

Republic of the Philippines
COMMISSION ON ELECTIONS
 Manila

SECOND DIVISION

FR. CHRISTIAN B.
 BUENAFE, FIDES M. LIM,
 MA. EDELIZA P.
 HERNANDEZ, CELIA
 LAGMAN SEVILLA, ROLAND
 C. VIBAL, AND JOSEPHINE
 LASCANO,

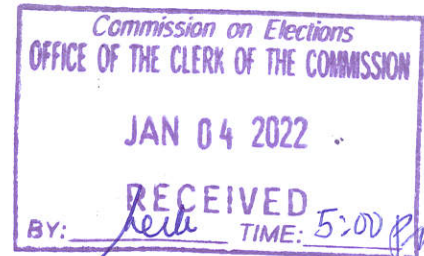
Petitioners,

- versus -

FERDINAND ROMUALDEZ
 MARCOS, JR.,

Respondent.

X-----X



SPA NO. **21-156 (DC)**

**MOTION TO INTERVENE AND
 ADMIT ATTACHED ANSWER-IN-INTERVENTION**

Intervenors **Gen. Dionisio Santiago (Ret.), JR., LTC. Oscarlito Paulino Mapalo, LTGEN. Irineo C. Espino AFP (Ret.), BGEN. Arnolfo Bambalan Palmea (Ret.), MGEN. Pedro S Soria II AFP (Ret.), and MGEN. Ricardo Butalid (Ret.)** ("Intervenors"), by counsel, respectfully moves to intervene in this case and in support hereof, states the following:

1. Intervenor **Gen. Dionisio Santiago (Ret.), JR.** is a former senior military officer of the Armed Forces of the Philippines. He may be served with all pleadings, notices, orders resolutions and other papers through the undersigned counsel.

2. Intervenor **LTC. Oscarlito Paulino Mapalo** is a former senior military officer of the Armed Forces of the Philippines. He may be served with all pleadings, notices, orders resolutions and other papers through the undersigned counsel.

3. Intervenor **LTGEN. Irineo C. Espino AFP (Ret.)** is a former senior military officer of the Armed Forces of the Philippines. He may be served with all pleadings, notices, orders resolutions and other papers through the undersigned counsel.

4. Intervenor **BGEN. Arnolfo Bambalan Palmea (Ret.)** is a former senior military officer of the Armed Forces of the Philippines. He may be served with all pleadings, notices, orders resolutions and other papers through the undersigned counsel.

5. Intervenor **MGEN. Pedro S Soria II AFP (Ret.)** is a former senior military officer of the Armed Forces of the Philippines. He may be served with all pleadings, notices, orders resolutions and other papers through the undersigned counsel.

6. Intervenor **MGEN. Ricardo Butalid (Ret.)** is a former senior military officer of the Armed Forces of the Philippines. He may be served with all pleadings, notices, orders resolutions and other papers through the undersigned counsel.

7. Rule 8, Section 1 of the Comelec Rules of Procedure provides that intervention may "be permitted by the Commission, in its discretion, to intervene in such action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by such action or proceeding." In this case, Intervenor has legal interest in the matter in litigation.

8. It is settled that **election cases involve public interest**.¹ This is so because elections, in turn, involve the people’s constitutional right to vote.

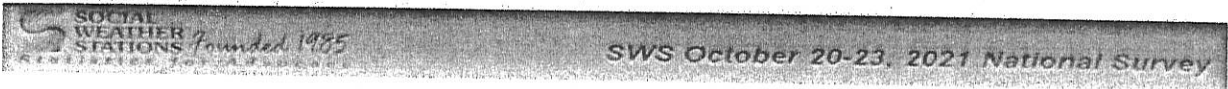
9. In this case, the petitioners seek to remove respondent Ferdinand Romualdez Marcos, Jr. ("**BBM**") as a presidential candidate.

10. It is already public knowledge that **BBM** is the leading presidential candidate massively topping all the surveys conducted by various groups. Some of these are the following:

