



Republic of the Philippines  
Presidential Electoral Tribunal  
Manila

Office of the Clerk of the Tribunal

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

Protestant,

- versus -

**P.E.T. No. 005**

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

Protestee.

X ----- X

**NOTICE OF DECISION**

Sirs/Mesdames:

Please take notice that on February 16, 2021 a Decision, copy attached herewith, was rendered by the Presidential Electoral Tribunal in the above-entitled case, the original of which was received by this Office on April 19, 2021 at 10:24 p.m.

By authority of the Tribunal:

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Republic of the Philippines  
Presidential Electoral Tribunal  
Manila

FERDINAND "BONGBONG" R. P.E.T. Case No. 005  
MARCOS, JR.,

Protestant,

Present:

PERALTA, *Chief Justice*,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
GESMUNDO,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
DELOS SANTOS,  
GAERLAN,  
ROSARIO, and  
LOPEZ, J., *JJ.*

-versus-

MARIA LEONOR "LENI DAANG  
MATUWID" G. ROBREDO,

Protestee.

Promulgated:

February 16, 2021

X-----X

DECISION

*"New beginnings are often  
disguised as painful endings."*  
Lao Tzu

*"Then you will know the truth,  
and the truth will set you free."*  
John 8:32

*"But part of surviving is  
being able to move on."*  
Alexandra Braken,  
*The Darkest Minds*

**LEONEN, J.:**

An election protest is no ordinary petition. It alleges anomalies and irregularities which, if proven true, would perniciously deprive a significant portion of the voting population of its constitutionally protected right of suffrage. Given this extraordinary nature, an election protestant takes on the heavy burden of clearly and specifically alleging, and then proving, the irregularities that led to a breakdown in our mechanisms for suffrage.

When the protestant fails to meet the strict requirement of specificity and established rules on evidence to support the allegations of election irregularities, the election protest must be dismissed.

The Court, sitting as the Presidential Electoral Tribunal (Tribunal), resolves the June 29, 2016 Election Protest<sup>1</sup> (Protest) filed by protestant Ferdinand “Bongbong” R. Marcos, Jr. (protestant), who challenges the election and proclamation of Maria Leonor “Leni Daang Matuwid” G. Robredo (protestee) as vice president in the 2016 national and local elections.

Protestant and protestee were two of six candidates for vice president during the May 9, 2016 elections. Protestee garnered 14,418,817 votes, while protestant received 14,155,344 votes, giving protestee a slim margin of only 263,473 votes over protestant.<sup>2</sup>

On May 30, 2016, Congress issued Resolution of Both Houses No. 1, which recognized the results of the canvass conducted and proclaimed protestee as the duly elected Vice President of the Philippines.<sup>3</sup>

On June 29, 2016,<sup>4</sup> protestant filed this Protest premised on two causes of action:

A.

(First Cause of Action)

The proclamation of protestee Robredo as the duly elected [Vice President] is null and void because the [Certificates of Canvass (COCs)] generated by the [Consolidation and Canvass System (CCS)] are not

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<sup>1</sup> *Rollo*, Vols. I and II, pp. 1–1047.

<sup>2</sup> Resolution of Both Houses No. 1, Resolution of both houses approving the report of the joint committee, declaring the results of the National Elections held on May 9, 2016, for the offices of President and Vice President, and proclaiming the duly elected President and Vice President of the Republic of the Philippines, May 30, 2016, <[http://www.senate.gov.ph/16th\\_congress/resolutions/joint%20public%20session%20res%20both%20houses%20no.1.pdf](http://www.senate.gov.ph/16th_congress/resolutions/joint%20public%20session%20res%20both%20houses%20no.1.pdf)> (last accessed on January 31, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> *Rollo*, Vol. XLIX, pp. 39525.



authentic, and may not be used as basis to determine the number of votes that the candidates for Vice President received.

....

B.

(Second Cause of Action)

Massive electoral fraud, anomalies, and irregularities, such as, but not limited to terrorism, violence, force, threats, . . . intimidation, pre-shading of ballots, vote-buying, substitution of voters, flying voters, pre-loaded SD cards, misreading of ballots, unexplained, irregular and improper rejection of ballots containing votes for protestant Marcos, malfunctioning Vote Counting Machines (VCMs), 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 [Vice President] in the protested precincts.<sup>5</sup> (Citation omitted)

On July 12, 2016, this Tribunal issued a Precautionary Protection Order,<sup>6</sup> directing the Commission on Elections to safeguard the integrity of all the ballot boxes, their contents, and other election paraphernalia in the 92,509 clustered precincts covered by the Protest.<sup>7</sup>

This Tribunal then issued Summons<sup>8</sup> to protestee, directing her to file her answer to the Protest.

In her Verified Answer with Special and Affirmative Defenses and Counter-Protest,<sup>9</sup> protestee alleged that the Protest failed to provide the specific acts or omissions that supposedly led to electoral frauds, anomalies, or irregularities in the protested 92,509 clustered precincts.<sup>10</sup> She further pointed out that the Protest was a pre-proclamation controversy, which should have been lodged before the National Board of Canvassers, and not before this Tribunal.<sup>11</sup>

As counter-protest, protestee contested the election results gathered from 7,547 clustered precincts in 13 provinces.<sup>12</sup> She alleged that vote-buying, intimidation, substitution, and other irregularities occurred in these provinces during the 2016 national and local elections. She stated that, had protestant not resorted to electoral fraud in these provinces, she would have received a higher number of votes.<sup>13</sup>

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<sup>5</sup> *Rollo*, Vol. II, pp. 927–929.

<sup>6</sup> *Rollo*, Vol. XX, pp. 16012–16013.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 16010–16013.

<sup>9</sup> *Rollo*, Vols. XXI–XXVII, pp. 16155–21525.

<sup>10</sup> *Rollo*, Vol. XXI, pp. 16177–16186.

<sup>11</sup> *Id.* at 16167–16177.

<sup>12</sup> *Rollo*, Vol. XLIX, pp. 39529–39530. The provinces included in the Counter-Protest were Apayao, Mountain Province, Abra, Kalinga, Bataan, Capiz, Aklan, Antique, Sarangani, Sulu, Sultan Kudarat, South Cotabato, and North Cotabato.

<sup>13</sup> *Rollo*, Vol. XXI, pp. 16406–16689.



Protestee then asked: (1) that a preliminary hearing be set; (2) that the Protest be dismissed for lack of jurisdiction and for insufficiency in form and substance; and (3) that her proclamation as vice president be affirmed.<sup>14</sup>

In a January 24, 2017 Resolution,<sup>15</sup> this Tribunal confirmed that it had jurisdiction over the Protest, as Article VII, Section 4 of the 1987 Constitution mandates it to be the “sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President[.]”<sup>16</sup>

In the same Resolution, this Tribunal found the Protest to be sufficient in form and substance. It also denied protestee’s motion to dismiss the Protest, along with the setting for preliminary hearing of her special and affirmative defenses.<sup>17</sup>

On February 27, 2017, protestee moved for the reconsideration<sup>18</sup> of this Tribunal’s January 24, 2017 Resolution.

On June 6, 2017, this Tribunal deferred<sup>19</sup> resolving protestee’s Motion for Reconsideration, protestant’s Comment/Opposition<sup>20</sup> to the Motion, as well as protestee’s Motion for Leave of Court to File and Admit the Herein Incorporated Reply to Protestant’s Comment/Opposition,<sup>21</sup> after the preliminary conference.

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<sup>14</sup> Id. at 16690.

<sup>15</sup> *Rollo*, Vol. XXIX, pp. 22459-A–22459-H.

<sup>16</sup> CONST., art. VII, sec. 4 states:

Section 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.

Unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.

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

<sup>17</sup> *Rollo*, Vol. XXIX, pp. 22459-A–22459-H.

<sup>18</sup> Id. at 22674–22698.

<sup>19</sup> *Rollo*, Vol. XXX, pp. 23285–23290.

<sup>20</sup> Id. at 22900–22924.

<sup>21</sup> Id. at 22990–23006.



On April 25, 2017, this Tribunal, among others, directed the parties to file their respective preliminary conference briefs five days before the scheduled preliminary conference.<sup>22</sup>

On July 11, 2017,<sup>23</sup> the preliminary conference was held. There, with protestant's consent, this Tribunal categorized his causes of action into: *first*, the annulment of protestee's proclamation; *second*, a revision and recount of ballots in Camarines Sur, Iloilo, and Negros Oriental; and *third*, the annulment of elections in Lanao del Sur, Maguindanao, and Basilan. The causes of action were elaborated as follows:

#### First Cause of Action - Annulment of Proclamation

The proclamation of protestee Robredo as the duly elected Vice President is null and void because the [certificates of canvass] generated by the [consolidated canvassing system] are not authentic, and may not be used as basis to determine the number of votes that the candidates for VICE PRESIDENT received.

#### Second Cause of Action - Revision and Recount

Revision and recount of the paper ballots and/or the ballot images as well as an examination, verification, and analysis of the voter's receipts, election returns, audit logs, transmission logs, the list of voters, particularly the [election day computerized voter's list], and [voters registration record], the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the [vote counting machines], [consolidated canvassing system] units, SD cards (main and backup), and the other data storage devices containing electronic data and ballot images in ALL of the 36,465 protested clustered precincts pursuant to Rules 38 to 45 of the 2010 PET Rules; and

#### Third Cause of Action - Annulment of Elections

Annulment of election results for the position of Vice President in the provinces of Maguindanao, Lanao del Sur[,] and Basilan, on the ground of terrorism, intimidation[,] and harassment of voters as well as pre-shading of ballots in all of the 2,756 protested clustered precincts that functioned in the aforesaid areas.<sup>24</sup>

In the interim, protestant had filed another Motion for Technical Examination of the voters' signatures in Lanao del Sur, Maguindanao, and Basilan. This is a separate pleading from his Protest that also prayed for a technical examination as part of his third cause of action.<sup>25</sup>

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<sup>22</sup> Rollo, Vol. XXXI, pp. 23087-23091.

<sup>23</sup> Id. at 23978-A-23798-E.

<sup>24</sup> Rollo, Vol. XLIX, p. 39540.

<sup>25</sup> Rollo, Vol. XXXI, pp. 23966-23972.



In an August 29, 2017 Resolution,<sup>26</sup> this Tribunal dismissed protestant's first cause of action, pointing out that the veracity of his allegations on the inauthenticity and unreliability of the certificates of canvass could only be determined by a manual recount of all votes in all precincts.<sup>27</sup> With protestant stating that he was limiting the manual recount to his second and third causes of action, this Tribunal ruled that resolving the first cause of action would have no practical effect.<sup>28</sup>

This Tribunal likewise dismissed protestee's Motion for Reconsideration and reiterated that the Protest was sufficient in form and substance.<sup>29</sup>

In the Preliminary Conference Order,<sup>30</sup> this Tribunal limited the issues to protestant's second and third causes of action, and to protestee's Counter-Protest. It then directed that the revision of ballots would begin with protestant's designated pilot provinces, which were Camarines Sur, Iloilo, and Negros Oriental. *The pilot provinces would serve as test cases, and the revision results would determine if this Tribunal would proceed with the revision of ballots in the remaining contested clustered precincts.*<sup>31</sup>

This Tribunal also reiterated the directive it had earlier issued in the preliminary conference, to limit the parties' witnesses to three per clustered precinct, and to submit a new list of witnesses that should include the clustered precinct each witness would testify on.<sup>32</sup> It noted that protestant had not yet submitted his witness list, and warned him that his failure to comply would "be deemed a waiver of his right to name and identify his witnesses, and to present them during the reception of evidence."<sup>33</sup>

This Tribunal deferred action on protestant's motion for the technical examination<sup>34</sup> of the voters' signatures in Lanao del Sur, Maguindanao, and Basilan. It explained that to do so would be premature, *as the result of the revision of ballots and reception of evidence in the pilot provinces—Camarines Sur, Iloilo, and Negros Oriental—would determine if this Tribunal would proceed with the other contested provinces.*<sup>35</sup>

On October 23, 2017, the ballot images for the protested clustered precincts of the three pilot provinces were decrypted and printed.<sup>36</sup> The

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<sup>26</sup> *Rollo*, Vol. XXXII, pp. 24482–24515.

<sup>27</sup> *Id.* at 24483–24484.

<sup>28</sup> *Id.*

<sup>29</sup> *Rollo*, Vol. XXIX, pp. 22674–22698.

<sup>30</sup> *Rollo*, Vol. XXXII, pp. 24485–24514. The PCO is included in the August 29, 2017 Resolution.

<sup>31</sup> *Id.*

<sup>32</sup> *Rollo*, Vol. XXXII, p. 24501.

<sup>33</sup> *Id.* at 24502.

<sup>34</sup> *Rollo*, Vol. XLIX, p. 39545.

<sup>35</sup> *Rollo*, Vol. XXXII, pp. 24510–24511.

<sup>36</sup> *Rollo*, Vol. XLIX, p. 39548.



ballot boxes and other election paraphernalia were later retrieved from the pilot provinces.<sup>37</sup>

On January 16, 2018, this Tribunal issued its Revisor's Guide for the Revision of Ballots under the Automated Election System (Revisor's Guide) to govern revision proceedings in election protests.<sup>38</sup> Rule 4 of the Revisor's Guide provided the four objectives of revision of ballots:

- (a) To verify the physical count of the ballots;
- (b) To recount the votes of the parties;
- (c) To record the parties' objections and claims thereon; and
- (d) To accordingly mark such ballots which were objected to and claimed by the parties for purposes of identification during subsequent examination by the Tribunal and for reception of evidence, if any.<sup>39</sup>

Additionally, the revision of ballots from the pilot provinces went through the following process:

*[F]irst*, prior to the actual recount of the votes of the parties, the [head revisors] were required to authenticate the ballots to ensure their genuineness, ensuring that the ballots contained all the security features of the official ballots and using ultraviolet lamps which could detect the hidden security marks; *second*, such [head revisors] segregated the ballots which were read by the [vote-counting machines] into four (4) categories: (1) Ballots for Protestant; (2) Ballots for Protestee; (3) Ballots for Other Candidates; and (4) Ballots with Stray Votes (ballots with no votes or those with more than one (1) vote for the Vice President position); *third*, the revisors for protestant and protestee registered their respective objections to the Ballots for Protestee and Ballots for Protestant, respectively; *fourth*, both Party Revisors registered their claims on the Ballots for Other Candidates and Ballots with Stray Votes; *fifth*, both Party Revisors registered their claims on ballots that were rejected by the [vote counting machines] and were not thus included in the ballot segregation, if any; and *lastly*, each [revision committee] recorded all relevant data, including the results of their revision, in a Revision Report signed by all three (3) members and to which the claims and objections of the Party Revisors were annexed for subsequent ruling by the Tribunal during the appreciation stage.<sup>40</sup> (Emphasis in the original, citations omitted)

The revision of ballots for the pilot provinces commenced on April 2, 2018, and ended on February 4, 2019.<sup>41</sup>

The three pilot provinces had 5,418 clustered precincts, but this Tribunal only revised paper ballots and decrypted ballot images from 5,415

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<sup>37</sup> Id. at 39550.

<sup>38</sup> Id. at 39551.

<sup>39</sup> Presidential Electoral Tribunal's Revisor's Guide for the Revision of Ballots under the Automated Election System (2018), Rule 4.

<sup>40</sup> *Rollo*, Vol. XLIX, pp. 39553.

<sup>41</sup> Id.



clustered precincts, as the Commission on Elections could not provide the decrypted ballot images of the damaged and unreadable paper ballots of three clustered precincts, namely: (1) Clustered Precinct 34, Barangay Niño Jesus, Bato, Camarines, Sur; (2) Clustered Precinct 13, Barangay Haring, Canaman Camarines Sur; and (3) Clustered Precinct 27, Barangay Cubay, San Joaquin, Iloilo.<sup>42</sup>

Protestee then moved that the Revision Committees be directed to use a 25% threshold in determining the validity of a marked oval, as this was allegedly the threshold used during the 2016 national and local elections.<sup>43</sup>

This Tribunal denied protestee's motion and ruled that her proposed 25% threshold was baseless.<sup>44</sup> It retained the 50% threshold under the 2010 Presidential Electoral Tribunal Rules,<sup>45</sup> and pointed out that the threshold mentioned in the Revisor's Guide<sup>46</sup> referred to the Rules' 50% threshold.<sup>47</sup>

Protestee moved for reconsideration. Likewise, she furnished this Tribunal, for the first time, with the Commission on Elections' *En Banc* Resolution No. 16-0600, which adopted the Random Manual Audit Visual Guidelines.<sup>48</sup>

In its Comment,<sup>49</sup> the Commission on Elections confirmed that for the 2016 national and local elections, it set the threshold at 25% as it calibrated the vote counting machines "to read marks that cover at least about 25%

<sup>42</sup> Id.

<sup>43</sup> Id. at 39555–39556.

<sup>44</sup> *Rollo*, Vol. XXXIV, pp. 26366–26370.

<sup>45</sup> PET RULES (2010), Rule 43(l) states:

RULE 43. *Conduct of the Revision*. — The revision of votes shall be done through the use of appropriate [precinct count optical scan] machines or manually and visually, as the Tribunal may determine, and according to the following procedures:

....

(l) In looking at the shades or marks used to register votes, the [revision committees] shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. Any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the [precinct count optical scan] machine, and not by human determination.

<sup>46</sup> Presidential Electoral Tribunal's Revisor's Guide for the Revision of Ballots under the Automated Election System (2018), Rule 62 states:

RULE 62. *Votes of the Parties*. — After the segregation and classification of ballots, the Head Revisor shall count the total number of ballots for the Protestant, Protestee, Other Candidates, and with Stray Votes and record said matter on the appropriate spaces of the Revision Report.

In examining the shades or marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such National and Local Elections reasons exist that will justify their rejection. Any issue as to whether a certain mark or shade is within the threshold shall be resolved by the assigned Revision Supervisor. Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.

<sup>47</sup> *Rollo*, Vol. XXXIV, pp. 26366–26370.

<sup>48</sup> Id. at 26483–26496.

<sup>49</sup> *Rollo*, Vol. XXXVII, pp. 28970–28983.



(when seen by human eyes) of the oval for each candidate as valid votes.”<sup>50</sup> It likewise stated that it used the 25% threshold for all the 2016 election protest cases filed before it.<sup>51</sup>

Acting on protestee’s Motion for Reconsideration, this Tribunal directed the Head Revisors to compare the election returns with the total number of votes read and counted by the vote counting machines.<sup>52</sup> It explained that the purpose of the revision process was to recount the votes received by confirming “how the [vote counting machines] read and counted the votes during the elections.”<sup>53</sup> It then laid down the following guidelines:

Hence, in the segregation of ballots, the Tribunal held that its Head Revisors must be guided by the number of votes indicated in the Election Returns. The Tribunal held that, in using the Election Returns and not merely adopting a specific shading threshold, the Tribunal’s revision procedure will be more flexible and adaptive to calibrations of the voting or counting machines in the future. The Head Revisors were directed to use the Election Returns which normally would be inside the ballot boxes retrieved. However, in their absence, the Head Revisors were directed to use the certified true copies of Election Returns obtained from COMELEC. As to those ballots already previously revised, the procedure of verifying votes using the Election Returns was to be strictly enforced during the appreciation stage by the Tribunal.<sup>54</sup>

Accordingly, this Tribunal amended Rule 62<sup>55</sup> of the Revisor’s Guide to refer the segregated ballots to the election returns generated by the vote counting machine and guidelines set by the Tribunal. It now reads:

**RULE 62. *Votes of the Parties.* — *The segregation and classification of ballots shall be done by referring to the Election Return (ER) generated by the machine used in the elections.*** The Head Revisor shall count the total number of ballots for the Protestant, Protestee, Other Candidates, and with Stray Votes and record said matter on the appropriate spaces of the Revision Report.

In examining the shades or marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as

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<sup>50</sup> Id. at 28971.

<sup>51</sup> Id. at 28972.

<sup>52</sup> *Rollo*, Vol. XLI, pp. 32728–32748.

<sup>53</sup> *Rollo*, Vol. XLIX, p. 39558.

<sup>54</sup> Id. at 39559.

<sup>55</sup> Rule 62 of the Revisor’s Guide originally read:

**RULE 62. *Votes of the Parties.*** – After the segregation and classification of ballots, the Head Revisor shall count the total number of ballots for the Protestant, Protestee, Other Candidates, and with Stray Votes and record said matter on the appropriate spaces of the Revision Report.

In examining the shades of marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. Any issue as to whether a certain mark or shade is within the threshold shall be resolved by the assigned Revision Supervisor. Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.



votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such National and Local Elections reasons exist that will justify their rejection. *Any issue on the segregation and classification of ballots by the Head Revisor shall be resolved by the assigned Revision Supervisor, based on the guidelines set by the Tribunal.* Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.<sup>56</sup> (Emphasis supplied)

The revision and recount proceedings in the 5,415 clustered precincts in the three pilot provinces led to the following results:<sup>57</sup>

	[Protestee]	[Protestant]
Camarines Sur	657,991	40,794
Iloilo	562,811	93,245
Negros Oriental	255,576	66,456
<b>Total</b>	<b>1,476,378</b>	<b>200,495</b>

On January 14, 2019, this Tribunal began its appreciation of the revised ballots, primarily to ascertain and give effect to the voters’ intent. It then verified the physical count of the revised ballots and ruled on the parties’ respective claims and objections.<sup>58</sup> The appreciation process was completed on August 14, 2019.<sup>59</sup>

Acting on the objections registered by the parties, this Tribunal deducted the following votes from the results of the revised ballots:<sup>60</sup>

	[Protestee]	[Protestant]
Camarines Sur	(358)	(8)
Iloilo	(285)	(34)
Negros Oriental	(205)	(56)
<b>Total votes deducted</b>	<b>(848)</b>	<b>(98)</b>

Next, acting on the claims made by the parties, the following votes were added to the parties:<sup>61</sup>

	[Protestee]	[Protestant]
Camarines Sur	12,004	734
Iloilo	16,825	2,127
Negros Oriental	5,819	1,254
<b>Total votes added</b>	<b>34,648</b>	<b>4,115</b>

<sup>56</sup> *Rollo*, Vol. XLIX, pp. 39557–39558.  
<sup>57</sup> *Id.* at 39565.  
<sup>58</sup> *Id.* at 39561.  
<sup>59</sup> *Id.*  
<sup>60</sup> *Id.* at 39569.  
<sup>61</sup> *Id.* at 39572.



This Tribunal then used the Provincial Certificates of Canvass to ascertain the number of votes received by the parties from the pilot provinces’ 5,418 clustered precincts. However, this Tribunal subtracted the votes from the three clustered precincts with unavailable paper ballots, thus coming up with total votes in 5,415 clustered precincts:<sup>62</sup>

	[Protestee]	[Protestant]
Votes in the 5,418 clustered precincts of the three pilot provinces based on the Provincial [Certificates of Canvass]	1,493,517	202,136
Less: Votes in the three (3) clustered precincts with unavailable paper ballots and ballots images	(859)	(51)
<b>Total votes in the 5,415 clustered precincts</b>	<b>1,492,658</b>	<b>202,085</b>

This Tribunal then deducted the parties’ votes from the 5,415 clustered precincts from their total votes as proclaimed by the National Board of Canvassers (TOTAL A):<sup>63</sup>

	[Protestee]	[Protestant]
Total votes as proclaimed	14,418,817	14,155,344
Less: Total votes in the 5,415 pilot clustered precincts	(1,492,658)	(202,085)
<b>Total votes in the clustered precincts other than the 5,415 pilot precincts revised and appreciated (TOTAL A)</b>	<b>12,926,159</b>	<b>13,953,259</b>

The revision and appreciation of ballots in the 5,415 clustered precincts of the pilot provinces generated the following results (TOTAL B):<sup>64</sup>

	[Protestee]	[Protestant]
Votes in the 5,415 pilot clustered precincts after revision	1,476,378	200,495
Less: Votes deducted from sustained objections	(848)	(98)
Total Votes in the 5,415 pilot clustered precincts after revision after deducting sustained objections	1,475,530	200,397
Add: Votes added due to admitted claims (ballots with stray votes, ballots with over-votes, and [vote counting machine]-rejected ballots)	34,648	4,115
<b>Total votes in the 5,415 pilot clustered</b>	<b>1,510,178</b>	<b>204,512</b>

<sup>62</sup> Id. at 39573.

<sup>63</sup> Id. at 39574.

<sup>64</sup> Id.

<b>precincts after revision and appreciation (TOTAL B)</b>		
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Finally, this Tribunal added TOTAL A and TOTAL B to get the total number of votes received by the parties after revision and appreciation of the 5,415 clustered precincts in the pilot provinces:<sup>65</sup>

	<b>[Protestee]</b>	<b>[Protestant]</b>
<b>Total votes in the clustered precincts other than the 5,415 pilot clustered precincts</b>	12,926,159	13,953,259
Add: Total votes in the 5,415 pilot clustered precincts after revision and appreciation	1,510,178	204,512
<b>Total votes in all clustered precincts after revision and appreciation of the ballots from the pilot clustered precincts</b>	<b>14,436,337</b>	<b>14,157,771</b>

Based on the final tally after revision and appreciation, this Tribunal found that protestee increased her lead over protestant from 263,473 votes to 278,566 votes.<sup>66</sup>

In the interest of due process,<sup>67</sup> this Tribunal required the parties to submit their respective memoranda, addressing the following matters:

- I. Their comments on the report on the revision and appreciation of votes relating to the three pilot provinces, Camarines Sur, Iloilo, and Negros Oriental as it relates to the Second Cause of Action;
- II. Their position on the following issues related to the Third Cause of Action:
  - A) 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;
  - B) Whether or not the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action;
  - C) 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:
    - 1) 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?
    - 2) What is the threshold of evidence that is required to prove failure or annulment of elections?

<sup>65</sup> Id. at 39574–39575.  
<sup>66</sup> Id. at 39575.  
<sup>67</sup> Id.



- 3) Will evidence other than those listed by the parties during the preliminary conference be considered?
  - 4) What percentage of votes/precincts needs to be proven as having been affected by the grounds for failure or annulment of elections?
  - 5) 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?
  - 6) Should a similar pilot testing rule be equally applied in annulment of election cases?
- D) Assuming that the Tribunal is convinced that there is basis to find for the Protestant in the Third Cause of Action:
- 1) Will this mean that the elections for all the elective positions in the ballot be nullified with all its attendant legal consequences?
  - 2) 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?
  - 3) 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?
  - 4) Will this mean “recovery” for the Protestant under Rule 65, which will, in turn, mean revision of all his contested precincts nationwide?
  - 5) What will be the effect of our ruling on Protestant's Third Cause of Action on protestee's counter protest?<sup>68</sup>

In his Memorandum,<sup>69</sup> protestant claims that the Preliminary Appreciation Committee erred several times during its revision and appreciation of ballots.

First, he claims that the Preliminary Appreciation Committee erred in overruling his objections<sup>70</sup> to protestee's ballots in the pilot provinces for “lack of evidence *aliunde*” without giving him the opportunity to present evidence supporting his pilot Protest.<sup>71</sup> He asserts that he was willing to present evidence to substantiate his claims, yet his motion to set the case for preliminary conference was not granted, leading to an “unfair and unjust” situation.<sup>72</sup>

Protestant then claims that the Preliminary Appreciation Committee erred a second time in overruling his objections to the questionable ballots<sup>73</sup> in protestee's favor, which contained signatures of Board of Election Inspectors that were “glaringly different” from the signatures indicated in the other election documents.<sup>74</sup>

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<sup>68</sup> Id. at 39576–39577.

<sup>69</sup> *Rollo*, Vol. L, pp. 40341–40935.

<sup>70</sup> Id.

<sup>71</sup> Id. at 40649.

<sup>72</sup> Id.

<sup>73</sup> Id.

<sup>74</sup> Id. at 40650.

Third, protestant asserts that the Preliminary Appreciation Committee erred, yet again, when it counted unshaded<sup>75</sup> and ambiguously<sup>76</sup> shaded ballots in protestee's favor.

He then asks this Tribunal to look into the ballots that the Preliminary Appreciation Committee admitted as claims for protestee without specifying why,<sup>77</sup> as well as the previously rejected ballots admitted by the Preliminary Appreciation Committee.<sup>78</sup> He contends that it was wrong to consider the rejected ballots in protestee's favor without first verifying the reason behind the vote counting machines' rejection of the ballots and determining if the concerned voters were issued replacement ballots.<sup>79</sup>

Protestant also maintains that his three causes of action are distinct from each other,<sup>80</sup> that the dismissal of one will not impact the other.<sup>81</sup>

Further, he stresses that his third cause of action is for the annulment of election results in Lanao del Sur, Maguindanao, and Basilan due to "terrorism, intimidation and harassment of voters, pre-shading of ballots, and substitution of voters";<sup>82</sup> thus, it was not covered by Rules 46 and 65 of this Tribunal's Rules, because the relief asked for in the annulment of elections does not require the revision and recount of votes.<sup>83</sup>

Protestant invokes *Tan v. Hataman*,<sup>84</sup> a case decided by the Commission on Elections. He narrates that in *Tan*, a technical examination was conducted on the signatures and thumbprints in the voters registration records, comparing them with the election day computerized voters list of the 2016 elections.<sup>85</sup> The results allegedly showed a discrepancy in as much as 40,528 signatures and 3,295 thumbprints.<sup>86</sup>

This purportedly led the Voters Identification Division of the Commission on Elections' Election Records and Statistics Department to conclude that the 2016 elections had been marred by "different forms of election fraud such as massive substituted voting."<sup>87</sup>

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<sup>75</sup> Id. at 40651–40793.

<sup>76</sup> Id. at 40794–40878.

<sup>77</sup> Id. at 40879–40889.

<sup>78</sup> Id. at 40889–40892.

<sup>79</sup> Id. at 40892.

<sup>80</sup> Id. at 40896.

<sup>81</sup> Id. at 40903.

<sup>82</sup> Id. at 40904.

<sup>83</sup> Id.

<sup>84</sup> Docketed as EPC No. 2016-37.

<sup>85</sup> *Rollo*, Vol. L, p. 40905.

<sup>86</sup> Id.

<sup>87</sup> Id.



Protestant maintains that because his causes of action are distinct from each other, due process demands that he be allowed to present evidence for his third cause of action.<sup>88</sup> He asserts that his third cause of action “cannot be mooted by the results of the preliminary appreciation of the ballots involved in the pilot precincts” as the two causes of action are mutually exclusive.<sup>89</sup>

Citing *Abayon v. House of Representatives Electoral Tribunal*,<sup>90</sup> protestant insists that a cause of action on the annulment of election results is independent of a cause of action on the recount and revision of ballots.<sup>91</sup> He avers that *Abayon* has made it clear that a dismissal under Rule 37 of the 2011 House of Representatives Electoral Tribunal Rules, or the initial revision of ballots to determine the merit or legitimacy of an election protest, will not lead to the dismissal of an action for annulment of election results on the ground of terrorism, as the two causes of action are different.<sup>92</sup>

He then opines that Rule 37 of the 2011 House of Representatives Electoral Tribunal Rules is the counterpart of Rule 65 of this Tribunal’s Rules;<sup>93</sup> thus, a dismissal of an election protest under Rule 65 is limited to the judicial recount and revision of ballots. However, if the election protest contains a cause of action distinct from revision and recount, that must proceed independently.<sup>94</sup>

Finally, protestant advances that if his third cause of action is given due course, and he can prove his allegations of failure of elections in Lanao del Sur, Maguindanao, and Basilan, only the tainted votes for the vice presidency should be annulled and deducted from the votes received by both protestant and protestee. He underscores that there is no need to conduct special elections, as this may only lead to another election protest.<sup>95</sup>

On the other hand, protestee underscores in her Memorandum<sup>96</sup> that per this Tribunal’s October 15, 2019 Resolution, her lead increased from 263,473 to 278,566 after the recount, revision, and appreciation of the ballots from the three pilot provinces.<sup>97</sup>

Still, protestee claims that this Tribunal erred in its revision and appreciation of ballots. She posits that 848 votes were erroneously deducted from her total votes, despite lack of evidence *aliunde* supporting protestant’s

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<sup>88</sup> Id. at 40907–40908.

<sup>89</sup> Id.

<sup>90</sup> 785 Phil. 683 (2016) [Per J. Mendoza, Special En Banc].

<sup>91</sup> *Rollo*, Vol. L, pp. 40908–40910.

<sup>92</sup> Id. at 40920–40921.

<sup>93</sup> Id.

<sup>94</sup> Id. at 40921.

<sup>95</sup> Id. at 40931–40932.

<sup>96</sup> *Rollo*, Vol. XLIX, pp. 39655–40098.

