



Republic of the Philippines  
Presidential Electoral Tribunal  
Manila

**FERDINAND “BONGBONG” R.  
MARCOS, JR.,**

Protestant,

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

Present:

BERSAMIN, C.J.,  
CARPIO,  
PERALTA,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
A. REYES, JR.,  
GESMUNDO,  
J. REYES, JR.,\*  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING, and  
ZALAMEDA, JJ.

- versus -

**MARIA LEONOR “LENI  
DAANG MATUWID” G.  
ROBREDO,**

Protestee.

Promulgated:

October 15, 2019

X-----X

**RESOLUTION**

***PER CURIAM:***

Protestant Ferdinand “Bongbong” R. Marcos, Jr. (protestant) is before the Presidential Electoral Tribunal (Tribunal) challenging the election and

\* On Leave.

proclamation of incumbent Vice President Maria Leonor “Leni Daang Matuwid” G. Robredo (protestee) in the May 9, 2016 National and Local Elections.<sup>1</sup>

The vice presidential elections in the 2016 National and Local Elections turned out to be a close contest between protestant and protestee. Protestee garnered 14,418,817 votes while protestant came at a close second with 14,155,344 votes. Protestee won by a slim margin of only of 263,473 votes. After the canvassing of results, Congress, sitting as the National Board of Canvassers (NBOC), proclaimed protestee as the duly-elected Vice President of the Republic of the Philippines on May 30, 2016.<sup>2</sup>

P.E.T. Case No. 005 is the first and only election protest before the Tribunal in which the recount and revision process of the pilot provinces were successfully concluded and the protest itself resolved on the merits.

In *Defensor-Santiago v. Ramos*,<sup>3</sup> the late Senator Miriam Defensor-Santiago (Santiago) contested the election of former President Fidel V. Ramos in the 1992 National and Local Elections. The protest was declared moot when Santiago ran for, and was elected, Senator in the 1995 Midterm Elections.

Contesting the results of the 2004 National and Local Elections, the late Ronald Allan Poe a.k.a. Fernando Poe, Jr. (Poe) filed an election protest against former President Gloria Macapagal-Arroyo. The case was dismissed after Poe’s demise on December 14, 2004. His widow, Jesusa Sonora Poe (Mrs. Poe) filed a motion to intervene and/or substitute the deceased party, but this was denied by the Tribunal, Mrs. Poe not being considered a real party-in-interest in the election protest.<sup>4</sup>

Also in 2004, former Senator Loren B. Legarda (Legarda) initiated the first protest for the position of Vice President before the Tribunal against former Vice President Noli L. De Castro. The Tribunal dismissed the cause of action for revision of ballots when Legarda failed to pay the required additional deposit for the continuation of the revision of the ballots. As well, the Tribunal declared that Legarda had abandoned her protest by reason of her candidacy, election, and assumption as Senator after the 2007 National Local Elections.<sup>5</sup>

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<sup>1</sup> Election Protest, *rollo* (Vols. I-X), pp. 1-16005.

<sup>2</sup> Resolution of Both Houses No. 1, declaring the results of the National Elections held on May 9, 2016, for the Offices of President and Vice President, and proclaiming the duly elected President and Vice President of the Republic of the Philippines, Annex “X” to the Protest, *rollo* (Vol. III), pp. 1315-1317.

<sup>3</sup> P.E.T. Case No. 001 (Resolution), 323 Phil. 665 (1996).

<sup>4</sup> *Poe v. Macapagal-Arroyo*, P.E.T. Case No. 002 (Resolution), 494 Phil. 137 (2005).

<sup>5</sup> *Legarda v. De Castro*, P.E.T. Case No. 003 (Resolution), 566 Phil. 123 (2008).

Upon the conclusion of the first nationwide elections using the Automated Election System (AES) in 2010, former Senator Manuel A. Roxas (Roxas) contested the election of former Vice President Jejomar C. Binay (Binay). However, both parties filed certificates of candidacy in the 2016 National and Local Elections for the position of President. The case was eventually overtaken by the 2016 National and Local Elections in which protestee Robredo was elected. Thus, Roxas' protest was eventually dismissed for being moot with the expiration of the term of the contested position on June 30, 2016.<sup>6</sup>

Judicial notice may be taken that the protest in this case has been the subject of much attention and speculation in the public arena. Even the Tribunal has not been immune from public vitriol and malicious imputations. The controversy over the results of the 2016 vice presidential elections has caused more social discord than the results of the presidential elections. Over and over again, questions about the accuracy and reliability of the AES during the 2016 National and Local Elections were propounded. Protestant and protestee have exchanged countless pleadings, motions, manifestations, and letters before the Tribunal. Each party has made allegations of the commission of electoral frauds, irregularities, and anomalies against the other. As well, the parties and their counsels have publicly traded barbs and accusations in the media regarding the protest, despite the Tribunal's warning on violation of the *sub judice* rule.

With this Resolution and the Memoranda required of both parties, the Tribunal will chart a way forward after the initial revision and recount, affording the parties the fullest opportunity to make their case consistent with due process of law. This Resolution does not yet resolve the entire case but is merely preliminary and interlocutory in nature. It is designed to hear the parties fully on the various legal issues relating to their controversy. It is not a finding for or against the protestant or the protestee.

## I.

### ***Filing of the Protest***

Protestant filed the *Election Protest* (Protest) on June 29, 2016 grounded on two (2) causes of action, namely:

#### A.

##### (First Cause of Action)

The proclamation of protestee Robredo as the duly elected [VICE PRESIDENT] is null and void because the [Certificates of Canvass (COCs)] generated by the [Consolidation and Canvass System (CCS)] are

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<sup>6</sup> *Roxas v. Binay*, P.E.T. No. 004 (Resolution), 793 Phil. 9 (2016).

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

x x x x

B.

(Second Cause of Action)

Massive electoral fraud, anomalies, and irregularities, such as, but not limited to terrorism, violence, force, threats, x x x intimidation, pre-shading of ballots, vote-buying, substitution of voters, flying voters, pre-loaded SD cards, misreading of ballots, unexplained, irregular and improper rejection of ballots containing votes for protestant Marcos, malfunctioning [Vote Counting Machines (VCMs)], and abnormally high unaccounted votes/undervotes for the position of [Vice President] compromised and corrupted the conduct of the elections and the election results for the position of [Vice President] in the protested precincts.<sup>7</sup>

For his Second Cause of Action, the subject of which covers a total of 39,221 clustered precincts, protestant seeks both the annulment of election results and the revision and recount of ballots. He alleged that out of the 39,221 protested clustered precincts, no actual election took place in the 2,756 clustered precincts in Lanao Del Sur, Maguindanao, and Basilan due to terrorism, force, violence, threats, and intimidation.<sup>8</sup>

Meanwhile, as to the elections in the remaining 36,465 protested clustered precincts in Cebu Province, Leyte, Negros Occidental, Negros Oriental, Masbate, Zamboanga Del Sur, Zamboanga Del Norte, Bukidnon, Iloilo Province, Bohol, Quezon Province, Batangas, Western Samar, Misamis Oriental, Camarines Sur, 2nd District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City, and Zamboanga City, the elections were allegedly attended by violence, intimidation, vote-buying, substitution of voters/presence of flying voters, misreading of ballots, malfunctioning and tampered Vote Counting Machines (VCMs) and Consolidation and Canvass System (CCS), pre-loaded Secure Digital (SD) cards, “abnormally high” turnout, and unaccounted votes/under-votes were prevalent in the said precincts.<sup>9</sup>

Protestant averred that if not for the attendance of electoral fraud, anomalies, or irregularities in the protested clustered precincts, he would have received the highest number of votes and emerged as the winning candidate for Vice President in the 2016 National and Local Elections.<sup>10</sup>

Protestant thus prayed that the Protest be given due course.<sup>11</sup> In addition, he sought the issuance of a Precautionary Protection Order over the

<sup>7</sup> *Rollo* (Vol. II), pp. 927-929.

<sup>8</sup> *Id.* at 963-974.

<sup>9</sup> *Id.* at 975-1039.

<sup>10</sup> *Id.* at 1037.

<sup>11</sup> *Id.* at 1038.

ballots and other election-related paraphernalia in all the 92,509 clustered precincts that functioned during the 2016 National and Local Elections pursuant to Rule 36 of the 2010 Rules of the Presidential Electoral Tribunal (2010 PET Rules).<sup>12</sup>

On his First Cause of Action, protestant prayed that the Tribunal declare as unauthentic the Certificates of Canvass (COC), on the basis of which protestee was declared the winning candidate for Vice President during the 2016 National and Local Elections. He also prayed that the proclamation of protestee as the duly-elected Vice President of the Philippines be nullified and set aside.<sup>13</sup>

On his Second Cause of Action, protestant prayed that the Tribunal annul the election results for the position of Vice President in the provinces of Maguindanao, Lanao del Sur, and Basilan.<sup>14</sup> As to the 36,465 protested clustered precincts for Cebu Province, Leyte, Negros Occidental, Negros Oriental, Masbate, Zamboanga Del Sur, Zamboanga Del Norte, Bukidnon, Iloilo Province, Bohol, Quezon Province, Batangas, Western Samar, Misamis Oriental, Camarines Sur, 2nd District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City, and Zamboanga City, protestant prayed for the collection, retrieval, transport, and delivery of the ballots and other election documents, and conduct of manual recount and revision.<sup>15</sup>

Protestant also moved for the conduct of a technical examination and forensic investigation of the paper ballots and/or the ballot images, voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the Election Day Computerized Voter's List (EDCVL), and Voters Registration Records (VRR), the books of voters and other pertinent election documents and/or paraphernalia used in the 2016 National and Local Elections, as well as the automated election equipment and records such as the VCMs, CCS units, main and back-up SD cards, and the other data storage devices containing electronic data and ballot images in the 39,221 protested clustered precincts pursuant to Rules 46 to 51<sup>16</sup> of the 2010

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<sup>12</sup> Id. at 1039-1040.

<sup>13</sup> Id. at 1040.

<sup>14</sup> Id.

<sup>15</sup> Id. at 1040-1042.

<sup>16</sup> **RULE 46. Motion for technical examination; contents.** – Within five days after completion of the revision of votes, either party may move for a technical examination, specifying:

(a) The nature of the technical examination requested (e.g., the examination of the genuineness of the ballots or election returns, and others);

(b) The documents to be subjected to technical examination;

(c) The objections made in the course of the revision of votes which he intends to substantiate with the results of the technical examination; and

(d) The ballots and election returns covered by such objections. (R43a)

**RULE 47. Technical examination; time limits.** – The Tribunal may grant the motion for technical examination in its discretion and other such conditions as it may impose. If the motion is granted, the Tribunal shall schedule the technical examination, notifying the other parties at least five days in

PET Rules.<sup>17</sup>

Lastly, protestant prayed that, after due proceedings, he be declared as the duly-elected and rightful Vice President for having obtained the highest number of valid votes cast for the said office during the 2016 National and Local Elections.<sup>18</sup> Protestant paid an initial cash deposit of ₱200,000.00<sup>19</sup> in compliance with Rule 33(c)<sup>20</sup> of the 2010 PET Rules.

In a Resolution dated July 12, 2016, the Tribunal issued a Precautionary Protection Order<sup>21</sup> over the 92,509 clustered precincts covered by the Protest. The COMELEC, its agents, representatives, and persons acting in its place, including city/municipal treasurers, election officers, and responsible personnel and custodians, were directed to preserve and safeguard the integrity of all the ballot boxes and their contents, as well as other election documents and paraphernalia in all 92,509 clustered precincts.<sup>22</sup> Finding the Protest to be sufficient in form and in substance, the Tribunal issued Summons<sup>23</sup> to protestee, directing her to file an Answer to the Protest.

***Protestee's Answer with Counter-Protest***

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advance. The technical examination shall be completed within the period allowed by the Tribunal. A party may attend the technical examination, either personally or through a representative, but the technical examination shall proceed with or without his attendance, provided due notice has been given to him.

