



**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**EN BANC**

**REYNALDO S. ZAPANTA,**  
 Petitioner,

**G.R. No. 233016**  
 Present:

**EDILBERTO U. LAGASCA,**  
 Petitioner-Intervenor,

**BERSAMIN, J.,** *Chief Justice,*  
**CARPIO,**  
**PERALTA,**  
**DEL CASTILLO,**  
**PERLAS-BERNABE\*,**  
**LEONEN,**  
**JARDELEZA,**  
**CAGUIOA,**  
**REYES, A., JR.,**  
**GESMUNDO,**  
**REYES, J., JR.,** and  
**HERNANDO,**  
**CARANDANG, JJ.**

-versus-

**COMMISSION ON ELECTIONS**  
**AND ALFRED J. ZAPANTA;**  
**EDILBERTO U. LAGASCA,**  
 Respondents.

**Promulgated:**  
March 5, 2019

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**DECISION**

**LEONEN, J.:**

In a multi-slot office, all votes cast in favor of the nuisance candidate whose name is confusingly similar to a bona fide candidate shall not be automatically credited in the latter's favor. If the ballot contains one (1) vote for the nuisance candidate and no vote for the bona fide candidate, that vote will be counted in the latter's favor. However, if the nuisance candidate and the bona fide candidate each gets a vote, only one (1) vote will be counted in the latter's favor.

\* On official leave.

For this Court's resolution is a Petition for Certiorari and Prohibition and Motion to Admit Petition for Intervention with Urgent Application for Temporary Restraining Order and/or Writ of Preliminary Injunction.<sup>1</sup> The Petition prays that the May 8, 2016<sup>2</sup> and August 8, 2017<sup>3</sup> Resolutions of the Commission on Elections (the Commission) be reversed and set aside, and that a temporary restraining order and/or writ of preliminary injunction be issued to enjoin the execution of the assailed Resolutions.<sup>4</sup> The Commission declared Reynaldo S. Zapanta (Reynaldo) as a nuisance candidate and ordered that the votes he received be added to the votes received by Alfred J. Zapanta (Alfred).<sup>5</sup>

For the May 9, 2016 national and local elections, Reynaldo, Alfred, and petitioner-intervenor Edilberto U. Lagasca (Lagasca) each filed a Certificate of Candidacy for city councilor of the Second District of Antipolo City, Rizal.<sup>6</sup> The Second District of Antipolo City is entitled to eight (8) seats in the *Sangguniang Panlungsod*.<sup>7</sup>

Alfred and Lagasca filed their Certificates of Candidacy on October 16, 2015. Alfred, a nominee of political party Aksyon Demokratiko, was then an incumbent city councilor of the Second District of Antipolo City.<sup>8</sup> Reynaldo, a member and nominee of Lakas-CMD, filed his Certificate of Candidacy on December 10, 2015 to replace another candidate, Rolando Z. Zonio.<sup>9</sup>

On December 14, 2015, Alfred filed before the Commission a Verified Petition To Deny Due Course and/or To Cancel Certificate of Candidacy of Reynaldo S. Zapanta as Nuisance Candidate<sup>10</sup> (Nuisance Petition).<sup>11</sup> He alleged that Reynaldo indicated the name "Alfred" both as his nickname in his Certificate of Candidacy and as his name in the official ballots.<sup>12</sup> He claimed that Reynaldo never identified himself as "Alfred."<sup>13</sup> To prove his allegations, Alfred attached a printed copy of Reynaldo's social media accounts, which showed that Reynaldo was using the name "Rey Zapanta."<sup>14</sup> Alfred also attached screenshots of public conversations from

<sup>1</sup> *Rollo*, pp. 3–37. Filed under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

<sup>2</sup> *Id.* at 39–46. The Resolution was signed by Presiding Commissioner Al A. Parreño and Commissioners Arthur D. Lim and Sheriff M. Abas of the Second Division, Commission on Elections, Manila.

<sup>3</sup> *Id.* at 50–59. The Resolution was signed by Chairman J. Andres D. Bautista and Commissioners Christian Robert S. Lim, Al A. Parreño, Luie Tito G. Guia, Arthur D. Lim, Ma. Rowena Amelia V. Guanzon, and Sheriff M. Abas of the En Banc, Commission on Elections, Manila.

<sup>4</sup> *Id.* at 31.

<sup>5</sup> *Id.* at 45 and 57–58.

<sup>6</sup> *Id.* at 5 and 39.

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

<sup>8</sup> *Id.* at 5 and 316.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 61–64. The Nuisance Petition was docketed as SPA No. 15-212 (DC).

<sup>11</sup> *Id.* at 40.