<sup>97</sup> Id. at 39661.



objections.<sup>98</sup> She argues that these<sup>99</sup> must be added back to the final count.<sup>100</sup>

Protestee also contends that this Tribunal erred<sup>101</sup> in invalidating votes due to alleged overvoting, despite the vote counting machines having counted them<sup>102</sup> in her favor. She avers that this invalidation has disenfranchised the voters.<sup>103</sup>

She further asserts that this Tribunal erred, yet again, when it invalidated ballots<sup>104</sup> without “specify[ing] the alleged markings on the ballots which would invalidate the votes for protestee.”<sup>105</sup>

Protestee then assails this Tribunal’s decision to add 714 votes in protestant’s favor,<sup>106</sup> when there was no shade in the oval beside protestant’s name in each of these votes.<sup>107</sup> She also questions why overvotes in her favor were not counted, while protestant’s claims on the same ground were granted.<sup>108</sup> Other claims were likewise admitted when this Tribunal did not even state its reasons.<sup>109</sup>

In any case, protestee argues that the revision, recount, and re-appreciation of the ballots affirmed her victory.<sup>110</sup> She maintains that under Rule 65 of this Tribunal’s Rules, the Protest must be dismissed for protestant’s failure to establish any substantial recovery.<sup>111</sup>

Protestee further asserts that protestant had already been given the opportunity to substantiate his allegations, and as he failed to do so, this Tribunal should not accommodate his whim at the expense of violating its own rules.<sup>112</sup> On this point, protestee narrates how this Tribunal deferred ruling on protestant’s motion for technical examination pending the results of the ballot revision of his designated pilot provinces twice. According to her, this exhibited Rule 65’s mandatory nature.<sup>113</sup>

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<sup>98</sup> Id. at 39666 and 39681.

<sup>99</sup> Id. at 39667–39681.

<sup>100</sup> Id. at 39666.

<sup>101</sup> Id. at 39681.

<sup>102</sup> Id. at 39682–39690.

<sup>103</sup> Id. at 39690.

<sup>104</sup> Id. at 39690–39703.

<sup>105</sup> Id. at 39703.

<sup>106</sup> Id.

<sup>107</sup> Id. at 39703–39776.

<sup>108</sup> Id. at 39776.

<sup>109</sup> Id. at 39779.

<sup>110</sup> Id. at 39782.

<sup>111</sup> Id. at 39782–39783.

<sup>112</sup> Id.

<sup>113</sup> Id. at 39795.

Invoking *Mutlan v. Commission on Elections*,<sup>114</sup> protestee contends that an annulment of elections is akin to a failure of elections, the jurisdiction of which falls on the Commission on Elections.<sup>115</sup> She cites how the Court in *Abayon*<sup>116</sup> declared that a resort to annulment of elections must be made only in exceptional circumstances,<sup>117</sup> as it effectively invalidates the whole ballot, and not only the votes for the protested position.<sup>118</sup>

In maintaining that the Commission on Elections has made no reports of election irregularities, protestee invokes *Abayon*, which upheld the credibility of government agency statements over testimonies from a handful of witnesses.<sup>119</sup> In any case, protestee argues that the 8,000 witnesses,<sup>120</sup> whom protestant sought to present to identify their signatures and ballots,<sup>121</sup> were not even registered voters in Basilan, where he sought to annul the elections.<sup>122</sup> She also asserts that there is neither allegation nor proof showing that she was responsible for the supposed fraud, anomalies, and irregularities that protestant claims.<sup>123</sup>

Protestee then opines that a technical examination of election day computerized voters list is not a right. Before this may be allowed, protestant must first establish that fraud was committed to favor protestee.<sup>124</sup>

Protestee likewise asserts that protestant's invocation of *Tan v. Hataman* to support his motion is misleading. She points out that the Commission on Elections dismissed<sup>125</sup> the case on December 5, 2019<sup>126</sup> which, as protestee notes, protestant conveniently left out in his pleadings.<sup>127</sup>

In any case, protestee argues that in an annulment of election case, protestant must also prove that the fraud, anomalies, and irregularities affected more than 50% of the votes cast in Lanao del Sur, Maguindanao, and Basilan—which he failed to do.<sup>128</sup>

Finally, protestee advances that her Counter-Protest is an “independent cause of action” which may only be dismissed upon the

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<sup>114</sup> 548 Phil. 699 (2007) [Per J. Carpio, En Banc].

<sup>115</sup> *Rollo*, Vol. XLIX, p. 39797.

<sup>116</sup> 785 Phil. 683 (2016) [Per J. Mendoza, Special En Banc].

<sup>117</sup> *Rollo*, Vol. XLIX, p. 39800.

<sup>118</sup> *Id.* at 39806.

<sup>119</sup> *Id.* at 39804–39807.

<sup>120</sup> *Id.* at 39811.

<sup>121</sup> *Id.* at 39808.

<sup>122</sup> *Id.* at 39811–39853.

<sup>123</sup> *Id.* at 39854.

<sup>124</sup> *Id.*

<sup>125</sup> *Rollo*, Vol. XLIX, p. 39855.

<sup>126</sup> *Id.* at 40337–40340. Protest Annex A.

<sup>127</sup> *Id.* at 39856–39857.

<sup>128</sup> *Id.*



Protest's dismissal and continues to survive should this Tribunal proceed with protestant's third cause of action.<sup>129</sup>

In a September 29, 2020 Resolution, this Tribunal directed the Commission on Elections to comment on protestant's factual allegation that according to it, massive fraud had attended the 2016 elections.<sup>130</sup>

Additionally, this Tribunal directed the Commission on Elections to inform it: (1) if any petitions for failure of elections were filed in Lanao del Sur, Maguindanao, and Basilan, the provinces covered by protestant's third cause of action; and (2) if any special elections as an offshoot of the petitions were conducted in those provinces.<sup>131</sup>

This Tribunal likewise directed the Commission on Elections, along with the Office of the Solicitor General, to comment on the constitutional issues raised by the parties.<sup>132</sup>

In its Compliance<sup>133</sup> with the September 29, 2020 Resolution, the Commission on Elections reports that during the 2016 national and local elections, eight petitions<sup>134</sup> seeking to declare a failure of elections were filed in Lanao del Sur, Maguindanao, and Basilan. However, *all* eight petitions were dismissed, and these rulings had reached finality.<sup>135</sup> The Commission added that no special elections were held in these provinces.<sup>136</sup>

The Commission on Elections likewise confirms that this Tribunal has jurisdiction to annul the results of an election, as an "indispensable consequence" of its constitutional mandate to decide election contests.<sup>137</sup> It states that *Abayon* can be analogously applied to this Tribunal.<sup>138</sup> However, it emphasizes that to respect the right of suffrage, "the strictest standards and procedures of law must be set in place if [this Tribunal] becomes strongly and positively convinced to annul the results of the elections."<sup>139</sup>

The Commission on Elections then emphasizes that in *Abayon*, the Court cited now Chief Justice Diosdado Peralta's (Chief Justice Peralta) dissent in the House of Representatives Electoral Tribunal's February 3,

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<sup>129</sup> Id. at 39864.

<sup>130</sup> *Rollo*, Vol. L, pp. 41266–41270.

<sup>131</sup> Id.

<sup>132</sup> Id.

<sup>133</sup> Id. at 41331–41360.

<sup>134</sup> Id. at 41334–41338.

<sup>135</sup> Id. at 41338.

<sup>136</sup> Id.

<sup>137</sup> Id. at 41342.

<sup>138</sup> Id. at 41343.

<sup>139</sup> Id.

2016 Decision in *Daza v. Abayon*.<sup>140</sup> In his dissent,<sup>141</sup> Chief Justice Peralta posited that to merit the “drastic action of nullifying the election,” the illegality of the ballots must affect more than 50% of the votes cast in the precincts sought to be annulled, and that lawful and unlawful ballots are impossible to distinguish.<sup>142</sup>

The Commission on Elections also points out that the Court in *Abayon* had set out an additional requisite for the annulment of elections—that there must be strong evidence that the protestee is responsible for the alleged unlawful acts.<sup>143</sup>

The Commission on Elections asserts that even if under Rule 65 of this Tribunal’s Rules, an election protest may be dismissed for failing to prove fraud in its chosen pilot provinces, this Tribunal may still determine the validity of protestant’s third cause of action.<sup>144</sup>

However, the Commission on Elections underscores the stringent requirements in *Abayon* as basis for proving failure or annulment of elections and maintained that the threshold of more than 50% applies to all provinces subject of the election protest.<sup>145</sup>

Citing the differences between the remedies of annulment of elections and declaration of failure of elections, the Commission on Elections states that this Tribunal is empowered to declare annulment of elections without holding special elections.<sup>146</sup>

Finally, the Commission on Elections opines that *Tan v. Hataman* was dismissed for mootness and was not resolved on the merits; hence, there was no opportunity to rule on the findings of the Voters Identification Division or to “pass upon its validity, merit and probative value.”<sup>147</sup>

In its Comment,<sup>148</sup> the Office of the Solicitor General argues that this Tribunal can declare annulment or failure of elections without infringing upon the Commission on Elections’ constitutional mandate.<sup>149</sup> Additionally,

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<sup>140</sup> HRET Case No. 12-023 (EP), February 3, 2016, <[https://hret.gov.ph/file-manager/2013-2016\\_023\\_decision-com.pdf](https://hret.gov.ph/file-manager/2013-2016_023_decision-com.pdf)> [Per R. Enverga, HRET].

<sup>141</sup> J. Peralta, Dissenting Opinion in *Daza v. Abayon*, HRET Case No. 12-023 (EP), February 3, 2016, <[https://hret.gov.ph/file-manager/2013-2016\\_023\\_dissenting-com.pdf](https://hret.gov.ph/file-manager/2013-2016_023_dissenting-com.pdf)> [Per R. Enverga, HRET].

<sup>142</sup> *Rollo*, Vol. L, pp. 41343–41344.

<sup>143</sup> *Id.* at 41344.

<sup>144</sup> *Id.* at 41346–41347.

<sup>145</sup> *Id.* at 41348–41349.

<sup>146</sup> *Id.* at 41355–41356.

<sup>147</sup> *Id.* at 41345–41346.

<sup>148</sup> *Id.* at 41291–41330.

<sup>149</sup> *Id.* at 41312–41314.



it states that this Tribunal has no concomitant power to direct the conduct of special elections.<sup>150</sup>

In his Consolidated Reply,<sup>151</sup> protestant concurs with the Commission on Elections and the Office of the Solicitor General that this Tribunal possesses the power to annul elections even without calling for special elections; hence, there is no infringement on the powers and functions of the Commission on Elections.<sup>152</sup>

Protestant then posits that this Tribunal has “no power to declare failure of elections” because such power, together with the power to call for special elections, is within the Commission on Elections’ jurisdiction.<sup>153</sup>

Protestant adds that there is no need to call for special elections, as his third cause of action prayed for the annulment of elections, not failure of elections.<sup>154</sup> He then comments that the dismissal of all the petitions to declare a failure of elections in Lanao del Sur, Maguindanao, and Basilan is irrelevant.<sup>155</sup>

Protestant likewise avers that even if the election protest in *Tan v. Hataman* was eventually mooted, the fact remained that upon a technical examination, 40,528 signatures and 3,295 thumbprints in 508 established precincts in Lanao del Sur, Maguindanao, and Basilan were found to be not identical with the original signatures or thumbprints of the legitimate voters in those provinces.<sup>156</sup> This led the Voters Identification Division to conclude that the 2016 elections in those provinces had been “marked with different forms of election fraud such as massive substituted voting.”<sup>157</sup>

He emphasizes that the Commission on Elections admitted the existence of the June 5, 2018 Dactyloscopic and Questioned Documents Reports or the technical examination report submitted by the Voters Identification Division of the Commission on Elections Election Records and Statistics Department.<sup>158</sup>

Protestant continues that, as confirmed by the Commission on Elections and the ruling in *Abayon*, the results in the revision and preliminary appreciation of ballots in his second cause of action will not moot his third cause of action, these two being distinct,<sup>159</sup> with separate

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<sup>150</sup> Id. at 41317.

<sup>151</sup> *Rollo*, Vol. LI, pp. 41937–41971.

<sup>152</sup> Id. at 41941.

<sup>153</sup> Id. at 41943–41944.

<sup>154</sup> Id. at 41946–41947.

<sup>155</sup> Id. at 41947–41948.

<sup>156</sup> Id. at 41949–41950.

<sup>157</sup> Id. at 41950.

<sup>158</sup> Id.

<sup>159</sup> Id. at 41951.



scopes.<sup>160</sup> Thus, he asserts that his third cause of action could be properly recognized by this Tribunal,<sup>161</sup> which has the competence to resolve it.<sup>162</sup>

Finally, protestant agrees with the Commission on Elections that in an action for annulment of elections, electoral tribunals may determine who among the candidates obtained a majority of the legally cast votes. He continues that only the election results connected with the election contest will be affected in an annulment of elections, and not the entire election in the affected precincts, as that pertains to a declaration of failure of elections.<sup>163</sup> A declaration of annulment of elections does not need a special election over the contested position.<sup>164</sup>

In her Consolidated Reply,<sup>165</sup> protestee submits that under Rule 65 of this Tribunal's Rules, the Protest must be dismissed due to protestant's failure to make out his case in the revision and appreciation of his three chosen provinces.<sup>166</sup>

Protestee maintains that allowing protestant's third cause of action will give him six pilot provinces, a clear violation of Rule 65.<sup>167</sup> She also adds that protestant's failure to prove his case after the revision, recount, and appreciation of the ballots from his three pilot provinces rendered moot his third cause of action for annulment of elections.<sup>168</sup>

Protestee likewise belies protestant's claims that the Commission on Elections has accepted the technical examination report from the Voters Identification Division, and points out that it even stated that the report has no probative value. She stresses that she was not a party to the case of *Tan v. Hataman*; thus, she was neither notified nor allowed to participate in the technical examination.<sup>169</sup>

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<sup>160</sup> Id. at 41955.

<sup>161</sup> Id. at 41956–41957.

<sup>162</sup> Id. at 41960.

<sup>163</sup> Id. at 41964.

<sup>164</sup> Id. at 41965.

<sup>165</sup> Id. at 41852–41895.

<sup>166</sup> Id. at 41868–41871.

<sup>167</sup> Id. at 41870. PET RULES (2010), Rule 65 states:

RULE 65. Dismissal; when proper. – The Tribunal may require the protestant or counter-protestant to indicate, within a fixed period, the province or provinces numbering not more than three, best exemplifying the frauds or irregularities alleged in his petition; and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof, and after making reasonable allowances, the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest.

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

<sup>168</sup> *Rollo*, Vol. LI, p. 41888.

<sup>169</sup> Id. at 41872–41874.



Moreover, protestee highlights that the report does not even account for 10% of the clustered precincts in Lanao del Sur, Maguindanao, and Basilan, falling short of the 50% threshold of fraud set in *Abayon*.<sup>170</sup>

Protestee then echoes the Commission on Elections' warning that the annulment of elections is an extraordinary remedy, and as such, must be granted with caution and only under exceptional circumstances.<sup>171</sup> She also points out that protestant failed to allege that she directly caused the electoral anomalies being complained of.<sup>172</sup>

Finally, protestee reiterates that this Tribunal cannot proceed to protestee's third cause of action without first resolving if protestant substantiated his case through his pilot provinces.<sup>173</sup>

On November 9, 2020, protestant sought the following: (1) that Associate Justice Mario Victor F. Leonen (Justice Leonen) inhibit himself from the case; (2) that the case be re-raffled to another justice; and (3) that all pending incidents in this case be resolved.<sup>174</sup> He alleged that since October 2019, the Protest has "remained in limbo."<sup>175</sup>

That same day, the Office of the Solicitor General, led by Solicitor General Jose C. Calida, filed a similar Motion<sup>176</sup> arguing that, since the Protest was raffled to Justice Leonen, "the people has (sic) been suspended in animation for close to a year[.]"<sup>177</sup> It suggested that this inordinate delay manifested Justice Leonen's bias and partiality against protestant.<sup>178</sup>

Both protestant<sup>179</sup> and the Office of the Solicitor General<sup>180</sup> asserted that Justice Leonen's strongly-worded dissent in the Marcos burial case showed his bias against and animosity toward protestant and his family. They also adverted to a newspaper article reporting that Justice Leonen had lobbied for the dismissal of the Protest, signifying that he had prejudged the case against protestant.<sup>181</sup>

On November 17, 2020, this Tribunal denied<sup>182</sup> protestant's motion

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<sup>170</sup> Id.

<sup>171</sup> Id. at 41876–41877.

<sup>172</sup> Id. at 41878–41888.

<sup>173</sup> Id. at 41889.

<sup>174</sup> *Rollo*, Vol. L, pp. 41462–41482, Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen (Justice Leonen); II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case.

<sup>175</sup> Id. at 41466.

<sup>176</sup> Id. at 41491.

<sup>177</sup> Id. at 41492.

<sup>178</sup> Id.

<sup>179</sup> Id. at 41467–41469.

<sup>180</sup> Id. at 41492 and 41499–41502.

<sup>181</sup> Id. at 41472–41473 and 41501–41502.

<sup>182</sup> Id. at 41602–41632.



for inhibition. It also cautioned the parties and the Solicitor General, who is not a party to the case, “to refrain from using language that undermines the credibility and respect due to this Tribunal.”<sup>183</sup> The Solicitor General was likewise reminded that, as the People’s Tribune, his client was the Republic of the Philippines and not private individuals.<sup>184</sup>

The dispositive portion of the Resolution reads:

**IN VIEW OF THE FOREGOING**, this Tribunal resolves to **DENY** protestant’s Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case dated November 9, 2020.

The Office of the Solicitor General’s Omnibus Motion (Motion for Inhibition of Associate Justice Marvic M.V.F. Leonen and Reraffle) also dated November 9, 2020 is **NOTED WITHOUT ACTION**.

The protestee’s Countermanifestation (to the Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case dated November 9, 2020) is **NOTED**.

Let a copy of this Resolution be served on the Office of the Solicitor General.

**SO ORDERED.**<sup>185</sup> (Emphasis in the original)

For this Tribunal’s resolution are the following issues:

First, whether or not protestant has sufficiently shown reasonable recovery of votes after the revision and appreciation of ballots from the three pilot provinces;

Second, whether or not unfavorable results of revision and appreciation of votes in the second cause of action moots protestant’s third cause of action of annulment of election;

Third, whether or not the 2010 Presidential Electoral Tribunal Rules allows for different pilot provinces per cause of action.

Fourth, whether or not the ruling on protestant’s third cause of action affects protestee’s Counter-Protest; and

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<sup>183</sup> Id. at 41630.

<sup>184</sup> Id.

<sup>185</sup> Id. at 41631.

Finally, whether or not the grant of the third cause of action will result in the calling of a special elections for the position of vice president and all other local and national candidates.

A democracy is only as secure as its elections. It is only as resilient as the faith of its people on its mechanisms for suffrage.

No electoral system is perfect, but doubts on the conduct of elections must be met with caution. Doubting election results at every turn forces us to run in circles. It hampers our development and frustrates the empowering objectives of popular sovereignty. Without clearly established anomalies, elections must be taken to have successfully manifested the free will of the sovereign.

Any election protest challenging the results of an election must clearly and specifically allege, and then prove, the irregularities that occurred. Specifying the precincts where each violation occurred, and how it transpired, is critical. Failure to do so warrants the protest's dismissal.

## I

Allegations in election protests must be specific.

The results of an election may be challenged through different legal vehicles: first, failure of election cases; second, pre-proclamation petitions; and third, election contests. These have substantive and procedural differences, with varying remedies, but what remains consistent across all modalities is the requirement of *specificity*. Particularity on one's allegations, grounds, and bases cuts across all mechanisms for challenging election outcomes and must be present in *all* actions, regardless of the mode.

Under Batas Pambansa Blg. 881, or the Omnibus Election Code, a failure of election may be declared if, "on account of *force majeure*, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or . . . such election results in a failure to elect, [or] in any of such cases the failure or suspension of election would affect the result of the election[.]"<sup>186</sup> For its declaration, the alleged illegality must have affected more than 50% of the votes cast.<sup>187</sup>

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<sup>186</sup> ELECTION CODE, sec. 6.

<sup>187</sup> *Carlos v. Angeles*, 400 Phil. 405 (2000) [Per J. Mendoza, En Banc].



A pre-proclamation controversy concerns questions affecting the proceedings of the board of canvassers or “any matter raised under Sections 233, 234, 235, and 236 [of the Omnibus Election Code] in relation to the preparation, transmission, receipt, custody, and appreciation of the election returns.”<sup>188</sup> Further, *only* the issues provided in Section 243 of the Omnibus Election Code may be raised in a pre-proclamation controversy. The restrictive and exclusive<sup>189</sup> list includes:

- (a) Illegal composition or proceedings of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in the authentic copies thereof as mentioned in Section 233, 234, 235, and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.<sup>190</sup>

Under the Automated Election System,<sup>191</sup> pre-proclamation controversies cover only two issues, both concerning the Board of Canvassers: (a) its illegal composition; and (b) its illegal proceedings.<sup>192</sup>

Finally, election contests, which only contemplate post-election scenarios,<sup>193</sup> take the form of either an election protest or a petition for *quo warranto*.<sup>194</sup> Although distinct, both actions aim to unseat a winning candidate after proclamation and assumption of office.<sup>195</sup>

An election protest involves “a contest between the defeated and winning candidates on the grounds of fraud or irregularities in the casting and counting of ballots, or in the preparation of the returns.”<sup>196</sup> It is centered on the issue of who actually and validly obtained the plurality of votes.<sup>197</sup>

A petition for *quo warranto* is defined as “an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public

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<sup>188</sup> ELECTION CODE, sec. 241.

<sup>189</sup> *Suhuri v. COMELEC*, 617 Phil. 852 (2009) [Per J. Bersamin, En Banc] citing *Matalam v. COMELEC*, 338 Phil. 447 (1997) [Per J. Panganiban, En Banc]; and *Sanchez v. COMELEC*, 237 Phil. 69 (1987) [Per Curiam, En Banc].

<sup>190</sup> ELECTION CODE, sec. 243.

<sup>191</sup> COMELEC Resolution No. 8804 (2010).

<sup>192</sup> COMELEC Resolution No. 8804 (2010), Rule 3, sec. 1.

<sup>193</sup> *Tecson v. COMELEC*, 468 Phil. 421 (2004) [Per J. Vitug, En Banc].

<sup>194</sup> A.M. No. 10-4-1-SC, Rule 1, sec. 3(t), 2010 Rules of Procedure in Election Contests before the Courts Involving Elective Municipal Officials.

<sup>195</sup> *Tecson v. COMELEC*, 468 Phil. 421 (2004) [Per J. Vitug, En Banc].

<sup>196</sup> *Samad v. COMELEC*, 296 Phil. 509, 521 (1993) [Per J. Cruz, En Banc].

<sup>197</sup> *Id.*



office.”<sup>198</sup> It is appropriate only “for the purpose of questioning the election of a candidate on the ground of disloyalty or ineligibility.”<sup>199</sup>

The Constitution established distinct electoral tribunals to serve as “the sole judge[s] of all contests relating to the election, returns, and qualifications”<sup>200</sup> concerning national elective positions. The Senate Electoral Tribunal rules on senatorial contests; the House of Representatives Electoral Tribunal on representatives; and the Supreme Court, as the Presidential Electoral Tribunal, on the president and vice president.

Jurisprudence discussing failure of election cases, pre-proclamation controversies, and election contests reveals that specificity in bases and allegations has always been critical to their appraisal.

As regards failure of elections, the Court emphasized in *Pasandalan v. Commission on Elections*:<sup>201</sup>

A petition for a declaration of failure of election *must specifically allege* the essential grounds that would justify the exercise of this extraordinary remedy. Otherwise, the Comelec can dismiss outright the petition for lack of merit. No grave abuse of discretion can be attributed to the Comelec in such a case because the Comelec must exercise with utmost circumspection the power to declare a failure of election to prevent disenfranchising voters and frustrating the electorate’s will.<sup>202</sup> (Emphasis supplied)

The same is true of pre-proclamation controversies. Any challenge that relates to election returns must likewise be anchored on specificity. For instance, in *Macabago v. Commission on Elections*:<sup>203</sup>

Pre-proclamation controversies are properly limited to challenges directed against the Board of Canvassers and proceedings before said Board relating to particular election returns to which private respondent

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<sup>198</sup> *Tecson v. COMELEC*, 468 Phil. 421, 462 (2004) [Per J. Vitug, En Banc].

<sup>199</sup> *Samad v. COMELEC*, 296 Phil. 509, 521 (1993) [Per J. Cruz, En Banc].

<sup>200</sup> CONST., art. VI, sec. 17 provides:

SECTION 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

CONST., art. VII, sec. 4(7) provides:

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

<sup>201</sup> 434 Phil. 161 (2002) [Per J. Carpio, En Banc].

<sup>202</sup> Id. at 167.

<sup>203</sup> 440 Phil. 683 (2002) [Per J. Callejo, Sr., En Banc].



should have made *specific* verbal objections subsequently reduced to writing[.]<sup>204</sup> (Emphasis supplied)

In *Macabago*, the need to aver a particular controversy at the first instance was emphasized. As pre-proclamation cases demand the petitioner to raise illegality *immediately*,<sup>205</sup> there is a need for “specific verbal objections subsequently reduced to writing.”<sup>206</sup>

Speaking on the functions of the Commission on Elections and the House of Representatives Electoral Tribunal vis-à-vis election contests, the Court has also been strict in requiring specification and substantiation.<sup>207</sup>

The same wisdom must animate this Tribunal as we judge all “contests relating to the election, returns, and qualifications”<sup>208</sup> of the highest electoral positions in our Republic.

Considering that specificity is at the crux of post-election challenges, in general, and election protests, in particular, it follows that petitions wanting in this requisite must be dismissed.

## II

This Tribunal likewise requires specific allegations in the protests before it.

Rule 17 of A.M. No. 10-4-29-SC, the 2010 Rules of the Presidential Electoral Tribunal, states:

RULE 17. Contents of the Protest or Petition. —

(A) An election protest or petition for *quo warranto* shall commonly state the following facts:

- (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 also state:

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<sup>204</sup> Id. at 692.

<sup>205</sup> *Laodenio v. COMELEC*, 342 Phil. 676 (1997) [Per J. Bellosillo, En Banc].

<sup>206</sup> *Macabago v. COMELEC*, 440 Phil. 683, 692 (2002) [Per J. Callejo, Sr., En Banc].

<sup>207</sup> *Corvera v. Savillo*, G.R. No. 208610 (Notice), November 11, 2014; *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013; *Lloren v. COMELEC*, 695 Phil. 288 (2012) [Per J. Bersamin, En Banc]; and *Peña v. HRET*, 337 Phil. 70 (1997) [Per J. Torres, Sr., En Banc].

<sup>208</sup> CONST., art. VII, sec. 4.

- (a) the facts giving the petitioner standing to 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 Precinct 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.* (Emphasis supplied)

Correlative provisions govern election contests under the jurisdiction of other tribunals.

The 2013 Rules of the Senate Electoral Tribunal and the 2015 Rules of the House of Representatives Electoral Tribunal both provide that “[a]n election protest shall state . . . the specific acts or omissions constituting the electoral fraud, anomaly or irregularity in the contested precincts.”<sup>209</sup>

Specificity is also required by both Section 10 of A.M. No. 10-4-1-SC, or the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials, and Rule 6, Section 7 of Commission on Elections Resolution No. 8804, or the Rules of Procedure on Disputes in an Automated Election System.

Section 10 of A.M. No. 10-4-1-SC states:

SECTION 10. *Contests of the protest or petition.* –

<sup>209</sup> SET RULES (2013), Rule 22.

HRET RULES (2015), Rule 17 similarly states:

....

An election protest shall state:

....

(4) The specific acts or omissions complained of constituting the electoral frauds, anomalies or irregularities in the contested precincts[.]



(a) An election protest or petition for *quo warranto* shall ***commonly*** and specifically state the following facts:

- (i) the position involved;
- (ii) the date of proclamation; and
- (iii) the number of votes credited to the parties per the proclamation.

(b) A *quo warranto* petition shall also state:

- (i) if the petitioner is not a candidate for the same municipal position, the facts giving the petitioner standing to file the petition;
- (ii) the qualifications for the municipal office and the disqualifications prescribed by law;
- (iii) the petitioner's cited ground for ineligibility or the specific acts of disloyalty to the Republic of the Philippines.

(c) An election protest shall also state:

- (i) that the protestant was a candidate who had duly filed a certificate of candidacy and had been voted for the same office;
- (ii) the total number of precincts in the municipality;
- (iii) the protested precincts and votes of the parties are not specified, an explanation why the votes are not specified; and
- (iv) *a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts.*<sup>210</sup> (Emphasis supplied)

Rule 6, Section 7 of Commission on Elections Resolution No. 8804 similarly provides:

SECTION 7. *Contests of the protest or petition.* - An election protest or petition for *quo warranto* shall specifically state the following facts:

- a) The position involved
- b) That the protestant was a candidate who has duly filed a certificate of candidacy and has been voted for the same office.
- c) The date of proclamation; and
- d) The number of votes credited to the parties per proclamation

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<sup>210</sup> A.M. No. 10-4-1-SC (2012), sec. 10.

An election protest shall also state:

e) The total number of precincts of the region, province or city concerned;

f) The protested precincts and votes of the parties in the protested precincts per the Statement of Votes By Precinct or, if the votes of the parties are not specified an explanation why the votes are not specified;

g) *A detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts.*<sup>211</sup> (Emphasis supplied)

Basic wisdom underlies the need for specific allegations before entertaining pleas to set aside election outcomes. “The power to annul an election should be exercised with *the greatest care* as it involves the free and fair expression of the popular will.”<sup>212</sup> A losing candidate cannot use an election protest as an expedient means to unseat the winner, when they are unsure of their factual bases.<sup>213</sup> “*It is only in extreme cases of fraud and under circumstances which demonstrate to the fullest degree a fundamental and wanton disregard of the law that elections are annulled, and then only when it becomes impossible to take any other step.*”<sup>214</sup>

The Court has underscored that a protest wanting in specific factual footing must be dismissed; “otherwise, the assumption of an elected public official may, and will always be held up by petitions of this sort by the losing candidate.”<sup>215</sup> To entertain it would be to put no end to divisive and disruptive electoral contests,<sup>216</sup> and “the whole election process will deteriorate into an endless stream of crabs pulling at each other, racing to disembark from the water.”<sup>217</sup>

The requirement of specificity deters fishing expeditions by losing candidates who, without clear bases for challenging election outcomes, are merely gambling with probabilities.<sup>218</sup> It prevents situations in which sweeping allegations of electoral fraud are used by defeated contenders to discover by happenstance surmised irregularities in elections.

The requirement also serves a practical purpose. As election protests determine who secured the plurality of votes, they require a manual recount and piecemeal scrutiny of ballots, demanding significant time and resources.

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<sup>211</sup> COMELEC Resolution No. 8804 (2010), Rule 6, sec. 7.

<sup>212</sup> *Peña v. HRET*, 337 Phil. 70, 78 (1997) [Per J. Torres, Sr., En Banc].

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 78–79.

<sup>215</sup> *Id.* at 77.

<sup>216</sup> *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013.

<sup>217</sup> *Peña v. HRET*, 337 Phil. 70, 78 (1997) [Per J. Torres, Sr., En Banc].

<sup>218</sup> *Abaya v. Concepcion*, G.R. No. L-56361, January 30, 1981 [Per J. Abad Santos, En Banc].



Thus, even before the actual scrutiny of ballots, proceedings to determine the sufficiency of a protest's allegations are required.<sup>219</sup> These include the protestee's submission of an answer or counter-protest,<sup>220</sup> the parties' submission of preliminary conference briefs,<sup>221</sup> a preliminary conference,<sup>222</sup> and the formation of revision committees.<sup>223</sup> Only then may this Tribunal determine if proceeding with the scrutiny demanded by the protestant is genuinely indispensable, or a mere superfluity that will needlessly expend scarce time and resources.

Failing to forward a "detailed specification of the acts or omissions complained of"<sup>224</sup> makes the protest insufficient in form and substance, warranting its summary dismissal.<sup>225</sup>

As mentioned earlier, the Court has been strict in requiring specificity.

In *Corvera v. Savillo*,<sup>226</sup> the losing mayoralty candidate filed an election protest alleging "discrepancies in the Random Manual Audit, glitches in the operation of the Precinct Count Optical Scan machines and strange pattern of votes . . . obtained by the administration, opposition and independent candidates in the Certificate of Canvass."<sup>227</sup> The Court sustained the Regional Trial Court in dismissing the protest after finding that the requirements under A.M. No. 10-4-1-SC were not satisfied:

The [Regional Trial Court] extensively laid out the reasons and thoroughly explained to the satisfaction of the Court why it ruled to dismiss the election protest:

An intensive study and exhaustive analysis of the allegations of the Petition revealed that the insufficiency in substance arose from the failure of the protest to: (a) indicate the total number of precincts in the municipality of San Jose; (b) specifically state in detail the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts and how the various irregularities and anomalies had affected the results of the elections; (c) identify the precincts where the PCOS machines malfunctioned or failed to accurately account for the votes in favor of protestant; (d) allege with particularity the number of precincts where the CF cards were found defective; and (e) explain with particularity the failure to transmit the results and in what precincts. The foregoing considered, juxtaposed with the pertinent

<sup>219</sup> PET RULES (2010), Rules 22–29.

<sup>220</sup> PET RULES (2010), Rule 24 and Rule 29(b).

<sup>221</sup> PET RULES (2010), Rule 29.

