

Republic of the Philippines
PRESIDENTIAL ELECTORAL TRIBUNAL
Manila

PRESIDENTIAL ELECTORAL TRIBUNAL
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FERDINAND "BONGBONG" R. MARCOS, JR.,
Protestant,

-versus-

PET Case No. 005
For: Election Protest
Vice-President

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

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MOTION FOR RECONSIDERATION

Election contests involve public interest. Technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle in determining the true will of the electorate in their choice of elective officials. Laws governing election contests must be liberally construed in order for the will of the people to be heard despite technical objections.

In an election case, the Court has an imperative duty to ascertain by all means within its command the real candidate elected by the electorate. The Supreme Court frowns upon any interpretation of the law or the rules which in any way may hinder not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.

Surely, allowing the election protest to proceed would be the best way of removing any doubt as to who was the real candidate chosen by the electorate. *Barring the proceedings due to technicalities and procedures accomplishes nothing except possibly to suppress the will of the majority.*¹

¹ Carlos v. Angeles, G.R. No. 142907, November 29, 2000 citing Benito v. Commission on Elections, G.R. No. 106053, 17 August 1994, 235 SCRA 436, 442 [1994]; Juliano v. Court of Appeals, G.R. No. L-27477, 28 July 1967, 127 Phil. 207, 219 [1967]; Tatlonghari v. Commission on Elections, G.R. No. 86645, 31 July 1991, 199 SCRA 849, 858-859 [1991]; Duremdes v. Commission on Elections, G.R. No. 86362-63, 27 October 1989, 178 SCRA 746, 759 [1989]; emphasis and underscoring supplied.

Protestant-movant **FERDINAND "BONGBONG" R. MARCOS, JR.** ("protestant Marcos"), through the undersigned counsels and unto this honorable Presidential Electoral Tribunal ("**PET**"), most respectfully moves for the reconsideration of its *Decision* promulgated on **16 February 2021** on the basis of the following:

PREFATORY

1. **It is an integral part of procedural due process that the parties be given the opportunity to present all evidence relevant to settle all the issues involved.**² It is only after the parties are given the opportunity to fully present all their relevant evidence that the Tribunal can state with certainty that the parties in the electoral contest have been heard.

2. Unfortunately, in this case, the majority of the members of this honorable Tribunal resolved to dismiss the **entire** case of protestant Marcos, including his **independent** Third Cause of Action for the annulment of election results, without first giving him an opportunity to present his testimonial and documentary evidence relevant to the nullification of the election results in the provinces of Lanao Del Sur, Maguindanao and Basilan.

3. While the Majority Opinion recognized the ruling of the Supreme Court in the case of **Harlin C. Abayon v. House of Representatives Electoral Tribunal (HRET) and Raul A. Daza**³ ("**Abayon** case"), this honorable Tribunal nonetheless concluded that protestant Marcos' cause of action for the annulment of election results could not proceed if there is no reasonable recovery of votes in his designated pilot provinces pursuant to **Rule 65** of **A.M. No. 10-4-29**, otherwise known as the "**2010 Rules of the Presidential Electoral Tribunal**" ("**2010 PET Rules**").

² Ituriaga v. Commission on Elections, G.R. No. L-52718, 30 April 1985, 136 SCRA 247, 255; emphasis supplied.

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

4. With all due respect, this myopic perception of the mandate of **Rule 65** of the **2010 PET Rules** vis-à-vis the legal implications of the **Abayon** case should be resolved in this *Motion for Reconsideration*.

5. The separate opinions penned by retired Chief Justice Diosdado M. Peralta and incumbent Associate Justice Samuel H. Gaerlan wisely concluded that **Rule 65** of the **2010 PET Rules** does not apply to an annulment of election results.

6. [A]nnulment of elections is a distinct electoral remedy that merits differentiated treatment from electoral protests and quo warrant petitions.⁴

7. [A]n election protest entails the revision, re-tabulation, and appreciation of the ballots; on the contrary, annulment of election entails a detailed investigation into the existence of the alleged fraud, terrorism, violence or other analogous causes which prevented the expression of the will of the electorate; or an expert technical examination of the electoral system.⁵

8. Consequently, since the Third Cause of Action is a ***separate, distinct and independent cause of action***, the annulment of the election results **can and must proceed independently of the result from the recount, revision and re-appreciation of ballots**. The results in the revision and appreciation of votes with respect to protestant Marcos' Second Cause of Action will **NOT RENDER** moot or unnecessary the consideration of his Third Cause of Action.

9. Thus, this *Motion for Reconsideration* serves as a platform through which protestant Marcos would like this honorable Tribunal to re-examine and re-evaluate the significance and ramifications of the **Abayon** case in relation to the scope and mandate of **Rule 65** of the **2010 PET Rules**.

⁴ Associate Justice Samuel H. Gaerlan, Separate Opinion p. 7.
⁵ *Id.*

10. Protestant Marcos humbly submits that this honorable Tribunal overlooked the fact that the dismissal of the entire protest under **Rule 65** of the **2010 PET Rules** would only apply if the cause of action of the protestant was limited to the judicial recount and revision of ballots. However, if the election protest is 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.

11. That being the case, it is respectfully submitted that there is an urgent need for this honorable Tribunal to **RECONSIDER** the assailed *Decision* dated **16 February 2021** and **ISSUE** another *Resolution* mandating the **PET** Hearing Commissioners to conduct hearings, receive and evaluate evidence, and determine the legitimacy of the Third Cause of Action for the annulment of election results.

12. At the end of the day, conducting further proceedings in this election contest would be beneficial to both parties. The complete resolution of this election protest would determine the true choice of the electorate and obviate any doubt on who won the 2016 Vice-Presidential race.

TIMELINESS

13. On **16 February 2021**, this honorable Tribunal promulgated the assailed *Decision*.

14. However, the original copy of the *Decision* was only transmitted to the Office of the Clerk of the Tribunal on **19 April 2021** at **10:24** in the morning.

15. A copy of the challenged *Decision* was only served to protestant Marcos through his lead counsel on **19 April 2021**.

16. Under **Rule 69** of the **2010 PET Rules**, an aggrieved party may file a Motion for Reconsideration within ***ten (10)*** days from service of a copy of the Decision.

17. Since a copy of the questioned *Decision* was only served to protestant Marcos on **19 April 2021**, he then had until **29 April 2021** to file his Motion for Reconsideration.

18. Meanwhile, on **14 April 2021**, the honorable Supreme Court Chief Justice Alexander G. Gesmundo issued **Administrative Circular No. 22-2021**, which **SUSPENDED** the time for filing and service of pleadings and motions in the National Capital Region and other areas under Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ). **The time for filing and service of pleadings and motions shall resume seven (7) calendar days counted from the first day of the physical opening of the relevant courts in these areas.**

19. On **30 April 2021**, **Administrative Circular No. 29-2021** was issued, re-affirming the earlier directive regarding the **suspension of the time for filing and service of pleadings and motions** in the National Capital Region and other areas under Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ). **The time for filing and service of pleadings and motions during this period shall resume after seven (7) calendar days counted from the first day of the physical opening of the relevant courts in these areas.**

20. On **03 May 2021**, however, the Office of the Clerk of Court issued a *Notice* stating that **the seven (7)-day extension under previous issuances for the filing and service of pleadings, motions and other court submissions with the Supreme Court shall start on 03 May 2021.**

21. Therefore, this *Motion for Reconsideration* is timely filed.

GROUND S FOR RECONSIDERATION

22. Protestant Marcos most respectfully seeks for the reconsideration of the assailed *Decision* dated 16 February 2021 based on the following grounds:

WITH ALL DUE RESPECT, THIS HONORABLE TRIBUNAL ERRED IN DISMISSING THE PROTESTANT MARCOS’ CAUSE OF ACTION FOR ANNULMENT OF ELECTION RESULTS.

- i. This honorable Tribunal erred when it claimed that protestant Marcos’ allegations are insufficient as this contradicts its previous finding that the election protest of Marcos, which included the cause of action for annulment of election results, is sufficient in form and content as contained in the *Summons* dated 12 July 2016, *Resolution* dated 24 January 2017 and *Resolution* dated 29 August 2017.**
- ii. This honorable Tribunal erred in not considering the annulment of election results as an independent, distinct and separate cause of action, which can proceed on its own despite the dismissal of protestant Marcos’ cause of action for judicial revision and recounting of ballots.**
- iii. This honorable Tribunal erred in dismissing the Third Cause of Action for annulment of election results by wrongfully applying Rule 65 of the 2010 PET Rules.**
- iv. This honorable Tribunal erred in dismissing the Third Cause of Action for annulment of election results without giving protestant Marcos any opportunity to present his evidence.**

ARGUMENTS

This honorable Tribunal erred when it claimed that protestant Marcos' allegations are insufficient as this contradicts its previous finding that the election protest of Marcos, which included the cause of action for annulment of election results, is sufficient in form and content as contained in the *Summons* dated 12 July 2016, *Resolution* dated 24 January 2017 and *Resolution* dated 29 August 2017.

23. With all due respect, this honorable Tribunal is **estopped** from claiming that the election protest is insufficient in form and substance and should have been summarily dismissed pursuant to **Rule 21** of the **2010 PET Rules**.

24. It is worthy to note that the sufficiency of the form, substance and content of the election protest filed by protestant Marcos was already **CONFIRMED** by this honorable Tribunal when it resolved to issue the *Summons* against protestee Robredo.

25. Since this honorable Tribunal did **not** summarily dismiss the election protest pursuant to **Rule 21⁶** of the **2010 PET Rules** but instead directed the protestee to file her answer thereto, **the sufficiency of the election protest and its compliance with the required contents as prescribed by Rule 17⁷ of the 2010 PET Rules is now beyond dispute.**

⁶ Rule 21. *Summary dismissal of election contest.* - An election protest or petition for *quo warranto* may be summarily dismissed by the Tribunal without requiring the protestee or respondent to answer if, inter alia:

- (a) the protest or petition is insufficient in form and substance;
- (b) the protest or petition is filed beyond the periods provided in Rules 15 and 16;
- (c) the filing fee is not paid within the periods provided in Rules 15 and 16;
- (d) the cash deposit or the first Two Hundred Thousand Pesos (P 200,000.00) is not paid within ten days after the filing of the protest; and
- (e) the protest or petition or copies and their annexes filed with the Tribunal are not clearly legible. (R20a)

⁷ Rule 17. *Contents of the protest or petition.* - (A) An election protest or petition for *quo warranto* shall commonly state the following facts:

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26. In fact, this honorable Tribunal categorically declared in the *Summons* that the **election protest filed by protestant Marcos was indeed sufficient in form and substance**, to wit :

SUMMONS

TO: **HON. MARIA LEONOR G. ROBREDO** (x)
Office of the Vice-President
Executive Home
No. 100 11th Street
New Manila, Quezon City

GREETINGS:

WHEREAS, protestant Ferdinand “Bongbong” R. Marcos, Jr. filed a verified election protest with the Presidential Electoral Tribunal (the Tribunal) on June 29, 2016, in relation to the May 9, 2016 results of the election for the position of Vice-President of the Republic of the Philippines;

WHEREAS, the Tribunal finds the Protest dated June 29, 2016 of the protestant to be sufficient in form and substance;

WHEREAS, considering the allegations contained, the issues raised and the arguments adduced in the aforesaid Protest, it is necessary and proper to require the protestee, Vice-President Maria Leonor G. Robredo, to file her answer thereto. xxx [Emphasis and underscoring supplied.]

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- (a) the position involved;
 - (b) the date of proclamation; and
 - (c) the number of votes credited to the parties per the proclamation.
- (B) A *quo warranto* petition shall as state:
- (a) the facts giving the petitioner standing to the file the petition;
 - (b) the legal requirements for the office and the disqualifications prescribed by law;
 - (c) the protestee's ground for ineligibility or the specific acts of disloyalty to the Republic of the Philippines
- (C) An election protest shall also state:
- (a) that the protestant was a candidate who had duly filed a certificate of candidacy and had been voted for the same office.
 - (b) the total number of precincts of the region, province, or city concerned;
 - (c) the protested precincts and votes of the parties to the protest in such precincts per the Statement of Votes By Precincts, or if the votes of the parties are not specified, an explanation why the votes are not specified; and
 - (d) a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies, or irregularities in the protested precincts. (n)

27. The sufficiency of the election protest was likewise unequivocally declared by the honorable Tribunal in its *Resolution* dated 24 January 2017, to wit :

On the matter of sufficiency of the protest, the same is already beyond dispute. With the issuance of Summons, **the Tribunal has found the Protest to be sufficient in form and substance.** The Protest contained narrations of ultimate facts of the alleged irregularities and anomalies in the contested clustered precincts, which the protestant needs to prove in due time.⁸

28. The Majority Opinion even confirmed that the honorable Tribunal found “the election protest of Marcos to be sufficient in form and substance when it denied the motion to dismiss of the protestee”⁹ in its *Resolution* dated 29 August 2017, the pertinent portions of which read as follows :

After careful examination of the issues raised by the parties in their submissions, the Tribunal resolves to DENY the Motion for Reconsideration for lack of merit.

The Tribunal is guided by its previous ruling in *Roxas v. Binay*. In *Roxas*, the protestee moved to dismiss the election because it purportedly failed to specifically state the precincts protested and contested and provide a detailed specification of the acts or omissions complained of showing the alleged electoral fraud, anomaly, or irregularity. In denying the motion to dismiss, the Tribunal ruled as follows:

Moreover, contrary to the complaint of Binay that the protest failed to provide a detailed specification of the acts or omissions complained of showing the alleged electoral fraud, anomaly or irregularity, the protest contained narrations or irregularities and ultimate facts that need to be proved in due time.

Considering the foregoing, the Tribunal finds the protest sufficient in form and substance, that is, the protest can sufficiently apprise Binay of the issues which he has to meet, and the Tribunal of the ballot boxes that have to be collected.

⁸ Emphasis supplied.
⁹ Page 4 of the Majority Opinion.

But even if the instant protest is found to be sufficient in form and substance, it must be emphasized that nothing as yet has been proved as to the veracity of the allegations. **The protest is only sufficient for the initial determination by the Tribunal of the grounds for the protest and gives Roxas the opportunity to prove his case, both pursuant to Rule 65 of the P.E.T. Rules.** (Emphasis supplied)

Following *Roxas*, in determining the sufficiency of the allegations of an election protest, what is merely required is a statement of the ultimate facts forming the basis of the Protest. At this stage, the consideration of evidentiary matters would be premature. Moreover, as applied to the case, **the Tribunal finds that the allegations in the Protest are sufficient to apprise protestee of the issues that she has to meet and this Tribunal of the ballot boxes that have to be collected.**¹⁰

29. **Ultimate facts mean the important and substantial facts which either directly form the basis of the plaintiff’s primary right and duty or directly make up the wrongful acts or omissions of the defendant.**¹¹ They refer to the principal, determinative, constitutive facts upon the existence of which the cause of action rests. **The term does not refer to details of the probative matter or particulars of evidence that establish the material elements.**¹²

30. On the other hand, **“evidentiary facts”** are those which tend to prove or establish said **ultimate facts.**¹³

31. As applied in this case, **ultimate facts** refer to the important and substantial facts which form the basis or grounds of this election protest. In contrast, **evidentiary facts** refer to the details or particulars of evidence to prove the grounds of this election protest.

¹⁰ Emphasis supplied; citations omitted.
¹¹ *Lazaro v. Brewmaster International, Inc.*, G.R. No. 182779, 23 August 2010 citing *Locsin v. Sandiganbayan*, G.R. No. 134458, 9 August 2007, 529 SCRA 572, 597; emphasis supplied.
¹² *Id.* citing *Barcelona v. Court of Appeals*, 458 Phil. 626, 635 (2003); emphasis and underscoring supplied.
¹³ *Bautista v. Court of Appeals, et al.*, G.R. No. 143375, 6 July 2001 citing *Tantuico, Jr. v. Republic*, G.R. No. 89114, 2 December 1991, 204 SCRA 428; emphasis supplied.

32. Contrary to the assertion of the majority opinion, a review of the election protest filed by protestant Marcos would easily reveal that the same contains a detailed narration or specification of the important, substantial and ultimate facts showing the electoral frauds, anomalies and irregularities in the protested precincts.

33. Protestant Marcos specifically contended in his election protest in so far as his Third Cause of Action is concerned that there is a **substantial basis for the annulment of the election results in the provinces of Lanao Del Sur, Maguindanao and Basilan in view of the widespread presence of terrorism, violence, threats, coercion, force, intimidation and the proliferation and batch-feeding of pre-shaded ballots in each of the two thousand seven hundred fifty-six (2,756) protested clustered precincts in said areas.**

34. The proliferation of pre-shaded ballots together with the presence of massive terrorism, violence, threats, coercion, force and intimidation in each of the **two thousand seven hundred fifty-six (2,756)** clustered precincts of Lanao Del Sur, Maguindanao, and Basilan rendered it impossible to conduct a **judicial recount/revision** of the paper ballots and/or ballot images in these areas.

