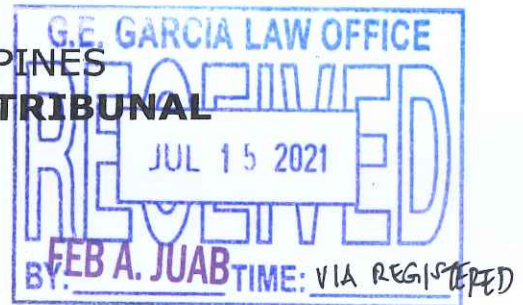


REPUBLIC OF THE PHILIPPINES
PRESIDENTIAL ELECTORAL TRIBUNAL
Manila



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

Protestant,

- versus -

PET Case No. 005

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

Protestee.

X - - - - -X

**COMMENT AND OPPOSITION
(TO THE MOTION FOR RECONSIDERATION DATED 06
MAY 2021)**

PROTESTEE **MARIA LEONOR G. ROBREDO**, by the undersigned counsel, to the Honorable Tribunal, in compliance with the Resolution dated 15 June 2021¹, and respectfully states:

Nobody is impervious to misfortune.
- Ferdinand E. Marcos

The prospect of defeat is a reality that all political candidates who stand for election must learn to accept. The pain of loss dissipates, through the grace with which defeat is accepted.

Like many roads leading to the same destination, the members of the Honorable Tribunal might have differing views and opinions but the unanimous conclusion remains - the Election Protest must be

¹ On 23 June 2021, protestee Robredo received the Notice of Resolution dated 15 June 2021. Under the said Notice, protestee Robredo is directed to file her Comment on the Motion for Reconsideration (of the Decision dated February 16, 2021) dated 06 May 2021. Protestee Robredo has ten (10) days from 23 June 2021 or until 02 July 2021 within which to file her Comment. Hence, this Comment is being timely filed.

dismissed. To borrow the words of the ponencia, *statistics never lie, but lovers often do*. The numbers are clear. Protestant Marcos failed to show any substantial recovery. The only thing left is for protestant Marcos to accept graciously his defeat and move on.

Protestant Marcos was given every opportunity to present his case and convince the Honorable Tribunal that his allegations of massive electoral fraud, anomalies and irregularities prejudiced him. Or, in plain terms, that protestant Marcos was cheated out of the Vice-Presidency. However, despite the opportunity afforded to him by the Honorable Tribunal, protestant Marcos still failed to present any convincing evidence that the alleged massive electoral fraud, anomalies and irregularities prejudiced him. The records even belie this claim. After the revision, recount and re-appreciation of ballots, the victory of protestee Maria Leonor G. Robredo as the duly elected Vice-President of the Republic of the Philippines during the 09 May 2016 National and Local Elections has been affirmed.

This Election Protest merely proved one thing, that protestee Robredo has won, not just once, but thrice against protestant Marcos. This might be a bitter pill to swallow, but it is one that protestant Marcos must accept with grace.

BRIEF MATERIAL ANTECEDENTS

1. On 30 May 2016, the National Board of Canvassers proclaimed protestee Maria Leonor G. Robredo (hereafter "Robredo" for brevity) as the winning candidate for the position of Vice-President of the Republic of the Philippines.

2. Based on the Certificates of Canvass and Resolution of Both Houses No. 1², the parties received the following votes:

Name	Votes Received
Marcos, Ferdinand Jr R.	14,155,344
Robredo, Maria Leonor G.	14,418,817

3. Upon her proclamation, protestee Maria Leonor G. Robredo had a winning margin of **263,473 votes**.

4. Not about to admit defeat, protestant Ferdinand R. Marcos, Jr. (hereafter "Marcos" for brevity) assailed, impugned and contested the results of the elections in the **Thirty Nine Thousand Two Hundred Twenty One (39,221) clustered precincts** which functioned during the 09 May 2016 National and Local Elections.

5. Of these, protestant Marcos sought the revision, recount and re-appreciation of ballots from the twenty seven (27) provinces and five (5) cities or a total of **Thirty Six Thousand Four Hundred Sixty Five (36,465) clustered precincts**.

6. On the other hand, protestant Marcos sought the technical examination and annulment of the results of the elections in the Provinces of Lanao del Sur, Maguindanao and Basilan or a total of **Two Thousand Seven Hundred Fifty Six (2,756) clustered precincts**.

7. During the Preliminary Conference, protestant Marcos, in compliance with **Rule 65³ of the Rules of the**

² 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.

³ Rule 65 provides:

"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.

Presidential Electoral Tribunal ("2010 PET Rules"), protestant Marcos designated the Provinces of Camarines Sur, Iloilo and Negros Oriental as his pilot provinces.

8. More importantly, protestant Marcos was well aware of the importance of his pilot provinces, that is, his Election Protest may be dismissed should he fail to show any substantial recovery:

"JUSTICE CAGUIOA:

... what I'm saying is, if after the revision you see that they are actually the same, then isn't that evidence to show that the process had the integrity that you question?

ATTY. GARCIA:

Perhaps, Your Honor, that's the reason why, if I may and with all due respect, the Honorable Presidential Electoral Tribunal revise its own rules and include the three (3) pilot provinces, Your Honor, because before, there is no provision as far as the three pilot provinces are concerned. That was likewise the same provision added by the Senate Electoral Tribunal and the HRET, even by the COMELEC. There are now pilot areas precincts in the HRET, SET and the COMELEC, provinces in the case of the PET, **because if we are to open the three provinces and the Honorable Tribunal will find or will be able to find out that there is no difference between the results as appearing in the certificates of canvass or votes in the election returns as against the manually counted in the revised ballots, again, its up to the Honorable**

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

Tribunal whether to proceed with the remaining protest, or to dismiss the protest.”⁴ [Emphasis supplied.]