<sup>222</sup> PET RULES (2010), Rule 37(a).

<sup>223</sup> PET RULES (2010), Rule 38.

<sup>224</sup> PET RULES (2010), Rule 17.

<sup>225</sup> PET RULES (2010), Rule 21(a).

<sup>226</sup> G.R. No. 208610 (Notice), November 11, 2014.

<sup>227</sup> Id.



provisions of A.M. No. 10-4-1-SC quoted hereunder, it succinctly appears that the instant election protest is destined for doomsday.<sup>228</sup> (Citation omitted)

The Court stressed in *Corvera* that a protest lacking in detail as to the “acts or omissions complained of showing the electoral frauds, anomalies, or irregularities”<sup>229</sup> should be struck down for being insufficient in form and substance. Bare claims of “glitches,” strange voting patterns, and discrepancies in the audit, without more, were found to be hollow accusations by a losing candidate unable to come to terms with defeat.<sup>230</sup> In so ruling, the Court affirmed the need for strict compliance with the specificity requirement.

*Corvera* follows a line of jurisprudence affirming that general and sweeping allegations of election fraud and irregularities warrant a protest’s dismissal: *Peña v. House of Representatives Electoral Tribunal*,<sup>231</sup> *Aguillo v. Commission on Elections*,<sup>232</sup> and *Lloren v. Commission on Elections*.<sup>233</sup>

In *Peña*, petitioner Teodoro Peña, after losing in the congressional elections, contested 700 out of 742 election precincts *without specifically pointing out the precincts where the anomalies and irregularities had allegedly taken place*. Peña argued, as follows:

7. The elections in the precincts of the Second District of Palawan were tainted with massive fraud, widespread vote-buying, intimidation and terrorism and other serious irregularities committed before, during and after the voting, and during the counting of votes and the preparation of election returns and certificates of canvass which affected the results of the election. Among the fraudulent acts committed were the massive vote-buying and intimidation of voters, disenfranchisement of petitioner’s known supporters through systematic deletion of names from the list of voters, allowing persons to vote in excess of the number of registered voters, misappreciation, misreading and non-reading of protestant’s ballots and other irregularities.<sup>234</sup> (Citation omitted)

The Court ruled that it was proper to dismiss Peña’s protest, noting that it failed to point to where and how the alleged violations occurred. It considered this omission fatal, as it went into the substance of the protest:

The prescription that the petition must be sufficient in form and substance means that the petition *must be more than merely rhetorical*. If

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<sup>228</sup> *Corvera v. Savillo*, G.R. No. 208610 (Notice), November 11, 2014.

<sup>229</sup> A.M. No. 10-4-1-SC (2010), Rule 2, sec. 10, Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials.

<sup>230</sup> *Corvera v. Savillo*, G.R. No. 208610 (Notice), November 11, 2014.

<sup>231</sup> 337 Phil. 70 (1997) [Per J. Torres, Sr., En Banc].

<sup>232</sup> G.R. No. 197975-76 (Notice), March 19, 2013.

<sup>233</sup> 695 Phil. 288 (2012) [Per J. Bersamin, En Banc].

<sup>234</sup> *Peña v. HRET*, 337 Phil. 70, 72 (1997) [Per J. Torres, Sr., En Banc].



the allegations contained therein are unsupported by even the faintest whisper of authority in fact and law, then there is no other course than to dismiss the petition, otherwise, the assumption of an elected official may, and will always be held up by petitions of this sort by a losing candidate.<sup>235</sup> (Emphasis supplied)

In *Aguillo*, petitioners Nila Aguillo and Benjamin Del Rosario assailed the results of local elections in 133 clustered precincts in Cabuyao, Laguna. They alleged “massive vote buying activities,”<sup>236</sup> “repeated or double transmission of results[,]”<sup>237</sup> and “several instances of glitches and technical and electronic problems attending the counting and canvassing of votes[.]”<sup>238</sup>

The respondents assailed the protests for failing to specify the precincts in which the supposed fraud transpired. In ruling for the respondents, the Court invoked Rule 2, Section 10 of A.M. No. 10-4-1-SC, on the rule requiring specificity.<sup>239</sup> Point by point, the Court addressed the allegations in the protest. First, petitioners’ claim of “repeated or double transmission”<sup>240</sup> was easily belied by the statement of votes by precinct. Second, the allegation of “massive vote buying”<sup>241</sup> was not supported by any affidavit. Finally, the claim of “several instances of glitches and technical and electronic problems attending the counting and canvassing of votes”<sup>242</sup> was not supported by copies of election returns. Thus, the Court concluded:

[W]hat protestants entertain are mere doubts, fears and apprehensions in the efficiency, accuracy and reliability of the automated elections, [fueling] their self-serving belief that they probably won.

These doubts, fears[,] and expressions of probability are not actionable. They do not constitute a cause of action simply because they are not yet in the realm of a wrong which is the essence of a cause of action.<sup>243</sup> (Citation omitted)

In *Lloren*, the losing candidate for vice mayor assailed the results of the 2010 elections, alleging “massive vote-buying, intimidation, defective PCOS machines in all the clustered precincts, election fraud, and other election-related manipulations[.]”<sup>244</sup> He failed, however, to indicate the number of precincts in the municipality, leading the Court to affirm the Regional Trial Court’s dismissal of the protest:

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<sup>235</sup> Id. at 77.

<sup>236</sup> *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013.

<sup>237</sup> Id.

<sup>238</sup> Id.

<sup>239</sup> A.M. No. 10-4-1-SC (2010), Rule 2, sec. 10, Rules of Procedure in Election Contests Before the Courts Involving Municipal Officials. It requires “a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities the protested precincts.”

<sup>240</sup> *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013

<sup>241</sup> Id.

<sup>242</sup> Id.

<sup>243</sup> Id.

<sup>244</sup> *Lloren v. COMELEC*, 695 Phil. 288, 292 (2012) [Per J. Bersamin, En Banc].



As the findings of the [Regional Trial Court] show, petitioner did not indicate the total number of precincts in the municipality in his election protest. The omission rendered the election protest insufficient in form and content, and warranted its summary dismissal, in accordance with Section 12, Rule 2 of the Rules in A.M. No. 10-4-1-SC[.]<sup>245</sup>

Through *Lloren*, the Court hearkened to the imperative of making specific allegations of fraud, irregularities, or anomalies, the failure of which warrants a protest's dismissal.

There may have been cases, such as *Cagas v. Commission on Elections*<sup>246</sup> (2012) and *Panlilio v. Commission on Elections*<sup>247</sup> (2009), where the Court appeared lenient on the specificity requirement.

However, these cases never truly hinged on the requirement of making specific factual allegations, but were decided on the basis of jurisdiction. Thus, they set no binding precedent on the matter of specificity in a protest's allegations.

*Cagas*<sup>248</sup> centered on whether the Court had jurisdiction over a petition for certiorari assailing an interlocutory order of a Commission on Elections Division. The Court ruled in the negative, as the proper remedy was to seek a review of the order during the appeal of the Division's decision. The Court's statement that it would respect the Commission on Elections' "determination of the sufficiency of allegations contained in election protests"<sup>249</sup> was nothing more than a preliminary statement on a peripheral matter that was not yet ripe for consideration, as it remained contingent on the Commission on Election's appraisal.

Similarly, *Panlilio*<sup>250</sup> involved an issue of jurisdiction. There, the petitioner elevated to the Court interlocutory orders rendered by a Commission on Elections Division. The Court ruled that it had no jurisdiction.<sup>251</sup>

On the other hand, *Corvera*, *Aguillo*, and *Lloren* have been more definitive—leaving little, if any, doubt in their pronouncements.

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<sup>245</sup> Id. at 300.

<sup>246</sup> 679 Phil. 640 (2012) [Per J. Bersamin, En Banc].

<sup>247</sup> 610 Phil. 551 (2009) [Per J. Leonardo-de Castro, En Banc].

<sup>248</sup> *Cagas v. Commission on Elections*, 679 Phil. 640 (2012) [Per J. Bersamin, En Banc].

<sup>249</sup> Id. at 654.

<sup>250</sup> 610 Phil. 551 (2009) [Per J. Leonardo-de Castro, En Banc].

<sup>251</sup> Id. at 560. The Court ruled that under Rule 2, Section 5(c) of the 1993 Commission on Elections Rules of Procedure, "any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission *en banc* except motions on interlocutory orders of the Division, which shall be resolved by the Division which issued the order."



*Corvera* minced no words in characterizing a protest wanting in specific factual allegations:

The foregoing<sup>252</sup> considered, juxtaposed with the pertinent provisions of A.M. No. 10-4-1-SC quoted hereunder, it succinctly appears that the instant election protest is destined for doomsday.<sup>253</sup>

Meanwhile, as *Aguillo* underscored:

An election protest is allowed to ascertain, not suppress, the true will of the electorate. It is not meant to save face, to keep pride for the loser. This is exactly the reason why an election protest is required to state “a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts.” An election protest which is not only divisive but also disruptive of the affairs of a political unit cannot and should never be allowed to proceed on mere belief and suspicion of a losing candidate.<sup>254</sup>

*Lloren*’s language also leaves no room for doubt. It characterized dismissal as “*mandatory*”:

The omission<sup>255</sup> rendered the election protest insufficient in form and content, and warranted its summary dismissal, in accordance with Section 12, Rule 2 of the Rules in A.M. No. 10-4-1-SC, . . .

. . . .

We note that the summary dismissal of the election protest upon any of the grounds mentioned in Section 12 is mandatory.<sup>256</sup>

### III

This Protest could have been dismissed under Rule 21 of this Tribunal’s Rules. However, we painstakingly heard every argument to afford the parties due process.

Protestant alleged in his Protest that:

Massive 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-

<sup>252</sup> This refers to the protestant’s failure to specifically state the following in the protest: total number of precincts; detailed acts or omissions complained of showing fraud and irregularities; and specific precincts where the PCOS machines malfunctioned.

<sup>253</sup> *Corvera v. Savillo*, G.R. No. 208610 (Notice), November 11, 2014.

<sup>254</sup> *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013.

<sup>255</sup> This refers to the total number of precincts in the municipality.

<sup>256</sup> *Lloren v. COMELEC*, 695 Phil. 288, 300-301 (2012) [Per J. Bersamin, En Banc].

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/ under votes 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.<sup>257</sup>

These irregularities allegedly occurred in 39,221 clustered precincts scattered in around 27 provinces and cities in the Philippines.<sup>258</sup> Of these clustered precincts, he prayed for the annulment of elections in 2,756 clustered precincts, and the conduct of judicial revision of votes in the remaining 36,465 clustered precincts.<sup>259</sup>

Protestant's allegations appeared bare, laden with generic and repetitious allegations, and lacked critical information as to the time, place, and manner that the alleged irregularities.

For instance, in Lanao del Sur, protestant claimed the presence of "violence, intimidation, and harassment of voters, as well as [the] illegal composition of the [Board of Election Inspectors], and proliferation of batch feeding of pre-shaded ballots in the clustered precincts" as supported by seven affidavits.<sup>260</sup> However, he did not specify which precincts were affected by the alleged irregularities.

In Maguindanao, protestant claimed "terrorism, violence, threats, force, intimidation, pre-shaded ballots, massive substitution of voters and ballot-snatching" as supported by two affidavits.<sup>261</sup> Similarly, there was no particular precinct identified.

In Basilan, protestant contended that "official ballots . . . were not delivered to the polling precincts on Election day,"<sup>262</sup> and "pre-shading was prevalent,"<sup>263</sup> as supported by eight affidavits.<sup>264</sup> He indicated 11 out of the alleged 422 affected precincts.<sup>265</sup>

On protestant's claim that "terrorism, violence, force, threats, [and] intimidation"<sup>266</sup> attended the elections, he made no mention of the acts that shed light on how these occurred. The Protest was silent on how they affected and disturbed the elections in the municipalities where these

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<sup>257</sup> *Rollo*, Vol. II, pp. 928-929.

<sup>258</sup> *Id.* at 1042.

<sup>259</sup> *Id.* at 1039.

<sup>260</sup> *Id.* at 965-968.

<sup>261</sup> *Id.* at 968-970.

<sup>262</sup> *Id.* at 970-974.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.* at 928-929.



supposedly happened. He did not even point to the precincts where these irregularities transpired.

Protestant also referred to the “abnormally high unaccounted votes / undervotes” in 23 provinces and cities, but did not submit a single supporting affidavit, let alone articulate a satisfactory recollection of how these arose.

He likewise argued that the names of deceased persons were included in the Precinct Computerized Voters List,<sup>267</sup> and that flying voters were rampant as they took the place of said supposedly deceased voters.<sup>268</sup> Regrettably, he did not specify where these actually happened.

In any case, despite the blatant lack of specificity, this Tribunal still proceeded to painstakingly scrutinized the attachments protestant appended in his Protest.

Paragraph 7.14 of the Protest alleged that affiant Gonaranao P. Corontoz<sup>269</sup> is an election assistant in Marawi City<sup>270</sup> in Lanao del Sur, yet his Judicial Affidavit, attached as Annex GG-7, stated that he is an election assistant in the municipality of Tamparan.<sup>271</sup>

In addition, Corontoz’s Judicial Affidavit lacked the date of examination:

**Date and Place where examination was conducted:**

**June \_\_\_\_\_, 2016 at the Office of the Provincial Election Supervisor  
ay (sic) Provincial Capitol, Marawi City, Lanao del Sur[.]<sup>272</sup> (Emphasis in the  
original)**

Footnote 77 of the Protest stated that affiant Imelda N. Dungog’s (Dungog) Affidavit is attached as Annex QQ-4,<sup>273</sup> while Amalia S. Mitra’s (Mitra) is attached as Annex QQ-3.<sup>274</sup> However, upon review of the records, Annex QQ-3 turned out to be Dungog’s Affidavit,<sup>275</sup> while Annex QQ-4<sup>276</sup> was Mitra’s Affidavit. Apart from these lapses, Dungog stated that she went to her precinct at 6:05 p.m., way past the official voting hours as prescribed in the Commission on Elections Resolution No. 10088,<sup>277</sup> from 6:00 a.m. to

<sup>267</sup> Id.

<sup>268</sup> Id. at 1019.

<sup>269</sup> In the Judicial Affidavit, his name is spelled as “Gonaranao P. Corontos”.

<sup>270</sup> *Rollo*, Vol. II, p. 966.

<sup>271</sup> *Rollo*, Vol. XIX, p. 15342, Protest Annex GG-7.

<sup>272</sup> Id. at 15343.

<sup>273</sup> *Rollo*, Vol. II, p. 987.

<sup>274</sup> Id.

<sup>275</sup> *Rollo*, Vol. XIX, p. 15784. Protest Annex QQ-3.

<sup>276</sup> Id. at 15787. Protest Annex QQ-4.

<sup>277</sup> COMELEC Resolution No. 10088 (2016), sec. 1 amending sec. 11.

5:00 p.m. only. It is not our business to speculate how Dungog cast her vote when it supposedly had been more than an hour since the polls closed.

Paragraphs 7.130 and 7.131 of the Protest stated that a certain Roy A. Timonio claimed that there was vote-buying from protestee's camp the night before election day, and that members of the Board of Election Inspectors "implemented a 'secure a number stub' scheme before the voters were allowed to vote."<sup>278</sup> On the allegation of vote-buying, footnote 98 stated that Roy A. Timonio's Affidavit is attached as Annex TT-3.<sup>279</sup> On the allegation on "secure a number stub scheme," his Affidavit was supposedly attached as Annex TT-9, per footnote 104.<sup>280</sup> Yet, upon verifying with the case records, there was no Annex TT-9 attached to the Protest, thus the allegation on "secure a number stub scheme" is unsupported.

Annexes UU-2 to UU-6 are missing critical information, particularly, the number of votes obtained by protestant and protestee in certain areas in Iloilo.<sup>281</sup> The same incomplete averments on specific details were found in Annexes III-3,<sup>282</sup> III-4,<sup>283</sup> and III-5.<sup>284</sup>

Annex WW-9, the Affidavit of a certain Cesar Reyes Aguinaldo, Jr. (Aguinaldo) of Sabang Uno, Calauag, Quezon, left a blank on what date he went to his precinct to vote. It also did not state who were the disenfranchised voters. Portions of his Affidavit read:

2. On May \_\_, 2016 at around 9:30AM in the morning/afternoon, I went to Precint (sic) in order to participate in the 2016 National and Local Elections;

....

5. I am executing the affidavit in order to support the truth (sic) allegations that several irregularities were present during the recently concluded elections and that the voters/supporters of \_\_\_\_\_ were positively disenfranchised without any justification at all.<sup>285</sup>

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Amending Certain Provisions of Resolution No. 10057 dated February 11, 2016 or Otherwise Known as the General Instructions for the Boards of Elections Inspectors (BEI) on the Testing and Sealing of Vote Counting Machines (VCMs), and Voting, Counting and Transmission of Election Results in Connection with the 09 May 2016 National and Local Elections.

<sup>278</sup> *Rollo*, Vol. II, p. 993.

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> *Rollo*, Vol. XIX, pp. 15866–15870, Protest Annex UU-2, Affidavit of Berdan Nalve; Annex UU-3, Affidavit of Henry Nuñez; Annex UU-4, Affidavit of Richard S. Terre; Annex UU-5, Affidavit of Marifel Soriano; and Annex UU-6, Affidavit of Jodael Kayle Contreras, all from the Province of Iloilo.

<sup>282</sup> *Id.* at 15727, Protest Annex III-3, Affidavit of Lorenzo Sagucio, Jr. of Iloilo City.

<sup>283</sup> *Id.* at 15728, Protest Annex III-4, Affidavit of Jerson Jaranilla of Iloilo City.

<sup>284</sup> *Id.* at 15729, Protest Annex III-5, Affidavit of Imelda Malte of Iloilo City.

<sup>285</sup> *Id.* at 15915, Annex WW-9, Affidavit of Cesar Reyes Aguinaldo, Jr., Quezon Province.



In any case, Annex WW-9 does not convince this Tribunal that the voters of Quezon were disenfranchised. Aguinaldo stated that protestant's supporters were not allowed to vote because their names "were not included in the Precinct Computerized [Voters] List[.]"<sup>286</sup> He also stated that he knew these voters to be registered and with an active status in the Commission on Elections database.<sup>287</sup> However, it was entirely possible that these voters were assigned in a different precinct. The Precinct Computerized Voters List is limited to the names of registered voters assigned to the particular precinct. It is immaterial for a supposed registered voter to attest to personally knowing that certain registered supporters were not in one list.

Like Annex WW-9, Annex DDD-2<sup>288</sup> also lacked details on who were the disenfranchised voters, this time in Daraga, Albay.<sup>289</sup>

Even without scrutiny of the annexes, the Protest itself left several blanks, likewise signifying the absence of important details:

*Bukidnon*

....

7.132. Protestant Marcos strongly rejects and disputes the election results for the position of Vice-President as reflected above. This election protest assails and impugns the elections results for the position of Vice-President in each of the \_\_\_\_\_ protested clustered precincts that functioned in the province of Leyte because the same do not reflect the true results of the elections thereat.

....

7.137. In view of the foregoing, protestant Marcos prays for the **reopening** of the protested 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), 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, SD cards (main and back up) and the other data storage devices containing electronic data and ballot images in each of the \_\_\_\_\_ protested clustered precincts which functioned in Bukidnon during the last elections.<sup>290</sup> (Emphasis in the original)

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<sup>286</sup> Id.

<sup>287</sup> Id.

<sup>288</sup> Id. at 15602, Protest Annex DDD-2, Affidavit of Cannon Dyan, Manila.

<sup>289</sup> Id.

<sup>290</sup> *Rollo*, Vol. II, pp. 993-995.

Strangely, the allegation under paragraph 7.132 pertained to the province of Leyte, under the sub-heading Bukidnon.<sup>291</sup>

Meanwhile, in Batangas and Cebu City:

7.178. In view of the foregoing, protestant Marcos prays for the **reopening** of the protested 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), 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, SD cards (main and back up) and the other data storage devices containing electronic data and ballot images in each of the \_\_\_\_\_ protested clustered precincts which functioned in Batangas province during the last elections."<sup>292</sup> (Emphasis in the original)

....

7.302 In view of the foregoing, protestant Marcos prays for the **reopening** of the protested 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 Voters' List (EDCVL), 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, SD cards (main and back up) and the other data storage devices containing electronic data and ballot images in each of the \_\_\_\_\_ protested clustered precincts which functions in Cebu City during the last elections."<sup>293</sup> (Emphasis in the original)

In addition, footnote 260 also left particular details blank. Protestant did not indicate which annex pertained to the Certified True Copy of the Certificate of Canvass of Zamboanga City:

<sup>260</sup> Certified true copy of the City/Municipality Certificate of Canvass of Zamboanga City is herein attached and made integral part of the protest as ANNEX \_\_\_\_\_.<sup>294</sup> (Emphasis in the original)

It is not for this Tribunal to supply the missing details that protestant failed to indicate.

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<sup>291</sup> Id. at 994.

<sup>292</sup> Id. at 1004.

<sup>293</sup> Id. at 1032.

<sup>294</sup> Id. at 1034.



As in *Peña*, *Corvera*, *Aguillo*, and *Lloren*, unsubstantiated allegations amount to nothing more than “mere doubts, fears and apprehensions”<sup>295</sup> which deserve scant consideration. “These doubts, fears, and expressions of probability are not actionable. They do not constitute a cause of action simply because they are not yet in the realm of a wrong which is the essence of a cause of action.”<sup>296</sup>

We note that protestant’s claims of:

. . . [m]assive electoral fraud, anomalies, and irregularities, such as, but not limited to terrorism, violence, force, threats, force, intimidation, pre-shading of ballots, vote-buying, substitution of voters, flying voters, pre-loaded [Secure Digital] cards, misreading of ballots, unexplained, irregular and improper rejection of ballots containing votes for protestant, malfunctioning [vote counting machines], and abnormally high unaccounted votes / under votes 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<sup>297</sup>

are glaringly similar to the allegations of the protestants in *Peña* and *Aguillo*. The allegations in *Peña* were articulated as follows:

7. The elections in the precincts of the Second District of Palawan were tainted with massive fraud, widespread vote-buying, intimidation and terrorism and other serious irregularities committed before, during and after the voting, and during the counting of votes and the preparation of election returns and certificates of canvass which affected the results of the election. Among the fraudulent acts committed were the massive vote-buying and intimidation of voters, disenfranchisement of petitioner’s known supporters through systematic deletion of names from the lists of voters, allowing persons to vote in excess of the number of registered voters, misappreciation, misreading and non-reading of protestant’s ballots and other irregularities.

....

9. Had the massive fraud, widespread intimidation and terrorism and other serious irregularities not been committed, the result of the elections for Member of the House of Representatives would have been different and the protestant would have garnered the highest number of votes for the Office of Member of the House of Representatives in the Second District of Palawan, which was the true expression of the will of the voters of the Province of Palawan.<sup>298</sup>

Protestant’s arguments in *Aguillo* were stated in this manner:

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<sup>295</sup> *Aguillo v. COMELEC*, G.R. Nos. 197975-76, (Notice) March 19, 2013.

<sup>296</sup> *Id.*

<sup>297</sup> *Rollo*, Vol. II, pp. 928-929.

<sup>298</sup> *Peña v. HRET*, 337 Phil. 70, 72-73 (1997) [Per J. Torres, Sr., En Banc].



a. Various fraud and irregularities were prevalent at the precinct level, to wit:

....

a.3. Another form of irregularity was the massive vote buying activities, whether in the form of money or kind, perpetrated by Protestee's allies, which further makes it difficult to conclude that the May 10, 2010 elections were clean, credible, honest and democratic. . . .

a.4. Voters who have yet to cast their votes were no longer allowed to vote at 7 o'clock in the evening of election day even if they were within the thirty (30) meter radius from the pooling place, only because they were known supporters of herein Protestant[.]<sup>299</sup>

The glaringly similar allegations in *Peña* and *Aguillo* failed to impress the Court. There is no reason to treat this Protest differently. In fact, with more reason should this Tribunal be strict, as it deals with the two highest positions of power in our Republic.

Even though this Protest could have been dismissed under Rule 21 of this Tribunal's Rules, we painstakingly heard every argument that this Protest raised. We exercised prudence and made more than reasonable allowances for protestant—proceeding with the preliminary conference and permitting him to designate the maximum number of three pilot provinces best signifying his allegations.

Throughout the proceedings, when protestant's allegations were insufficient, this Tribunal resolved to direct him to allege with specificity.<sup>300</sup> On every motion, this Tribunal ordered the opposing party to comment. When new arguments were surreptitiously raised or when allegations were unsubstantiated, we directed that evidence be properly presented.<sup>301</sup>

This Tribunal conducted retrieval, revision, and appreciation of more than two million ballots from the pilot provinces that protestant designated.

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<sup>299</sup> *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013.

<sup>300</sup> Protestant preliminarily delineated his causes of action into two. After asking clarificatory questions during the preliminary conference on July 11, 2017, this Tribunal categorized them into three causes of action instead, and dismissed his first cause of action for being "meaningless and pointless[.]" (*See rollo*, Vol. XLIX, pp. 39523–39579. *Marcos, Jr. v. Robredo*, P.E.T. Case No. 005 (Resolution), October 15, 2019 [Per Curiam]). This Tribunal gave the parties a preliminary conference guide prior to its conduct where it summarized their respective admissions, proposed stipulations, issues, and witnesses. As the parties requested, this Tribunal also gave them the time to comment on it, and these were adopted accordingly. Moreover, when this Tribunal released the results of the revision and appreciation of ballots in the October 15, 2019 Resolution, it resolved to hear the parties again.

<sup>301</sup> When protestant failed to specify his witnesses' corresponding clustered precincts after having been directed to substantiate his allegations, this Tribunal required him to submit anew a list of his witnesses and their corresponding clustered precincts, giving him a fresh period of time to do so. (*Marcos, Jr. v. Robredo*, P.E.T. Case No. 005, October 15, 2019 [Per Curiam, En Banc]).



In the October 15, 2019 Resolution,<sup>302</sup> this Tribunal informed the parties of the results of the revision and appreciation of ballots in the 5,415 clustered precincts in the pilot provinces.

Even as the results showed that protestant failed to establish massive fraud or irregularities in his designated pilot provinces, this Tribunal opted to take the prudent course yet again.

In the interest of due process, this Tribunal granted the parties another opportunity to be heard on whether it should proceed with the case. The parties were directed to submit a memorandum containing their comments and positions on specifically delineated issues within 20 working days.<sup>303</sup>

In separate motions, the parties requested for time to view, photocopy, and secure hard copies of the voluminous records of the case. This Tribunal granted their prayer in its November 5, 2019 Resolution.<sup>304</sup>

Later, the parties each submitted a Memorandum,<sup>305</sup> as noted in this Tribunal's January 7, 2020 Resolution.<sup>306</sup> Thereafter, several incidents concerning the contracts of this Tribunal's personnel, commissioners, and funding were resolved with dispatch.

In their respective memoranda, the parties made serious factual allegations that warranted verification from the Commission on Elections. They also raised constitutional issues, which led this Tribunal to require the Office of the Solicitor General's comment for a fair and full resolution of this Protest.

At every step, this Tribunal did not shirk its duty and afforded the parties due process to make and defend their arguments in the proper forum.

#### IV

In election protests before this Tribunal, the mandatory ceiling in designating pilot provinces is three. Failure to show substantial recovery of votes in these pilot provinces entails the protest's dismissal.<sup>307</sup>

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<sup>302</sup> *Rollo*, Vol. XLIX, pp. 39523–39579. *Marcos, Jr. v. Robredo*, P.E.T. Case No. 005, October 15, 2019 [Per Curiam, En Banc].

<sup>303</sup> *Id.* at 54.

<sup>304</sup> *Rollo*, Vol. XLIX, pp. 39652–39653.

<sup>305</sup> *Id.* at 39655–40098. Protestee's Memorandum; *rollo*, Vol. L, pp. 40341–40935, Protestant's Memorandum.

<sup>306</sup> *Rollo*, Vol. L, pp. 41169–41172.

<sup>307</sup> PET RULES (2010), Rule 65.

#### IV (A)

Rule 65 of this Tribunal's Rules mandates an election protest to be dismissed when the results of the revision and appreciation of the ballots in the pilot provinces do not support the allegation of fraud or irregularities. It states:

RULE 65. *Dismissal; when proper.* – The Tribunal *may* require the protestant or counter-protestant to indicate, within a fixed period, the province or provinces numbering not more than three, best exemplifying the frauds or irregularities alleged in his petition; and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof, and after making reasonable allowances, the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest.

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

Rule 65 gives this Tribunal the *discretion* to direct the protestant or counter-protestant to designate the pilot provinces that would best exemplify the alleged frauds or irregularities. This is apparent in the use of the permissive word, *may*:

The word “may” in Rule 65 refers to the discretion of the Tribunal to dismiss or not the protest, and if the Tribunal does not dismiss the protest, to require the protestant to designate **“not more than three”** pilot provinces, **a mandatory ceiling. The word “may” recognizes that the Tribunal may summarily dismiss the protest, in which event there will be no reason to require the designation of pilot provinces. But if the Tribunal does not dismiss the protest, there will be a need to designate “not more than three” pilot provinces.** The word “may” has never been interpreted to pertain to the number of pilot provinces, which must be “not more than three,” a language which is a clear mandatory command that the number of pilot provinces shall not exceed three.<sup>308</sup> (Emphasis in the original)

While this Tribunal may direct the protestant to designate pilot provinces, Rule 65 also provides a mandatory ceiling of “not more than three pilot provinces,” limiting its designation to a maximum of three.

A ceiling is likewise imposed in election protests lodged before the Senate Electoral Tribunal<sup>309</sup> and the House of Representatives Electoral

<sup>308</sup> *Rollo*, Vol. XLIX, pp. 39580–39589. J. Carpio, Dissenting Opinion in *Marcos, Jr. v. Robredo*, P.E.T. Case No. 005, October 15, 2019 [Per Curiam, En Banc].

<sup>309</sup> SET RULES (2013), Rules 39 and 42 states:

RULE 39. *Preliminary Conference; Purpose* — After the filing of the last responsive pleading and the issues have been joined, the Tribunal shall call the parties to preliminary conference to consider:



Tribunal.<sup>310</sup> In these tribunals, the protestant or protestee designates pilot precincts which consist of not more than 25% of the total number of those protested. The tribunals are mandated to direct the party to designate pilot precincts that best exemplify the electoral fraud or anomaly, and no discretion is afforded to them on this point.

Election protests filed before the trial courts and the Commission on Elections require a similar limitation.

In election protests involving elective regional, provincial, and city officials, Commission on Elections Resolution No. 8804, as amended,<sup>311</sup> requires the protestant to list, as early as in the preliminary conference, pilot precincts for initial recount which are “at most twenty (20%) of the total number of his [or her] protested clustered precincts, but in no case exceeding two hundred (200) clustered precincts or be less than twenty (20) clustered precincts”<sup>312</sup> that best illustrates the protest’s merits.

....

In an election protest, the following shall also be considered:

*e. The list of pilot precincts consisting of not more than twenty-five percent (25%) of the total number of contested precincts, which the party deems as best exemplifying or demonstrating the electoral fraud or anomaly pleaded[.]* (Emphasis supplied)

See also:

RULE 42. *Preliminary Conference Brief.* — Not later than five (5) working days before the preliminary conference, the parties shall file with the Tribunal in fifteen (15) legible copies and serve on the adverse party or parties, both through personal service, a preliminary conference brief, which shall contain:

....

In an election protest, the preliminary conference brief shall also contain the following:

*f. The list of pilot precincts consisting of not more than twenty-five percent (25%) of the total number of contested precincts, which the party deems as best exemplifying or demonstrating the electoral fraud or anomaly pleaded[.]*

<sup>310</sup> HRET RULES (2015), Rule 40 provides:

RULE 40. *Post-Revision Determination of the Merit or Legitimacy of Protest Prior to Revision of Counter-Protest; Pilot Precincts; Initial Revision and/or Technical Examination.* — 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 and the protestee shall be required to state and designate in the preliminary conference brief, at most twenty-five (25%) percent of the total number of precincts involved in the protest or counter-protest, as the case may be, which said parties deem as best exemplifying or demonstrating the electoral irregularities or fraud pleaded by them.

The revision of the ballots or the examination, verification or re-tabulation of election returns and the reception of evidence shall begin only with the designated pilot protested precincts.

The revision of ballots or the examination, verification or retabulation of election returns and the reception of evidence in the remaining seventy-five (75%) protested precincts and twenty-five percent (25%) counter-protested precincts shall not commence until the Tribunal shall have determined through appreciation of ballots or election documents and/or reception of evidence, within a period not exceeding ten (10) successive working days, the merit or legitimacy of the protest, relative to the designated 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 may proceed with the revision of the ballots or the examination, verification or re-tabulation of election returns in the remaining contested precincts.

The foregoing shall likewise apply to the twenty-five percent (25%) of designated pilot counter-protested precincts.

However, if the proclamation margin is only one thousand (1,000) votes or less, the revision of ballots or the examination, verification or re-tabulation of election returns and/or reception of evidence shall cover all the contested precincts. (Emphasis supplied)

<sup>311</sup> COMELEC Resolution No. 9164 (2011).

