



Republic of the Philippines
Supreme Court
Manila

EN BANC

CONSERTINO C. SANTOS,
Petitioner,

G.R. No. 235058

- versus -

COMMISSION ON ELECTIONS
(COMELEC) EN BANC and
JENNIFER ANTIQUERA
ROXAS,

Respondents.

X -----X

RICARDO ESCOBAR SANTOS
and MA. ANTONIA CARBALLO
CUNETA,

Petitioners,

G.R. No. 235064

Present:

LEONARDO-DE CASTRO, C.J.,
CARPIO,
PERALTA,
BERSAMIN,
DEL CASTILLO,*
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
TIJAM,
REYES, JR., A.B.,
GISMUNDO, and
REYES, JR., J.C., JJ.

- versus -

COMMISSION ON ELECTIONS
and JENNIFER ANTIQUERA
ROXAS,

Respondents.

Promulgated:

September 4, 2018

X -----X

* On official leave.

DECISION

GESMUNDO, J.:

These are petitions for *certiorari* and prohibition with urgent prayer for the issuance of a temporary restraining order (*TRO*) and/or status quo ante order and/or preliminary injunction seeking to annul and set aside the November 8, 2017 Writ of Execution¹ of the Commission on Elections (*COMELEC-En Banc*) in SPA Case No. 15-029 (DC), a case for declaration of a nuisance candidate.

The Antecedents

On October 14, 2015, Jennifer Antiquera Roxas (*respondent*) filed a certificate of candidacy for the position of member of the *Sangguniang Panlungsod* for the First District of Pasay City for the May 9, 2016 National and Local Elections.

On October 21, 2015, respondent filed a petition for disqualification against Rosalie Isles Roxas (*Rosalie*) before the COMELEC praying that the latter be declared a nuisance candidate because her certificate of candidacy (*COC*) was only filed for the sole purpose of causing confusion among the voters by the similarity of their names. She pointed out that Rosalie stated that her nickname was “Jenn-Rose,” to impersonate the former, when Rosalie’s real nickname was actually “Saleng.”

Respondent also argued that Rosalie’s intent to confuse the voters was apparent because she chose the name “Roxas Jenn-Rose” to appear in the official ballot even though respondent, a re-electionist candidate, was already using the name “Roxas Jenny” for election purposes.

After the parties filed their respective memoranda, the case was submitted for resolution.

In its Resolution² dated March 30, 2016, the COMELEC Second Division granted the petition and declared Rosalie a nuisance candidate. It found that Rosalie suspiciously indicated her name in the ballot to be “Roxas Jenn-Rose,” which was strikingly similar with respondent’s name in the ballot as “Roxas Jenny.” The COMELEC also observed that the nickname “Jenn-Rose” did not resemble the name of Rosalie as her real nickname was

¹ *Rollo* (G.R. No. 235064), pp. 42-46.

² *Id.* at 47-53.

actually “Saleng.” It further opined that Rosalie was not financially capable of sustaining the rigors of waging a campaign. COMELEC concluded that the candidacy of Rosalie was clearly meant to cause confusion among the voters with respect to respondent’s name and that Rosalie had no *bona fide* intention to run for office. The dispositive portion of the resolution states:

WHEREFORE, the Petition is **GRANTED**. Accordingly, **ROSALIE ISLES ROXAS**, is hereby declared a **NUISANCE CANDIDATE** and her Certificate of Candidacy for Member, Sangguniang [Panlungsod] of Pasay City for the May 9, 2016 National and Local Elections is hereby **CANCELLED**.

SO ORDERED.³

On April 18, 2016, Rosalie filed a motion for reconsideration, consisting of three (3) pages, before the COMELEC.

While the motion for reconsideration was pending with the COMELEC, the National and Local Elections proceeded on May 9, 2016. The City Board of Canvassers⁴ stated the following results of the elections:

Names	Votes Garnered	Ranking
Calixto, Mark	51,369	1
Advincula, Jerome	45,986	2
Cuneta, Ma. Antonia	41,835	3
Alvina, Abet	36,994	4
Santos, Ricardo	35,756	5
Santos, Consertino	34,291	6
Roxas, Jenny	33,738	7
xxxx		
Roxas, Jenn-Rose	13,328	14

The top six (6) candidates were proclaimed as duly elected members of the First District of the *Sangguniang Panlungsod* of Pasay City. Respondent was not included because she ranked in 7th place; while Rosalie ranked in 14th place with 13,328 votes.

³ Id. at 52.

⁴ Id. at 90.

On May 20, 2016, respondent filed an Election Protest *Ad Cautelam*⁵ against Consertino C. Santos (*Santos*) before the COMELEC praying, among others, that the votes cast for Rosalie, who was declared a nuisance candidate, be credited to her, that the proclamation of Santos as a member of the *Sangguniang Panlungsod* for the First District of Pasay be annulled, and that she be proclaimed as the winning candidate for the *Sangguniang Panlungsod* of First District of Pasay City. Later, respondent amended her protest and added Jerome Advincula, Alberto Alvina, Ma. Antonia Carballo Cuneta (*Antonia*) and Ricardo Escobar Santos (*Ricardo*), as they were also proclaimed as members of the *Sangguniang Panlungsod*.

Meanwhile, on July 22, 2016, or more than two (2) months after the elections, the COMELEC-*En Banc* issued a Resolution⁶ denying Rosalie's motion for reconsideration as follows:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. The Resolution dated 30 March 2016 of the Commission (Second Division) is hereby **AFFIRMED**.

SO ORDERED.⁷

The process server of COMELEC attempted to personally serve the July 22, 2016 resolution to the counsel of Rosalie on July 27, 2016 and August 18, 2016. However, despite earnest efforts, the resolution was not served because the office of Rosalie's counsel was always closed and the guard on duty refused to receive the same.

On November 14, 2016, respondent filed a motion for execution. In its November 17, 2016 order, the COMELEC-*En Banc* considered the July 22, 2016 resolution as served. In its Certificate of Finality⁸ dated February 15, 2017, the COMELEC-*En Banc* declared its July 22, 2016 resolution final and executory.

On March 31, 2017, Ricardo, who was not a party in the nuisance case, filed a Manifestation of Grave Concern with Omnibus Motion [i. To admit attached strong opposition; ii. To defer issuance of writ of execution while this motion is pending; iii. To limit the tenor of the writ of execution to a

⁵ Id. at 74-88.

⁶ Id. at 63-69.

⁷ Id. at 69.