<sup>12</sup> *Id.* at 40 and 62.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 71, Annex E of the Nuisance Petition.

the same social media accounts, where different people pertained to the account holder as “Rey.”<sup>15</sup>

Alfred averred that Reynaldo’s use of the name “Alfred” was “designed to mislead the voters”<sup>16</sup> to steal the votes intended for him. He contended that Reynaldo “has no [bona fide] intention to run for the office [and only aims to] cause confusion among the voters of Antipolo City and thus prevent the faithful determination of the true will of the electorate of Antipolo City.”<sup>17</sup> He prayed that Reynaldo be declared as a nuisance candidate and that Reynaldo’s Certificate of Candidacy be canceled. He further prayed that Reynaldo’s name be excluded in the official ballots and, should his Petition be decided after the elections, that the votes Reynaldo would have received be counted in his favor.<sup>18</sup>

On January 13, 2016, Reynaldo filed his Answer,<sup>19</sup> praying that Alfred’s Nuisance Petition be dismissed.<sup>20</sup> He questioned the authenticity of the social media accounts presented by Alfred, arguing that the latter could not establish that they belonged to him.<sup>21</sup> To further show that he was indeed identified as “Alfred,” Reynaldo presented two (2) affidavits.<sup>22</sup> His wife, Fe Zapanta,<sup>23</sup> stated in her affidavit that Reynaldo had been using the name “Alfred” even before their marriage, and that his friends and relatives also called him “Alfred.”<sup>24</sup> In another affidavit, former barangay official Armando G. Panganiban said that from the time he met Reynaldo, who was then a sitio coordinator, he and other people had already called Reynaldo “Alfred.”<sup>25</sup>

Reynaldo emphasized that he was nominated as councilor by Lakas-CMD. His membership in a political party, he said, established that he has a bona fide intention to run. Further, he had expertise and experience in both the private and public sectors to serve its constituents.<sup>26</sup>

Finally, Reynaldo claimed that, come election day, there would be no confusion since his and Alfred’s entries in the official ballots were different: Reynaldo’s name would be “ZAPANTA ALFRED LAKAS,” while Alfred’s would be “ZAPANTA ALFRED J.”<sup>27</sup>

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<sup>15</sup> Id. at 72, Annex F of the Nuisance Petition.

<sup>16</sup> Id. at 62.

<sup>17</sup> Id.

<sup>18</sup> Id. at 62–63.

<sup>19</sup> Id. at 74–87.

<sup>20</sup> Id. at 40 and 85.

<sup>21</sup> Id. at 40–41 and 75–77.

<sup>22</sup> Id. at 41.

<sup>23</sup> Id. at 94.

<sup>24</sup> Id.

<sup>25</sup> Id. at 93.

<sup>26</sup> Id. at 78–82.

<sup>27</sup> Id. at 82–83.

Alfred and Reynaldo filed their Memoranda on January 25, 2016 and January 26, 2016, respectively.<sup>28</sup>

In its May 8, 2016 Resolution,<sup>29</sup> the Commission's Second Division granted Alfred's Petition.<sup>30</sup> It found that Reynaldo's name, as it would be indicated in the official ballots, was "confusingly similar"<sup>31</sup> to Alfred's name. The Commission held:

Without a doubt, an examination of the name REYNALDO S. ZAPANTA would disclose that the nickname "ALFRED" nowhere resembles the name of the Respondent. While the Respondent submitted affidavits of his two (2) witnesses attesting to the fact that he is known to be using "ALFRED" as his nickname, the same fails to persuade this Commission.

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In the case, it is worthy to note that Petitioner is an incumbent Member of the City Council of Antipolo, Rizal, as such, it seems that he is known to the City as only ALFRED ZAPANTA. Thus, the inclusion of another candidate with strikingly the same name for the same position in the ballot will definitely sow confusion among the voters. Hence, the COC of Respondent is only meant to cause confusion among the voters by the similarity of his name appearing on the official ballot to that of the Petitioner, who is running for reelection.

The likelihood of confusion is apparent considering that Petitioner's preferred name to appear on the Official Ballot is ["ZAPANTA ALFRED J.,"] while Respondent is ["ZAPANTA ALFRED LAKAS."] Moreover, on the same premise, it likewise appears that Respondent has no *bona fide* intention to run for the office for which his COC has been filed. Hence, Respondent should be declared a nuisance candidate.<sup>32</sup> (Emphasis in the original)

The dispositive portion of the May 8, 2016 Resolution read:

**WHEREFORE**, the Petition is **GRANTED**. Accordingly, **REYNALDO S. ZAPANTA**, is hereby declared a **NUISANCE CANDIDATE** and his Certificate of Candidacy for Member of the *Sangguniang Panglungsod* of Antipolo City for the May 9, 2016 National and Local Elections is hereby **CANCELLED**.