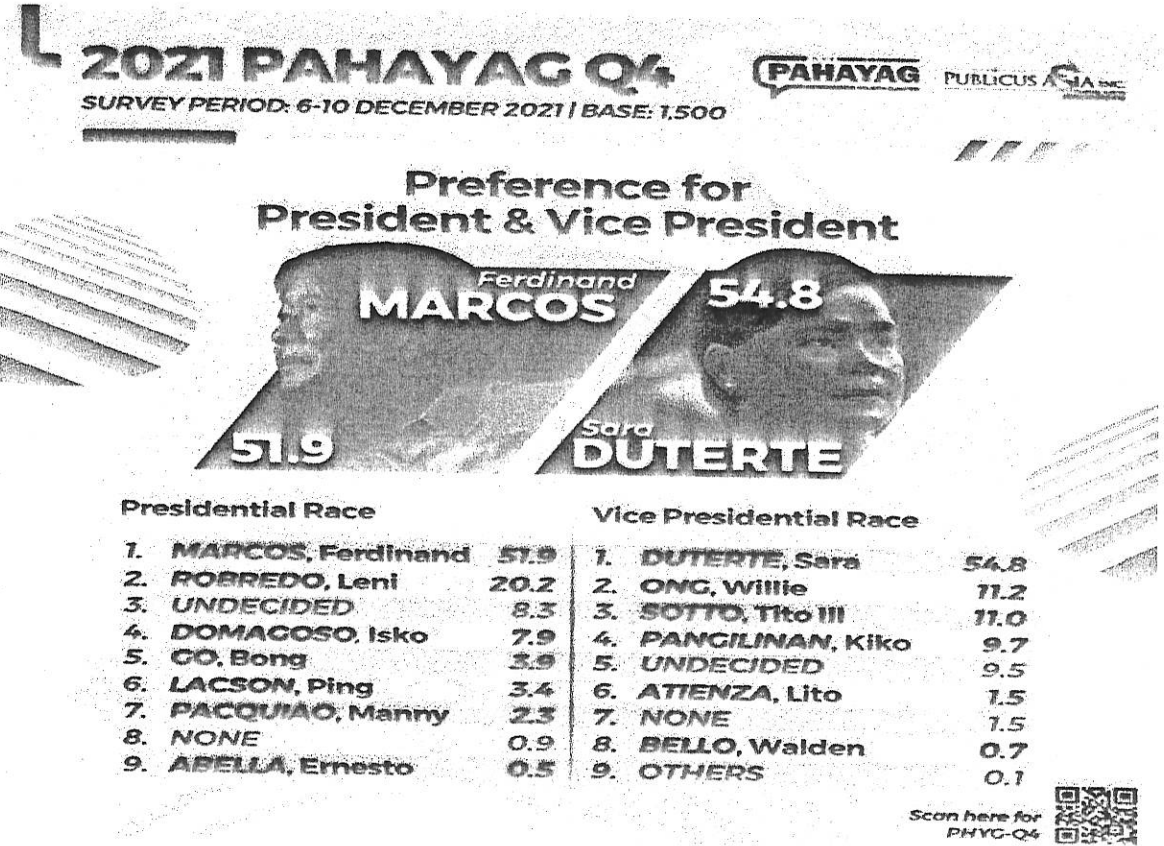
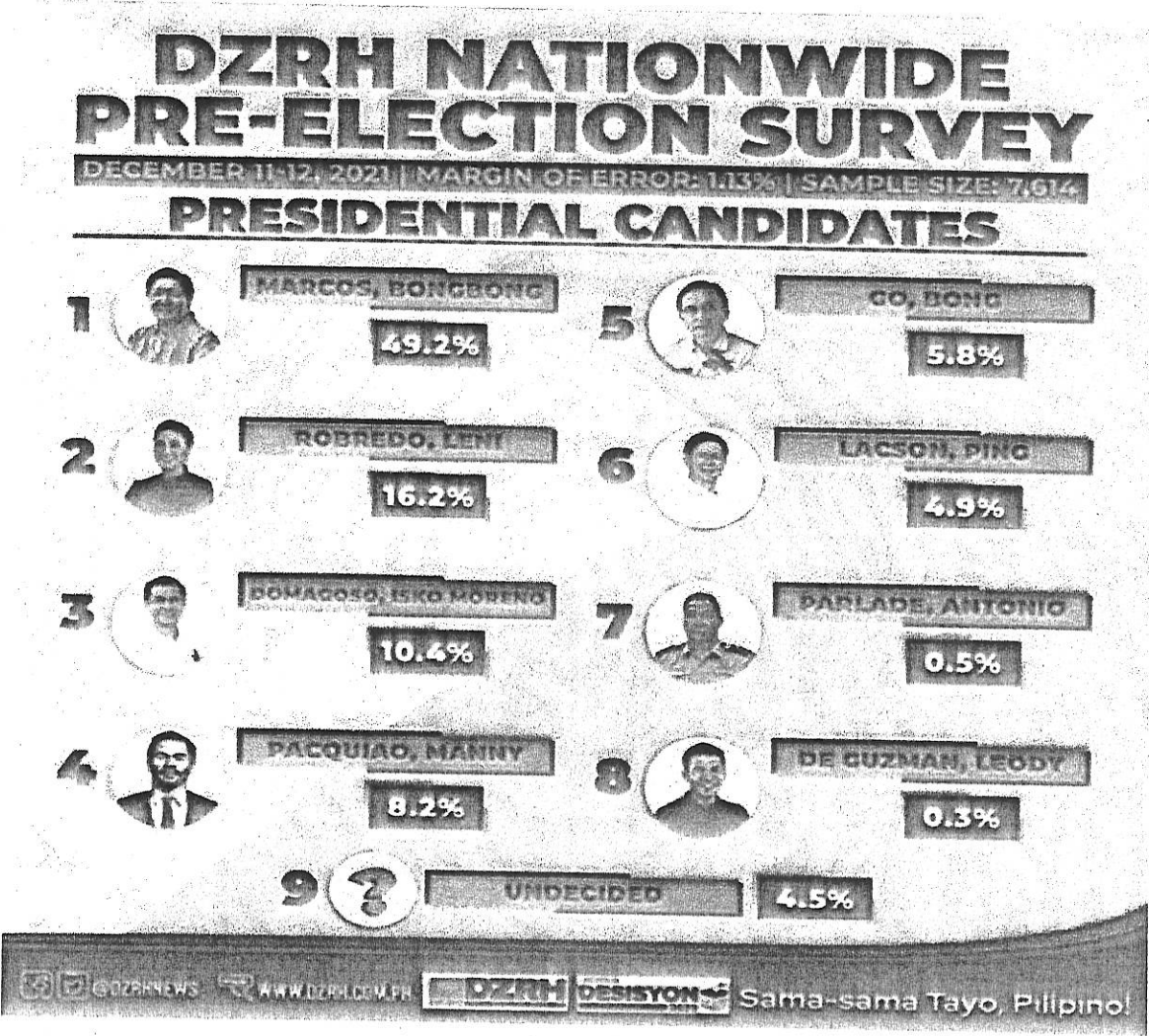
**PREFERENCE FOR PRESIDENT IN THE 2022 ELECTION,
PHILIPPINES, OCT 2021 (Base: Total Registered Voters)**

	<u>Rank</u>	<u>%</u>	<u>Count (In 000)</u>
Marcos Jr., Bongbong	1	47	29,289
Robredo, Leni	2	18	11,130
Domagoso, Isko Moreno	3	13	8,250
Pacquiao, Manny	4	9	5,734
Lacson, Ping	5-6	5	2,994
Dela Rosa, Bato	5-6	5	2,880
Undecided+		3	1,568

Q: Narito po ang isang listahan ng mga posibleng kandidato para sa PRESIDENTE NG PILIPINAS. Kung ang eleksyon ay gaganapin ngayon, sino po ang pinakamalamang ninyong iboboto bilang PRESIDENTE NG PILIPINAS? (SHOW LIST)



¹ Roberto S. Alberto vs COMELEC, G.R. No. 132242, 27 July 1999.



11. In addition, the following are likewise the opinion of some noted writers regarding petitions filed against the candidacy of **BBM**:

This is not the most democratic of inspirations. But the people behind these petitions would rather scuttle our electoral politics than see democratically elected candidate they have decided to hate. The end justifies every means.

One needs to have a tunnel vision to want to see a free electoral contest settled by non-electoral means. That **tunnel vision prevents us from seeing the profound consequences of settling this vital contest extra-electorally. Disqualifying the leading candidate will polarize our politics for many years to come, dividing the nation and sinking our economy.**

XXX XXX XXX

Bongbong Marcos is on course to be the first majority president after Edsa. The only way to stop him is to have him disqualified.

XXX XXX XXX

They should take pause and **examine the possible blowback that could scuttle our democracy.**² (Emphasis ours)

12. It was also opined that the post of president is so important that it transcends mere laws, thus:

At the end of the day, any tribunal deciding on it will invoke the **principle of vox populi, vox Dei — that the post of president is so important it transcends mere laws** and precedents involving

² Magno, Alex. Absurd, The Philippine Star, December 4, 2021; <https://www.philstar.com/opinion/2021/12/04/2145552/absurd>.

lower officials, that it is the people who must decide by way of elections as long as the candidate complies with the five simple Constitutional requirements to be president (natural born, registered voter, 40-years old, and a resident for at least 10 years before the elections). Carpio's huge mental problem is that he thinks laws operate in a vacuum, that "lawfare" is so powerful it can even humble superpowers.

