General when he filed the motion for inhibition of the Honorable Associate Justice Marvic M.V.F. Leonen is the protection and preservation of the interest of the Filipino people. Despite the insinuations made in the Resolution, the Solicitor General is supporting neither party to this case. The motion for inhibition is apolitical and intended purely for the preservation of the neutrality in the determination of the true will of the Filipino people. Its filing was painstakingly thought of given the possible aspersions the Solicitor General may receive from biased and political personalities.

16. While it is conceded that the Solicitor General is not technically a party to the election contest, the fact that he has the legal mandate to represent the interests of the people as their Tribune, and, therefore, an interested party in the protest, he took the judicious route, in the exercise of his own prerogative, of moving for the inhibition of the Honorable Associate Justice Leonen.

17. The right to seek disqualification of judges is recognized in law and jurisprudence. Such right is adjunct to the basic right to due process which requires a hearing before an impartial and disinterested tribunal. Besides, it is settled that "[a] judge has both the duty of rendering a just decision



and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity."<sup>16</sup>

18. Suffice it to state that the present election protest, while distinct in strict sense to the extraordinary remedy of *quo warranto*, a power lodged with the Solicitor General, both remedies essentially involve one and the same thing: the legitimacy of a holder of a public office. Accordingly, it has been held that "[t]he remedy of *quo warranto* is vested in the people, and not in any private individual or group, because disputes over title to public office are viewed as a public question of governmental legitimacy and not merely a private quarrel among rival claimants."<sup>17</sup>

19. Considering that the present case is imbued with public interest, it is respectfully submitted that the Solicitor General is justified in invoking its role as the Tribune of the People to protect the interest of Filipino people, in general, and the electorate, in particular. After, all, isn't that the full essence of having a republican government?

**II. R.A. No. 1793 and B.P. No. 884 mandate the Honorable Tribunal to decide the protest within a limited period.**

20. With utmost respect, the Solicitor General disagrees with the Honorable Tribunal's stance that there is no rule requiring that an election protest should be decided within 20 months or 12 months, citing Rule 67 of A.M. No. 10-4-29-SC, or the 2010 Rules of the Presidential Electoral Tribunal, which reads:

RULE 57. *Procedure in Deciding Contests.* - In rendering its decision, the Tribunal shall follow the procedure prescribed for the Supreme Court in Sections 13 and 14, Article VIII of the Constitution.

<sup>16</sup> Republic of the Philippines rep. by Solicitor General Jose C. Calida v. Maria Lourdes Sereno, G.R. No. 237428, May 11, 2018 citing *Quany of Exco. Judge Estrada, BTC Malabon, Bulacan*, 260 Phil. 1, 6 (1987).

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21. The constitutional provisions cited in Rule 67 state:

ARTICLE VIII  
Judicial Department

....

SECTION 13. The conclusions of the Supreme Court in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower collegiate courts.

SECTION 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

22. As can be gleaned, the two provisions pertain to the procedure in deciding cases which includes the **collegiality requirement** in Section 13 and the **content requirement** in Section 14; but the *period or timeframe* in rendering the decision is, of course, distinct.

23. The Resolution states or otherwise suggests that there was an implied repeal of R.A. No. 1793 and B.P. Blg. 884 by the 1973 Constitution and the 1987 Constitution, respectively, is not only dangerous but also unfounded especially in this case where there is no repugnance. It has been ruled that:

xxx Repeals by implication are not favored. To the contrary, every statute must be so interpreted and brought in accord with other laws as to form a uniform system of jurisprudence. *Interpretare et concordare legibus est optimus interpretandi*. For there to be an implied repeal, there must be a clear showing of repugnance. The language used in the later statute must be such as to render it



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inconsistency that falls short of that standard does not suffice.<sup>18</sup>