**SO ORDERED.**<sup>33</sup> (Emphasis in the original)

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<sup>28</sup> Id. at 41.

<sup>29</sup> Id. at 39–46.

<sup>30</sup> Id. at 45.

<sup>31</sup> Id. at 43.

<sup>32</sup> Id. at 43–45. In its Resolution, the Commission mistakenly interchanged in the last paragraph quoted here the parties' names as indicated in the official ballots.

<sup>33</sup> Id. at 45.

Meanwhile, the national and local elections took place on May 9, 2016. The 10 candidates who got the highest votes for the *Sangguniang Panlungsod* of Antipolo City Second District were:

Names of Candidates	Number of Votes	Ranking
Acop, Dok Bong	119,226	1
Leyva, Loni	97,532	2
Tapales, Pau	95,897	3
Alarcon, Christian	93,237	4
Masangkay, Tony	84,532	5
O'hara, Edward	74,896	6
Aranas, Nixon	64,210	7
Lagasca, Eddie	63,724	8
Zapanta, Alfred J. - <i>Petitioner</i>	45,210	9
Zapanta, Reynaldo. - <i>Respondent</i>	31,667	10 <sup>34</sup> (Emphasis in the original)

On June 1, 2016, Reynaldo moved for the reconsideration of the May 8, 2016 Resolution of the Commission's Second Division.<sup>35</sup> He argued that his name's likeness with Alfred's "does not necessarily make him a nuisance candidate."<sup>36</sup> He maintained that it was Alfred who should present evidence to prove that his candidacy was not made in good faith, and that the Commission erred in placing the burden of proving his nickname's authenticity on him.<sup>37</sup> He argued that confusion based on similar names could not arise in an automated election, and reiterated that his evidence proved that he had always been known as "ALFRED."<sup>38</sup>

On June 7, 2016, Alfred filed his Opposition, reiterating his arguments in his previous pleadings before the Commission's Second Division.<sup>39</sup>

In its August 8, 2017 Resolution,<sup>40</sup> the Commission En Banc denied Reynaldo's Motion for Reconsideration for lack of merit.<sup>41</sup> It held that since the name "Alfred" could not be directly connected to Reynaldo's name, Reynaldo should have presented sufficient evidence to establish his allegation. Otherwise, his use of the nickname "Alfred" would confuse the electorate and prejudice Alfred's candidacy. The Commission En Banc

<sup>34</sup> Id. at 57.

<sup>35</sup> Id. at 50.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id. at 50–51.

<sup>39</sup> Id. at 51.

<sup>40</sup> Id. at 50–59.

<sup>41</sup> Id. at 57.

ruled that Reynaldo failed to provide credible proof that he was publicly known as “Alfred”; the submitted affidavits alone did not suffice.<sup>42</sup>

The Commission En Banc further held that Reynaldo’s nomination by Lakas-CMD was not enough to mitigate the confusion that could arise from his use of the name “Alfred.”<sup>43</sup> Thus, even if he was nominated, two (2) candidates with the name “ZAPANTA ALFRED” would still appear on the official ballots and “voters would still be confused as to which name refer to which candidate.”<sup>44</sup> His nomination, Commission En Banc ruled, was insufficient to show that his intention to run as councilor was genuine.<sup>45</sup>

Finally, the Commission En Banc held that confusion may still arise in an automated election as held in *Dela Cruz v. Comelec*:<sup>46</sup>

*[T]he possibility of confusion in the names (sic) 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.*<sup>47</sup> (Emphasis in the original)

The Commission En Banc ruled that the votes in favor of Reynaldo should be credited to Alfred, pursuant to *Dela Cruz*.<sup>48</sup> The dispositive portion of its August 8, 2017 Resolution read:

**WHEREFORE**, premises considered, the Commission (*En Banc*) **RESOLVED**, as it hereby **RESOLVES**, to **DENY** the Motion for Reconsideration filed by Reynaldo S. Zapanta for **LACK OF MERIT**. The *Second Division* Resolution declaring Reynaldo S. Zapanta as a **NUISANCE CANDIDATE** and **CANCELLING** his Certificate of Candidacy is hereby **AFFIRMED**.

Accordingly:

1. A Special City Board of Canvassers shall be constituted which shall be **DIRECTED** to:

1.1. **CONVENE** a session, not later than ten (10) days after the finality of this *Resolution*, with notice of the place, date and time of the session to the parties in this case and to the affected *Sangguniang Panglungsod Members* for the Second District of Antipolo City;

<sup>42</sup> Id. at 54–55.