Similarly, if ever by a miracle, the Comelec, the Senate Electoral Tribunal, or the Supreme Court disqualifies Marcos, Filipinos are unlikely to take it sitting down. (Emphasis ours)

12. Thus, the petitioners effectively seek to deprive millions of Filipino voters from exercising their constitutional right to vote for **BBM**. Thus, as citizens of the Republic of the Philippines and as registered voters, Intervenors have legal interest in making sure that the May 2022 national elections will be orderly, peaceful and **will reflect the manifest will of the people.**

14. In this connection, Intervenors, who are all former senior military officers of the Armed Forces of the Philippines, most respectfully urge this Honorable Commission to consider all these in resolving the cases that seek to disqualify **BBM** from running in the May 2022 presidential elections for what is involved here is of great public interest which cannot, and should not be, decided on mere personal biases.

15. Intervenors most respectfully urge this Honorable Commission to allow this intervention because it is **Intervenors' legal right to make sure that BBM be allowed to run and be voted for.**

PRAYER

WHEREFORE, it is respectfully prayed that Honorable Commission grant the Motion to Intervene and admit the attached Answer-in-Intervention.

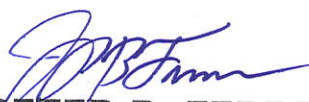
Other just and equitable reliefs are likewise prayed for.

Quezon City for Manila, January 3, 2022.

FERRER & ASSOCIATES LAW OFFICES

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For the Firm



JON PETER B. FERRER

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valid until 04-14-2022
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IBP Lifetime Member No. 06011,
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ATTY. RAFAEL A.L. AQUINO <i>Collaborating Counsel for Ma. Edeliza P. Hernandez</i> Suite 706 & 806, West Tower Philippine Stock Exchange Center (Tektite) Exchange Road, Ortigas Center Pasig City	Registry Receipt No. : <u>RE 514 378 105 22</u> Date : <u>3 January 2022</u> Post Office: <u>SM Aura Taguig</u> post office
ATTY. JEAN FRANCOIS D. RIVERA III <i>Collaborating Counsel for Josephine Lascano</i> 3 rd Floor, Prestige Tower F. Ortigas Jr. Road, Ortigas Center, Pasig City	Registry Receipt No. : <u>RE 514 378 096 22</u> Date : <u>3 January 2022</u> Post Office: <u>SM Aura Taguig</u> post office
ATTY. CAMILLE ROSS G. PARPAN <i>Collaborating Counsel for Christian B. Buenafe</i> Leflegis Legal Services Unit 403, FSS Building I 20 Scout Tuazon corner Scout Castor Barangay Laging Handa, Diliman, Quezon City	Registry Receipt No. : <u>RE 514 378 082 22</u> Date : <u>3 January 2022</u> Post Office: <u>SM Aura Taguig</u> Post office
ATTY. MICHAEL CHRISTOPHER C. DE CASTRO <i>Collaborating Counsel for Fides M. Lim</i> Leflegis Legal Services Unit 403, FSS Building I 20 Scout Tuazon corner Scout Castor, Barangay Laging Handa, Diliman, Quezon City	Registry Receipt No. : <u>RE 514 378 079 22</u> Date : <u>3 January 2022</u> Post Office: <u>SM Aura Taguig</u> Post office

ATTY. FELIX J. MARIÑAS, JR. <i>Collaborating Counsel for</i> <i>Roland C. Vibal</i> c/o FBM Corporation, 3 rd Floor, FBM Building, M.L. Quezon Street, Antipolo City	Registry Receipt No. : <u>RE 514 374 065 22</u> Date : <u>3 January 2022</u> Post Office: <u>SM Aura Taguig</u> Post office
ATTY. HOWARD M. CALLEJA ATTY. JAKE REY M. FAJARDO <i>Counsel for the Petitioners-</i> <i>Intervenors</i> Calleja Law Office Unit 2904-C, West Tower, PSE Centre, Exchange Road, Ortigas Center, Pasig City	Registry Receipt No. : <u>RE 514 378 051 22</u> Date : <u>3 January 2022</u> Post Office: <u>SM Aura Taguig</u> Post office
ATTY. JOCEL ISIDRO S. DILAG <i>Collaborating Counsel for Celia</i> <i>Lagman Sevilla</i> Leflegis Legal Services Unit 403, FSS Building I 20 Scout Tuazon corner Scout Castor, Barangay Laging Handa, Diliman Quezon City	Registry Receipt No. : <u>RE 514 378 048 22</u> Date : <u>3 January 2022</u> Post Office: <u>SM Aura Taguig</u> Post office

EXPLANATION

A copy of this *Motion to Intervene with Admit Attached to Answer-in-Intervention* will be served on the above addressee by **registered mail** and/or **private courier** since personal service is impracticable due to distance, time and manpower constraints.


JON PETER B. FERRER

Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

SECOND DIVISION

**FR. CHRISTIAN B. BUENAFE,
FIDES M. LIM, MA. EDELIZA
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SPA NO. **21-156 (DC)**

- versus-

**FERDINAND ROMUALDEZ
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Respondent.

X-----X

**GEN. DIONISIO SANTIAGO
(RET.), JR, LTC. OSCARLITO
PAULINO MAPALO, LTGEN.
IRINEO C ESPINO AFP
(RET.), BGEN. ARNOLFO
BAMBALAN PALMEA (RET.),
MGEN. PEDRO S SORIA II
AFP (RET.), AND MGEN.
RICARDO BUTALID (RET.)**

Intervenors.

X-----X

ANSWER-IN-INTERVENTION
(to the Petition dated 2 November 2021)

Intervenors **Gen. Dionisio Santiago (Ret.), JR.,
LTC. Oscarlito Paulino Mapalo, LTGEN. Irineo C Espino
AFP (Ret.), BGEN. Arnolfo Bambalan Palmea (Ret.),
MGEN. Pedro S Soria II AFP (Ret.), and MGEN. Ricardo
Butalid (Ret.) ("Intervenors")**, by counsel, respectfully
submits this *Answer-in-Intervention* to the *Petition* dated
2 November 2021 ("**Petition**") and states the following:

Prefatory Statement

The manifest will of the people as expressed through the ballot must be given fullest effect. In case of doubt, political laws must be interpreted to give life and spirit to the popular cases.¹


Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objection.²

To be sure, the 1987 Constitution, which we all swore to protect and defend, provides that the "Philippines is a democratic and republican state" and that "[s]overeignty resides in the people and all government authority emanates from them."