<sup>312</sup> COMELEC Resolution No. 9164 (2011), sec. 1.



A.M. No. 10-4-1-SC<sup>313</sup> and A.M. No. 07-4-15-SC,<sup>314</sup> which respectively govern election protests against elective municipal officials and barangay officials, require the protestant in both cases to pinpoint “a number of precincts, corresponding to *twenty percent [20%] of the total revised protested precincts*, that will best attest to the votes recovered or will best exemplify the frauds or irregularities pleaded”<sup>315</sup> to determine the merit of the protest.

Clearly, there is a mandatory ceiling in designating pilot provinces across different tribunals where election results may be contested, and for good reason.

#### IV (B)

This Tribunal was explicit in imposing the mandatory ceiling in pilot provinces to serve as a litmus test of the allegations in this protest.

*As early as the preliminary conference in this case, this Tribunal has explicitly stated that the pilot provinces shall serve as a litmus test “by which the Tribunal will make a determination as to whether it would proceed with the Protest—that is, retrieve and revise the ballots for the remaining protested clustered precinct—or simply dismiss the Protest for failure of the protestant to make out his case.”*<sup>316</sup> It is improper to impose new rules when the purpose of the proceedings before this Tribunal had been categorical at the outset. There is no reason to abandon this Tribunal’s unanimous ruling on this point.

When no substantial recovery of votes in the pilot provinces is shown, the election protest must be dismissed. This principle is consistent across all three tribunals.

In the Senate Electoral Tribunal:

RULE 76. *Pilot Precincts; Initial Determination.* — The revision of the ballots or the correction of manifest errors and reception of evidence shall begin with pilot precincts. If after the appreciation of ballots or election documents and/or reception of evidence in the pilot precincts, the Tribunal determines that the officially proclaimed results of the contested election will not be affected, the Tribunal shall dismiss the protest, counter or cross protest without further proceedings.<sup>317</sup>

<sup>313</sup> Rules of Procedure in Election Contests Before the Courts involving Elective Municipal Officials (2010), Rule 10, sec. 10.

<sup>314</sup> Rules of Procedure in Election Contests before the Courts Involving Elective Municipal and Barangay Officials (2007). The title of the rules does not appear to have been amended, but election protests involving elective municipal officials are now covered by SC Administrative Matter No. 10-4-1-SC.

<sup>315</sup> See A.M. No. 10-4-1-SC (2010), Rule 10, sec. 10 and A.M. No. 07-4-15-SC (2007), Rule 10, sec. 9.

<sup>316</sup> *Rollo*, Vol. XXXII, p. 24591.

<sup>317</sup> SET RULES (2013), Rule 76.



Likewise, in the House of Representatives Electoral Tribunal:

RULE 40. *Post-Revision Determination of the Merit or Legitimacy of Protest Prior to Revision of Counter-Protest; Pilot Precincts; Initial Revision and/or Technical Examination. — . . .*

The revision of the ballots or the examination, verification or re-tabulation of election returns and the reception of evidence shall begin only with the designated pilot protested precincts.

The revision of ballots or the examination, verification or re-tabulation of election returns and the reception of evidence in the remaining seventy-five (75%) protested precincts and twenty-five percent (25%) counter-protested precincts shall not commence until the Tribunal shall have determined through appreciation of ballots or election documents and/or reception of evidence, within a period not exceeding ten (10) successive working days, *the merit or legitimacy of the protest, relative to the designated 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 may proceed with the revision of the ballots or the examination, verification or re-tabulation of election returns in the remaining contested precincts.*

The foregoing shall likewise apply to the twenty-five percent (25%) of designated pilot counter-protested precincts.

However, if the proclamation margin is only one thousand (1,000) votes or less, the revision of ballots or the examination, verification or re-tabulation of election returns and/or reception of evidence shall cover all the contested precincts.<sup>318</sup> (Emphasis supplied)

For election protests involving elective regional, provincial, and city officials:

Rule 15  
Recount of Ballots

SECTION 6. *Conduct of the Recount. — . . .*

(b) The recount of the ballots in the remaining contested precincts shall not commence until the Division concerned shall have made a determination on the merit of the protest based on the results of the recount of the votes on the ballots from the pilot protested precincts and the review of other documentary exhibits which the protestant may submit. The documentary exhibits may be submitted by the protestant within a non-extendible period of ten (10) days from the completion of the recount of the pilot protested precincts.

<sup>318</sup> HRET RULES (2015), Rule 40.

Based on the above determination, *the Division may dismiss the protest, without further proceedings, if no reasonable recovery could be established from the pilot protested precincts.* Otherwise, the recount of the ballots in the remaining protested precincts shall proceed. The recount of the pilot counter-protested precincts if substantial recovery is likewise established by the counter protestant, shall then follow. For this purpose, there is substantial recovery when the protestant or counter protestant is able to recover at least 20% of the overall vote lead of the protestee or counter protestee.<sup>319</sup> (Emphasis supplied)

Similar language was employed concerning election protests against elective municipal officials:

Rule 10  
Revision of Ballots

....

SECTION 10. Post-revision determination of the merit of legitimacy of the protest prior to revision of the counter-protest. — .... Based on the results of this post-revision preliminary determination, *the court may dismiss the protest without further proceedings if the validity of the grounds for the protest is not established by the evidence from the chosen twenty percent (20%) of the protested precincts;* or proceed with revision or examination of the ballots, or the verification or re-tabulation of election returns in the counter-protested precincts. In the latter case, the protestee shall be required to pay the cash deposit within a non-extendible period of three (3) days from notice.<sup>320</sup> (Emphasis supplied.)

Finally, as to elective barangay officials:

Rule 10  
Revision of Ballots

....

SECTION 9. *Post-revision determination of the merit of legitimacy of the protest prior to revision of the counter-protest. — . . .*

Based on the results of such post-revision determination, *the court may dismiss the protest without further proceedings, if and when no reasonable recovery was established from the twenty percent pinpointed precincts,* or proceed with revision of the ballots or the examination, verification or re-tabulation of election returns in the counter-protested precincts.<sup>321</sup> (Emphasis supplied)

The results upon examination of ballots in the pilot provinces determine whether this Tribunal should proceed with the retrieval and

<sup>319</sup> COMELEC Resolution No. 8804 (201), as amended by Resolution No. 9720, Rule 15, sec. 6(b).

<sup>320</sup> A.M. No. 10-4-1-SC (2010), Rule 10, sec. 10.

<sup>321</sup> A.M. No. 07-4-15-SC (2007), Rule 10, sec. 9.



revision of the remaining ballots in the other precincts. Thus, in this case, if the results in the pilot provinces supported protestant's allegation of massive fraud and irregularities *in protestee's favor*, this Tribunal must proceed with the Protest. Otherwise, it must be dismissed.<sup>322</sup>

Accordingly, in the Preliminary Conference Order, this Tribunal directed protestant to designate three provinces that best exemplified the frauds or irregularities he claims.<sup>323</sup> Protestant, in turn, chose Camarines Sur, Iloilo, and Negros Oriental.<sup>324</sup>

A protestant or counter-protestant freely chooses their pilot provinces and makes the representation before this Tribunal that these provinces best exemplified the fraud or irregularities alleged in the Protest. Hence, the chosen pilot provinces are expected to cover *all* the causes of actions on these grounds. To allow a different set of pilot provinces for every cause of action would be to contravene the mandatory ceiling of "not more than three" pilot provinces.<sup>325</sup>

Additionally, providing different sets of pilot provinces for every cause of action would amount to a fishing expedition, where the parties will be emboldened to designate as many provinces or precincts as they can, in the hope that one of them will prove their allegation of fraud or irregularity. This, we cannot condone.

An election protest lodged before this Tribunal raises factual issues of fraud, anomalies, or irregularities in the presidential and vice presidential elections. Rule 65 itself refers to the "frauds or irregularities"<sup>326</sup> alleged in the election protest. The expansive coverage of Rule 65 means that it encompasses all mechanisms.

If, indeed, protestant was convinced of his claims in Lanao del Sur, Maguindanao, and Basilan, then he should have indicated those three as his pilot provinces. But he did not, to no fault of this Tribunal.

The guidelines, incidents, proceedings, and *findings* in the revision and appreciation of ballots were laid out in the October 15, 2019 Resolution which this Tribunal unanimously passed. The ballots from the three pilot provinces that protestant handpicked to substantiate his allegations—Camarines Sur, Iloilo, and Negros Oriental—were thoroughly scrutinized.<sup>327</sup>

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<sup>322</sup> *Rollo*, Vol. XLIX, pp. 39523–39579. *Marcos, Jr. v. Robredo*, P.E.T. Case No. 005, October 15, 2019 [Per Curiam, En Banc].

<sup>323</sup> *Rollo*, Vol. XXXII, p. 24591.

<sup>324</sup> *Id.*

<sup>325</sup> PET RULES (2010), Rule 65.

<sup>326</sup> PET RULES (2010), Rule 65.

<sup>327</sup> *Rollo*, Vol. XLIX, p. 39542, October 15, 2019 Resolution.

As witnessed by the parties' representatives, this Tribunal went over the ballots from 5,415 clustered precincts in these provinces.<sup>328</sup>

Having carefully ruled on every claim and objection, this Tribunal tallied 1,510,178 votes in protestee's favor, and 204,512 votes in protestant's favor. It resulted in protestee increasing her lead over protestant from 263,473 to 278,566,<sup>329</sup> confirming her victory in the 2016 elections.

#### IV (C)

Protestant invoked *Abayon v. House of Representatives Electoral Tribunal*<sup>330</sup> to justify that the third cause of action for annulment of elections stands even if the result of the revision and appreciation of ballots affirmed protestee's victory.

Both parties cited *Abayon* in their pleadings. This Tribunal takes the opportunity to discuss the case.

*Abayon* involved Raul A. Daza's (Daza) election protest over the position of Representative of the First Legislative District of Northern Samar against Harlin C. Abayon (Abayon) concerning the 2013 elections. Abayon won by 52 votes.<sup>331</sup>

Daza assailed the results in 25 clustered precincts in the municipalities of Biri, Capul, Catarman, Lavezares, San Isidro, and Victoria in Northern Samar. He averred that there was terrorism, "massive fraud, vote-buying, intimidation, employment of illegal and fraudulent devices and schemes before, during, and after the elections" to benefit Abayon.<sup>332</sup>

Upon revision of ballots, the House of Representatives Electoral Tribunal found that Abayon's votes increased by 28, and Daza's by 14. However, Daza *moved to withdraw* his prayer for recount, revision, and reappreciation of the ballots from the municipalities of Biri, Capul, and San Isidro. He also prayed that the tribunal receive evidence on the issue of terrorism.<sup>333</sup>

The House of Representatives Electoral Tribunal eventually annulled the results in five clustered precincts and deducted the votes which the parties received in specific clustered precincts. It ruled that Daza established

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<sup>328</sup> Id. at 39565.

<sup>329</sup> Id. at 39574.

<sup>330</sup> 785 Phil. 683 (2016) [Per J. Mendoza, Special En Banc].

<sup>331</sup> Id. at 690–691.

<sup>332</sup> Id. at 691.

<sup>333</sup> Id. at 692.



that 50% of the votes cast in these clustered precincts were marred by massive terrorism, and it was impossible to determine the good votes from the bad.<sup>334</sup> Daza's proclamation as the winning candidate was hinged on the following evidence:

The HRET highlighted that Daza presented testimonial and documentary evidence showing that: (1) prior to the May 13, 2013 elections, the National Democratic Front-Eastern Visayas (NDF-EV) had already shown its animosity and hostility towards him and his then incumbent governor son through the posting on the NDF-EV website and in conspicuous places statements declaring them as enemies of the people of Northern Samar; (2) comic magazines vilifying them were distributed; (3) "pulong-pulong" were held in the concerned barangays where the NDF-EV exhorted the resident-attendees to vote against him and in favor of Abayon, threatening to comeback if the result were otherwise; (4) his supporters and/or fellow Liberal Party candidates were prohibited from campaigning for him, and also from mounting tarpaulins/posters and distributing sample ballots; (5) Abayon had meetings with NDF-EV officials, during which times, he gave them money and guns; and (6) NDF-EV armed partisans were deployed around the school premises in the concerned precincts on election day.

The HRET found that Daza had adduced convincing evidence to establish that fear was instilled in the minds of hundreds of resident-voters in the protested clustered precincts from the time they had attended the "pulong-pulong" up until the election day itself when armed partisans were deployed to the schools to ensure that the voters would not vote for him but for Abayon.<sup>335</sup>

Sitting as a member of the House of Representatives Electoral Tribunal, then Associate Justice Peralta dissented. He found no clear and convincing evidence to warrant the annulment of election results in the five clustered precincts. He opined that the testimonies failed to identify a single ballot that was affected by terrorism. He added that there was no evidence that the alleged acts of terrorism were of Abayon's doing.<sup>336</sup>

He also pointed out that Daza's election protest, which alleged fraud, terrorism, and violence, was in effect a petition to declare a failure of elections, over which the Commission on Elections has exclusive jurisdiction, and not the House of Representatives Electoral Tribunal.<sup>337</sup>

Abayon filed a petition for certiorari before the Supreme Court.<sup>338</sup>

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<sup>334</sup> Id. at 694.

<sup>335</sup> Id. at 693.

<sup>336</sup> Id. at 705-707.

<sup>337</sup> J. Peralta, Dissenting Opinion in *Daza v. Abayon*, HRET Case No. 13-023(EP), February 3, 2016, <[https://hret.gov.ph/file-manager/2013-2016\\_023\\_dissenting-com.pdf](https://hret.gov.ph/file-manager/2013-2016_023_dissenting-com.pdf)> 19-21 [Per R. Enverga, HRET].

<sup>338</sup> *Abayon v. Daza*, 785 Phil. 683, 690 (2016) [Per J. Mendoza, Special En Banc].



The Court held that the House of Representatives Electoral Tribunal has jurisdiction to annul the results:

Both Abayon and Daza do not contest the exclusive jurisdiction of the HRET to decide election protests filed against members of the House of Representatives. They, however, diverge as to the extent of its jurisdiction.

An Election Protest proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds or irregularities. It aims to determine who between them has actually obtained the majority of the legal votes cast and, therefore, entitled to hold the office.

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

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

To the Court’s mind, the HRET had jurisdiction to determine whether there was terrorism in the contested precincts. In the event that the HRET would conclude that terrorism indeed existed in the said precincts, then it could annul the election results in the said precincts to the extent of deducting the votes received by Daza and Abayon in order to remain faithful to its constitutional mandate to determine who among the candidates received the majority of the valid votes cast.<sup>339</sup>

The Court continued that a resort to annulment of elections is warranted only in exceptional circumstances:

It must be remembered that “[t]he power to declare a failure of elections should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the

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<sup>339</sup> Id. at 700–701.



law had been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever, or that the great body of the voters have been prevented by violence, intimidation and threats from exercising their franchise.” Consequently, a protestant alleging terrorism in an election protest must establish by clear and convincing evidence that the will of the majority has been muted by violence, intimidation or threats.

The Court adopted Chief Justice Peralta’s dissent, extensively quoting portions of it, and ruled that Daza failed to present clear and compelling evidence to annul the election results. The Court held that the evidence presented was “utterly weak, unclear and unconvincing.”<sup>340</sup> It also adopted Chief Justice Peralta’s opinion which underscored the need to prove that the protestee was responsible for the alleged terrorism and violence:

It is worthy to note that no evidence was presented which will directly point to protestee as the one responsible for the incidents which allegedly happened before and during the elections. Absent anything that would concretely and directly establish protestee as the one who had induced or actually perpetrated the commission of terroristic acts and demonstrate that those incidents were part of a scheme to frustrate the free expression of the will of the electorate, the alluded handing of material considerations, including guns, to the NDF-EV officials, and the garnering of votes higher than those of the protestant in the protested clustered precincts, do not per se make him responsible for the charges of terrorism.<sup>341</sup>

Abayon was reinstated as the duly elected representative of the First Legislative District of Northern Samar.<sup>342</sup>

In *Abayon*, the Court never truly hinged on the possibility of entertaining a separate cause of action of annulment of elections after determining the results of revision of ballots. The prayer for revision and reappreciation of votes was withdrawn, and the protest was anchored on the allegations of terrorism. Moreover, the case was decided on the extent of the House of Representatives Electoral Tribunal’s jurisdiction on election protests. *Abayon* set no binding precedent on whether a separate cause of action may be entertained after revision and appreciation of ballots in pilot provinces.

Thus, in this Protest, protestant is incorrect to invoke *Abayon* that his third cause of action survives despite an unfavorable resolution of his second cause of action.

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<sup>340</sup> Id. at 705.

<sup>341</sup> Id. at 706.

<sup>342</sup> Id. at 711.



To stress, this Tribunal's Rules directs the *forthwith dismissal* of an election protest if, upon examining the ballots and proof in the three provinces exemplifying the alleged fraud or irregularity, this "Tribunal is convinced that . . . the protestant or counter-protestant will most probably fail to make out [their] case, *without further consideration of the other provinces mentioned in the protest.*"<sup>343</sup> This is clear and is not susceptible to any other interpretation.

## V

Here, protestant failed to make out his case through his designated pilot provinces. Thus, this Protest must be dismissed.

In the August 29, 2017 Resolution, this Tribunal noted protestant's position that he would:

. . . no longer present any testimonial evidence to prove the material allegations in so far as the thirty-six thousand four hundred sixty-five (36,465) protested clustered precincts which functioned in the following protested areas 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, 2<sup>nd</sup> District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City, and Zamboanga City are concerned.<sup>344</sup>

This was reiterated in the October 15, 2019 Resolution:

As regards the Second Cause of Action, protestant maintained that he would no longer present any testimonial evidence to prove the material allegations insofar as the 36,465 protested clustered precincts were concerned and would rely only on the results of the revision of ballots.<sup>345</sup>

The second cause of action concerns whether protestant was able to determine if there was reasonable recovery of votes based on the results of the revision and appreciation of the protested ballots in protestant's chosen pilot provinces. Since this Tribunal's Rules provided no numerical equivalent to determine if protestant successfully made out his case, protestant must convincingly show that it is possible for him to overcome the protestee's lead. Only then will this Tribunal be compelled to proceed with the revision and appreciation of the other contested areas.

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<sup>343</sup> PET RULES (2010), Rule 65.

<sup>344</sup> *Rollo*, Vol. XXXII, p. 24502, August 29, 2017 Resolution.

<sup>345</sup> *Rollo*, Vol. XLIX, p. 39541, October 15, 2019 Resolution.



This Tribunal analyzed the resulting votes in the pilot provinces for protestant and protestee after the revision and appreciation. The ballots lacking decrypted images were deducted from the total number of votes cast in the pilot provinces because these ballots were not included in the revision. In the October 15, 2019 Resolution, this Tribunal summarized the number of revised ballots as follows:

Number of Ballots Revised					
Pilot Provinces	Number of Actual Voters	Number of Ballots deducted prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE <sup>346</sup>			Total number of Ballots Revised <sup>347</sup>
		Protestant	Protestee	Total	
<b>Camarines Sur</b>	841,496 <sup>348</sup>	39	676	715	840,781
<b>Iloilo Province</b>	1,139,418 <sup>349</sup>	12	183	195	1,139,223
<b>Negros Oriental</b>	658,924 <sup>350</sup>	0	0	0	658,924
<b>TOTAL</b>	<b>2,639,838</b>	<b>51</b>	<b>859</b>	<b>910</b>	<b>2,638,928</b>

The total number of ballots for revision, 2,638,928, was divided into protestant’s (202,085) and protestee’s (1,492,658) shares of votes based on the Provincial Certificates of Canvass. The revision process left protestant with 200,495 votes, while protestee was left with 1,476,378 votes. Each party then raised claims and objections on these votes.

In the appreciation process, this Tribunal acted on the parties’ claims and objections, which led to protestant garnering a total of 204,512 votes, and protestee garnering a total of 1,510,178 votes. The tables below summarized the process and results as follows:

<sup>346</sup> Id. at 39565.

<sup>347</sup> Id. at 39564, October 15, 2019 Resolution. Total Number of Ballots Revised = [Number of Actual Voters] – [Number of Ballots deducted prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE]

<sup>348</sup> *Rollo*, Vol. XX, p. 15521, Protest Annex AAA (Provincial Certificate of Canvas).

<sup>349</sup> Id. at 15856, Protest Annex UU (Provincial Certificate of Canvas).

<sup>350</sup> *Rollo*, Vol. XIX, p. 15477, Protest Annex PP (Provincial Certificate of Canvas).

Number of Votes for Protestant after Revision and Appreciation								
Pilot Provinces	Number of Votes Received by Protestant based on Provincial Certificate of Canvass <sup>351</sup>	Number of Ballots deducted prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE <sup>352</sup>	Number of Ballots to be Revised for Protestant <sup>353</sup>	Number of Votes after Revision <sup>354</sup>	Sustained Objections <sup>355</sup>	Number of Votes After Deducting Sustained Objections <sup>356</sup>	Number of Votes added to Protestant after Appreciation <sup>357</sup>	Total Number of Votes for Protestant after Revision and Appreciation <sup>358</sup>
Camarines Sur	41,219 <sup>359</sup>	39	41,180	40,794	8	40,786	734	41,520
Iloilo Province	94,411	12	94,399	93,245	34	93,211	2,127	95,338
Negros Oriental	66,506	0	66,506	66,456	56	66,400	1,254	67,654
TOTAL	202,136	51	202,085	200,495	98	200,397	4,115	204,512

Number of Votes for Protestee after Revision and Appreciation								
Pilot Province	Number of Votes Received by Protestee based on Provincial Certificate of Canvass <sup>360</sup>	Number of Ballots deducted prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE <sup>361</sup>	Number of Ballots Revised for Protestee <sup>362</sup>	Number of Votes after Revision <sup>363</sup>	Sustained Objections <sup>364</sup>	Number of Votes After Deducting Sustained Objections <sup>365</sup>	Number of Votes added to Protestee after Appreciation <sup>366</sup>	Total Number of Votes for Protestee after Revision and Appreciation <sup>367</sup>
Camarines Sur	664,190	676	663,514	657,991	358	657,633	12,004	669,637
Iloilo Province	573,729	183	573,546	562,811	285	562,526	16,825	579,351
Negros Oriental	255,598	0	255,598	255,576	205	255,371	5,819	261,190
TOTAL	1,493,517	859	1,492,658	1,476,378	848	1,475,530	34,648	1,510,178

<sup>351</sup> *Rollo*, Vol. XXXII, p. 24491, August 29, 2017 Resolution.

<sup>352</sup> *Rollo*, Vol. XLIX, p. 39565, October 15, 2019 Resolution.

<sup>353</sup> Number of Ballots Revised for Protestant = [Number of Votes Received by Protestant based on Provincial Certificate of Canvass] – [Number of Ballots deducted prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE]

<sup>354</sup> *Rollo*, Vol. XLIX, p. 39565, October 15, 2019 Resolution.

<sup>355</sup> Id. at 39569.

<sup>356</sup> Id. at 39574.

<sup>357</sup> Id. at 39572.

<sup>358</sup> Id. at 39574.

Total Number of Votes for Protestant after Revision and Appreciation = [Number of Votes After Deducting Sustained Objections] + [Number of Votes added to Protestant after Revision and Appreciation].

<sup>359</sup> *Rollo*, Vol. XXXII, p. 24491, August 29, 2017 Resolution. See footnote 34 of the Resolution stating that the figure should 41,219, per Protestant’s Comment of the Preliminary Conference Guides.

<sup>360</sup> Id.

<sup>361</sup> *Rollo*, Vol. XLIX, p. 39565, October 15, 2019 Resolution.

<sup>362</sup> Number of Ballots Revised for Protestee = [Number of Votes Received by Protestee based on Provincial Certificate of Canvass] - [Total Number of Ballots deducted from Protestant prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE]

<sup>363</sup> *Rollo*, Vol. XLIX, p. 39565, October 15, 2019 Resolution.

<sup>364</sup> Id. at 39569.

<sup>365</sup> Id. at 39574.

<sup>366</sup> Id. at 39572.

<sup>367</sup> *Rollo*, Vol. XLIX, p. 39574, October 15, 2019 Resolution.

Total Number of Votes for Protestant after Revision and Appreciation = [Number of Votes After Deducting Sustained Objections] + [Number of Votes added to Protestant after Revision and Appreciation].



After revision and appreciation, protestant's total number of votes only increased by 204,512, while protestee's total number of votes increased by 1,510,178. By this alone, protestant failed to show reasonable recovery of votes in his designated pilot provinces which supposedly best exemplified his allegations of fraud and irregularities. It fails to convince this Tribunal that protestant can overcome protestee's lead.

It can be fairly deduced that if even if we break down these ballots by clustered precincts or by the established precincts that comprise a clustered precinct, none will demonstrate the fraud and irregularities protestant claims to have happened in the pilot provinces.

Considering that protestant failed to make out his case, per this Tribunal's Rules, this Protest must be forthwith dismissed "without further consideration of the other provinces mentioned in the protest."<sup>368</sup>

Justice Mario V. Lopez (Justice Lopez) concurs<sup>369</sup> with the *ponencia's* finding that protestant failed to make out his case or show reasonable recovery of votes for his second cause of action. He observes that "[i]ndeed, the protestant failed to show that he will probably overcome the overall lead of the protestee in his second cause of action."<sup>370</sup> As such, he agrees that there is no more need to revise the ballots in protestant's remaining protested clustered precincts.<sup>371</sup> Nonetheless, he proposes a formula to determine reasonable recovery.

Justice Lopez proposes that this Tribunal should determine reasonable recovery "based on the proportion of the protested clustered precincts (only those revised) in the pilot provinces and the total number of protested clustered precincts."<sup>372</sup> He continues that "if the protested pilot provinces comprise 20% of the total number of protested clustered precincts, then the determination of the reasonable recovery must use 20% as a basis for reasonable recovery."<sup>373</sup>

Using his proposed formula, Justice Lopez also concluded that protestant failed to show reasonable recovery, as protestee's lead increased by 15,093 votes<sup>374</sup> after the revision of the pilot provinces.

## VI

A word on failure of elections and annulment of election results.

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<sup>368</sup> PET RULES (2010), Rule 65.

<sup>369</sup> J. Lopez, Reflections, pp. 1–11.

<sup>370</sup> Id. at 1.

<sup>371</sup> Id.

<sup>372</sup> Id. at 8.

<sup>373</sup> Id.

<sup>374</sup> Id.

In the course of this Protest, the parties appeared to have confused the remedies of failure of elections and annulment of election results.

In *Abayon*,<sup>375</sup> where petitioner Abayon had argued that an annulment of election results is similar to a declaration of failure of elections,<sup>376</sup> the Court clarified the difference:

Consequently, the difference between the annulment of elections by electoral tribunals and the declaration of failure of elections by the COMELEC cannot be gainsaid. *First*, the former is an incident of the judicial function of electoral tribunals while the latter is in the exercise of the COMELEC's administrative function. *Second*, electoral tribunals only annul the election results connected with the election contest before it whereas the declaration of failure of elections by the COMELEC relates to the entire election in the concerned precinct or political unit. As such, in annulling elections, the HRET does so only to determine who among the candidates garnered a majority of the legal votes cast. The COMELEC, on the other hand, declares a failure of elections with the objective of holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect. When COMELEC declares a failure of elections, special elections will have to be conducted.<sup>377</sup>

Thus, the power to annul election results rests within the electoral tribunals. This power is "an incident of the judicial function of electoral tribunals,"<sup>378</sup> and an indispensable consequence of the constitutional mandate<sup>379</sup> of electoral tribunals to decide all election contests within their jurisdiction. *Abayon* continued that two indispensable requisites must concur to annul an 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.<sup>380</sup>

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<sup>375</sup> 785 Phil. 683 (2016) [Per J. Mendoza, Special En Banc].

<sup>376</sup> Id. at 696.

<sup>377</sup> Id. at 703-704.

<sup>378</sup> *Abayon v. HRET*, 785 Phil. 683, 703 (2016) [Per J. Mendoza, Special En Banc].

<sup>379</sup> PET RULES (2010), Rule 7 provides:

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

<sup>380</sup> Id. at 705 citing J. Peralta, Dissenting Opinion in *Daza v. Abayon*, HRET Case No. 13-023(EP), February 3, 2016, <[https://hret.gov.ph/file-manager/2013-2016\\_023\\_dissenting-com.pdf](https://hret.gov.ph/file-manager/2013-2016_023_dissenting-com.pdf)> [Per R. Enverga, HRET].



*Abayon* also extensively discussed how “no evidence was presented which will directly point to protestee as the one responsible for the incidents which allegedly happened before and during the elections.”<sup>381</sup>

On the other hand, it is the Commission on Elections that can declare a failure of elections, a power that it had been vested with as early as the passage of the 1971 Election Code.

Republic Act No. 6388, or the 1971 Election Code, provided the following grounds to proclaim a failure of elections: (1) *force majeure*; (2) violence; (3) terrorism; or (4) fraud. It likewise provided the specific instances when a failure of elections shall be declared. The only power that the Supreme Court has is to confirm the date fixed by the Commission on Elections to hold a special election:

SECTION 11. *Failure of Election.* — If, on account of *force majeure*, violence, terrorism, or fraud, the election in any precinct or precincts has not been held on the date herein fixed or has been suspended before the hour fixed by law for the closing of the voting and such failure or suspension of election in any precinct or precincts would alter the result of the election for any office to be voted in said election, the Commission may, on the basis of a verified petition and after due notice and hearing, call for the holding or continuation of the election on a date reasonably close to the date of the election not held or suspended: *Provided, however,* That the holding or continuation of the election on the date fixed by the Commission shall not be effective unless confirmed by the Supreme Court. For this purpose the Commission shall immediately certify to the Supreme Court its resolution for review, transmitting with it the pertinent records of the proceedings.

When the 1978 Election Code<sup>382</sup> was decreed into law, it expanded the grounds to proclaim the postponement of elections, including “loss or destruction of election paraphernalia or records, . . . and other analogous cause of such a nature that the holding of a free, orderly and honest election should become impossible”:

SECTION 6. *Postponement of election.* — When for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, *force majeure*, and other analogous cause of such a nature that the holding of a free, orderly and honest election should become impossible in any voting center or political subdivision, the Commission on Elections, which hereinafter shall be referred to as the Commission, upon a verified petition and after due notice and hearing, shall postpone the election therein for such time as it may deem necessary.

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<sup>381</sup> Id.

<sup>382</sup> Presidential Decree No. 1296 (1978).



The 1978 Election Code also differentiated a failure of election from the mere postponement of election. It then provided more comprehensive guidelines on the Commission on Elections' exercise of the duty to call for a special election. It stated:

SECTION 7. *Failure of election.* — If, on account of force majeure, violence, terrorism, or fraud the election in any voting center has not been held on the date fixed or has been suspended before the hour fixed by law for the closing of the voting and such failure or suspension of election in any voting center would affect the result of the election, the Commission may, on the basis of a verified petition and after due notice and hearing, call for the holding or continuation of the election on a date reasonably close to the date of the election not held or suspended.

SECTION 8. *Call of special election.* — Special election shall be called by the Commission by proclamation on a date to be fixed by it, which shall specify the offices to be voted for, that it is for the purpose of filling a vacancy or a newly created elective position, as the case may be. The Commission shall send copies of the proclamation, in numbers sufficient for due distribution and publication, to the provincial election supervisor or city election registrar concerned, who in turn shall publish it in their respective localities, by posting copies thereof in at least three conspicuous places in the city or in each municipality in the building, the public market, and his office, and one copy each in every voting center in the city or province.

Pending an election to fill a vacancy arising from any cause in the *interim* Batasang Pambansa, the vacancy shall be filled by majority vote of the Members of the *interim* Batasang Pambansa on nomination of the President.

The law then expanded and clarified the powers of the Commission on Elections by instituting it as the "sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory."<sup>383</sup>

The rules were reiterated in the law<sup>384</sup> governing the election of local government officials:

SECTION 5. *Failure of Election.* — Whenever for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, force majeure and other analogous causes of such a nature that the holding of a free, orderly and honest election should become impossible, the election for a local office fails to take place on the date fixed by law, or is suspended, or such election results in a failure to

<sup>383</sup> Presidential Decree No. 1296 (1978), sec. 175 provides:

SECTION 175. Suspension and annulment of proclamation. — The Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory. It may, *motu proprio* or upon written petition, and after due notice and hearing order suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 hereof.

<sup>384</sup> Batas Pambansa Blg. 52 (1979).



elect, the Commission on Elections shall, on the basis of a verified petition and after due notice and hearing, call for the holding or continuation of the election as soon as practicable.

Thereafter, the rules were also applied to the election of barangay officials in the Barangay Election Act of 1982.<sup>385</sup>

SECTION 16. *Postponement or Failure of Election.* — *When for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, force majeure, and other analogous causes of such nature that the holding of a free, orderly and honest election should become impossible in any barangay, the Commission on Elections, upon a verified petition, and after due notice and hearing, shall postpone the election therein for such time as it may deem necessary.*

If, on account of *force majeure*, violence, terrorism, or other analogous causes or fraud, the election in any barangay has not been held on the date herein fixed or has been suspended before the hour fixed by law for the closing of the voting therein and such failure or suspension of election would affect the result of the election, the Commission on Elections, on the basis of a verified petition and after due notice and hearing, shall call for the holding or continuation of the election on a date reasonably close to the date of the election not held or suspended.