<sup>43</sup> Id. at 55.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id. at 56 *citing* 698 Phil. 548 (2012) [Per J. Villarama, Jr., En Banc].

<sup>47</sup> Id.

<sup>48</sup> Id. at 56–57.

1.2. **AMEND/CORRECT**, in the course of the session, the official *Certificate of Canvass* of Antipolo by **crediting** the votes counted for *Respondent* Reynaldo Santiago Zapanta in favor of *Petitioner* Alfred Jarlego Zapanta; and thereafter

1.3. **AMEND/CORRECT** the official *Certificate of Canvass of Votes and Proclamation* on the basis of the vote figures after the votes counted for *Respondent* Reynaldo Santiago Zapanta shall have been credited in favor of *Petitioner* Alfred Jarlego Zapanta.

2. The Amended/Corrected *Certificate of Canvass of Votes and Proclamation* shall supersede the previous *Certificate of Canvass of Votes and Proclamation* and the previous proclamation of any candidate who is not included in the amended/corrected *Certificate* is deemed nullified.

3. The Law Department of this Commission is directed to investigate whether there is basis to commence an election offense proceedings (*sic*) by reason of the acts found to have committed in this case.

Let the Clerk of the Commission, in coordination with the Election Officer of Antipolo City, **FURNISH** copies of this Resolution to the parties and the *Sangguniang Panlungsod Members* for the Second Division of Antipolo City.

**SO ORDERED.**<sup>49</sup> (Emphasis in the original)

On August 15, 2017, Reynaldo filed before this Court a Petition and Motion to Admit Petition for Intervention<sup>50</sup> against the Commission and Alfred, with Lagasca joining as a petitioner-intervenor. Petitioner prays that the May 8, 2016 and August 8, 2017 Resolutions of public respondent be nullified and set aside, and that a temporary restraining order and/or writ of preliminary injunction be issued to prevent the Resolutions' execution.<sup>51</sup>

Petitioner argues that public respondent committed grave abuse of discretion when it: (1) declared petitioner as a nuisance candidate; (2) directed the proclamation of private respondent as the winning candidate; and (3) declared void the proclamation of petitioner-intervenor as councilor of the *Sangguniang Panlungsod* of the Second District of Antipolo City.<sup>52</sup>

Petitioner contends that having the same nickname as private respondent does not automatically translate to an insincere candidacy. He maintains that the affidavits prove that he was known as "Alfred" and stresses his affiliation with a political party. He again argues that there can be no confusion in an automated election. Moreover, private respondent

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<sup>49</sup> Id. at 57–58.

<sup>50</sup> Id. at 3–37.

<sup>51</sup> Id. at 3 and 31.

<sup>52</sup> Id. at 10–11.

actively introduced himself during the campaign period as “21. ZAPANTA, ALFRED (AKSYON)” in the official ballots; thus, the electorate was aware of his identity, and there could be no confusion between them.<sup>53</sup>

Petitioner further argues that if the votes he garnered will be added to the votes of private respondent, then the electorate will be disenfranchised; their right to suffrage, violated. He asserts that it is “preposterous, if not downright foolish,”<sup>54</sup> for voters if public respondent assumes that all those who voted for petitioner were confused.<sup>55</sup>

Lastly, petitioner claims that public respondent’s earlier rulings violated petitioner-intervenor’s right to due process, as he “was never involved or heard in the proceedings therein.”<sup>56</sup>

To support his prayer for a temporary restraining order, petitioner argues that the elements for the grant of a temporary restraining order are present.<sup>57</sup> His right to “equal access to opportunities for public service”<sup>58</sup> and petitioner-intervenor’s right to due process will be threatened should the Resolutions be implemented.<sup>59</sup> Further, the invasion of their rights “is material and substantial.”<sup>60</sup> Since the Resolutions are executory and the removal of petitioner-intervenor is impending, an injunctive writ is necessary to prevent irreparable damage.<sup>61</sup>

On August 18, 2017, the Commission issued a Certificate of Finality,<sup>62</sup> declaring its August 8, 2017 Resolution final and executory. It also issued a Writ of Execution<sup>63</sup> on August 31, 2017, directing the Special City Board of Canvassers to:

1. **CONVENE** on 12 September 2017, 3:00 p.m., at the Comelec Session Hall, 8<sup>th</sup> Floor, Palacio del Gobernador Building, Intramuros, Manila, with notice to all affected parties and to the affected Sangguniang Panlungsod Members for the Second District of Antipolo City;
2. **AMEND/ CORRECT**, in the course of the session, the official Certificate of Canvass for the Second District of Antipolo City by crediting the votes counted for Respondent Reynaldo Santiago Zapanta in favor of Petitioner Alfred Jarlego Zapanta;

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<sup>53</sup> Id. at 11–22.