The technical examination shall be conducted at the expense of the movant and under the supervision of the Clerk of the Tribunal or his duly authorized representative. (R44)

**RULE 48. Experts who shall provide.** – The Tribunal shall appoint independent experts necessary for the conduct of a technical examination. The parties may avail themselves of the assistance of their own experts who may observe, but not interfere with, the examination conducted by the experts of the Tribunal. (R45)

**RULE 49. Technical examination not interrupted.** – Once started, the technical examination shall continue every working day until completed or until expiration of the period granted for such purpose. (R46)

**RULE 50. Photographing or electronic copying.** – Upon prior approval of the Tribunal, photographing or electronic copying of ballots, election returns or election documents shall be done within its premises under the supervision of the Clerk of the Tribunal or his duly authorized representative, with the party providing his own photographing or electronic copying equipment. (R47a)

**RULE 51. Scope of technical examination.** – Only the ballots, election returns and other election documents allowed by the Tribunal to be examined shall be subject to such examination. (R48)

<sup>17</sup> *Rollo* (Vol. II), p. 1042.

<sup>18</sup> *Id.* at 1043.

<sup>19</sup> *Id.* at 1049.

<sup>20</sup> **RULE 33. Cash deposit.** – In addition to the fees mentioned above, each protestant or counter-protestant shall make a cash deposit with the Tribunal in the following amounts:

x x x x

(c) If the amount of the deposit exceeds Two Hundred Thousand Pesos (₱200,000.00), a partial deposit of at least Two Hundred Thousand Pesos (₱200,000.00) shall be made within ten days after the filing of the protest or counter-protest. The balance shall be paid in such installments as may be required by the Tribunal on at least five days advance notice to the party required to make the deposit.

<sup>21</sup> *Rollo* (Vol. XX), pp. 16012-16013.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 16010-16011.

On August 15, 2016, protestee filed a *Verified Answer with Special and Affirmative Defenses and Counter-Protest*<sup>24</sup> (Answer with Counter-Protest), moving for the dismissal of the Protest on the grounds of lack of jurisdiction and insufficiency in form and in substance.

Protestee alleged that the Protest failed to specify the acts or omissions complained of showing the electoral frauds, anomalies, or irregularities in the protested precincts, in accordance with Rule 17<sup>25</sup> of the 2010 PET Rules.<sup>26</sup> Protestee also averred that the Protest had no legal and factual basis. She pointed out that that the Protest is in the nature of a pre-proclamation controversy, which should have been initiated before the NBOC and not the Tribunal.<sup>27</sup>

Furthermore, protestee averred that her proclamation as Vice President cannot be annulled based on made-up irregularities during the canvassing and COMELEC's alleged noncompliance with the law on automated elections.<sup>28</sup> Protestee also countered that the annulment of the results in Lanao del Sur, Maguindanao, and Basilan does not have legal and factual basis as the Protest failed to show, much more prove, that the supposed illegality of the ballots affected more than 50% of the votes cast in these provinces. The evidence allegedly consisted mainly of hodgepodge accounts in affidavit form which were hardly credible.<sup>29</sup> On protestant's prayer for recount and revision of ballots, protestee likewise asserted that the same had no legal and factual basis.<sup>30</sup>

For her Counter-Protest, protestee contested the election results in 7,547 clustered precincts in thirteen (13) provinces, namely: Apayao, Mountain Province, Abra, Kalinga, Bataan, Capiz, Aklan, Antique,

<sup>24</sup> *Rollo* (Vols. XXI-XXVII), pp. 16155-21525.

<sup>25</sup> **RULE 17. Contents of the protest or petition.** – (A) An election protest or petition for *quo warranto* shall commonly state the following facts:

- (a) the position involved;
- (b) the date of proclamation; and
- (c) the number of votes credited to the parties *per* the proclamation.

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

- (a) the facts giving the petitioner standing to file the petition;
- (b) the legal requirements for the office and the disqualifications prescribed by law;
- (c) the protestee's ground for ineligibility or the specific acts of disloyalty to the Republic of the Philippines.

(C) An election protest shall also state:

- (a) that the protestant was a candidate who had duly filed a certificate of candidacy and had been voted for the same office.
- (b) the total number of precincts of the region, province, or city concerned;
- (c) the protested precincts and votes of the parties to the protest in such precincts per the Statement of Votes By Precinct, or if the votes of the parties are not specified, an explanation why the votes are not specified; and
- (d) a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies, or irregularities in the protested precincts. (n)

<sup>26</sup> *Rollo* (Vol. XXI), pp. 16167-16177.

<sup>27</sup> *Id.* at 16177-16186.

<sup>28</sup> *Id.* at 16212-16224.

<sup>29</sup> *Id.* at 16224-16261.

<sup>30</sup> *Id.* at 16261-16406.

Sarangani, Sulu, Sultan Kudarat, South Cotabato, and North Cotabato. She alleged that vote-buying, threats, intimidation, substitute voting, and incidence of unaccounted votes occurred in these provinces, which were bailiwicks of protestant. Allegedly, had these electoral frauds and anomalies not been employed by protestant, protestee would have received a higher number of votes.<sup>31</sup>

Thus, protestee prayed that a preliminary hearing be set for her special and affirmative defenses and thereafter, that the Protest be dismissed for lack of jurisdiction and for being insufficient in form and substance. Additionally, she prayed that after due proceedings, her proclamation as the winning candidate for Vice President in the 2016 National and Local Elections be affirmed.<sup>32</sup> She also paid an initial cash deposit to the Tribunal in the amount of ₱200,000.00.<sup>33</sup>

***Issues on timeliness and defects in  
Protestee's Answer with Counter-  
Protest and Protestant's Answer to  
the Counter-Protest***

On September 9, 2016, protestant filed a *Motion to Strike-Out or Expunge Protestee's Verified Answer dated 12 August 2016 with Manifestation and Answer Ad Cautelam to the Counter-Protest*<sup>34</sup> (Answer to the Counter-Protest), claiming that protestee's Answer with Counter-Protest was belatedly filed. Protestant averred that protestee admitted that she received the Protest on August 2, 2016. Thus, under Rule 24 of the 2010 PET Rules, she had only ten (10) days or until August 12, 2016 to file the pleading. However, the Answer with Counter-Protest was filed only on August 15, 2016, hence three (3) days late.<sup>35</sup>

Furthermore, in his Answer to the Counter-Protest, protestant denied protestee's allegations of electoral fraud, anomalies, and irregularities in the provinces covered by the Counter-Protest.<sup>36</sup> Protestant also controverted protestee's allegation that the Protest was insufficient in form and in substance. He claimed that he had narrated in detail the electoral fraud, anomalies, and irregularities which pervaded the conduct of elections in the 39,221 protested clustered precincts.<sup>37</sup> Protestant also averred that the Tribunal had already found the Protest to be sufficient in form and in substance in the Summons to protestee.<sup>38</sup> Protestant further claimed that

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<sup>31</sup> Id. at 16406-16689.

<sup>32</sup> Id. at 16690.

<sup>33</sup> *Rollo* (Vol. XXVIII), p. 21526.

<sup>34</sup> Id. at 21698-21744.

<sup>35</sup> Id. at 21698-21699.

<sup>36</sup> Id. at 21732-21734.

<sup>37</sup> Id. at 21703.

<sup>38</sup> Id. at 21701-21702.



when there is an allegation in an election protest that would require the perusal, examination, or counting of ballots as evidence, it is the ministerial duty of the court to order the opening of the ballot boxes and the examination and counting of ballots therein.<sup>39</sup>

On the issue of jurisdiction, protestant maintained that under the 1987 Constitution, the Tribunal is the sole judge of all contests relating to the election, returns, and qualifications of the President and Vice President.<sup>40</sup>

In turn, on September 7, 2016, protestee urged the Tribunal to expunge protestant's Answer to the Counter-Protest in her *Urgent Ex-Parte Motion to Consider as Waived the Right of Protestant Marcos to file an Answer to the Counter-Protest*,<sup>41</sup> claiming that it was filed beyond the reglementary period. Protestee asserted that protestant filed a Manifestation<sup>42</sup> dated August 24, 2016 that he had not yet received a copy of protestee's Answer with Counter-Protest but had secured a copy thereof (sans annexes) from the Tribunal on August 16, 2016. Thus, he had only ten (10) days therefrom to file his Answer to the Counter-Protest. However, protestant filed his Answer to the Counter-Protest only on September 9, 2016.

Thereafter, protestee filed another pleading, entitled *Manifestation with Urgent Ex-Parte Motion to Expunge from the Records the Answer Ad Cautelam to the Counter-Protest*<sup>43</sup> on September 19, 2016, reiterating that the Answer to the Counter-Protest was not filed on time. Even if the reglementary period was reckoned from protestant's receipt via registered mail of protestee's Answer with Counter-Protest with annexes, the same was still not filed on time. Protestee alleged that protestant was untruthful in stating that he received the Answer with Counter-Protest on August 30, 2016. Based on the Certification<sup>44</sup> from Ms. Marissa Sable (Ms. Sable), Acting Records Officer of the Philippine Postal Corporation (PhilPost), the actual receipt of the pleading was on August 28, 2016. Thus, the Answer to the Counter-Protest should have been filed on September 7, 2016. Additionally, protestee alleged that the Answer to the Counter-Protest was not verified, as required under Rule 23<sup>45</sup> of the 2010 PET Rules.<sup>46</sup>

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<sup>39</sup> Id. at 21705-21706.

<sup>40</sup> Id. at 21738.

<sup>41</sup> Id. at 21688-21697.

<sup>42</sup> Id. at 21557-21562.

<sup>43</sup> Id. at 21769-21777.

<sup>44</sup> Id. at 21778.

<sup>45</sup> **RULE 23. Answer.** -- The answer shall be verified and may set forth special and affirmative defenses. The protestee or respondent may incorporate in his answer a counter-protest or counterclaim which shall be filed with the Clerk of the Tribunal. The answer must be filed within ten days from receipt of summons in eighteen clearly legible copies with proof of service of a copy upon the protestant or petitioner. (R22)

<sup>46</sup> *Rollo* (Vol. XXVIII), pp. 21769-21771.

Meanwhile, on October 5, 2016, protestee filed a *Comment and Opposition (To the Motion to Strike-Out or Expunge Protestee's Verified Answer dated 12 August 2016)*.<sup>47</sup> Protestee claimed that she had actually received the Summons on August 3, 2016. Through mere inadvertence, the incorrect date of August 2, 2016 was indicated in her Answer with Counter-Protest. August 13, 2016, being a Saturday, the Answer with Counter-Protest was timely filed on the next working day, August 15, 2016.<sup>48</sup>

Due to mutual allegations of procedural defects, several other pleadings were filed by the parties in addition to the foregoing. On September 20, 2016, protestant filed a *Manifestation with Motion to Admit Attached Verification*,<sup>49</sup> praying that the Tribunal admit his belated Verification for his Answer to the Counter-Protest.<sup>50</sup>

On September 30, 2016, protestant filed a *Comment/Opposition [to the Urgent Ex-Parte Motion to Consider as Waived the Right of Protestant Marcos to File an Answer to Counter-Protest and Manifestation with Urgent Ex-Parte Motion to Expunge from the Records the Answer Ad Cautelam to the Counter-Protest]*.<sup>51</sup> He attached to the pleading a Certification,<sup>52</sup> also from PhilPost, that the Answer with Counter-Protest was delivered to protestant's counsel's office on August 30, 2016 and not August 28, 2016.

On October 5, 2016, protestee filed a *Comment and Opposition (to Motion to Admit Attached Verification dated 19 September 2016)*.<sup>53</sup> On November 2, 2016, protestant filed a *Manifestation*,<sup>54</sup> informing the Tribunal that he will no longer file a reply to the pleading.

In its Resolution<sup>55</sup> dated January 24, 2017, the Tribunal held that under Section 4,<sup>56</sup> Article VII of the 1987 Constitution, the Supreme Court (SC), sitting as the Presidential Electoral Tribunal (PET), had exclusive jurisdiction over the Protest. The Tribunal also held that the Protest was sufficient in form and in substance. Protestee's prayer for the setting of a preliminary hearing on her special and affirmative defenses and for the dismissal of the Protest was denied. Likewise, the Tribunal denied

<sup>47</sup> Id. at 21843-21851.

<sup>48</sup> Id. at 21844-21846.

<sup>49</sup> Id. at 21786-21793.

<sup>50</sup> Id. at 21788.

<sup>51</sup> Id. at 21818-21827.

<sup>52</sup> Id. at 21828.

<sup>53</sup> Id. at 21854-21867.

<sup>54</sup> Id. at 22015-22020.

<sup>55</sup> *Rollo* (Vol. XXIX), pp. 22459-A to 22459-H.