24. Indeed, Section 3, Article XVII of the 1987 Constitution explicitly ordains:

Sec. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

25. *Apropos* is the ruling in ***People v. Hon. Gacott***<sup>19</sup> on implied repeals. In this case, the accused was charged with violation of Anti-Dummy Law. He then moved to quash, claiming that the authority to prosecute the Anti-Dummy Law is exclusively vested in the Anti-Dummy Board. The prosecution opposed the said motion, arguing that the Anti-Dummy Board had already been abolished through P.D. No. 1 and LOI No. 2 issued by then President Ferdinand E. Marcos. Judge Gacott, nonetheless, granted the motion to quash. The Honorable Supreme Court, through a petition for *certiorari* filed by the People, later ruled that the trial court judge erred in granting the quashal. Citing the OSG, the Honorable Supreme Court held that P.D. No. 1 and LOI No. 2 continue to have the force and effect of law despite the ratification of the 1987 charter absent any law expressly or impliedly repealing the same.

26. Prescinding therefrom, a reading of Section 3 of R.A. No. 1793 shows that the Honorable Tribunal is expected to render its decision in a protest case within a specified period:

SECTION 3. The Presidential Electoral Tribunal shall decide the contest within twenty months after it is filed, and within said period shall declare who among the parties has been elected, or, in the proper case, that none has been elected, and in case of a tie between the candidates for president or for vice-president involved in the contest, one of them shall be chosen President or Vice-President, as the

<sup>18</sup> *City Warden of the Manila City Jail v. Estrella, et al.*, G.R. No. 141211, August 31, 2001 citing *Republic of the Philippines v. Marcopper Mining Corporation*, G.R. No. 137174, July 10, 2000 citing *Hagad v. Gozodale*, 251 SCRA 242 (1995); and *Arquistan v. Court of Appeals*, 261 SCRA 17 (1996); *AGRA v. AGRA*, G.R. No. 141211, August 31, 2001.

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case may be, by a majority vote of the members of the Congress in joint session assembled...

27. A.M. No. 10-4-29-SC governs the internal operations of the Honorable Tribunal and guides its exercise of judicial and administrative functions. However, the internal rules cannot trump the law.

28. In plain language, Section 4 of B.P. Blg. mandates that the Honorable Tribunal shall decide the contest within twelve months after it is filed:

SEC. 4. The Tribunal **must** decide the contest **within twelve months after it is filed**. In case of a tie between the candidates for President and/or for Vice-President involved in the contest, the Tribunal shall notify the *Batasang Pambansa* of such fact, in which case the President or Vice-President, as the case may be, shall be chosen by a vote of a majority of all the Members of the *Batasang Pambansa* in session assembled...<sup>20</sup>

29. Procedural rules are essential in the administration of justice. However, in case of conflict, the law must prevail over regulation or any portion thereof not adopted pursuant to law. If there is no law and has neither the force nor the effect of law.

30. So while Sections 13 and 14 quoted above refer to the procedure, the period to render judgment is governed by Section 15, thus:

Section 15. (1) All cases or matters filed after the effectivity of this Constitution **must be decided or resolved within twenty-four months from date of submission for the Supreme Court**, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.



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attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.

(4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay.

31. The provision on applicable periods for decision is mandatory. The word "shall" ordinarily connotes an imperative and indicates the mandatory character of a statute.<sup>22</sup> Assuming *arguendo*, that the 20-month period under R.A. 1793 has been impliedly repealed, would the 24-month period under Section 15 apply? To claim in the Resolution that there is no rule requiring that an election protest be decided within a certain period and, thus, "[t]he allegation of undue delay is severely unfounded" is, with due respect, without basis and dangerous.

32. As a general principle, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business. By their very nature, these rules are regarded as mandatory. Accordingly, it has been ruled that a judge cannot choose his deadline for deciding cases pending before him.<sup>23</sup>

33. In general, the maximum period is 24 months for the Honorable Supreme Court, which shall start from the filing of the last pleading, brief, or memorandum required by the Rules of Court. The provision strictly requires that if the period is exceeded, an explanation must be made either by the Chief Justice in a certification to be served upon the parties. The provision was included in the Constitution for the purpose of achieving an expeditious and inexpensive determination of cases. For presidential contests, the statutes shall prevail.