<sup>54</sup> Id. at 24.

<sup>55</sup> Id. at 22–24.

<sup>56</sup> Id. at 25.

<sup>57</sup> Id. at 29.

<sup>58</sup> Id. at 29–30.

<sup>59</sup> Id.

<sup>60</sup> Id. at 30.

<sup>61</sup> Id.

<sup>62</sup> Id. at 181–184.

<sup>63</sup> Id. at 187–191.



3. **AMEND/ CORRECT**, the official Certificate of Canvass of Votes and Proclamation on the basis of the vote figures after the votes counted for Respondent Reynaldo Santiago Zapanta shall have been credited in favor of Petitioner Alfred Jarlego Zapanta; and
4. **PROCLAIM** the following as the duly elected Members of the Sangguniang Panlungsod Members for the Second District of Antipolo City, Rizal:

Names of Candidates	Number of Votes	Ranking
Philip Conrad Acop	119,226	1
Catalino Leyva	97,532	2
Irvin Paulo Tapales	95,897	3
Christian Edward Alarcon	93,237	4
Antonio Masangkay	84,532	5
Alfred J. Zapanta	76,877	6
Edward O'hara	74,896	7
Nixon Aranas	64,210	8 <sup>64</sup>

On November 6, 2017, private respondent filed his Comment,<sup>65</sup> arguing that the Commission, in issuing its rulings, did not commit grave abuse of discretion. He avers that despite being given a number of opportunities, petitioner failed to show that he was and had been using the nickname "Alfred" so as to use the name in the ballot. He claims that petitioner neither campaigned nor distributed or posted a single campaign paraphernalia.<sup>66</sup> Petitioner's only action during the campaign period was to send a text message to different individuals where he stated, "'RE-ELECT' ALFRED ZAPANTA No. 22 for 2<sup>nd</sup> District Councilor."<sup>67</sup> For private respondent, petitioner's use of the word "RE-ELECT" was malicious since he was not even an incumbent city councilor.

Moreover, private respondent claims that petitioner, in his text message, used his campaign slogan and did not even state his political party.<sup>68</sup> Petitioner, he points out, did not campaign personally to confuse and mislead the voters, but relied on the confusion that his tactics as a nuisance candidate would bring to the electorate.<sup>69</sup>

Private respondent refutes petitioner's claim that the Commission committed grave abuse of discretion in declaring him as the winning candidate, arguing that:

<sup>64</sup> Id. at 190–191.

<sup>65</sup> Id. at 214–226.

<sup>66</sup> Id. at 216–217.

<sup>67</sup> Id. at 217.

<sup>68</sup> Id.

<sup>69</sup> Id. at 217–218.

The petitioner also claims that it was preposterous and downright foolish on the part of the Commission to think that there were 31,667 confused voters in the 2<sup>nd</sup> District of Antipolo City who wrongfully casted their votes in his favor while voting for private respondent who is an incumbent City Councilor. **But it would be more preposterous and downright foolish to say that an unknown candidate in the person of the petitioner, a candidate who never campaigned even a single day during the entire campaign period, who did not post even a single campaign poster in the eight Barangays of 2<sup>nd</sup> District of Antipolo City, who did not bother to distribute even a single sample ballot during election day, who is not even known as a running candidate in his own Sitio and even in the Tricycle Operators and Drivers Association (TODA) where he is a member, would garner THIRTY ONE THOUSAND SIX HUNDRED SIXTY SEVEN (31, 667) votes.** The ones disenfranchised as a result of this dirty political tactic and maneuvering were the voters of private respondent and not the petitioner[.]<sup>70</sup> (Emphasis in the original)

Private respondent adds that the Commission did not unseat petitioner-intervenor, but merely corrected its wrongful proclamation. He maintains that petitioner-intervenor was not duly elected; he merely benefited from petitioner's political tactics. Since he was never elected, petitioner-intervenor was not ousted from the position and his right to due process was not violated when he was not impleaded in the Nuisance Petition. Private respondent further contends that there is no provision under the Commission's Rules of Procedure that require him to implead any elected official who may be affected by his Petition. Nonetheless, petitioner-intervenor was accorded due process since he was given a copy of the Commission's August 8, 2017 Resolution.<sup>71</sup>

Lastly, private respondent argues that the August 8, 2017 Resolution became final and executory since no temporary restraining order was issued within five (5) days from petitioner's receipt of the Resolution's copy. He adds that the issuance of a temporary restraining order or a writ of preliminary injunction is no longer possible because the Commission had already issued a Certificate of Finality on August 18, 2017.<sup>72</sup>

On November 9, 2017, the Office of the Solicitor General, as counsel for public respondent, filed its Comment.<sup>73</sup> It argues that the Commission "correctly declared petitioner a nuisance candidate and, accordingly, cancelled his certificate of candidacy."<sup>74</sup> However, the 31,667 votes petitioner received should not be automatically credited in private respondent's favor. Since voters can cast more than one (1) vote for the position of city councilor, the nuisance candidate and the bona fide

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<sup>70</sup> Id. at 219.