In various surveys, respondent Ferdinand Romualdez Marcos, Jr. ("**BBM**") consistently lead all the other presidential candidates by huge margins, to wit:

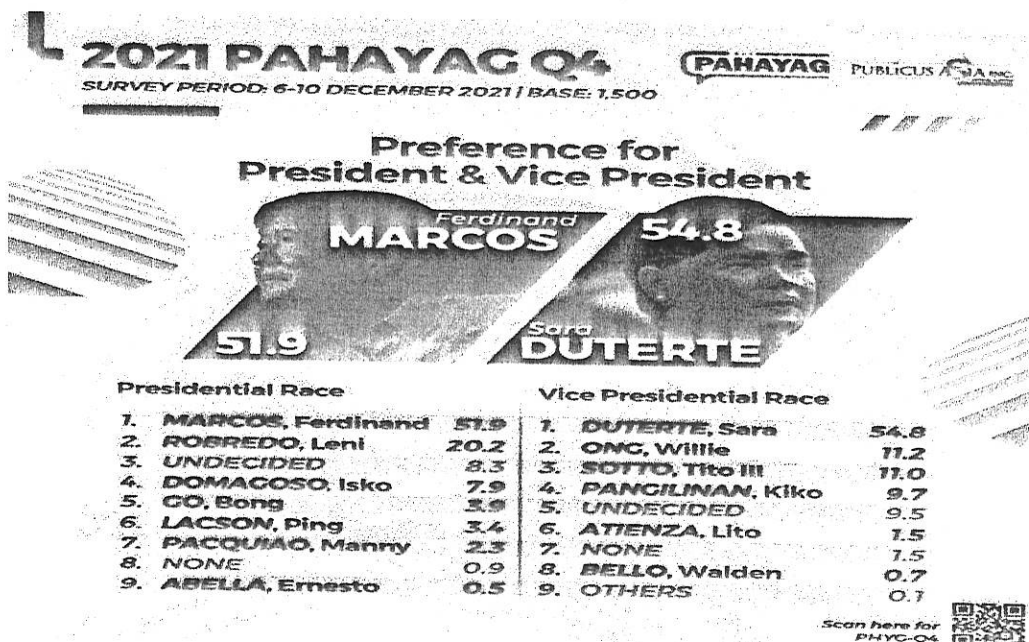
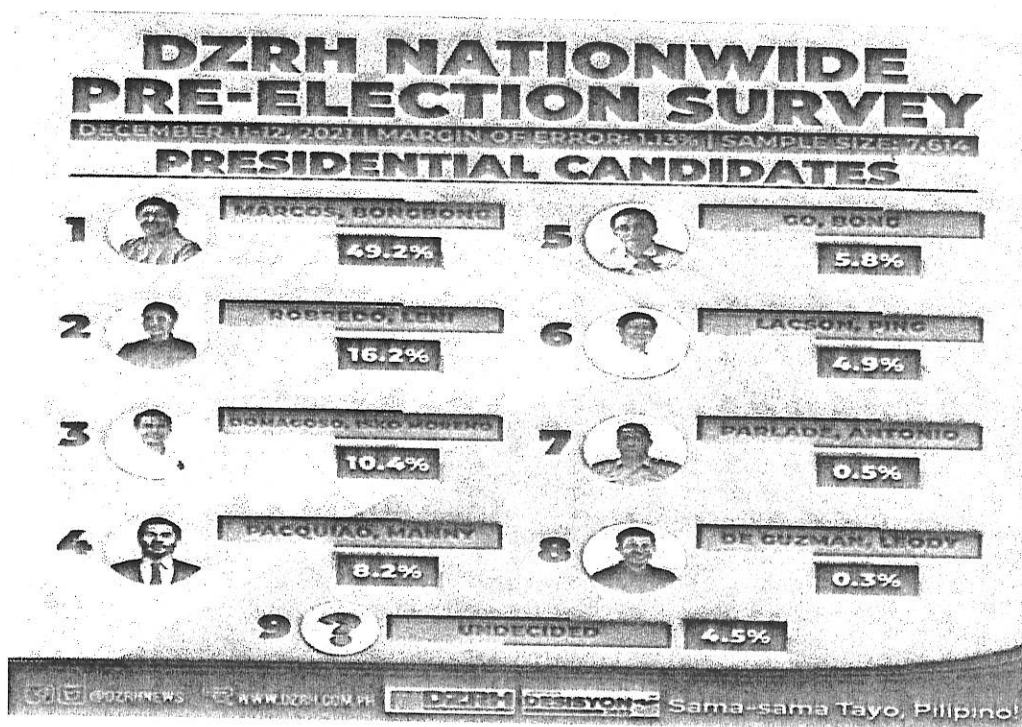
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SOCIAL WEATHER STATIONS Founded 1985

SWS October 20-23, 2021 National Survey

¹ Rogelio Torayno, Sr. v. COMELEC, G.R. No. 137329, 9 August 2020.
² Roberto S. Alberto vs COMELEC, G.R. No. 132242, 27 July 1999.



It was also written that “[t]here are other surveys that give him a larger lead” and in “[o]ne survey, currently embargoed... gives [BBM] a truly fabulous lead.”³

In addition, the following are likewise the opinion of some noted writers regarding petitions filed against the candidacy of **BBM**:

³ <https://www.philstar.com/opinion/2021/12/04/2145552/absurd>.

This is not the most democratic of inspirations. But the people behind these petitions would rather scuttle our electoral politics than see democratically elected candidate they have decided to hate. The end justifies every means.

One needs to have a tunnel vision to want to see a free electoral contest settled by non-electoral means. That **tunnel vision prevents us from seeing the profound consequences of settling this vital contest extra-electorally. Disqualifying the leading candidate will polarize our politics for many years to come, dividing the nation and sinking our economy.**

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Bongbong Marcos is on course to be the first majority president after Edsa. The only way to stop him is to have him disqualified.

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They should take pause and **examine the possible blowback that could scuttle our democracy.**⁴
(Emphasis ours)

It was also opined that the post of president is so important that it transcends mere laws, thus:

At the end of the day, any tribunal deciding on it will invoke the **principle of vox populi, vox Dei — that the post of president is so important it transcends mere laws** and precedents involving lower officials, that it is the **people who must decide by way of elections as long as the candidate complies with the five simple Constitutional requirements to be president** (natural born, registered voter, 40-years old, and a resident for at least 10 years before the elections).

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Carpio's huge mental problem is that he thinks laws operate in a vacuum, that "lawfare" is so powerful it can even humble superpowers.

Similarly, if ever by a miracle, the Comelec, the Senate Electoral Tribunal, or the Supreme Court disqualifies Marcos, Filipinos are unlikely to take it sitting down. (Emphasis ours)

In this connection, Intervenors, who are all former senior military officers of the Armed Forces of the Philippines, most respectfully urge this Honorable Commission to consider all these in resolving the cases that seek to disqualify **BBM** from running in the May 2022 presidential elections for what is involved here is of great public interest which cannot, and should not be, decided on mere personal biases.