35. The pre-shaded ballots in Lanao Del Sur, Maguindanao and Basilan **DO NOT REFLECT** the true vote of the electorate and their genuine choice for the 2016 Vice-Presidential elections has been **SUBSTITUTED**. That is why, the proper legal remedy to address the electoral frauds committed in the protested clustered precincts of Lanao Del Sur, Maguindanao, and Basilan is the **annulment of the election results** thereat.

36. To prove his cause of action for annulment of the election results in each of the two thousand seven hundred fifty-six (2,756) protested clustered precincts in the provinces of Lanao Del Sur, Maguindanao, and Basilan, protestant Marcos manifested that he will present witnesses and documentary evidence during the course of the trial of this case.

37. Among the evidence to be presented by protestant Marcos is the result of the **technical examination and forensic investigation** of the **lists of voters and voting records**, *i.e.*, the signatures appearing on **Election Day Computerized Voter's List ("EDCVL") vis-à-vis the Voter's Registration Record ("VRR")**, in each of the **two thousand seven hundred fifty-six (2,756)** protested clustered precincts of Lanao Del Sur, Maguindanao, and Basilan which protestant Marcos repeatedly stressed.

38. Protestant Marcos intends to use the results of the technical examination of the voters' signatures appearing on the **EDCVL** as against the voters' signatures appearing on the **VRRs** to prove the **massive proliferation of pre-shaded ballots and substitute-voting in Lanao Del Sur, Maguindanao and Basilan**, which he cited in support of his claim that there is a substantial basis for the annulment of the election results in the provinces of Lanao Del Sur, Maguindanao and Basilan.

39. As for his Second Cause of Action for the judicial revision and manual recount of ballots in the protested clustered precincts of Cebu Province, Leyte, Negros Occidental, Negros Oriental, Masbate, Zamboanga Del Sur, Zamboanga Del Norte, Bukidnon, Iloilo Province, Bohol, Quezon Province, Batangas, Western Samar, Misamis Oriental, 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, protestant Marcos complained of the **prevalence of violence, intimidation, vote-buying, substitution of voters/presence of flying voters, misreading of ballots, malfunctioning and tampered VCM and CCS, pre-loaded SD cards, and an abnormally high turnout of unaccounted votes/undervotes for the position of Vice-President in these contested areas during the last elections.**

40. With all due respect, it was not necessary at that point for protestant Marcos to present **ALL** his evidence to prove the existence of electoral frauds, anomalies and irregularities in each and every clustered precinct subject of his protest. These are evidentiary matters which shall be presented during trial.

41. There is no requirement under **Rule 17** of the **2010 PET Rules** to append **ALL** the evidence of the protestant in his election protest.

42. It is enough for the protestant to narrate the electoral fraud, anomalies and irregularities which pervaded the conduct of elections in the protested clustered precincts that functioned in Lanao Del Sur, Maguindanao, Basilan, 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.

43. There are prescribed time to present evidence of electoral frauds, anomalies and irregularities to prove the allegations in this protest, which shall be in accordance with the procedure for the reception of evidence under **Rules 55 to 64** of the **2010 PET Rules**, to wit :

RECEPTION EVIDENCE

Rule 55. Hearings - After the submission of all Revision/Correction Reports, the Tribunal may delegate the reception of evidence to a Hearing Commissioner who is a member of the Bar. (R53)

Rule 56. Preliminary conference. - The Hearing Commissioner shall fix a date for the reception of evidence and submission of the affidavits of the witnesses of the parties, with the adverse parties being furnished copies.

Reception of the evidence shall be done at the offices of the Tribunal unless Hearing Commissioner directs its reception in some other place. (R54)

Rule 57. Procedure of hearings. - At the hearings, the affidavits of the witnesses submitted by the parties shall constitute their direct testimonies. Witnesses who testify may be subject to cross-examination, redirect or re-cross examination. Should the affiant fail to testify, his affidavit shall not be considered as competent evidence for the party presenting the affidavit, but the adverse party may utilize the same for any admissible purpose.

Except on rebuttal or sur-rebuttal, no witness shall be allowed to testify unless his affidavit was previously submitted to the Tribunal.

However, should a party desire to present additional affidavits or counter-affidavits as part of his direct evidence, he shall manifest during the preliminary conference, stating their purpose. If allowed by the Tribunal, the additional affidavits of the protestee shall be submitted to the Tribunal and serve on the adverse party not later than five days after the termination of the preliminary conference. If the additional affidavits are presented by the protestant, the protestee may file his counter-affidavits and serve the same on the protestant within five days of such service. (R55a)

Rule 58. Cross-examination; effect of absence of a party. - In the reception of evidence of a party before a Hearing Commissioner, the other party has a right to be present and to cross-examine the witness presented.

The Hearing Commissioner may proceed *ex parte* in the absence of the other party provided he has been duly notified of the hearing.

If a party presenting evidence fails to appear at the time and place designated, the Hearing Commissioner may adjourn the proceedings to a future day, giving notice to the absent party or his attorney of the adjournment. The delay shall be charged to the party's period to present evidence. (R56)

Rule 59. Hearing Commissioner to rule on objections. - The Hearing Commissioner receiving the evidence shall rule on objections made in the course of cross-examination subject to review by the Tribunal.

An exception to a ruling of the Hearing Commissioner shall not suspend the reception of evidence. (R57)

Rule 60. Procedure after hearing by Commissioner. - The Hearing Commissioner shall submit the evidence presented, together with the transcripts of the proceedings held before him, to the Tribunal within five days. (R58)

Rule 61. Time limit for presentation of evidence. - Each part is given a period of thirty working days to complete the presentation of his evidence, including its formal offer. This period shall begin from the first date set for the presentation of the party's evidence, either before the Tribunal or a Hearing Commissioner.

The hearing for any particular day or days may be postponed or canceled upon the request of either party. The delay caused by such postponement shall be charged to the period for presenting evidence of the movant.

The following shall not be charged against the period allotted to either party:

- (a) The period when presentation of the party's evidence is suspended by order of the Tribunal or the Hearing Commissioner by reason of the pendency of an issue in the nature of a prejudicial question which must first be resolved before the hearing can continue; and
- (b) The time taken up in the cross-examination of his witnesses by the other party.

A party may present rebuttal or sur-rebuttal evidence during the remainder of the thirty-day period that he has not utilized for the presentation of his evidence-in-chief. (R59)

Rule 62. Evidence not formally offered, inadmissible - Evidence not formally offered shall not be admitted and considered by the Tribunal in deciding the case. (R60)

Rule 63. When submitted; contents - Within twenty days from receipt of the Tribunal's ruling on the last offer of evidence by the protestee, the parties shall simultaneously submit their respective memoranda setting forth briefly:

- (a) The facts of the case;
- (b) A complete statement of all the arguments submitted in support of their respective views of the case;
- (c) Objections to the ballots adjudicated to or claimed by the other party in the revision of ballots;
- (d) Refutation of the objections of the other party to the ballots adjudicated to or claimed in the revision of ballots;
- (e) Objections to the tallying of election returns and certificates of canvass raised by the other party in the correction of manifest error; and
- (f) Refutation of the objections raised by the other party to the tallying of election returns and certificates of canvass in the correction of manifest error.

All evidence, as well as objections to evidence presented by the other party, shall be either referred to or contained in the memorandum or in an appendix thereto. (R61)

Rule 64. Supplemental or rebuttal memorandum. - When required or allowed by the Tribunal, a party shall a supplemental or rebuttal memorandum. (R62)

44. Based on the foregoing, it is evident that the majority opinion erred when it claimed that protestant Marcos’ allegations are insufficient in form and substance and should have been summarily dismissed.

45. It is quite confusing for protestant Marcos to be told in the end by the Majority Opinion that he failed to sufficiently aver all the pertinent matters that are required so that this honorable Tribunal can act on his causes of action, even though the sufficiency of the form, substance and content of the election protest was already **CONFIRMED** by this honorable Tribunal when it issued the ***Summons dated 12 July 2016, Resolution dated 24 January 2017 and Resolution dated 29 August 2017.***

46. The separate opinion penned by Associate Justice Mario V. Lopez is quite elucidating as regards the application of the governing rules and jurisprudence in determining the sufficiency of an election protest, to wit :

Rule 17(d) requires a detailed specification of the electoral frauds, anomalies, or irregularities in the protested precincts. I submit that this requirement must be read in conjunction with Section 255 of the Omnibus Election Code (OEC).

SEC. 255. Judicial counting of votes in election contest. – Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes be recounted. (Emphasis supplied)

As worded, the law merely requires sufficient allegations in the election protest to authorize the ballot boxes’ opening and examination of the ballots. **It does not even require a prima facie showing of fraud and irregularities to authorize the counting.** In *Dayo v. COMELEC*, the Court had the opportunity to emphasize the application of Section 255 of the OEC :

When fraud and irregularities are alleged in the protest and the court believes the interest of justice so requires, it should order that the ballots be examined and the votes be recounted (Section 255, Omnibus Election Code). **If the court is not satisfied that the allegations of the protest are sufficient, it should give the protestant an opportunity to prove his allegations instead of dismissing the protest on the basis of interrogatories taken in another case involving other parties. Allegations of fraud and irregularities are sufficient grounds for opening the ballot boxes and examining the questioned ballots** (Moguis Jr. vs. CA & Bisnar, G.R. No. 66547, May 7, 1985). **Evidence or irregularities is not necessary to justify the revision of ballots** (Jaguros vs. Villamor, 134 SCRA 553). To require parole and other evidence on the alleged irregularities before opening the ballot box, would only give the protestee time and opportunity to delay the settlement of the controversy through lengthy presentation of testimonial evidence and cross-examination (Astorga vs. Fernandez, 19 SCRA 331). The trial court committed grave abuse of discretion when it declared, based only on the interrogatories in the companion case (Protest Case No. 06-88), that there is no evidence of fraud or irregularities committed. As wryly observed by the Solicitor General in his comments on the petition: "there was precisely no evidence of fraud and irregularities on record because the trial court did not give private respondent (the protestant) a chance to substantiate his allegations. (Emphasis supplied)

The allegation of fraud and irregularity should, however, relate to the need to examine ballots. In *Miguel v. COMELEC*, the Court held that "when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein. Notably, the ballots serve as the best evidence of how the voters voted.

I respectfully submit that Dayo and Miguel do not run contrary to the later cases of Corvera v. Sabillo, Aguillo v. COMELEC, and Lloren v. COMELEC were not rendered "obsolete" and "ineffectual." First, Corvera and Aguillo are Unsigned Resolutions, which should not overturn the doctrine outlined in Dayo and Miguel. Second, the summary dismissal of the election protests in Corvera, Aguillo, and Lloren refers to the defect in identifying which protested precincts were affected by electoral fraud and irregularities. Even Peña v. HRET, which Aguillo cited, refers to the defect in identifying which protested precincts were affected.

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This defect affects the “seriousness” of the allegations, which makes Section 255 of the OEC inapplicable. The protestant’s failure to specify the protested precincts where the fraud and irregularities were committed contradicts the allegations’ “seriousness” and reveals a perfunctory allegation of fraud and irregularities. In case of doubt, prudence dictates that the protestant should be given his day in the Tribunal. An election protest affords a losing candidate an effective remedy to contest an election. It also serves to erase doubts on who won and breathes life to the Court’s consistent pronouncement that the outcome of elections involves public interest.

In *Saquilayan v. COMELEC*, the Court emphasized that *Miguel* should be differentiated from *Peña* :

The facts of the present petition are similar to those in *Miguel* rather than to those in *Peña*. In *Miguel*, there was a controversy between two candidates for municipal mayor, while *Peña* dealt with candidates for a congressional district office. Also, one reason that led to the dismissal of the election protest in *Peña* was the protestant’s failure to specify the 700 out of the 743 precincts where the alleged anomalies occurred. In both *Miguel* and the present petition, the protestants questioned all the precincts in their respective municipalities.

Furthermore, the *Miguel* case, being the more recent decision, should prevail in case of a conflict, under the well-established doctrine that a later judgment supersedes a prior one in case of an inconsistency.

In this context, I humbly differ from the Ponente’s pronouncement that the protestant’s election protest should have been considered insufficient in form and substance and summarily dismissed. Here, the protestant alleged the following fraud and irregularities in his protest :

[M]assive electoral fraud, anomalies, and irregularities, such as, but not limited to, terrorism, violence, force, threats, force, intimidating, pre-shading of ballots, vote-buying, substitution of voters, flying voters, pre-loaded SD cards, **misreading of ballots, unexplained, irregular and improper rejection of ballots containing votes for protestant Marcos**, malfunctioning Vote Counting Machine and abnormally high unaccounted votes/undervotes for the position of Vice-President compromised and corrupted the conduct of the elections and the election results for the position of the Vice-President in the protested precincts. (Emphasis supplied)

X-----X

The allegation of ballots’ misreading and improper rejection deserve the ballots’ scrutiny. The misreading of ballots is a serious allegation that can affect the elections’ outcome if proven right. Further, the margin of vote between protestant and protestee is relatively low, with a mere 1.83% of the protestee’s votes. The relatively small lead margin emphasizes the need to open the ballot boxes and provide the protestant an opportunity to substantiate his allegations of fraud, irregularities and anomalies.¹⁴

47. This honorable Tribunal should likewise take note of the pronouncement of the honorable Supreme Court in the case of ***Douglas R. Cagas v. COMELEC and Claude P. Bautista***,¹⁵ which emphasized the following points in determining the sufficiency of the allegations contained in election protests, to wit :

The Court has upheld the COMELEC’s determination of the sufficiency of allegations contained in election protests, conformably with its imperative duty to ascertain in an election protest, by all means within its command, who was the candidate elected by the electorate. Indeed, in *Panlilio v. Commission on Elections*, we brushed aside the contention that the election protest was insufficient in form and substance and was a sham for having allegations couched in general terms, stating :

In *Miguel v. COMELEC*, the Court belittled the petitioner's argument that the protestant had no cause of action, as the allegations of fraud and irregularities, which were couched in general terms, were not sufficient to order the opening of ballot boxes and counting of ballots. The Court states the rules in election protests cognizable by the COMELEC and courts of general jurisdiction, as follows:

The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, **we have consistently ruled that when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein.**

In a kindred case, *Homer Saquilayan v. COMELEC*, the Court considered the allegations in an election protest, similar to those in this case, as sufficient in form and substance.

¹⁴ Citations omitted; emphasis and underscoring supplied.
¹⁵ G.R. No. 194139, 24 January 2012.

Again, in *Dayo v. COMELEC*, the Court declared that **allegations of fraud and irregularities are sufficient grounds for opening the ballot boxes and examining the questioned ballots**. The pronouncement is in accordance with Section 255 of the Omnibus Election Code, which reads :

Judicial counting of votes in election contest. - Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court in the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes be recounted.

In this case, the COMELEC Second Division found that the allegations in the protest and counter-protest warranted the opening of the contested ballot boxes and the examination of their contents to settle at once the conflicting claims of petitioner and private respondent.

The petitioner adds that with the Court having noted the reliability and accuracy of the PCOS machines and consolidation/canvassing system (CCS) computers in *Roque, Jr. v. Commission on Elections*,³⁰ Bautista's election protest assailing the system and procedure of counting and canvassing of votes cast in an automated system of elections should be immediately dismissed.

We are not persuaded.

***Roque, Jr. v. Commission on Elections* does not preclude the filing of an election protest to challenge the outcome of an election undertaken in an automated system of elections.** Instead, the Court only ruled there that the system and procedure implemented by the COMELEC in evaluating the PCOS machines and CCS computers met the minimum system requirements prescribed in Section 7 of Republic Act No. 8436. The Court did not guarantee the efficiency and integrity of the automated system of elections, as can be gleaned from the following pronouncement thereat :

The Court, however, will not indulge in the presumption that nothing would go wrong, that a successful automation election unmarred by fraud, violence and like irregularities would be the order of the moment on May 10, 2010. Neither will it guarantee, as it cannot guarantee, the effectiveness of the voting machines and the integrity of the counting and consolidation software embedded in them.

That task belongs at the first instance to COMELEC, as part of its mandate to ensure clean and peaceful elections. This independent constitutional commission, it is true, possesses extraordinary powers and enjoys a considerable latitude in the discharge of its functions. The road, however, towards successful 2010 automation elections would certainly be rough and bumpy. The COMELEC is laboring under very tight timelines. It would accordingly need the help of all advocates of orderly and honest elections, of all men and women of goodwill, to smoothen the way and assist COMELEC personnel address the fears expressed about the integrity of the system. Like anyone else, the Court would like and wish automated elections to succeed, credibly.¹⁶

48. Guided by the foregoing, an examination of the allegations of protestant Marcos’ election protest, including the material averments in support of his Third Cause of Action for annulment of election results in the provinces of Lanao Del Sur, Maguindanao and Basilan, would surely reveal that the same contains a comprehensive and detailed narration of the ultimate and substantial facts, which consists of the acts and omissions complained of by the protestant showing the electoral frauds, anomalies and irregularities in the protested precincts.