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**III. The Omnibus Motion presented clear grounds to warrant Honorable Associate Justice Marvic M.V.F. Leonen's inhibition.**

34. In denying<sup>24</sup> and noting without action<sup>25</sup> the Solicitor General's Omnibus Motion (Motion for Inhibition of Associate Justice Marvic M.V.F. Leonen and Re-Raffle), the Honorable Tribunal held that "none of... the Solicitor General's arguments cited a clear ground to warrant Justice Leonen's inhibition under the Rules."<sup>26</sup> The Honorable Tribunal cited Section 1, Rule 8 of the Internal Rules of the Supreme Court and ruled as follows:

Rule 8, Section 1 of the Internal Rules of the Supreme Court is clear:

**RULE 8**

*Inhibition and Substitution of Members of the Court*

**SECTION 1. Grounds for inhibition.** – A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

- (a) the Member of the Court was the ponente of the decision or participated in the proceedings in the appellate or trial court;
- (b) the Member of the Court was counsel, partner or member of law firm that is or was the counsel in the case subject to Section 3(c) of this rule;
- (c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;



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(d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;

(e) the Member of the Court was executor, administrator, guardian or trustee in the case; and

(f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

The inhibiting Member must state the precise reason for the inhibition.

None of protestant and the Solicitor General's arguments cited a clear ground to warrant Justice Leonen's inhibition under the Rules. There were no prior proceedings where he may have participated. He had no profession engagement with, pecuniary interest relative to, or relation within the sixth degree of consanguinity or affinity to any of the parties or their counsels.<sup>27</sup>

35. With all due respect, the Honorable Tribunal limited the grounds to the mandatory inhibition of members of the Honorable Supreme Court. The Solicitor General's Omnibus Motion, however, is anchored on the *voluntary* inhibition of Honorable Associate Justice Leonen, under the second paragraph of Section 1, Rule 8 of the Internal Rules of the Supreme Court.

36. The second paragraph of Section 1, Rule 8 of the Internal Rules of the Honorable Supreme Court provides for

the voluntary inhibition of a member of the Honorable Supreme Court who may, "in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above."

37. The Solicitor General, in his Omnibus Motion, quoted the evolution of the second paragraph in ***Pagoda Philippines, Inc. v. Universal Canning, Inc.***,<sup>28</sup> viz.:

In *Umañe v. Villaluz*, the Court traced the history of the second paragraph of the above-quoted provision, which had been added only as an amendment to the Rules of Court in 1964. Prior to that year, the question on whether to take cognizance of the case did not depend upon the discretion of the judges not legally disqualified to sit in a given case. If those concerned were not disqualified, it was their official duty to proceed with the case or else risk being called upon to account for their dereliction. They could not voluntarily inhibit themselves on grounds of prejudice or bias, extreme delicacy, or even if they themselves took great interest and an active part in the filing of the case. *Gutierrez v. Santos* and *Del Castillo v. Javelona* paved the way for the recognition of other circumstances for disqualification- those that depended upon the exercise of discretion of the judges concerned.<sup>29</sup>

38. While the second paragraph does not expressly enumerate the specific grounds for inhibition and leaves it to the sound discretion of the judge, such should be based on just and valid reasons. The import of the rule on the voluntary inhibition of judges is that the decision on whether to inhibit is left to the sound discretion and conscience of the trial judge, or member of the Honorable Supreme Court in this case, based on his rational and logical assessment of the circumstances prevailing in the case brought before him. It makes clear to the occupants of the Bench that outside of pecuniary interest, relationship, or previous participation in the matter that calls for adjudication, there might be other causes that could conceivably erode the trait of objectivity, thus calling for inhibition. That is to betray a sense of realism,



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for the factors that lead to preference or predilections are many and varied.<sup>30</sup>

39. The case of **Antonia J. Gutang, et al. v. Court of Appeals, et al.**<sup>31</sup> involved a valid voluntary inhibition by the presiding judge who, despite his position that there was neither factual nor legal basis for the inhibition, nevertheless inhibited. The Honorable Supreme Court held that a just and valid reason for inhibition exists as it is "more prudent to inhibit himself than to have any decision, order, or resolution he would make on the incidents of the case be put under a cloud of distrust and skepticism,"<sup>32</sup> viz.:

While not expressly stated, respondent judge nevertheless did have a just and valid reason for voluntarily inhibiting himself. In the questioned order, **it was evident that he thought it more prudent to inhibit himself than to have any decision, order or resolution he would make on the incidents of the case be put under a cloud of distrust and skepticism. In this sense, he would no longer be effective in dispensing justice to the parties to the litigation.**

Taking the cue from the *Pimentel* case, the respondent Judge de la Cruz, Jr. properly took heed of this Court's advice, to wit:

... But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstance reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired....

Truly, the presiding judge must maintain and preserve the trust and faith of the parties-litigants. He must hold himself above reproach and suspicion. **At the very first sign of lack of faith and trust in his actions, whether well-grounded or not, the Judge has no other alternative but to inhibit himself from the case.** When circumstances appear that will induce doubt as to his honest actuations and probity in favor of either party, or incite such

<sup>30</sup> *Antonia J. Gutang, et al. v. Court of Appeals, et al.*, G.R. No. 164760, July 9, 1999.



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state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the Courts of Justice is not impaired. The better course for the judge under such circumstances is to disqualify himself. That way, he avoids being misunderstood, his reputation for probity and objectivity is preserved. What is more important, the ideal of impartial administration of justice is lived up to.<sup>33</sup>

40. The Honorable Supreme Court made the same ruling in ***Konrad A. Rubin, et al. v. Judge Evelyn Corpus-Cabochan***<sup>34</sup> when it held that inhibition is warranted at the very first sign of lack of faith or trust:

Certainly, a presiding judge must maintain and preserve the trust and faith of the parties-litigants. He must hold himself above reproach and suspicion. **At the very first sign of lack of faith and trust in his actions, whether well-grounded or not, the judge has no other alternative but to inhibit himself from the case. The better course for the judge under the circumstances is to disqualify himself. That way, he avoids being misunderstood; his reputation for probity and objectivity is preserved. What is more important, the ideal of impartial administration of justice is lived up to.** Hence, Judge Cabochan should not be condemned for her recusal in Civil Case No. Q-09-64898.<sup>35</sup>

41. Indeed, well-known is the judicial norm that "judges should not only be impartial but should also appear impartial." Jurisprudence repeatedly teaches that litigants are entitled to nothing less than the cold neutrality of an impartial judge. Judges must not only render just, correct, and impartial decisions, but must do so in a manner free of any suspicion as to their fairness, impartiality, and integrity.<sup>36</sup>

42. Thus, while a judge may not be legally prohibited from sitting in a litigation, when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of

<sup>33</sup> *Id.*; Emphases supplied and citations omitted.

<sup>34</sup> OCA I.P.L. No. 11-3589-R71, July 29, 2013.



circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination.<sup>37</sup>

43. With due respect, the Solicitor General sought the inhibition of Honorable Associate Justice Leonen because the totality of facts and circumstances presented in his Omnibus Motion manifested, at the least, an impression of Honorable Associate Justice Leonen's bias and partiality warranting his inhibition.

44. Consequently, the Solicitor General did not contend that Honorable Associate Justice Leonen exhibited bias by merely dissenting in ***Ocampo v. Enriquez***.<sup>38</sup> On the contrary, it was the statements made by Honorable Associate Justice Leonen in his dissenting opinion that disclosed his bias and partiality against President Ferdinand Marcos and his family. As stated by the Solicitor General in his Omnibus Motion, Honorable Associate Justice Leonen in his dissenting opinion: (a) expressed his negative attitude against President Marcos and his family and friends; (b) disclosed his personal biases against President Marcos and his family; (c) imputed the whole Marcos family as beneficiaries of ill-gotten wealth; (d) treated the Marcos family as a single unit of human rights violators; and (e) suggested a need for unconditional apology from the heirs of the late President.<sup>39</sup>