<sup>56</sup> SEC. 4. x x x

x x x x

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

protestant's Motion to Strike-Out and forthwith admitted protestee's Answer with Counter-Protest.

In the same Resolution, the Tribunal ordered the PhilPost to clarify the true date of protestant's receipt of protestee's Answer.<sup>57</sup>

On February 27, 2017, Protestee filed a *Motion for Reconsideration Pro Tanto with Prayer to Set for Hearing* of the Tribunal's Resolution<sup>58</sup> dated January 24, 2017, which was opposed by protestant in a *Comment/Opposition*<sup>59</sup> filed on March 27, 2017. Then, on April 11, 2017, protestee filed a *Motion for Leave of Court to File and Admit the Herein Incorporated Reply to Protestant's Comment/Opposition*.<sup>60</sup> These matters were deferred by the Tribunal in its Resolution<sup>61</sup> dated June 6, 2017 for resolution after the preliminary conference.

On March 16, 2017, the Tribunal received the letter-explanation from PhilPost, through Ms. Sable, in compliance with the Resolution dated January 24, 2017. PhilPost explained that the correct date of protestant's receipt of the Answer with Counter-Protest was August 30, 2016. The earlier Certification indicating the date of receipt as August 28, 2016 was erroneous.<sup>62</sup> The Tribunal noted PhilPost's letter in its Resolution<sup>63</sup> dated March 21, 2017.

### ***COMELEC Closure and Stripping Activities***

As mentioned above, the Tribunal issued a Precautionary Protection Order directing the preservation and safeguarding of all documents, paraphernalia, automated election equipment and records, and other data storage devices of all 92,509 clustered precincts in the 2016 National and Local Elections.

In reference to the Precautionary Protection Order, the Commission on Elections (COMELEC), through then Commissioner Christian Robert S. Lim, wrote a letter<sup>64</sup> dated August 10, 2016, seeking clarification on whether the election paraphernalia not containing election results data were covered by the Precautionary Protection Order. These election paraphernalia are the

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<sup>57</sup> *Rollo* (Vol. XXIX), p. 22459-F.

<sup>58</sup> *Id.* at 22674-22698.

<sup>59</sup> *Rollo* (Vol. XXX), pp. 22900-22924.

<sup>60</sup> *Id.* at 22990-23006.

<sup>61</sup> *Id.* at 23285-232890.

<sup>62</sup> *Id.* at 22781-22784.

<sup>63</sup> *Id.* at 22800-22803.

<sup>64</sup> *Rollo* (Vol. XX), pp. 16041-16044.

Broadband Global Area Network (BGAN) Satellite Antennas, External Back up Batteries, VCM Kits,<sup>65</sup> and Canvassing and CCS Kits.<sup>66</sup>

The COMELEC informed the Tribunal that they had conducted closure activities over the BGAN Antennas prior to the issuance of the Precautionary Protection Order.<sup>67</sup> The COMELEC sought authority to conduct closure/stripping activities wherein each VCM kit would be opened and tested so that the equipment can be turned over to Smartmatic-TIM, Inc. (Smartmatic), while the consumables, such as SD cards, i-Buttons, thermal paper, and marking pens, which are considered as sold items, shall be turned over to the COMELEC. The CCS kits, the contents of which are already owned by the COMELEC, would likewise undergo closure/stripping activities.<sup>68</sup>

More important, the COMELEC manifested that, in its AES Contract dated August 27, 2015 with Smartmatic, all equipment in the possession of the COMELEC as of December 1, 2016 because of any election contest or audit requirement would be considered sold to the COMELEC pursuant to its option to purchase, and the COMELEC would pay the corresponding price, without prejudice to the COMELEC requiring the protestant to shoulder such costs. Also, the lease contract for the COMELEC's warehouse in Sta. Rosa, Laguna, where the AES equipment were then stored, would be expiring in November 2016.<sup>69</sup>

In his *Comment*,<sup>70</sup> protestant stated that he was willing to waive the coverage of the Precautionary Protection Order with respect to the following items: external back-up batteries, VCM electric power supply and adaptor, headphones, battery cable, marking pens, printer and toner, since these materials would not be included in his request for technical examination and forensic investigation.<sup>71</sup>

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<sup>65</sup> VCM Kits containing: VCM electric power supply and adaptor;  
a) USB Modems and SIM Cards;  
b) Headphones;  
c) i-Buttons;  
d) Unused Thermal Paper Rolls;  
e) Battery Cable;  
f) Marking Pens; and,  
g) Documents inside the Kit (e.g., BEI PINs, passwords, FTS ballots)

<sup>66</sup> CCS Kits containing:  
a) Printer and Toner;  
b) Unused Bond Paper;  
c) USB Modem and SIM cards;  
d) USB Token; and,  
e) Documents inside the Kit (e.g., BOC PINs, passwords)

<sup>67</sup> *Rollo* (Vol. XX), p. 16043.

<sup>68</sup> *Id.* at 16042, 16044.

<sup>69</sup> *Id.* at 16043.

<sup>70</sup> *Rollo* (Vol. XXVIII), pp. 21673-21680.

<sup>71</sup> *Id.* at 21674.

Protestant, however, opposed the closure and stripping activities on the servers, routers, transmission mediums, VCMs, CCS units, SD cards [main, backup and such other Written Once Read Many (WORM) cards], and other automated election paraphernalia containing election results data. According to protestant, he intended to request for the technical examination and forensic investigation of the above automated election equipment, devices and records, which contain evidence of the conduct and the results of the elections, in all 92,509 clustered precincts that functioned during the 2016 National and Local Elections.<sup>72</sup>

With regard to the proposed manual backing-up activities to be undertaken by the Election Records and Statistics Department (ERSD) of the COMELEC, protestant did not interpose any objection thereto as long as all the files contained in the SD cards (main, back up and such other WORM cards) including the ballot images would be included in the back-up copy of the COMELEC.<sup>73</sup>

Protestee, on the other hand, stated in her *Pagsunod sa Utos ng Tribunal na Maghain ng Komento sa Liham ng COMELEC*<sup>74</sup> that she had no objections to the activities to be conducted by the COMELEC, but suggested that all interested parties be informed of the activities to be conducted. The protestee likewise stated that protestant should bear the cost as he initiated the Protest.<sup>75</sup>

The COMELEC then filed a *Reply*<sup>76</sup> stating that closure/stripping activities, which involve only the physical dismantling of the 92,509 VCMs, 1,716 CCS laptops, their respective components, and other automated election paraphernalia, was necessary for the COMELEC to comply with its obligations under Articles 6.9 and 6.10 of the AES Contract.<sup>77</sup> Under these provisions, all goods still in the possession of the COMELEC as of December 1, 2016, would be considered sold to it.<sup>78</sup>

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<sup>72</sup> Id. at 21674-21675.

<sup>73</sup> Id. at 21675-21676.

<sup>74</sup> Id. at 21573-21578.

<sup>75</sup> Id. at 21574-21575.

<sup>76</sup> Id. at 21905-21915.

<sup>77</sup> 6.9 All Goods still in the possession of the COMELEC as of 01 December 2016 because of any election contest or audit requirement shall be considered sold to COMELEC pursuant to its option to purchase under this Contract, and the COMELEC shall pay the corresponding price in accordance with the Financial Proposal within ten (10) working days from receipt by COMELEC of the invoice from the PROVIDER covering said Goods, without prejudice to COMELEC requiring the protestant to shoulder the costs.

6.10 After 01 December 2016, any notice, request or order for the custody and use of the Equipment in any election contest or audit requirement shall be addressed and coursed through the COMELEC, without prejudice to the COMELEC requiring the protestant or requesting party to pay to the PROVIDER the cost of transportation and other related expenses. Id. at 21907-21908.

<sup>78</sup> *Rollo* (Vol. XXVIII), pp. 21907-21908.

In its Resolution<sup>79</sup> dated November 8, 2016, the Tribunal granted the COMELEC authority to conduct the stripping and closure activities. As guaranteed by the COMELEC, the closure and stripping activities involved only the physical dismantling of the election paraphernalia so that their removable components may be tested, properly accounted for, and those components not purchased by the COMELEC may be completely turned over to Smartmatic. This was also to ensure that the election results data would not be affected by the intended closure and stripping activities.<sup>80</sup>

The Tribunal also held that the COMELEC was contractually obligated to return the goods covered by the AES Contract to Smartmatic by December 1, 2016; otherwise, any goods in its possession as of December 1, 2016 would be considered sold to it at the cost of ₱2,017,563,198.44, or a portion thereof. In the same Resolution, the Tribunal allowed the parties to send their representatives to observe the stripping and closure activities.<sup>81</sup>

#### ***Payment of the Protest and Counter-Protest Fee***

Rule 33 of the 2010 PET Rules provides that if a protest or counter-protest requires the bringing of ballot boxes and election documents or paraphernalia, a cash deposit must be made with the Tribunal in the amount of ₱500.00 for each of the precincts involved. If the amount of the deposit does not exceed ₱200,000.00, the same shall be paid in full within ten (10) days from the filing of the protest or counter-protest. However, if the deposit exceeds ₱200,000.00, the same shall be paid in such installments as may be required by the Tribunal.

In this case, both the Protest and Counter-Protest required the bringing of ballot boxes and other election paraphernalia. Protestant, in his Protest, assailed the election results of 39,221 clustered precincts — 36,465 of which he prayed for the conduct of manual count and judicial revision, while the remaining 2,756 he prayed for the annulment of election results. Based on the COMELEC data, the 39,221 clustered precincts are composed of 132,446 precincts. On the other hand, protestee, as counter-protestant, assailed the election results in 8,042 clustered precincts, which are composed of 31,278 precincts, also based on the COMELEC data.

Based on the foregoing, and considering the initial deposits made by both protestant and protestee/counter-protestant, the Tribunal, in the Resolution<sup>82</sup> dated March 21, 2017, required protestant to pay the total cash deposit of ₱66,023,000.00 for the Protest in two (2) installments:

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<sup>79</sup> Id. at 22121-22130.

<sup>80</sup> Id. at 22125-22126.

<sup>81</sup> Id.

<sup>82</sup> *Rollo* (Vol. XXX), pp. 22800-22805.

₱36,023,000.00 on or before April 14, 2017, and ₱30,000,000.00 on or before July 14, 2017. Counter-protellant was also required to pay a total cash deposit of ₱15,439,000.00 for the Counter-Protest in two (2) installments: ₱8,000,000.00 on or before April 14, 2017, and ₱7,439,000.00 on or before July 14, 2017.

In compliance with the foregoing directive, protestant paid the first installment on April 17, 2017<sup>83</sup> and the second installment on July 10, 2017.<sup>84</sup> Protestee/counter-protellant, on the other hand, filed on April 12, 2017 a *Manifestation with Urgent Ex-Parte Omnibus Motion (1) For Clarification; and (2) Reconsideration of the Resolution dated 21 March 2017*,<sup>85</sup> praying, *inter alia*, that the Tribunal clarify its computation of the cash deposit and hold in abeyance the payment of her cash deposit for the 8,042 counter-protested clustered precincts until such time that the recount and revision of the protestant's 36,465 contested clustered precincts have been terminated.

Meanwhile, on April 20, 2017, protestant filed an *Omnibus Motion (i. to Dismiss the Counter-Protest and ii. to Reiterate the Immediate Setting of the Preliminary Conference)*<sup>86</sup> (Omnibus Motion). Protestant claimed that protestee's failure to pay the required deposit within the prescribed period was a ground for the dismissal of the Counter-Protest.

In the Resolution<sup>87</sup> dated April 25, 2017, the Tribunal: (1) denied protestee's Motion for Reconsideration on the Resolution dated March 21, 2017; (2) directed protestee to pay the first installment within a non-extendible period of five (5) days from notice; and (3) deferred action on protestant's Omnibus Motion to dismiss the Counter-Protest while awaiting protestee's Omnibus Motion payment of the first installment as directed by the Tribunal. Further, the Tribunal granted protestant's motion for the setting of the preliminary conference and set the case for preliminary conference on June 21, 2017 at 2:00 p.m. Both parties were then required to file their respective Preliminary Conference Briefs five (5) days prior to the scheduled preliminary conference, pursuant to Rule 29 of the 2010 PET Rules.