49. The Majority Opinion’s assertion that protestant Marcos’ allegations appeared bare and laden with generic and repetitious allegations is quite pretentious given that protestee **Robredo’s counter-protest**, which was likewise found by this honorable Tribunal to be sufficient in form and content, **did not contain a single evidence in support of the material averments alleged therein.**

50. Moreover, protestee Robredo herself raised the grounds of misreading of ballots, misappreciation of votes due to malfunctioning VCMs and the abnormally high turnout of unaccounted votes / undervotes for the position of Vice-President to justify the judicial recount of her counter-protested clustered precincts, to wit :

¹⁶ *Id*; citations omitted; emphasis supplied.

COUNTER-PROTEST

961. Protestee Robredo REPLEADS all the allegations as maybe germane and pertinent hereto.

962. The recently concluded 09 May 2016 National and Local Elections was credible except for some reported instances of vote-buying, threats and intimidation, substitute voting and incidence of unaccounted votes in the bailiwicks of protestant Marcos.

963. Had these electoral frauds, anomalies and irregularities not been employed by protestant Marcos, his cohorts and supporters, protestee Robredo would have received higher number of votes.

964. For these reasons, and if only to put rest any doubt as to the results of the elections, protestee Robredo is contesting, impugning and assailing the results of the elections in the **Seven Thousand Five Hundred Forty-Seven (7,547) clustered precincts** which functioned in the following thirteen (13) provinces :

xxx

ALLEGATIONS OF FRAUD

966. The numbers do not lie.

967. Based on the Provincial Certificate of Canvass of the Province of Apayao, protestee Robredo received a Two Thousand Seven Hundred Sixty-Two (2,762) votes while protestant Marcos received Forty Thousand Eight Hundred Forty-Six (40,846) votes.

968. Meanwhile, based on the City/Municipal Certificates of Canvass, protestee Robredo and protestant Marcos received the following votes:

xxx

969. Protestee Robredo lost in all seven (7) municipalities.

970. Thus, protestee Robredo is assailing, impugning and contesting the results of the elections for Vice-President in the One Hundred Fifty-Four (154) clustered precincts which functioned in the Province of Apayao during the 09 May 2016 National and Local Elections.

971. It is noteworthy that aside from having lost in all the seven (7) municipalities in the Province of Apayao, the unaccounted votes are greater than the number of votes received by protestee Robredo in each municipality.

972. In fact, in the Municipality of Flora, protestee Robredo even received Zero (0) votes in Barangay Balasi.

973. Meanwhile, protestant Marcos allegedly receiving Seventy One (71) out of the One Hundred Five (105) and there are Twenty (20) unaccounted votes.

974. The reported malfunctioning of the VCMs in the Province of Apayao has caused the misreading and misappreciation of votes.

975. Thus, there was a systematic reduction of votes credited to protestee Robredo and a corresponding increase in the votes credited to protestant Marcos.

976. Only through the recount, revision and reappreciation of the ballots from the counter-protested clustered precincts.

977. Only through the recount, revision and reappreciation of the ballots will this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of Apayao.

978. Furthermore, protestee Robredo believes that there was massive substitute voting in the clustered precincts which functioned in the Province of Apayao during the 09 May 2016 National and Local Elections.

979. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of Apayao represent the true will of the electorate.

980. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of Apayao do not reflect the true will of the electorate.

981. In the **Province of Mountain Province**, protestant Marcos, his supporters and cohorts employed massive vote-buying.

982. Based on the Provincial Certificate of Canvass, protestee Robredo received **Seventeen Thousand Six Hundred Fifty-Three (17,653) votes** while protestant Marcos received **Thirty-Four Thousand Two Hundred Eighty-Six (34,386) votes**.

983. Meanwhile, based on the Municipal Certificates of Canvass in the ten (10) municipalities in the Province of Mountain Province, protestee Robredo and protestant Marcos received the following votes:

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984. Surprisingly, in the following municipalities, the number of unaccounted votes are more than the votes received, or in some instances, these unaccounted votes equal the number of votes received by protestee Robredo:

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985. Without these unaccounted votes, protestee Robredo would have received a higher margin.

986. The reported malfunctioning of the VCMs in the Province of Mountain Province has caused the misreading and misappreciation of votes.

987. Thus, there is a need for a recount, revision and re-appreciation of the ballots from the counter-protested clustered precincts.

988. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of Mountain Province.

989. Further, protestee Robredo believes that there was a substitute voting in the clustered precincts which functioned Province of Mountain Province during the 09 May 2016 National and Local Elections.

990. It is noteworthy that during the 09 May 2016 National and Local Elections, there was an almost eighty percent (80%) turnout of voters in the Province of Mountain Province.

991. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of Mountain Province represent the true will of the electorate.

992. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of Mountain Province do not reflect the true will of the electorate.

993. Meanwhile, in the **Province of Abra**, massive electoral frauds, anomalies and irregularities marred the elections for Vice-President during the 09 May 2016 National and Local Elections.

994. Protestant Marcos, his cohorts and supporters employed massive vote-buying and substitute voting.

995. The unexplained number of unaccounted votes further compounds this situation.

996. In the entire Province of Abra, the number of unaccounted votes is greater than the number of votes received by protestee Robredo.

997. Based on the Provincial Certificate of Canvass, protestee Robredo received **Forty-Six Thousand Two Hundred Eighteen (46,218) votes** while protestant Marcos received **One Hundred Twenty-Seven Thousand Four Hundred Thirty-Seven (127,437) votes**.

998. Meanwhile, based on the City/Municipal Certificates of Canvass in the twenty seven (27) municipalities in the Province of Abra, protestee Robredo and protestant Marcos received the following votes:

xxx

999. As aforesated, in the following clustered precincts, the votes received by protestee Robredo is less than the unaccounted votes:

xxx

1000. Worse, in all the clustered precincts that functioned during the 09 May 2016 National and Local Elections, in the Municipalities of La Paz, Lagayan, Langiden, Licuan-Baay, Luba, Manabo, Pidigan, Pilar, Sallapadan, San Isidro, San Juan, San Quintin, Tineg and Villaciosa, the total number of unaccounted votes exceeds the number of votes received by protestee Robredo.

1001. On the other hand, in several clustered precincts throughout the Province of Abra, protestee Robredo received either a single or zero (0) vote:

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1002. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of Abra.

1003. Further, protestee Robredo believes that there was a massive substitute voting in the clustered precincts which functioned Province of Abra during the 09 May 2016 National and Local Elections.

1004. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of Abra represent the true will of the electorate.

1005. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of Abra do not reflect the true will of the electorate.

1006. In the Province of Kalinga, massive electoral frauds, anomalies and irregularities attended the elections for Vice-President during the 09 May 2016 National and Local Elections.

1007. Based on the Provincial Certificate of Canvass, protestee Robredo received **Eleven Thousand Six Hundred Thirty-Six (11,636) votes** while protestant Marcos received **Sixty Four Thousand Twenty Three (64,023) votes**.

1008. On the other hand, the City/Municipal Certificates of Canvass will show that in each of the eight (8) municipalities in the Province of Kalinga, protestee Robredo lost:

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1009. In the Province of Kalinga, a total of Two Hundred Sixty-Seven (267) clustered precincts functioned during the 09 May 2016 National and Local Elections.

1010. Protestant Marcos, his cohorts and supporters employed massive substitute voting to ensure his victory in the Province of Kalinga.

1011. On the other hand, on 09 May 2016, there was massive breakdown and malfunctioning of the VCM, which led to the misreading of the ballots.

1012. The consistent, if not systematic, malfunction of the VCM has resulted to a high number of unaccounted votes.

1013. It is noteworthy, that in the following municipalities, the number of unaccounted votes:

xxx

1014. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of Kalinga.

1015. Further, protestee Robredo believes that there was a massive substitute voting in the clustered precincts which functioned Province of Kalinga during the 09 May 2016 National and Local Elections.

X-----X
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1016. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of Kalinga represent the true will of the electorate.

1017. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of Kalinga do not reflect the true will of the electorate.

1018. In the **Province of Bataan**, valid ballots were rejected by the VCM for no apparent reason.

1019. These rejected but valid ballots contain votes for protestee Robredo.

1020. This resulted to a systematic reduction of the actual votes of protestee Robredo and in the corresponding increase in the votes received by the protestant Marcos in the Province of Bataan.

1021. Had these ballots not being rejected, the margin of protestee Robredo would be higher.

1022. Thus, protestee Robredo is impugning, assailing and contesting the results of the elections in the Seven Hundred Seventy-Three (773) clustered precincts which functioned in the Province of Bataan during the 09 May 2016 National and Local Elections.

1023. Based on the Provincial Certificate of Canvass, protestee Robredo received **Eighty-Four Thousand Two Hundred Forty-One (84,241) votes** while protestant Marcos received **One Hundred Eighty Four Thousand Six Hundred Seventy (184,670) votes**.

1024. Meanwhile, based on the City/Municipal Certificates of Canvass from the eleven (11) municipalities and one (1) city in the Province of Bataan, protestee Robredo and protestant Marcos received the following votes:

xxx

1025. Meanwhile, in the following municipalities, the number of unaccounted voters were higher than the votes received by protestee Robredo:

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1026. In the **Province of Bataan**, there are Twenty-One Thousand Eight Hundred Ninety-Five (21,895) votes for the position of Vice-President during the 09 May 2016 National and Local Elections.

1027. Meanwhile, it is also noteworthy that there was an almost eighty-four percent (84%) turnout of voters in the entire Province of Bataan.

1028. In the Municipality of Orani, there was an almost ninety percent (90%) turnout of voters, while in the Municipality of Hermosa, there was an almost eighty-eight percent (88%) turnout of voters.

1029. Finally, in the Municipality of Pilar, there was an almost eighty-five percent (85%) turnout of voters.

1030. By tradition, protestee Robredo understands that presidential elections usually explain the higher turnout of voters.

1031. However, the number of unaccounted votes taken together with suspiciously high turnout of voters render the results of the elections for Vice-President in the Province of Bataan.

1032. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of Bataan.

1033. Further, protestee Robredo believes that there was a massive substitute voting in the clustered precincts which functioned Province of Bataan during the 09 May 2016 National and Local Elections.

1034. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of Bataan represent the true will of the electorate.

1035. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of Bataan do not reflect the true will of the electorate.

1036. In the **Province of Capiz**, there was a suspiciously high number of unaccounted votes.

1037. Based on the Provincial Certificate of Canvass, protestee Robredo received **Two Hundred Fifty-Three Thousand Two Hundred Ninety (253,290) votes** while protestant Marcos received **Forty-Three Thousand Six Hundred Eighty-Four (43,684) votes**.

1038. Meanwhile, based on the City/Municipal Certificates of Canvass from the sixteen (16) municipalities and one (1) city, protestee Robredo and protestant Marcos received the following votes:

X-----X

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xxx

1039. The total unaccounted votes in the entire Province of Capiz for the position of Vice-President was Thirty-Five Thousand Three Hundred Forty-Four (35,344).

1040. Thus, protestee Robredo is assailing, contesting and impugning the results of the elections for Vice-President during the 09 May 2016 National and Local Elections.

1041. These unaccounted votes were a result of the misreading and misappreciation of the ballots by the VCM, which resulted in the systematic decrease in the votes received by protestee Robredo.

1042. In fact, in Barangay Lahug, Municipality of Tapaz, the number of unaccounted votes was higher than the actual votes received by protestee Robredo.

1043. Thus, protestee Robredo would have been credited with a higher margin over protestant Marcos.

1044. Worse, protestant Marcos, his supporters and cohorts engaged in massive vote-buying in the Province of Capiz.

1045. Without these electoral fraud, anomalies and irregularities, protestee Robredo would have emerged with a higher margin over protestant Marcos.

1046. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of Capiz.

1047. Further, protestee Robredo believes that there was a massive substitute voting in the clustered precincts which functioned Province of Capiz during the 09 May 2016 National and Local Elections.

1048. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of Capiz represent the true will of the electorate.

1049. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of Capiz do not reflect the true will of the electorate.

1050. The unaccounted votes in the Province of Aklan for the position of Vice-President were Thirty-Nine Thousand Nine Hundred Ninety-Four (39,994).

1051. Based on the Provincial Certificate of Canvass, protestee Robredo received **One Hundred Forty-Eight Thousand Two Hundred Eighty (148,280) votes** while protestant Marcos received **Fifty One Thousand Three Hundred Ninety-Five (51,395) votes**.

1052. Meanwhile, based on the City/Municipal Certificates of Canvass from the seventeen (17) municipalities in the Province of Aklan, protestee Robredo and protestant Marcos received the following votes:

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1053. Meanwhile, for the position of Vice-President, there was suspiciously high number of unaccounted votes.

1054. Further, the alleged turnout of the voters in the Province of Aklan during the 09 May 2016 National and Local Elections was eighty six percent (86%).

1055. Although known as one of the expected bailiwicks of protestee Robredo, there were still **Forty Thousand Six Hundred Fifteen (43,615) unaccounted votes** for the position of Vice-President in the Province of Aklan.

1056. Thus, protestee Robredo is assailing, impugning and contesting the results of the elections for Vice-President in the **Six Hundred Six (606)** clustered precincts which functioned during the 09 May 2016 National and Local Elections in the Province of Aklan.

1057. If only to determine the reasons for this anomalous circumstance which led to the high number of unaccounted votes, protestee Robredo is counter-protesting the **Six Hundred Six (606)** clustered precincts which functioned in the Province of Aklan.

1058. Further, on election day, 09 May 2016, there were numerous reports of VCM malfunctioning and breakdowns.

1059. In fact, as early as the Final Testing and Sealing, there were already reports of VCMs overheating.

1060. The malfunctioning and breakdown of the VCMs caused the misreading and misappreciation of the ballots.

1061. In numerous instances the VCM rejected valid ballots containing votes for protestee Robredo.

1062. This electoral frauds, anomalies and irregularities have prejudiced protestee Robredo and benefitted protestant Marcos.

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1063. As a consequence, the margin of protestee Robredo was lower as she was credited with less votes.

1064. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of Aklan.

1065. Further, protestee Robredo believes that there was a massive substitute voting in the clustered precincts which functioned Province of Aklan during the 09 May 2016 National and Local Elections.

1066. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of Aklan represent the true will of the electorate.

1067. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of Aklan do not reflect the true will of the electorate.

1068. The elections for Vice-President in the **Province of Antique** were attended by massive electoral frauds, anomalies and irregularities.

1069. Based on the Provincial Certificate of Canvass, protestee Robredo received **One Hundred Nineteen Thousand Fifty-Five (119,055) votes** while protestant Marcos received **Forty-Four Thousand Six Hundred Sixty Three (44,663) votes**.

1070. Meanwhile, based on the City/Municipal Certificates of Canvass from the eighteen (18) municipalities in the Province of Antique, protestee Robredo and protestant Marcos received the following votes:

xxx

1071. There were **Thirty-Nine Thousand Nine Hundred Ninety-Four (39,994) unaccounted votes** in the Province of Antique for the position of Vice-President.

1072. Protestee Robredo is assailing, impugning and contesting the results of the elections for Vice-President in the **Seven Hundred Forty-Two (742)** clustered precincts which functioned during the 09 May 2016 National and Local Elections in the Province of Antique during the 09 May 2016 National and Local Elections.

1073. There was an alarming high number of unaccounted votes in the Province of Antique which was even higher than the votes received by protestee Robredo.

1074. The high number of unaccounted votes is best illustrated in the following municipalities:

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1075. In fact, as admitted by protestant Marcos, during the canvassing, there was a discrepancy in the physically and electronically transmitted PCOC for the Province of Antique.

1076. It was only after the Provincial Election Supervisor (PES) was summoned that the PCOC was admitted.

1077. Further, it is also noteworthy that the Province of Antique had an eighty-five (85%) turnout of voters during the 09 May 2016 National and Local Elections.

1078. Albeit a satisfactory explanation from the PES, there were reported mechanical defects in the VCMs used.

1079. The mechanical defects resulted in the misreading of the ballots, which drastically reduced the number of votes credited to protestee Robredo.

1080. Further, a significant number of valid ballots were also rejected by the VCM for no apparent reason.

1081. These irregularities and anomalies in the VCMs were unduly taken advantage of by protestant Marcos, his allies and supporters in the Province of Antique.

1082. Thus, this adversely affected the results of the election for Vice-President and prejudiced protestee Robredo while benefiting protestant Marcos.

1083. The high turnout of the voters and the undeniable high number of unaccounted votes for the position of Vice-President render the results therein suspect.

1084. In reality, protestee Robredo should have been credited with more votes had protestant Marcos, his allies and supporters not engaged in massive electoral frauds, anomalies and irregularities in the Province of Antique.