In such case, the Minister of Local Government shall designate the persons who shall temporarily act as Punong Barangay (Barangay Captain) and Members of the Sangguniang Barangay (Barangay Council).

When the conditions in these areas warrant, upon verification by the Commission on Elections, or upon petition of at least thirty *per centum* of the registered voters in the barangay concerned, it shall order the holding of the barangay election. (Emphasis supplied)

Upon the enactment of the Omnibus Election Code,<sup>386</sup> the Commission on Elections can now *motu proprio*<sup>387</sup> proclaim a failure of election. The Code also provided for special elections regarding vacancy in the Batasang Pambansa<sup>388</sup> and at the barangay level.<sup>389</sup>

<sup>385</sup> Batas Pambansa Blg. 222 (1982).

<sup>386</sup> ELECTION CODE, or Batas Pambansa Blg. 881 (1985).

<sup>387</sup> ELECTION CODE, sec. 6 states:

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

<sup>388</sup> ELECTION CODE, sec. 7.

<sup>389</sup> ELECTION CODE, sec. 45.



In the 1988 Rules of Procedure of the Commission on Elections, Rule 26 laid down the process for proclaiming the postponement or failure of election. In addition to repeating the guidelines set forth in the preceding laws, it provided:

**RULE 26**  
**Postponement or Suspension of Elections**

....

SECTION 3. *Motu Proprio Postponement.* — When the Commission acts *motu proprio*, notices of hearing must be sent to all interested parties by the fastest means available.

SECTION 4. *When Based Upon a Verified Petition.* — Unless a shorter period is deemed necessary by circumstances, within twenty-four (24) hours from the filing of the petition, the Clerk of Court concerned shall forthwith serve notices to all interested parties, indicating therein the date of hearing, through the fastest means available.

SECTION 5. *Time to File Opposition.* — Unless a shorter period is deemed necessary by the circumstances, within two (2) days from receipt of the notice of hearing, any interested party may file an opposition with the Law Department of the Commission.

SECTION 6. *Summary Proceeding.* — The hearing of the case shall be summary in nature.

SECTION 7. *Delegation of Reception of Evidence.* — The Commission may designate any of its officials who are members of the Philippine Bar to hear the case and to receive evidence.

SECTION 8. *Determination of Cessation of Cause.* — The determination of the cessation of the cause of the postponement or suspension of election or failure of election falls within the exclusive prerogative of the Commission.

Moreover, Republic Act No. 7056<sup>390</sup> and Republic Act No. 7166<sup>391</sup> both provided that “[t]he postponement, declaration of failure of election, and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code (Batas Pambansa Blg. 881) shall be decided only by the Commission on Elections sitting *en banc* by a majority vote of its members.”<sup>392</sup>

Republic Act No. 7056 added that the “causes for the declaration of a failure of election may occur before or after the casting of votes or the day of

<sup>390</sup> An Act Providing for the National and Local Elections in 1992, Pave the Way for Synchronized and Simultaneous Elections Beginning 1995, and Authorizing Appropriations Therefor (1991).

<sup>391</sup> An Act Providing for Synchronized National and Local Elections for the Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes (1991).

<sup>392</sup> See Republic Act No. 7056 (1991), sec. 7 and Republic Act No. 7166 (1991), sec. 4.



the election.”<sup>393</sup> Republic Act No. 7166 added that in cases of permanent vacancies in Congress at least one year before the expiration of the term, the Commission “shall call and hold a special election to fill the vacancy not earlier than sixty (60) days nor longer than ninety (90) days after the occurrence of the vacancy. However, in case of such vacancy in the Senate, the special election shall be held simultaneously with the succeeding regular election.”<sup>394</sup>

At bottom, the power to declare a failure of elections, and consequently conduct special elections, is lodged exclusively with the Commission on Elections. Meanwhile, an electoral tribunal, after determining “who among the candidates garnered a majority of the legal votes cast,”<sup>395</sup> is empowered to annul election results for the contested position before it.

The differences between the two remedies are clear and there is no overlap in their functions. Nonetheless, declarations of failure of elections and annulment of election results hinge on the same grounds and quantum of evidence.

The Commission on Elections, upon petition or *motu proprio*, may declare a failure of elections and call for special elections if it is shown with strong and convincing evidence that “*force majeure*, violence, terrorism, fraud, or other analogous causes”<sup>396</sup> made it impossible to hold the scheduled elections.

Electoral tribunals may, in turn, annul election results if they are strongly convinced that the conduct of elections was tainted with “fraud, terrorism or other electoral irregularities existed to warrant the annulment.”<sup>397</sup> However, being drastic and extraordinary, the remedy of annulment of elections must “be judiciously exercised with utmost caution and resorted only in exceptional circumstances.”<sup>398</sup>

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<sup>393</sup> Republic Act No. 7056 (1991), sec. 7.

<sup>394</sup> Republic Act No. 7166 (1991), sec. 4.

<sup>395</sup> *Abayon v. HRET*, 785 Phil. 683, 703 (2016) [Per J. Mendoza, Special En Banc].

<sup>396</sup> ELECTION CODE, sec. 6 provides:

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

<sup>397</sup> *Abayon v. HRET*, 785 Phil. 683, 701 (2016) [Per J. Mendoza, Special En Banc].

<sup>398</sup> *Id.* at 709.

On September 29, 2020, this Tribunal directed the Commission on Elections to submit a report on whether petitions for failure of elections were filed in Lanao del Sur, Maguindanao, and Basilan in connection with the 2016 national and local elections.<sup>399</sup>

Accordingly, the Commission on Elections reported that there were indeed petitions filed for Lanao del Sur and Maguindanao, but none in Basilan. The Commission reported, as follows:

Province	Case No.	Case Title	Nature of the Case	Resolution
LANAO DEL SUR				
Marawi City, Lanao del Sur	SPA 16-111 (FE)	In the matter of the Petition to Declare Failure of Elections in Marawi City	Petition to Declare Failure of Elections	DISMISSED on the merits.
Marantao, Lanao del Sur	SPA 16-130 (FE)	In the matter of Declaring Failure of Elections in Barangays Bacong, Daana Ingud, Matampay, Poona Marantao, Kialdan, Lubo 1 and 2, Lumbac Kialdan, Mantapoli, Pantiamas, Tuca Kialdan and Punud Proper of the Municipality of Marantao, Lanao del Sur and to hold Special Elections or to Annul/Exclude Election Returns therein Samson U. Adiong	Declaration of Failure of Elections, hold Special Elections, or to Annul/Exclude Election Returns	DISMISSED on the merits.

<sup>399</sup> Rollo, Vol. L, p. 41266–41286, September 29, 2020 Resolution.



Marantao, Lanao del Sur	SPA 16-131 (FE)	Alimoden Guro Cornell v. The Members of the BEI of Clustered Precinct Nos. of Brgys. Mantapoli, Pantaimas, Lubo, Kialdan, Tuka Kialdan, Lumbac Kialdan; The MBOC of the Municipality of Marantao, Province of Lanao del Sur, Alahoding Maruhom, as the Vice Mayor, Proclaimed in the recently concluded May 09, 2016 National, Local and ARMM Elections	In the matter of the Petition to Declare a Failure of Election in Clustered Precinct No. 0043A, 0044A, 0045A, 0045B, 0045C of Brgy. Lubo, 0047A, 0047B, 0048A, 0048B of Brgy. Lumbac Kialdan, 0049A, 0050A, 0051A, 0052A, Brgy. Mantapoli, 0079A, 0080A, 0081A, 0082A, 0083A of Brgy. Tuca Kialdan; 0069A, 0070A, 0071A, 0071B of Brgy. Pantaimas; 0040A, 0041A, 0042A, 0042B of Brgy. Kialdan in the Municipality of Marantao, Province of Lanao del Sur.	DISMISSED on the merits.
<b>MAGUINDANAO</b>				
Northern Kabuntalan, Maguindanao	SPA 16-114 (FE)	Magdon U. Dingalen v. Mohidin S. Lauban and the MBOC, Northern Kabuntalan, Maguindanao	For Annulment of Elections and/or Declaration of Failure of Elections and Annulment of Proclamation	DISMISSED on the merits.
Pagalungan, Maguindanao	SPA 16-122 (FE)	Guimid P. Matalam and Arkan M. Matalam v. Salik Mamasabulod, Abdillah Mamasabulod and Municipal Board of Canvassers (MBOC) of Pagalungan, Maguindanao	For Annulment of Elections and/or Declaration of Failure of Elections and Annulment of Proclamation	DISMISSED on the merits.
Sultan Kudarat, Maguindanao	SPA 16-125 (FE)	Ibrahim K. Ibrahim v. Shameem B. Mastura	Petition for Annulment of Election Results and/or Declaration of Failure of Elections	DISMISSED on the merits.
Datu Unsay, Maguindanao	SPA 16-132 (FE) Formerly SPC 16-016	Monawara Ampatuan, Kamarudin Ibrahim, Abdul Hamid Lumena, Tato G. Abdulradzak, Macmod Ebrahim, Norodin Datuali, Mulba Ampakay,	Petition for Annulment of Proclamation and/or Declaration of Failure of Elections	DISMISSED on the merits.

		Zacaria Saway, Mohammad Unggala and Rocky Nacio, in their capacities as local candidates for the May 9, 2016 elections in Datu Unsay, Maguindanao v. Reshal Ampatuan, Janine Mamalapat, Salahudin Tagadaya, Zuhari Guiapal, Wanay Dukay, Tho Pasawilan, Adbulrahim Abdullah, Ging Amman, Mohammad Shamron Sapalon, and Dor Engkel, in their capacities as proclaimed winning local candidates for the May 9, 2016 elections, and the MBOC, all for the Municipality of Datu Unsay, Maguindanao		
Sultan sa Barongis, Maguindanao	SPA 16-135 (FE) Formerly SPC 16-017	Abubakar Katambak and Sukarno Badal v. The MBOC of Sultan sa Barongis, Maguindanao, Ramdatu Angas, and Al-Fizzar Allandatu Angas	Petition for Declaration of Nullity and/or Annulment of Proclamation and/or Declaration of Failure of Elections	DISMISSED due to non-appearance of both parties <sup>400</sup>

All the cases in the Commission on Elections’ report, except for one, were dismissed on the merits. The Commission on Elections made findings of fact which led it to conclude that there was no failure of elections or any ground to annul the election results. This Tribunal respects the Commission on Elections’ rulings, which have attained finality.

VII

Failing to make out his case through his designated pilot provinces—Camarines Sur, Iloilo, and Negros Oriental—protestant cannot now insist on the annulment of the election results in Lanao del Sur, Maguindanao, and Basilan. The Rules explicitly direct the forthwith dismissal of his Protest “without further consideration of the other provinces mentioned in the protest.”<sup>401</sup> A resort to his third cause of action can no longer be had.

<sup>400</sup> *Rollo*, Vol. L, p. 41335–41433, COMELEC Compliance with September 29, 2020 Resolution.  
<sup>401</sup> PET RULES (2010), Rule 17 (C)(d).



In any case, for a full disposition of this Protest, this Tribunal extensively scrutinized protestant's allegations and assessed the evidence he presented. Even then, we find that he failed to show *prima facie* evidence of his claims that "terrorism, intimidation and harassment of voters, pre-shading of ballots, and substitution of voters" attended the elections in Lanao del Sur, Maguindanao, and Basilan.<sup>402</sup>

As discussed in this Tribunal's August 29, 2017 Resolution,<sup>403</sup> the parties were directed during the preliminary conference to limit their number of witnesses to three per clustered precinct for the second and third causes of action and to submit a new list of witnesses.<sup>404</sup>

This Tribunal likewise informed the parties that it would base its review of the sufficiency of the allegations of fraud on the evidence on record, and that failure to comply with the directive would be deemed "a waiver of his right to name and identify his witnesses, and to present them during the reception of evidence":

In view of protestant's clear and unequivocal declaration that he will no longer present any testimonial evidence on his Second Cause of Action, the Tribunal reiterates its directive to protestant to submit a new list of witnesses **for the Third Cause of Action** by limiting that number of witnesses to three (3) per clustered precinct, and already identifying the concerned clustered precinct, within a non-extendible period of five (5) days from receipt hereof. **Protestant's failure to do so will be deemed a waiver of his right to name and identify his witnesses, and to present them during the reception of evidence.**<sup>405</sup> (Emphasis in the original, citation omitted)

Protestant submitted a Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action) dated September 8, 2017.<sup>406</sup> This was another accommodation, considering that this Tribunal had previously dismissed protests on insufficient allegations alone. As earlier discussed, *Corvera*,<sup>407</sup> *Aguillo*,<sup>408</sup> *Lloren*,<sup>409</sup> and *Peña*<sup>410</sup> declared that general allegations of irregularities, insufficient averments, and failure to specify precincts warrant the dismissal of election protests. However, despite being directed to state the *specific* clustered precinct per witness, which other petitioners had not been accorded in the past, protestant still did not comply.

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<sup>402</sup> *Rollo*, Vol. L, p. 40904, Protestant's Memorandum.

<sup>403</sup> *Rollo*, Vol. XXXII, pp. 24482–24641.

<sup>404</sup> *Id.* at 24501.

<sup>405</sup> *Id.* at 24502.

<sup>406</sup> *Id.* at 24795–24819.

<sup>407</sup> G.R. No. 208610 (Notice), November 11, 2014.

<sup>408</sup> G.R. No. 197975-76 (Notice), March 19, 2013.

<sup>409</sup> 695 Phil. 288 (2012) [Per J. Bersamin, En Banc].

<sup>410</sup> 337 Phil. 70 (1997) [Per J. Torres, Sr., En Banc].



Thus, in the September 19, 2017 Resolution,<sup>411</sup> this Tribunal again ordered him to strictly comply with the August 29, 2017 Resolution directing him to identify his witnesses, this time with the concerned clustered precincts.

Protestant accordingly submitted another Manifestation and Compliance dated October 9, 2017,<sup>412</sup> in which he—yet again—failed to satisfy the required information.

A review of protestant's Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action) dated October 9, 2017 yielded the following lapses: (1) lack of clustered precinct numbers;<sup>413</sup> (2) erroneous use of the established precinct number instead of the clustered precinct number as required in the Preliminary Conference Order;<sup>414</sup> (3) precinct numbers that do not exist based on the Project of Precincts for the 2016 elections;<sup>415</sup> (4) lack of witnesses for several clustered precincts;<sup>416</sup> and (5) repetition of the names of some witnesses.

Protestant has already waived his right to present witnesses. This Tribunal's rulings must not be arbitrarily vacated.

To reiterate, *Abayon* explained that since annulment of elections is a drastic and extraordinary remedy, it must "*be judiciously exercised with utmost caution and resorted only in exceptional circumstances*":

*The testimonies of a minute portion of the registered voters in the said precincts should not be used as a tool to silence the voice of the majority expressed through their votes during elections. To do so would disenfranchise the will of the majority and reward a candidate not chosen*

<sup>411</sup> *Rollo*, Vol. XXXII, pp. 24905–24907.

<sup>412</sup> *Rollo*, Vol. XXXIII, pp. 25059–25245.

<sup>413</sup> For example, in Lanao del Sur, there was no clustered precinct number for Brgys. Cadingilan Occidental, Bairan, Bayang Proper, Sandab Madaya, and Lalaupung Upper, municipality of Bayang; Brgy. Pantaon-A, Municipality of Ganassi; Brgys. Bolao, Cambong, and Sabala Dilausan, municipality of Maguing; and Brgy. Pialot, municipality of Malabang; Raya Madaya and Tampilong in Marawi City; and Brgy. Notong, municipality of Pualas. In Maguindanao, there was no clustered precinct number for Brgy. Poblacion 7, Cotabato City. In Basilan, there was no clustered precinct number for Brgy. Lower Bato-Bato, municipality of Akbar.

<sup>414</sup> For all three pilot provinces, protestant used the precinct number and not the clustered precinct numbers in the list of witnesses. The August 29, 2017 Resolution required the use of clustered precinct numbers. A clustered precinct is composed of several established precincts. As an example, the Commission on Elections' Project of Precincts for the 2016 National and Local Elections shows that Established Precinct Nos. 0001A, 0002A, 0003A, and 0004A form Clustered Precinct 1 in Barangay Maganda, Lamitan City, Basilan. See <<https://comelec.gov.ph/?r=2016NLE/ProjectofPrecincts/POP>> (last accessed on February 5, 2021).

<sup>415</sup> In Basilan, Brgy. Basak in Lamitan City has no Precinct No. 0042A. Similarly, Brgy. Baimbing of Lamitan City has no Precinct Nos. 0067B, 0067C, and 0067P1.

<sup>416</sup> In Lanao del Sur, there were no witnesses for Brgys. Condaraan, Cairan, Cadayona, and Rantian, municipality of Bayang; Brgy. Pangadapun, Municipality of Ganassi; Brgy. Lilod Borocot, municipality of Maguing. In Maguindanao, there were no witnesses for Brgys. Calaan, Cabayuan, and Karim, municipality of Buldon. In Basilan, there were no witnesses for Brgy. Baguindan, municipality of Tipo-Tipo; Brgy. Sta. Clara, Lamitan City; Brgy. Upper Port Holland, municipality of Maluso, Brgy. Basak, municipality of Sumisip; and Brgy. Tong-Umus, municipality of Tabuan-Lasa.



by the people to be their representative. With such dire consequences, it is but expected that annulment of elections be judiciously exercised with utmost caution and resorted only in exceptional circumstances.<sup>417</sup> (Emphasis supplied)

Annulling the votes for vice president in the 2016 elections casts serious doubts on the victory of other nationally elected officials like the president, senators, and party-list representatives. This is why “the power to annul an election should be exercised with *the greatest care* as it involves the free and fair expression of the popular will. It is only in extreme cases of fraud and under circumstances which demonstrate to the fullest degree a fundamental and wanton disregard of the law that elections are annulled, and then only when it becomes impossible to take any other step.”<sup>418</sup>

If this Tribunal were to give due course to protestant’s third cause of action, a formulation of ad hoc rules would be necessary. As pointed out by Justice Samuel H. Gaerlan, who concurs that this Protest must be dismissed for protestant’s failure to prove reasonable recovery in the pilot provinces,<sup>419</sup> pushing through with protestant’s third cause of action “is properly and optimally addressable through an exercise of this tribunal’s rule-making power.”<sup>420</sup> This would, however, raise due process concerns, because the revision of ballots and reception of evidence have been completed, and results have been released.

More important, these were conducted precisely to determine if this Tribunal should proceed with the other contested provinces.<sup>421</sup> Changing the rules this late in the game to grant protestant’s third cause of action would not be a good precedent as it would tailor the Protest in favor of one party.

Besides, there is also protestee’s pending Counter-Protest that would be affected by a change in the rules. This Tribunal must be prepared to hear it if we decide to proceed with the annulment of elections.

In any case, we examine protestant’s evidence, guided by the framework that “[t]he testimonies of a minute portion of the registered voters in the precincts should not be used as a tool to silence the voice of the majority expressed through their votes during elections.”<sup>422</sup> We are reminded that “[s]tatistics never lie, but lovers often do[.]”<sup>423</sup>

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<sup>417</sup> *Abayon v. HRET*, 785 Phil. 683, 709 (2016) [Per J. Mendoza, Special En Banc].

<sup>418</sup> *Peña v. HRET*, 337 Phil. 70, 78–79 (1997) [Per J. Torres, Sr., En Banc].

<sup>419</sup> J. Gaerlan, Reflections, p. 1.

<sup>420</sup> *Id.* at 4.

<sup>421</sup> *Rollo*, Vol. XXXII, p. 24511.

<sup>422</sup> *Abayon v. HRET*, 785 Phil. 683, 709 (2016) [Per J. Mendoza, Special En Banc].

<sup>423</sup> *Antonio v. Reyes*, 519 Phil. 337, 340 (2006) [Per J. Tinga, Third Division].



This Tribunal notes that the list of witnesses in protestant's annexes attached to the Protest and the list of witnesses in the October 9, 2017 Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action) bear the same names. Thus, we reviewed the affidavits of these witnesses for the provinces of Lanao Del Sur, Maguindanao, and Basilan.

### *Lanao del Sur*

The affidavits of Amerah A. Maranda,<sup>424</sup> Aliah L. Abdulkarim,<sup>425</sup> Nabilah Sowaib,<sup>426</sup> Rohanie Amanoddin,<sup>427</sup> and Nouman A. Abdullah<sup>428</sup> state similar facts: that they are all poll watchers who went to the municipal hall of Bacolod-Kalawi at around 5:00 a.m. on election day, but were prevented from entering. When Amerah, Aliah, Nabilah, and Rohanie went to Kalawi Central Elementary School, they narrated that supporters of a certain candidate intimidated them.

However, none of their allegations showed that no voting took place, or that registered voters were not allowed to cast their votes. Moreover, they did not attach identification cards to prove that they were official poll watchers of the candidate they supposedly represented during the 2016 elections.

Election Assistant Gonaranao P. Corontoz (Corontoz), in his Judicial Affidavit,<sup>429</sup> alleged that errors were recorded during the final testing and sealing of the vote-counting machines. It would appear from his Affidavit that only one machine was faulty, and he did not state to which specific precinct it was assigned.<sup>430</sup> In any case, the technical problem with the vote-counting machine happened during the final testing and sealing, and not during election day.

Election Assistant Amer D. Abdullah executed a Judicial Affidavit<sup>431</sup> and alleged ballot-snatching in the municipality of Pagayawan, but did not state the specific precincts.

The Judicial Affidavit of Marawi City Election Assistant Sanapia D. Benito<sup>432</sup> would no longer have any bearing after the Commission on Elections had found that there was no failure of elections in Marawi City.<sup>433</sup>

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<sup>424</sup> *Rollo*, Vol. XIX, pp. 15330–15331, Protest Annex GG-2.

<sup>425</sup> *Id.* at 15332–15334, Protest Annex GG-3.

<sup>426</sup> *Id.* at 15335–15336, Protest Annex GG-4.

<sup>427</sup> *Id.* at 15337–15338, Protest Annex GG-5.

<sup>428</sup> *Id.* at 15339–15340, Protest Annex GG-6.

<sup>429</sup> *Id.* at 15341–15350, Protest Annexes GG-7 and GG-8.

<sup>430</sup> *Id.* at 15343–15344.

<sup>431</sup> *Id.* at 15351–15356, Protest Annex GG-9.

<sup>432</sup> *Id.* at 15357–15363, Protest Annex GG-10.

<sup>433</sup> *Rollo*, Vol. L, p. 41335. The Commission on Elections' Compliance (To the Resolution dated 29 September 2020). SPA 16-111 (FE), "In the matter of the Petition to Declare Failure of Elections in



Abdulnader M. Balt, a support staff member under the Office of the Election Officer of Lumbaca Unayan, did not state in his Judicial Affidavit<sup>434</sup> the specific precincts where the alleged irregularities took place.

### *Maguindanao*

Affiant Normina L. Taha<sup>435</sup> (Taha) alleged that she was “a Team Leader of the Kilusang Bagong Lipunan (“KBL”) in charge over the whole of Datu Saudi Ampatuan in Maguindanao”<sup>436</sup> and that during election day, she “was assigned to supervise the personnel of the KBL in the conduct of elections in Datu Pendililang Piang Elementary School[.]”<sup>437</sup> She alleged that several men of the then incumbent mayor had intimidated her, yet her allegation does not show that voting did not take place, or that there was a substantial number of disenfranchised voters, or that protestee had anything to do with this.<sup>438</sup>

Bassir D. Utto<sup>439</sup> (Utto), a candidate for vice mayoralty of Datu Saudi Ampatuan during the 2016 elections,<sup>440</sup> also executed an Affidavit<sup>441</sup> alleging irregularities. A portion of his affidavit states:

2. On 9 May 2016, Election Day, around 9 a.m. at Barangay Kabinge, while I was doing my rounds to observe the conduct of elections, I was alarmed by the presence of armed men within fifty (50) meters from the voting center. I noticed that it was the group of MILF 118 Base Command Wahid Tundok with Nashro Dimaukom and Patrick Dimaukom (“Tundok group”), brother and nephew of incumbent Mayor Dimaukom. The Tundok group numbered a hundred men and I immediately noticed that about six (6) of them were brandishing their pistols in full view of the Armed Forces of the Philippines (“AFP”) soldiers and the public.<sup>442</sup>

Utto went on to narrate that after receiving Taha’s report, he proceeded to Datu Pendililang Piang Elementary School where he also saw the incumbent mayor’s armed men, whom the military and police also present in the area seemed to have tolerated.<sup>443</sup>

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Marawi City,” was dismissed on the merits on August 16, 2016. A Certificate of Finality was issued by COMELEC on February 15, 2017.

<sup>434</sup> *Rollo*, Vol. XIX, pp. 15364–15371, Protest Annex GG-11.

<sup>435</sup> *Id.* at 15383–15385, Protest Annex HH-2.

<sup>436</sup> *Id.* at 15383.

<sup>437</sup> *Id.*

<sup>438</sup> *Id.*

<sup>439</sup> The Affidavit at times spelled as Utto as Uto.

<sup>440</sup> *Rollo*, Vol. XIX, pp. 15386–15390, Protest Annex HH-3.

<sup>441</sup> *Id.*

<sup>442</sup> *Id.* at 15386.

<sup>443</sup> *Id.* at 15387.



As Utto had admitted, the armed forces' presence is more than enough evidence to show that even if armed men were present, the military ensured that orderly elections would be conducted.

Incidentally, Utto admitted that he was a candidate who went from one polling place to another.<sup>444</sup> Under Section 192 of the Omnibus Election Code, only authorized persons are allowed to stay within the polling place:

SECTION 192. *Persons allowed in and around the polling place.*  
— During the voting, no person shall be allowed inside the polling place, except the members of the board of election inspectors, the watchers, the representatives of the Commission, the voters casting their votes, the voters waiting for their turn to get inside the booths whose number shall not exceed twice the number of booths and the voters waiting for their turn to cast their votes whose number shall not exceed twenty at any one time. The watchers shall stay only in the space reserved for them, it being illegal for them to enter places reserved for the voters or for the board of election inspectors or to mingle and talk with the voters within the polling place.

It shall be unlawful for any officer or member of the Armed Forces of the Philippines including the Philippine Constabulary or the Integrated National Police or peace officer or any armed person belonging to any extra-legal police agency, special forces, reaction forces, strike forces, home defense units, *barangay tanod*, or other similar forces or paramilitary forces, including special forces, security guards, special policemen, and all other kinds of armed or unarmed extra-legal police officers, to enter any polling place, unless it is his polling place where he will vote but in such case he should immediately leave the polling place, and within a radius of fifty meters from such polling place, no policeman or peace officer shall be allowed to enter or stay inside the polling place except when there is an actual disturbance of the peace and order therein. However, the board of election inspectors upon majority vote, if it deems necessary, may make a call in writing, duly entered in the minutes, for the detail of a policeman or any peace officer for their protection or for the protection of the election documents and paraphernalia, in which case, the said policeman or peace officer shall stay outside the polling place within a radius of thirty meters near enough to be easily called by the board of election inspectors at any time, but never at the door, and in no case shall the said policeman or peace officer hold any conversation with any voter or disturb or prevent or in any manner obstruct the free access of the voters to the polling place. It shall likewise be unlawful for any *barangay* official to enter and stay inside any polling place except to vote or except when serving as a watcher or member of the board of election inspectors, in which case, he shall leave the polling place immediately after voting.

Utto appears to have committed an election offense, having went to two different polling places to observe the elections despite being a candidate and not an authorized poll watcher. It could be that he just cast his vote in one of the polling places he visited, but no such statement was made in his Affidavit. Just the same, any registered voter has a stake in the

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<sup>444</sup> Id. at 15386–15387.



outcome of the elections, but the manner by which we ensure the clean, orderly, and honest elections should be within the bounds of law.

### ***Basilan***

The affidavits of Nasir A. Tawani,<sup>445</sup> Abdulla I. Anjala,<sup>446</sup> Amat A. Sarama,<sup>447</sup> Mariabella E. Macay,<sup>448</sup> Alamin O. Ibama,<sup>449</sup> Sitti S. Bohong,<sup>450</sup> Abdulbasir D. Tawani,<sup>451</sup> Massir S. Tawani,<sup>452</sup> Kais T. Itih,<sup>453</sup> Muallam A. Gadjalul,<sup>454</sup> Hussin A. Adjain,<sup>455</sup> and Salaaain A. Muhtarin,<sup>456</sup> residents of various barangays in Sumisip, all alleged that there was pre-shading of ballots and that they were unable to vote on election day.

However, being unable to vote does not necessarily mean that no voting took place. A voter may have been unable to vote on election day for various reasons. They may have been transferred to the list of deactivated voters for failure to vote in two consecutive regular elections.<sup>457</sup>

Notably, Abdulla I. Anjala stated that he was a registered voter in Precinct No. 0053-A, Barangay Cabcaban, Sumisip.<sup>458</sup> Yet, the Commission on Elections' Project of Precincts for 2016 shows no Precinct No. 0053-A in Sumisip.<sup>459</sup> With no such precinct in Barangay Cabcaban, this Affidavit has no evidentiary value at all.

Likewise, in Lamitan City, Basilan, affiants also alleged irregularities in the elections, but their narratives were woefully lacking.

Said M. Uliling, a resident of Barangay Balagtasan, alleged in his Affidavit<sup>460</sup> that he was instructed to pre-shade official ballots. Yet, there was no indication whether these ballots were fed into the vote-counting machines during the canvassing.<sup>461</sup>

<sup>445</sup> Id. at 15405–15406, Protest Annex II-8.

<sup>446</sup> Id. at 15407, Protest Annex II-9.

<sup>447</sup> Id. at 15408, Protest Annex II-10.

<sup>448</sup> Id. at 15409, Protest Annex II-11.

<sup>449</sup> Id. at 15410, Protest Annex II-12.

<sup>450</sup> Id. at 15411, Protest Annex II-13.

<sup>451</sup> Id. at 15412, Protest Annex II-14.

<sup>452</sup> Id. at 15413, Protest Annex II-15.

<sup>453</sup> Id. at 15414, Protest Annex II-16.

<sup>454</sup> Id. at 15415–15416, Protest Annex II-17.

<sup>455</sup> Id. at 15417–15418, Protest Annex II-18.

<sup>456</sup> Id. at 15419–15420, Protest Annex II-19.

<sup>457</sup> The procedure for deactivation of voters for the 2016 elections can be found in COMELEC Resolution No. 9863 (2014).

<sup>458</sup> *Rollo*, Vol. XIX, p. 15407.

<sup>459</sup> 2016 National and Local Elections Project of Precincts, available at <<https://comelec.gov.ph/?r=2016NLE/ProjectofPrecincts/POP>> (last accessed on December 10, 2020).

<sup>460</sup> *Rollo*, Vol. XIX, p. 15421, Protest Annex II-20.

<sup>461</sup> Id.

For his part, Mady A. Anjalang<sup>462</sup> (Anjalang) stated that on election day, he was told that he could only vote after the supporters of the Liberal Party had done so.<sup>463</sup> He was brought home by his companions after a sudden altercation with a civilian security escort who had threatened to shoot him, and was thus unable to cast his vote.<sup>464</sup>

If Anjalang was unable to cast his vote, it appears that it was of his own doing. He did not claim that he was prevented from casting his vote, but was simply told to wait. Yet, he chose to go home and, it would seem, never returned to the polling place.

Boy Sanson Akilin (Akilin) alleged in his Affidavit<sup>465</sup> that there had been pre-shading of ballots. He added that in the early morning, only select voters had been initially allowed to vote.<sup>466</sup> He also claimed:

4. That, it was not until about 10:00 o'clock in the morning, when a military vehicle arrived and talked to the Barangay Captain that all voters, without distinction, were already allowed entry to the polling place and allowed to cast votes[.]<sup>467</sup>

Notably, Akilin himself admitted that the issue of selecting voters who could cast their votes was resolved that same morning. As for the pre-shaded ballots, there was likewise no statement that these ballots were fed into the vote-counting machines.

Additionally, in Isabela City, Basilan, Gerry A. Salapuddin alleged ballot-snatching and feeding in particular areas, yet he did not explain how he had personal knowledge of these allegations:

**Ballot Snatching and Feeding**

5. Contrary to the directive of the COMELEC Central Office, the ballots for the clustered precincts in the Municipalities of Akbar, Tuburan, Al Barkah, Sumisip, Tabu-an Lasa, and in some barangays of the Municipalities of Muhammad Ajul and Lantawan, all in the Province of Basilan, were not delivered to such clustered precincts but were instead placed in the respective Municipal Halls. As a result, local candidates belonging to the Liberal Party, together with their armed men, took around 90% of these ballots from their respective Treasurers of said municipalities and brought said ballots to the households of their supporters and/or relatives to be filled-up.

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<sup>462</sup> Id. at 15422, Protest Annex II-21.

<sup>463</sup> Id.

<sup>464</sup> Id.