Statement of Relevant Facts

1. The following facts were established by the *Court of Appeals in People of the Philippines v. Ferdinand R. Marcos, Jr.*⁵:

[**BBM**] served as Provincial Governor of Ilocos Norte beginning November 3, 1982 until 1986 when he, together with the other members of the Marcos family, was forced into exile in February 1986. It was only on October 31, 1991 that [**BBM**] was allowed to set foot once more on Philippine soil, but with several warrants for his arrest awaiting him.

Pursuant to the recommendation of then Commissioner of Internal Revenue Jose U. Ong (Commissioner) to the Secretary of Justice in a letter dated July 25, 1991, [**BBM**] was charged criminally with four (4) counts each of violation of Sections 45 and 50 of the NIRC, as amended, for having failed, respectively, to file his income tax returns, as Governor of Ilocos Norte, for the taxable years 1982 to 1985 and to pay the corresponding deficiency taxes due thereon...

XXX XXX XXX

⁵ CA-G.R. No. 18567

When [BBM] returned to the Philippines in late October of 1991, he learned of these cases. He was surprised because he always thought that his staff took care of the filing of his income tax returns. He does not recall if he filed his returns from 1982 to 1985, and he has no proof that his staff filed his returns. He was not reminded by his staff about the filing of income tax returns. He did not receive any demand letter, notice to taxpayer or notice of assessment from BIR regarding his income tax liability before or after February, 1986 up to the filing of these cases. Further, he was not also aware of the investigation conducted by the Special Tax Audit Team.

2. On July 27, 1995, the trial court rendered a *Decision*. **BBM** then appealed the trial Court's *Decision* to the Court of Appeals.

3. In its *Decision* ("**CA Decision**") dated 31 October 1997, Court of Appeals acquitted **BBM** of violation of Section 50 of the NIRC involving non-payment of deficiency taxes for the taxable years 1982 to 1985 but affirmed his conviction of violation of Section 45 of the NIRC for mere failure to file income tax returns, thus:

"WHEREFORE, the *Decision* of the trial court is hereby MODIFIED as follows :

1. **ACQUITTING** the accused-appellant of the **charges of violation of Section 50 of the NIRC for non-payment of deficiency taxes** for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-92-29216, Q-92-29215, Q-92-29214 and Q-91-24390; and **FINDING** him **guilty** beyond reasonable doubt of violation of Section 45 of the NIRC **for failure to file income tax returns** for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-91-24391, Q-92-29212, Q-92-29213 and Q-92-292171;

2. Ordering the appellant to pay to the BIR the deficiency income taxes due with interest at the legal rate until fully paid;

3. Ordering the appellant to **pay a fine** of Php 2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212 and Q-92-2917 for failure to file income tax returns for the years 1982, 1983 and 1984; and the fine of Php 30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, with surcharges."⁶
[Emphasis ours]

4. Subsequent to the conviction, **BBM** ran for and won in various government positions. From 1998 to 2007, he ran and served as Governor of *Ilocos Norte*. From 2007 to 2010, he ran and served as Representative of the Second District of *Ilocos Norte*. From 2010 to 2016, he ran and served as Senator of the Republic of the Philippines. In 2016, he ran as Vice President of the Republic of the Philippines. All these were allowed without any legal impediment and objections.

5. On October 6, 2021, **BBM** filed his *Certificate of Candidacy for President* ("**COC**") with this Honorable Commission.

6. Thereafter, various petitions were filed asking this Honorable Commission to disqualify **BBM** from being a presidential candidate and to cancel **BBM**'s COC and/or deny due course to it. All the petitions are anchored on **BBM**'s violation of Section 45 of the NIRC or failure to file tax returns.

7. According to petitioners, **BBM** is perpetually disqualified from holding any public office, to vote and to participate in any election; **BBM** was convicted of a crime involving which further disqualifies him from holding any public office. The conviction of **BBM** in the *CA Decision* carries with it a mandatory penalty of imprisonment of more than 18 months which in turn disqualifies him from running for any public office.

8. The petitioners mislead.

⁶ CA-G.R. CR No. 18569.

Grounds for the Dismissal of the Petition

I

BBM is qualified to hold public office. And there is no false material representation contained in BBM's COC.

II

BBM's conviction of failure to file his tax returns did not amount to perpetual disqualification from holding any public office, to vote and to participate in any election.

III

Failure to file tax returns is not a crime involving moral turpitude.

IV

The penalty for failure to file tax returns was not a mandatory imprisonment of more than 18 months.

V

There is no more crime of failure to file tax returns for purely compensation income earners.

Discussion

BBM is qualified to hold public office. And there is no false material representation contained in BBM's COC.

9. According to the petitioners, **BBM's** representation that he is eligible to run for public office is false.

10. Contrary to the petitioners' claim, **BBM's** representation that he is eligible to run for the position of president is true. Section 2 Article VII of the 1987 Constitution provides for the eligibility of a presidential candidate, thus:

Section 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

11. The petitioners have not alleged that **BBM** does not possess any of the eligibility requirements for president in the 1987 Constitution. Thus, there is no doubt that **BBM** is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age, and a resident of the Philippines for more than 10 years already. Consequently, pursuant to the 1987 Constitution, **BBM** is undeniably eligible to be a presidential candidate.

12. **BBM's** conviction of failure to file tax returns is immaterial and irrelevant. It did not perpetually disqualify him from holding any public office, to vote and to participate in any election. The offense of failure to file tax returns is not a conviction of a crime involving moral turpitude. Moreover, **BBM's** conviction of failure to file tax returns did not have a mandatory penalty of imprisonment for more than 18 months.

BBM's conviction of failure to file his tax returns did not amount to a perpetual disqualification from holding any public office, to vote and to participate in any election.

13. *Section 252 of the 1977 NIRC*, which the petitioners cite as basis for **BBM's** alleged disqualification, was not in the original 1977 NIRC. The said section was merely introduced by *Presidential Decree No. 1994 ("PD 1994")* which **took effect in 1 January 1986**.

14. *Article 4 of the Civil Code of the Philippines* provides that, "[l]aws shall have no retroactive effect, unless the contrary is provided." More importantly, *Section 22, Article III of the 1987 Constitution* states that, "*no ex post facto law or bill of attainder shall be enacted.*"

15. The failure to file tax returns for taxable years 1982 to 1984 were committed on April 16 of each the subsequent years. Thus, the offenses of failure to file tax returns for taxable years 1982 to 1984 were consummated **before the effectivity of PD 1994**. Therefore, the penalty of perpetual disqualification which was introduced by PD 1994⁷ **cannot** be applied to **BBM's** failure to file his tax returns for taxable years 1982 to 1984. To rule otherwise would be tantamount to a violation of the Constitutional prohibition on *ex post facto* laws.