<sup>71</sup> Id. at 219–221.

<sup>72</sup> Id. at 221–223.

<sup>73</sup> Id. at 235–250.

<sup>74</sup> Id. at 241.

candidate may each receive a vote from a single voter. Thus, to add the votes cast for the nuisance candidate to the votes cast for the bona fide candidate would be erroneous, as this may result in the latter receiving two (2) votes from the same voter. It asserts that if the voter casts a vote for the nuisance candidate only, then only that vote can be credited to the bona fide candidate.<sup>75</sup>

On January 15, 2018, petitioner and petitioner-intervenor filed their Reply,<sup>76</sup> reiterating that petitioner is not a nuisance candidate.<sup>77</sup> Assuming that he was, they agreed with the Office of the Solicitor General that the votes cast for petitioner should not be instantly added to the votes for private respondent. Instead, they should be considered as stray votes.<sup>78</sup>

On December 5, 2018, public respondent filed its own Comment.<sup>79</sup> It stands by its earlier ruling that petitioner is a nuisance candidate whose Certificate of Candidacy was correctly canceled. Like the Office of the Solicitor General, it opines that the votes in petitioner's favor should not be automatically credited to the votes in private respondent's favor,<sup>80</sup> in accordance with this Court's new ruling in *Santos v. Commission on Elections*.<sup>81</sup> Still, it insists that it did not commit grave abuse of discretion since it merely applied the doctrine in *Dela Cruz*. It submits that the Special Board of Canvassers of the Second District of Antipolo City should be reconvened for the recounting and recanvassing of votes for the city councilor position.<sup>82</sup>

The issues for this Court's resolution are:

First, whether or not public respondent Commission on Elections, in declaring petitioner Reynaldo S. Zapanta as a nuisance candidate, committed grave abuse of discretion amounting to lack or excess of jurisdiction;

Second, whether or not public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered that the votes cast for petitioner be credited to the votes cast for private respondent Alfred J. Zapanta; and

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<sup>75</sup> Id. at 244–246.

<sup>76</sup> Id. at 253–262.

<sup>77</sup> Id. at 254–256.

<sup>78</sup> Id. at 256–258.

<sup>79</sup> Id. at 282–297.

<sup>80</sup> Id. at 293–294.

<sup>81</sup> G.R. Nos. 235058 & 235064, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64577>> [Per J. Gesmundo, En Banc].

<sup>82</sup> *Rollo*, pp. 289–294.

Finally, whether or not public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared as void the proclamation of petitioner-intervenor Edilberto U. Lagasca as the duly elected member of the *Sangguniang Panlungsod* of the Second District of Antipolo City.

The Petition is partly meritorious.

In *Martinez III v. House of Representatives Electoral Tribunal*,<sup>83</sup> this Court thoroughly discussed the reasons why nuisance candidates are abhorred:

In controversies pertaining to nuisance candidates as in the case at bar, the law contemplates the likelihood of confusion which the similarity of surnames of two (2) candidates may generate. A nuisance candidate is thus defined as one who, based on the attendant circumstances, has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed, his sole purpose being the reduction of the votes of a strong candidate, upon the expectation that ballots with only the surname of such candidate will be considered stray and not counted for either of them.

In elections for national positions such as President, Vice-President and Senator, the sheer logistical challenge posed by nuisance candidates gives compelling reason for the Commission to exercise its authority to eliminate nuisance candidates who obviously have no financial capacity or serious intention to mount a nationwide campaign. Thus we explained in *Pamatong v. Commission on Elections*:

“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. . . .

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<sup>83</sup> 624 Phil. 50 (2010) [Per J. Villarama, Jr., En Banc].

“The preparation of ballots is but one aspect that would be affected by allowance of “nuisance candidates” to run in the elections. Our election laws provide various entitlements for candidates for public office, such as watchers in every polling place, watchers in the board of canvassers, or even the receipt of electoral contributions. Moreover, there are election rules and regulations the formulations of which are dependent on the number of candidates in a given election.

“Given these considerations, the ignominious nature of a nuisance candidacy becomes even more galling. The organization of an election with *bona fide* candidates standing is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process. . . .

. . . .