45. In the same vein, Honorable Associate Justice Leonen's bias was also manifested in his dissent in ***Gloria Macapagal-Arroyo v. People of the Philippines***.<sup>40</sup> His dissenting opinion created the impression that the Marcoses were guilty of plunder. However, the case of ***Republic v. Sandiganbayan***<sup>41</sup> cited by Honorable Associate Justice Leonen merely ordered the civil forfeiture of treasury notes and bank accounts of foreign foundations.<sup>42</sup>

46. Honorable Associate Justice Leonen's partiality was not confined to the decision he penned and his dissenting

<sup>37</sup> *People v. Kho*, G.R. No. 139381, April 20, 2001.

<sup>38</sup> G.R. No. 225973, November 8, 2016.

<sup>39</sup> See: Omnibus Motion, pp. 8-13.

<sup>40</sup> G.R. No. 220598, July 19, 2016 and April 18, 2017.



opinion. It was also shown in the delay in the resolution of the election protest case since more than one year had lapsed from the time the parties filed their memoranda but the case remains pending. Resolution of the vice-presidential electoral protest is of paramount import as the 2022 national elections are looming.

47. Based on the foregoing circumstances, Honorable Associate Justice Leonen exhibited, at the least, an impression of bias and partiality warranting his inhibition. Certainly, a judge must maintain and preserve the trust and faith of the parties-litigants. He must hold himself above reproach and suspicion. At the very first sign of lack of faith and trust in his actions, whether well-grounded or not, the judge has no other alternative but to inhibit himself from the case. The better course for the judge under the circumstances is to disqualify himself. That way, he avoids being misunderstood; his reputation for probity and objectivity is preserved. What is more important, the ideal of impartial administration of justice is lived up to.<sup>43</sup>

48. Verily, it is of utmost importance that a judge or a magistrate must preserve the trust and confidence reposed in him as an impartial, unbiased, and dispassionate dispenser of justice. When he conducts himself in a manner that gives rise, fairly or unfairly, to perception of bias, such faith and confidence are eroded. His decisions, whether right or wrong, will always be under suspicion of irregularity.<sup>44</sup>

49. In ***Ty v. Banco Filipino Savings and Mortgage Bank***,<sup>45</sup> the Honorable Supreme Court held:

In the case at bar, the consistency and regularity with which respondent judge issued the assailed directives gives rise, not to a fanciful suggestion or to a superficial impression of partiality, but to a clear and convincing proof of bias and prejudice. While we are not unmindful of this Court's previous pronouncements that to warrant the judge's inhibition from the case, bias or prejudice must be shown to have stemmed from an extra-judicial or extrinsic



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source, this rule does not apply where the judge, as in the instant case, **displays an inordinate predisposition to deviate from established procedural precepts that demonstrate obvious partiality in favor of one party.**

It is also true that the Supreme Court, on several occasions, ruled that the issuance of the complained orders and decision that pertain to the judge's judicial functions may not be proper considerations to charge a judge of bias though these acts may be erroneous. **However, where said complained orders, taken not singly but collectively, ineluctably show that the judge has lost the cold neutrality of an impartial magistrate, due process dictates that he voluntarily inhibits himself from the case.**<sup>46</sup>

50. Due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge. Parallel to the duty of rendering a just decision is the duty of doing it in a manner that will not arouse any suspicion as to its fairness and the integrity of the Judge.<sup>47</sup>

51. Honorable Associate Justice Leonen's refusal to inhibit, given the political stakes involved, will destroy the reputation of an independent Judiciary. His non-inhibition will likewise result in the sense that whoever loses the case was not accorded due process given the contrasting expectations involved.

### **CONCLUDING REMARKS**

52. The Solicitor General's mandate as Tribune of the People is not at all taken lightly. He does not make any distinction whatsoever, contrary to what is suggested, on whether a case is supposedly big ticket or otherwise. Based on the merits of any case that falls within his mandate, or even in cases where his participation is not at all expected but his legal position was solicited, as in this case when the Honorable Tribunal sought the Solicitor General, aside from the Commission on Elections, to file Comment on certain legal issues, he will not shirk in putting on record his position which he thinks truly represents the interest of the People.