9. After the recount, revision and re-appreciation of the ballots from the three pilot provinces, the Honorable Tribunal found that the lead of protestee Robredo even increased from 263,473 to 278,566 or by **Fifteen Thousand Ninety Three (15,093) votes:**

“The sum of TOTAL A and TOTAL B represent the votes of the parties in all the clustered precincts which functioned during the 2016 National and Local Elections, after revision and appreciation of the ballots in the 5,415 clustered precincts in the pilot provinces, thus:

	Robredo	Marcos
Total votes in the clustered precincts other than the 5,415 pilot clustered precincts	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
Total votes in all clustered precincts after revision and appreciation of the ballots from the pilot clustered precincts	14,436,337	14,157,771

Thus, based on the final tally after revision and appreciation of the votes in the pilot provinces, protestee Robredo maintained, as in fact she increased, her lead with 14,436,337 votes over protestant Marcos who obtained 14,157,771 votes. **After the revision and appreciation, the lead of protestee Robredo increased from**

⁴ Pages 34 – 35, Stenographic Notes held on July 11, 2017.

263,473 to 278,566."⁵ [Emphasis supplied.]

10. Notwithstanding the findings during the revision, recount and re-appreciation of ballots, the Honorable Tribunal deferred any ruling as to the effects of the increase in the winning margin of protestee Robredo over protestant Marcos:

"Before the Tribunal proceeds to make a ruling on the effects of the results of the revision and appreciation of the votes for the pilot provinces on the Protestant's Second Cause of Action as articulated in the Preliminary Conference Order, the Parties will be required to submit their position stating their factual and legal basis.

Likewise, the Tribunal deems it essential to meet due process requirements to require protestant and protestee to now provide their position in relation to the Third Cause of Action also articulated in the Preliminary Conference Order. The Tribunal notes the pending Motion for Technical Examination dated July 10, 2017 and Extremely Urgent Manifestation of Grave Concern with Omnibus Motion dated December 10, 2018, as well as protestee's Manifestation dated October 14, 2019, and the earlier deferments made by the Tribunal of the various issues related to the Third Cause of Action.

This controversy has spawned very serious but unfounded and careless speculations on the part of many partisan observers who, on the basis of incomplete information, would rather latch on to their favorite conspirational theories rather than critically examine the facts and the law involved in this case. This Tribunal, however, will comply with its constitutionally mandated duty allowing

⁵ Resolution dated 15 October 2019.

the parties the opportunity to examine the results of the revision and appreciation of the pilot provinces as well as comment so that they are fully and fairly heard on all the related legal issues. **Based on the submissions of the parties, the Tribunal can therefore confidently and judiciously deliberate on the proper course of action as clarified by the actual position of the parties on the common issues that we have identified.**" [Emphasis supplied.]

11. Thus, under the same Resolution, the Honorable Tribunal directed the parties to submit their respective Memorandum on the following issues:

"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?
 - 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 President 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?"

12. Thus, in compliance with the Resolution dated 15 October 2019, the parties submitted their respective Memorandum on 19 December 2019.

13. In the interim, due to the pandemic, **Proclamation No. 922⁶** was issued declaring a State of Public Health Emergency throughout the Philippines.

14. Immediately thereafter, **Proclamation No. 929⁷** imposed an Enhanced Community Quarantine throughout Luzon.

⁶ Declaring a State of Public Health Emergency Throughout the Philippines. Proclamation No. 1021 dated 16 September 2020 extended this until 12 September 2021.

⁷ Declaring a State of Calamity Throughout the Philippines Due to Corona Virus Disease 2019.

15. The Enchanted Community Quarantine lasted until 30 May 2020.

16. In the Resolution dated 29 September 2020, the Honorable Tribunal directed the Commission on Elections (COMELEC) and Office of the Solicitor General (OSG) to file their respective Comments.

17. On the part of the COMELEC, the Honorable Tribunal directed it to report *where petitions for failure of elections were filed in the provinces of Maguindanao, Lanao del Sur and Basilan during the 26 National and Local Elections.*

18. Meanwhile, OSG was likewise directed to file its Comment on whether the Honorable Tribunal has the power to declare an annulment of elections without special elections.

19. In compliance with the Resolution dated 29 September 2020, both COMELEC and OSG filed their respective Comments on 03 November 2020.

20. Thereafter, the parties filed their respective Replies to the Comments filed by both COMELEC and OSG.

21. On 16 February 2021, the Honorable Tribunal issued its Decision ("assailed Decision") dismissing the above-captioned Election 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."

22. Not content, protestant Marcos filed his Motion for Reconsideration on the assailed Decision on the following grounds:

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

- i. This honorable Tribunal erred when it claimed that protestant Marcos' allegations are insufficient as this contradicts its previous finding that the election protest of Marcos which included the cause of action for annulment of election results, is sufficient in form and content as contained in the *Summons* dated 12 July 2016, *Resolution* dated 24 January 2017 and *Resolution* dated 29 August 2017.**
- ii. This honorable Tribunal erred in not considering the annulment of election results as an independent, distinct and separate cause of action, which can proceed on its own despite the dismissal of protestant Marcos' cause of action for judicial revision and recounting of ballots.**
- iii. This honorable Tribunal erred in dismissing the Third Cause of Action for annulment of election results by wrongfully applying Rule 65 of the 2010 PET Rules.**
- iv. This honorable Tribunal erred in dismissing the Third Cause of Action for annulment of election results without giving protestant Marcos any opportunity to present his evidence."⁸**

⁸ Page 6, Motion for Reconsideration.

23. In the Resolution dated 15 June 2021, the Honorable Tribunal directed protestee Robredo to file her Comment on the Motion for Reconsideration.

24. Hence, this Comment.

GROUND

I.

WITH DUE RESPECT, THE HONORABLE TRIBUNAL, IN ITS DECISION DATED 15 JUNE 2021 NEVER CLAIMED THAT THE ELECTION PROTEST WAS INSUFFICIENT IN FORM AND SUBSTANCE.

II.

THE HONORABLE TRIBUNAL DID NOT ERR IN DISMISSING THE THIRD CAUSE OF ACTION FOR ANNULMENT OF ELECTION RESULTS.