<sup>465</sup> Id. at 15423, Protest Annex II-22.

<sup>466</sup> Id.

<sup>467</sup> Id.



6. On the next day, 9 May 2016, these already filled-up ballots were then fed into the VCMs. As a result of these activities, 90% of the voters in these Municipalities were disenfranchised.<sup>468</sup>

In sum, the affidavits lacked specificity and any iota of proof of fraud or irregularity that would entail annulment of elections, falling short of the threshold in *Abayon*.

We note that protestant also advocated the application of the threshold set forth in *Abayon*:

96. As to whether the threshold will apply per province to all **three (3)** provinces, it can be inferred from the ruling in the case of *Abayon v. HRET and Daza* that if the annulment of the election results involves an entire province, the threshold in case of annulment of the election results covering an entire municipality should apply, *i.e.*, the illegality of the ballots must affect more than fifty percent (50%) of the total precincts of the municipality or province concerned.

97. As to whether there can be failure or annulment in some but not all **three (3)** provinces, the answer will depend on whether there is compliance with the threshold of evidence that is required to prove failure or annulment of elections and the percentage of votes/precincts that needs to be proven as having been affected by the grounds for failure or annulment of elections. If there is compliance for **ALL** the **three (3)** provinces then the elections results for the position of Vice-President in these 3 provinces shall be annulled.<sup>469</sup> (Emphasis in the original)

The Commission on Elections likewise recommended that per *Abayon*, the threshold of evidence to prove annulment of elections consists of a showing that:

- (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;
- (2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots; and
- (3) There must be clear, convincing and strong evidence showing that the protestee is the one responsible for the unlawful acts complained of.<sup>470</sup>

This Tribunal applies the requisites in *Abayon*. Both parties have repeatedly invoked it, and the Commission on Elections itself has insisted on its applicability. We take this opportunity to scrutinize this case through the lens of *Abayon*.

<sup>468</sup> Id. at 15398, Annex II-2, Affidavit of Gerry A. Salapuddin.

<sup>469</sup> *Rollo*, Vol. L, p. 40931, Protestant's Memorandum.

<sup>470</sup> Id. at 41349.



The first requisite—that the unlawful ballots must have affected *more than 50%* of the votes cast on the specific precincts sought to be annulled—was not met. The affidavits reviewed pertained to a measly few municipalities in Lanao del Sur, Maguindanao, and Basilan.

Lanao del Sur has a total of 39 municipalities and one city, yet protestant submitted affidavits referring to only three localities: the municipality of Bacolod-Kalawi,<sup>471</sup> the municipality of Lumbaca-Unayan,<sup>472</sup> and Marawi City.<sup>473</sup>

Interestingly, the Commission on Elections found that there was no failure of elections in Marawi City and in the municipality of Marantao during the 2016 elections.

On August 16, 2016, the Commission on Elections dismissed<sup>474</sup> a petition to declare a failure of elections in Marawi City, docketed as SPA 16-111 (FE). It had ruled on the merits, considering the prior investigation<sup>475</sup> that revealed the reported violence on election day, resulting in voters belatedly casting their votes.<sup>476</sup> In dismissing this petition, the Commission on Elections explained:

Before the COMELEC can declare a failure of election two conditions must concur, namely (1) no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect; and (2) the votes not cast would have affected the result of the election[s]. The cause of such failure of election could only be any of the following: *force majeure*, violence, terrorism, fraud or other analogous causes. The phrase “resulted in failure to elect,” in turn, must be understood in its literal sense, which is “nobody was elected.”

A careful review of the circumstances surrounding the subject elections in Marawi City would disprove any claim of failure of elections therein.

The mere fact that the winning candidates in Marawi City have been proclaimed belies the argument that no voting took place in the precincts on the date fixed by law, or that the election resulted in the failure to elect. In fact, PES Dela Peña failed to appear during the scheduled hearing to present evidence that there was indeed failure of election in Marawi City. There is nothing in the records that will show that (a) elections were not conducted in the designated polling places; (b)

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<sup>471</sup> *Rollo*, Vol. XIX, pp. 15330–15340, Protest: Annex GG-2, Affidavit of Amerah Maranda; Annex GG-3, Affidavit of Aliah L. Abdulkarim; Annex GG-4, Affidavit of Nabilah Sowaib; Annex GG-5, Affidavit of Rohanie Amanoddin; Annex GG-6, Affidavit of Nouman Abdullah.

<sup>472</sup> *Id.* at 15364–15371, Protest Annex GG-11, Affidavit of Abdalnader M. Balt.

<sup>473</sup> *Id.* at 15341–15363, Protest Annexes GG-7 and GG-8, Affidavit of Gonarano P. Corontoz; Annex GG-9, Affidavit of Amer D. Abdullah; Annex GG-10, Affidavit of Sanapia D. Benito.

<sup>474</sup> *Id.* at 41370–41374.

<sup>475</sup> As reported by acting Provincial Election Supervisor of Lanao del Sur, Atty. Roberto dela Peña.

<sup>476</sup> *Rollo*, Vol. L, p. 41371.



elections were suspended in the said city or barangays; and (c) after the voting and during the transmission of the election returns or in the custody or canvass thereof, such results in failure to elect on account of *force majeure*, violence, terrorism, fraud and other analogous causes.<sup>477</sup> (Emphasis in the original, citations omitted)

The August 16, 2016 Resolution turned final on February 15, 2017.<sup>478</sup> The Commission on Elections' ruling that there was no failure of elections in Marawi City is thus binding on this Protest, based on *res judicata* by conclusiveness of judgment. The rule is codified in Rule 39, Sec. 47(c) of the Rules of Civil Procedure, which states:

Rule 39  
Execution, Satisfaction and Effect of Judgments

SECTION 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:

....

(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.

This rule was explained in *Webb v. Gatdula*.<sup>479</sup>

There is conclusiveness of judgment when “there is identity of parties in the first and second cases, but no identity of causes of action[.]” Moreover, “the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.” Thus, when a court of competent jurisdiction judicially tried and settled a right or fact, or an opportunity for a trial has been given, the court's judgment should be conclusive upon the parties. In *Nabus v. Court of Appeals*:

The doctrine [of conclusiveness of judgment] states that a fact or question which was in issue in a former suit, and was there judicially passed on and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein, as far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed or

<sup>477</sup> Id. at 41373.

<sup>478</sup> Id. at 41335.

<sup>479</sup> G.R. No. 194469, September 18, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65754> [Per J. Leonen, Third Division].

unvacated by proper authority. The only identities thus required for the operation of the judgment as an estoppel, in contrast to the judgment as a bar, are identity of parties and identity of issues.

It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. In order that this rule may be applied, it must clearly and positively appear, either from the record itself or by the aid of competent extrinsic evidence that the precise point or question in issue in the second suit was involved and decided in the first. And in determining whether a given question was an issue in the prior action, it is proper to look behind the judgment to ascertain whether the evidence necessary to sustain a judgment in the second action would have authorized a judgment for the same party in the first action. . . .

In essence, *res judicata* by bar by prior judgment prohibits the filing of a second case when it has the same parties, subject, and cause of action, or when the litigant prays for the same relief as in the first case. Meanwhile, *res judicata* by conclusiveness of judgment precludes the re-litigation of a fact or issue that has already been judicially settled in the first case between the same parties. If, between the first and second case, the causes of action are different and only the parties and issues are the same, *res judicata* is still present by conclusiveness of judgment.<sup>480</sup> (Citations omitted)

While SPA No. 16-111 (FE) does not name any petitioner, the resolved matter is the same as that raised by protestant here. The grounds for annulment of election results are similar to the grounds for declaration of failure of elections. The Commission on Elections found no failure of elections in Marawi City because the elections were held, a majority of the voters cast their votes, and winning candidates were proclaimed. Thus, there is no need to re-litigate the same matter.

For the municipality of Marantao, two consolidated petitions had both alleged violence, terrorism, and pre-shading of ballots.<sup>481</sup> In dismissing the consolidated petitions, the Commission on Elections explained:

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<sup>480</sup> Id.

<sup>481</sup> *Rollo*, Vol. L, p. 41398, May 26, 2017 in SPA No. 16-130 (FE) and SPA No. 16-131 (FE).



Elections did take place in the assailed clustered precincts as the evidence on record establishes. There is no evidence on record that elections were suspended before the hour fixed by law for the closing of the voting because of the alleged terrorism and anomalies claimed in the petitions. Moreover, the alleged terrorism and anomalies did not result in failure to elect.

....

While there is evidence on record showing that there was a shooting incident at the Municipal Gym of Marantao, which resulted in the deaths of two of Petitioner Adiong's watchers, the same cannot be considered as sufficient basis to declare failure of elections because evidence shows that the violent encounter did not fully disrupt or adversely affect the voting in the questioned polling centers.<sup>482</sup>

The ruling that there was no failure of elections in the municipality of Marantao is also *res judicata* by conclusiveness of judgment.

*Res judicata* by conclusiveness of judgment also applies to the other cases resolved by the Commission on Elections involving cities and municipalities in Maguindanao and Basilan. Again, in determining whether this Tribunal should proceed to the third cause of action, we must recognize the Commission on Elections' various resolutions dismissing petitions to declare a failure of elections.

For Maguindanao, the Commission on Elections ruled that there was no failure of elections in the municipalities of Pagalungan,<sup>483</sup> Sultan Kudarat,<sup>484</sup> Sultan sa Barongis,<sup>485</sup> Datu Unsay,<sup>486</sup> and Northern Kabuntalan.<sup>487</sup>

Incidentally, Maguindanao has a total of 36 municipalities and one city,<sup>488</sup> but the affiants protestant presented were both from the municipality of Datu Saudi Ampatuan.<sup>489</sup>

Meanwhile, Basilan has 11 municipalities and two cities,<sup>490</sup> but the affidavits protestant presented refer only to the municipalities of Tuburan,<sup>491</sup> Sumisip,<sup>492</sup> Akbar,<sup>493</sup> and Lamitan City.<sup>494</sup>

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<sup>482</sup> Id. at 41410 and 41413.

<sup>483</sup> Id. at 41382–41387, October 30, 2017 in SPA Case No. 16-122 (FE).

<sup>484</sup> Id. at 41388–41395, November 17, 2016 Resolution in SPA No. 16-125 (FE).

<sup>485</sup> Id. at 41338, November 8, 2016 and May 17, 2017 Resolutions in SPA No. 16-135 (FE).

<sup>486</sup> Id. at 41417–41431, February 1, 2018 Resolution in SPA No. 16-132 (FE).

<sup>487</sup> Id. at 41375–41381, January 15, 2018 Resolution in SPA No. 16-114 (FE).

<sup>488</sup> Cotabato City is treated as a special province per the Commission on Elections' Project of Precincts for the 2016 elections, but is deemed included in Maguindanao for the third cause of action.

<sup>489</sup> *Rollo*, Vol. XIX, pp. 15383–15390, Protest Annex HH-2, Affidavit of Normina L. Taha; and Annex HH-3, Affidavit of Bassir D. Utto.

<sup>490</sup> Isabela City is treated as a special province as per COMELEC's Project of Precincts for the 2016 national and local elections, but is included in Basilan for the third cause of action.



The Provincial Certificates of Canvass for Lanao del Sur,<sup>495</sup> Maguindanao,<sup>496</sup> and Basilan<sup>497</sup> indicate the total number of registered voters for these provinces, the total number of voters who actually voted, as well as the number of votes garnered per candidate for vice president and its percentage based on the total number of votes cast. Protestee presented the number of votes needed to reach the threshold laid down in *Abayon*:

102. Following the requirements laid down in *Abayon*, protestant Marcos must be able to show that at least **Five Hundred Fifty Four Thousand Forty Two (554,042) votes** were affected by the alleged electoral [frauds], anomalies and irregularities in the Provinces of Basilan, Lanao del Sur and Maguindanao:

	Total Number of Voters Who Actually Voted	Number of Votes That Must Have Been Affected
Basilan	190,704	95,353
Lanao del Sur	421,057	210,529
Maguindanao	496,319	248,160
<b>TOTAL</b>	<b>1,108,080</b>	<b>554,042</b> <sup>498</sup>

The Commission on Elections’ finding that there was no failure of elections in several cities and municipalities in these provinces serves as *res judicata* by conclusiveness of judgment. Necessarily, we must subtract the number of votes in those areas from the total number of protested votes. After subtracting the number of votes, we can preliminarily determine whether the remaining votes will reach the threshold in *Abayon*.

The table below represents data for Lanao del Sur where, as discussed, petitions in Marawi City<sup>499</sup> and the municipality of Marantao<sup>500</sup> had been dismissed by the Commission on Elections on the merits.<sup>501</sup> The votes cast in these areas should no longer be included in the votes to be

<sup>491</sup> *Rollo*, Vol. XIX, pp. 15399–15401, Protest Annex II-3, Affidavit of Nurudin A. Dawalin; Annex II-4, Affidavit of Redzmar M. Hasim; and Annex II-5, Affidavit of Basir A. Saala.

<sup>492</sup> *Id.* at 15405–15420, Protest Annex II-8, Affidavit of Nasir A. Tawani; Annex II-9, Abdulla I. Anjala; Annex II- 10, Affidavit of Amat A. Sarama; Annex II-11, Affidavit of Mariabella E. Macay; Annex II-12, Affidavit of Alamin O. Ibama; Annex II-13, Affidavit of Sitti S. Bohong; Annex II-14, Affidavit of Abdulbasir D. Tawani; Annex II-15, Affidavit of Massir S. Tawani; Annex II-16, Affidavit of Kais T. Itih; Annex II-17, Affidavit of Muallam A. Gadjalul; Annex II-18, Affidavit of Hussin Adjain; and Annex II-19, Affidavit of Salaain A. Muhtarin.

<sup>493</sup> *Id.* at 15402–15404, Protest Annex II-6, Affidavit of Rahman S. Kapeng; and Annex II-7, Affidavit of Gani A. Alap.

<sup>494</sup> *Id.* at 15421–15423, Protest Annex II-20, Affidavit of Said M. Uliling; Annex II-21, Affidavit of Mady A. Anjalang; and Annex II-22, Affidavit of Boy Sanson Akilin.

<sup>495</sup> *Rollo*, Vol. XIX, pp. 15320–15321, Annex GG.

<sup>496</sup> *Id.* at 15373, Protest Annex HH.

<sup>497</sup> *Id.* at 15392, Protest Annex II.

<sup>498</sup> *Rollo*, Vol. XLIX, p. 39857, Protestee’s Memorandum.

<sup>499</sup> *Rollo*, Vol. L, p. 41335, Docketed as SPA No. 16-111 (FE).

<sup>500</sup> *Id.* at 41336, Docketed as SPA No. 16-130 (FE).

<sup>501</sup> *Id.* at 41335–41336.



annulled lest we run afoul of the rule on conclusiveness of judgment. These votes have been upheld and the results of the elections can no longer be questioned.

“Voter Turnout” was computed based on the voter’s turnout for the province. This Tribunal used the data from the Statement of Votes by City/Municipality for Lanao del Sur,<sup>502</sup> Maguindanao,<sup>503</sup> and Basilan,<sup>504</sup> attached as annexes to the Protest. “Votes to be Deducted” were likewise based on the same data:

LANAO DEL SUR			
Marawi City			
	Total Number of Registered Voters	Actual Voter Turnout based on Statement of Votes by City/Municipality	Votes to be Deducted from total number of protested ballots
Protestant	49,114	44,780	5,050
Protestee			21,782
Total			26,832
Municipality of Marantao			
Protestant	20,793	19,446	2,307
Protestee			7,405
Total			9,712
TOTAL number of votes to be deducted from protested ballots in the Province of Lanao del Sur			36,544

Meanwhile, data for Maguindanao is presented in the table below:

MAGUINDANAO			
Municipality of Pagalungan			
	Total Number of Registered Voters	Actual Voter Turnout based on Statement of Votes by City/Municipality	Votes to be Deducted from total number of protested ballots
Protestant	17,031	13,039	495
Protestee			7,030
Total			7,525
Municipality of Sultan Kudarat			
Protestant	44,719	41,320	13,494
Protestee			14,490
Total			27,984

<sup>502</sup> Rollo, Vol. XIX, pp. 15322–15329, Protest Annex GG-1.

<sup>503</sup> Id. at 15375–15381, Protest Annex HH-1.

<sup>504</sup> Id. at 15394–15397, Protest Annex II-1.

Municipality of Sultan sa Barongis			
Protestant	10,267	6,783	653
Protestee			2,985
Total			3,638
Municipality of Datu Unsay			
Protestant	5,827	4,287	56
Protestee			444
Total			500
Municipality of Northern Kabuntalan			
Protestant	10,538	6,694	1,524
Protestee			2,791
Total			4,315
TOTAL number of votes to be deducted from protested ballots in the Province of Maguindanao			43,962

Per the Commission on Elections, no petition to declare failure of elections and/or annulment of election results was filed for Basilan.

“Votes subject of annulment” refers to the total number of votes earned by protestant and protestee in the provinces. “Votes deducted due to COMELEC’s prior finding” refers to the projected number of votes that protestant and protestee garnered as seen in the two previous tables. We then compare the difference between the votes subject of annulment and the votes deducted with the numbers in the column “50+1 Threshold.” If the total remaining ballots are less than the threshold, this means that the annulment of election results for that particular province fails:

Determination of whether <i>Abayon’s</i> Threshold will be met if Third Cause of Action is given due course						
Province	Total Number of Actual Voters	50+1 Threshold	Votes Subject of Annulment	Votes Deducted due to COMELEC’s prior finding	TOTAL ballots that remain subject to annulment	50+1 Threshold Met?
Basilan	190,704	95,353				
Protestant			32,326	None	32,326	
Protestee			77,321	None	77,321	
					109,647	Yes
Lanao del Sur	421,057	210,529				
Protestant			56,243	7,357	48,886	
Protestee			180,539	41,228	139,311	
					188,197	No
Maguindanao	496,319	248,160				
Protestant			80,591	16,222	64,369	
Protestee			220,125	27,740	192,385	
					256,754	Yes



From this table, it is clear that the remaining contested ballots for Lanao del Sur will not meet the required threshold under the first requisite.

The table below represents the computation of votes for protestant and protestee if we combine the results of the revision and appreciation for the second cause of action, and the projected results for the third cause of action:

Combined total for all provinces			
	Protestant's remaining votes subject of annulment	Protestee's remaining votes subject of annulment	RESULT
Basilan	32,326	77,321	
Lanao Del Sur	48,886	139,311	
Maguindanao	64,369	192,385	
TOTAL	145,581	409,017	
Total Votes after revision and appreciation	14,157,771	14,436,337	
LESS (total of three provinces)	145,581	409,017	
TOTAL	14,012,190	14,027,320	Protestee maintains her lead
DIFFERENCE			15,130

*There is prima facie showing that protestee would still maintain her lead even if we proceed with the third cause of action.*

Protestant has repeatedly raised *Tan v. Hataman*, the case decided by the Commission on Elections. *Tan* was dismissed for mootness on December 5, 2019, and this ruling has turned final.<sup>505</sup> In any case, to fully resolve the issue, we reviewed which specific precincts were chosen as pilot precincts in that case.

Based on the April 26, 2018 Order<sup>506</sup> of the Commission on Elections' Second Division, the 167 pilot protested precincts<sup>507</sup> were in the municipalities of Akbar, Lantawan, Tuburan, Tabuan-lasa, Sumisip, and

<sup>505</sup> *Rollo*, Vol. L, p. 41345.

<sup>506</sup> Penned by Presiding Commissioner Luie Tito F. Guia, available at <[https://www.bongbongmarcos.com/wp-content/uploads/2018/05/BBM-Notice-with-Order-dtd-04.26.18\\_\\_EPC-No.-2016-37.pdf](https://www.bongbongmarcos.com/wp-content/uploads/2018/05/BBM-Notice-with-Order-dtd-04.26.18__EPC-No.-2016-37.pdf)> (last accessed on January 18, 2021).

<sup>507</sup> An established precinct is different from a clustered precinct. An established precinct is the basic component of a clustered precinct. Several established precincts compose a clustered precinct.

Lamitan City in Basilan; Taraka in Lanao del Sur; and the municipalities of Barira, Sultan Kudarat, Pandag, and Datu Odin Sinsuat in Maguindanao.

As discussed, the Commission on Elections ruled in SPA No. 16-125 (FE) that there was no failure of elections in Sultan Kudarat, Maguindanao.<sup>508</sup> Similar to Marawi City and the municipality of Marantao, the votes cast in Sultan Kudarat shall be excluded because of the Commission's prior finding.

In SPA No. 16-125 (FE), Ibrahim K. Ibrahim (Ibrahim) filed a petition to annul election results or declare a failure of elections against Shameem B. Mastura (Mastura). Both were mayoral candidates of Sultan Kudarat in 2016.<sup>509</sup> Ibrahim alleged that Mastura committed electoral fraud:

- a) [Mastura]'s personnel shaded in advance the official ballots;
- b) [Mastura]'s personnel threatened to kill the legitimate voters who were supporting [Ibrahim];
- c) Barangay officials were tolerating elements engaged in the advance shading of ballots;
- d) Letting [Mastura]'s personnel man the polling places or precincts;
- e) Excluding [Ibrahim]'s poll watchers from their assigned precincts;
- f) Closing the precincts without just cause;
- g) Allowing [Mastura]'s voters to vote repetitively;
- h) Not inking voters;
- i) Allowing persons not on COMELEC's master list of voters to vote; and
- j) Feeding the ballots and the pre-shaded ballots to the VCM (PCOS) Machines.<sup>510</sup>

The Commission on Elections denied the Petition, reasoning that:

Section 6 of the Omnibus Election Code lays down the conditions for Failure of Election to prosper, thus:

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

<sup>508</sup> *Rollo*, Vol. L, pp. 41388–41395.

<sup>509</sup> *Id.* at 41389.

<sup>510</sup> *Id.* at 41389–41390.



failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

Based on the foregoing provision, three instances justify a declaration of failure of election. These are:

- a) the election in any polling place has not been held on the date fixed on account of *force majeure*, violence, terrorism, fraud or other analogous causes;
- b) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud or other analogous causes; or
- c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud or other analogous causes.

The Supreme Court elucidates that what is common in these three instances is the resulting failure to elect. In the first instance, no elections is held while in the second, the election is suspended. In the third instance, circumstances attending the preparation, transmission, custody or canvas (sic) of the election returns cause a failure to elect. The term failure to elect means nobody emerged as a winner. Absent any showing that these conditions were not met, the Commission can deny the Petition.

A close perusal of the allegations in the Petition shows that [Ibrahim] does not contend that elections were not held or suspended. Neither does he allege that although there was voting, nobody was elected. [Ibrahim] simply posits that there was failure of elections on account of violence, intimidation and fraud committed by [Mastura]. These allegations do not fall under any of the conditions that would justify the declaration of failure of election.

....

[Ibrahim] averred that there was failure of election for the reason that no actual election was held since no actual voting was done by the real and legitimate voters of Sultan Kudarat on account of violence, intimidation, and fraud of [Mastura] and his personnel.

We are not persuaded.

....

As earlier discussed, the conditions set forth by law were not met in the instant case to declare failure of elections. Elections were held followed by the declaration of the winning candidate. Considering that there is no concurrence of the conditions seeking to declare failure of election, there is no longer need to receive evidence on alleged election irregularities.

Moreover, the nullification of elections or declaration of failure of elections is an extraordinary remedy. The party who seeks the



nullification of an election has the burden of proving entitlement to this remedy. It is not enough that a verified petition is filed. The allegations in the petition must make out a *prima facie case* for the declaration of failure of election, and convincing evidence must substantiate the allegations.<sup>511</sup> (Citations omitted)

Since there was no ruling on the merits in *Tan*, the pilot precincts there were included in the computation of remaining votes to be annulled, as shown in the previous table. To reiterate, the votes that were removed from the computation of votes to be annulled are those where the Commission on Elections had ruled that there was no failure of elections. Thus, if we consider the alleged failure of elections in the pilot precincts in *Tan*, it would not change any of the computation in the table above, as these precincts already form part of it.

The second requisite in *Abayon* was also not proven. Protestant failed to allege that it was “impossible to distinguish with reasonable certainty between the lawful and unlawful ballots.”<sup>512</sup> There is nothing that would prove the use of illegal ballots or that any illegal ballots existed.

Neither was the third requisite established, as there is no piece of evidence that would lead this Tribunal to believe that protestee “*is the one responsible for the unlawful acts complained of.*”<sup>513</sup> Protestant utterly failed to allege that protestee instigated the electoral irregularities complained of, let alone prove it.

All told, the third cause of action fails, and is likewise dismissed.

### VIII

Protestant, citing Section 3 of Republic Act No. 1793,<sup>514</sup> which created this Tribunal, accused the member-in-charge of delay<sup>515</sup> in the resolution of the present election case. However, it is no longer good law.

<sup>511</sup> Id. at 41391–41394.

<sup>512</sup> *Abayon v. HRET*, 785 Phil. 683, 705 (2016) [Per J. Mendoza, Special En Banc].

<sup>513</sup> *Rollo*, Vol. L, p. 41349. Commission on Elections’ Comment citing *Abayon v. HRET*, 785 Phil. 683 (2016) [Per J. Mendoza, Special En Banc].

<sup>514</sup> SECTION 3. The Presidential Electoral Tribunal *shall decide the contest within twenty months after it is filed*, and within said period shall declare who among the parties has been elected, or, in the proper case, that none has been elected, and in case of a tie between the candidates for president or for vice-president involved in the contest, one of them shall be chosen President or Vice-President, as the case may be, by a majority vote of the members of the Congress in joint session assembled. The party who, in the judgment, has been declared elected, shall have the right to assume the office as soon as the judgment becomes final which shall be ten days after promulgation. The promulgation shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys, personally or by registered mail or by telegraph. No motion shall be entertained for the reopening of a case but only for the reconsideration of a decision under the evidence already of record. No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for reconsideration shall be resolved within ten days after it is submitted for resolution. As soon as a



The 1973 Constitution impliedly repealed Republic Act No. 1793 because it removed from the citizens the power to directly vote for the president and gave it to the members of the National Assembly.<sup>516</sup> Additionally, “the position of Vice-President was constitutionally non-existent”<sup>517</sup> under the 1973 Constitution.

Eventually, the direct election of the president and vice president was restored when the National Assembly passed Batas Pambansa Blg. 884,<sup>518</sup> which constituted an independent Presidential Electoral Tribunal. From a mere statutory creation, it then became a constitutional institution under the 1987 Constitution. *Atty. Macalintal v. Presidential Electoral Tribunal*<sup>519</sup> explained:

A plain reading of Article VII, Section 4, paragraph 7, readily reveals a grant of authority to the Supreme Court sitting *en banc*. In the same vein, although the method by which the Supreme Court exercises this authority is not specified in the provision, *the grant of power does not contain any limitation on the Supreme Court's exercise thereof*. The Supreme Court's *method* of deciding presidential and vice-presidential election contests, through the PET, is actually a derivative of the exercise of the prerogative conferred by the aforementioned constitutional provision. Thus, the subsequent directive in the provision for the Supreme Court to “promulgate its rules for the purpose.”<sup>520</sup> (Emphasis supplied)

This Tribunal has promulgated its 2010 Rules which governs its proceedings. Under Rule 67, this Tribunal “shall follow the procedure prescribed for the Supreme Court in Sections 13 and 14, Article VIII of the Constitution.” These constitutional provisions, in turn, state:

ARTICLE VIII  
Judicial Department

....

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

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decision becomes final, a copy thereof shall be furnished both houses of the Congress. (Emphasis supplied).

<sup>515</sup> *Rollo*, Vol. L, p. 41462–41490, Strong Manifestation with Extremely Urgent Omnibus Motion.

<sup>516</sup> *Atty. Macalintal v. PET*, 650 Phil. 326, 347 (2010) [Per J. Nachura, En Banc].

<sup>517</sup> *Id.* at 348.

<sup>518</sup> An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear, and Decide Election Contests in the office of the President and Vice-President of the Philippines, Appropriating Funds Therefor and For Other Purposes.

<sup>519</sup> 650 Phil. 326 (2010) [Per J. Nachura, En Banc].

<sup>520</sup> *Id.* at 353.



or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower collegiate courts.

SECTION 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

Thus, there is no rule requiring an election protest to be decided within a particular timeframe, whether 20 months<sup>521</sup> or 12 months<sup>522</sup> after its filing.

Furthermore, an election protest is not an ordinary petition as it may deprive a significant portion of the voting population of its right of suffrage. Precisely due to such extraordinary nature, this Tribunal took pains to afford both parties every opportunity to present their case in the interest of due process. Throughout the proceedings, this Tribunal directed protestant to allege with specificity when his allegations were insufficient.<sup>523</sup> We likewise directed the opposing party to comment on every motion. We instructed the parties to present evidence when they raised new arguments or unsubstantiated ones.<sup>524</sup>

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<sup>521</sup> Republic Act No. 1793 (1957).

<sup>522</sup> Batas Pambansa Blg. 884 (1985) partly states:

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

The promulgation of the judgment shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys, personally or by special registered mail or by telegram. No motion shall be entertained for the opening of a case but only for the reconsideration of a decision based on the evidence already of record. No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for reconsideration must be resolved within ten days after it is submitted for resolution. As soon as a decision becomes final, a copy thereof shall be furnished the Batasang Pambansa through the Speaker, and the Commission on Elections through its Chairman, in addition to the copies for the contestants or their attorneys.

<sup>523</sup> Protestant preliminarily anchored his causes of action into two. After asking clarificatory questions during the preliminary conference on July 11, 2017, this Tribunal categorized them into three causes of action instead, and dismissed his first cause of action for being "meaningless and pointless[.]" (*See rollo*, Vol. XLIX, p. 39541, October 15, 2019 Resolution). This Tribunal gave the parties a preliminary conference guide prior to its conduct where it summarized their respective admissions, proposed stipulations, issues, and witnesses. As the parties requested, this Tribunal also gave them the time to comment on it, and these were adopted accordingly. Moreover, when this Tribunal released the results of the revision and appreciation of ballots in the October 15, 2019 Resolution, it resolved to hear the parties again. (*Marcos v. Robredo*, P.E.T. Case No. 005, October 15, 2019, p. 18 [Per Curiam, En Banc]).

<sup>524</sup> When protestant failed to specify his witnesses' corresponding clustered precincts after having been directed to substantiate his allegations, this Tribunal required the protestant to submit anew a list of his witnesses and their corresponding clustered precinct. He was given fresh period of time to comply with this Tribunal's order. (*See rollo*, Vol. XLIX, pp. 39523-39578, October 15, 2019 Resolution).



When the revision and appreciation of ballots from protestant's pilot provinces failed to support his claim of electoral fraud and irregularity, this Tribunal opted to take the prudent course and direct the parties to comment on the results instead of dismissing the Protest outright, allowing the parties to defend their arguments in the proper forum. We likewise solicited the comments of the Commission on Elections and the Office of the Solicitor General and had them weigh in on the factual and constitutional issues raised by the parties.

This case is undoubtedly politically delicate, as it involves the second highest position in the land. However, it is also "the first and only election protest before the Tribunal in which the recount and revision process of the pilot provinces were successfully concluded and the [P]rotest itself resolved on the merits."<sup>525</sup> Before this, only four<sup>526</sup> election protests had been lodged before this Tribunal.

Unlike those four previous cases, which were dismissed for mootness due to abandonment,<sup>527</sup> failure to substitute the deceased protestant,<sup>528</sup> and expiration of term,<sup>529</sup> this Protest was resolved on the merits after the revision and appreciation of ballots for protestant's three pilot areas had been concluded.

This Protest is in contrast to *Defensor-Santiago v. Ramos*,<sup>530</sup> where protestant Miriam Defensor-Santiago moved to waive the revision of the remaining unrevised ballots from 4,017 precincts out of the 17,527 precincts of her three pilot areas of Metro Manila, Pampanga, and Zamboanga.<sup>531</sup> Her motion was granted and the revision was terminated.<sup>532</sup>

Similarly, in *Legarda v. De Castro*,<sup>533</sup> the revision of ballots in 124,404 precincts in protestant Loren Legarda's pilot areas of Cebu, Pampanga, and Maguindanao was not completed because she failed to make the required additional deposit for the continuation of the revision. This led to the dismissal of her cause of action grounded on the revision of ballots.

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<sup>525</sup> *Rollo*, Vol. XLIX, pp. 39523–39578, *Marcos v. Robredo*, P.E.T. Case No. 005, October 15, 2019 [Per Curiam, En Banc].

<sup>526</sup> *Defensor-Santiago v. Ramos*, P.E.T. Case No. 001, 323 Phil. 665 (1996) [Per Curiam, En Banc], *Poe v. Macapagal Arroyo*, P.E.T. Case No. 002, 494 Phil. 137 (2005) [Per J. Quisumbing, En Banc], *Legarda v. De Castro*, P.E.T. Case No. 003, 566 Phil. 123 (2008) [Per J. Quisumbing, En Banc], and *Roxas v. Binay*, P.E.T. Case No. 004, 793 Phil. 9 (2016) [Per J. Bersamin, En Banc].