In compliance with this Resolution, protestee/counter-protellant paid the first installment on May 2, 2017.<sup>88</sup>

On July 13, 2017, protestee filed a motion praying that the payment of the second installment be deferred,<sup>89</sup> to which protestant raised no

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<sup>83</sup> Id. at 23056.

<sup>84</sup> *Rollo* (Vol. XXXI), p. 23976.

<sup>85</sup> Id. at 23007-23025.

<sup>86</sup> Id. at 23079-23086.

<sup>87</sup> Id. at 23087-23091.

<sup>88</sup> Id. at 23135-23141.

objection.<sup>90</sup> Thus, in the Resolution<sup>91</sup> dated August 8, 2017, the Tribunal deferred the payment of the second installment for the Counter-Protest only after the initial determination of substantial recovery in protestant's designated three (3) pilot provinces pursuant to Rule 65 of the 2010 PET Rules.

In relation to protestee's payment of deposit, an *Urgent Motion for Leave to File and Admit Petition in Intervention*<sup>92</sup> (Motion) and *Petition in Intervention*<sup>93</sup> were filed on June 27, 2017 by Zorayda Amelia C. Alonzo, Maria Karina A. Bolasco, Maria Celeste Legaspi Gallardo, Paulynn Paredes Sicam, Corazon Juliano-Soliman, Maria Cristina Lim-Yuson (Zorayda, *et al.*), as taxpayers and voters in the 2016 National and Local Elections. They wished to submit ₱30,000.00 as payment for protestee's Counter-Protest. The Motion and Petition in Intervention were denied by the Court in its Resolution<sup>94</sup> dated July 11, 2017. Zorayda, *et al.* moved for reconsideration,<sup>95</sup> but the Motion was likewise denied by the Tribunal in its Resolution<sup>96</sup> dated November 7, 2017.

### ***Appointment of Panel of Hearing Commissioners***

In its Resolution<sup>97</sup> dated June 6, 2017, the Tribunal constituted a panel of three (3) Commissioners to aid the Tribunal in the disposition of the Protest and Counter-Protest and to act in behalf of, and under the control and supervision of, the Tribunal. The Tribunal granted the Commissioners such powers as may be inherent, necessary, or incidental to the panel's duty to aid the Tribunal in the disposition of the case.

The Tribunal appointed Retired Justice Jose C. Vitug as chairperson, and Atty. Angelito C. Imperio and Atty. Irene Ragodon-Guevarra, as members.<sup>98</sup>

### ***Preliminary Conference***

In the Resolution dated June 6, 2017, the preliminary conference scheduled on June 21, 2017 at 2:00 p.m. was reset to July 11, 2017 at 2:00

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<sup>89</sup> Protestee's Compliance and Urgent Motion to Defer Payment of Second Installment of Additional Cash Deposit dated July 13, 2017, *id.* at 23999-24010.

<sup>90</sup> Protestant's Comment [to the Compliance and Urgent Motion to Defer Payment of Second Installment of Additional Cash Deposit dated 13 July 2017], *rollo* (Vol. XXXII), pp. 24362-24369.

<sup>91</sup> *Rollo* (Vol. XXXII), pp. 24429-A to 24429-E.

<sup>92</sup> *Rollo* (Vol. XXXI), pp. 23907-23912.

<sup>93</sup> *Id.* at 23913-23928.

<sup>94</sup> *Id.* at 23978-A to 23978-E.

<sup>95</sup> *Rollo* (Vol. XXXII), pp. 24726-24740.

<sup>96</sup> *Rollo* (Vol. XXXIII), pp. 25351-25354.

<sup>97</sup> *Rollo* (Vol. XXX), pp. 23285-23290.

<sup>98</sup> *Id.* at 23285-23286.



p.m. at the En Banc Session Hall. Nonetheless, the parties were still directed to submit their preliminary conference briefs as previously directed by the Tribunal.<sup>99</sup>

On June 16, 2017, the parties filed their respective Preliminary Conference Briefs,<sup>100</sup> which the Tribunal noted in its Resolution<sup>101</sup> dated June 27, 2017.

As scheduled, the preliminary conference was conducted on July 11, 2017. Protestant personally appeared with his counsel Attorneys George M. Garcia (Atty. Garcia), Joan M. Padilla, Pacifico A. Agabin, Jose Amor M. Amorado, and Estelito Mendoza. Protestee, on the other hand, did not appear in person but her counsels Attorneys Romulo B. Macalintal (Atty. Macalintal), Maria Bernadette V. Sardillo, Reagan F. De Guzman and Antonio Carlos B. Bautista appeared with a special power of attorney to represent her and to do whatever acts necessary, required and desirable in defending, suing, filing and prosecuting the case.<sup>102</sup>

To facilitate the conduct of the preliminary conference, the parties were given a preliminary conference guide, which summarized their respective admissions, proposed stipulations, issues, and witnesses.<sup>103</sup> The Tribunal then granted the parties' request to study the guide and submit their comments thereto within five (5) working days from the date of the preliminary conference or until July 18, 2017.<sup>104</sup>

The purposes of conducting a preliminary conference are: (1) to obtain stipulations or admissions of facts and documents to avoid unnecessary proof; (2) to simplify the issues; (3) to limit the number of witnesses; (4) to consider the most expeditious manner of the retrieval of ballot boxes containing the ballots, election returns, certificates of canvass, and other election documents involved in the election protest; and (5) to consider such other matters that may aid in the prompt disposition of the election protest.<sup>105</sup>

In consideration of these purposes, the Tribunal, with the protestant's agreement, categorized protestant's causes of action into the following:

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<sup>99</sup> Id. at 23289.

<sup>100</sup> Protestee's Preliminary Conference Brief dated June 16, 2017, *rollo* (Vol. XXXI), pp. 23412-23561; Protestant's Preliminary Conference Brief dated June 15, 2017, *id.* at 23563-23811, including Annexes.

<sup>101</sup> *Rollo* (Vol. XXXI), pp. 23864-A to 23864-D.

<sup>102</sup> See TSN, Preliminary Conference Hearing, July 11, 2017. pp. 3-4.

<sup>103</sup> Id. at 40-41.

<sup>104</sup> Id. at 42.

<sup>105</sup> 2010 PET RULES, Rule 29.

***First Cause of Action – Annulment of Proclamation***

***The proclamation of protestee Robredo as the duly elected Vice President is null and void because the COCs generated by the CCS are not authentic, and may not be used as basis to determine the number of votes that the candidates for VICE PRESIDENT received.***

***Second Cause of Action – Revision and Recount***

***Revision and recount of the paper ballots and/or the ballot images as well as an examination, verification, and analysis of the voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the EDCVL, and VRRs, the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the VCMs, CCS units, SD cards (main and backup), and the other data storage devices containing electronic data and ballot images in ALL of the 36,465 protested clustered precincts pursuant to Rules 38 to 45 of the 2010 PET Rules; and***

***Third Cause of Action - Annulment of Elections***

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

The Tribunal also asked clarificatory questions regarding the causes of action in the protest.<sup>106</sup>

In the First Cause of Action, Atty. Garcia, the lead counsel for protestant, clarified that even if protestant would be able prove his allegations that the COCs and CCS are not authentic, he did not intend to conduct a manual recount of the ballots in all the clustered precincts that

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<sup>106</sup> See TSN, Preliminary Conference Hearing, July 11, 2017, pp. 8-17.

functioned during the 2016 National and Local Elections. Atty. Garcia categorically emphasized that protestant's prayer for the collection, revision, and manual recount of ballots was limited to the 39,221 clustered precincts mentioned in the Second and Third Causes of Action. Atty. Garcia also admitted that the First Cause of Action was merely complementary to the Second and Third Causes of Action.<sup>107</sup>

As regards the Second Cause of Action, protestant maintained that he would no longer present any testimonial evidence to prove the material allegations insofar as the 36,465 protested clustered precincts were concerned and would rely only on the results of the revision of the ballots.<sup>108</sup>

Anent the Third Cause of Action, protestant insisted on his prayer for technical examination of the voters' registration record and the EDCVL and stated that he would present testimonial and documentary evidence that would prove that voters in Lanao del Sur, Maguindanao, and Basilan were deprived of their right to vote on election day.<sup>109</sup>

Thereafter, the Tribunal directed the parties to limit the number of witnesses for the Second and Third Causes of Action to three (3) witnesses per clustered precinct.<sup>110</sup> The parties also agreed to limit the witnesses for the First Cause of Action to twenty-five (25) for protestant and ten (10) for protestee.<sup>111</sup> In this regard, the Tribunal ordered the parties to submit a new list of witnesses in compliance with the given limits and to specify the applicable precincts per witnesses, within ten (10) days from the date of the preliminary conference or until July 21, 2017.<sup>112</sup> The parties were also informed that the Tribunal would adopt the Judicial Affidavit Rule.<sup>113</sup>

### ***Preliminary Conference Order and Dismissal of the First Cause of Action***

In the Resolution<sup>114</sup> dated August 29, 2017, the Tribunal dismissed the First Cause of Action of the Protest. The Tribunal found protestant's prayer to annul protestee's proclamation as Vice President meaningless and pointless considering that protestant did not intend to conduct a manual recount of the ballots in all clustered precincts that functioned during the 2016 National and Local Elections.

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<sup>107</sup> Id. at 10-12.

<sup>108</sup> Id. at 43, 46.

<sup>109</sup> Id. at 20-21.

<sup>110</sup> Id. at 43.

<sup>111</sup> Id. at 50.

<sup>112</sup> See Resolution dated July 11, 2017, p. 3, rollo (Vol. XXXi), p. 23978-C.

<sup>113</sup> See TSN, Preliminary Conference Hearing, July 11, 2017, p. 46.

<sup>114</sup> Rollo (Vol. XXXII), pp. 24482-24515.

The Tribunal explained that even if protestant succeeds in proving his first cause of action, this would not mean that he has already won the position for Vice President as this could only be determined by a manual recount of all votes in all precincts. Since protestant had clearly stated that he was not praying for such relief, to allow the First Cause of Action to continue would be an exercise in futility and would have no practical effect. ***Thus, the First Cause of Action was dispensed with for judicial economy and for the prompt disposition of the case.***<sup>115</sup>

In the same Resolution, the Tribunal also issued a Preliminary Conference Order<sup>116</sup> setting forth the parties' respective admissions and stipulations, the issues for the Tribunal's resolution, and the parties' proposed witnesses. ***With the dismissal of the First Cause of Action, the admissions, stipulations, and issues in the Preliminary Conference Order were limited to the Second and Third Causes of Action of the Protest and to the Counter-Protest.***

The Preliminary Conference Order also indicated Camarines Sur, Iloilo, and Negros Oriental as protestant's designated pilot provinces pursuant to Rule 65 of the 2010 PET Rules. As discussed, the revision of ballots was to begin with these three (3) provinces, which shall serve as "test cases" by which the Tribunal will determine whether to proceed with the revision of ballots of the remaining contested clustered precincts.

As regards the parties' witnesses, protestant, in his *Comment [To the Preliminary Conference Guide]*,<sup>117</sup> reserved his right to present additional witnesses for the Third Cause of Action, namely: handwriting, technology, and other technical experts and forensic investigators to testify on the result of the technical examination and forensic investigation of the paper ballots and/or the ballot images, other elections documents, as well as the automated election equipment and records such as the VCMs, CCS units, SD cards (main and back-up), and other data storage devices containing electronic data and ballot images in each of the 2,756 protested clustered precincts of Lanao del Sur, Maguindanao, and Basilan that functioned during the 2016 National and Local Elections. Protestant also reserved the presentation of three (3) registered voters and/or members of the Board of Election Inspectors (BEI) to identify paper ballots and/or ballot images, voter's receipts, and signatures on the lists of voters, particularly the EDCVL, VRRs, and the books of voters used during the 2016 National and Local Elections in the same provinces.<sup>118</sup>

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<sup>115</sup> Id. at 24483-24484.

<sup>116</sup> Id. at 24485-24514.

<sup>117</sup> Id. at 24324-24341.

<sup>118</sup> Id. at 24328-24329, 24501-24502.

As to the witnesses for the Second Cause of Action, protestant maintained his position that he would no longer present any testimonial evidence to prove the material allegations insofar as the 36,465 protested clustered precincts subject to revision of ballots.<sup>119</sup> Thus, protestant effectively waived his right to present any witnesses for his Second Cause of Action.