III.

THE NECESSARY CONSEQUENCE OF THE FAILURE OF PROTESTANT MARCOS TO SHOW SUBSTANTIAL RECOVERY FROM HIS PILOT PROVINCES IS THE DISMISSAL OF THE ELECTION PROTEST.

IV.

THE HONORABLE TRIBUNAL CORRECTLY APPLIED RULE 65 OF THE 2010 PET RULES.

ARGUMENTS/DISCUSSION

The Honorable Tribunal did not claim that the Election Protest is insufficient in form and substance.

The Election Protest was dismissed for failure of protestant Marcos to make any substantial recovery in his pilot provinces.

25. With due respect, protestant Marcos is making mountains out of molehills.

26. Protestant Marcos seems to have conveniently overlooked that the issues resolved by the Honorable Tribunal in the assailed Decision:

“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 President 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

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."⁹

27. Thus, contrary to the incorrect appreciation of protestant Marcos, the assailed Decision never made any categorical finding that the Election Protest is insufficient in form and substance.

28. In fact, protestant Marcos overlooked that the assailed Decision even confirmed the earlier findings in the Resolution dated 24 January 2017 that the Election Protest was sufficient in form and substance:

"In a January 24, 2017 Resolution, 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 if all contests relating to the election, returns and qualifications of the President or Vice-President [.]

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."¹⁰

29. Protestant Marcos missed if not overlooked these preliminary discussions made by the Honorable Tribunal in the assailed Decision.

⁹ Pages 23-24, Decision dated 16 February 2021.

¹⁰ Page 4, Decision dated 16 February 2021.

30. In fact, it appears that protestant Marcos zeroed in and took by piecemeal the discussions made in the assailed Decision that:

"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."¹¹

31. By doing so, protestant Marcos presented a lengthy discussion on why his Election Protest was not insufficient in form and substance.

32. Thus, protestant Marcos clearly showed his misunderstanding, if not mis-appreciation, of the assailed Decision - he was afforded protestant Marcos every opportunity to be heard and present evidence:

"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. 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.

¹¹ Page 35, Decision dated 16 February 2021.

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

X X X

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

X X X

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."

33. Thus, by doing so, protestant Marcos merely muddled the issues presented in his Motion for Reconsideration.

34. A final point on this non-issue. With due respect to protestant Marcos, the sufficiency of the Counter-Protest is separate and distinct from his Election Protest.

35. Clearly, protestant Marcos is grasping at straws by even raising this.

**Protestant Marcos
failed to show any
substantial recovery
from his pilot
provinces.**

**Having failed to show
any substantial
recovery in his pilot
provinces, the
Honorable Tribunal did**

**not err in dismissing
the Election Protest.**

**The Honorable Tribunal
did not err in applying
Rule 65 of the 2010
Rules of PET.**

36. Protestant Marcos has finally accepted that he has failed to show any substantial recovery in his pilot provinces.

37. Notwithstanding, protestant Marcos insists that his Election Protest should still proceed.

38. **Rule 65 of the 2010 Rules of the Presidential Electoral Tribunal** is clear that should protestant Marcos fail to make out his case or establish any substantial recovery in his pilot provinces, the above-captioned Election Protest will be dismissed:

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 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.

39. A similar provision can be found in **Rule 61 of the 1992 Rules of the Presidential Electoral Tribunal**:

"Rule 61. As public interest demands the speedy termination of the contest, the Tribunal may, after the issues have been joined, require the 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 will most probably fail to make out his case, the contest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest."**
[Emphasis supplied.]

40. This same provision was adopted in **Rule 63 of the 2005 Rules of the Presidential Electoral Tribunal**, albeit, with some amendments:

"Rule 63. 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, 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 the correction of manifest errors."

41. Thus, the importance of protestant Marcos being able to show substantial recovery in his pilot provinces cannot be brushed aside and just swept under the rug.

42. For emphasis, as early as 2017, protestant Marcos was already made aware that for his Election Protest to proceed, he must be able to show substantial recovery in his pilot provinces.

43. The records will show that even prior to the assailed Decision, the Honorable Tribunal repeatedly deferred any action on the Motion for Technical Examination pending the initial determination under Rule 65 of the 2010 Rules of the Presidential Electoral Tribunal ("PET Rules").

44. To recall, on 29 August 2017, the Honorable Tribunal resolved to defer any action on the Motion for Technical Examination filed by protestant Marcos pending the initial determination under Rule 65 of the 2010 PET Rules:

"On the other hand, in protestant's Motion for Technical Examination, protestant prays that the Tribunal direct the conduct of technical examination to be done by handwriting experts of the COMELEC of the voter's signatures appearing on the EDCVL as against the

voters' signatures appearing on the VRRs in each of the 2,756 clustered precincts of Lanao del Sur, Maguindanao and Basilan.

Similar to her Comment and Opposition to the Motion for Retrieval, protestee argued in her Comment and Opposition to the Motion for Technical Examination, that protestant is not entitled to the technical examination of the signatures of voters in Lanao del Sur, Maguindanao and Basilan as these provinces are not among those protestant designated as his pilot provinces. Protestee also argued that the pending incidents and logistical and practical considerations as discussed during the Preliminary Conference warrant the denial of the Motion for Technical Examination.

The Tribunal has already resolved protestee's Motion for Reconsideration above; thus, the Motions for Decryption, Retrieval and Technical Examination can already be resolved.

Rule 65 of the 2010 PET Rules, as its caption states, is for the initial determination of the grounds for the protests. Following this, the revision and reception of evidence, upon designation of the provinces best exemplifying the frauds or irregularities, will begin with those provinces, thus:

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 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.