⁸ Id. at 70-73.

declaration that respondent is a nuisance candidate; and iv. To immediately set the instant motion for hearing].⁹

On April 4, 2017, Ricardo filed an Extremely Urgent Motion to Set the Case for Hearing.¹⁰

On April 4, 2017, the COMELEC-*En Banc* issued a Writ of Execution¹¹ (*first writ of execution*) to implement the March 30, 2016 and July 22, 2016 resolutions, to wit:

NOW THEREFORE, you are hereby **DIRECTED** to immediately implement this Writ of Execution by serving a copy hereof together with certified true copy of the Resolutions of the Second Division, and of the *En Banc*, of this Commission, dated 30 March 2016 and 22 July 2016, respectively, upon respondent **ROSALIE ISLES ROXAS** and to submit a return of service thereof to the Clerk of the Commission.

For this purpose, the Commission hereby **DIRECTS**, after due notice to the parties, the Special City Board of Canvassers (SCBOC) of Pasay City, composed of:

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to do the following:

1. **CONVENE** on April 20, 2017, 10:00 a.m., at the Comelec Session Hall, 8th Floor, Palacio del Gobernador Building, Intramuros, Manila, with notice to all affected parties;
2. **COUNT** the Thirteen Thousand Three Hundred Twenty-Eight (13,328) votes cast for [Rosalie] in favor of the [respondent] and **AMEND** the total number of votes garnered by the latter to Forty Seven Thousand Sixty-Six (47,066); and
3. **SUBMIT**, within three (3) days from reconvening, a report to the Commission *En Banc* on the total number of votes garnered by all the affected candidates for the position of the Sangguniang Panlungsod of Pasay City and await for further orders;

Accordingly, Dir. Ester Villafior-Roxas is directed to submit before the Special City Board of Canvassers (SCBOC) a certified true copy of the votes of candidates in the May 9, 2016 National and Local Elections.

SO ORDERED.¹²

⁹ Id. at 306-315.

¹⁰ Id. at 316-320.

¹¹ Id. at 321-324.

¹² Id. at 323-324.

On April 20, 2017, the Special City Board of Canvassers of Pasay City (*SCBOC*) convened and counted 13,328 votes for respondent and consequently amended the statement of votes relevant to the position of members of the *Sangguniang Panlungsod* for the May 9, 2016 National and Local Elections.

Meanwhile, on April 24, 2017, Ricardo filed a separate Petition for Annulment of the Illegal Proceedings of the Special Board of Canvassers of Pasay City with Extremely Urgent Prayer for Issuance of Status Quo Ante Order and Suspension of the Effects of the Illegal Proceedings.¹³ The case was docketed as SPC No. 17-001.

In the nuisance case, on April 25, 2017, Ricardo filed a Manifestation with Omnibus Motion [i. To quash the writ of execution issued in this case; and ii. To admit the foregoing submission].¹⁴

On October 25, 2017, Ricardo also filed an Extremely Urgent Manifestation with Motion¹⁵ where he reiterated that the first writ of execution had been rendered moot by the election protest filed by respondent. On November 3, 2017, Ricardo filed a Reiterative Omnibus Motion¹⁶ requesting/praying that the *SCBOC* be directed to cease and desist from recanvassing the votes.

On November 8, 2017, the *COMELEC-En Banc* issued its Order¹⁷ denying the motions of Ricardo for lack of merit and considering that there were other actions pending before the *COMELEC* that would sufficiently address the issues raised.

On the same day, the *COMELEC-En Banc* issued another writ of execution (*second writ of execution*), which states:

NOW THEREFORE, you are hereby **DIRECTED** to immediately implement this Writ of Execution by serving a copy hereof together with certified true copy of the Resolutions of the Second Division and of the *En Banc*, of this Commission, dated 30 March 2016 and 22 July

¹³ Id. at 325-332.

¹⁴ Id. at 365-373.

¹⁵ Id. at 374-376.

¹⁶ Id. at 412-418.

¹⁷ Id. at 419-420.

2016, respectively, upon respondent **ROSALIE ISLES ROXAS** and to submit a return of service thereof to the Clerk of the Commission.

For this purpose, the Commission hereby **DIRECTS**, after due notice to the affected parties, the Special City Board of Canvassers for the First District of Pasay City, composed of:

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to do the following:

1. **CONVENE** on 5 December 2017, 3:00 p.m., at the Comelec Session Hall, 8th Floor, Palacio del Gobernador Building, Intramuros, Manila;
2. **ANNUL** the proclamation of Jerome Ruiz Advincula, Ma. Antonia Carballo Cuneta, Alberto Cerdeña Alvina, Ricardo Escobar Santos, and Consertino Claudio Santos as the 2nd, 3rd, 4th, 5th and 6th Members of the Sangguniang Panlungsod for the First District of Pasay City;
3. **AMEND/CORRECT** the Certificate of Canvass of Votes and Proclamation of Sangguniang Panlungsod Members for the First District of Pasay City based on the Amended Statement of Votes by Precinct.
4. **PROCLAIM** the following as the duly elected Members of the Sangguniang Panlungsod Members for the First District of Pasay City:

Names of Candidates	Number of Votes	Ranking
Calixto, Mark Anthony Aguas	51,369	1
Roxas, Jennifer Antiquera	47,066	2
Advincula, Jerome Ruiz	45,986	3
Cuneta, Ma. Antonia Carballo	41,835	4
Alvina, Alberto Cerdeña	36,994	5
Santos, Ricardo Escobar	35,756	6

Accordingly, Dir. Ester Villafor-Roxas [member of the SCBOC] is directed to submit before the Special City Board of Canvassers for the First District of Pasay City a certified true copy of the votes of candidates in the May 9, 2016 National and Local Elections.

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Finally, the Special City Board of Canvassers of Pasay City is likewise directed to furnish copy of the Certificate of Proclamation to the Department of Interior [and] Local Government (DILG), Secretary of the Sangguniang Panlungsod for the First District of Pasay City and affected parties.

SO ORDERED.¹⁸

Santos, Ricardo and Antonia, collectively referred to as petitioners, were served with a copy of the second writ of execution.