<sup>527</sup> *Defensor-Santiago v. Ramos*, P.E.T. Case No. 001, 323 Phil. 665 (1996) [Per Curiam, En Banc] and *Legarda v. De Castro*, P.E.T. Case No. 003, 566 Phil. 123 (2008) [Per J. Quisumbing, En Banc].

<sup>528</sup> *Poe v. Macapagal-Arroyo*, P.E.T. Case No. 002 (Resolution), 494 Phil. 137 (2005) [Per J. Quisumbing, En Banc].

<sup>529</sup> *Roxas v. Binay*, P.E.T. No. 004, 793 Phil. 9 (2016) [Per J. Bersamin, En Banc].

<sup>530</sup> P.E.T. Case No. 001, 323 Phil. 665 (1996) [Per Curiam, En Banc].

<sup>531</sup> *Id.* at 693.

<sup>532</sup> *Id.* at 705.

<sup>533</sup> P.E.T. Case No. 003, 566 Phil. 123, 126 and 137–138 (2008) [Per J. Quisumbing, En Banc].



The election protest in *Poe v. Macapagal-Arroyo*<sup>534</sup> did not even reach the revision stage as protestant Ronald Allan Poe died only a few months after filing his election protest. His wife's motion for substitution was not granted, as she was not a real party in interest. This Tribunal pointed out that Mrs. Poe was "cognizant that as a mere substitute she cannot succeed, assume or be entitled to said elective office, and her utmost concern is not personal but one that involves the public's interest."<sup>535</sup>

The election protest in *Roxas v. Binay*<sup>536</sup> likewise did not garner much traction and no preliminary conference order was released since the parties failed to agree on the common issues and on the procedure to expedite proceedings.<sup>537</sup> The parties then filed their certificates of candidacy in the 2016 elections and failed to inform this Tribunal if they were still interested in pursuing the protest.<sup>538</sup> The election protest was eventually mooted after the contested position of vice president had expired on June 30, 2016.<sup>539</sup>

Here, this Tribunal conducted and completed the retrieval, revision, and appreciation of more than two million ballots from protestant's designated pilot areas. This Protest also involved complex issues and presented this Tribunal with an opportunity to reconcile the *Abayon* ruling with Rule 65 of this Tribunal's Rules, which provides for the outright dismissal of the protest if the protestant fails to show reasonable recovery of votes after the revision and appreciation of ballots from the three pilot areas.

The determination of delay is not a mechanical process. "Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised."<sup>540</sup>

Considering the unique issues presented before this Tribunal, the volume of ballots that had to be recounted, revised, and appreciated, as well as the voluminous affidavits submitted by protestant—all of which had to be carefully reviewed to determine if they rose up to the degree of fraud required to annul election results—it cannot be said that inordinate delay attended the resolution of this Protest. This is the only case not mooted by events, and the only one that reached disposition.

Suffrage is at the heart of every democracy.<sup>541</sup> Election results must not be tainted with unnecessary doubt by losing candidates who cannot accept defeat.

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<sup>534</sup> P.E.T. Case No. 002, 494 Phil. 137 (2005) [Per J. Quisumbing, En Banc].

<sup>535</sup> Id. at 142.

<sup>536</sup> P.E.T. Case No. 004, 793 Phil. 9 (2016) [Per J. Bersamin, En Banc].

<sup>537</sup> Id. at 14.

<sup>538</sup> Id. at 15.

<sup>539</sup> Id. at 16.

<sup>540</sup> *Cagang v. Sandiganbayan, Fifth Division*, G.R. Nos. 206438, 206458, and 210141–42, July 31, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581>> [Per J. Leonen, En Banc].

<sup>541</sup> *In re: Geronimo v. Ramos*, 221 Phil. 130 (1985) [Per J. Gutierrez, Jr., En Banc].




To reiterate, “the power to annul an election should be exercised with the greatest care as it involves the free and fair expression of the popular will. It is only in extreme cases of fraud and under circumstances which demonstrate to the fullest degree a fundamental and wanton disregard of the law that elections are annulled, and then only when it becomes impossible to take any other step.”<sup>542</sup>

What this Tribunal faces today is not an extreme case of fraud that deserves further consideration. Protestant failed to make out his case. There is no substantial recovery of votes in the pilot provinces that he himself had designated. To entertain the third cause of action is to risk frustrating the valid exercise of the nation’s democratic will and subject it to the endless whims of a defeated candidate.

The case has immense repercussions not only for the parties, but also for future election protests brought before this Tribunal. We have granted the parties every opportunity to make and defend their arguments before this Tribunal, the proper forum to hear this case. However, protestant still failed to substantiate his allegations of massive anomalies and irregularities in protestee’s favor. Instead, he chose to make sweeping allegations of wrongdoing and submitted incomplete and incorrect data. His abject failure to support his claims leaves this Tribunal with no other recourse but to dismiss his Protest.

**WHEREFORE**, the Presidential Electoral Tribunal **DISMISSES** the Election Protest filed by protestant Ferdinand “Bongbong” R. Marcos, Jr. for lack of merit. The Counter-Protest filed by protestee Maria Leonor “Leni Daang Matuwid” G. Robredo is likewise **DISMISSED**.

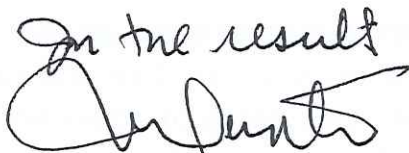
**SO ORDERED.**

  
MARVIC M.V.F. LEONEN  
Associate Justice

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ANNA-LI R. PAPA-GOMBIO  
Deputy Clerk of Court En Banc  
OCC En Banc, Supreme Court

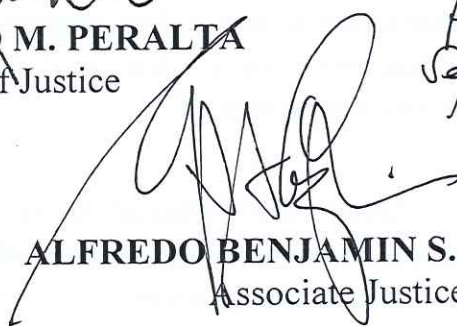
<sup>542</sup> *Peña v. HRET*, 337 Phil. 70, 78 (1997) [Per J. Torres, Sr., En Banc].

WE CONCUR:

*In the result*  
  
**DIOSDADO M. PERALTA**  
 Chief Justice

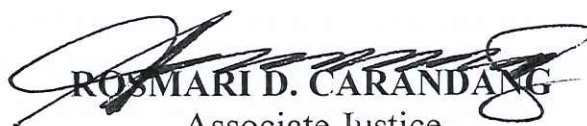
*Please See  
 Separate Concurring  
 Opinion*

*ME. KERN*  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice


  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

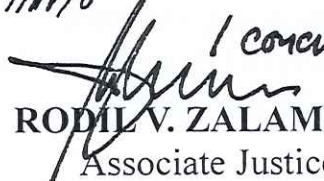
*Aggescmundo*  
**ALEXANDER G. GESMUNDO**  
 Associate Justice

*Ruternando*  
**RAMON PAUL L. HERNANDO**  
 Associate Justice

  
**ROSMARI D. CARANDANG**  
 Associate Justice

*Alfajar*  
**AMY C. LAZARO-JAVIER**  
 Associate Justice

*concur in the result; I join Justice Mario*  
  
**HENRI JEAN PAUL B. INTING**  
 Associate Justice

*I concur in the result,  
 I join the  
 Separate  
 Opinion of  
 J. Gerdan*  
  
**RODIL V. ZALAMEDA**  
 Associate Justice

*concur in the result*  
*see separate  
 opinion*  
  
**MARIO V. LOPEZ**  
 Associate Justice

*I concur in the result  
 I concur in the result  
 separate opinion  
 of Justice Mario  
 Lopez*  
**EDGARDO L. DELOS SANTOS**  
 Associate Justice

*I concur in the result. Please  
 see separate opinion*  
  
**SAMUEL H. GAERLAN**  
 Associate Justice

*I concur in the result. I  
 join the  
 separate  
 opinion of Justice  
 Mario Lopez*  
**RICARDO R. ROSARIO**  
 Associate Justice

*Concur in the Result!*  
  
**JHOSEP Y. LOPEZ**  
 Associate Justice

*I join the separate opinion of  
 Justice Mario Lopez*

OFFICE OF THE  
 DEPUTY CLERK OF COURT  
 DEPUTY CLERK OF COURT  
 DEPUTY CLERK OF COURT




**CERTIFICATION**

I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the court.



**DIOSDADO M. PERALTA**  
Chief Justice

**Certified True Copy**



**ANNA-LI R. PAPA-GOMBIO**  
Deputy Clerk of Court En Banc  
OCC En Banc, Supreme Court

## IN RE: [REDACTED]

I, the undersigned, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the Court.

Attest my hand and the seal of the Court this [REDACTED] day of [REDACTED] 20[REDACTED].

ANNA-LI R. PAPA-GOMBIO  
Deputy Clerk of Court En Banc  
OCC En Banc Supreme Court  
Certified True Copy  
[Signature]



P.E.T. Case No. 005 (*Ferdinand “Bongbong” R. Marcos, Jr., Protestant, v. Maria Leonor “Leni Daang Matuwid” G. Robredo, Protestee*).

Promulgated:

February 16, 2021

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## SEPARATE OPINION

PERALTA, C.J.:

I concur in the result. 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.

### I

We may seek guidance from the landmark case of *Abayon v. HRET*.<sup>1</sup>

*Abayon* is noteworthy for confirming the jurisdiction of electoral tribunals to annul election results and for setting the standard to justify an actual annulment of election results. In order to fully appreciate the nuances of such pronouncements, however, a brief rundown of the relevant facts of *Abayon* is necessary.

*Abayon* had its roots in an election protest filed before the House of Representatives Electoral Tribunal (*HRET*) involving the legislative seat for the First District of Northern Samar.<sup>2</sup> The election protest in *Abayon*, like the one in the case at bench, also included a cause of action for the annulment of election results.<sup>3</sup> The election protest in *Abayon* anchored such cause on allegations of, among others, terrorism in certain identified precincts.<sup>4</sup>

After reception of evidence, the HRET issued a decision favoring the protestant and annulling the election results in five (5) clustered precincts in

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<sup>1</sup> 785 Phil. 683 (2016).

<sup>2</sup> *Id.* at 690.

<sup>3</sup> *Id.* at 691.

<sup>4</sup> *Id.*

Northern Samar.<sup>5</sup> By reason of the annulment of election results, the votes received by the protestant and protestee in the concerned clustered precincts were deducted from their original votes.<sup>6</sup> This then led to the protestant obtaining a plurality victory over the protestee.

Aggrieved, the protestee elevated by petition for *certiorari* the HRET decision to the Supreme Court. In her petition, protestee primarily questioned the jurisdiction of the HRET to order any annulment of election results—contending that the same exclusively belonged to the Commission on Elections (*COMELEC*), pursuant to its power to declare failure of elections under the Omnibus Election Code.

The Supreme Court ruled against the protestee on the issue of jurisdiction of the HRET. According to the Court, the HRET has jurisdiction to order the annulment of election results as the same is but a mere concomitant of its constitutional mandate to decide election contests involving members of the House of Representatives, thus:

An Election Protest proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds or irregularities. It aims to determine who between them has actually obtained the majority of the legal votes cast and, therefore, entitled to hold the office.

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

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

**The power granted to the HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature. 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.<sup>7</sup>**

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<sup>5</sup> *Id.* at 693

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 700. (Emphasis supplied, citations omitted)





The Court also held that the jurisdiction of the HRET to annul election results is different and distinguishable from the COMELEC's power to declare failure of elections.<sup>8</sup> Hence:

Consequently, the difference between the annulment of elections by electoral tribunals and the declaration of failure of elections by the COMELEC cannot be gainsaid. *First*, the former is an incident of the judicial function of electoral tribunals while the latter is in the exercise of the COMELEC's administrative function. *Second*, electoral tribunals only annul the election results connected with the election contest before it whereas the declaration of failure of elections by the COMELEC relates to the entire election in the concerned precinct or political unit. As such, in annulling elections, the HRET does so only to determine who among the candidates garnered a majority of the legal votes cast. The COMELEC, on the other hand, declares a failure of elections with the objective of holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect. When COMELEC declares a failure of elections, special elections will have to be conducted.<sup>9</sup>

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 an 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.*”<sup>10</sup>

Applying the standard, the Court then said of the protestant's evidence:

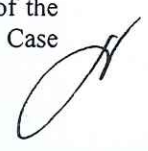
It is on record that [protestant] presented several residents of the concerned precincts to illustrate how NDF-EV members terrorized the residents of the said precincts before and during the elections to ensure [protestant's] defeat to [protestee]. The Court, nevertheless, observes that only three (3) witnesses testified that they voted for [protestee] out of fear from the NDF-EV. The other witnesses merely described the alleged violence committed by the NDF-EV but did not expound whether the same had ultimately made other voters vote for [protestee].

Neither did the testimonies of P/SSupt. Tonog and Col. Capulong corroborate the fact that the alleged terrorism by the NDF-EV caused

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 703-704.

<sup>10</sup> *Id.* at 705. The *Abayon standard*, as well as the ruling of the Court as to the sufficiency of the protestant's evidence, were directly lifted from the dissenting opinion of the undersigned in HRET Case No. 13-023.





voters to vote for [protestee]. These testimonies do not prove that voters in the concerned precincts indeed voted for [protestee] out of fear of the NDF-EV. For one, Col. Capulong simply stated that the NDF-EV would want to see that politicians and candidates whom they call "enemies of the people" be defeated in the elections. Further, as noted by Justice Peralta, P/SSupt. Tonog's Post-Election Memorandum did not state that NDF-EV armed partisans were present in the course of the elections.

[Protestant] presented three (3) voters as witnesses to establish that they were coerced by NDF-EV armed partisan to vote for [protestee] during the 2013 Elections. Their collective testimonies, however, fail to impress. *First*, their testimonies made no reference to [protestee's] alleged participation in the purported terroristic acts committed by the NDF-EV. *Second*, [Protestant's] witnesses alone are insufficient to prove that indeed terrorism occurred in the contested precincts and the same affected at least 50% of the votes cast therein. The testimonies of three (3) voters can hardly represent the majority that indeed their right to vote was stifled by violence. With the allegation of widespread terrorism, it would have been more prudent for [protestant] to present more voters who were coerced to vote for [protestee] as a result of the NDFEV's purported violence and intimidation.

Indubitably, the numbers mattered considering that both the COMELEC and the PNP issued certifications stating that no failure of elections occurred in Northern Samar and that the elections was generally peaceful and orderly. The unsubstantiated testimonies of [Protestant's] witnesses falter when faced with official pronouncements of government agencies, which are presumed to be issued in the regular performance of their duties.<sup>11</sup>

## II

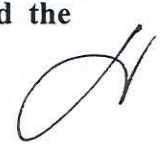
What can be implicitly derived from the case of *Abayon* is that the remedy of annulment of election results is different from the typical election protests that are dependent on the revision and recount of votes. By establishing a unique standard applicable only to cases seeking the annulment of election 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 causes which prevented the**

<sup>11</sup>

*Id.* at 707-708.





**expression of the will of the electorate; or an expert technical examination of the electoral system.”<sup>12</sup>**

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 brought 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.<sup>13</sup>

In parting, I wish to say that this Tribunal should be guided by the spirit of liberalism in handling election contests of whatever kind. Election contests, unlike an ordinary action, is imbued with public interest, since it involves not only the adjudication of private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate as to who shall discharge the prerogatives of a particular public office.<sup>14</sup> Hence, dispositions of election contests should, as much as possible, not be made to rest on technical reasons.

**IN VIEW WHEREOF**, and subject to the foregoing discussions, I join in the result.



**DIOSDADO M. PERALTA**  
Chief Justice

**Certified True Copy**

*Anna-Li R. Papa-Gombio*

**ANNA-LI R. PAPA-GOMBIO**

**Deputy Clerk of Court En Banc**

**OCC En Banc Supreme Court**

**Deputy Clerk of Court En Banc**

**ANNA-LI R. PAPA-GOMBIO**

**Certified True Copy**

<sup>12</sup> Separate Opinion of Justice Gaerlan, page 7. (Emphasis supplied)

<sup>13</sup> *Id.* at 6-7.

<sup>14</sup> *Violago, Sr. v. Commission on Elections, et al.*, 674 Phil. 305, 314 (2011).

ANNA-LI R. PAPA-GOMBIO  
Deputy Clerk of Court En Banc  
OCC En Banc Supreme Court



EN BANC

P.E.T. Case No. 005 - FERDINAND "BONGBONG" R. MARCOS, JR.,  
protestant, *versus* MARIA LEONOR "LENI DAANG MATUWID" G.  
ROBREDO, protestee.

Promulgated:

February 16, 2021

X ----- X

SEPARATE CONCURRING OPINION

CAGUIOA, J.:

*The Protest lives or dies by the results of the determination under Rule 65 of the [Presidential Electoral Tribunal] Rules. Protestant is bound by his choice of pilot provinces. The Tribunal cannot accommodate protestant at the expense of violating its own rules. Protestant therefore has only himself to blame as the results of the revision and appreciation of millions of ballots in his three (3) pilot provinces only lead to one conclusion: the dismissal of his Protest.<sup>1</sup>*

These were the concluding words in my Dissenting Opinion to the Tribunal's Resolution dated October 15, 2019. In the instant Decision, I maintain the same position. Accordingly, I fully concur with the *ponencia* in dismissing the entire Protest.

I write this Separate Concurring Opinion to stress that: 1) following Rule 65 of the 2010 Rules of the Presidential Electoral Tribunal<sup>2</sup> (PET Rules), the Protest should be dismissed for protestant Ferdinand "Bongbong" R. Marcos, Jr.'s (protestant) failure to make out a case using his pilot provinces; 2) a dismissal under Rule 65 applies to the whole Protest, including protestant's third cause of action; 3) the PET Rules, specifically Rule 65, still apply in cases of annulment of elections contemplated in *Abayon v. House of Representatives Electoral Tribunal (HRET)*;<sup>3</sup> and 4) *Abayon*'s strict requirements, as applied to protestant's allegations, show that his third cause of action cannot be considered an annulment of elections but is essentially a petition for declaration of a failure of elections.

<sup>1</sup> J. Caguioa, Dissenting Opinion in P.E.T. Case No. 005, *Marcos, Jr. v. Robredo*, October 15, 2019, p. 7.

<sup>2</sup> A.M. No. 10-4-29-SC, May 4, 2010.

<sup>3</sup> G.R. No. 222236 & 223032, May 3, 2016, 791 SCRA 242.





***The Protest should be dismissed for protestant's failure to make out a case using his pilot provinces.***

Rule 65 of the PET Rules provides for the initial determination of the merit of the protest through the examination of ballots and proof in three pilot provinces designated by protestant that best exemplify the frauds or irregularities raised in his Protest, thus:

**RULE 65. Dismissal; when proper.** – The Tribunal may require the protestant or counter-protestant to indicate, within a fixed period, the province or provinces numbering not more than three, best exemplifying the frauds or irregularities alleged in his petition; and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof, and after making reasonable allowances, the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest.

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

As early as the Preliminary Conference Order, the Tribunal already explained the nature of the proceedings under Rule 65 of the PET Rules, as follows:

Rule 65 provides the Tribunal with a litmus test for protestant's grounds as raised in his Protest. Thus, protestant is given the opportunity to designate three provinces which best exemplify the frauds or irregularities raised in his Protest. These provinces constitute the "test cases" by which the Tribunal will make a determination as to whether it would proceed with the Protest — that is, retrieve and revise the ballots for all the remaining protested clustered precincts — or simply dismiss the Protest for failure of the protestant to make out his case.<sup>4</sup> (Emphasis and underscoring supplied)

It was with this clear and unambiguous purpose that the Tribunal cumbersomely retrieved thousands of ballot boxes from the three pilot provinces chosen by protestant, meticulously re-counted millions of ballots, and painstakingly ruled on each and every objection and claim of the parties on these ballots.<sup>5</sup> Based on the final tally after revision and appreciation of the votes in the pilot provinces, protestee Maria Leonor "Leni Daang Matuwid" G. Robredo (protestee) not only maintained, but even widened her lead with 14,436,337 votes over protestant Marcos who obtained 14,157,771 votes. Stated differently, instead of narrowing the margin of votes between protestant and protestee, the revision and appreciation of the votes in the pilot

<sup>4</sup> Rollo, Vol. XXXII, p. 24591.

<sup>5</sup> P.E.T. Case No. 005 is the first and only election protest before the Tribunal in which the recount, revision and appreciation process of the pilot provinces were successfully concluded.





provinces even led to the widening of the margin of votes from 263,473 to 278,566 in favor of protestee.

To reiterate, in order to proceed with the Protest, protestant should have been able to show reasonable recovery from his designated pilot provinces. Yet, far from doing so, the results of the revision and appreciation proceedings in the pilot provinces established that protestee increased her lead over protestant. Given this, the entire Protest should be dismissed for protestant's failure to make out a case based on his chosen pilot provinces.

As I had intimated in my Dissenting Opinion to the Tribunal's October 15, 2019 Resolution, Rule 65 is plain in its wording and no legal acrobatics are needed to decipher its meaning.<sup>6</sup> It speaks of indicating three provinces "best exemplifying" the frauds and irregularities alleged in the Protest, and the revision and appreciation of ballots and/or reception of evidence will begin with such provinces. In other words, protestant must show through his three (3) chosen pilot provinces that his Protest has merit; otherwise, the Tribunal may dismiss the Protest without further consideration of the other provinces mentioned in his Protest.

Protestant simply had to demonstrate to the Tribunal, through recovery of votes in his chosen pilot provinces, that he would most likely overcome protestee's lead. It was incumbent upon protestant to show through the three (3) pilot provinces that the margin between him and protestee had decreased to such an extent that would convince the Tribunal to consider the rest of the protested precincts.

Despite the foregoing, the opposite was achieved, to the detriment of protestant's cause. To emphasize once more, the numbers irrefutably show that instead of narrowing the margin of votes between protestant and protestee, the margin even widened from 263,473 to 278,555.

As the lead of protestee increased after the revision and appreciation proceedings in the pilot provinces, which protestant himself designated as best exemplifying the grounds in his Protest, it is clear that protestant will most likely fail to make out his case even if the rest of the protested provinces were considered. Having failed to hurdle the requirement in Rule 65, the inevitable conclusion is that the Protest must be dismissed.

***Following Rule 65, the dismissal involves the whole protest, including protestant's third cause of action.***

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<sup>6</sup> J. Caguioa, Dissenting Opinion in *Marcos, Jr. v. Robredo*, supra note 1, at 2.





Proceeding from the foregoing, protestant's failure to make out a case through his three (3) pilot provinces affects all causes of action in his Protest.

The use of pilot provinces, which is common among electoral tribunals, has an underlying wisdom and public purpose. As far back as the 1992 PET Rules, the public interest involved in the speedy termination of election contests had been emphasized. In fact, the PET Rules from 1992 to 2005, and until 2010 have consistently affirmed the principle that the rules shall be liberally construed to achieve a just, expeditious and inexpensive determination and disposition of every election contest filed before the tribunal. The requirement of the three pilot provinces under Rule 65 aids the Tribunal in achieving this goal.

As I had stated in my Dissenting Opinion, the Protest should already have been dismissed then – and protestant has only himself to blame for his failure to surmount the litmus test provided under Rule 65 of the PET Rules:

The dismissal of the protest for protestant's failure to make out a case under Rule 65 is not because of convenience. Indeed, given the divisiveness of elections, the purpose of an initial determination is to weed out protests that have no basis, most especially for a protest involving a national position. Given the massive logistical and administrative concerns, as well as the significant government resources and costs involved in an election protest for the national positions of President and Vice President, the Tribunal is only to proceed with the entire protested precincts and/or provinces if protestant is able to show to the Tribunal the need to look into the other provinces. On the other hand, if protestant fails to make out a case, the Tribunal must dismiss the Protest.

This is necessitated also by the fact that the choice of the pilot provinces was protestant's sole unfettered choice. He could have chosen any three provinces in any of his causes of action. In fact, his choice was not limited to three provinces for a particular cause of action. He could have chosen one province for his second cause of action and two provinces for his third cause of action, or vice versa. He could have, in fact, opted to limit the three provinces to his third cause of action. The permutations are numerous and the decision as to which permutation would best exemplify his cause rested solely on protestant. The only limitation was the number of pilot provinces — **not more than three**. That protestant, the astute politician that he is, and represented by a well-recognized election lawyer, chose three provinces for his second cause of action which were all known bailiwicks of protestee, was his own legal gamble.

This Protest is a thorny and divisive issue that is of paramount importance to the nation, not just to the parties. And this is where the numbers are decisive. Numbers do not hold any feelings or political leanings. Numbers do not lie. They state things simply as they are. And when the numbers reveal a definite conclusion, the Tribunal would do a disservice to the public and to the nation not to heed the conclusion they provide. The majority cannot turn a blind eye to the numbers, when the figures here confirm that protestee indeed won by the slimmest of margins. The numbers also show that even with the provinces that protestant himself





chose to be the ones that would best exemplify his Protest, the margin widened.<sup>7</sup>

To recall, the Tribunal, with the conformity of protestant, categorized his two remaining causes of action after the dismissal of the first one as follows:

*Second Cause of Action - Revision and Recount*

*Revision and recount of the paper ballots and/or the ballot images as well as an examination, verification, and analysis of the voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the EDCVL, and 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 VCMs, CCS units, SD cards (main and backup), and the other data storage devices containing electronic data and ballot images in ALL of the 36,465 protested clustered precincts pursuant to Rules 38 to 45 of the 2010 PET Rules; and*

*Third Cause of Action - Annulment of Elections*

*Annulment of election results for the position of Vice President in the provinces of Maguindanao, Lanao del Sur and Basilan, on the ground of terrorism; intimidation and harassment of voters as well as pre-shading of ballots in all of the 2,756 protested clustered precincts that functioned in the aforesaid areas.<sup>8</sup>*

When protestant chose his pilot provinces, he had complete autonomy to select any province and he could have identified which cause of action to use on any such province. Now that he failed to achieve his desired result, he cannot now escape the dismissal of his entire Protest which was the direct result of his own legal tactic.

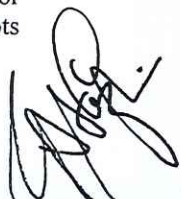
This notwithstanding, protestant claims that pursuant to *Abayon*, a cause of action on the annulment of elections can stand on its own, and is not dependent on the cause of action involving the recount and revision of ballots.<sup>9</sup> It is his stance that according to *Abayon*, a dismissal under Rule 37<sup>10</sup>

<sup>7</sup> Id. at 6.

<sup>8</sup> P.E.T. Case No. 005, *Marccs, Jr. v. Robredo*, October 15, 2019, p. 18.

<sup>9</sup> *Ponencia*, p. 14.

<sup>10</sup> **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 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





of the 2011 Rules of the House of Representatives Electoral Tribunal (HRET Rules) – the counterpart of Rule 65 of the PET Rules – will not lead to the dismissal of an action for annulment of elections, as the two causes of action are separate and distinct from each other.<sup>11</sup> Hence, protestant alleges that by the same token, a dismissal of an election protest under Rule 65 of the PET Rules is limited to the judicial recount and revision of ballots such that if the protest contains a separate cause of action – such as the present annulment of elections – such cause of action may proceed independently.<sup>12</sup>

The facts and the procedure followed by the HRET in *Abayon* do not support this contention.

In *Abayon*, Raul A. Daza (Daza) filed an election protest against Harlin C. Abayon (Abayon), questioning the results in 25 Clustered Precincts (CPs) in the Municipalities of Biri, Capul, Catarman, Lavezares, San Isidro, and Victoria in Northern Samar. He alleged that there was massive fraud, vote-buying, intimidation, and employment of illegal and fraudulent devices and schemes before, during, and after the elections which benefitted Abayon. Moreover, Daza alleged that terrorism was committed by Abayon and his unidentified cohorts, agents and supporters.

**Without requiring Daza to choose his pilot precincts**, the HRET proceeded to conduct revision of the ballots in all the 25 CPs. After revision, the votes of Abayon increased by 28 and Daza by 14. Eventually, Daza moved for the withdrawal of his cause of action for revision and moved for the HRET to receive evidence on the issue of terrorism but limited to only eight CPs out of the 25 CPs subject of his protest.

The HRET annulled the results in only five CPs over which Daza was able to present evidence. The HRET ruled that Daza was able to show that 50% of the votes cast in the five CPs were affected by terrorism and it was impossible to determine the good votes from the bad. Thus, the HRET annulled the results for these CPs, resulting in Daza's proclamation as the winning candidate.

Sitting as members of the HRET, former Chief Justice Lucas P. Bersamin and Associate Justice Presbiterio J. Velasco, Jr. took no part while then Associate Justice, now Chief Justice, Diosdado M. Peralta (Chief Justice

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or the examination, verification or 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 or 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. (Approved on February 10, 2011).

<sup>11</sup> *Ponencia*, 14.

<sup>12</sup> *Id.*





Peralta) dissented. In his dissent, Chief Justice Peralta explained that there was no clear and convincing evidence to warrant the annulment of the results in the five CPs. Chief Justice Peralta opined that the testimonial evidence presented by Daza failed to identify a single ballot that was affected by terrorism, and that there was no evidence that Abayon was responsible for any of the alleged acts of terrorism.

Chief Justice Peralta further declared that another strong ground existed to dismiss Daza's protest: Daza's protest, although captioned as such, was essentially a petition to declare a failure of elections, which should have been promptly and appropriately brought before the Commission on Elections (COMELEC), which has exclusive jurisdiction over such petitions. Chief Justice Peralta pointed out that a prayer to annul election results and a prayer to declare failure of elections based on allegations of fraud, terrorism, violence or analogous cases are within the jurisdiction of the COMELEC, not the HRET.

In its Decision on Abayon's petition for *certiorari*, the Court agreed with Chief Justice Peralta that Daza failed to present clear and compelling evidence to annul the elections. The Court, however, ruled that the HRET has jurisdiction to annul the results.

The question, therefore, is this: Is *Abayon* applicable to the instant Protest such that even if the margin between protestant and protestee increased as a result of the proceedings under Rule 65, the Tribunal can still proceed with the third cause of action?

My answer is no – for three reasons.

*First*, in *Abayon*, no initial revision or examination in pilot precincts was conducted. The HRET immediately proceeded to revise all 25 CPs which were subject of Abayon's cause of action for revision. Hence, there can be no gainsaying that *Abayon* set no precedent on the issue of whether the dismissal on the basis of the results of the revision and appreciation of a protestant's pilot precincts or pilot provinces would affect the entirety of the protest — as it was not a question that was raised then before the Court.

*Second*, *Abayon* did not state that an annulment of elections is separate and distinct from an election protest. A careful reading of *Abayon* will show that an annulment of elections is entertained as part of an election contest – specifically an election protest. The discussion of the Court in *Abayon* centered on the extent of the HRET's jurisdiction in an election protest – **that is, whether an election protest covers a cause of action for annulment of elections**. The Court ruled that the HRET has jurisdiction, as follows:

Both Abayon and Daza do not contest the exclusive jurisdiction of the HRET to decide election protests filed against members of





the House of Representatives. They, however, diverge as to the extent of its jurisdiction.

**An Election Protest proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds or irregularities. It aims to determine who between them has actually obtained the majority of the legal votes cast and, therefore, entitled to hold the office.**

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

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

To the Court’s mind, the HRET had jurisdiction to determine whether there was terrorism in the contested precincts. In the event that the HRET would conclude that terrorism indeed existed in the said precincts, then it could annul the election results in the said precincts to the extent of deducting the votes received by Daza and Abayon **in order to remain faithful to its constitutional mandate to determine who among the candidates received the majority of the valid votes cast.**<sup>13</sup> (Emphasis and underscoring supplied.)

From the foregoing, what *Abayon* held was that the HRET had jurisdiction to rule on the annulment of elections as part of the election protest of Daza. Thus, following *Abayon*, electoral tribunals – including the PET – has jurisdiction to rule on the existence of terrorism in order to determine who between protestant and protestee obtained majority of the legal votes cast, and therefore entitled to hold office. *Abayon* did not, however, create a third type of electoral contest separate from an election protest and *quo warranto*. In

<sup>13</sup> *Abayon v. House of Representatives Electoral Tribunal (HRET)*, supra note 3, at 258-259.





fact, in *Abayon*, the HRET used its 2011 Rules, which, like the PET Rules, speaks of election contests as an election protest or *quo warranto* petition.

*Finally*, *Abayon* did not exempt the action for annulment of elections from the coverage of HRET Rules. As mentioned, *Abayon* applied the 2011 HRET Rules to the cause of action for annulment of elections, which was treated as part of the protest and not as a separate and independent cause of action. Thus, in the present Protest, while *Abayon* allows protestant to include in his protest the cause of action for the annulment of elections in the provinces of Basilan, Lanao del Norte, and Maguindanao, this cause of action is nevertheless covered by the PET Rules, particularly Rule 65. What this means is that before the Tribunal may act on the rest of the protested precincts, including the precincts forming part of the third cause of action for annulment of elections, **protestant must first hurdle Rule 65. And, as discussed, protestant failed to do this.**

At this juncture, it is worth noting that the Tribunal had repeatedly recognized the need for protestant to make out a case under Rule 65 before proceeding to any precincts other than those in his pilot provinces.