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 "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.** [Emphasis supplied]

45. This was reiterated by the Honorable Tribunal in the Resolution dated 02 July 2019 when it resolved to defer any action on the *Extremely Urgent Manifestation of Grave Concern with Omnibus Motion dated December 10, 2018 and Consolidated Reply with Urgent Motion to Resolve Protestant's Omnibus Motion dated March 22, 2019* **until after the Tribunal's initial determination of the grounds for the Protest under Rule 65 of the 2010 PET Rules:**

"The Tribunal believes, and so holds, that protestant's motions with respect to the conduct of technical examination on his third cause of action are premature

because the proceedings under Rule 65 of the 2010 PET Rules have not been concluded. To recall, protestant chose three pilot provinces and prayed for the judicial recount and revision of the ballots. As both protestant and protestee are aware, the Tribunal is currently in the process of appreciation of more than two million revised ballots, which includes ruling on the objections and claims thereto.

Rule 65 of the 2010 PET Rules refers to the initial determination of the grounds for an election protest before the Tribunal. The rule states:

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 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.

Protestant designated Camarines Sur, Negros Oriental, and Iloilo as his pilot provinces which, under the language of Rule 65, best exemplify the frauds or irregularities alleged in the election protest. As it stands, therefore, it would be premature to conduct a technical examination of voter's records and election documents from provinces other than those designated as pilot provinces in the Protest.

The Tribunal reiterates its previous ruling in its Resolution dated August 29, 2017 on the deferment of the technical examination. **Rule 65 allows the Tribunal to conduct a revision of ballots and reception of evidence on the designated pilot provinces first, and on such basis, dismiss the protest if it finds that the protestant will most probably fail to make out his case.** Practical and logistical considerations also restrict the Tribunal in proceeding with the technical examination due to its limited resources and manpower, as the Tribunal is faced with the gargantuan task of determining the validity of the votes in more than two million ballots from the pilot provinces.

Given the foregoing, the Court resolves to defer action on the matter of technical examination until such time that an initial determination has been made on the protest, based on the explicit mandate of Rule 65 of the 2010 PET Rules. On that note, there is no need to discuss at this time the issue of the application of the *sub judice* rule to this case." [Emphasis supplied.]

46. Clearly, under Rule 65 of the 2010 Rules, protestant Marcos has the burden to show that based on his designated pilot provinces, he will be able to make out his case.

47. Simply put, based on the result of the revision, recount and re-appreciation of ballots, protestant Marcos must not only be able to show substantial recovery but also a probability that he will be able to overcome the margin of protestee Robredo.

48. Thus, the Honorable Tribunal, in its assailed Decision painstakingly expounded on this:

"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." 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 there tribunals.

x x x

The results upon examination of ballots in the pilot provinces determine

whether this Tribunal should proceed with the retrieval and 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.

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

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.

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" 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. As witnessed by the parties' representatives, this Tribunal went over the ballots from 5,415 clustered precincts in these provinces.

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, confirming her victory in the 2016 elections." [Citations omitted.]

49. In his Separate Opinion, Associate Justice Mario Lopez echoed the findings and conclusion of the majority on the dismissal of the Election Protest:

"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 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 the initial determination of the protest's merit.**"¹²

50. Meanwhile, even with the proposed computation by Associate Justice Mario Lopez, the result remained the same – protestant Marcos failed to show any substantial recovery and the dismissal of his Election Protest:

"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 results on who won.**"¹³ [Emphasis supplied.]

51. Finally, to put the nail in the proverbial coffin, Associate Justice Samuel Gaerlan in his Separate Opinion also

¹² Page 4, Separate Opinion in the Decision dated 16 February 2021.

¹³ Page 8, Separate Opinion in the Decision dated 16 February 2021.

concurred in the dismissal of the Election Protest due to the failure of protestant Marcos to show substantial recovery:

"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."¹⁴ [Emphasis supplied.]

52. The choice of pilot provinces was made by protestant Marcos himself. It was a personal choice.

53. Nobody dictated upon him to choose them.

54. Now that he was proven wrong, protestant Marcos now wants to change the Rules so he can keep fanning the flames on his unsubstantiated allegations.

55. Protestant Marcos has no one to blame but himself for the dismissal of his Election Protest.

56. Now, having failed to show any substantial recovery, protestant Marcos is now insisting on proceeding to his Third Cause of Action.

57. In his Motion for Reconsideration, protestant Marcos has repeatedly urged the Honorable Tribunal to *adhere to the sound pronouncements of the HRET and COMELEC that the Third Cause of Action for the annulment of election results is indeed **distinct, seprate and independent from the cause of action for the judicial revision, recount and re-***

¹⁴ Page 1, Separate Opinion in the Decision dated 16 February 2021

appreciation of ballots under Rule 65 of the 2010 PET Rules.¹⁵

58. At the same time, the Commission on Elections (COMELEC) also categorically stated that should protestant Marcos fail to make out his case, his Election Protest shall be dismissed:

"17. It is clearly provided under Rule 65 of the 2010 Rules of PET that if, upon examination of the ballots and proof in the chosen pilot provinces 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."¹⁶

59. Conveniently, protestant Marcos overlooked this categorical statement of COMELEC and only considered, if not twisted the words, in order to suit his purposes.

60. Further, in insisting on the merits of his Third Cause of Action, protestant Marcos conveniently overlooked the pronouncements of COMELEC that *no special elections were held or conducted in the Provinces of Basilan, Lanao del Sur, and Maguindanao in connection with the 2016 NLE.*¹⁷

61. Or that, the result of the technical examination of the Election Day Computerized Voter's List (EDCVL) in the case of Tan v. Hataman docketed as EPC No. 2016-37 has no probative value:

"13. We would like to stress that every election protest case tried before the COMELEC has always been resolved by the COMELEC based on the evidence and the

¹⁵ Paragraph 81 of the Motion for Reconsideration.

¹⁶ Pages 16-17, Compliance (to the Resolution dated 29 September 2020) dated 03 November 2020.

¹⁷ Paragraph 6, Compliance dated 03 November 2020

circumstances surrounding them and COMELEC has always been steadfast in ensuring that all elections conducted are free, honest and credible as well as free from undue influence and corruption.