In addition, the Tribunal found that protestee complied with the limit on the number of witnesses and the directive to indicate the concerned clustered precinct.<sup>120</sup> Protestant, however, failed to submit his new list of witnesses for the Third Cause of Action. Thus, the Tribunal granted protestant a non-extendible period of five (5) days from notice to comply with the directive; otherwise, protestant's right to name and identify his witness, and to present them during the reception of evidence would be deemed waived.<sup>121</sup>

On September 11, 2017, protestant filed a *Manifestation and Compliance [Re: List of Witnesses for the Third Cause of Action]*<sup>122</sup> and submitted a list of his witnesses for the Third Cause of Action. However, protestant failed to specify the corresponding clustered precinct per witness. Thus, in the Resolution<sup>123</sup> dated September 19, 2017, the Tribunal noted protestant's *Manifestation and Compliance* but required the protestant to strictly comply with the Resolution dated August 29, 2017 within a final and non-extendible period of five (5) days from notice.

On October 9, 2017, protestant filed anew his *Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action)*<sup>124</sup> and submitted a revised list of witnesses showing the corresponding clustered precinct per witness, which the Court noted in its Resolution<sup>125</sup> dated November 7, 2017.

***Motion for Reconsideration on the sufficiency of the allegations in the Protest***

Addressing other pending incidents, the Tribunal, in the same August 29, 2017 Resolution, denied protestee's *Motion for Reconsideration Pro Tanto with Prayer to Set for Hearing* of the Tribunal's Resolution dated

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<sup>119</sup> Id. at 24502.

<sup>120</sup> Id. at 24501, 24503.

<sup>121</sup> Id. at 24502.

<sup>122</sup> Id. at 24795-24819.

<sup>123</sup> Id. at 24905-24907.

<sup>124</sup> *Rollo* (Vol. XXXIII), pp. 25059-25245.

<sup>125</sup> Id. at 25351-25354.

January 24, 2017.<sup>126</sup> Protestee had insisted in her motion that the Tribunal erred in finding the Protest sufficient in form and substance.

Guided by its previous ruling in *Roxas v. Binay*,<sup>127</sup> the Tribunal emphasized that in determining the sufficiency of the allegations of an election protest, what is merely required is a statement of the ultimate facts forming the basis of the Protest. Based on this yardstick, the Tribunal found the allegations in the Protest sufficient to apprise protestee of the issues that she had to meet, and to inform this Tribunal of the ballot boxes that had to be collected.<sup>128</sup> The Tribunal also stressed that protestee's Motion for Reconsideration essentially restated the arguments contained in her Answer with Counter-Protest, which the Tribunal had duly considered and passed upon in the Resolution dated January 24, 2017.<sup>129</sup>

***Motion for Technical Examination,  
Retrieval of Ballot Boxes, and  
Decryption and Printing of Ballot  
Images***

In addition, the Tribunal resolved the following incidents: (1) protestant's *Motion for the Collection and Retrieval of Ballot Boxes and Other Election Documents and Paraphernalia*<sup>130</sup> (Motion for Retrieval); (2) protestant's *Motion for Decryption and Printing of Ballot Images dated June 1, 2017* (Motion for Decryption); and (3) protestant's *Motion for Technical Examination*<sup>131</sup> dated July 10, 2017 (Motion for Technical Examination).

Protestant, in his Motion for Retrieval, sought the collection, retrieval, transport, and delivery of all the ballot boxes and their contents and all other documents or paraphernalia used in the elections, including the automated election equipment and records such as the VCMs, CCS units, SD cards (main and backup), and other data storage devices containing electronic and ballot images, evidencing the conduct and results of the elections in all clustered precincts in the pilot provinces of Camarines Sur, Iloilo, and Negros Oriental, and the provinces of Basilan, Lanao del Sur, Maguindanao, subject of his Third Cause of Action.

<sup>126</sup> *Rollo* (Vol. XXIX), pp. 22674-22698.

<sup>127</sup> P.E.T. Case No. 004, September 28, 2010 Resolution.

<sup>128</sup> *Rollo* (Vol. XXXII), pp. 24505-24506.

<sup>129</sup> *Id.* at 24506.

<sup>130</sup> *Rollo* (Vol. XXXI), pp. 23979-23983. Denominated as "Manifestation and Compliance with Reiterative Motion to Direct the Collection of Ballot Boxes and Other Election Documents and Paraphernalia for the Pilot Protest" dated July 10, 2017.

<sup>131</sup> *Id.* at 23966-23972.

Protestee, in her *Comment and Opposition [To the Motion for Retrieval]*<sup>132</sup> dated July 20, 2017, claimed that for logistical and practical reasons, the retrieval should only be limited to the three (3) pilot provinces.

On the other hand, in his Motion for Technical Examination, protestant prayed that the COMELEC handwriting experts conduct a technical examination on the voters' signatures appearing on the EDCVL and compare them against the voters' signatures appearing on the VRRs in each of the 2,756 clustered precincts of Lanao del Sur, Maguindanao, and Basilan. This would allegedly show massive presence of pre-shaded ballots and substitute voting in these provinces.<sup>133</sup>

Protestee argued in her *Comment and Opposition (To the Motion for Technical Examination dated 10 July 2017)*<sup>134</sup> that protestant was not entitled to the technical examination of the signatures of voters in Lanao del Sur, Maguindanao, and Basilan as these provinces are not among those protestant designated as his pilot provinces. Protestee also argued that the pending incidents and logistical and practical considerations as discussed during the Preliminary Conference warrant the denial of the Motion for Technical Examination.

In his Motion for Decryption, protestant prayed that the Tribunal direct the COMELEC-ERSD to conduct the decryption and printing of the ballot images from the relevant SD cards and/or data storage devices in each of the 36,465 protested clustered precincts. Protestant claimed that the conduct of the decryption and printing of ballot images would not only aid the Tribunal in the prompt disposition of the Protest, but would likewise assist protestant in the preparation for the recount proceedings and the presentation of his evidence for the protest.<sup>135</sup>

In her *Comment and Opposition (To the Motion for Decryption and Printing of Ballot Images dated 01 June 2017)*,<sup>136</sup> protestee asserted that the decryption and printing of ballot images was premature considering that Rule 43(q) of the 2010 PET Rules allows decryption only when the integrity of the ballot box and its contents was compromised or was not preserved.

The Tribunal partially granted the retrieval of the ballot boxes and other election documents, and the decryption of ballot images, only for the pilot provinces of Camarines Sur, Iloilo, and Negros Oriental. It also deferred action on the technical examination of the signature of voters in

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<sup>132</sup> *Rollo* (Vol XXXII), pp. 24220-24237.

<sup>133</sup> *Rollo* (Vol. XXXI), pp. 23966-23967.

<sup>134</sup> *Rollo* (Vol. XXXII), pp. 24238-24264.

<sup>135</sup> *Id.* at 24509.

<sup>136</sup> *Rollo* (Vol. XXXI), pp. 23395-23403.

Lanao del Sur, Maguindanao, and Basilan, following Rule 65 of the 2010 PET Rules.

Rule 65 of the 2010 PET Rules pertains to the initial determination of the grounds for the protest. Rule 65 grants the protestant the opportunity to designate three (3) provinces that best exemplify the frauds or irregularities raised in his or her Protest. These provinces constitute the “test cases” by which the Tribunal will determine whether it would proceed with the protest. The full effect of Rule 65, however, is yet to be determined by the Tribunal based on the required submission of Memoranda mentioned in this Resolution.

Following Rule 65, the Tribunal found it premature to retrieve the ballot boxes, decrypt and print the ballot images, and conduct a technical examination on voters’ signatures from provinces other than those designated to be the pilot provinces. The Tribunal further stressed that given the physical and logistical constraints it was facing, judicial economy required that action on matters other than those pertaining to the pilot provinces be deferred until such time that an initial determination has been made in the Protest.

On September 15, 2017, protestant filed a *Partial Motion for Reconsideration [of the Resolution dated August 29, 2017]*<sup>137</sup> (Partial Motion for Reconsideration) praying that the Tribunal immediately direct the conduct of technical examination of the voters’ signatures appearing in the EDCVL as against the voters’ signatures appearing on the VRRs in each of the 2,756 protested clustered precincts in Lanao del Sur, Maguindanao, and Basilan during the 2016 National and Local Elections. Protestant maintained that the technical examination was limited to the provinces in his Third Cause of Action, which was separate and independent from the pilot provinces for revision envisioned by Rule 65.

In her *Comment and Opposition (to the Partial Motion for Reconsideration dated 15 September 2017)*,<sup>138</sup> protestee asserted that the technical examination on the three (3) provinces covered by the Third Cause of Action is premature. Protestee claimed that protestant could not take separately and in piecemeal his causes of action in his Protest. Pursuant to Rule 65, protestant was bound by his choice of the pilot provinces, and to allow protestant to add three (3) more provinces would be a circumvention of the Rules.

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<sup>137</sup> *Rollo* (Vol. XXXII), pp. 24896-24904.

<sup>138</sup> *Rollo* (Vol. XXXIII), pp. 25270-25283.



***In the Resolution<sup>139</sup> dated November 7, 2017, the Tribunal denied protestant's Partial Motion for Reconsideration for lack of merit and reiterated its previous ruling to defer the technical examination after the initial determination of the grounds of the Protest pursuant to Rule 65 of the 2010 PET Rules.***

***Lifting of the Precautionary Protection Order on the clustered precincts not covered by the Protest and Counter-Protest***

As discussed, on July 12, 2016, the Tribunal issued a Precautionary Protection Order mandating the COMELEC and its agents to preserve and safeguard the integrity of all the ballot boxes and their contents in the 92,509 clustered precincts. Subsequently, in a Resolution dated August 29, 2017, the Tribunal resolved to dismiss the First Cause of Action for judicial economy and the prompt resolution of the Protest. Thus, given that the allegations in the Second and Third Causes of Action are specific only to the 39,221 clustered precincts, only the said precincts remain subject of the Protest as a result of the dismissal of the First Cause of Action. In this regard, the Tribunal, in the Resolution<sup>140</sup> dated October 10, 2017, lifted the Precautionary Protection Order with respect to the 45,751 clustered precincts not covered by the Second and Third Causes of Action of the Protest and the Counter-Protest as there was no more purpose in further preserving the ballot boxes and other election paraphernalia corresponding to the 45,751 clustered precincts.

***Decryption and Printing of Ballot Images, Audit Logs, and Election Returns***

In relation to the decryption and printing of ballot images, the Tribunal, in the Resolution dated August 29, 2017, directed the COMELEC to inform the Tribunal of its recommended procedures, logistics, schedule, and cost of the decryption and printing of the ballot images for the pilot provinces of Camarines Sur, Iloilo, and Negros Oriental.<sup>141</sup>

In compliance thereto, the COMELEC, on September 15, 2017, submitted its *Manifestation/Compliance with Motion*,<sup>142</sup> attaching thereto Resolution No. 10155 on the Guidelines to Decrypt Ballot Images and other related resolutions, the Order of Payment, and Summary of Supplies.<sup>143</sup>

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<sup>139</sup> Id. at 25351-25354.

<sup>140</sup> Id. at 25246-25251.

<sup>141</sup> *Rollo* (Vol. XXXII), p. 24513.

<sup>142</sup> Id. at 24853-24861.

<sup>143</sup> Id. at 24862-24883.

On October 9, 2017, the COMELEC filed another *Manifestation*<sup>144</sup> requesting that the decryption and printing of the ballot images, election returns, and audit logs for all the protested clustered precincts of the pilot provinces be conducted on October 23, 2017 at 9:00 a.m. at the Project Management Office of the COMELEC until the completion thereof.

In the Resolution<sup>145</sup> dated October 10, 2017, the Tribunal found the COMELEC's Compliance lacking in details, particularly on the logistics and duration of the decryption and printing activity. Thus, while the Tribunal granted the COMELEC's request to start the decryption and printing of ballot images, audit logs and election returns on October 23, 2017, the COMELEC was directed to provide the Tribunal information on the following matters related to the decryption and printing process:

1. the estimated duration of decryption and printing process per pilot province, and for all three pilot provinces;
2. the number of computers and printers to be used and COMELEC personnel to be assigned to conduct the decryption and printing process;
3. the number of party representatives that may be allowed to witness the decryption and printing process; and
4. other information on the decryption and the printing process that the COMELEC may deem useful to the Tribunal and the parties, including but not limited to the storage of the printed ballot images, audit logs, and election returns.<sup>146</sup>

On October 20, 2017, protestant filed a *Manifestation [Re: Payment of the Costs and Expenses for the Decryption and Printing of Ballot Images]*,<sup>147</sup> informing the Tribunal that protestant, on October 18, 2017, paid the COMELEC the costs and expenses for the conduct of the decryption and printing of ballot images, election returns and audit logs for all the protested clustered precincts of the pilot provinces. Protestant also alleged that he also delivered the supplies required by the ERSD for the said activity.