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 18 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.<sup>84</sup> (Emphasis in the original, citations omitted)

Here, the names of petitioner and private respondent in the official ballots are indicated as follows:

21. ZAPANTA, ALFRED (AKSYON)
22. ZAPANTA, ALFRED (LAKAS)<sup>85</sup>

The only way to distinguish petitioner from private respondent is their number on the ballot and their affiliations. Other than that, a voter who wanted to vote for “Alfred Zapanta,” but only knows the name “Alfred” or surname “Zapanta,” would be confused on which oval to shade to reflect his or her choice. No other candidate for the position of city councilor has either the name “Alfred” or “Zapanta.”

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<sup>84</sup> Id. at 69–71.

<sup>85</sup> *Rollo*, p. 142.

After a perusal of the case records, this Court holds that petitioner was not able to sufficiently show that voters can clearly identify that his chosen nickname pertains only to him. The affidavits he presented are not enough to show that he had been using the name “Alfred” or that he is publicly known by that name.

Moreover, despite being given an opportunity to counter private respondent’s allegations, petitioner failed to deny that he had no campaign materials using the name “Alfred Zapanta,” or present evidence to the contrary. He merely banked on his membership in a political party to support his claim that he had a bona fide intention to run for office. Association to a political party per se does not necessarily equate to a candidate’s bona fide intent; instead, he or she must show that he or she is serious in running for office. This, petitioner failed to demonstrate.

Additionally, private respondent is more recognized by his constituents as “Alfred Zapanta,” being an incumbent city councilor who was running for another term.

This Court further holds that public respondent’s order of adding petitioner’s votes to private respondent’s votes is not tainted with grave abuse of discretion. However, its ruling on this issue must be set aside.

*In David v. Senate Electoral Tribunal.*<sup>86</sup>

The term “grave abuse of discretion” has been generally held to refer to such arbitrary, capricious, or whimsical exercise of judgment as is tantamount to lack of jurisdiction:

[T]he abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough: it must be grave.

There is grave abuse of discretion when a constitutional organ such as the Senate Electoral Tribunal or the Commission on Elections, makes manifestly gross errors in its factual inferences such that critical pieces of evidence, which have been nevertheless properly introduced by a party, or admitted, or which were the subject of stipulation, are ignored or not accounted for.

A glaring misinterpretation of the constitutional text or of statutory provisions, as well as a misreading or misapplication of the current state of jurisprudence, is also considered grave abuse of discretion. The

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<sup>86</sup> 795 Phil. 529 (2016) [Per J. Leonen, En Banc].



arbitrariness consists in the disregard of the current state of our law.<sup>87</sup>  
(Citations omitted)

Public respondent explained that it based its ruling on *Dela Cruz*,<sup>88</sup> where this Court held that the votes for the nuisance candidate should be added to the votes for the bona fide candidate.<sup>89</sup> Despite involving a single-slot office, where only one (1) candidate can win for the position, public respondent applied *Dela Cruz* as it was the prevailing doctrine when it decided on this case. More, there were then no rules or jurisprudence dealing with the votes of a nuisance candidate in a multi-slot office.

This Court finds that public respondent did not exercise its judgment in an arbitrary, capricious, or whimsical manner when it ordered adding the votes cast for petitioner to the votes cast for private respondent. On the contrary, it merely applied “the current state of our law.”<sup>90</sup>

With the recent promulgation of *Santos*,<sup>91</sup> this Court clarified how the votes of nuisance candidates in a multi-slot office should be treated:

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.

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.

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

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<sup>87</sup> Id. at 565–566.

<sup>88</sup> 698 Phil. 548 (2012) [Per J. Villarama, Jr., En Banc].

<sup>89</sup> Id. at 569.

<sup>90</sup> *David v. Senate Electoral Tribunal*, 795 Phil. 529, 566 (2016) [Per J. Leonen, En Banc].

<sup>91</sup> G.R. Nos. 235058 & 235064, September 4, 2018  
<<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64577> > [Per J. Gesmundo, En Banc].

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.<sup>92</sup> (Citation omitted)

Here, the *Santos* doctrine must be applied: the votes for petitioner alone should be counted in favor of private respondent; if there are votes for both petitioner and private respondent in the same ballot, then only one (1) vote should be counted in the latter's favor. This will not only discourage nuisance candidates, but will also prevent the disenfranchisement of voters.

On the third issue, petitioner-intervenor contends that he was denied his right to due process since he was not impleaded in the Nuisance Petition, nor was he furnished with public respondent's processes or private respondent's pleadings.

The legal standing of unaffected candidates in a nuisance petition has already been settled in *Santos*:

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 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.

In *Timbol v. COMELEC (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.

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<sup>92</sup> Id.