14. The subject document from the COMELEC-ERSD was submitted and became part of the records in the election protest case raffled before the COMELEC Second Division, docketed as **EPC No. 2016-37** entitled "*Abdusakur M. Tan vs. Mujiv S. Hataman*", seeking nullification of the proclamation of Mujiv S. Hataman as the Regional Governor of the Autonomous Region in Muslim Mindanao (ARMM) in the 2016 NLE was not discussed nor resolved on the merits. In its Order dated 05 December 2019, considering that during the pendency of the case, Republic Act No. 11054 was signed into law, and the term of office of the Regional Governor of ARMM has expired on 30 June 2019, the case was dismissed due to mootness and is now final and executory.

15. Accordingly, the Commission, be it with any of its Division or *En Banc*, did not have the opportunity to rule upon such findings or otherwise pass upon its validity, merit and probative value."

62. Thus, if protestant Marcos is urging the Honorable Tribunal to adhere the sound pronouncements of COMELEC, then, the result of the technical examination cannot be used as it has no probative value.

63. Protestant Marcos cannot insist on nitpicking the arguments which would favor his cause.

64. In fact, COMELEC even cautioned the Honorable Tribunal that **as to give highest importance to the thousands of votes cast in the elections, the strictest standards and procedures of law must be set in place if**

PET becomes strongly and positively convinced to annul the results of the elections.¹⁸

65. These words of caution have been made for the simple reason that the remedy sought by protestant Marcos is extraordinary:

"As a final note, we reiterate our pronouncement in *Batabor v. Commission on Elections* that "[t]he power to declare a failure of election should be exercised with utmost care and only under circumstances which **demonstrate beyond doubt that the disregard of the law has been so fundamental or so persistent and continuous** that 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 voters have been prevented by violence, intimidation and threats from exercising their franchise. **There is failure of election only when the will of the electorate has been muted and cannot be ascertained. If the will of the people is determinable, the same must as far as possible be respected.**"¹⁹ [Citations omitted; Emphasis supplied.]

66. In ***Mutlan v. Commission on Elections***,²⁰ the Supreme Court was categorical in stating that an annulment of elections is akin to a failure of elections and that jurisdiction is vested on the COMELEC:

"Under Section 4 of Republic Act No. 7166 (RA 7166), jurisdiction over postponement, failure of elections and special elections vests in the COMELEC En Banc. The jurisdiction of the COMELEC En

¹⁸ Paragraph 10, Compliance dated 03 November 2020; Emphasis and underscoring supplied.

¹⁹ *Presbiterio v. Commission on Elections*, G.R. No. 178884, 30 June 2008.

²⁰ G.R. No. 171248, 2 April 2007.

Banc over a petition to declare a failure of elections has been affirmed by this Court which ruled that a petition to declare a failure of elections is neither a pre-proclamation controversy nor an election case. **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 actually of the same nature and are denominated similarly in the Omnibus Election Code. Thus, the COMELEC Second Division has no jurisdiction over the petition to annul the elections."** [Citations omitted; Emphasis supplied.]

67. The Supreme Court also concluded that the allegations in the petition to annul the elections fail to make out a prima facie case to warrant the declaration of failure of elections.

"In this case, the elections took place. In fact, private respondent was proclaimed the winner. Petitioner contests the results of the elections on the grounds of massive disenfranchisement, substitute voting, and farcical and statistically improbable results. Petitioner alleges that no actual election was conducted because the voters did not actually vote and the ballots were filled up by non-registered voters.

Petitioner alleges that "[i]n some instances, the ballots were forcibly grabbed by armed persons and the same were filled-up even before election day." However, petitioner did not cite the particulars of his allegations. Petitioner further alleges that "election returns were already filled up even before the counting started;" "votes credited to candidates even exceeded the number of registered voters of the precincts;" and "in one of the counting areas, the tally boards were filled

up in the presence of some Comelec officials even before the ballots were counted." Again, petitioner failed to state the particulars of these incidents except that "[s]ome of these anomalies were committed in the municipalities of Butig, Sultan Gumander, Calanogas, Tagoloan, Kapai and Maguing of Lanao del Sur."

The other allegations of petitioner, particularly the transfer of venue of the canvass without previous notice to the candidates, the proclamation of private respondent without canvassing the results of the "farcical election" in Tawi-Tawi, the erasures in the certificate of canvass, the lack of initials by the Provincial Board of Canvassers, the use of different inks and handwritings, and the act of the Provincial Board of Canvassers in simply noting his objections to the canvass of the returns, are not grounds that would warrant the annulment of the elections.

In *Pasandalan v. Commission on Elections*, the Court explained:

'To warrant a declaration of failure of election on the ground of fraud, the fraud must prevent or suspend the holding of an election, or mar fatally the preparation, transmission, custody and canvass of the election returns. The conditions for the declaration of failure of election are stringent. Otherwise, elections will never end for losers will always cry fraud and terrorism.

x x x

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 declaration of failure of election, and convincing evidence must substantiate the allegations.**²¹ [Emphasis supplied.]

68. Similarly, in the present case, protestant Marcos also failed to make out a prima facie case for annulment of elections.

69. The Honorable Tribunal, in its assailed Decision took pains to examine the dearth of allegations in the Election Protest:

"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. We are reminded that "[s]tatistics never lie, but lovers often do[.]

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 Basiln.

x x x

In sum, the affidavits lacked specificity and any iota of proof of fraud or irregularity that

²¹ Citing G.R. No. 150312, 18 July 2002.

would entail annulment of elections, falling short of the threshold in *Abayon*."²²

70. Notwithstanding, these clear findings of the Honorable Tribunal, protestant Marcos insists that he has evidence to present to substantiate his allegations.

71. Once more, protestant Marcos failed to address the issue on how his witnesses who are not even registered voters can testify on what transpired during the 09 May 2016 National and Local Elections.

72. For instance, in the Province of Basilan, protestant Marcos listed names of witnesses who were not even registered voters in the Province of Basilan.