16. Section 252 of the 1977 NIRC is also not applicable to **BBM's** failure to file his tax return for taxable year 1985. The petitioners cite the alleged Section 252 of the 1977 NIRC as follows :

⁷ as the alleged Section 252 of the 1977 NIRC

Section 252. (a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: Provided, that payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

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X X X

X X X

(c) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. **If he is a public officer or employee**, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and **perpetually disqualified from holding any public office, to vote and to participate in any election**. If the offender is a Certified Public Accountant, his certificate as a Certified Public Accountant shall, upon conviction, be automatically revoked or cancelled. (Emphasis ours)

17. In the CA Decision, the Court of Appeals ruled that **BBM** was a "Provincial Governor of Ilocos Norte beginning November 3, 1982 until 1986 when, he, together with the other members of the Marcos family, was forced into exile in February, 1986." Thus, it is clear that **BBM** was a public officer only until February 1986. **BBM** was no longer a public officer or employee in April 16, 1986 or at the time when he failed to file his income tax return for taxable year 1985. Since **BBM** was not a public officer or employee at that time, the penalty of perpetual disqualification is not applicable.

18. Even assuming that **BBM** was a public officer at that time, his conviction of failure to file returns did not result in perpetual disqualification from holding public office. **The Court of Appeals did not impose the additional principal penalty of perpetual disqualification.**

19. That the Court of Appeals did not impose the additional penalty of perpetual disqualification is significant. The penalty of perpetual disqualification from holding a public office in the NIRC is an additional principal penalty and **not an accessory penalty**. An accessory penalty exists only in the Revised Penal Code's penalty system. Article 73 of the Revised Penal Code categorically states that accessory penalties are deemed imposed together with the respective principal penalties, thus:

"Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of Articles 40, 41, 42, 43, 44, and 45 of this Code, it must be understood that the accessory penalties are also imposed upon the convict."

20. The NIRC has no equivalent provision defining and providing for accessory penalties and their automatic imposition.

Failure to file tax returns is not a crime involving moral turpitude.

21. In the CA Decision, the Court of Appeals ruled as follows:

From the above circumstances, which are not disputed by the appellee, **[BBM] was not apprised of whatever action was taken by the government through the BIR** from the time that the investigations commenced up to and until the Notice to the Taxpayer and the notice of assessment were sent to him on August 23, 1991 and September 12, 1991, respectively.

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For the years 1982 to 1985, for which he had been charged, **he had been earning compensation/income from the government** as Provincial Governor of Ilocos Norte. Thus, for those years, **[BBM] was duty-bound to pay his taxes through the withholding tax system...**

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No deficiency assessment for the taxable years 1982 to 1985 was made on the part of the government against **[BBM]**.

It bears emphasis that the **duty to withhold taxes from government employees, including elected officials like the provincial governor, has been reposed by law in the Government** (Sections 90 (c); 94, NIRC of 1977). Consequently, any deficiency in the taxes so withheld is likewise attributable to and/or determinable by the government and not by the employee concerned (Section 91 (f), 1977 NIRC)

[BBM] had a right to rely on the computation and assessment by the BIR for whatever deficiency income taxes that may be due from him, as after all, it is the **government itself which deducts from his gross income the taxes** which he should pay over which he has no control.

XXX XXX XXX

The circumstances in the Ungab case do not obtain in the case at bench. The deficiency in the tax of **[BBM]** was not of his own doing and its determination was not his obligation. Furthermore, **there could be no attempt on his part, for his failure to file the necessary income tax returns, to evade and defeat the taxes as he has in fact paid his tax obligations for the taxable years here-involved under the withholding tax system.** (Emphasis ours)

22. Based on the ruling of the Court of Appeals, the offense of failure to file tax returns cannot, in any way, be considered a crime involving moral turpitude. First, the offense of failure to file tax returns is not intrinsically immoral. In fact, today, it is no longer a crime when a purely compensation income earner does not file a tax return. Second, the offense of failure to file tax returns is *malum prohibitum* or a crime by omission. Fraud is not an element of the offense. And lastly, it was categorically ruled with finality that **BBM** had no intent to evade and defeat taxes. **BBM** was not motivated by criminal intent or ill will as **BBM**'s taxes were paid.

23. To be sure, the Supreme Court has already ruled with finality that **BBM**'s conviction of the offense of failure to file tax returns is not a conviction of a crime involving moral turpitude. In *Republic of the Philippines v. Ferdinand R. Marcos II and Imelda R. Marcos*,⁸ the Republic questioned **BBM**'s qualification to act and serve as the executor of the estate of the deceased former President Ferdinand E. Marcos. According to the Republic, **BBM** was disqualified to act and serve as executor because of his conviction of failure to file income tax returns.

24. In ruling that **BBM**'s conviction of failure to file tax returns for taxable years 1982 to 1985 does not involve moral turpitude, the Supreme Court held:

The "failure to file an income tax return" is not a crime involving moral turpitude as the mere omission is already a violation regardless of the fraudulent intent or willfulness of the individual. This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return.

⁸ G.R. Nos. 130371 and 130855, 4 August 2009.

The same is illustrated in Section 51(b) of the NIRC which read:

(b) Assessment and payment of deficiency tax –
xxx

In case a person fails to make and file a return or list at the time prescribed by law, or makes willfully or otherwise, false or fraudulent return or list x x x.

Likewise, in *Aznar v. Court of Tax Appeals*,⁴¹ this Court observed:

To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, and (3) omission. **Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, "falsity," "fraud" and "omission."**

Applying the foregoing considerations to the case at bar, the filing of a "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual. The same, however, cannot be said for "failure to file a return" where the mere

omission already constitutes a violation. Thus, **this Court holds that even if the conviction of BBM Marcos II is affirmed, the same not being a crime involving moral turpitude cannot serve as a ground for his disqualification.** (Emphasis ours)

PRAYER

WHEREFORE, it is respectfully submitted that this Honorable Commission **DISMISS** the *Petition* dated 2 November 2021 for lack of merit.

Other just and equitable reliefs are likewise prayed for.

Quezon City for Manila, January 3, 2022.

FERRER & ASSOCIATES LAW OFFICES

Counsel for the Intervenors
Suite 805 Union Square Condominium
No. 145 15th Avenue
Cubao, 1109 Quezon City
Tel. No. 8911-3375
Email address: info@ferrerlaw.com.ph

For the Firm



JON PETER B. FERRER

MCLE Compliance No. VI-0002832,
valid until 04-14-2022

PTR No. 0598696D, 01-04-2021,
Quezon City, M.M.