Hence, these consolidated petitions:

I. In G.R. No. 235064, Ricardo And Antonia anchored their petition on the following issues:

- A. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED WRIT OF EXECUTION DATED NOVEMBER 8, 2017, WITHOUT AFFORDING THE PETITIONERS THE OPPORTUNITY TO BE HEARD IN CLEAR VIOLATION OF THEIR CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW.
- B. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED WRIT OF EXECUTION DATED NOVEMBER 8, 2017 IN VIOLATION OF THE RULE ON IMMUTABILITY OF JUDGMENTS GIVEN THAT THE DIRECTIVES MENTIONED IN THE CHALLENGED WRIT OF EXECUTION WERE NOT INCLUDED IN THE MARCH 30, 2016 AND JULY 22, 2016 RESOLUTIONS OF THE PUBLIC RESPONDENT COMELEC IN SPA NO. 15-029 (DC).
- C. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED WRIT OF EXECUTION DATED NOVEMBER 8, 2017 IN VIOLATION OF COMELEC RESOLUTION NO. 10083.¹⁹

¹⁸ Id. at 44-46.

¹⁹ Id. at 22.



II. In G.R. No. 235058, Santos raised the following issues:

- A. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED WRIT OF EXECUTION DATED 8 NOVEMBER 2017, WHICH DIRECTED THE ANNULMENT OF THE PROCLAMATION OF THE PETITIONER AS MEMBER OF THE SANGGUNIANG [PANLUNGSOD] OF THE FIRST DISTRICT OF PASAY CITY AND THE PROCLAMATION OF PRIVATE RESPONDENT JENNIFER, WITHOUT AFFORDING THE PETITIONER THE OPPORTUNITY TO BE HEARD IN CLEAR VIOLATION OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW.
- B. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DIRECTED THE CREDITING OF THE VOTES RECEIVED BY ROSALIE TO THE VOTES RECEIVED BY PRIVATE RESPONDENT JENNIFER AND THE AMENDMENT/CORRECTION OF THE CERTIFICATE OF CANVASS OF VOTES AND PROCLAMATION OF SANGGUNIANG [PANLUNGSOD] MEMBERS FOR THE FIRST DISTRICT OF PASAY CITY BASED ON THE AMENDMENT STATEMENT OF VOTES BY PRECINCT AS THIS VIOLATES THE RULE ON IMMUTABILITY OF JUDGMENTS GIVEN THAT THE AFOREMENTIONED UNDERTAKINGS WERE NOT INCLUDED IN THE RESOLUTION OF THE PUBLIC RESPONDENT COMELEC DATED 30 MARCH 2016 AND 22 JULY 2016.
- C. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED WRIT OF EXECUTION WHICH BLATANTLY VIOLATED SECTION 11 OF COMELEC RESOLUTION NO. 10083.²⁰

Petitioners argue that they were deprived of due process when the COMELEC-*En Banc* hastily issued the first and second writs of execution without any actual or constructive notice to them; that the said writs did not conform to the dispositive portion of the March 30, 2016 and July 22, 2016 resolutions of the COMELEC because the resolutions were silent as to the crediting of the votes of Rosalie in favor of respondent; that under Section 11 of COMELEC Resolution No. 10083, the votes of a nuisance candidate can only be credited to the legitimate candidate if the decision or resolution is final and executory before the proclamation of the winning candidate.

²⁰ Rollo (G.R. No. 235064), pp. 22-23.

Petitioners also assert that the March 30, 2016 resolution of the COMELEC-Second Division which was affirmed in the July 22, 2016 resolution of the COMELEC-*En Banc* merely declared Rosalie a nuisance candidate; as these resolutions only became final after the proclamation of the winners, there must be a separate election protest or action in order to determine whether the votes for the nuisance candidate are stray votes or can be credited to the legitimate candidate. They also contend that a TRO and/or status quo ante order and/or preliminary injunction must be issued to prevent serious and irreparable damage, not only to petitioners, but also to the electorate of the first district of Pasay City.

In its Resolution²¹ dated November 28, 2017, the Court issued a TRO effective immediately and directed COMELEC-*En Banc* to cease and desist from implementing the second writ of execution.

In her Consolidated Comment,²² respondent countered that she continues to suffer the consequences of that evil brought by the nuisance candidate when the COMELEC belatedly ruled on her nuisance case and when the Court issued a TRO; that petitioners were never denied due process because Ricardo was able to file several motions in the nuisance case and that they were notified during the implementation of the first and second writs of execution; and that the crediting of votes in respondent's favor was purely a legal consequence of the declaration that Rosalie was a nuisance candidate.

In its Consolidated Comment,²³ the OSG cited *Dela Cruz v. COMELEC*²⁴ and asserted that the rule on crediting votes can be applied even if the resolution declaring a nuisance candidate became final and executory after the elections. However, it stated that the votes for a nuisance candidate in a multi-slot office should not be automatically credited to the legitimate candidate. It explained that in a multi-slot office, a voter may choose more than one candidate, hence, it is possible that the legitimate candidate and nuisance candidate may both receive votes in one ballot. In that case, the vote cast for the nuisance candidate must no longer be credited to the legitimate candidate, otherwise, the latter shall receive two votes from one voter.

The OSG highlighted that the system of automatically crediting the votes of the nuisance candidate in favor of the legitimate candidate in a multi-slot office may be exploited. A legitimate candidate may seek another

²¹ *Rollo* (G.R. No. 235064), p. 421.

²² *Id.* at 441-453.

²³ *Id.* at 467-486.

²⁴ 698 Phil. 548 (2012).

person with the same surname to file a candidacy for the same position and the latter will opt to be declared a nuisance candidate. In that scenario, the first candidate shall receive all the votes of the nuisance candidate and may even receive double votes, thereby, drastically increasing his odds. Thus, the OSG averred that the simple arithmetic of adding the votes of the nuisance candidate to the legitimate candidate should not be applied in a multi-slot office.

In their Consolidated Reply,²⁵ petitioners reiterated that they were denied due process when the COMELEC-*En Banc* issued the first and second writs of execution; and that since the March 30, 2016 and July 22, 2016 resolutions of the COMELEC only became final and executory after the elections, the 13,328 votes of Rosalie should be considered as stray votes.

The Court's Ruling

The Court affirms with modification the November 8, 2017 writ of execution of the COMELEC-*En Banc*.

The COMELEC's declaration of Rosalie as a nuisance candidate, which was sought to be implemented by the assailed writ of execution resulted into: (1) Antonia and Ricardo's ranking were changed from 3rd and 5th place to 4th and 6th place, respectively; and (2) Constantino was dislodged as a winning candidate as member of the *Sangguniang Panlungsod* of the First District of Pasay City.