73. When protestee Robredo pointed out this important fact, her Manifestation and Comment (on the Manifestation and Compliance [Re: List of Witnesses for the Third Cause of Action] dated 09 October 2017) dated 21 November 2017 was met with eerie silence.

74. The Honorable Tribunal even astutely observed that:

"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, the municipality of Lumbaca-Unayan, and Marawi City.

x x x

Incidentally, Maguindanao has a total of 36 municipalities and one city, but the affiants protestant presented were both from the municipality of Datu Saudi Ampatuan.

Meanwhile, Basilan has 11 municipalities and two cities, but the affiants presented

²² Pages 70, 75 of the assailed Decision dated 16 February 2021.

refer only to the municipalities of Tuburan, Sumisip, Akbar, and Lamitan City."²³
[Citations omitted.]

75. Clearly, protestant Marcos failed to even sufficiently show that his allegations on the annulment of elections had any legal or factual basis to stand on.

76. Meanwhile, protestant Marcos repeatedly invoked **Abayon v. House of Representatives Electoral Tribunal**²⁴ (Abayon).

77. However, while invoking Abayon, protestant Marcos also overlooked the requisites laid down by the Supreme Court to justify annulment of elections:

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

- (1) The illegality of the ballots must affect more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein;²⁵ and
- (2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots..."

78. Aside from these, COMELEC also pointed out that the Supreme Court, in **Abayon**, specified an additional requisite for

²³ Pages 76, 79 of assailed Decision dated 16 February 2021.

²⁴ G.R. Nos. 222236 and 223032, 3 May 2016.

²⁵ Incidentally, even assuming that the threshold can apply per province which would mean failure in some and but not in all three provinces, the issue of failure of election is now moot. Various jurisprudence defines "failure of election" as one where "nobody is elected" but all elective positions have already been filled up after the elections.

the Annulment of Elections, that is – **there must be clear and convincing evidence to show that the protestee is the one responsible for the acts complained of.**²⁶

79. A cursory glance at the Election Protest will readily show that there is no allegation made by protestant Marcos or even by his witnesses, that protestee Robredo is directly responsible for the alleged incidents complained of.

80. In the **Province of Lanao del Sur**, protestant Marcos did not allege that protestee Robredo was directly responsible for the general allegations of fraud:

"7.13. Massive electoral fraud, anomalies and irregularities marred the elections in these clustered precincts in Lanao del Sur. In the Municipality of Bacolod-Kalawi,

²⁶ Paragraph 11 and 12 of the Compliance (To the Resolution dated 29 September 2020) dated 03 November 2020 states:

"11. The Supreme Court likewise specified as an **additional requisite** for the annulment of election that **there must be a clear, convincing and strong evidence showing that the protestee is the one responsible for the unlawful acts complained of.** It is thus elucidated:

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.** (Emphasis supplied.)"

12. Summarizing the points given by the Highest Tribunal, it is respectfully submitted that **three (3) elements must concur to justify the extreme act of annulling the results of the elections, namely: (1) evidence that more than fifty percent (50%) of the votes were cast illegally; (2) impossibility of differentiating the lawful and unlawful ballots; and, (3) clear, convincing, and strong evidence that the protestee is the one accountable for the illegal acts.** In the end, even the Supreme Court is mindful that *"annulment of elections (must) be judiciously exercised with utmost caution and resorted only in exceptional circumstances.* Likewise, it has been consistently held that *"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."*

Lanao del Sur, for instance, there was a prevalence of violence, intimidation and harassment of voters, as well as illegal composition of the BEI, and proliferation of batch-feeding of pre-shaded ballots in the clustered precincts thereat according to **Ameral Maranda, Alliah Abdulkarim, Nabilah Sowaib, Rohanie Amanoddin and Nouman A. Abdullah.**

7.14. In the judicial affidavit executed by **Marawi City Election Assistant Gonarano P. Corontoz**, he noted the following observations:

- a. During the testing of the VCM approximately two (2) weeks before the elections, they put "Duterte" for President and "Marcos" for Vice-President but then the machine read the votes in favor of "Mar Roxas" and "Leni Robredo" respectively. They did it again and this time, Corontoz made a video of the proceedings. It yielded the same results. They reported the same to the Central Office of the COMELEC, but the latter did not respond with an action; and
- b. On 9 May 2016, the precincts were opened for voting, but only a few people cast their votes. Late afternoon of Election Day, a report has reached Corontoz that barangay officials were shading the unused ballots in the other precincts, and feeding the same to the VCM. He was instructed by the Election Officer to investigate. He went to the precincts and there he saw several barangay officials carrying firearms, and some were busy shading the ballots and

feeding them in bulk to the VCM. Corontoz called their attention, but they said that if he interfered then they would not hesitate to harm him. During the canvass, the turnout was high and it showed that 10,922 people voted which is equivalent to 84% voter turnout. Corontoz attributes the high voter turnout to the shading of the unused ballots.

7.15. In the same judicial affidavit executed by the **Election Assistant Amer D. Abdullah** assigned to the Municipality of Pagayawan, Lanao del Sur, he attested to the following:

- a. On Election Day, the precincts were opened for voting, but only a few voters came to cast their votes.
- b. The voters' turn out became suspiciously high at 44,780 or 91.20%, considering the few number of voters who came to cast their votes.
- c. While affiant was casting her vote, and while shading her ballot, an unidentified person suddenly snatched her ballot and shaded it for the national position except for the President.
- d. There were numerous reports of official ballots being forcibly taken or snatched from the voters.
- e. During the delivery of the ballots and VCM to Brgy. Cabingan, Marawi City in the early morning of Election Day, two watchers

were shot dead by unidentified men.