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53. The Omnibus Motion was a respectful yet firm call for Honorable Associate Justice Leonen's inhibition citing written records that included his judicial opinions and news articles. But a pleader's intention may be different from a reader's perception.

54. The Solicitor General is also not unaware of the collegiality and confidentiality requirements of the Honorable Tribunal. However, he is also aware that despite collegiality, there is courtesy extended to the Justice-in-charge.

55. In sum, to serve the best interests of justice and for the impartial disposition of the case, it is humbly prayed that the Honorable Tribunal reconsider Resolution dated November 17, 2020.

**PRAYER**

The OSG respectfully prays that the Honorable Tribunal **RECONSIDER** its Resolution dated November 17, 2020 and **ISSUE** a new one:

- (1) **GRANTING** the Omnibus Motion for Inhibition of Associate Justice Marvic M.V. F. Leonen; and
- (2) **ORDERING THE IMMEDIATE RE-RAFFLE** of the instant election protest case to another Member of the Tribunal.

Other forms of relief, just and equitable in the premises, are likewise prayed for.

Makati City for the City of Manila, February 4, 2021.

//...Signatories on the next page...//



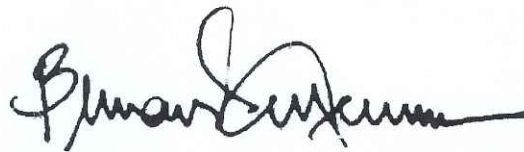
  
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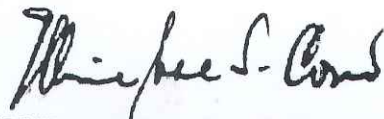
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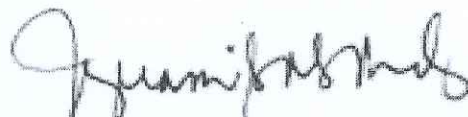
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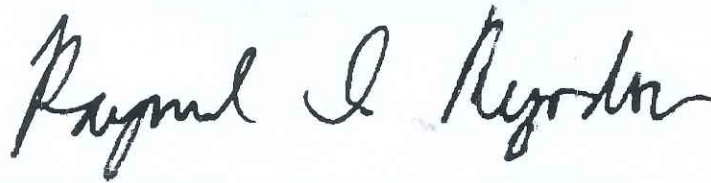
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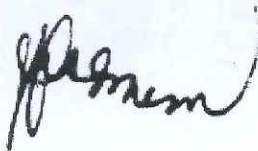
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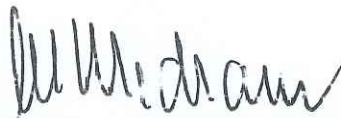
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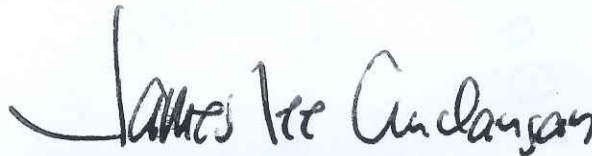
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**EXPLANATION**

Service on the other parties are being done by registered mail due to lack of personnel.



**JAMES LEE CUNDANGAN**

Assistant Solicitor General

## VERIFIED DECLARATION

I, **GILBERT U. MEDRANO**, hereby declare that the documents hereto submitted in accordance with the Efficient Use of Paper Rule are complete and true copies of the documents filed with the Presidential Electoral Tribunal.



**GILBERT U. MEDRANO**

Assistant Solicitor General

February 5, 2021

SUBSCRIBED AND SWORN to before me this 5th day of February, 2021, affiant exhibiting his competent evidence of identity, to wit: Employee ID No. 2010-04001.



**LILIAN C. ABENOJAR**

Senior State Solicitor



T.N: 195-783-928-000

GSIS No: 2001089248

Date of Birth: 15 Nov 1972

Signature

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**MEDRANO, GILBERT U.**  
**ASSISTANT SOLICITOR GENERAL**

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