Nuisance Candidates

Section 69 of Batas Pambansa (B.P.) Blg. 881, or the *Omnibus Election Code*, defines nuisance candidates as follow:

Sec. 69. Nuisance candidates. - The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

²⁵ *Rollo* (G.R. No. 235064), pp. 559-570.

The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for office is easy to divine. The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions.²⁶

A petition for disqualification of a nuisance candidate clearly affects the voters' will and causes confusion that frustrates the same. This is precisely what election laws are trying to protect. They give effect to, rather than frustrate, the will of the voter. Thus, extreme caution should be observed before any ballot is invalidated. Further, in the appreciation of ballots, doubts are resolved in favor of their validity.²⁷

By their very nature, proceedings in cases of nuisance candidates require prompt disposition. The declaration of a duly registered candidate as a nuisance candidate results in the cancellation of his COC. The law mandates the COMELEC and the courts to give priority to cases of disqualification to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought. In many instances, however, proceedings against nuisance candidates remained pending and undecided until election day and even after canvassing of votes had been completed.²⁸

The Court has resolved several petitions involving cases where the COMELEC declared a nuisance candidate before and after the elections.

In *Bautista v. COMELEC (Bautista)*,²⁹ the case involved the disqualification of Edwin "Efren" Bautista as a nuisance candidate for the position of mayor in Navotas because his name was confusingly similar to Cipriano "Efren" Bautista and he had no financial means to support a

²⁶ *Pamatong v. Commission on Elections*, 470 Phil. 711, 719-720 (2004).

²⁷ *Bautista v. Commission on Elections*, 359 Phil. 1, 13 (1998), citing *Silverio v. Clamor, et al.*, 125 Phil. 917, 925 (1967).

²⁸ *Martinez III v. House of Representatives Electoral Tribunal, et al.*, 624 Phil. 50, 61 (2010).

²⁹ *Supra* note 27.

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campaign. Several days before the election or on April 30, 1998, the COMELEC issued a resolution declaring Edwin Bautista as a nuisance candidate and ordered the cancellation of his COC. A motion for reconsideration was filed and it was only resolved by COMELEC on May 13, 1998, or after the elections. Thus, a separate tally for "EFREN BAUTISTA", "EFREN", "E. BAUTISTA", and "BAUTISTA" were made by the municipal board of canvassers. Cipriano Bautista filed a petition to declare illegal the proceedings of the municipal board of canvassers, but, it was denied by the COMELEC stating that the separate tallies should be considered as stray votes.

On appeal, the Court reversed the COMELEC. It ruled that the separate tallies were made to remedy any prejudice that may be caused by the inclusion of a potential nuisance candidate. Such inclusion was brought about by technicality, specifically Edwin Bautista's filing of a motion for reconsideration, which prevented the April 30, 1998 resolution from becoming final at that time. Ideally, the matter should have been resolved with finality prior to election day. Its pendency on election day exposed the evils brought about by the inclusion of a nuisance candidate.

The Court further held therein that the votes separately tallied were not stray votes. It emphasized that a stray vote is invalid because there is no way of determining the real intention of the voter. In that case, however, it was clear that the votes for Edwin "Efren" Bautista were actually intended by the electorate for Cipriano "Efren" Bautista, thus, the votes for Edwin "Efren" Bautista should be credited in favor of Cipriano "Efren" Bautista. The Court also underscored that:

As we said earlier, the instant petition is laden with an issue which involves several ramifications. **Matters tend to get complicated when technical rules are strictly applied.** True it is, the disqualification of Edwin Bautista was not yet final on election day. However, it is also true that the electorate of Navotas was informed of such disqualification. The voters had constructive as well as actual knowledge of the action of the COMELEC delisting Edwin Bautista as a candidate for mayor. Technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself, as in this case.³⁰ (emphasis supplied)

Similarly, *Martinez III v. House of Representatives Electoral Tribunal*³¹ (*Martinez III*) involved a petition to declare Edilito C. Martinez a nuisance candidate for the position of representative in the fourth legislative district of Cebu because his name was confusingly similar with Celestino A.

³⁰ Id. at 17.

³¹ Supra note 28.

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Martinez III. The COMELEC rendered a decision declaring Edilito Martinez as a nuisance candidate only on June 12, 2007, or almost one (1) month after the elections. Thus, the jurisdiction regarding the election was transferred to the House of Representatives Electoral Tribunal (*HRET*) and Celestino Martinez III filed an election protest therein against the winning candidate Benhur Salimbangon. The HRET ruled that the ballots containing "MARTINEZ" and "C. MARTINEZ" should not be counted in favor of Celestino Martinez III because Edilito Martinez was not yet declared a nuisance candidate at the time of the elections.

The Court reversed the HRET and held that the votes for "MARTINEZ" and "C. MARTINEZ" should have been counted in favor of Celestino Martinez III because such votes could not have been intended for Edilito C. Martinez, who was declared a nuisance candidate in a final judgment. It emphasized that the candidacy of Edilito C. Martinez was obviously meant to confuse the electorate. The Court also stated that Celestino Martinez III should not have been prejudiced by the COMELEC's lethargy in resolving the nuisance case. It was explained therein:

Enshrined in our jurisprudence is the well-founded rule that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. An election protest is imbued with public interest so much so that the need to dispel uncertainties which becloud the real choice of the people is imperative. The prohibition against nuisance candidates is aimed precisely at preventing uncertainty and confusion in ascertaining the true will of the electorate. **Thus, in certain situations as in the case at bar, final judgments declaring a nuisance candidate should effectively cancel the certificate of candidacy filed by such candidate as of election day.** Otherwise, potential nuisance candidates will continue to put the electoral process into mockery by filing certificates of candidacy at the last minute and delaying resolution of any petition to declare them as nuisance candidates until elections are held and the votes counted and canvassed.³² (emphasis and underscoring supplied)

Recently, in *Dela Cruz v. COMELEC*³³ (*Dela Cruz*), a petition to declare Aurelio Dela Cruz a nuisance candidate for the position of vice-mayor of Bugasong, Antique was filed because his name was confusingly similar with the name of Casimir Dela Cruz and the former did not have the financial capacity to campaign for the elections. On January 29, 2010, the COMELEC declared Aurelio Dela Cruz a nuisance candidate, however, his name was not deleted in the certified list of candidates and he still received votes during the automated elections. In its Resolution No. 8844, the

³² Id. at 75.

³³ Supra note 24.