7.16. In the judicial affidavit of **Election Assistant Sanapia D. Benito**, Marawi City, Lanao Del Sur, affiant attested to the following facts:

- a. On Election Day, the precincts were opened for voting and only few voters came to the precincts to cast their votes.
- b. The voters' turn out became suspiciously high at 44,780 or 91.20%, considering the few number of voters who came to cast their votes.
- c. While the affiant was casting her votes, and while shading her ballot, an unidentified person suddenly snatched her ballot and shaded it for the national position, except for the President.
- d. There were numerous reports of official ballots being forcibly taken or snatched from the voters.
- e. During the delivery of the ballots and VCM to Brgy. Cabingan, Marawi City in the early morning of Election Day, two watchers were shot dead by unidentified men.

7.17. In the judicial affidavit of **Election Assistant Adbulnader M. Balt** of Lumbaca Unayan, Lanao del Sur, affiant attested to the following facts:

- a. On Election Day, the precincts were opened for voting and only few voters came to the precincts to cast their votes.
- b. There was a proliferation of armed men in the polling precincts to intimidate voters.
- c. Affiant received reports of minors who casted their votes.
- d. Assigned assistors at the polling precincts refused to assist senior citizens."²⁷

81. Similarly, for the **Province of Maguindanao**, there is no allegation that protestee Robredo was directly responsible for the acts complained of:

"7.23. In Datu Saudi Ampatuan, Maguindanao, **Normina L. Taha** witnessed the violence, intimidation and threats employed by the group of Samsudin Dimaukom (who was the incumbent Mayor and Liberal Party candidate in that municipality) in Datu Pendililang Piang Elementary School to ensure the victory of the full slate of the Liberal Party in the said polling place. Taha also witnessed the proliferation of pre-shaded ballots in Datu Pendililang Piang Elementary School.

7.24. **Bassir D. Utto**, a vice-mayorality candidate in Datu Saudi Ampatuan, also witnessed the violence, threats and intimidation employed by the group of MILF 118 Base Command Wahid Tundok, with Nashro Dimaukom and Partrick Dimaukom, in Barangay Kabinge on Election Day, in order to prevent the voters and supporters

²⁷ Pages 965-968, Election Protest.

of Utto from entering the polling precinct."²⁸

82. Similarly, for the **Province of Basilan**, there is no allegation that protestee Robredo was directly responsible for the acts complained of:

"7.30. According to the congressional candidate **Gerry A. Salapuddin**, ninety (90%) percent of the official ballots for the protested clustered precincts in the Municipalities of Akbar, Tuburan, AL Barkah, Sumisip, Tabu-an Lasa, Ajul and Lantawan, all in the Province of Basilan, were not delivered in the polling precincts on the Election Day. Instead, these official ballots were pre-shaded by the supporters of the local candidates belonging to the Liberal Party on 8 May 2016. On Election Day, these pre-shaded ballots were then fed into the VCM to make it appear as if actual elections took place in those municipalities, when the truth is that there was no actual elections thereat.

7.31. Pre-shading of ballots was prevalent in Barangay Sinulatan, Municipality of Tuburan, Basilan as per **Nuruddin A. Dawalin**, who witnessed that the official ballots on the polling precincts in Barangay Sinulatan were already pre-shaded. This was corroborated by **Redzmar M. Hasim**, who witnessed Brgy Captain Ben Salain filing up the ballots for his relatives who were not yet at the polling center in Barangay Sinulatan. Other unidentified persons, who are not registered voters of Barangay Sinulatan, were also seen pre-shading the official ballots. In Brgy. Calut Tuburan, Basilan, **Basir A. Saala** attested that the election was terminated as early as eight o'clock in the morning (8:00 a.m).

²⁸ Pages 969, Election Protest.

7.32. The Pre-shading of ballots was prevalent in Barangay Mangalut, Akbar, Basilan according to **Rahman S. Kapeng**. In fact, Kapeng saw Brgy. Captain. Maujabal Jahaddin, together with his wife and brother, watching over the batch-feeding of pre-shaded ballots into the VCM on 9 May 2016. In Barangay Caddayan, Akbar, Basilan, **Gani A. Alap** witnessed the BEIs assigned thereat as they were issuing the pre-shaded ballots.

7.33. In Barangay Mebak, Municipality of Sumisip, Basilan, **Nasir A. Tawani**, who was a watcher for UNA gubernatorial candidate Joel T. Maturan, witnessed pre-shading of ballots inside the municipal hall as early 3:00 p.m. on 8 May 2016. According to Tawani, not only was there pre-shading inside the Municipal hall, he also witnessed pre-shading ballots inside more than twenty (20) vehicles parked within the premises of the hall. And since the ballots in Barangay Mebak, Municipality of Sumisip, Basilan were already pre-shaded, registered voters like Tawani were no longer allowed to vote by 9:00 a.m on 9 May 2016.

7.34. In Barangay Cabcaban, Municipality of Sumisip, Basilan, **Abdulla I. Anjala**, who was a watcher for UNA gubernatorial candidate Joel T. Maturan, discovered that at about 7:00 am of 9 May 2016, ballots were already pre-shaded, and there were only ten (10) official ballots left unfilled.

7.35. In Barangay Upper Cabengbeng, Municipality of Sumisip, Basilan, Amat A. Sarama, who is a registered voter thereat, witnessed that no actual elections took place in the said barangay on 9 May 2016. According to her, the ballots were already pre-shaded inside

the Municipal hall at Barangay Buli on 8 May 2016.

7.36. In Barangay Tongsengal, Municipality of Sumisip, Basilan, **Mariabella E. Macay**, who was a watcher for UNA gubernatorial candidate Joel T. Maturan, was prevented from voting on 9 May 2016. By the time she arrived at the polling place, the polling precincts were not set up and no election officer was around. When she asked a certain Capt. Valencia why there were no ballots boxes and election officers, the latter replied in Filipino saying, "*Wala tayong magagawa, maghintay na lang ng next election.*"

7.37. In Barangay Mahalatang, Municipality of Sumisip, Basilan, **Alamin O. Ibama**, who is a watcher for UNA gubernatorial candidate Joel T. Maturan, witnessed that all the ballots were already pre-shaded at around 7:30 am on 9 May 2016, except for fifty (50) official ballots.