As scheduled, the decryption and printing of the ballot images for the three (3) pilot provinces commenced on October 23, 2017 at 9:00 a.m. Representatives from protestant, protestee and the Tribunal, together with representatives from the COMELEC-ERSD, stood as witnesses in the authentication of the printed ballot images.

Meanwhile, on October 24, 2017, protestee filed an *Urgent Ex-parte Motion to be Allowed to Secure Soft Copies of the Ballot Images and Other*

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<sup>144</sup> *Rollo* (Vol. XXXIII), pp. 25046-25051.

<sup>145</sup> *Id.* at 25248-25251.

<sup>146</sup> *Id.* at 25250.

<sup>147</sup> *Id.* at 25371-25376.

*Reports from the Decrypted Secured Digital Cards*,<sup>148</sup> praying that she be allowed to secure soft copies of the ballot images and other reports from the decrypted SD cards, in lieu of the printed images. The Tribunal granted protestee's request in its Resolution dated November 7, 2017.<sup>149</sup> Protestant filed a motion for reconsideration, but it was denied by the Tribunal in its Resolution<sup>150</sup> dated January 10, 2018.

On October 30, 2017, COMELEC filed its *Compliance*<sup>151</sup> to the October 10, 2017 Resolution attaching a Memorandum dated October 26, 2017 from Dir. Ester L. Villaflor-Roxas of the COMELEC-ERSD addressing the Tribunal's concern as indicated in its Resolution. The said Memorandum stated that only forty (40) clustered precincts could be completed in a day considering that each printed ballot image needs to be authenticated by representatives from the COMELEC, PET, protestant, and protestee. And with a daily output of forty (40) clustered precincts, the decryption, printing, and authentication of the printed ballot images and other files is estimated to be completed with seven (7) months.<sup>152</sup>

On November 21, 2017, protestant filed a *Motion to Turnover to the Protestant the Official, Printed and Authenticated Copies of the Decrypted Ballot Images, Election Returns and Audit Logs*,<sup>153</sup> praying for the Tribunal to turn over to the protestant all the official printed and authenticated copies of the decrypted ballot images, election returns, and audit logs for all the protested clustered precincts of the pilot provinces of Camarines Sur, Iloilo, and Negros Oriental. Protestant claimed that he should have custody of the official printed and authenticated copies of the decrypted ballot images, election returns and audit logs because he initiated the decryption and printing thereof and paid the corresponding fee therefor. Protestant further alleged that he would use this to prepare for the presentation of his evidence in this Protest.

In the Resolution dated January 10, 2018, the Tribunal allowed protestant to secure only photocopies or soft copies of the decrypted ballot images, election returns, and other reports for all the protested clustered precincts of the pilot provinces, subject to the payment of incidental costs. The Tribunal held that for the purpose of the conduct of the revision proceedings, the custody of the official, printed, and authenticated copies of the decrypted ballot images, election returns, and audit logs from the protested clustered precincts of the said pilot provinces shall remain with the Tribunal.<sup>154</sup>

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<sup>148</sup> Id. at 25325-25332.

<sup>149</sup> Id. at 25352.

<sup>150</sup> Id. at 25751-25753.

<sup>151</sup> Id. at 25333-25345, including Annexes.

<sup>152</sup> Id. at 25340.

<sup>153</sup> Id. at 25438-25444.

<sup>154</sup> Id. at 25751.

On December 3, 2018, COMELEC turned over the custody of the printed ballot images, audit logs, and election returns in all the clustered precincts of the pilot provinces to the Tribunal.

### ***Retrieval of Ballot Boxes from the Pilot Provinces***

On August 29, 2017, the Tribunal partially granted protestant's Motion for Retrieval only for the precincts in the pilot provinces. Prior thereto, or on August 8, 2017, the Tribunal resolved to create an exploratory mission/retrieval team composed of nine (9) officials and personnel of the Tribunal to facilitate such retrieval of ballot boxes and election documents from the three (3) pilot protested provinces.<sup>155</sup> The exploratory mission entailed coordinating with concerned officials from COMELEC, the local government units and the Philippine National Police, the PhilPost, and finding suitable transportation procedures and storage places to assure the most efficient, expeditious, and safest way to retrieve and transport the ballot boxes.

In the Tribunal's Resolutions dated December 5, 2017,<sup>156</sup> April 24, 2018,<sup>157</sup> and September 11, 2018,<sup>158</sup> the retrieval team was authorized to undertake retrieval of ballot boxes and other election paraphernalia in the provinces of Camarines Sur, Iloilo, and Negros Oriental, respectively, following exploratory missions conducted in these areas. The retrieval from all three (3) provinces was concluded on September 19, 2018.<sup>159</sup>

### ***Preparation for the Revision of Ballots***

During the preliminary conference, the Tribunal informed the parties of the physical and logistical constraints that the PET was facing with respect to the venue of the revision of ballots. Based on the state of physical facilities of the SC at that time, the only venue spacious enough inside the SC to conduct the revision process was the SC gymnasium. To be a proper and suitable venue for the revision process, and accommodate fifty (50) revision tables at most, the SC gymnasium had to be renovated and retrofitted, which took a significant period of time.<sup>160</sup>

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<sup>155</sup> See *rollo* (Vol. XXXII), p. 24429-N; see also Resolution dated December 5, 2017, *id.* at 25671.

<sup>156</sup> *Rollo* (Vol. XXXIII), pp. 25671-25674.

<sup>157</sup> *Rollo* (Vol. XXXIV), pp. 26664-26672.

<sup>158</sup> *Rollo* (Vol. XLI), pp. 32233-32240.

<sup>159</sup> Report dated September 7, 2018.

<sup>160</sup> TSN, Preliminary Conference Hearing, July 11, 2017, pp. 47-48.

In the Resolution<sup>161</sup> dated August 8, 2017, the Tribunal approved the use of the SC gymnasium for revision and the parking space of the SC-Court of Appeals Multi-Purpose Building as storage for the ballot boxes and other election documents.

In addition to renovating the venue for revision, there was also a need to amend the 2010 PET Rules on the composition of the Revision Committee (RC), as well as the qualification and compensation of the members thereof, and the hiring and training of the members of the RC before the start of the revision process.

In this regard, the Tribunal amended Rule 39(b) of the 2010 PET Rules such that each RC would now be composed of a Coordinator who shall be a college graduate, a recorder, and one (1) representative from the protestant and protestee.<sup>162</sup> The Tribunal likewise resolved to amend the compensation of the members of the RCs under Rule 40.<sup>163</sup>

On January 10, 2018, the Tribunal resolved to further amend Rule 39(b) and rename or retitle the position of Coordinator as Head Revisor (HR) and collapse the position of recorder.<sup>164</sup> Hence, the RC became composed of three (3) members: the HR and one representative from each party.

Further, the Tribunal authorized the Acting Administrative Officer of the Tribunal to screen, hire and train applicants for Head Revisor.<sup>165</sup>

### ***Start of the Revision Proceedings***

On January 16, 2018, the Tribunal issued the PET Revisor's Guide for the Revision of Ballots under the Automated Election System (Revisor's Guide) to govern the conduct of revision in election protests falling within the jurisdiction of the Tribunal under the AES, in lieu of the rules and procedures set out under Rules 38 to 45 (Revision of Votes) of the 2010 PET Rules.

The objectives of the process of revision of ballots are: (1) to verify the physical count of the ballots; (2) to recount the votes of the parties; (3) to

<sup>161</sup> *Rollo*, (Vol. XXXII), pp. 24429-K to 24429-O.

<sup>162</sup> See Resolution dated August 8, 2017, *rollo* (Vol. XXXII), p. 24429-L and Resolution dated October 18, 2017, *rollo* (Vol. XXXIII), p. 25313.

<sup>163</sup> *Rollo* (Vol. XXXII), p. 24429-M.

<sup>164</sup> *Rollo* (Vol. XXXIII), p. 25752.

<sup>165</sup> *Rollo* (Vol. XXXII), p. 24429-M. See also Resolution dated October 18, 2017, *rollo* (Vol. XXXIII), p. 25313; Resolution dated January 30, 2018, *rollo* (Vol. XXXIV), pp. 25958-25960; Resolution dated February 20, 2018, *id. at rollo* (Vol. XXXIV), pp. 26105-26107; and Resolution dated March 20, 2018, *rollo* (Vol. XXXIV), pp. 26218-26222.

record the parties' objections and claims thereon; and (4) to accordingly mark such ballots which were objected to and claimed by the parties for purposes of identification during subsequent examination by the Tribunal and for reception of evidence, if any.<sup>166</sup> In other words, the main purpose of the revision proceeding is to conduct a physical recount of the ballots and provide the parties with an opportunity to register their objections and claims thereon, the validity of which will later be ruled upon by the Tribunal during the appreciation stage.<sup>167</sup> For the present case, the revision process was undertaken by fifty (50) RCs constituted by the Tribunal, each composed of an Head Revisor, and one representative of the protestant and one representative of the protestee (Party Revisors).<sup>168</sup>

In addition, Revision Supervisors, who were lawyers, were designated by the respective offices of the Chairman and Members of the Tribunal to directly oversee the revision process.<sup>169</sup> Each revision day, two (2) Members of the Tribunal were required to assign lawyers from their offices who had previously undergone the necessary training to act as Revision Supervisors. The Revision Supervisors were tasked to, among others, settle issues relating to which shadings or markings were considered votes or non-votes,<sup>170</sup> settle matters and questions referred to them by the HRs,<sup>171</sup> and remove or oust persons from the revision hall for improper conduct tending to delay or disrupt the proceedings or prohibit such persons from participating in subsequent revision proceedings.<sup>172</sup> The Revision Supervisors prepared Incident Reports on matters involving irregularities found on the face of the ballots and election paraphernalia during revision.

The Incident Reports prepared by the Revision Supervisors involving alleged tampered ballots and irregularities on the external condition of the ballot boxes, glaringly different BEI signatures on the ballots, excess ballots, and damaged and wet ballots were referred for appropriate action by the Tribunal to the panel of Commissioners who played key roles in the revision process.

During the revision process, the panel of Commissioners examined the ballots subject of the Incident Reports *vis-à-vis* the relevant election documents pertaining to the subject clustered precincts and undertook the process of bar code matching each and every such ballot in cases where the physical ballots exceeded the number of registered voters in the concerned precincts for the end objective of identifying the excess ballot.

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<sup>166</sup> REVISOR'S GUIDE, Rule 4.

<sup>167</sup> See Resolution dated September 18, 2018, *rollo* (Vol. XLI), p. 32728; see also *rollo* (Vol. XXXIV), p. 26368.

<sup>168</sup> REVISOR'S GUIDE, Rule 6.

<sup>169</sup> *Id.*, Rule 9.

<sup>170</sup> *Id.*, Rule 62.

<sup>171</sup> *Id.*, Rule 48.

<sup>172</sup> *Id.*, Rule 32.

The panel of Commissioners submitted nine (9) memoranda reflecting their findings on the Incident Reports and recommending the continuation of the revision proceedings on the subject ballot boxes using the decrypted images/picture images of the ballots therein for the purpose of determining the validity and authenticity of the votes. The Commissioners likewise recommended directing the Revision Supervisors and HRs that revision proceedings not be suspended in future similar instances and that discrepancies and irregularities simply be recorded in the Revision Reports for consideration by the Tribunal during appreciation proceedings. The City and Municipal Treasurers and the BEI were required to explain the irregularities found on the ballots, ballot boxes, and other election paraphernalia.