COMELEC stated that the votes for Aurelio Dela Cruz, a nuisance candidate, should be considered stray. Thus, Casimir Dela Cruz filed a petition for *certiorari* before the Court to annul and set aside the said resolution.

In reversing the COMELEC, the Court ruled that even in the automated elections, the votes for the nuisance candidate should still be credited to the legitimate candidate. It held that the previous COMELEC Resolution No. 4116 – declaring that the vote cast for a nuisance candidate, who had the same surname as the legitimate candidate, should be counted in favor of the latter – remains good law. The Court underscored that:

xxx the possibility of confusion in names of candidates if the names of nuisance candidates remained on the ballots on election day, cannot be discounted or eliminated, even under the automated voting system especially considering that voters who mistakenly shaded the oval beside the name of the nuisance candidate instead of the bona fide candidate they intended to vote for could no longer ask for replacement ballots to correct the same.

Finally, upholding the former rule in Resolution No. 4116 is more consistent with the rule well-ensconced in our jurisprudence that laws and statutes governing election contests especially **appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities**. Indeed, as our electoral experience had demonstrated, such infirmities and delays in the delisting of nuisance candidates from both the Certified List of Candidates and Official Ballots only made possible the very evil sought to be prevented by the exclusion of nuisance candidates during elections.³⁴ (emphases supplied)

Accordingly, the Court consistently declared that the votes cast for the nuisance candidate must be credited in favor of the legitimate candidate with a similar name to give effect to, rather than frustrate, the will of the voters, even if the declaration of the nuisance candidate became final only after the elections.

*No separate proceeding to
execute a decision declaring
a nuisance candidate*

Petitioners argue that although Rosalie was declared a nuisance candidate by the COMELEC, the execution of the decision does not cover the transfer of the votes of Rosalie in favor of respondent; there must be a specific proceeding, particularly an election protest or a petition to declare

³⁴ Id. at 568-569.

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the proceedings before the board of canvassers illegal, before the said votes could be credited so that petitioners' right to due process is respected.

The Court is not convinced.

Section 69 of the Omnibus Election Code states that the COMELEC may declare a person as a nuisance candidate *motu proprio* or through a verified petition. In *Dela Cruz*, the Court discussed that the said petition to declare a person as a nuisance candidate is akin to a petition to cancel or deny due course a COC under Section 78 of the Omnibus Election Code.³⁵

A cancelled certificate cannot give rise to a valid candidacy, much less to valid votes. Said votes cannot be counted in favor of the candidate whose COC was cancelled as he or she is not treated as a candidate at all, as if he or she never filed a COC.³⁶ **Thus, a petition to declare a person a nuisance candidate or a petition for disqualification of a nuisance candidate is already sufficient to cancel the COC of the said candidate and to credit the garnered votes to the legitimate candidate because it is as if the nuisance candidate was never a candidate to be voted for.**

Further, while *Bautista* involved a petition to declare illegal the proceedings of the municipal board of canvassers and *Martinez* involved an election protest under jurisdiction of the HRET before the votes for the nuisance candidate was credited to the legitimate candidate, the same cannot be said with *Dela Cruz*.

In *Dela Cruz*, the petition simply involved the petition for *certiorari* for the annulment of COMELEC Resolution No. 8844. The Court credited the votes of the nuisance candidate in favor of the legitimate candidate even though there was neither an election protest nor a petition to declare the proceedings before the board of canvassers illegal. The votes were counted in favor of the legitimate candidate because there was already a final and executory judgment declaring a nuisance candidate.

Evidently, as seen in *Bautista*, *Martinez III* and *Dela Cruz*, the Court does not require a specific or special proceeding before the votes of the nuisance candidate is credited to the legitimate candidate. As long as there is

³⁵ **Sec. 78. Petition to deny due course to or cancel a certificate of candidacy.** - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

³⁶ See supra note 24 at 563.

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a final and executory judgment declaring a person a nuisance candidate, the votes received by the nuisance candidate shall be credited to the legitimate candidate.

Likewise, to subscribe to petitioners' argument – that there should be a separate proceeding solely for the purpose of crediting the votes in favor of the legitimate candidate – would be absurd. When a candidate is declared a nuisance candidate, it certainly follows that he or she cannot be voted for as he or she is not a candidate, consequently, the votes shall be credited to the legitimate candidate. Evidently, the crediting of the votes is a logical consequence of the final decision in the nuisance case because the vote for the nuisance candidate is considered a vote for the legitimate candidate. It would be the height of injustice to require the legitimate candidate to initiate a separate proceeding for the crediting of votes when it was already declared that there was indeed a nuisance candidate, which confused the electorate regarding their votes for the legitimate candidate.

It is a general rule that the writ of execution should conform to the dispositive portion of the decision to be executed, and that the execution is void if it is in excess of and beyond the original judgment or award, for it is a settled general principle that a writ of execution must conform strictly to every essential particular of the judgment promulgated.³⁷ Nonetheless, the Court had held that a judgment is not confined to what appears on the face of the decision, **but extends as well to those necessarily included therein or necessary thereto.**³⁸

Here, the crediting of the votes of the nuisance candidate to respondent as a legitimate candidate, whose names are similar, is a necessary consequence of the COMELEC's declaration that Rosalie is a nuisance candidate. Consequently, the transfer of votes of the nuisance candidate to the legitimate candidate can be validly accomplished in the execution proceedings of the nuisance case.

*There was no violation of
the right to due process*

The Court finds that in a petition for disqualification of a nuisance candidate, the only real parties in interest are the alleged nuisance candidate, the affected legitimate candidate, whose names are similarly confusing. A

³⁷ *Spouses Mahinay v. Judge Asis, et al.*, 598 Phil. 382, 395 (2009).

³⁸ *Tumibay, et al. v. Spouses Soro*, 632 Phil. 179, 187 (2010).

real [party-in-interest] is the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit.³⁹

In *Timbol v. COMELEC*⁴⁰ (*Timbol*), it was stated that to minimize the logistical confusion caused by nuisance candidates, their COC may be denied due course or cancelled by the petition of a legitimate candidate or by the COMELEC. This denial or cancellation may be *motu proprio* or upon a verified petition of an interested party, subject to an opportunity to be heard. It was emphasized therein that the COMELEC should balance its duty to ensure that the electoral process is clean, honest, orderly, and peaceful with the right of an alleged nuisance candidate to explain his or her *bona fide* intention to run for public office before he or she is declared a nuisance candidate.