IBP Lifetime Member No. 06011,
29 June 2006

Roll of Attorneys No. 52013

Mobile # 0917-8000178

VERIFICATION

We, the Former AFP Senior Military Officers, **GEN Dionisio Reyes Santiago AFP (Ret.)**, Filipino, of legal age and with address at #7 Villa Kalayaan, Kalayaan Avenue, West Rembo, Makati City; **LTC Oscarlito Paulino Mapalo**, Filipino, of legal age and with address at 4 Miller St., Filinvest 2 Brgy. Batasan Hills, Quezon City; **LTGEN Irineo Cruz Espino AFP (Ret.)**, Filipino, of legal age and with address at L1 B18, Mt. Sinai cor. Rushmore St. Richdale Subd., Antipolo City; **BGEN Arnolfo Bambalan Palmea AFP (Ret.)**, Filipino, of legal age and with address at #11 Kangleon St. Phase 4, AFPOVAI, Western Bicutan, Taguig City; **MGEN Pedro Solomon Soria II AFP (Ret.)**, Filipino, of legal age and with address at #41 Magsaysay St. Phase 2 AFPOVAI, Western Bicutan, Taguig City; and **MGEN Ricardo Bartolabac Butalid Jr. AFP (Ret.)**, Filipino, of legal age and with address at 12 Florencio, San Pedro III, Tandang Sora, Quezon City, after having been duly sworn to in accordance with law, hereby depose and state the following:

1. We are the intervenors in the case entitled "*Fr. Christian B. Buenafe et al. v. Ferdinand R. Marcos, Jr.*," filed before the Commission on Elections and docketed as SPA No. 21-156 (DC);

2. We have caused the preparation and filing of the foregoing *Motion to Intervene and Admit attached Answer-In-Intervention and Answer in Intervention (to the Petition dated 2 November 2021)*;

3. We have read and understood the contents thereof and we attest that the allegations therein are true and correct based on my personal knowledge, available records and authentic documents on hand;


GEN Dionisio Reyes Santiago AFP (Ret.)
LTC Oscarlito Paulino Mapalo
LTGEN Irineo Cruz Espino AFP (Ret.)
BGEN Arnolfo Bambalan Palmea AFP (Ret.)
MGEN Pedro Solomon Soria II AFP (Ret.)
MGEN Ricardo Bartobalac Butalid Jr. AFP (Ret.)
Verification

-----page 4 of 4

SUBSCRIBED AND SWORN to before me this **JAN 09 2022** at **PASIG CITY** City, affiants exhibiting to me the following identification cards with the corresponding details below. *Affiants* are known to me to be the same person who executed the foregoing instrument and acknowledged to me that the same is their free act and deed.

NAME	GOVERNMENT ID	DATE / PLACE ISSUED
GEN Dionisio Reyes Santiago AFP (Ret.)	TIN: 135-148-409-000	
LTC Oscarlito Paulino Mapalo	TIN : 205-989-188-000	
LTGEN Irineo Cruz Espino AFP (Ret.)	TIN : 127-381-206-000	
BGEN Arnolfo Bambalan Palmea AFP (Ret.)	TIN : 135-147-536-000	
MGEN Pedro Solomon Soria II AFP (Ret.)	TIN: 139-624-421-000	
MGEN Ricardo Bartobalac Butalid Jr. AFP (Ret.)	TIN : 137-274-604-000	

Doc No. 66;
Page No. 13;
Book No. 1;
Series of 2021.


GAUDENCIO A. BARBOZA JR.
NOTARY PUBLIC
UNTIL DEC. 31, 2022
PTR NO. A-5063681/1-4-2021/ TAGUIG CITY
IBP NO. 131041/10-22-2020 RSM(FOR YR. 2021
ROLL NO. 41969
MCLE COMP. VI No. 0021812
MARCH 29,2019
APP No. 38(2021-2022)

AFFIDAVIT OF SERVICE

I, **PEDRO G. BINAG III** of legal age, Filipino, with office address at Suite 805 Union Square Condominium, No. 145, 15th Avenue, Cubao 1109 Quezon City after having been sworn to in accordance with law, depose and state the following :

1. I am one of the liaison officers of **FERRER & ASSOCIATES LAW OFFICES**, counsel for intervenors;
2. On 3 January 2022, I mailed one (1) copy of *Motion to Intervene and Admit attached Answer-In-Intervention and Answer in Intervention (to the Petition dated 2 November 2021)* dated 3 January 2022 in the case entitled "*Fr. Christian B. Buenafe, et al. v. Ferdinand R. Marcos, Jr.,*" pending before the Commission on Elections, Manila by Registered Mail :

ATTY. THEODORE O. TE <i>Counsel for all petitioners</i> 2 nd Floor, Eastside Building No. 77 Malakas Street, Diliman Quezon City	Registry Receipt No. <u>RT 514 378 119 22</u> Date : 3 January 2022 Post Office : SM Aura Taguig Post Office
ATTY. RAFAEL A.L. AQUINO <i>Collaborating Counsel for Ma. Edeliza P. Hernandez</i> Suite 706 & 806, West Tower Philippine Stock Exchange Center (Tektite) Exchange Road, Ortigas Center Pasig City	Registry Receipt No. <u>RT 514 378 105 22</u> Date : 3 January 2022 Post Office : SM Aura Taguig Post Office
ATTY. JEAN FRANCOIS D. RIVERA III <i>Collaborating Counsel for Josephine Lascano</i> 3 rd Floor, Prestige Tower F. Ortigas Jr. Road, Ortigas Center, Pasig City	Registry Receipt No. <u>RT 514 378 096 22</u> Date : 3 January 2022 Post Office : SM Aura Taguig Post Office
ATTY. CAMILLE ROSS G. PARPAN <i>Collaborating Counsel for Christian B. Buenafe</i> Leflegis Legal Services Unit 403, FSS Building I 20 Scout Tuazon corner Scout Castor Barangay Laging Handa, Diliman, Quezon City	Registry Receipt No. <u>RT 514 378 082 22</u> Date : 3 January 2022 Post Office : SM Aura Taguig Post Office