1085. It is disturbingly bad in the expected bailiwicks of protestee Robredo that an abnormally high number of unaccounted votes are present.

1086. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of Antique.

1087. Further, protestee Robredo believes that there was a massive substitute voting in the clustered precincts which functioned Province of Antique during the 09 May 2016 National and Local Elections.

1088. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of Antique represent the true will of the electorate.

1089. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of Antique do not reflect the true will of the electorate.

1090. Massive vote-buying marred the elections for Vice-President in the **Province of Saranggani**.

1091. Aside from this, the 09 May 2016 National and Local Elections for Vice-President was marred by massive electoral frauds and anomalies committed by protestant Marcos, his allies and supporters in the Province of Saranggani.

1092. Thus, protestee Robredo is assailing, impugning and contesting the results of the elections for Vice-President in the **Four Hundred Ninety-Five (495)** clustered precincts in the Province of Saranggani, which functioned during the 09 May 2016 National and Local Elections.

1093. Based on the Provincial Certificate of Canvass, protestee Robredo received **Forty-Seven Thousand Eight Hundred Three (47,803) votes** while protestant Marcos received **Sixty Six Thousand Four Hundred Eighty-Four (66,484) votes**.

1094. Meanwhile, based on the City/Municipal Certificates of Canvass from the seven (7) municipalities in the Province of Saranggani, protestee Robredo and protestant Marcos received the following votes:

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1095. In the Province of Saranggani, a total of **Two Hundred Twenty-Five Thousand Two Hundred Eighty-Seven (225,287) actually voted**.

1096. Thus, in the Province of Saranggani, there was a total of **Fifty Thousand Seven Hundred Forty-Seven (50,747) unaccounted votes** for the position of Vice-President.

1097. In fact, this high number of unaccounted votes was extant in all the seven (7) municipalities in the Province of Saranggani:

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1098. Due to the high number of unaccounted votes, the results for the elections for Vice-President in the Province of Saranggani do not reflect the true will of the electorate.

1099. These unaccounted votes are valid votes for protestee Robredo that were not properly read by the VCM.

1100. Had these valid ballots been properly read, the margin of protestee Robredo would be higher.

1101. These ballots contained valid voting marks but were still not read properly.

1102. Meanwhile, valid ballots containing votes for protestee Robredo were also rejected by the VCM for no apparent reason.

1103. This could have been verified had the onscreen verification of the VCM not been technically disabled by the COMELEC.

1104. Further, other electoral frauds, anomalies and irregularities attended the voting and counting in the Province of Saranggani.

1105. Protestant Marcos, his allies and cohorts employed massive vote-buying to ensure his victory in the Province of Saranggani.

1106. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of Saranggani.

1107. Further, protestee Robredo believes that there was a massive substitute voting in the clustered precincts which functioned Province of Saranggani during the 09 May 2016 National and Local Elections.

1108. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of Saranggani represent the true will of the electorate.

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1109. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of Sarangani do not reflect the true will of the electorate.

1110. The results of the election for Vice-President in the **Province of Sulu** are incredible and do not reflect the true will of the electorate.

1111. Based on the Provincial Certificate of Canvass, protestee Robredo received **Forty-Six Thousand Two Hundred Eighteen (46,218) votes** while protestant Marcos received **One Hundred Twenty-Seven Thousand Four Hundred Thirty-Seven (127,437)**.

1112. Meanwhile, based on the City/Municipal Certificates of Canvass from the nineteen (19) municipalities in the Province of Sulu, protestee Robredo and protestant Marcos received the following votes:

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1113. It is noteworthy that, in the Municipalities of Kalingalan Calauang, Indanan, Lugus, Maimbung Old Panamao, Omar, Pandami, Pata, Siasi and Talipao, the unaccounted votes are greater than the votes allegedly received by protestee Robredo.

1114. The results of the elections for Vice-President in the **Six Hundred Forty-Four (644)** clustered precincts which functioned in the Province of Sulu during the 09 May 2016 National and Local Elections.

1115. Protestee Robredo is impugning, assailing and contesting the results in all the **Six Hundred Forty-Four (644)** clustered precincts which functioned in the Province of Sulu during the 09 May 2016 National and Local Elections.

1116. The elections for Vice-President in the Province of Sulu were not only marred by massive substitute voting and vote-buying but the threats, fear and intimidation prevailed over the Province of Sulu on 09 May 2016.

1117. Because of the terrorism employed, thousands of voters were not able to cast their votes.

1118. Instead, the supporters and allies of protestant Marcos shaded the ballots and ensured his victory in the entire Province of Sulu.

1119. These electoral frauds, anomalies and irregularities resulted to the benefit of protestant Marcos and prejudiced protestee Robredo.

1120. As a result, protestee Robredo was unlawfully deprived of thousands of votes in the Province of Sulu.

1121. Had these electoral frauds, anomalies and irregularities not been employed, the winning margin of protestee Robredo would have been more.

1122. The elections for Vice-President in the Province of Sulu are not an expression of the true will of the electorate.

1123. To illustrate, in Barangay Kan Islam, Municipality of Indanan, out of the Four Hundred Twenty Seven (427) voters who actually voted, protestant Marcos received Four Hundred Twenty Six (426) votes while all the other candidates for Vice-President received Zero (0) votes.

1124. This is not an isolated case.

1125. One more, in Barangay Timbangan, Municipality of Indanan, protestant Marcos received Four Hundred Eighty-Four (484) votes, then-candidate Alan Peter Cayetano received Two (2) while the remaining candidates, including protestee Robredo received Zero (0) votes

1126. Finally, in Barangay Buanza, protestant Marcos allegedly received Seven Hundred Fifty-Three (753) votes while candidates Cayetano, Honasan received One (1) vote each, Trillanes received Four (4) votes and protestee Robredo had Zero (0) votes.

1127. This situation prevailed in the entire Province of Sulu where in various clustered precincts, protestee Robredo received Zero (0) votes:

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1128. Thus, in order to determine what these unaccounted votes are, there is a need for the recount, revision and re-appreciation of the ballots from the counter-protested precincts in the Province of Sulu.

1129. To further compound this anomalous situation, in the entire Province of Sulu, the unaccounted votes even exceeded the number of votes received by all the candidates for Vice-President:

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1130. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of Sulu.

1131. Further, protestee Robredo believes that there was a massive substitute voting in the clustered precincts which functioned Province of Sulu during the 09 May 2016 National and Local Elections.

1132. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of Sulu represent the true will of the electorate.

1133. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of Sulu do not reflect the true will of the electorate.

1134. In **Province of Sultan Kudarat**, there was a systematic breakdown of the VCM, which caused misreading of the ballots.

1135. Due to the misreading of the ballots, the ballots containing votes for protestee Robredo were not read properly.

1136. Further, protestant Marcos, his cohorts and supporters employed massive vote-buying and substitute voting.

1137. Protestee Robredo was unduly prejudiced such that her winning margin was lower.

1138. Thus, protestee Robredo is assailing, impugning and contesting the results of the elections for Vice-President in the **Six Hundred Sixty Four (664)** clustered precincts which functioned during the 09 May 2016 National and Local Elections in the Province of Sultan Kudarat.

1139. Based on the Provincial Certificate of Canvass, protestee Robredo received **Eighty-Four Thousand Two Hundred Twenty-Five (84,225) votes** while protestant Marcos received **One Hundred Four Thousand Five Hundred Ninety-Two (104,592).**

1140. Meanwhile, based on the City/Municipal Certificates of Canvass from the eleven (11) municipalities and one (1) city in the Province of Sultan Kudarat, protestee Robredo and protestant Marcos received the following votes:

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1141. Aside from the massive electoral frauds, anomalies and irregularities which was employed by protestant Marcos, his cohorts and supporters, there was a high number of unaccounted votes.

1142. In fact, in several municipalities in the Province of Sultan Kudarat, the unaccounted votes were higher than the votes received by protestee Robredo.

1143. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of Sultan Kudarat.

1144. Further, protestee Robredo believes that there was a massive substitute voting in the clustered precincts which functioned Province of Sultan Kudarat during the 09 May 2016 National and Local Elections.

1145. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of Sultan Kudarat represent the true will of the electorate.

1146. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of Sultan Kudarat do not reflect the true will of the electorate.

1147. In the **Province of South Cotabato**, it is perplexing that the data from the Statement of Votes in the Municipalities of Tantaran is not complete.

1148. To date, the copy as requested still contained a missing page.

1149. Meanwhile, based on the Provincial Certificate of Canvass, protestee Robredo received **One Hundred Seventy-Seven Thousand Three Hundred Ninety-Six (177,396) votes** while protestant Marcos received **One Hundred Ninety-One Thousand Four Hundred Sixty One (191,461) votes**.

1150. Further, based on the City/Municipal Certificates of Canvass from the ten (10) municipalities and two (2) cities in the Province of South Cotabato, protestee Robredo and protestant Marcos received the following votes:

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1151. While the margin of protestant Marcos over protestee Robredo in the Province of South Cotabato is not insurmountable.

1152. The **Thirty-Five Thousand Two Hundred Eighty-Four (35,284) unaccounted votes** have sadly contributed to the victory of protestant Marcos in the Province of South Cotabato.

1153. For instance, in the Municipality of T'boli, in the following clustered precincts, the unaccounted votes were higher than the votes received by protestee Robredo:

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1154. The high incidence of unaccounted votes was due to the intentional marks placed by supporters and cohorts of protestant Marcos.

1155. These intentional marks caused the VCM to misread valid ballots containing votes for protestee Robredo.

1156. Thus, had these electoral frauds, anomalies and irregularities been employed by protestant Marcos, his allies and cohorts, protestee Robredo would have received a higher number of votes in the Province of South Cotabato.

1157. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of South Cotabato.

1158. Further, protestee Robredo believes that there was a massive substitute voting in the clustered precincts which functioned Province of South Cotabato during the 09 May 2016 National and Local Elections.

1159. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of South Cotabato represent the true will of the electorate.

1160. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of South Cotabato do not reflect the true will of the electorate.

1161. Finally, in the **Province of North Cotabato**, there are **Forty Thousand Two Hundred Thirty-Four (40,234) unaccounted votes**.

1162. Based on the Provincial Certificate of Canvass, protestee Robredo received **One Hundred Twenty Nine Thousand One Hundred Forty-One (129,141) votes** while protestant Marcos received **One Hundred Sixty Nine Thousand One Hundred Seventy-Seven (169,177) votes**.

1163. Meanwhile, based on the City/Municipal Certificates of Canvass from the eighteen (18) municipalities in the Province of North Cotabato, protestee Robredo and protestant Marcos received the following votes:

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1164. Thus, there were **Forty Thousand Two Hundred Thirty-Four (40,234) unaccounted votes** for the position of Vice-President during the 09 May 2016 National and Local Elections in the Province of North Cotabato.

1165. Protestee Robredo is assailing, impugning and contesting the results of the elections for Vice-President in the **One Thousand One Hundred Fifty-Two (1,152)** clustered precincts which functioned in the Province of North Cotabato during the 09 May 2016 National and Local Elections.

1166. It is noteworthy that the following clustered precincts show that the unaccounted votes are higher than the votes received by protestee Robredo:

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1167. Once more, these unaccounted votes led to the systematic decrease in the votes credited to protestee Robredo.

1168. These electoral frauds, anomalies and irregularities resulted to the prejudice of protestee Robredo and benefitted protestant Marcos as thousands of voters were assured to have been cast in his favor.

1169. The revision, recount and re-appreciation of the ballots are necessary in order to ascertain the fraud committed, which favored protestant Marcos and undermined the true votes for protestee Robredo.

1170. Only through the recount, revision and re-appreciation of the ballots with this Honorable Tribunal determine what happened in the 09 May 2016 National and Local Elections for Vice-President in the Province of North Cotabato.

1171. Further, protestee Robredo believes that there was a massive substitute voting in the clustered precincts which functioned Province of North Cotabato during the 09 May 2016 National and Local Elections.

1172. Thus, there is a need for a technical examination of the EDCVL to determine whether the results of the elections in the Province of North Cotabato represent the true will of the electorate.

1173. Finally, protestee Robredo reserves the right to present additional evidence during the course of the trial to prove that the results of the elections in the Province of North Cotabato do not reflect the true will of the electorate.

51. Based on the foregoing, it is respectfully submitted that there is an urgent need for this honorable Tribunal to **RECONSIDER** the assailed *Decision* dated 16 February 2021, finding that the election protest of Marcos is insufficient in form and substance.

This honorable Tribunal erred in not considering the annulment of election results as an independent, distinct and separate cause of action, which can proceed on its own despite the dismissal of protestant Marcos' cause of action for judicial revision and recounting of ballots.

52. It is respectfully submitted that protestant Marcos' Third Cause of Action for the annulment of election results is **an independent, distinct and separate cause of action**, which does not involve the judicial revision and manual recount of the ballots.

53. The stark difference between the cause of action for judicial revision and manual recount of the ballots and that of annulment of election results is quite obvious.

54. The Second Cause of Action for the judicial revision and manual recount of the ballots necessitate the reopening of the protested ballot boxes as well as the re-appreciation and re-examination of the ballots found therein.

55. Hence, for his Second Cause of Action, protestant Marcos moved for the **re-opening** of the ballot boxes and the **manual recount, judicial revision, technical examination** and **forensic investigation** of the paper ballots and/or the ballot images, voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the Election Day Computerized Voter's List ("EDCVL") and voters registration records ("VRRs"), the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the VCM, the main and back up SD cards and the other data storage devices containing electronic data and ballot images in **each** of 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* on the grounds of violence, intimidation, vote-buying, substitution of voters/ presence of flying voters, misreading of ballots, malfunctioning and tampered VCM and CCS, pre-loaded SD cards and an abnormally high turn-out of unaccounted votes/undervotes for the position of Vice-President thereat.

56. On the other hand, the Third Cause of Action for annulment of election results does not require this tedious process of **recount, revision, re-appreciation and re-examination** of the ballots.

57. The Third Cause of Action of protestant Marcos is grounded on **terrorism, intimidation, harassment, pre-shading of ballots and substitution of voters** in **each** of the **two thousand seven hundred fifty-six (2,756)** clustered precincts of Lanao Del Sur, Maguindanao and Basilan.

58. Since it is impossible to identify and distinguish the pre-shaded ballots from the valid ballots, the **judicial recount/revision of the paper ballots and/or ballot images in the provinces of Lanao Del Sur, Maguindanao and Basilan is clearly unnecessary.**

59. The proper legal remedy to address the electoral frauds committed in the protested clustered precincts of Lanao Del Sur, Maguindanao and Basilan is **annulment of the election results for the position of Vice-President**.

60. According to the **Abayon**¹⁷ case, 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.¹⁸

61. To prove the legitimacy of his Third Cause of Action for annulment of the election results, protestant Marcos intends to present witnesses and documentary evidence during trial.

62. Among the evidence to be presented by protestant Marcos is the result of the **technical examination and forensic investigation of the lists of voters and voting records, i.e., the signatures appearing on Election Day Computerized Voter's List (EDCVL) vis-à-vis the Voter's Registration Record (VRR), in each of the two thousand seven hundred fifty-six (2,756) protested clustered precincts of Lanao Del Sur, Maguindanao and Basilan, which protestant Marcos repeatedly stressed.**

63. As stated earlier, protestant Marcos will use the results of the technical examination of the voters' signatures appearing on the EDCVL as against the voters' signatures appearing on the VRRs to prove the **massive presence of pre-shaded ballots and substituted-voting in Lanao Del Sur, Maguindanao and Basilan.**

¹⁷ *Supra* note 3.
¹⁸ *Id.*; emphasis and underscoring supplied.

64. The disparity between the two causes of action of protestant Marcos cannot, therefore, be denied. The variance between their supporting allegations, scope, evidence, methodology, procedural rules and applicable jurisprudential doctrines is likewise palpable.

65. During the scheduled preliminary conference in this case conducted on **11 July 2017**, protestant Marcos' lead counsel Atty. George Erwin M. Garcia ("Atty. Garcia") reiterated before this honorable Tribunal that the **causes of action of protestant Marcos are separate, distinct and independent** as shown by the Transcript of Stenographic Notes (TSN) taken during the proceeding, to wit :

JUSTICE CAGUIOA:

Can I ask for counsel for protestant again? I'd like to go the Second Cause of Action; which I'm calling Second and Third Causes of Action because they're really for judicial recount and annulment of elections. You'd lumped them together but I broke them down.

ATTY. GARCIA:

Yes, Your Honor.

JUSTICE CAGUIOA:

Again to clarify. For the 2,756 clustered precincts in the 39,221 protested clustered precincts belonging to Lanao del Sur, Maguindanao and Basilan, you are asking for annulment of the election results. But for the rest 36,465 you are asking for a judicial revision, do I understand your Causes of Action correctly?

ATTY. GARCIA:

You are perfectly correct, Your Honor.