Revision of ballots involved the following process: *first*, prior to the actual recount of the votes of the parties, the HRs were required to authenticate the ballots to ensure their genuineness, ensuring that the ballots contained all the security features of the official ballots and using ultraviolet lamps which could detect the hidden security marks;<sup>173</sup> *second*, such HRs segregated the ballots which were read by the VCMs into four (4) categories: (1) Ballots for Protestant; (2) Ballots for Protestee; (3) Ballots for Other Candidates; and (4) Ballots with Stray Votes (ballots with no votes or those with more than one (1) vote for the Vice President position);<sup>174</sup> *third*, the revisors for protestant and protestee registered their respective objections to the Ballots for Protestee and Ballots for Protestant, respectively;<sup>175</sup> *fourth*, both Party Revisors registered their claims on the Ballots for Other Candidates and Ballots with Stray Votes;<sup>176</sup> *fifth*, both Party Revisors registered their claims on ballots that were rejected by the VCMs and were not thus included in the ballot segregation, if any;<sup>177</sup> and *lastly*, each RC recorded all relevant data, including the results of their revision, in a Revision Report signed by all three (3) members and to which the claims and objections of the Party Revisors were annexed for subsequent ruling by the Tribunal during the appreciation stage.

The revision of ballots for the pilot protested precincts commenced on April 2, 2018 and was concluded on February 4, 2019. Paper ballots and decrypted ballot images were revised in a total of 5,415 clustered precincts. Three (3) clustered precincts were left unrevised as the paper ballots contained in their ballot boxes were wet, damaged and unreadable, and at the same time, COMELEC failed to provide the Tribunal with their respective decrypted ballot images.

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<sup>173</sup> Id., Rule 60.

<sup>174</sup> Id., Rule 61.

<sup>175</sup> Id., Rule 64.

<sup>176</sup> Id., Rules 65 and 66.

<sup>177</sup> Id., Rule 67.

### ***Gag Order and Show Cause Order***

On February 13, 2018, considering that the revision of ballots was then about to commence, the Tribunal directed the parties to strictly observe the *sub judice* rule.<sup>178</sup> This order was reiterated in the Resolution<sup>179</sup> dated March 20, 2018. However, despite these directives, the parties and their counsel continued to disclose sensitive information on the Protest, as shown in several news reports.

Hence, in the Resolution<sup>180</sup> dated April 10, 2018, the Tribunal, to preserve the sanctity of the proceedings, directed the parties to show cause and explain why they should not be cited in contempt for violating its Resolutions dated February 13, 2018 and March 20, 2018.<sup>181</sup>

The parties filed their respective *Compliances*,<sup>182</sup> both dated April 23, 2018, where they each denied having violated the *sub judice* rule. Protestant, while admitting that he made statements regarding the Protest before the media on April 2, 2018, argued that such statements were limited to his “personal observations” and were not intended to prejudge the issue or influence the Tribunal. He further claimed that it was protestee who violated the *sub judice* rule by issuing misleading pronouncements. On the other hand, protestee claimed that her statements were made in defense of “frivolous media releases” issued by protestant.

On June 26, 2018, the Tribunal found that the parties’ continuous public discussion of pending issues tended to sway public opinion and may potentially destroy the people’s confidence in the Tribunal’s resolution of the protest. Hence, it found that the parties violated the *sub judice* rule, which restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice.<sup>183</sup>

Accordingly, the Tribunal imposed the penalty of fine of Fifty Thousand Pesos (P50,000.00) on both parties, and were sternly warned that a repetition of the same or similar acts would be dealt with more severely.<sup>184</sup>

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<sup>178</sup> *Rollo* (Vol. XXXIV), p. 26092.

<sup>179</sup> *Id.* at 26218-26222.

<sup>180</sup> *Id.* at 26366-26370.

<sup>181</sup> *Id.* at 26369.

<sup>182</sup> Protestee’s Compliance (of the Resolution dated 10 April 2018), *rollo* (Vol. XXXIV), pp. 26636-26651; Protestant’s Compliance [to the Show Cause Order as contained in Resolution dated 10 April 2018], *rollo* (Vol. XXXIV), pp. 26652-26663.

<sup>183</sup> Resolution dated June 26, 2018, *rollo* (Vol. XXXVI), pp. 27916-27917, citing *Romero II v. Estrada*, 602 Phil. 312, 219 (2009).

<sup>184</sup> *Rollo* (Vol. XXXVI), p. 27917.



### ***Threshold Issues***

Rule 43(l) of the 2010 PET Rules provides that during segregation of ballots in the revision process, a 50% threshold is to be applied in determining a valid vote:

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

On the other hand, the Revisor's Guide provides that any issue on whether a mark or shade is within the threshold must be resolved by the assigned Revision Supervisor in the following manner:

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

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

Challenging the standard used by the RCs in determining valid votes on the ballots during the revision stage, protestee filed an *Urgent Ex-Parte Motion to Direct the Head Revisors to Apply the Correct Threshold Percentage as Set by the Commission on Elections in the Revision, Recount and Re-Appreciation of the Ballots, in Order to Expedite the Proceedings*<sup>185</sup> dated April 5, 2018 (*Ex-Parte Motion*). Protestee claimed that the threshold percentage in determining the validity of votes during the 2016 National and Local Elections was 25% and not 50% and, thus, moved that the Tribunal direct its HRs to use the 25% threshold percentage in determining valid

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<sup>185</sup> *Rollo* (Vol. XXXIV), pp. 26282-26293.

votes. In support of her claim, protestee cited the Random Manual Audit (RMA) Visual Guidelines and RMA Report of the COMELEC.

On April 10, 2018, the Tribunal denied Protestee's *Ex-Parte* Motion, ruling that it did not have any basis to impose the 25% threshold as even the RMA Report — the document presented by protestee to support her claim — indicates the impossibility of using such threshold. Moreover, the Tribunal held that the mention of a threshold in the Revisor's Guide is in reference to the 50% threshold in the 2010 PET Rules. Hence, the Tribunal retained the 50% threshold under the 2010 PET Rules as the basis of the HRs in determining a valid vote.<sup>186</sup>

Protestee filed an *Urgent Motion for Reconsideration (of the Resolution dated 10 April 2018) with Reiterative Prayer to Immediately Direct the Head Revisors to Use the Twenty-Five (25%) Threshold Percentage in the Revision, Recount and Re-Appreciation of Ballots*<sup>187</sup> dated April 18, 2018 (Motion for Reconsideration). Protestee, for the first time, furnished the Tribunal a copy of COMELEC *en banc* Resolution No. 16-0600 dated September 6, 2016 wherein the COMELEC allegedly adopted the RMA guidelines as its position on the type of marks or shading that would be read by the VCMs as votes or non-votes for the 2016 National and Local Elections.

On May 28, 2018, protestant filed a *Comment/Opposition*<sup>188</sup> dated May 22, 2018. He argued, among others, that COMELEC Resolution No. 16-0600 did not contain a categorical declaration that the 25% threshold must be applied, even the Senate Electoral Tribunal was then observing the 50% threshold in the segregation of ballots. Protestant likewise argued that protestee failed to timely move for the amendment of the 2010 PET Rules upon the filing of the protest and is, thus, barred by *laches*.

On July 6, 2018, the Office of the Solicitor General (OSG), acting as the People's Tribune, filed a *Manifestation and Motion (in Lieu of Comment)*,<sup>189</sup> stating that the Tribunal correctly upheld the 50% threshold as it had no basis to adopt the 25% threshold. It also posited that the Tribunal, being the sole judge of all contests relating to election, returns, and qualifications of the Vice President, may promulgate rules and regulations on matters falling within its jurisdiction, including the threshold to be used in its recount. It thus prayed that the Tribunal affirm its Resolution dated

<sup>186</sup> Resolution dated April 10, 2018, *id.* at 26366-26370.

<sup>187</sup> *Rollo* (Vol. XXXIV), pp. 26483-26496.

<sup>188</sup> *Rollo* (Vol. XXXV), pp. 27427-27439. Denominated as "Comment/Opposition [To Protestee's Urgent Motion for Reconsideration (of the Resolution dated 10 April 2018) with Reiterative Prayer to Immediately Direct the Head REvisors to Use the Twenty-Five (25%) Percent Threshold Percentage in the Revision, Recount and Re-Appreciation of Ballots]."

<sup>189</sup> *Rollo* (Vol. XXXVI), pp. 28249-28271.

April 10, 2018 and grant the COMELEC a fresh period to file its own comment.

On July 23, 2018, the COMELEC filed its *Comment*<sup>190</sup> narrating that it calibrated the VCMs for the 2016 National and Local Elections to read marks that cover at least about 25% (when seen by human eyes) of the oval for each candidate as valid votes. All election results were based on this threshold. It alleged that the RMA process, which involved a visual examination of the paper ballots much like a revision of ballots in election protests, used a diagrammatic guide that was consistent with the 25% threshold. According to the COMELEC, the RMA Guide — the guide submitted in evidence by protestee in her *Ex Parte* Motion — was adopted and confirmed by the COMELEC *en banc* through its Resolution No. 16-0600 and that the 25% threshold under the RMA Guide was being used in all its protest cases for the 2016 National and Local Elections.

Moreover, the COMELEC stated that while it recognizes the power of the Tribunal to promulgate its own rules for election contests falling within its exclusive constitutional jurisdiction, the COMELEC is endowed with a similar constitutional power to decide all questions affecting elections. It alleged that decisions on election disputes like protests must be based on standards actually used during the conduct of the elections concerned. Hence, the COMELEC submitted that the threshold issue is a question of fact, specifically, a question of what was used to appreciate, count votes, and proclaim winners in the 2016 National and Local Elections.

Acting on protestee's Motion for Reconsideration, the Tribunal, in the Resolution<sup>191</sup> dated September 18, 2018, directed its HRs to refer to the election returns used during the 2016 National and Local Elections to verify the total number of votes as read and counted by the VCMs and accordingly amended, effective immediately, Rule 62 of the Revisor's Guide to read as follows:

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

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

<sup>190</sup> *Rollo* (Vol. XXXVII), pp. 28970-28983. Denominated as "Comment (On the Urgent Motion for Reconsideration (Of the Resolution dated April 10, 2018) With Reiterative Prayer to Immediately Direct the Head Revisors to Use the Twenty-Five (25%) Threshold Percentage in the Revision, Recount and Re-Appreciation of Ballots dated April 18, 2018 filed by Counsel for Protestee Robredo)."

<sup>191</sup> *Rollo* (Vol. XLI), pp. 32728-32748.

votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such National and Local Election reasons exist that will justify their rejection. **Any issue on the segregation and classification of ballots by the Head Revisor shall be resolved by the assigned Revision Supervisor, based on the guidelines set by the Tribunal.** Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.<sup>192</sup>

The Tribunal clarified that, prior to the Motion for Reconsideration of protestee, it was never furnished a copy of COMELEC Resolution No. 16-0600 which appeared to be the only official act of the COMELEC that referred to a 25% threshold. Prior to COMELEC's Comment to protestee's Motion for Reconsideration, it was never informed by the COMELEC that the latter had adopted a 25% threshold in determining valid votes. Before the filing of these pleadings, the Tribunal was merely furnished a copy of the RMA Guide which was not an official act or issuance by the COMELEC *en banc* and could not have constituted a sufficient basis to amend the rules of the Tribunal. The Tribunal likewise emphasized that the parties were apprised of the 50% threshold under the 2010 PET Rules before the start of the revision proceedings, but neither of them brought COMELEC Resolution No. 16-0600 to the Tribunal's attention.

In any case, the Tribunal declared that from the submissions of the parties and the COMELEC, what was adopted during the 2016 National and Local Elections was a range of 20% to 25% shading threshold for the following reasons: first, no official document predating the 2016 National and Local Elections was submitted to support the claim that the machines were indeed calibrated to observe a 25% threshold; second, in COMELEC Commissioner Luie Tito G. Guia's letter to the Tribunal dated September 6, 2016, it was disclosed that the public was not apprised of a 25% voting threshold as the voters were told to shade the ovals fully; third, no threshold was adopted for the 2016 National and Local Elections prior to COMELEC Resolution No. 16-0600, except for the 20% threshold for detainee voting under COMELEC Resolution No. 10115 dated May 3, 2016; and finally, the RMA Visual Guidelines states that a valid mark must score higher than a VCM's mark detection threshold of 20%-25%; otherwise, it is considered an invalid mark.