ATTY. MICHAEL CHRISTOPHER C. DE CASTRO <i>Collaborating Counsel for Fides M. Lim</i> Leflegis Legal Services Unit 403, FSS Building I 20 Scout Tuazon corner Scout Castor, Barangay Laging Handa, Diliman, Quezon City	Registry Receipt No. <u>RE 514 378 029 22</u> Date : 3 January 2022 Post Office : SM Aura Taguig Post Office
ATTY. FELIX J. MARIÑAS, JR. <i>Collaborating Counsel for Roland C. Vibal</i> c/o FBM Corporation, 3 rd Floor, FBM Building, M.L. Quezon Street, Antipolo City	Registry Receipt No. <u>RE 514 378 065 22</u> Date : 3 January 2022 Post Office : SM Aura Taguig Post Office
ATTY. HOWARD M. CALLEJA ATTY. JAKE REY M. FAJARDO <i>Counsel for the Petitioners-Intervenors</i> Calleja Law Office Unit 2904-C, West Tower, PSE Centre, Exchange Road, Ortigas Center, Pasig City	Registry Receipt No. <u>RE 514 378 051 22</u> Date : 3 January 2022 Post Office : SM Aura Taguig Post Office
ATTY. JOCEL ISIDRO S. DILAG <i>Collaborating Counsel for Celia Lagman Sevilla</i> Leflegis Legal Services Unit 403, FSS Building I 20 Scout Tuazon corner Scout Castor, Barangay Laging Handa, Diliman Quezon City	Registry Receipt No. <u>RE 514 378 048 22</u> Date : 3 January 2022 Post Office : SM Aura Taguig Post Office

3. That the above service was done in SM Aura Taguig Post Office, as evidenced by the Registry Receipt hereto attached wherein the name of the addressee was indicated.

IN WITNESS WHEREOF, I have hereunto affixed my signature this ___ January 2022 in _____ City.

PEDRO G. BINAG III
Affiant

SUBSCRIBED AND SWORN to before me this JAN 03 2022 January 2022 at PASIG CITY City, affiant exhibiting to me his UMID CRN No. 0111-0438965-5. Affiant is known to me to be the same person who executed the foregoing instrument and acknowledged to me that the same is his free act and deed.

Doc. No. 61
Page No. 14
Book No. 1
Series of 2022.

GAUDENCIO A. BARBOZA JR.
NOTARY PUBLIC
UNTIL DEC. 31, 2022
PTR NO. A-5063681/1-4-2021/ TAGUIG CITY
IBP NO. 31041/10-22-2020 RSM(FOR YR. 2021
ROLL NO. 41969
MCLE COMP. VI No. 0021812
MARCH 29, 2019
APP No. 38(2021-2022)

REPUBLIC OF THE PHILIPPINES)
PASIG CITY) SS.

AFFIDAVIT OF SERVICE

I, **JON PETER B. FERRER**, of legal age, Filipino, with office address at Suite 805 Union Square Condominium, No. 145 15th Avenue, Cubao, Quezon City 1109, after having been sworn to in accordance with law, depose and state the following :

1. I am one of the lawyers of **FERRER & ASSOCIATES LAW OFFICES**, counsel for intervenors;

2. On 3 January 2022 at 5:40 in the afternoon, I emailed to clerkofthecommission@comelec.gov.ph a copy of the of *Motion to Intervene and Admit attached Answer-In-Intervention and Answer in Intervention (to the Petition dated 2 November 2021)* dated 3 January 2022 in the case entitled "*Fr. Christian B. Buenafe, et al. v. Ferdinand Romualdez Marcos, Jr.,*" filed before the Commission on Elections and docketed as SPA No. 21-156 (DC);

3. I took a screenshot of the email I sent to the above-mentioned party and printed the same as proof of transmittal; and


4. That I am executing this *Affidavit* to attest to the truth of the foregoing statement and for whatever legal purposes it may serve best.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 3 January 2022 at _____ City.


JON PETER B. FERRER
Affiant

SUBSCRIBED AND SWORN to before me this 3 January 2022 at PASIG CITY City, affiant exhibiting to me his IBP ID No. 06011. Affiant is known to me to be the same person who executed the foregoing instrument and acknowledged to me that the same is her free act and deed.

Doc. No. 65;
Page No. 14;
Book No. 1;
Series of 2022.


GAUDENCIO A. BARBOZA JR.
NOTARY PUBLIC
UNTIL DEC. 31, 2022
PTR NO. A-5063681/1-4-2021/ TAGUIG CITY
IBP NO. 131041/10-22-2020 RSM(FOR YR. 2021
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MCLE COMP. VI No. 0021812
MARCH 29, 2019
APP No. 38(2021-2022)

MOTION TO INTERVENE AND ADMIT ATTACHED ANSWER-IN-INTERVENTION AND ANSWER IN INTERVENTION (to the Petition dated 2 November 2021) dated 3 January 2022 (Fr. Christian B. Buenafe et al. v. Ferdinand R. Marcos, Jr.) - SPA No. 21-156 (DC)



From <info@ferrerlaw.com.ph>
To <clerkofthecommission@comelec.gov.ph>
Cc <info@ferrerlaw.com.ph>, <emram@globelines.com.ph>, <inquiry@m-associates.com>, <info@bongbongmarcos.com>, <theodore.te@gmail.com>, <spaslaw@spaslaw.com>, <fdrivera@dfgrlawoffices.com>, <cgp@leflegis.com>, <mcdc@leflegis.com>, <rlaquinox@gmail.com> 3 more...
Bcc <jpbferrer@gmail.com>
Date 2022-01-03 05:46

- 1. Motion To Intervene and Admit Attached Answer-In-Intervention and Answer in Intervention (to th... (~9.3 MB)
- 2. Verification dated 3 January 2022.pdf (~1.1 MB)
- 3. Affidavit of Service by Registered Mail dated 3 January 2022.pdf (~903 KB)
- 4. Affidavit of Service by Electronic Mail dated 3 January 2022.pdf (~424 KB)
- 4. Affidavit of Service by Electronic Mail dated 3 January 2022.pdf (~424 KB)

3 January 2022

COMMISSION ON ELECTIONS
Palacio del Gobernador
General Luna Street
Intramuros, Manila 1002

Re : MOTION TO INTERVENE AND ADMIT ATTACHED ANSWER-IN-INTERVENTION AND ANSWER IN INTERVENTION (to the Petition dated 2 November 2021) dated 3 January 2022 (Fr. Christian B. Buenafe et al. v. Ferdinand R. Marcos, Jr.) - SPA No. 21-156 (DC)

Gentlemen :

For reference, attached please find the following documents in connection with the above-captioned matter :

1. Motion To Intervene and Admit Attached Answer-In-Intervention and Answer in Intervention (to the Petition dated 2 November 2021) dated 3 January 2022;
2. Verification dated 3 January 2022;
3. Affidavit of Service by Registered Mail dated 3 January 2022;
4. Affidavit of Service by Electronic Mail dated 3 January 2022.

Other parties were furnished with copies of the Motion To Intervene and Admit Attached Answer-In-Intervention and Answer in Intervention (to the Petition dated 2 November 2021) by registered mail.

Kindly acknowledge receipt of this email.

Thank you and I look forward to your usual prompt action on this matter.

Kind regards,

John Peter V. Ferrer