JUSTICE CAGUIOA:

Now, on the Second Cause of Action, my reading is, this is for the revision it is or both, they are both grounded or premised on the same factual allegations of, and I will quote, "massive electoral fraud, irregularities and anomalies which pervaded the conduct of elections in 39,221 clustered precincts," am I correct?

ATTY. GARCIA:

Yes, Your Honor. That is correct, Your Honor, if I may explain, Your Honor.

JUSTICE CAGUIOA:

No. let me just ask the question. I just need to understand why on the same set of facts you are praying for annulment in three provinces and for the rest you are praying only for manual revision?

ATTY. GARCIA:

Yes, Your Honor. Thank you very much, Your Honor, for that question. As far as the protestant is concerned on the three provinces as mentioned, Basilan, Maguindanao and Lanao del Sur, during the period of presentation of evidence in relation to Rule 55 to 64 of the Rules of the Presidential Electoral Tribunal, we will endeavor to prove that in these three provinces, Your Honors, there were mass feeding of the ballots substituted voters who voted during the election as compared to the other provinces, Your Honor. And we will try to prove in relation to the case of *Abayon v. HRET* that more than 51% of the votes involved in these three (3) provinces were actually prostituted in the sense that you cannot separate or segregate the valid ballots as against the invalid ballots or the valid votes as against the invalid votes, Your Honor. And that's why we are asking in relation to that case of *Abayon v. HRET* for the annulment of the results of the elections. We are not asking for a special election because the Supreme Court already distinguished the distinction between the annulment of election results and failure of election. We are asking for the exclusion for purposes of computing the over-all votes obtained by the parties in these three (3) provinces, Your Honor. It may really happen that the allegations as correctly pointed out by the Honorable Justice are practically the same as far as the three provinces and cities are concerned, but however, we would like to zero-in all these three provinces. We will not look into the ballots. We will not say, we are saying that the VCMs or the Vote Counting Machines did not function properly. What we are saying is that people were not allowed to vote properly during the election in these three (3) provinces, Your Honor.

JUSTICE CAGUIOA:

I'd like to ask, what do you mean by properly?

ATTY. GARCIA:

Because the people were not even allowed to go to the precincts and cast their ballots, Your Honor, or vote, Your Honor.

JUSTICE CAGUIOA:

Okay. Just to capture what you're saying, it is your position that in all three (3) provinces, not a single voter was able to vote or cast his vote, is that what you're saying?

ATTY. GARCIA:

No, Your Honor. What we are saying is more than 51% of the voters in these three (3) provinces were not able to cast their votes, Your Honor.

JUSTICE CAGUIOA:

51%?

ATTY. GARCIA:

More than 51% because that is the requirement, Your Honor.

JUSTICE CAGUIOA:

Under *Abayon*?

ATTY. GARCIA:

Yes, Your Honor.

JUSTICE CAGUIOA:

Okay. And under *Abayon*, well, that will be discussed further by the Tribunal. Thank you.

ATTY. GARCIA:

Thank you very much, Your Honor.

JUSTICE CAGUIOA:

So here, just to be clear, as far as Basilan, Lanao del Sur and Maguindanao, you are questioning the integrity of the ballots themselves, that's why we don't need to manually recount or revise the ballots here?

ATTY. GARCIA:

No. Your Honor, we are, because if we question the ballots *per se*, Your Honor, that should be the subject of revision, recount and re-appreciation of the ballots. We are questioning the failure of the people to vote, to cast their votes on election day, Your Honor.

JUSTICE CAGUIOA:

Exactly, therefore, we don't need to revise the ballots in these three (3) provinces, is that correct?

ATTY. GARCIA:

That is correct.

JUSTICE CAGUIOA:

And that also means that the nature of the evidence you will present will be the evidence *aliunde*, you will not be relying in any of these votes to prove, you will be relying mostly on testimonial evidence to show the terrorism and everything else that you've mentioned. Do I understand you correctly?

ATTY. GARCIA:

Yes, Your Honor, testimonial and more importantly documentary evidence, Your Honor.

JUSTICE CAGUIOA:

What documentary evidence are you referring to?

ATTY. GARCIA:

The voters registration record, Your Honor, and the election day computerized voters list, Your Honor. These are documents which are all in the possession of the election officers of the subject municipalities and provinces, Your Honor, which will definitely prove that the people were not the ones who voted during the election, which will definitely prove that the people were deprived of their right to vote on election day.

JUSTICE CAGUIOA:

That's presently the matter of your pending motion, correct?

ATTY. GARCIA:

That is correct, Your Honor.

JUSTICE CAGUIOA:

Alright. I might as well ask this. Counsel for protestee says and based on what you are saying now, is that, what you are alleging is really failure of elections?

ATTY. GARCIA:

Your Honor...

JUSTICE CAGUIOA:

Do you agree with that characterization by protestee?

ATTY. GARCIA:

Definitely not, Your Honor. If that is the case, Your Honor, that is a misunderstanding of the provision of Section 6 of the Omnibus Election Code on the failure of election. In fact, the Honorable Supreme Court, if I may be allowed to explain briefly, Your Honor. In the case of *Abayon v. HRET* already distinguished the difference between a failure of election and the declaration of the effects of the election, Your Honor. Because in the first place as far as failure of elections is concerned you are asking the Tribunal, the Commission or any other body, Your Honor, for a continuation of election which was stopped for holding of a special election. In the annulment of election results we are not asking for anything, Your Honor, except that these votes should be excluded as votes for the protestant and even for the protestee, Your Honor. Second, Your Honor, in annulment of election, or it is purely a function or a failure of election is purely a function of the Commission on Election under Section 6.

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Unlike an annulment of election results, Your Honor, it is actually a judicial function of the Presidential Electoral Tribunal. One, is an exercise of the administrative function by Comelec and the second one is the exercise of the judicial function of this Presidential Electoral Tribunal.

JUSTICE CAGUIOA:

Okay. So, understanding your, if I can call it a strategy, understanding your strategy, you focused on three (3) provinces and the net result that you want to achieve there is the deduction of all those votes?

ATTY. GARCIA:

Of the protestee and the protestant, Your Honor.

JUSTICE CAGUIOA:

Okay. And there is no issue of disenfranchisement as far as you are concerned?

ATTY. GARCIA:

The Supreme Court already said that as far as annulment of election results is concerned, because you cannot distinguish the valid votes as against the invalid votes and therefore it will naturally affect those which are valid simply because you cannot really segregate the two, Your Honor. And therefore...

JUSTICE CAGUIOA:

On the assumption that you get to prove that 51%...?

JUSTICE CAGUIOA:

Alright. So, when we get later on to that portion I would just flash on the screen the proposals of the counter protestant and then ask whether you agree with those issues or stipulations and the number of witnesses that they're...but for the record you are not presenting any evidence...

ATTY. GARCIA:

Aliunde, Your Honor.

JUSTICE CAGUIOA:

Aliunde, correct?

ATTY. GARCIA:

That is correct, Your Honor.

JUSTICE CAGUIOA:

Alright. Chief I have no more preliminary questions. Maybe the other Justices would have clarificatory questions.

CHIEF JUSTICE SERENO:

Justice Leonen.

JUSTICE LEONEN:
Good afternoon.

ATTY. GARCIA:
Good afternoon, Your Honor.

JUSTICE LEONEN:
Is your First Cause of Action **independent** of the Second and the Third?

ATTY. GARCIA:
Yes, Your Honor.

JUSTICE LEONEN:
In other words, is the Second and the Third Causes of Action, that, is the resolution in the First Cause of Action **not a condition precedent** in order for us to move to the Second and the Third?

ATTY. GARCIA:
Yes, Your Honor, the three are independent with each other, Your Honor.

JUSTICE LEONEN:
And you insist that the First Cause of Action should be taken up by the Tribunal. Is there a way that you might want to withdraw the First Cause of Action **so that we can proceed immediately** only to the Second and the Third Cause of Action?

ATTY. GARCIA:
Your Honor, as far as this representation is concerned and as far as the protestant is concerned, we are not willing to give up the First Cause of Action, Your Honor. We are in fact asking, with all due respect to the Honorable Tribunal, to proceed with the First Cause of Action **simultaneously** with the Second and Third, Your Honor.¹⁹

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66. As shown above, Atty. Garcia underscored during the preliminary conference that the causes of action of protestant Marcos are **independent, distinct and separate** such that the **dismissal of one (1) cause of action shall not affect the others.**

¹⁹ TSN dated 11 July 2017, p. 17-26.

67. That is why, the dismissal of protestant’s First Cause of Action, which was ordered *motu proprio* by this honorable Tribunal in its *Resolution* dated **29 August 2017, DID NOT AFFECT his Second and Third Causes of Action for the judicial revision and manual recount of ballots and annulment of election results**, respectively.

68. Protestant Marcos agrees with the separate opinion of Associate Justice Samuel H. Gaerlan that “**annulment of elections is a distinct electoral remedy that merits differentiated treatment from electoral protests and quo warranto petitions.**”²⁰

69. [A]n election protest entails the revision, re-tabulation, and appreciation of the ballots; on the contrary, annulment of election entails a detailed investigation into the existence of the alleged fraud, terrorism, violence or other analogous causes which prevented the expression of the will of the electorate; or an expert technical examination of the electoral system. These are separate and distinct methods of investigations which require different rules; and are properly and optimally addressable through an exercise of this Tribunal’s rule-making power under the Constitution and Rule 74 of the 2010 PET Rules.²¹

70. The House of Representatives Electoral Tribunal (“HRET”) **Resolution No. 15-052**²² dated **24 September 2015**, relevant to the election protest case of Raul A. Daza (“Daza”) docketed as **HRET Case No. 13- 023**, categorically declared that the 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.

²⁰ *Supra* note 4.
²¹ *Id.*; emphasis and underscoring supplied.
²² 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.

71. 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.²³

72. Protestant Marcos’ causes of action for judicial recount and revision of the protested ballots and the annulment of election results for the position of Vice-President were both **pleaded in the body and prayer of his Election Protest**. Protestant Marcos also reiterated these causes of action in his *Preliminary Conference Brief* filed on **16 June 2017**.

73. Since the election protest of Marcos involves **two (2) distinct, separate and independent causes of action**, the dismissal of his cause of action for judicial recount and revision of the protested ballots under **Rule 65** of the **2010 PET Rules** should not lead to the dismissal of his Third Cause of Action for the annulment of election results for the position of Vice-President.

74. **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.**

75. 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 cause of action for annulment of election results can and must proceed independently of the result from the recount, revision and re-appreciation of ballots.**

²³ 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.

76. In fact, in the election protest case of Daza docketed as **HRET Case No. 13-023**, the protestant therein was allowed by the HRET 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.

77. Moreover, protestant Daza was further allowed by the **HRET** 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.

78. This honorable Tribunal, in its *Resolution* dated 29 September 2020, 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 protestant’s Third Cause of Action of annulment of election results within a non-extendible period of **twenty (20) working days** from receipt of a copy of the said *Resolution*.

79. Among the issues presented to the COMELEC for its **COMMENT** are 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 a basis to find for the Protestant in the Third Cause of Action :

- i. Will this mean that the elections for all the elective positions on 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?

80. In its *Compliance* dated 03 November 2020, the **COMELEC** correctly underscored its position that based on the application of the **Abayon** case, “**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.**”²⁴

81. This honorable Tribunal should adhere to the resounding pronouncements of the **HRET** and the **COMELEC** that the Third Cause of Action for the annulment of election results is indeed **distinct, separate and independent from the cause of action for the judicial revision, recount and re-appreciation of ballots under Rule 65 of the 2010 PET Rules.**

82. As a consequence, the dismissal of his cause of action for judicial recount and revision of the protested ballots under **Rule 65** of the **2010 PET Rules** cannot be used as a basis for the dismissal of his Third Cause of Action for the annulment of election results for the position of Vice-President.

83. **To reiterate, 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.**

²⁴ COMELEC’s Compliance dated 03 November 2020, p. 22; emphasis and underscoring supplied.

84. However, since the election protest of Marcos was grounded on another cause of action, *i.e.*, the annulment of election results, which is separate and distinct from revision and recount, then the Third Cause of Action for annulment of election results **can and must proceed independently of the result from the recount, revision and re-appreciation of ballots.**

85. In view of the foregoing, it is humbly submitted by protestant Marcos that the Majority Opinion committed a grave error when it failed to recognize **the annulment of election results as an independent, distinct and separate cause of action, which can proceed on its own despite the dismissal of his cause of action for judicial revision and manual recounting of ballots.**

The honorable Tribunal erred in dismissing the Third Cause of Action for annulment of election results by wrongfully applying Rule 65 of the 2010 PET Rules.

86. According to the Majority Opinion, the final tally after the revision and the appreciation of the votes in the pilot precincts nominated by protestant Marcos resulted in an increase of votes in favor of the protestee Robredo. The Majority Opinion then applied the provision of **Rule 65** of the **2010 PET Rules** in dismissing the election protest of Marcos for the alleged failure of protestant Marcos to show substantial gain or reasonable recovery through revision in his three nominated pilot provinces. Since these pilot provinces were supposedly identified by protestant Marcos as best exemplifying the frauds or irregularities subject of his protest, the Majority Opinion claimed that the result of the initial revision of the pilot protested provinces has shown that it was unlikely that protestant Marcos would still overcome protestee Robredo’s lead.

87. Despite having serious concerns on the preliminary appreciation of his pilot protested provinces, particularly on the stray votes that were unduly counted in favor of protestee Robredo, protestant Marcos will no longer contest the dismissal of his second cause of action for the judicial revision and manual recount of 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* for practical reasons and due to time-constraints given that the next national elections is set for next year.

88. In the alternative, Protestant Marcos pleads that this honorable Tribunal reconsider the dismissal of his Third Cause of Action for the annulment of election results in the **two thousand seven hundred fifty-six (2,756)** protested clustered precincts of *Lanao Del Sur, Maguindanao and Basilan* on the grounds of terrorism, force, violence, threats, intimidation, substitution of voters and pre-shading of ballots in favor of protestee Robredo.

89. With all due respect, the Majority Opinion erroneously supported the dismissal of the entire election protest based on **Rule 65** of the **2010 PET Rules**, to wit :

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 this 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 not also apply when the election protest involves correction of manifest errors.

90. A reading of the above rule would palpably reveal, however, that it only covers the cause of action for judicial revision and manual recount of ballots and has **NO APPLICATION to the Third Cause of Action for annulment of elections.**

91. The designation of protestant Marcos' pilot protested provinces that would best exemplify the frauds and irregularities alleged in the election protest is likewise in reference to the cause of action for judicial revision and manual recount of ballots and **not to the Third Cause of Action for annulment of elections.**

92. In his Separate Opinion, the recently retired Chief Justice Diosdado M. Peralta shared the same standpoint that **Rule 65 is not applicable to the Third Cause of Action of annulment of election results.** The significant portions of his Separate Opinion, which should be pondered upon by this honorable Tribunal, are quoted below :

Similar to the observation of Associate Justice Samuel H. Gaerlan, **I believe that Rule 65 of A.M. No. 10-4-29-SC, or the 2010 Rules of the Presidential Electoral Tribunal (PET Rules), should not apply to the dismissal of election contests based on annulment of election results.**

xxx

Be that as it may, the Supreme Court ultimately set aside the decision of the HRET. The Court found that the evidence presented by the protestant were actually insufficient to satisfy annulment of the election results in the five (5) clustered precincts in Northern Samar. In this regard, the court laid down the *Abayon standard* - two (2) indispensable requisites that must be proven to justify the annulment of election results. These requisites are : "(1) that the illegality of the ballots must affect more than 50% of the votes cast on the specific precinct or precincts to be annulled, or in case of the entire municipality, more than 50% of its total precincts and the votes cast therein, and (2) that it is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots."

xxx

What can be implicitly derived from the case of Abayon is that **the remedy of annulment of election results is different from the typical election protests that are dependent on the revision and recount of votes.** By establishing a unique standard applicable only to cases seeking the annulment of election results, **Abayon effectively recognized such cases as an election remedy totally separable from ordinary election protests.**

The rationale behind such conclusion is immediately discernable from a comparison of the nature of ordinary election protests, on one hand, and of annulment of election results, on the other. As astutely observed by Justice Gaerlan:

“x x x annulment of elections is a distinct electoral remedy that merits differentiated treatment from electoral protests and *quo warranto* petitions. x x x an election protest entails the revision, re-tabulation and appreciation of the ballots; on the contrary, annulment of election entails a detailed investigation into the existence of the alleged fraud, terrorism, violence or other analogous cases which prevented the expression of the will of the electorate; or an expert technical examination of the electoral system.”