To recall, protestant filed a *Motion for Technical Examination* dated July 10, 2017, praying for the conduct of technical examination on the voters' signatures on the Election Day Computerized Voter's List (EDCVL) as against the voters' signatures in the Voters Registration Records (VRRs) in the 2,756 CPs of Lanao del Sur, Maguindanao and Basilan, which would allegedly show massive presence of pre-shaded ballots and substitute voting in the said provinces.<sup>14</sup> In its August 29, 2017 Resolution, the Tribunal deferred action on the *Motion for Technical Examination* because, following Rule 65, it would be premature to conduct the technical examination without protestant first showing, through his pilot provinces, that he has a meritorious case.<sup>15</sup>

When protestant again moved for the Tribunal to conduct a technical examination for the provinces of Basilan, Lanao Del Sur, and Maguindanao in an *Extremely Urgent Manifestation of Grave Concern with Omnibus Motion* dated December 10, 2018, this time on the allegation that in the election protest filed by Abdusakur M. Tan against Mujiv Hataman, the COMELEC's Voter's Identification Division (VID) of the COMELEC conducted a technical examination of 508 established precincts in the provinces of Lanao Del Sur, Maguindanao, and Basilan allegedly revealing that 40,528 signatures and 3,295 thumbprints in the EDCVL of the precincts did not match the signatures in the VRRs — the Tribunal, in its Resolution dated July 2, 2019, again resolved to defer action until after the initial determination of the grounds of the Protest under Rule 65, reiterating its August 29, 2017 Resolution that it would be premature to conduct a technical

<sup>14</sup> *Marcos, Jr. v. Robredo*, supra note 8, at 23.

<sup>15</sup> *Id.* at 41.





examination on the three provinces which are not part of the protestant's pilot provinces.<sup>16</sup>

Evidently, the Tribunal had consistently held that it is premature to conduct a technical examination of the EDCVL and VRRs in precincts other than those in protestant's pilot provinces in light of Rule 65's mandate that before it can proceed thereto, protestant must first establish his case through his designated pilot provinces.

Now, with the conclusion of the revision and appreciation of ballots in the pilot provinces, which resulted in an utter failure by protestant to make out a case as, in fact, the margin between him and protestee even increased, the Tribunal must dismiss the entire Protest, including the third cause of action for annulment of elections.

*Abayon's strict requirements as applied to protestant's allegations show that his cause of action cannot be considered an annulment of elections. It essentially seeks a declaration of a failure of elections.*

At any rate, even if the Tribunal were to consider protestant's third cause of action for annulment of elections as an independent and separate cause of action, the same should still be dismissed as it failed to meet the strict requirements stated in *Abayon* for annulment of elections.

*Abayon* instructs that annulment of elections is a drastic measure that may only be granted under very narrow and exceptional circumstances, thus:

It must be remembered that "[t]he power to declare a failure of elections should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the law had been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever, or that the great body of the voters have been prevented by violence, intimidation and threats from exercising their franchise." Consequently, a protestant alleging terrorism in an election protest must establish by clear and convincing evidence that the will of the majority has been muted by violence, intimidation or threats.<sup>17</sup> (Emphasis supplied)

Adopting Chief Justice Peralta's dissent in the HRET Decision, the Court in *Abayon* provided for two indispensable requisites that must concur in order to justify the drastic action of nullifying elections:

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<sup>16</sup> Id. at 39-41.

<sup>17</sup> *Abayon v. House of Representatives Electoral Tribunal (HRET)*, supra note 3, at 263.





- 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.<sup>18</sup>

Finally, and still echoing Chief Justice Peralta's dissent, the Court held that nullifying elections is warranted only when there is proof that protestee was responsible for the fraud and terroristic acts perpetrated to frustrate the free will of the electorate:

It is worthy to note that no evidence was presented which will directly point to the protestee as the one responsible for the incidents which allegedly happened before and during the elections. Absent anything that would concretely and directly establish protestee as the one who had induced or actually perpetrated the commission of terroristic acts and demonstrate that those incidents were part of a scheme to frustrate the free expression of the will of the electorate, the alluded handing of material considerations, including guns, to the NDF-EV officials, and the garnering of votes higher than those of the protestant in the protested clustered precincts, do not *per se* make him responsible for the charges of terrorism.<sup>19</sup>

Here, applying the foregoing principles from *Abayon*, protestant utterly **failed to even allege, much less submit proof**, that the circumstances of the case warrant the drastic relief of nullifying the election results in Maguindanao, Lanao del Sur, and Basilan. This conclusion is anchored on three points:

*First*, as noted by the *ponencia*,<sup>20</sup> the threshold of more than fifty percent (50%) of the precincts in said provinces being affected by the alleged illegality of the ballots was not met. The affidavits submitted by protestant are far from the required threshold in *Abayon*. Protestant submitted affidavits for only four out of the 11 municipalities and two cities of Basilan; only one out of the 36 municipalities and one city of Maguindanao; and only three out of the 39 municipalities and one city of Lanao del Sur.<sup>21</sup> Accordingly, even assuming that all of these affidavits are meritorious and credible, they are still not enough to meet the threshold in *Abayon*.

*Second*, there is likewise no allegation as to the impossibility of distinguishing with reasonable certainty between the lawful and unlawful ballots.<sup>22</sup>

<sup>18</sup> C.J. Peralta, Dissenting Opinion on HRET Case No. 13-023(EP), *Daza v. Abayon*, p. 17.

<sup>19</sup> Id. at 18.

<sup>20</sup> *Ponencia*, p. 76.

<sup>21</sup> Id. at 76 and 79.

<sup>22</sup> Id. at 58.





*Finally*, there is neither allegation nor proof submitted to show that it was protestee who perpetrated the unlawful acts which supposedly tainted the invalid ballots.

Again, the import of the ruling in *Abayon* is clear and unequivocal: the annulment of election results is warranted only when there is evidence directly pointing to protestee as the one responsible for the fraud and terrorism which happened before and during the elections to ensure protestant's defeat. In such case, only the votes received by the parties are deducted and the votes for the other candidates in other positions are unaffected.

Consequently, even assuming that the Tribunal can proceed to the third cause of action despite the failure of protestant to make out a case under Rule 65, such cause of action must still fail because protestant did not allege, and did not submit proof of, the requisites in *Abayon* to treat his third cause of action as one for annulment of elections.

Further, I am of the position that protestant's third cause of action is essentially a petition for failure of elections, over which the Tribunal has no jurisdiction.

Section 6 of the Omnibus Election Code of the Philippines<sup>23</sup> defines failure of elections as follows:

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

Jurisdiction to declare a failure of elections is with the COMELEC *En Banc*, following Section 4 of Republic Act No. 7166.<sup>24</sup>

<sup>23</sup> Batas Pambansa Blg. 881, December 3, 1985.

<sup>24</sup> SEC. 4. *Postponement, Failure of Election and Special Elections*. — The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members. The causes for the declaration of a failure of election may occur before or after the casting of votes or on the day of the election. (Approved on November 26, 1991).



The Court in *Abayon* differentiated a tribunal's power in an annulment of elections and the COMELEC's power in a failure of elections as follows:

Consequently, the difference between the annulment of elections by electoral tribunals and the declaration of failure of elections by the COMELEC cannot be gainsaid. *First*, the former is an incident of the judicial function of electoral tribunals while the latter is in the exercise of the COMELEC's administrative function. *Second, electoral tribunals only annul the election results connected with the election contest before it whereas the declaration of failure of elections by the COMELEC relates to the entire election in the concerned precinct or political unit. As such, in annulling elections, the HRET does so only to determine who among the candidates garnered a majority of the legal votes cast. The COMELEC, on the other hand, declares a failure of elections with the objective of holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect. When COMELEC declares a failure of elections, special elections will have to be conducted.*<sup>25</sup> (Emphasis supplied.)

The allegations of protestant as well as the tenor of his *Motion for Technical Examination* lend support to the conclusion that the actual relief sought by him is to annul the entire election in Maguindanao, Lanao del Sur, and Basilan.

In protestant's *Motion for Technical Examination*, he is questioning, not the validity of the votes cast for protestee but **the validity of the ballots themselves**. The supposed report relied upon by protestant showing that the signatures in the EDCVL are different from the signatures in the VRRs, indicates that the alleged fraud, violence, and terrorism affected the people's right to vote **not only for the contested position but for all other positions – including the President, Senators, Members of the House of Representatives, and other local positions – which again, as Chief Justice Peralta pointed out, is akin to a failure of elections.** This defies the nature of an election protest as being “strictly a contest between the defeated and the winning candidates,”<sup>26</sup> the aim of which is to “determine who between them has actually obtained the majority of the legal votes cast and, therefore, entitled to hold office.”<sup>27</sup>

As his cause of action is essentially that for a declaration of a failure of elections, the same should be dismissed as the same is within the exclusive jurisdiction of the COMELEC.

All told, with the undeniable increase in vote margin obtaining in the pilot provinces, which protestant himself designated as best exemplifying the grounds for his Protest, protestant failed to make out his case. In keeping with

<sup>25</sup> *Abayon v. House of Representatives Electoral Tribunal (HRET)*, supra note 3, at 262.

<sup>26</sup> *Id.* at 258.

<sup>27</sup> *Id.*



the PET Rules, this leaves the Tribunal with no other verdict than to dismiss the Protest in its entirety.

**WHEREFORE**, in view of the foregoing, I vote that the instant Election Protest be **DISMISSED** without further proceedings for lack of merit.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

**Certified True Copy**

*Anna Li R. Papa-Gombio*  
**ANNA-LI R. PAPA-GOMBIO**  
Deputy Clerk of Court En Banc  
OCC En Banc, Supreme Court



## PRESIDENTIAL ELECTORAL TRIBUNAL

**P.E.T. Case No. 005 – FERDINAND “BONGBONG” R. MARCOS, JR.,**  
*protestant, versus, MARIA LEONOR “LENI DAANG MATUWID” G.*  
**ROBREDO, protestee.**

x-----Promulgated: February 16, 2021-----x

### SEPARATE OPINION

**M. LOPEZ, J.:**

I commend Justice Marvic M.V.F Leonen for his exhaustive discussions on every point raised in the election protest. Indeed, the protestant failed to show that he will probably overcome the overall lead of the protestee in his second cause of action. Following Rule 65 of the 2010 Rules of the Presidential Electoral Tribunal (2010 PET Rules),<sup>1</sup> further consideration of the remaining protested provinces or clustered precincts may no longer be necessary. The protestant chose his pilot provinces to demonstrate his allegations of electoral fraud and irregularities, which are supposedly sufficient to affect the election results' outcome. Although the Tribunal found some irregularities, as shown by the increase in the votes of both the protestant and the protestee, the protestant failed to show that these irregularities are sufficient to overcome the overall lead of the protestee. On the contrary, the protestee's overall lead after revision increased. If the pilot provinces represent the worst of the irregularities attendant to the 2016 vice-presidential race as protestant wants this Tribunal to believe, then the results in the remaining protested precincts will probably be insufficient to alter the protestee's win.

Nonetheless, I humbly submit this opinion to give context to my vote and humbly differ on some points discussed in the well-written *ponencia*. The Tribunal's pronouncements, in this case, will influence how other tribunals and bodies resolve the election protests filed before them. In particular, I submit a different approach on the specificity of allegations in the election protest and propose a formula to determine reasonable recovery.

Foremost, I agree with Justice Leonen that an election protest must contain specific allegations of frauds and anomalies in the protested precincts. Otherwise, the protest must be summarily dismissed. Rule 17 of the 2010 PET Rules is evident on the required allegations before a protest is considered sufficient in form and substance.

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

- (a) the position involved;
- (b) the date of proclamation; and
- (c) the number of votes credited to the parties *per* the proclamation.

<sup>1</sup> A.M. No. 10-4-29-SC (2010).



X X X X

- (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 Precinct or, if the votes 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.** (Emphasis supplied.)

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).<sup>2</sup>

SEC. 255. Judicial counting of votes in election contest. — 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*,<sup>3</sup> 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 counted (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

<sup>2</sup> Batas Pambansa Bilang 881 (1985).

<sup>3</sup> 276 Phil. 487 (1991).



because the trial court did not give private respondent (the protestant) a chance to substantiate his allegations.”<sup>4</sup> (Emphasis supplied.)

The allegation of fraud and irregularity should, however, relate to the need to examine ballots. In *Miguel v. COMELEC*,<sup>5</sup> 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.”<sup>6</sup> Notably, the ballots serve as the best evidence of how the voters voted.<sup>7</sup>

I respectfully submit that *Dayo* and *Miguel* do not run contrary to the later cases of *Corvera v. Sabillo*,<sup>8</sup> *Aguillo v. COMELEC*,<sup>9</sup> and *Lloren v. COMELEC*,<sup>10</sup> were not rendered “obsolete” and “ineffectual.” First, *Corvera* and *Aguillo* are Unsigned Resolutions, which should not overturn the doctrine outlined in *Dayo* and *Miguel*.<sup>11</sup> Second, the summary dismissal of the election protests in *Corvera*, *Aguillo*, and *Lloren* refers to the defect of identifying which protested precincts were affected by electoral fraud and irregularities. Even *Peña v. HRET*,<sup>12</sup> which *Aguillo* cited, refers to the defect in identifying which protested precincts were affected. 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.<sup>13</sup>

In *Saquilayan v. COMELEC*,<sup>14</sup> 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

<sup>4</sup> *Id.* at 492.

<sup>5</sup> 390 Phil. 478 (2000).

<sup>6</sup> *Id.* at 485-486.

<sup>7</sup> See *Rosal v. COMELEC*, 547 Phil. 379 (2007).

<sup>8</sup> G.R. No. 208610 (Notice), November 11, 2014.

<sup>9</sup> G.R. No. 197975-76 (Notice), March 19, 2013.

<sup>10</sup> 695 Phil. 288 (2012).

<sup>11</sup> See THE INTERNAL RULES OF THE SUPREME COURT, A.M. No. 10-4-20-SC, Rule 13, Section 6 (c) “[b]y unsigned resolution when the Court disposes of the case on the merits, but its ruling is essentially meaningful only to the parties; has no significant doctrinal value; or is minimal interest to the law profession, the academe, or the public. The resolution shall state clearly and distinctly the facts and the law on which it is based.”

<sup>12</sup> 337 Phil. 70 (1997).

<sup>13</sup> See *Suliguin v. COMELEC*, 520 Phil. 92 (2006).

<sup>14</sup> 462 Phil. 383 (2003).





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.<sup>15</sup> (Underscoring in the original.)

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/ under votes 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.<sup>16</sup> (Emphasis supplied.)

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.<sup>17</sup> 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.

While only allegations are needed to warrant ballots' examination, the protestant must still demonstrate that the alleged fraud and irregularities exist during the initial determination of the protest's grounds. The allegations of fraud and anomalies do not automatically mean that the ballot boxes in all of the protested clustered precincts would be opened and examined. Rule 65 of the 2010 PET Rules requires that the protestant choose his pilot provinces, demonstrating the alleged fraud and irregularities. The Tribunal must be convinced that the remaining protested provinces should also be examined. Thus, the protestant must carefully choose his pilot provinces; otherwise, the protest may be dismissed after an initial determination of the protest's merit.

#### INITIAL DETERMINATION OF THE GROUNDS FOR PROTEST

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

<sup>15</sup> *Id.* at 390.

<sup>16</sup> *Ponencia*, pp. 35-36.

<sup>17</sup> Protestee enjoys a lead margin of 263,473 votes.





**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.**  
x x x (Emphasis supplied.)

The rule is broad enough to leave the Tribunal with discretion on whether the protest should be dismissed depending on what will transpire during the initial determination of the protest's merit. However, the rule is silent on what circumstances are considered convincing enough to merit the remaining protested provinces' consideration. The circumstances should refer to the existence of fraud or irregularities and a sufficient decrease in the protestee's overall lead. Under the rules governing election protests of other elective positions, the protestant must show a "reasonable recovery" to overcome the protestee's overall lead. For instance, the Senate Electoral Tribunal also requires an initial determination of the protest's merit. The determination takes into account whether the officially proclaimed results will be affected.

RULE 76. Pilot Precincts; Initial Determination. — The revision of the ballots or the correction of manifest errors and reception of evidence shall begin with pilot precincts. If after the appreciation of ballots or election documents and/or reception of evidence in the pilot precincts, **the Tribunal determines that the officially proclaimed results of the contested election will not be affected,** the Tribunal shall dismiss the protest, counter or cross protest without further proceedings.<sup>18</sup> (Emphasis supplied.)

In the House of Representatives Electoral Tribunal, the initial determination of the protest's merit is anchored on the protestant's "reasonable recovery," as shown in the pilot precincts.

RULE 40. Post-Revision Determination of the Merit or Legitimacy of Protest Prior to Revision of Counter-Protest; Pilot Precincts; Initial Revision and/or Technical Examination. — x x x The revision of ballots or the examination, verification or retabulation of election returns and the reception of evidence in the remaining seventy-five (75%) protested precincts and twenty-five percent (25%) counter-protested precincts shall not commence until the Tribunal shall have determined through appreciation of ballots or election documents and/or reception of evidence, x x x, the merit or legitimacy of the protest, relative to the designated 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 may proceed with the revision of the ballot or the examination, verification or re-tabulation of election returns in the remaining contested precincts.

x x x x

**However, if the proclamation margin is only one thousand (1,000) votes or less, the revision of ballots or the examination, verification or retabulation of election returns and/or reception of evidence shall cover all the contested precincts.**<sup>19</sup> (Emphases supplied.)

<sup>18</sup> *Ponencia*, p. 46.

<sup>19</sup> *Id.* at 47.



As aptly observed by the *ponente*, election protests involving elective regional, provincial, city, municipal, and barangay officials likewise found that reasonable recovery must be obtained in the initial determination of the protest’s merit. However, the above-quoted rules are silent on how reasonable recovery is determined.

The goal in an election protest is to determine who received the plurality of valid votes. Notably, the ballots’ revision in the pilot provinces partially determines the parties’ correct votes in these areas. The revision of ballots should reflect an increase or decrease in the overall lead *per* proclamation. It should then give this Tribunal an idea of whether the overall lead *per* proclamation is decreasing or not.

In the absence of a numerical value on how many votes should be recovered, I propose that the reasonable recovery must be determined based on the proportion of the protested clustered precincts (only those revised) in the pilot provinces and the total number of protested clustered precincts. Thus, if the protested pilot provinces comprise 20% of the total number of protested clustered precincts, then the determination of the reasonable recovery must use 20% as a basis for reasonable recovery. The proposal recognizes that the protested clustered precincts in the pilot provinces constitute only a portion of the total number of protested clustered precincts. The determination of reasonable recovery should also consider the overall lead *per* proclamation of the protestee, which will serve as the baseline in determining recovery. The percentage of the protested clustered precincts in the pilot provinces (only those revised) with the total number of all protested clustered precincts should determine the percentage or threshold that the protestant should recover.

To determine whether reasonable recovery is met, I propose the following steps:

First, identify the overall lead *per* proclamation. It is the total lead of protestee over protestant based on the official proclamation. The overall lead *per* proclamation represents the number of votes that the protestant must overcome to be declared the winner.

Candidates	Votes per proclamation <sup>20</sup>
Maria Leonor Robredo	14,418,817
Ferdinand Marcos, Jr.	14,155,344
Overall lead	263,473

Second, identify the number of clustered precincts in the pilot provinces that underwent revision and appreciation (revised clustered precincts). Then, compute the proportion of the revised clustered precincts with all protested clustered precincts. Considering that the revised precincts constitute only a portion of all the protested clustered precincts, the protestant is expected to show a proportional “recovery” from the protestee’s overall lead *per* proclamation. I propose using the clustered precincts instead of the provinces because the protestant may decide to

<sup>20</sup> *Id.* at 2.





protest only some clustered precincts within the province. Besides, Rule 17 (d) refers to the “protested precincts.”

Total number of protested clustered precincts [A]	39,921 <sup>21</sup>
Number of revised clustered precincts in the pilot provinces [B]	5,415 <sup>22</sup>
Proportion of A & B	13.56%

Third, determine the reasonable recovery by multiplying the percentage in step 2 and the overall lead *per* proclamation. The resulting numerical value shall be considered reasonable recovery, which the protestee must satisfy for the protest to prosper. “Recovery” is the result after revision and appreciation, which may increase the protestant’s votes, decrease the protestee’s votes, or a combination of both scenarios. In any of these instances, the protestee’s overall lead *per* proclamation will be affected.

REASONABLE RECOVERY	
Proportion of revised and appreciated clustered precincts and total protested clustered precincts multiplied by the overall lead per proclamation (13.56% * 263,473)	35,726

Fourth, determine the protestant’s votes and the protestee’s votes after revision and appreciation in the pilot provinces. After that, add the respective revision and appreciation results to the total votes in the clustered precincts other than the revised and appreciated clustered precincts.

	Robredo	Marcos, Jr.
Revision and Appreciation Results	1,510,178 <sup>23</sup>	204,512 <sup>24</sup>
Add: Total votes in the clustered precincts other than the 5,415 pilot precincts revised and appreciated <sup>25</sup>	12,926,159 <sup>26</sup>	13,953,259 <sup>27</sup>
Total	14,436,337 <sup>28</sup>	14,157,771 <sup>29</sup>
TOTAL LEAD AFTER REVISION AND APPRECIATION	278,566	

Fifth, determine if reasonable recovery is met. Under this step, identify and compare the protestee’s total lead after revision and appreciation and the protestee’s overall lead *per* proclamation. Then, compute the resulting difference by deducting the total lead after revision and appreciation from the overall lead

<sup>21</sup> P.E.T. Resolution dated October 15, 2019, p. 4.

<sup>22</sup> *Ponencia*, p. 7.

<sup>23</sup> P.E.T. Resolution dated October 15, 2019, p. 52.

<sup>24</sup> *Id.*

<sup>25</sup> *Ponencia*, p. 11.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> P.E.T. Resolution dated October 15, 2019, p. 53.

<sup>29</sup> *Id.*

*per* proclamation. If the resulting difference is greater than or equal to the reasonable recovery, then the protest may prosper. Otherwise, the protest may be dismissed.


Overall lead per proclamation	263,473 <sup>30</sup>	Whether reasonable recovery of 35,726 is met
Less: Total lead after revision and appreciation	278,566 <sup>31</sup>	
DIFFERENCE	-15,093	No

Here, it is clear that reasonable recovery is not met. The resulting difference is less than 35,726. The negative value (-15,093) suggests that the protestee’s lead increased. On this ground alone, the election protest may be dismissed under Rule 65 of the 2010 PET Rules. Indeed, the protestant cast serious allegations of fraud and irregularities in his election protest. Thus, the Tribunal allowed the protestant to substantiate his allegations through the ballot boxes’ opening and let him choose his pilot provinces. However, he failed to prove that electoral fraud and irregularities will alter the election results on who won.

Accordingly, I vote to dismiss the election protest following Rule 65 of the 2010 PET Rules.

  
MARIO V. LOPEZ  
Associate Justice

<sup>30</sup> P.E.T. Resolution dated October 15, 2019, p. 53.  
<sup>31</sup> *Id.*

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Deputy Clerk of Court En Banc  
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P.E.T. Case No. 005 – (FERDINAND “Bongbong” R. MARCOS, JR.,  
*protestant*, v. MARIA LEONOR “Leni Daang Matuwid” G. ROBREDO,  
*protestee*.)

Promulgated: February 16, 2021

X-----X

## SEPARATE OPINION

GAERLAN, J.:

I concur in the result. The electoral protest at bar was properly dismissed for failure to prove substantial recovery in the pilot precincts volunteered by the Ferdinand “Bongbong” Marcos (*protestant*), in accordance with the clear import of Rule 65 of the 2010 Rules of the Presidential Electoral Tribunal (2010 PET Rules). I write this Separate Opinion in the hope of guiding future adjudications of this tribunal on the matter of the annulment of elections.

### I.

Article VII, Section 4 of the Constitution empowers the Supreme Court to act as a tribunal that will resolve *all contests* relating to the positions of President and Vice-President, *viz.*:

Section 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

X X X X

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

It bears repeating that the present Constitution appointed and empowered this Court as the sole judge on matters relating to the election, returns, and qualifications of the two highest officers of the executive department of the Republic of the Philippines. Unlike its previous

incarnations,<sup>1</sup> the grant of power to the present Presidential Electoral Tribunal flows directly from the text of the fundamental law; it is not a grant of authority from the legislature but a mandate imposed by the sovereign people through the basic law. Consequently, the adjudicative powers of this tribunal with respect to the election, returns, and qualifications of the President and Vice-President are plenary in scope and limited only by the Constitution itself and the rules that this tribunal may promulgate.

Article VII, Section 4 of the Constitution expressly vests two powers in the Supreme Court in its capacity as sole judge of presidential and vice-presidential contests. Corollary to the grant of power to adjudicate electoral contests involving the President and Vice-President, the Supreme Court was also given the authority to promulgate the rules for the exercise of said power. This grant of complimentary rulemaking authority must be read together with the primary grant of rulemaking power to the Supreme Court in Article VIII, Section 5(5) of the Constitution, which reads:

**Section 5.** The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

On the basis of these constitutional postulations, I submit that the plenary power and authority of this tribunal as the sole judge of presidential and vice-presidential contests includes the power and authority to rule on causes of action for annulment of elections and to promulgate rules to govern such adjudications.

The remedy of annulment of elections has been recognized in Philippine law since 1918, when the case of *Garchitorena v. Crescini*<sup>2</sup> (*Garchitorena*) was decided. In sustaining the lower court's annulment of the election for governor of the old province of Ambos Camarines and proclamation of the protestant therein, this Court held:

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<sup>1</sup> The Presidential Electoral Tribunal was first created in 1957 through Republic Act No. 1793; and later reorganized by Batas Pambansa Blg. 884 (1985).

<sup>2</sup> 39 Phil. 258 (1918).



x x x [B]ecause of the frauds mentioned in the decision of Judges Mina and Paredes, the entire vote in the municipalities of Minalabac, Sagnay, Bato, Iriga, and Lagonoy, were annulled. Judges Mina and Paredes, after discussion of the various frauds committed in said municipalities arrived at the same conclusion, to wit: that said frauds and irregularities were such as to absolutely defeat the honest expression of the desires of the voters of said municipalities. Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts, and they should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which does actually and in fact defeat the true expression of the opinion of the voters of said precinct or municipality. A reading of the evidence adduced during the trial of the cause, in relation with the facts stated in connection there-with, in said municipalities, shows an unmistakable intention and design on the part not only of the election inspectors but of many of the voters, to defeat, by the methods adopted, the true expression of opinion, through the ballot, of the people of said municipalities. The presumption is that an election is honestly conducted, and the burden of proof to show it otherwise is on the party assailing the return. But when the return is clearly shown to be wilfully and corruptly false, the whole of it becomes worthless as proof. When the election has been conducted so irregularly and fraudulently that the true result cannot be ascertained, the whole return must be rejected. It is impossible to make a list of all the frauds which will invalidate an election. Each case must rest upon its own evidence. The rule, however, is so well established that authorities need no longer be cited in its support, that whenever the irregularities and frauds are sufficient to defeat the will of the people of the particular municipality or precinct, the entire vote should be rejected, and those who are guilty of such frauds and irregularities should be punished to the very limit of the law.

The record of the frauds and irregularities committed in the said municipalities in which Judges Mina and Paredes annulled the entire vote, not only shows that legal voters were prevented from voting, but in some instances, legal ballots were tampered with and destroyed after they had been cast, to such an extent that no confidence can be placed in the return. The return in no sense discloses the expressed will of the voters. x x x<sup>3</sup>

Since then, this Court has consistently recognized the existence of annulment of elections as a remedy available to a losing candidate if it be alleged that an election is tainted with irregularities and frauds so numerous and so undeniably characteristic of an intention to defraud and defeat the true expression of the will of the electorate.<sup>4</sup>

In more recent cases, the Court gave greater definition to the remedy. *Macabago v. Commission on Elections*<sup>5</sup> recognized that election protest, pre-

<sup>3</sup> Id. at 260-262. Citations omitted.

<sup>4</sup> See *Banaga, Jr. v. Commission on Elections*, 391 Phil. 596, 609 (2000); See also *Jardiel v. Commission on Elections*, 209 Phil. 534, 545 (1983); See also Concurring Opinion of Barredo, J. in *Badelles v. Cabili*, 136 Phil. 383, 403-404 (1969); See also *Capalla v. Tabiana*, 63 Phil. 95 (1936) and cases cited therein; See also *Garchitorena v. Crescini*, supra note 2.

<sup>5</sup> 440 Phil. 683 (2002).



proclamation controversy, annulment of election, and failure of election are distinct and separate remedies.<sup>6</sup> 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),<sup>7</sup> 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.<sup>8</sup> *Tan v. COMELEC*<sup>9</sup> 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;<sup>10</sup> 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.<sup>11</sup> Furthermore, such allegations must be supported by convincing evidence.<sup>12</sup> Finally, in *Abayon v. House of Representatives Electoral Tribunal*,<sup>13</sup> 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 differ from the power granted to the COMELEC to declare failure of elections. The Constitution no less, grants the HRET with exclusive jurisdiction to decide all election contests involving the members of the House of Representatives, which necessarily includes those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections. To deprive the HRET the prerogative to annul elections would undermine its constitutional fiat to decide election contests. The phrase “election, returns and qualifications” should be interpreted in its totality as referring to all matters affecting the validity of the contestee’s title. Consequently, the annulment of election results is but a power concomitant to the HRET’s constitutional mandate to determine the validity of the contestee’s title.

The power granted to the HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature. 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

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<sup>6</sup> Id. at 692-696.

<sup>7</sup> *Banaga, Jr. v. Commission on Elections*, supra note 4 at 609.

<sup>8</sup> Id. at 607; *Soliva v. COMELEC*, 409 Phil. 381, 398-399 (2001).

<sup>9</sup> 463 Phil. 212 (2003).

<sup>10</sup> Id. at 237.

<sup>11</sup> *Dr. Mutilan v. Commission on Elections*, 548 Phil. 699, 710 (2007); *Pasandalan v. Commission on Elections*, 434 Phil. 161, 173 (2002).

<sup>12</sup> Id.

<sup>13</sup> 785 Phil. 683 (2016).



ascertain who among the candidates received the majority of the valid votes cast.

x x x x

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.<sup>14</sup>

Furthermore, this Court's discussion in *Abayon* bears out the following guiding principles for determining the propriety of annulling an election:

1. The power to annul elections should be exercised with utmost care.<sup>15</sup>
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.<sup>16</sup>
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.<sup>17</sup>
4. When a person elected obtained a considerable plurality of votes over his adversary, and the evidence offered to rebut such a result is neither solid nor decisive, it would be imprudent to quash the election, as that would be to oppose without reason the popular will solemnly expressed in suffrage.<sup>18</sup>

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<sup>14</sup> Id. at 700-704. Citations omitted.

<sup>15</sup> Id. at 704.

<sup>16</sup> Id.

<sup>17</sup> Id. at 705, citing the dissenting opinion of Chief Justice (then Associate Justice) Diosdado M. Peralta in the HRET Decision.

<sup>18</sup> Id.

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.<sup>19</sup>
6. The allegation of matters in support of the extreme remedy of annulment of election must be established by clear and convincing evidence.<sup>20</sup>
7. Such allegations must be supported by concrete proof. Mere abstract or mathematical speculation or postulations are not enough.<sup>21</sup>
8. If violence or terrorism is alleged, there must be actual reports of such incidents submitted to the COMELEC by law enforcement agencies or actually reported by the protestant to the proper authorities.<sup>22</sup>

Ultimately, the fundamental guideline tribunals should use in proceedings for annulment of elections is a principle of restraint, as enunciated in the leading case of *Garchitorena*:

x x x Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts, and they should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which does actually and in fact defeat the true expression of the opinion of the voters x x x.<sup>23</sup>

## II.

While it is true that the 2010 PET Rules do not expressly mention the remedy of annulment of elections, I submit that such mere omission should not operate to bar the availment and adjudication of the remedy given its long existence in jurisprudence and the plenary power of this tribunal in adjudicating presidential and vice-presidential contests. While such omission is best addressed by an exercise of this tribunal's rulemaking power through

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<sup>19</sup> Id.

<sup>20</sup> Id. at 705.

<sup>21</sup> Id. at 706.


<sup>22</sup> Id.

<sup>23</sup> *Garchitorena v. Crescini*, supra note 2 at 261.



an amendment or revision of the 2010 PET Rules, I nevertheless submit that in the meantime, adjudications pertaining to the remedy of annulment of election be governed by the Rules of Court, decisions of the Supreme Court, and the decisions of this tribunal, in accordance with Rule 73 of the 2010 PET Rules.

Considering that distinct nature of annulment of elections, I submit that Rule 65 of the 2010 PET Rules pertaining to dismissal of *election protests* or *quo warranto petitions* does not apply thereto. As demonstrated above, 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 investigation 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.

  
SAMUEL H. GAERLAN  
Associate Justice

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