Thus, when a verified petition for disqualification of a nuisance candidate is filed, the real parties-in-interest are the alleged nuisance candidate and the interested party, particularly, the legitimate candidate. Evidently, the alleged nuisance candidate and the legitimate candidate stand to be benefited or injured by the judgment in the suit. The outcome of the nuisance case shall directly affect the number of votes of the legitimate candidate, specifically, whether the votes of the nuisance candidate should be credited in the former's favor.

Glaringly, there was nothing discussed in *Timbol* that other candidates, who do not have any similarity with the name of the alleged nuisance candidate, are real parties-in-interest or have the opportunity to be heard in a nuisance petition. Obviously, these other candidates are not affected by the nuisance case because their names are not related with the alleged nuisance candidate. **Regardless of whether the nuisance petition is granted or not, the votes of the unaffected candidates shall be completely the same.** Thus, they are mere silent observers in the nuisance case.

Nevertheless, in the case at bench, even if the other candidates are not real parties-in-interest in respondent's petition for disqualification, the Court finds that the COMELEC gave petitioners sufficient opportunity to be heard during the execution proceedings of the nuisance case, to wit:

1. On March 31, 2017, after the nuisance case became final and executory, Ricardo filed a Manifestation of Grave Concern with Omnibus Motion [i. To admit attached strong opposition; ii. To defer issuance of writ of execution while this motion is pending; iii.

³⁹ *National Power Corporation v. Provincial Government of Bataan, et al. (Resolution)*, G.R. No. 180654, March 6, 2017.

⁴⁰ 754 Phil. 578 (2015).

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- To limit the tenor of the writ of execution to a declaration that respondent is a nuisance candidate; and iv. To immediately set the instant motion for hearing].
2. On April 4, 2017, Ricardo filed an Extremely Urgent Motion to Set the Case for Hearing.⁴¹
 3. On April 25, 2017, Ricardo filed a Manifestation with Omnibus Motion [i. To quash the writ of execution issued in this case; and ii. To admit the foregoing submission].⁴²
 4. On October 25, 2017, Ricardo filed an Extremely Urgent Manifestation with Motion.⁴³
 5. On November 3, 2017, Ricardo filed a Reiterative Omnibus Motion⁴⁴ to direct the SCBOC to cease and desist from canvassing the votes.
 6. On November 8, 2017, the COMELEC issued its Order⁴⁵ denying the motions of Ricardo for lack of merit and considering that there are already other actions pending that sufficiently address the issues raised.
 7. Petitioners were served with a copy of the second writ.

Based on the foregoing, petitioners were given sufficient opportunity to be heard. Notably, Ricardo exhaustively exercised his right to be heard and filed multiple motions and manifestations before the COMELEC during the execution proceedings of the nuisance case. The COMELEC even considered the said incidents on the merits and issued an order denying the same because other pending actions sufficiently address the issues raised. Petitioners were likewise given a copy of the second writ of execution, thus, they were able to institute these present petitions. The Court is of the view that the COMELEC properly exercised its jurisdiction and gave petitioners the opportunity to ventilate their grievances, even though they are technically not real parties in interests in the nuisance case.

The votes shall be credited to the legitimate candidate regardless whether the decision in the nuisance case becomes final and executory before or after the elections

Petitioners argue that the votes of the nuisance candidate shall only be credited in favor of the legitimate candidate if the decision in the nuisance case becomes final and executory before the elections.

Again, the Court is not convinced.

⁴¹ *Rollo* (G.R. No. 235064), pp. 316-320.

⁴² *Id.* at 365-373.

⁴³ *Id.* at 374-376.

⁴⁴ *Id.* at 412-418.

⁴⁵ *Id.* at 419-420.

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Section 11 (K) of COMELEC Resolution No. 10083, or the General Instructions Governing the Consolidation/Canvass, and Transmission of Votes in connection with the May 9, 2016 National and Local Election, states:

K. Proclamation of Winning Candidates

A candidate who obtained the highest number of votes shall be proclaimed by the Board, except the following:

- a. In case the certificate of candidacy of the candidate who obtains the highest number of votes has been cancelled or denied due course or disqualified by a final and executory Decision or Resolution **before the elections**, the votes cast for such candidate shall be considered stray, hence, the Board shall proceed to proclaim the candidate who obtains the second highest number of votes, provided, the latter's certificate of candidacy has not likewise been cancelled by a final and executory Decision or Resolution **before the elections**;
- b. In case a candidate has been declared a nuisance candidate by final and executory Decision or Resolution, **the votes cast for the nuisance candidate shall be added to the candidate who shares the same surname as the nuisance candidate** and thereafter, the candidate who garnered the highest number of votes shall be proclaimed;

XXXX

- c. In case the certificate of candidacy of the candidate who obtains the highest number of votes has been cancelled or denied due course or disqualified by a final and executory Decision or Resolution **after the elections** and he/she obtains the highest number of votes cast for a particular position, the Board shall not proclaim the candidate and the rule of succession, if allowed by law, shall be observed. In case the position does not allow the rule of succession under Republic Act No. 7160, the position shall be deemed vacant. (emphases supplied)

As stated above, Section 11 (K) (a) of COMELEC Resolution No. 10083, which refers to petitions for disqualifications under Section 72 of the Omnibus Election Code,⁴⁶ requires that the decision of the COMELEC in the said case must become final and executory before the elections. At that moment, the votes for the candidate with the cancelled COC shall be

⁴⁶ SEC. 72. Effects of Disqualification cases and priority. — The Commission and the courts shall give priority to cases of disqualification by reason of violation of this Act to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought. Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, his violation of the provisions of the preceding sections shall not prevent his proclamation and assumption of office.

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considered stray and the candidate who obtains the second highest number of votes shall be proclaimed. Similarly, under Section 11 (K) (c), if the case becomes final and executory after the elections, then the rule on succession, if allowed, shall apply. Consequently, in petitions to deny due course to or cancel a COC under Section 72, the specific period when the case becomes final and executory before or after the elections, is material and relevant.