A look at the current PET Rules, however, would clearly reveal that it is not equipped to address the extraordinary demands of election contests seeking the annulment of election results. **Hence, I find that Rule 65 of the said Rules cannot be used to justify the dismissal of protestant’s plea for the annulment of election results in Lanao Del Sur, Maguindanao and Basilan.**

Indeed, this case has bought to the fore the need for the Tribunal to formulate new rules specific to the remedy of annulment of election results. **Yet, the absence of a specific rule should not dissuade the Tribunal from taking cognizance and giving due course to contests praying for the annulment of election results. Again, I echo Justice Gaerlan’s recommendation that, in the interim, the Tribunal may make use of the Rules of Court and the decisions of the Supreme Court and this Tribunal in order to facilitate the resolution and disposition of cases for annulment of election results.**²⁵

²⁵ Retired Chief Justice Diosdado M. Peralta, Separate Opinion pp. 1, 3-5; emphasis and underscoring supplied.

93. The perspective of Associate Justice Samuel H. Gaerlan on this issue is also noteworthy. With all due respect, this honorable Tribunal should be enlightened by the following explanation :

Considering the distinct nature of annulment of elections, I submit that Rule 65 of the 2010 PET Rules pertaining to the dismissal of *election protests or quo warranto petitions* does not apply thereto. As demonstrated above, the annulment of elections is a distinct electoral remedy that merits differentiated treatment from electoral protests and quo warranto petitions. To reiterate, an election protest entails the revision, re-tabulation, and appreciation of the ballots; on the contrary, annulment of election entails a detailed investigation into the existence of the alleged fraud, terrorism, violence or other analogous causes which prevented the expression of the will of the electorate; or an expert technical examination of the electoral system. **These are separate and distinct methods of investigations which require different rules**; and are properly and optimally addressable through an exercise of this tribunal’s rule-making power under the Constitution and Rule 74 of the 2010 PET Rules.²⁶

94. As shown above, revision is a distinct term that applies only to the judicial revision and manual recount of ballots. It would go against the rules on statutory construction and legal reasoning to apply the concept of revision to the cause of action for the annulment of election results.

95. Since **Rule 65 of the 2010 PET Rules is not applicable to the Third Cause of Action of annulment of election results**, the dismissal of the entire protest under this procedural rule 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.**

²⁶ *Supra* note 4; emphasis and underscoring supplied.

96. In fact, the **HRET Resolution No. 15-052**²⁷ dated **24 September 2015** emphatically declared that the dismissal of a protest under **Rule 37**²⁸ of the **2011 HRET Rules**, which is the counterpart provision of **Rule 65** of the **2010 PET Rules**, contemplates a situation where the protest alleges and prays **only** for the recount and revision of ballots so that dismissal follows if no substantial recovery is made.

97. **A dismissal of the entire protest under this rule does not apply when there is a separate and distinct Third Cause of Action for annulment of election results which is pleaded both in the body and relief of the protest. The protest can and must proceed independently of the result from the recount, revision and re-appreciation of ballots.**²⁹

98. At this point, it is important to state that this honorable Tribunal should give weight to the opinion given by the **COMELEC** regarding this issue. It is because the **COMELEC** is a constitutional body that is tasked to administer the elections in the Philippines and adjudicate electoral contests both originally and those brought on appeal.

²⁷ *Supra* note 20; emphasis and underscoring supplied.

²⁸ **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.

²⁹ *Supra* note 20; emphasis and underscoring supplied.

99. According to the **COMELEC**, the jurisprudential doctrine established in the **Abayon** case 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 protestant Marcos’ Third Cause of Action for the annulment of election results in the provinces of Maguindanao, Lanao Del Sur and Basilan.

100. 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 Marcos’ Third Cause of Action**.

101. With all due respect, this honorable Tribunal should be guided by the foregoing pronouncements of the **HRET** and the **COMELEC**.

102. To repeat, **Rule 65 of the 2010 PET Rules is not applicable to the Third Cause of Action of annulment of election results** given that it is **separate and distinct** from revision and recount of ballots. For this reason, protestant Marcos’ Third Cause of Action **can and must proceed independently regardless of the alleged failure of Marcos to prove substantial recovery from the recount, revision and re-appreciation of ballots from his pilot protested provinces**.

103. Besides, even if the protestant concedes for the sake of argument that **Rule 65** covers an action for annulment of election results, the very language of **Rule 65 is not mandatory**. Under **Rule 65**, the Tribunal “after making reasonable allowances, the Tribunal is convinced that, ***taking all circumstances into account***, the protestant or counter-protestant will most likely fail to make out his case, the protest ***may*** forthwith be dismissed, without further consideration of the other provinces mentioned in the protest.” Restated in the alternative, even if the revision involving the pilot provinces did not result in substantial recovery, the dismissal of the case is not mandatory but **merely discretionary**.

104. The **PET** still has the option to proceed with the proceedings taking into consideration that **"allowing the election protest to proceed would be the best way of removing any doubt as to who was the real candidate chosen by the electorate. Barring the proceedings due to technicalities and procedures accomplishes nothing except possibly to suppress the will of the majority."**³⁰

105. **Election contests involve public interest. Technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials.** Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.³¹

106. **In an election case, the court has an imperative duty to ascertain by all means within its command the real candidate elected by the electorate.** The Supreme Court frowns upon any interpretation of the law or the rules that would hinder, in any way, not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.³²

107. In the interest of truth and justice, this honorable Tribunal should not turn a blind eye on the existence of the **Dactyloscopic and Questioned Document Report**³³ dated 5 June 2018 given that the Voters Identification Division of the COMELEC-ERSD concluded therein that the **"2016 National, Local and ARMM Elections had been marked with different forms of election fraud such as massive substituted voting."**³⁴

³⁰ *Supra* note 1; emphasis and underscoring supplied.

³¹ *Id.*; emphasis and underscoring supplied.

³² *Id.*, emphasis and underscoring supplied.

³³ A copy of the **Dactyloscopic and Questioned Document Report** 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.

³⁴ Emphasis and underscoring supplied.

108. This honorable Tribunal should allow the annulment of election results to proceed if only to verify whether there are indeed **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 OF 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.**

109. 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.

110. 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 Report** 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) THUMBPRINTS ON THE EDCVLs USED IN THE FIVE HUNDRED EIGHT (508) ESTABLISHED PRECINCTS OF THE PROVINCES OF 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.**

111. Moreover, the **Dactyloscopic and Questioned Document Report** 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.

112. As mentioned earlier, the **Dactyloscopic and Questioned Document Report** dated 5 June 2018 was prepared by the Voters Identification Division of the COMELEC-ERSD. Being a public document, the **Dactyloscopic and Questioned Document Report** dated 5 June 2018 is **prima facie evidence of the facts stated therein.**

113. If this honorable Tribunal will reconsider the dismissal of the entire protest, allow the annulment of election results to proceed, and permit the conduct of technical examination requested by herein protestant then Marcos will surely prove the massive presence of substituted voting in the **two thousand seven hundred fifty-six (2,756)** protested clustered precincts of *Lanao Del Sur, Maguindanao, and Basilan.*

This honorable Tribunal erred in dismissing the Third Cause of Action for annulment of election results without giving protestant Marcos any opportunity to present his evidence.

114. Protestant Marcos humbly submits that his right to prove and establish his Third Cause of Action for annulment of election results in Lanao Del Sur, Maguindanao and Basilan is **substantive in nature** and the **denial of the same will impair his right to due process.**

115. The Supreme Court has adopted the following definitions of substantive law and right, 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, include 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 rights 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).³⁵

116. Consequently, there can be no doubt that protestant Marcos 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.

117. 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”³⁶, it is most respectfully posited that protestant Marcos’ right to be heard on his Third Cause of Action should not be barred by **Rule 65** of the **2010 PET Rules** which is adjective in nature. **Rule 65** could not have been couched to diminish protestant Marcos’ substantive right. To rule otherwise would impair his substantive right and his right to due process.

118. Moreover, since it has been demonstrated earlier that the Third Cause of Action for annulment of election results is **separate and distinct** from the Second Cause of Action, the dismissal of the latter pursuant to **Rule 65** of the **2010 PET Rules** should not adversely affect the proceedings for annulment of election results.

119. Again, with all due respect, this honorable Tribunal erred in dismissing the Third Cause of Action for annulment of election results without giving the protestant any opportunity to present his evidence.

³⁵ *Bustos vs. Lucero*, 46 Off. Gaz., January Supp., pp. 445, 448; G.R. No. 2068; 20 October 1948.

³⁶ 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.

120. In *Ang Tibay v. Court of Industrial Relations*³⁷ (“**Ang Tibay**” case), which is the landmark case on administrative due process, the Supreme Court laid down seven cardinal primary rights. “The first of these rights is the **right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.**”³⁸

121. The Supreme Court explained in the case of *Mendoza v. COMELEC*³⁹ that the “first of the enumerated rights [in the **Ang Tibay** case] pertain to the substantive rights of a party at the hearing stage of the proceedings.

122. Needless to say, the protestant in an election protest is entitled to a hearing. “**A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy.**”⁴⁰

123. Undoubtedly, protestant Marcos is entitled as a matter of **substantive** right to prove his **Third Cause of Action** by first presenting his evidence in accordance with **Rule 55 to 64** of the **2010 PET Rules**, to wit:

RECEPTION EVIDENCE

Rule 55. Hearings - After the submission of all Revision/Correction Reports, the Tribunal may delegate the reception of evidence to a Hearing Commissioner who is a member of the Bar. (R53)

Rule 56. Preliminary conference. - The Hearing Commissioner shall fix a date for the reception of evidence and submission of the affidavits of the witnesses of the parties, with the adverse parties being furnished copies.

37 69 Phil. 635 [1940].
38 *Id.*
39 618 Phil. 706 [2009].
40 *Gonzales v. Commission on Elections*, G.R. No. 52789, 19 December 1980, 101 SCRA 752 emphasis supplied.

Reception of the evidence shall be done at the offices of the Tribunal unless Hearing Commissioner directs its reception in some other place. (R54)

Rule 57. Procedure of hearings. - At the hearings, the affidavits of the witnesses submitted by the parties shall constitute their direct testimonies. Witnesses who testify may be subject to cross-examination, redirect or re-cross examination. Should the affiant fail to testify, his affidavit shall not be considered as competent evidence for the party presenting the affidavit, but the adverse party may utilize the same for any admissible purpose.

Except on rebuttal or sur-rebuttal, no witness shall be allowed to testify unless his affidavit was previously submitted to the Tribunal.

However, should a party desire to present additional affidavits or counter-affidavits as part of his direct evidence, he shall manifest during the preliminary conference, stating their purpose. If allowed by the Tribunal, the additional affidavits of the protestee shall be submitted to the Tribunal and serve on the adverse party not later than five days after the termination of the preliminary conference. If the additional affidavits are presented by the protestant, the protestee may file his counter-affidavits and serve the same on the protestant within five days of such service. (R55a)

Rule 58. Cross-examination; effect of absence of a party. - In the reception of evidence of a party before a Hearing Commissioner, the other party has a right to be present and to cross-examine the witness presented.

The Hearing Commissioner may proceed *ex parte* in the absence of the other party provided he has been duly notified of the hearing.

If a party presenting evidence fails to appear at the time and place designated, the Hearing Commissioner may adjourn the proceedings to a future day, giving notice to the absent party of his attorney of the adjournment. The delay shall be charged to the party's period to present evidence. (R56)

Rule 59. Hearing Commissioner to rule on objections. - The Hearing Commissioner receiving the evidence shall rule on objections made in the course of cross-examination subject to review by the Tribunal.

An exception to a ruling of the Hearing Commissioner shall not suspend the reception of evidence. (R57)

Rule 60. *Procedure after hearing by Commissioner.* - The Hearing Commissioner shall submit the evidence presented, together with the transcripts of the proceedings held before him, to the Tribunal within five days. (R58)

Rule 61. *Time limit for presentation of evidence.* - Each part is given a period of thirty working days to complete the presentation of his evidence, including its formal offer. This period shall begin from the first date set for the presentation of the party's evidence either before the Tribunal or a Hearing Commissioner.

The hearing for any particular day or days may be postponed or canceled upon the request of either party. The delay caused by such postponement shall be charged to the period for presenting evidence of the movant.

The following shall not be charged against the period allotted to either party:

(a) The period when presentation of the party's evidence is suspended by order of the Tribunal or the Hearing Commissioner by reason of the pendency of an issue in the nature of a prejudicial question which must first be resolved before the hearing can continue; and

(b) The time taken up in the cross-examination of his witnesses by the other party.

A party may present rebuttal or sur-rebuttal evidence during the remainder of the thirty-day period that he has not utilized for the presentation of his evidence-in-chief. (R59)

Rule 62. *Evidence not formally offered, inadmissible* - Evidence not formally offered shall not be admitted and considered by the Tribunal in deciding the case. (R60)

Rule 63. *When submitted; contents* - Within twenty days from receipt of the Tribunal's ruling on the last offer of evidence by the protestee, the parties shall simultaneously submit their respective memoranda setting forth briefly.

- (a) The facts of the case;
- (b) A complete statement of all the arguments submitted in support of their respective views of the case;
- (c) Objections to the ballots adjudicated to or claimed by the other party in the revision of ballots;
- (d) Refutation of the objections of the other party to the ballots adjudicated to or claimed in the revision of ballots;

- (e) Objections to the tallying of election returns and certificates of canvass raised by the other party in the correction of manifest error; and
- (f) Refutation of the objections raised by the other party to the tallying of election returns and certificates of canvass in the correction of manifest error.

All evidence, as well as objections to evidence presented by the other party, shall be either referred to or contained in the memorandum or in an appendix thereto. (R61)

Rule 64. Supplemental or rebuttal memorandum. - When required or allowed by the Tribunal, a party shall a supplemental or rebuttal memorandum. (R62)

124. With all due respect, the Majority Opinion committed a grave error when it simply disregarded the right of protestant Marcos to present testimonial and documentary evidence for his Third Cause of Action in violation of his constitutional right to due process.

125. **It is an integral part of procedural due process that the parties be given the opportunity to present all relevant evidence so as to settle all the issues involved.**⁴¹

126. Protestant Marcos **DID NOT WAIVE** his right to present witnesses for his Third Cause of Action. In fact, a review of his Preliminary Conference Brief would easily reveal that he intended to present both testimonial and documentary evidence to prove the merit and legitimacy of his prayer for the annulment of election results.

127. In its *Resolution* dated **29 August 2017**, this honorable Tribunal directed protestant Marcos to submit a new list of witnesses for the annulment of the election results for the position of Vice President in the Provinces of Basilan, Lanao Del Sur and Maguindanao.

⁴¹ *Supra* note 2; emphasis supplied.

128. In conformity thereto, protestant Marcos filed his *Manifestation and Compliance* dated 8 September 2017, where he identified his witnesses for the Third Cause of Action. He even included a reservation for the presentation of handwriting, technology, and other technical experts and forensic investigators to testify on the result of the **TECHNICAL EXAMINATION** and **FORENSIC INVESTIGATION** of the lists of voters, particularly the **EDCVL, VRRs**, books of voters and other pertinent election documents and/or paraphernalia used in the elections in each of the **two thousand seven hundred fifty-six (2,756)** protested clustered precincts of **Lanao Del Sur, Maguindanao and Basilan** that functioned during the 09 May 2016 National and Local Elections.

129. He likewise reserved the presentation of two (2) registered voters in each of the **two thousand seven hundred fifty-six (2,756)** protested clustered precincts of Lanao Del Sur, Maguindanao and Basilan that functioned during the 09 May 2016 National and Local Elections to identify their respective signatures in the EDCVL, VRRs and books of voters, as well as their respective paper ballots and/or the ballot images and voter’s receipts used during the last 09 May 2016 National and Local Elections. However, protestant Marcos did not disclose the names of these registered voters whom he intends to present as witnesses in his *Manifestation and Compliance* dated 8 September 2017 for security reasons because of his fear that his intended witnesses will be subjected to threats, intimidation and harassment if their identities will be divulged.

130. Despite the justification interposed by protestant Marcos, this honorable Tribunal in its *Resolution* dated 19 September 2017 required him once again to submit his list of witnesses for the third cause of action in strict compliance with the mandate of *Resolution* dated 29 August 2017, *i.e.*, to limit the witnesses to three (3) per precinct and to identify the names of his witnesses and their concerned clustered precinct.

131. Protestant Marcos filed another *Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action)* dated 09 October 2017. He maintained therein his express reservation for the presentation of handwriting, technology, and other technical experts and forensic investigators to testify on the result of the **TECHNICAL EXAMINATION** and **FORENSIC INVESTIGATION** of the lists of voters, particularly the **EDCVL, VRRs, books of voters and other pertinent election documents and/or paraphernalia** used in the elections in each of the **two thousand seven hundred fifty-six (2,756)** protested clustered precincts of the Provinces of Lanao Del Sur, Maguindanao and Basilan that functioned during the 09 May 2016 National and Local Elections.

132. Protestant Marcos likewise reserved his right to substitute witnesses in case any of those mentioned above becomes unavailable. He also reserved the right to present additional witnesses, if necessary and proper, during the trial.