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.<sup>93</sup> (Emphasis in the original, citations omitted)

As a mere observer, petitioner-intervenor is not required to be impleaded in the Nuisance Petition. Hence, his right to due process could not have been violated. Records also show that petitioner-intervenor did not deny private respondent's allegation that it received a copy of public respondent's August 8, 2017 Resolution.<sup>94</sup> Despite receipt, petitioner-intervenor did not take action to protect his interest.

**WHEREFORE**, the August 31, 2017 Writ of Execution of public respondent Commission on Elections En Banc in SPA Case No. 15-212 (DC) is **AFFIRMED** with **MODIFICATION**, as follows:

1. **RE-CONVENE** the Special Board of Canvassers of Antipolo City to re-canvass the votes for the position of Members of the *Sangguniang Panlungsod* of the Second District of Antipolo City;
2. **COUNT** the votes for Reynaldo S. Zapanta, a nuisance candidate, in favor of Alfred J. Zapanta. However, if there is a ballot that contains votes in favor of both Reynaldo S. Zapanta and Alfred J. Zapanta, only one (1) vote shall be counted in the latter's favor; and
3. **PROCLAIM** the duly elected Members of the *Sangguniang Panlungsod* for the Second District of Antipolo City in accordance with the result of the proper counting of votes.


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<sup>93</sup> *Santos v. Commission on Elections*, G.R. Nos. 235058 & 235064, September 4, 2018 <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64577>> 17-18 [Per J. Gesmundo, En Banc].


<sup>94</sup> *Rollo*, p. 220-221.


This Decision is immediately executory. Public respondent Commission on Elections is **ORDERED** to complete the implementation of the August 31, 2017 Writ of Execution, as modified, within thirty (30) days from receipt of this Decision.

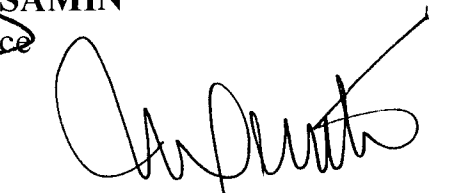
**SO ORDERED.**


  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

  
**LUCAS P. BERSAMIN**  
Chief Justice

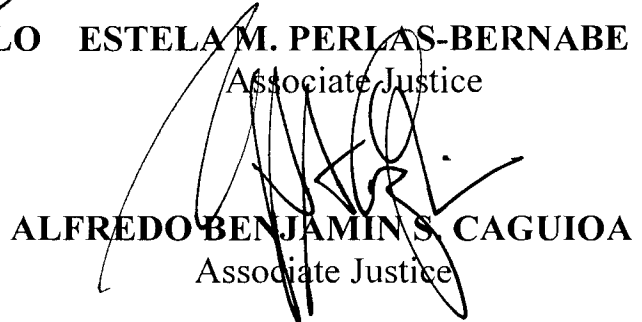
  
**ANTONIO T. CARPIO**  
Associate Justice

  
**DIOSDADO M. PERALTA**  
Associate Justice


  
**MARIANO C. DEL CASTILLO**  
Associate Justice

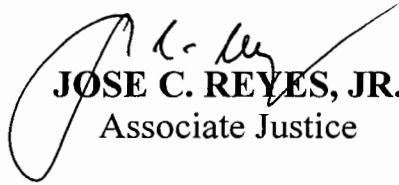
On official leave  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice


  
**FRANCIS H. JARDELEZA**  
Associate Justice

  
**ALFREDO BENJAMINS CAGUIOA**  
Associate Justice

  
**ANDRES B. REYES, JR.**  
Associate Justice

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

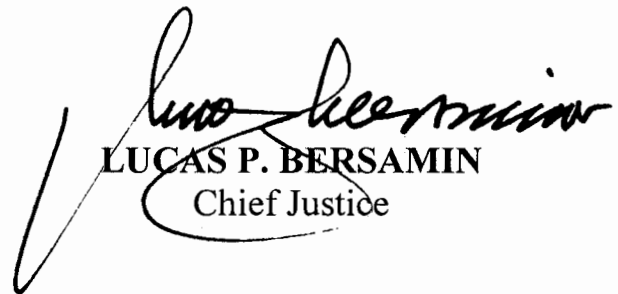
  
**JOSE C. REYES, JR.**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

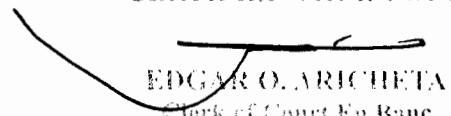
  
**ROSMARI D. CARANDANG**  
Associate Justice

**CERTIFICATION**

I 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.

  
**LUCAS P. BERSAMIN**  
Chief Justice

CERTIFIED TRUE COPY

  
**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court