On the contrary, Section 11 (K) (b) of COMELEC Resolution No. 10083, which specifically refers to nuisance petitions under Section 69 of the Omnibus Election Code, states that the votes cast for the nuisance candidate shall be added to the candidate that shares the same surname with the former. **It does not distinguish whether the decision in the nuisance case became final and executory before or after the elections.** Notably, *Dela Cruz* emphasized that Section 72 applies to disqualification cases but not to petitions to cancel or deny due course a certificate of candidacy under Sections 69 for nuisance candidates.⁴⁷

To reiterate, in a nuisance petition, the votes of the nuisance candidate shall be credited to the legitimate candidate once the decision becomes final and executory, whether before or after the elections. *Martinez III* provides the basis for this rule: “final judgments declaring a nuisance candidate should effectively cancel the certificate of candidacy filed by such candidate **as of election day.**”⁴⁸

Accordingly, when there is a final and executory judgment in a nuisance case, it shall be effective and operative as of election day. It is as if the nuisance candidate was never a candidate to be voted for because his candidacy caused confusion to the electorate and it showed his lack of *bona fide* intention to run for office. Thus, the votes for the said nuisance candidate shall be transferred to the legitimate candidate, with the similar name, as of election day also.

Similarly, in *Bautista*, even though the decision in the nuisance case only became final and executory after the elections, the Court still credited the votes of the nuisance candidate in favor of the legitimate candidate. It was highlighted therein that technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself.

Further, the position of petitioners is unjust and oppressive. A declaration – that only decisions or resolutions in nuisance cases that became

⁴⁷ See supra note 24 at 563.

⁴⁸ Supra note 28 at 75.

final and executory before the election shall result in the crediting of votes in favor of the legitimate candidate – would lead to harsh practices of rival political opponents and exploitations in the delays in COMELEC. As discussed in *Martinez III*:

Given the realities of elections in our country and particularly contests involving local positions, what emerges as the paramount concern in barring nuisance candidates from participating in the electoral exercise is the avoidance of confusion and frustration of the democratic process by preventing a faithful determination of the true will of the electorate, more than the practical considerations mentioned in *Pamatong*. A report published by the Philippine Center for Investigative Journalism in connection with the May 11, 1998 elections indicated that the tactic of fielding nuisance candidates with the same surnames as leading contenders had become one (1) "dirty trick" practiced in at least parts of the country. **The success of this clever scheme by political rivals or operators has been attributed to the last-minute disqualification of nuisance candidates by the Commission, notably its "slow-moving" decision-making.**

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xxx The inclusion of nuisance candidates turns the electoral exercise into an uneven playing field where the bona fide candidate is faced with the prospect of having a significant number of votes cast for him invalidated as stray votes by the mere presence of another candidate with a similar surname. **Any delay on the part of the COMELEC increases the probability of votes lost in this manner.** While political campaigners try to minimize stray votes by advising the electorate to write the full name of their candidate on the ballot, still, election woes brought by nuisance candidates persist.⁴⁹

To sanction the argument of petitioners would promote the practice of fielding nuisance candidates and delaying the resolution of nuisance cases after the election in order to prevent the proclamation of legitimate candidates. While the delays in the resolution of the nuisance cases in the COMELEC exist, it should not be a valid reason to deprive a legitimate candidate of the votes of the electorate.

The better approach would be to allow the crediting of the votes of the nuisance candidate to the legitimate candidate, who have similar names, **regardless whether the decision or resolution of the COMELEC became final and executory before or after the elections.** In that way, the will of the electorate shall be respected as observed in *Bautista* and *Martinez III*.

In this case, respondent, a re-electionist candidate, was an apparent prey to the unscrupulous practice of fielding nuisance candidates and to the

⁴⁹ Id. at 70-72.

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delays of the resolution of cases before the COMELEC. As early as October 21, 2015, she filed a petition to declare Rosalie a nuisance candidate because the latter chose the name “Roxas Jenn-Rose” to appear in the official ballot even though respondent already had a preferred name of “Roxas Jenny,” which are confusingly similar. Further, the name “Jenn-Rose” was far from Rosalie’s actual name and her real nickname was “Saleng.” It was also discovered that Rosalie was not financially capable to campaign for the elections.

However, it was only on March 30, 2016, that the COMELEC declared Rosalie a nuisance candidate. Then, on April 18, 2016, Rosalie filed a motion for reconsideration consisting merely of three (3) pages. COMELEC still had twenty (20) days before the May 9, 2016 elections, to resolve such motion for reconsideration but it failed to do so. Instead, it was only on July 22, 2016, or more than two (2) months after the elections, that COMELEC issued a resolution denying the motion for reconsideration. When COMELEC attempted to serve the said resolution to Rosalie’s counsel, the latter could not be located. Thus, it was only on February 15, 2017 that the COMELEC declared its resolutions final and executory.

These manifest delays in the resolution of the nuisance case negatively affected respondent and the will of the electorate. Nevertheless, as declared in *Martinez III*, the legitimate candidate should not be prejudiced by the COMELEC’s inefficiency and lethargy.⁵⁰ The technicalities employed by petitioners should not frustrate the voter’s will to elect respondent as a member of the *Sangguniang Panlungsod* of Pasay. Thus, the votes for the nuisance candidate must be credited in her favor.

Correspondingly, the votes for Rosalie, a nuisance candidate, should be credited in favor of respondent, the legitimate candidate, under the second writ of execution. Thus, the TRO imposed by the Court’s resolution dated November 28, 2017, must be lifted.

*In a multi-slot office, the votes
of the nuisance candidate are
not automatically added to the
legitimate candidate*

Nonetheless, while the OSG argues that the votes of Rosalie should be credited in favor of respondent pursuant to *Dela Cruz*, the said votes should not be automatically added. It explained that in a multi-slot office, it is possible that the legitimate candidate and nuisance candidate may both

⁵⁰ *Id.* at 72.

receive votes in one ballot. In that case, the vote cast for the nuisance candidate may not automatically be credited to the legitimate candidate, otherwise, it shall result to a situation where the latter shall receive two votes from one voter.⁵¹

The OSG's argument is meritorious.

Section 11 (K) (b) of COMELEC Resolution No. 10083 states that method of canvassing of votes when there is a nuisance candidate, viz:

- b. In case a candidate has been declared a nuisance candidate by final and executory Decision or Resolution, the votes cast for the nuisance candidate shall be added to the candidate who share the same surname as the nuisance candidate and thereafter, the candidate who garnered the highest number of votes shall be proclaimed;

In case of two or more candidate having the same surnames as the nuisance candidate shall be considered as stray votes and shall not be credited to any candidate;

In case the nuisance candidate does not have the same surname as any candidate for the same position, the votes cast for the nuisance candidate shall be considered as stray votes;

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Evidently, the rules provided by the COMELEC regarding the canvassing of votes for nuisance candidates are still insufficient because these do not consider a multi-slot office with a nuisance candidate.