133. Protestant Marcos assured this honorable Tribunal that he shall comply with the limitation regarding the number of witnesses per protested clustered precinct subject of the cause of action for annulment of election results.

134. The filing of protestant Marcos’ *Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action)* dated 09 October 2017 was **duly acknowledged** by this honorable Tribunal in its ***Resolution*** dated **07 November 2017**.

135. There being no additional comment and/or directive from this honorable Tribunal with regard to his *Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action)* dated 09 October 2017, protestant Marcos assumed that the same has substantially complied with the *Resolution* dated 19 September 2017.

136. The minor lapses on protestant Marcos’ *Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action)* dated 09 October 2017 were only pointed out by this honorable Tribunal in the assailed *Decision* dated 16 February 2021.

137. It is respectfully submitted that these lapses, which consists of harmless and innocuous errors and discrepancies, should not result to the waiver of protestant Marcos’ right to present his witnesses for the Third Cause of Action.

138. Disputes in the outcome of elections involve public interest. As such, **technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle in determining the true will of the electorate in their choice of elective officials.** Laws governing such disputes must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.⁴²

139. As for the COMELEC’s dismissal of the petitions to declare failure of elections involving the Provinces of Lanao Del Sur, Maguindanao and Basilan during the 2016 National and Local Elections, protestant Marcos humbly submits that their outcome is **IRRELEVANT and IMMATERIAL** to the resolution of his Third Cause of Action.

140. Protestant Marcos did not file a petition to declare failure of elections in the afore-stated provinces. Instead, he implores the annulment of election results in the Provinces of Lanao Del Sur, Maguindanao and Basilan in connection with the 2016 National and Local Elections.

141. 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 fully explained by the Supreme Court in the **Abayon** case, to wit :

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**.

⁴² Suliguin v. COMELEC, G.R. No. 166046, 23 March 2006, citing Carlos v. Angeles, *supra* note 1; emphasis and underscoring supplied.

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.⁴³

142. Although the petitions to declare failure of elections in the Provinces of Lanao del Sur, Maguindanao 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. **The determining factor in petitions to declare failure of elections is the failure to elect.**

143. In contrast, protestant Marcos’ Third Cause of Action for the annulment of election results does not claim that there were no elections or that there was a failure to elect. The basis for the annulment of election results is that, even if the elections were held in the Provinces of Lanao del Sur, Maguindanao 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.**

⁴³ Supra note 1.

144. This honorable Tribunal should take into account the meticulous discussion of Associate Justice Samuel H. Gaerlan regarding this matter, to wit :

In more recent cases, the Court gave greater definition to the remedy. *Macabago v. Commission on Elections* recognized that election protest, pre-proclamation controversy, annulment of election and failure of election are distinct and separate remedies. While failure of election and annulment of election are “denominated similarly” for purposes of statutory treatment under cases within the jurisdiction of the Commission on Elections (COMELEC), annulment of election actually contemplates a specific scenario where an election is held but “*the preparation and transmission, custody and canvass of the election returns*” or the counting of votes was “*marred fatally*” by force majeure, violence, terrorism, fraud, or other analogous causes. *Tan v. COMELEC* held that in proceeding for annulment of election, the COMELEC may conduct a technical examination of election documents and compare and analyze voters’ signatures and fingerprints in order to determine whether or not the elections had indeed been free, honest and clean; however, the petition for annulment of election has to be verified and must make out a *prima facie* case for the annulment of the election in question. Furthermore, such allegations must be supported by convincing evidence. Finally, in *Abayon v. House of Representatives Electoral Tribunal*, the court expounded on the nature of the remedy of annulment of elections, distinguished the same from failure of elections, and laid down guidelines in resolving cases of annulment of elections, viz:

The Court agrees that the power of the HRET to annul elections differs 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.

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.

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x x x [T]he 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.⁴⁴

145. For this reason, it is humbly submitted that this honorable Tribunal committed a grave error when it concluded that the annulment of election results in the Provinces of Lanao del Sur, Maguindanao and Basilan will not prosper simply because of the COMELEC's dismissal of the petitions to declare failure of elections in those areas.

146. *Res judicata* means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."⁴⁵

⁴⁴ *Supra* note 4, pp. 3-5; emphasis supplied; citations omitted.
⁴⁵ *Monterona, et al v. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 209116, 14 January 2019

147. It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.⁴⁶

148. The doctrine of *res judicata* by conclusiveness of judgment, which was unfortunately misapplied in the assailed Decision dated 16 February 2021, is embodied in **Section 47, Rule 39** of the **Rules of Court**, to wit :

SEC. 47. *Effect of judgments or final orders.* –

The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

149. The Supreme Court differentiated between the two rules of *res judicata* in the case of *Oropeza Marketing Corporation v. Allied Banking Corporation*⁴⁷ :

There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or any other tribunal.

⁴⁶ *Id.*; citing *Spouses Selga v. Brar*, 673 Phil. 581, 591 (2011).
⁴⁷ *Id.*; citing 441 Phil. 551, 564 (2002)

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.⁴⁸

150. If, as between the two cases, only the identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.⁴⁹

151. Guided by the foregoing pronouncements, it would appear that the Majority Opinion **misapplied** the ***doctrine of res judicata by conclusiveness of judgement*** to justify the deduction of votes subject of protestant Marcos' annulment of election results due to **COMELEC's** prior finding which dismissed the petitions to declare failure of elections in certain areas in Lanao Del Sur, Maguindanao and Basilan. There being **no identity of parties or successors-in-interest** between the **COMELEC** cases involving petitions to declare failure of elections and the election protest filed by Marcos, there is **no basis** for the application of *res judicata by conclusiveness of judgement*.

152. Finally, it is **premature** for this honorable Tribunal to conclude that protestant Marcos will not be able to comply with the threshold of evidence required by the **Abayon** case to prove the legitimacy of his Third Cause of Action for annulment of elections **without giving him an opportunity to present his testimonial and documentary evidence**.

⁴⁸ *Id.*; emphasis supplied.

⁴⁹ *Id.*

153. The affidavits, which were scrutinized and nitpicked by the Majority Opinion, are not the same affidavits that protestant Marcos will present as evidence. He intends to present the judicial affidavits of his witnesses so that they can comprehensively testify on all the factual circumstances in support of the grounds cited by protestant Marcos for his Third of Cause of Action.

154. Moreover, protestant Marcos intends to present handwriting experts and forensic investigators to testify on the result of the **TECHNICAL EXAMINATION** and **FORENSIC INVESTIGATION** of the lists of voters, particularly the **EDCVL, VRRs, books of voters and other pertinent election documents and/or paraphernalia** used in the elections in each of the **two thousand seven hundred fifty-six (2,756)** protested clustered precincts of the Provinces of Lanao Del Sur, Maguindanao and Basilan that functioned during the 09 May 2016 National and Local Elections.

155. The result of the technical examination and forensic investigation of the lists of voters, particularly the **EDCVL, VRRs**, books of voters and other pertinent election documents and/or paraphernalia will certainly prove that pre-shading of ballots and massive substituted voting attended the 2016 Vice-Presidential elections in each of the two thousand seven hundred fifty-six (2,756) protested clustered precincts of the Provinces of Lanao Del Sur, Maguindanao and Basilan.

156. Further, protestant Marcos intends to comply with the mandate of the **Abayon** case by presenting the requisite evidence which will prove :

(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) The impossibility to distinguish, with reasonable certainty, between the lawful and unlawful ballots. in order to justify the drastic action of nullifying the election results in each of the two thousand seven hundred fifty-six (2,756) protested clustered precincts of the Provinces of Lanao Del Sur, Maguindanao and Basilan.

157. At this point, protestant Marcos would like to clarify that the third requisite mentioned by the **COMELEC** and the Majority Opinion to the effect 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**. The Abayon case did not impose a third requisite to justify the annulment of election results. 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.**

158. Protestant Marcos concurs with the Separate Opinion of Associate Justice Samuel H. Gaerlan that the following guiding principles shall determine the propriety of annulling election results :

1. The power to annul elections should be exercised with utmost care.

2. Annulment of elections can only be resorted to 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.

3. The tribunal cannot annul an election authorized by law if it was so conducted as to give substantially a free and fair expression of the popular will, and the actual result thereof is clearly ascertained.

4. When a person elected obtained a considerable plurality of votes over his adversary, and the evidence offered to rebut such result is neither solid nor decisive, it would be imprudent to quash the election as that would oppose, without reason, the popular will solemnly expressed in suffrage.

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5. There are two (2) indispensable requisites that must concur in order to justify the drastic action of nullifying the election:
- a. 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
 - b. It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots.
6. The allegation of matters in support of the extreme remedy of annulment of elections must be established by clear and convincing evidence.
7. Such allegations must be supported by concrete proof. Mere abstract or mathematical speculation or postulations are not enough.^{xxx 50}

SUMMARY

159. In summary, protestant Marcos strongly argues that there is an urgent and imperative for this honorable Tribunal to **RECONSIDER** and **SET ASIDE** the assailed *Decision* dated **16 February 2021**.

160. *First*, the conclusion of Majority Opinion that the election protest is insufficient in form and substance and should have been summarily dismissed pursuant to **Rule 21** of the **2010 PET Rules** is **FLAWED**.

161. The sufficiency of the form, substance and content of the election protest was already **CONFIRMED** by this honorable Tribunal when it issued the ***Summons* dated 12 July 2016, *Resolution* dated 24 January 2017 and *Resolution* dated 29 August 2017**. With all due respect, this honorable Tribunal is **estopped** from claiming otherwise.

⁵⁰ *Supra* note 4, pp. 5-6.

162. *Second*, this honorable Tribunal erred in not considering the annulment of election results as an independent, distinct and separate cause of action, which can proceed on its own despite the dismissal of protestant Marcos’ cause of action for judicial revision and recounting of ballots.

163. This honorable Tribunal should adhere to the resounding pronouncements of the recently retired Chief Justice Diosdado M. Peralta, Associate Justice Samuel H. Gaerlan, the **HRET** and the **COMELEC** that the Third Cause of Action for the annulment of election results is indeed **distinct, separate and independent from the cause of action for the judicial revision, recount and re-appreciation of ballots.**

164. **[A]n election protest entails the revision, re-tabulation, and appreciation of the ballots; on the contrary, annulment of election entails a detailed investigation into the existence of the alleged fraud, terrorism, violence or other analogous causes which prevented the expression of the will of the electorate; or an expert technical examination of the electoral system. These are separate and distinct methods of investigations which require different rules xxx.**⁵¹

165. *Third*, this honorable Tribunal erred in dismissing the Third Cause of Action for annulment of election results by wrongfully applying **Rule 65 of the 2010 PET Rules.**

166. **Rule 65 is not applicable to the Third Cause of Action of annulment of election results.**⁵² This was affirmed by no less than the recently retired Chief Justice Diosdado M. Peralta in his Separate Opinion in this case.

167. Associate Justice Samuel H. Gaerlan concurs that **Rule 65 of the 2010 PET Rules** pertaining to dismissal of *election protests* or *quo warranto petitions* **does not apply to the Third Cause of Action considering the distinct nature of annulment of election results.**⁵³

51 *Supra* note 4; emphasis and underscoring supplied.
52 *Supra* note 24; emphasis and underscoring supplied.
53 *Supra* note 4; emphasis and underscoring supplied.

168. The COMELEC likewise asserted in its Compliance dated 03 November 2020 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 protestant Marcos’ Third Cause of Action for the annulment of election results in the provinces of Maguindanao, Lanao Del Sur and Basilan.

169. The **COMELEC** even candidly admitted 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 Marcos’ Third Cause of Action.**”⁵⁴

170. At the risk of being repetitious, **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.**

171. Given that the election protest of Marcos involves **two (2) distinct, separate and independent causes of action**, the dismissal of his cause of action for judicial recount and revision of the protested ballots under **Rule 65 of the 2010 PET Rules should not lead to the dismissal of his Third Cause of Action for the annulment of election results for the position of Vice-President.**

172. To repeat, **Rule 65 of the 2010 PET Rules is not applicable to the cause of action of annulment of election results** given that it is *separate and distinct* from revision and recount of ballots. For this reason, protestant’s third cause of action **can and must proceed independently regardless of the alleged failure of Marcos to prove substantial recovery from the recount, revision and re-appreciation of ballots from his pilot protested provinces.**

173. *Fourth*, this honorable Tribunal erred in dismissing the Third Cause of Action for annulment of election results without giving protestant Marcos any opportunity to present his evidence.

⁵⁴ *Supra* note 24; emphasis supplied.

174. Protestant Marcos humbly submits that his right to prove and establish his Third Cause of Action for annulment of election results in Lanao Del Sur, Maguindanao and Basilan is **substantive in nature** and the **denial of the same will impair his right to due process**.

175. **It is an integral part of procedural due process that the parties be given the opportunity to present all relevant evidence so as to settle all the issues involved.**⁵⁵

176. The Supreme Court even underscored that **"the right to a hearing includes the right of the party interested or affected to present his own case and submit evidence in support thereof."**⁵⁶

177. It was further explained in the case of *Mendoza v. COMELEC*⁵⁷ that the **"the right to a hearing"** in the *Ang Tibay* case "pertain to the substantive rights of a party at the hearing stage of the proceedings."⁵⁸

178. **A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy.**⁵⁹

179. Guided by the foregoing pronouncements, protestant Marcos is undoubtedly entitled as a matter of **substantive** right to prove his **Third Cause of Action** by first presenting his evidence in accordance with **Rule 55 to 64** of the **2010 PET Rules**.

55 *Supra* note 2; emphasis supplied.
56 *Supra* note 37; emphasis supplied.
57 *Supra* note 39; emphasis supplied.
58 *Id.*
59 *Supra* note 40.

180. As for the COMELEC’s dismissal of the petitions to declare failure of elections involving the Provinces of Lanao Del Sur, Maguindanao and Basilan during the 2016 National and Local Elections, protestant Marcos reiterates his position that their outcome is **IRRELEVANT and IMMATERIAL** to the resolution of his Third Cause of Action.

181. 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 election results in the Provinces of Basilan, Lanao Del Sur, and Maguindanao in connection with the 2016 National and Local Elections.

182. There should be no confusion between these legal remedies. A petition to declare failure of elections is definitely different from protestant’s Third Cause of Action for annulment of elections as explained by the Supreme Court in the **Abayon** case, to wit :

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.⁶⁰

183. Although the petitions to declare failure of elections in the Provinces of Lanao del Sur, Maguindanao 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.

⁶⁰ *Supra* note 3.

184. **The determining factor in petitions to declare failure of elections is the resulting failure to elect.**

185. In contrast, protestant Marcos’ Third Cause of Action for the annulment of election results does not claim that there were no elections or that there was a failure to elect.

186. The basis for the annulment of election results is that, even if the elections were held in the Provinces of Lanao del Sur, Maguindanao 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.**

187. The COMELEC’s dismissal of the petitions to declare failure of elections in some areas in the Provinces of Lanao Del Sur, Maguindanao and Basilan cannot certainly be used by the Majority Opinion as their basis to wantonly conclude that the protestant’s annulment of election results in these areas must likewise fail.

188. For this reason, it is humbly submitted that this Honorable Tribunal committed a grave error when it concluded that the annulment of election results in the provinces of Maguindanao, Lanao Del Sur, Basilan will not prosper simply because of the COMELEC’s dismissal of the petitions to declare failure of elections in those areas.

189. 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 should remain to be subject of nullification pursuant to protestant’s Third Cause of Action.

190. This honorable Tribunal should also revisit the erroneous application of the ***doctrine of res judicata by conclusiveness of judgement*** in this case. It is also respectfully submitted that the Majority Opinion **misapplied** the ***doctrine of res judicata by conclusiveness of judgement*** in order to justify the deduction of votes subject of protestant Marcos’ annulment of election results.

191. This is **FLAWED**.

192. The doctrine of *res judicata* by conclusiveness of judgment requires the **IDENTITY OF PARTIES OR THEIR SUCCESSORS IN INTEREST** between the two cases as exemplified in **Section 47, Rule 39** of the **Rules of Court**, to wit :

SEC. 47. *Effect of judgments or final orders.* –

The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

X X X X

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

193. There being **no identity of parties or successors-in-interest** between the **COMELEC** cases involving petitions to declare failure of elections and the election protest filed by Marcos, there is **no basis** for the application of *res judicata by conclusiveness of judgement*.

194. At this point, it is still **premature** for this honorable Tribunal to conclude that protestant Marcos will not be able to comply with the threshold of evidence required by the **Abayon** case to prove the legitimacy of his Third Cause of Action for annulment of elections **without giving him an opportunity to present his testimonial and documentary evidence**.

195. Protestant Marcos intends to comply with the mandate of the Abayon case. He will present the requisite evidence to prove:

- (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.

in order to justify the drastic action of nullifying the election results in each of the two thousand seven hundred fifty-six (2,756) protested clustered precincts of Lanao Del Sur, Maguindanao, and Basilan.