7.38. According to **Sitti S. Bohong**, almost all of the one thousand seventy six (1,076) official ballots were already pre-shaded and were already prepared to be fed into the VCM at the polling precinct where she was assigned in Barangay Manaul, Municipality of Sumisip, Basilan. In fact, only seventeen (17) ballots were left unfilled when she went to her assigned polling place to vote on 9 May 2016.

7.39. In Barangay Tumahubong, Municipality of Sumisip, Basilan, **Abdulbasir D. Tawani**, who is a registered voter of Barangay Mebak, was not allowed to vote on 9 May 2016. He was informed that voting was already conducted the day before at the Municipal Hall in Barangay Buli-Buli.

7.40. In Barangay Mebak, Municipality of Sumisip, Basilan, **Massir S. Tawani** went to the Barangay Tumahubong to cast his vote and to act as a watcher for his candidate Joel Maturan. However, he was informed that he cannot vote anymore because voting was already conducted on 8 May 2016 at the Municipal Hall in Barangay Buli-Buli.

7.41. In Barangay Mebak, Municipality of Sumisip, Basilan, **Kais T. Itih**, who was a watcher for UNA gubernatorial candidate Joel T. Maturan, went on 8 May 2016 to the Municipal hall in Barangay Buli-Buli, where the election paraphernalia were stored for safekeeping. However, he was prevented by the military, police, and security aides from going inside the hall to carry out his duties as a watcher.

7.42. According to **Muallam A. Gadjalul**, he witnessed the BEIs issuing pre-shaded ballots in Barangay Lower Cabengbeng, Sumisip, Basilan. Pre-shaded ballots were also being distributed and issued by the respective BEIs in Barangay Manual and Barangay Tongsengal, Sumisip, Basilan as per **Hussin Adjain** and **Salaain A. Muhtarin**.

7.43. In Brgy. Balagtasan, Lamitan City, Basilan, **Said M. Uliling** was ordered by Brgy. Captain Abdulla Panglias to fill-out the ballots in favor of the Liberal Party on 8 May 2016. The following day, on 9 May 2016, Uliling started filling up the ballots from 6:00 am until 1:00 pm. Voters were no longer allowed to enter the polling precinct at 3:00 pm, and Captain Abdulla's men continued casting the remaining ballots themselves.

7.44. According to **Mady A. Anjalang**, he went to the polling place in

Brgy. Balagtasán, Lamitan City, Basilan on 9 May 2016, at around 8:00 am, but Brgy. Captain Abdulla Panglias, prevented him from entering the polling center. Abdulla was accompanied by armed Civilian Volunteer Organization ("CVO") members and civilian security escorts. Abdulla informed Anjalang that he could only vote after all the voters of the Liberal Party are done casting their votes. When Anjalang insisted on his right to vote, a civilian security escort named Padlan Tengoh interfered and pointed an M16 rifle at him.

7.45. As per **Boy Sanson Akilin**, who is a registered voter of Brgy. Balagtasán, Lamitan City, Basilan, he went to the polling center to cast his vote on 9 May 2016 at around 8:00 am. However, he saw that the Barangay Captain of Balagtasán and armed CVO members were guarding the entrance to the polling center. Only voters who supported the barangay captain's candidate were allowed to enter.

7.46. According to Salmad Asamad, a municipal campaign coordinator stationed at the Municipal Hall of Buli-buli, Sumisip, on 8 May 2016, the service vehicles of Mayor Boy Hataman brought out the ballot boxes from the municipal hall and gave it to his supporters. On 9 May 2016, Asamad went to the polling precinct and recommended that the ballot boxes and official ballots be checked before the start of voting. Upon checking, they discovered that the almost all the ballots had already been filled out."²⁹

83. Thus, in her Verified Answer with Special and Affirmative Defenses dated 12 August 2016, protestee Robredo invited the attention of the Honorable Tribunal on the absence

²⁹ Pages 970-974, Election Protest.

of any allegation that she is directly responsible for the acts complained of:

"196. Finally, it is noteworthy that there is nothing in the allegations and evidence that shows protestee Robredo was directly responsible for the alleged incidents of terrorism, threats and intimidation.

197. Thus, as enunciated in Abayon, *absent anything that would concretely and directly establish protestee as the one who had induced or actually perpetuated the commission of terroristic acts and demonstrate that those incidents were part of scheme to frustrate the free expression of the will of the electorate, the alluded handing of material considerations, xxx xxx 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.*"³⁰

84. Equally noteworthy is that protestant Marcos also failed to include in his Preliminary Conference Brief any evidence which will prove that protestee Robredo was *the one directly responsible for the unlawful acts complained of*.

85. Thus, how can protestant Marcos prove a fact that was not alleged in his Election Protest?

86. Protestant Marcos cannot insist on proceeding to the Third Cause of Action when he miserably failed to comply with the requirements laid down in Abayon.

87. After all, as aptly stated by the Honorable Tribunal:

"Suffrage is at the heart of every democracy. Election results must not be

³⁰ Pages 71-72, Verified Answer with Special and Affirmative Defenses and Counter Protest dated 12 August 2016.

tainted by unnecessary doubt by losing candidates who cannot accept defeat."

88. In the end, protestant Marcos needs to concede and accept his defeat with grace.

89. The Motion for Reconsideration dated 06 May 2021, being a mere rehash of arguments previously passed upon by the Honorable Tribunal, must be DENIED for utter lack of merit.

PRAYER

WHEREFORE, PREMISES CONSIDERED, protestee Maria Leonor G. Robredo respectfully prays to the Honorable Tribunal that the Motion for Reconsideration dated 06 May 2021 be **DENIED FOR UTTER LACK OF MERIT.**

Protestee Robredo prays for such other reliefs as may be just and equitable under the premises.

Pasig City for Manila. 02 July 2021.

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EXPLANATION

Due to unavailability of messengers and the distance of the parties, copies of the herein "*Comment*" were sent to the above-named parties by registered mail.


MARIA BERNADETTE V. SARDILLO