In a multi-slot office, such as membership of the *Sangguniang Panlungsod*, a registered voter may vote for more than one candidate. Hence, it is possible that the legitimate candidate and nuisance candidate, having similar names, may both receive votes in one ballot. The Court agrees with the OSG that in that scenario, the vote cast for the nuisance candidate should no longer be credited to the legitimate candidate; otherwise, the latter shall receive two votes from one voter.

Therefore, in a multi-slot office, the COMELEC must not merely apply a simple mathematical formula of adding the votes of the nuisance candidate to the legitimate candidate with the similar name. To apply such simple arithmetic might lead to the double counting of votes because there may be ballots containing votes for both nuisance and legitimate candidates.

⁵¹ *Rollo* (G.R. No. 235064), p. 482.

As properly discussed by the OSG, a legitimate candidate may seek another person with the same surname to file a candidacy for the same position and the latter will opt to be declared a nuisance candidate. In that scenario, the legitimate candidate shall receive all the votes of the nuisance candidate and may even receive double votes, thereby, drastically increasing his odds.⁵²

At the same time, it is also possible that a voter may be confused when he reads the ballot containing the similar names of the nuisance candidate and the legitimate candidate. In his eagerness to vote, he may shade both ovals for the two candidates to ensure that the legitimate candidate is voted for. Similarly, in that case, the legitimate candidate may receive two (2) votes from one voter by applying the simple arithmetic formula adopted by the COMELEC when the nuisance candidate's COC is cancelled.

Thus, to ascertain that the votes for the nuisance candidate is accurately credited in favor of the legitimate candidate with the similar name, the COMELEC must also inspect the ballots. In those ballots that contain both votes for nuisance and legitimate candidate, only one count of vote must be credited to the legitimate candidate.

While the perils of a fielding nuisance candidates against legitimate candidates cannot be overemphasized, it must also be guaranteed that the votes of the nuisance candidate are properly and fairly counted in favor of the said legitimate candidate. In that manner, the will of the electorate is upheld.

In this case, the certificate of canvass stated that Rosalie received 13,328 votes; while respondent received 33,738 votes. In the first writ of execution, the COMELEC applied the simple arithmetic formula of counting the 13,328 votes cast for Rosalie in favor of respondent, thus, the total number of votes garnered by respondent was 47,066. Similarly, in the second writ of execution, the COMELEC applied the same simple arithmetic formula and stated that respondent had 47,066 votes.

As discussed-above, the simple arithmetic formula of the COMELEC in a multi-slot office, where there is a nuisance candidate, is inaccurate. Thus, the ballots containing the votes for nuisance candidate Rosalie must be credited in favor of respondent. However, if there are ballots which contain both votes in favor of Rosalie and respondent, only one vote shall be credited in favor of respondent.

⁵² Id. at 483.

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Final Note

The present petition arose from the delay in the disposition of nuisance cases by the COMELEC. In *Martinez III*, the Court emphasized that the law mandates the COMELEC and the courts to give priority to cases of disqualification to the end that a final decision shall be rendered not later than **seven days** before the election in which the disqualification is sought.⁵³

As discussed earlier, the COMELEC still had **twenty (20) days** before the May 9, 2016 elections to resolve such motion for reconsideration of Rosalie but it failed to do so. Instead, it was only on July 22, 2016, or more than two (2) months after the elections, that the COMELEC denied the motion for reconsideration.

Had the COMELEC promptly resolved the simple motion for reconsideration of Rosalie before the elections, then her name could have been removed from the ballots and prevented confusion among the voters with the similar names. That delay created the unwarranted present scenario. The upcoming election is not a valid excuse for the sluggish disposition of crucial cases for disqualification of nuisance candidates. Any delay on the part of the COMELEC increases the probability of votes lost due to the confusion brought about by nuisance candidates.

Nevertheless, the COMELEC can still rectify itself. The declaration of Rosalie as a nuisance candidate changed the result of the elections for the position of Members of the *Sangguniang Panlungsod* of the First District of Pasay City. Thus, the COMELEC must execute the second writ of execution immediately and without any further delay subject to the modification of the counting of votes in a multi-slot office.

Further, the COMELEC must amend its Resolution No. 10083 to reflect the proper counting of votes in a multi-slot office when there is a nuisance candidate.

⁵³ Supra note 28 at 61, citing Section 72 of the Omnibus Election Code.

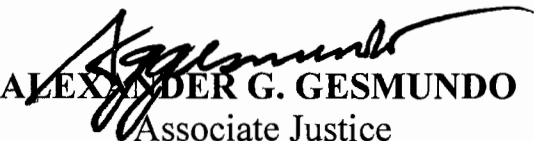
WHEREFORE, the November 8, 2017 Writ of Execution of the Commission on Elections-*En Banc* in SPA Case No. 15-029 (DC) is **AFFIRMED with MODIFICATION** as follows:

1. **RE-CONVENE** the Special Board of Canvassers of Pasay City for the purpose of re-canvassing the votes for the position of Members of the *Sangguniang Panlungsod* of the First District of Pasay City;
2. **COUNT** the votes for nuisance candidate Rosalie Isles Roxas in favor of respondent Jennifer Antiquera Roxas. However, if there is a ballot that contains votes in favor of both Rosalie Isles Roxas and respondent Jennifer Antiquera Roxas, only one vote shall be counted in favor of the latter; and
3. **PROCLAIM** the duly elected Members of the *Sangguniang Panlungsod* for the First District of Pasay City in accordance with the result of the proper counting of votes.

The Temporary Restraining Order imposed by the Court in its Resolution dated November 28, 2017, is **LIFTED**.

This Decision is immediately executory. The Commission on Elections is **ORDERED** to complete the implementation of the November 8, 2017 Writ of Execution, as modified, within thirty (30) days from receipt of this Decision.

SO ORDERED.


ALEXANDER G. GESMUNDO
Associate Justice

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice

Antonio T. Carpio
ANTONIO T. CARPIO
Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

(On official leave)
MARIANO C. DEL CASTILLO
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

Francis H. Jardeleza
FRANCIS H. JARDELEZA
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Noel Gomez Tijam
NOEL GOMEZ TIJAM
Associate Justice

Andres B. Reyes, Jr.
ANDRES B. REYES, JR.
Associate Justice

Jose C. Reyes, Jr.
JOSE C. REYES, JR.
Associate Justice

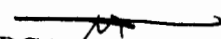
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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

Agd