196. Protestant Marcos shall present his evidence for the Third Cause of Action in accordance with the procedure for the reception of evidence prescribed by **Rule 55 to 64** of the **2010 PET Rules**.

197. With regard to matters not covered by the 2020 PET Rules, this honorable Tribunal may utilize the Rules of Court which have suppletory application, as well as the prevailing decisions of the Supreme Court and this honorable Tribunal in order to facilitate the resolution and disposition of protestant’s Third Cause of Action for annulment of election results,” thus:

Yet, the absence of a specific rule should not dissuade the Tribunal from taking cognizance and giving due course to contests praying for the annulment of election results. Again, I echo Justice Gaerlan’s recommendation that, in the interim, **the Tribunal may make use of the Rules of Court and the decisions of the Supreme Court and this Tribunal in order to facilitate the resolution and disposition of cases for annulment of election results.**⁶¹

198. **As a final note, it bears stressing that the results in the preliminary appreciation of the ballots in the pilot precincts are not mathematically insurmountable as to render the Third Cause of Action moot and academic.**

⁶¹ *Supra* note 24; emphasis and underscoring supplied.

199. 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.

200. 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

201. At this juncture, it must be recalled that the presumptive winning margin of protestee Robredo against protestant Marcos as per the total number of Certificates of Votes nationwide is only **TWO HUNDRED SIXTY-THREE THOUSAND FOUR HUNDRED SEVENTY-THREE (263,473)** votes.

202. Now, even if we include the number of votes added to the protestee after the Preliminary Appreciation of the pilot protested provinces which is **THIRTY-FOUR THOUSAND SIX HUNDRED FORTY-EIGHT (34,648)**,⁶² protestee Robredo’s presumptive vote lead would only total to **TWO HUNDRED NINETY-EIGHT THOUSAND ONE HUNDRED TWENTY-ONE (298,121)** votes.

⁶² Majority Opinion p. 56.

203. 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 presumptive 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.

204. In view of the foregoing, protestant Marcos implores this honorable Tribunal to **REVIEW, REEVALUATE** and eventually **RECONSIDER** the assailed Decision dated 16 February 2021.

CONCLUSION

205. This election protest has been a long and weary battle. As aptly stated by this honorable Court :

Judicial notice may be taken that the protest in **this case has been the subject of much attention and speculation in the public arena.** x x x The controversy over the results of the 2016 vice presidential elections has caused more social discord than the results of the presidential elections. **Over and over again, questions about the accuracy and reliability of the AES during the 2016 National and Local Elections were propounded.** Protestant and protestee have exchanged countless pleadings, motions, manifestations, and letters before the Tribunal. Each party has made allegations of the commission of electoral frauds, irregularities, and anomalies against the other. x x x⁶³

206. Four years ago, on 29 August 2017, this honorable Tribunal came out with a *Resolution* stating that the three (3) Causes of Action would be **independent** of each other:

"In other words, both these causes of action remain intact independent of the First Cause of Action. (emphasis provided) x x x as indeed, this will not prevent the Protest from continuing because **protestant can still prove his case through the** Second and **Third Causes of Action.**⁶⁴

⁶³ 2nd paragraph, page 3, PET Resolution 15 October 2019.
⁶⁴ 4th and 5th sentences, 4th paragraph, PET Resolution dated 29 August 2017.

207. As discussed in paragraph 127, the Tribunal asked protestant **Marcos** to submit evidence to support their **Third** Cause of Action. Marcos complied with the Court’s directive.

208. Almost two years ago, on 15 October 2019, when there was an attempt to disregard the Third Cause of Action, this honorable Tribunal underscored the importance of **due process** in resolving this election protest. Instead of dismissing the protest outright because of the much vaunted Rule 65, the Tribunal stated that the parties ought to be given the **full opportunity** to make their case. Said the Court :

With this Resolution and the Memoranda required of both parties, the Tribunal will chart a way forward after the initial revision and recount, **affording the parties the fullest opportunity to make thier case consistent with due process of law.** This Resolution does not yet resolve the entire case but is merely preliminary and interlocutory in nature. **It is designed to hear the parties fully on the various legal issues relating to their controversy.** It is not a finding for or against the protestant or the protestee.⁶⁵

209. In the same **Resolution** dated 15 October 2019, the high Tribunal asked the parties to submit their respective Memoranda. Protestant **Marcos** submitted an 810-page Memoranda while protestee **Robredo** submitted her 662-page Memoranda.

210. Eight months ago, on 29 September 2020, the Tribunal sought the opinion of **both** the Commission on Elections (COMELEC) and the Office of the Solicitor General (OSG) on whether or not it could rule on the Third Cause of Action. **Both** agencies replied in the **affirmative**.⁶⁶

211. Despite this, on 16 February 2021, the high Court decided to dismiss the election protest **WITHOUT** taking into account protestant **Marcos’** evidence of massive lectoral fraud in the provinces of Basilan, Maguindanao & Lanao Del Sur -- as discovered by COMELEC itself during the technical examination it conducted.

⁶⁵ PET Resolution dated 15 October 2019.

⁶⁶ PET Resolution dated 29 September 2020.

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212. After waiting patiently for almost five years and paying a hefty deposit of **SIXTY SIX MILLION TWENTY THREE THOUSAND AND TWO HUNDRED PESOS** (Php 66,023,200.00) protestant **Marcos** should -- at the very least -- be accorded his Constitutional right to due process.

213. It is the mandatory duty of Courts to uphold the Constitutional right of a litigant to due process and give them every chance to present his case.

214. This Constitutional right cannot be overcome by mere conjecture.⁶⁷

215. As we all know, the power of PET is plenary. The Third Cause of Action, like annulment, should not be taken lightly, even if there are no rules. We are talking about the second highest position in the country and the will of the electorate must be heard.

216. The existence or non existence of procedural rules for the Third Cause of Action should not be an obstacle because at the end of the day, the public deserves to know the real will of the electorate. Rules are just secondary since what is important is the will of the electorate.

217. What is lamentable is that in one sweeping stroke, the high Court chose to deny protestant **Marcos** his Constitutional right to be heard on his defenses in every issue :

"The closed mind has no place in the open society. It is part of the sporting idea of fair play to hear 'the other side' before an opinion is formed or a decision is made by those who sit in judgment. Obviously, one side is only one-half of the question; the other half must also be considered if an impartial verdict is to be reached based on an informed appreciation of the issues in contention.

⁶⁷ Alonte vs. Savellano, 287 SCRA 245 [1998]; People vs. Isla, GR No. 96176, 21 August 1997.

It is indispensable that the two sides complement each other, as unto the bow the arrow, in leading to the correct ruling after examination of the problem **not from one or the other perspective only but in its totality.**

A judgment based on less than full appraisal, on the pretext that a hearing is unnecessary or useless, is tainted with the vice of bias or intolerance, or worst of all, in repressive regimes, the insolence of power.”⁶⁸

218. Borrowing the words of the Supreme Court, “it does seem that there has been undue precipitancy in the conduct of the proceedings. Perhaps the problem could have well been avoided had not the basic procedures not been taken lightly”. There can be no short cut to the legal process just like there can be no excuse for not affording an accused his full day in court. **Due process is an enshrined and invaluable right that cannot be denied even to the most undeserving.**⁶⁹

219. Because of protestant’s Constitutional right to be heard, it is well-settled that between this Constitutional right and the rigid and inflexible adherence by this Court to the wordings of the Rules of Court (on the existence of non-existence of procedural rules), the conclusion should have been to give greater accord to the Constitutional intent to give the parties **all possible avenues** to prove their case.⁷⁰

220. Again, the existence or non existence of procedural rules should never be an obstacle in ascertaining who the voters chose to be their leaders. **What is mportant is that the true will of the electorate be heard.**

221. There is a reason why our lady justice has blinders over her eyes. She is supposed to render a decision based on **all** the evidence presented, without any regard as to the personalities or the parties involved - - however controversial they may be. She is bound to mete out justice without fear or favor. And if per chance her decision is not popular, she will find solace in the fact that it was the right one.

⁶⁸ Ynot vs. Intermediate Appellate Court, 148 SCRA 659, 668 [1987]; emphasis and underscoring supplied.
⁶⁹ Alonte vs. Savellano, *supra*, at p. 260 emphasis and underscoring supplied.
⁷⁰ People vs. Mahinay, 246 SCRA 451 [1995] emphasis and underscoring supplied.

222. Like the lady justice, protestant **Marcos** respectfully prays that this Honorable Court make the right decision based on the merits of his Motion.

PRAYER

ACCORDINGLY, it is most respectfully prayed that the honorable Tribunal:

- i. **RECONSIDER** and **SET ASIDE** the *Decision* dated **16 February 2021** thereof;
- ii. **ISSUE** another *Resolution* constituting a special committee to conduct hearings, receive evidence and assess the evidence for the cause of action of annulment of election results;
- iii. **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 the Provinces of *Lanao Del Sur, Maguindanao* and *Basilan* relative to the Third Cause of Action;
- iv. **CONDUCT** another Preliminary Conference for the Third Cause of Action; and thereafter,
- v. **PROCEED** with the presentation of evidence for the Third Cause of Action.

Other reliefs, just or equitable under the premises, are likewise prayed for.

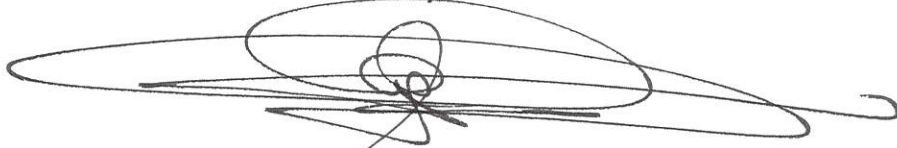
City of Manila, Philippines, **06 May 2021**.

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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:



GEORGE ERWIN M. GARCIA
Roll of Attorneys No. 44950
PTR OR No. 9823193; 01-04-2021; 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. 0703494D; 01-04-2021; 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

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By:



DRIXEL S. DABATOS

Roll of Attorneys No. 75275

PTR OR No. 8536864;01-07-2021; Makati City

IBP Membership No. 153865; Quezon City Chapter

Admitted to the Bar in 2020

Copies Furnished : (By electronic mail)

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

rbmcacalintal@gmail.com

THE SOLICITOR GENERAL

134 Amorsolo Street

Legaspi Village, 1229 Makati City

efile@osg.gov.ph

THE COMMISSION ON ELECTIONS

Palacio Del Gobernador Building

General Luna St., Intramuros Manila

law@comelec.gov.ph

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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 *Motion for Reconsideration* were filed before this Honorable Tribunal by personal filing and/or electronic mail. The same were served to the above-mentioned parties by registered mail and/or electronic mail since personal service is impractical due to the increasing number of COVID19 cases in the Philippines, community quarantine restrictions, distance, time and manpower constraints.



GEORGE ERWIN M. GARCIA

REPUBLIC OF THE PHILIPPINES)
TAGUIG CITY) SS.
X- - - - -X

AFFIDAVIT OF SERVICE

I, **DRIXEL S. DABATOS**, of legal age, Filipino, with office address at 30/F Ore Central Tower, 31st Street corner 9th Avenue, Bonifacio Global City, Taguig 1634, after having been sworn to in accordance with law, hereby depose and state that :

1. I am one of the Lawyers of **M & ASSOCIATES**, collaborating counsel for protestant *Ferdinand "BongBong" R. Marcos, Jr.*;

2. On 10 May 2021, I electronically mailed a copy of **Motion for Reconsideration** dated 6 May 2021 in the case entitled *Ferdinand "BongBong" R. Marcos, Jr. v. Maria Leonor "Leni Daang Matuwid" G. Robredo* with PET Case No. 005, pending before Presidential Electoral Tribunal, to the following addresses :

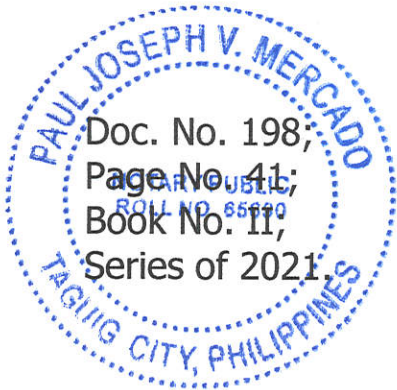
ATTY. ROMULO B. MACALINTAL <i>Lead counsel for Protestee Robredo</i>	Email : rbsmacalintal@gmail.com Date : 10 May 2021
OFFICE OF THE SOLICITOR GENERAL	Email : efile@osg.gov.ph Date : 10 May 2021
COMMISSION ON ELECTIONS Law Department	Email : law@comelec.gov.ph Date : 10 May 2021

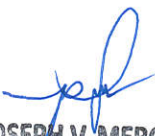
3. As proof of transmittal, I have attached hereto a copy of the screenshot of the electronic mail sent to the above-mentioned addressees.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 10 May 2021 in Taguig City.


DRIXEL S. DABATOS
Affiant

SUBSCRIBED AND SWORN to before me this 10 May 2021 at Taguig City, affiant exhibiting to me her IBP ID Roll no. 75275. Affiant is known to me to be the same person who executed the foregoing instrument and acknowledged to me that the same is her free act and deed.




PAUL JOSEPH V. MERCADO
Notary Public for and in Taguig City
30th Floor, Ore Central Tower
31st Street corner 9th Avenue
Bonifacio Global City, Taguig 1634
Application No. 25 (2021-2022)
Attorney's Rolli No. 65690
PTR No. A-5075068 / 1-05-21/Taguig City
IBP No. 153861/01-19-21/QC
MCLE Compliance No. VI- 0025244/4-8-19

From: inquiry@m-associates.com
Sent: Monday, May 10, 2021 1:12 PM
To: rbmacalintal@gmail.com; efile@osg.gov.ph; law@comelec.gov.ph
Subject: PET Case No. 005 (Ferdinand "BongBong" R. Marcos, Jr., v. Maria Leonor "Leni Daang Matuwid" G. Robredo)
Attachments: 2021 may 06 - Motion for Reconsideration.pdf; 2021 may 10 - Affidavit of Service.pdf; 2021 may 10 - Verified Declaration.pdf

Case Number : PET Case No. 005

Case Title : Ferdinand "BongBong" R. Marcos, Jr., v. Maria Leonor "Leni Daang Matuwid" G. Robredo

Name of Filing Party : Ferdinand "BongBong" R. Marcos Jr.

Contact Number : +63 (02) 8863 0601 (landline)

Other email addresses : inquiry@m-associates.com

Title of Attached Documents:

1. *Motion for Reconsideration* dated 6 May 2021
2. *Affidavit of Service* dated 10 May 2021
3. *Verified Declaration* dated 10 May 2021

10 May 2021

Gentlemen,

We hereby furnish you a copy of the *Motion for Reconsideration* dated 6 May 2021 in connection with the above-captioned case. The attached *Motion* will be personally filed with the Presidential Electoral Tribunal (PET) today, 10 May 2021.

We trust that you will find everything in order.

Thank you.

Drixel Jann S. Dabatos
Associate



30/F Ore Central Tower
31st Street corner 9th Avenue
Bonifacio Global City, Taguig 1634
Philippines

Telephone : +63 (02) 8863 0601

inquiry@m-associates.com

<https://m-associates.com>

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REPUBLIC OF THE PHILIPPINES)
TAGUIG CITY) SS.

VERIFIED DECLARATION

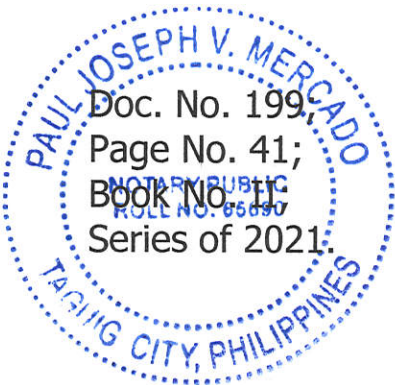
I, **DRIXEL S. DABATOS**, Filipino, of legal age and with office address at 30th Floor Ore Central Tower, 31st Street corner 9th Avenue, Bonifacio Global City, Taguig 1634, hereby declare that the **Motion for Reconsideration** dated 6 May 2021 hereto submitted electronically in accordance with the *Efficient Use of Paper Rule* is a **complete and true** copy thereof filed with the Presidential Electoral Tribunal.

IN WITNESS WHEREOF, I have signed this instrument on 10 May 2021 in Taguig City.


DRIXEL S. DABATOS
Associate

M & ASSOCIATES
30th Floor Ore Central Tower
31st Street corner 9th Avenue
Bonifacio Global City, Taguig 1634
10 May 2021

SUBSCRIBED AND SWORN to before me on 10 May 2021 at Taguig City, affiant exhibiting to me her IBP ID Roll no. 75275. Affiant is known to me to be the same person who executed the foregoing instrument and acknowledged to me that the same is her free act and deed.




PAUL JOSEPH V. MERCADO
Notary Public for and in Taguig City
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