As to what must be used in its revision of ballots, the Tribunal noted that the purpose of the revision process is simply to recount the votes of the parties. This is implemented by mimicking (or verifying/confirming) how the VCMs read and counted the votes during the elections. This objective can be achieved by referring to the election returns generated by the VCMs

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<sup>192</sup> Id. at 32746.

used in the 2016 National and Local Elections. The election return is a document in electronic and printed form directly produced by the VCM showing the date, province, municipality, and precinct in which the election was held, and the votes in figures for each candidate in a clustered precinct where the said VCM was utilized.<sup>193</sup>

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

Hence, from October 1, 2018 up to the conclusion of the revision process on February 4, 2019, the Head Revisors referred to the Election Returns and segregated the votes of the parties in accordance with the votes reflected therein.

### ***Protestant's Motion for Inhibition***

On August 6, 2018, protestant filed an *Extremely Urgent Motion to Inhibit Associate Justice Alfredo Benjamin S. Caguioa*<sup>194</sup> (Motion to Inhibit) on the ground of evident bias and manifest partiality in favor of protestee.

Protestant alleged that the Member-in-Charge, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa), was biased in favor of protestee due to his close ties with former President Benigno Simeon C. Aquino III (former President Aquino) who was a member of the same political party as protestee. Former President Aquino was a classmate of Justice Caguioa and had previously appointed him as Chief Presidential Legal Counsel, Secretary of Justice, and eventually, as Associate Justice of the SC. Protestant asserted that former President Aquino and his family bore a grudge against protestant and had handpicked protestee as the Liberal Party's candidate for Vice President in the 2016 National and Local Elections. Protestant also insinuated that Justice Caguioa's spouse was close to former President Aquino's family and protestee, and campaigned for the latter during the 2016 National and Local Elections. Based on these claims,

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<sup>193</sup> Republic Act No. 9369, Sec. 2(4), January 23, 2007.

<sup>194</sup> *Rollo* (Vol. XXXVII), 29286-29304, including Annexes.

protestant prayed to recuse Justice Caguioa from participating in any of the proceedings in connection with the Protest.<sup>195</sup>

In support of his Motion to Inhibit, protestant appended an August 4, 2018 column entitled “Questions that need answers” by Len Montaña published on the website [www.radyo.inquirer.net](http://www.radyo.inquirer.net), on the alleged conjugal conspiracy video which was supposedly circulating in social media, along with a copy of the said video.

The Tribunal unanimously denied protestant’s Motion to Inhibit in its Resolution<sup>196</sup> dated August 28, 2018 for utter lack of merit, ruling that the grounds cited by protestant did not fall under any of the grounds for inhibition under Section 1,<sup>197</sup> Rule 8 of the Internal Rules of the Supreme Court. Citing *Philippine Commercial International Bank v. Spouses Dy*,<sup>198</sup> the Tribunal held that the mere imputation of bias or partiality was not sufficient ground for inhibition, especially when the charges against Justice Caguioa were without basis and not supported by any evidence.

The Tribunal further held that an opinion piece in a news website and an unauthenticated video circulating on social media websites were not credible and admissible supporting evidence, and that these were not even worthy of cognizance.

The Tribunal also found that Justice Caguioa had shown impartiality and that the proceedings in the Protest had moved forward with utmost dispatch despite the numerous pleadings filed and incidents brought up by both parties and the COMELEC, as well as the logistical and administrative concerns in relation to the Protest. The Tribunal also emphasized that all of its decisions were arrived at through a majority vote of all the members of the Court sitting *en banc* as the Tribunal, and not decided by the Member-in-

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<sup>195</sup> Id. at 29292-29296.

<sup>196</sup> *Rollo* (Vol. XL), pp. 31745-31756.

<sup>197</sup> SECTION 1. *Grounds for inhibition.* – A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

(a) the Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;

(b) the Member of the Court was counsel, partner or member of a law firm that is or was the counsel in the case subject to Section 3(c) of this rule;

(c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;

(d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;

(e) the Member of the Court was executor, administrator, guardian or trustee in the case; and

(f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

The inhibiting Member must state the precise reason for the inhibition.

<sup>198</sup> 606 Phil. 615 (2009).

Charge alone. Thus, the Tribunal denied protestant's Motion to Inhibit for lack of factual and legal basis.

### ***Appreciation of Ballots***

After the revision had concluded, the revised ballots were then appreciated. During this process, the Tribunal validates and verifies the physical count of the ballots during the revision stage and rules on the parties' respective claims and objections thereon.

For this purpose, the Tribunal approved, on November 6, 2018, the PET Guidelines in the Appreciation of Ballots Under the Automated Election System<sup>199</sup> (Ballot Appreciation Guidelines), which superseded and replaced the Guidelines previously approved by the Tribunal on January 16, 2018.<sup>200</sup> The Ballot Appreciation Guidelines were used in the appreciation of the ballots, specifically in determining the validity of the ballots and whether they contained valid votes. The cardinal objective of ballot appreciation was to discover and give effect to the intent of the voter.<sup>201</sup>

***The appreciation of the revised ballots from the pilot provinces started on January 14, 2019 and was completed on August 14, 2019.***

### ***Protestant's Omnibus Motion and Protestee's Motion to Resolve***

As discussed, the Tribunal resolved to defer action on protestant's Motion for Technical Examination until after its initial determination of the grounds of the Protest under Rule 65 of the 2010 PET Rules. This was reiterated by the Tribunal in its November 7, 2017 Resolution of protestant's Motion for Reconsideration.

Despite the foregoing, protestant filed an *Extremely Urgent Manifestation of Grave Concern with Omnibus Motion*<sup>202</sup> dated December 10, 2018 (Omnibus Motion) where he narrated that an election protest was filed by Abdusakur M. Tan (Tan) against Mujiv Hataman (Hataman) before the COMELEC, docketed as EPC Case No. 2016-37. Protestant averred that Tan informed him that the Voter's Identification Division (VID) of the COMELEC-ERSD conducted a technical examination of the signatures and thumbprints appearing in the VRRs and compared them to those in the EDCVL of 508 established precincts in the provinces of Lanao de Sur, Maguindanao, and Basilan — the same three (3) provinces subject of his

<sup>199</sup> *Rollo* (Vol. XLII), pp. 33578-33595.

<sup>200</sup> *Rollo* (Vol. XXXIV), pp. 25784-25798.

<sup>201</sup> Ballot Appreciation Guidelines, *rollo* (Vol. XLII), pp. 33578-33579.

<sup>202</sup> *Rollo* (Vol. XLV), pp. 36231-36239.



Third Cause of Action and Motion for Technical Examination. Allegedly, the technical examination revealed that 40,528 signatures and 3,295 thumbprints in the EDCVL of these precincts did not match the original signatures and thumbprints in their VRRs. Consequently, the VID concluded that the “2016 National, Local and ARMM elections [were] marked with different forms of election fraud such as massive substituted voting.”<sup>203</sup> Hence, protestant prayed that the Tribunal issue a *subpoena duces tecum* to the VID to produce and submit the report on the alleged technical examination that it conducted on the 508 established precincts, investigate the BEIs concerned, and immediately direct the VID to conduct a technical examination on EDCVLs and VRRs of the entire 2,756 protested clustered precincts of the three (3) subject provinces.

The Tribunal directed both protestee and the COMELEC to file their respective Comments. Protestee filed a *Counter-Manifestation with Comment and Opposition (On the Extremely Urgent Manifestation of Grave Concern with Omnibus Motion dated 10 December 2018)*<sup>204</sup> dated January 14, 2019, arguing that granting the prayer for technical examination would be tantamount to allowing the protestant to expand his designated pilot provinces in contravention of Rule 65 of the 2010 PET Rules. For its part, the COMELEC filed a *Manifestation (In lieu of a Comment on Protestant Marcos’ Extremely Urgent Manifestation of Grave Concern with Omnibus Motion)*<sup>205</sup> dated February 5, 2019 confirming that EPC Case No. 2016-37 was then pending before the COMELEC Second Division, and thus, was covered by the *sub judice* rule which restricts disclosures pertaining to ongoing judicial proceedings.

Protestant filed a *Consolidated Reply with Urgent Motion to Resolve Protestant’s Omnibus Motion*<sup>206</sup> dated March 22, 2019, where he countered that protestee’s argument was misleading, as his Second and Third Causes of Action are separate and independent from one another. Allegedly, his Second Cause of Action was for judicial revision and recount of ballots while his Third Cause of Action was for the annulment of election results in the provinces of Lanao del Sur, Maguindanao and Basilan. Thus, these provinces were excluded from the coverage of the pilot protested provinces mandated by Rule 65 of the 2010 PET Rules.

On the other hand, protestee filed an *Urgent Motion to Immediately Resolve all Pending Incidents*<sup>207</sup> dated June 11, 2019 (Urgent Motion). Protestee prayed that the Tribunal immediately resolve all pending incidents after the revision and recount of the ballots. She presented her own computation of the total national votes for protestant and protestee after

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<sup>203</sup> Id. at 36233. Emphasis and underscoring omitted.

<sup>204</sup> *Rollo* (Vol. XLVI), pp. 36879-36898.

<sup>205</sup> *Rollo* (Vol. XLVII), pp. 37676-37682.

<sup>206</sup> Id., no pagination.

<sup>207</sup> Id., no pagination.



“revision, recount, and re-appreciation,” claiming that her victory as Vice President had been confirmed. In effect, protestee sought the immediate resolution of the Protest.

*In the Resolution<sup>208</sup> dated July 2, 2019, the Tribunal again resolved to defer action on protestant’s Omnibus Motion until after its initial determination of the grounds for the Protest under Rule 65 of the 2010 PET Rules.* The Tribunal reiterated its prior ruling in its Resolution dated August 29, 2017 that the technical examination of the voter’s records in the three (3) subject provinces was premature, as these provinces were not part of the pilot provinces of protestant and that Rule 65 allows the Tribunal to conduct revision of ballots and reception of evidence on these pilot protested precincts.

The Tribunal also found protestee’s Urgent Motion premature considering that the Tribunal has yet to complete the appreciation of the revised ballots and ruling on the respective objections and claims made by the parties thereon.

## II.

### *Results of the Revision and Appreciation of Ballots in the Pilot Provinces*

#### Revision

Based on the canvass by the National Board of Canvassers<sup>209</sup> during the May 9, 2016 National and Local Elections, and as admitted by both parties,<sup>210</sup> protestant and protestee received the following votes:

Protestee Robredo	14,418,817
Protestant Marcos, Jr.	14,155,344
Margin of votes	(263,473)

*Table 1*

The table below shows the votes (as declared in provincial COCs) obtained by the parties in each of the pilot provinces<sup>211</sup> handpicked by protestant:

<sup>208</sup> Id., no pagination.

<sup>209</sup> Resolution of Both Houses No. 1, declaring the results of the National Elections held on May 9, 2016, for the Offices of President and Vice-President, and proclaiming the duly elected President and Vice-President of the Republic of the Philippines, supra note 2.

<sup>210</sup> *Rollo* (Vol. XXXII), p. 24567.

<sup>211</sup> Id. at 24517.

	Robredo	Marcos, Jr.
Camarines Sur	664,190	41,219
Iloilo	573,729	94,411
Negros Oriental	255,598	66,506
<b>Total votes</b>	<b>1,493,517</b>	<b>202,136</b>

Table 2

The total clustered precincts from the three (3) pilot provinces are as follows:

Camarines Sur	1,816
Iloilo	2,318
Negros Oriental	1,284
<b>Total</b>	<b>5,418</b>

Table 3

In the course of the revision, the Tribunal observed that the paper ballots in several clustered precincts were wet and unreadable, or their integrity was compromised such that it rendered revision using paper ballots impossible. For these clustered precincts, the Tribunal directed the use of the decrypted ballot images provided by the COMELEC for purposes of revision. The parties registered their claims and objections thereto in the same manner as they did for paper ballots.

However, as earlier mentioned, for three (3) clustered precincts—specifically Clustered Precinct 34, Barangay Nino Jesus, Bato, Camarines Sur; Clustered Precinct 13, Barangay Haring, Canaman Camarines Sur; and Clustered Precinct 27, Barangay Cubay, San Joaquin, Iloilo—the COMELEC was unable to provide the decrypted ballot images as they were not available. The COMELEC explained that the BEI in said clustered precincts used the “REZERO” command before shutting down the VCMs. Thus, except for the audit logs, all contents of the SD cards were deleted, including the ballot images.<sup>212</sup> Given this, the three (3) clustered precincts were necessarily excluded from the pilot provinces of protestant as the paper ballots and ballot images of said clustered precincts were not available for revision and appreciation. The votes of the parties in the said clustered precincts are as follows:

	Robredo	Marcos, Jr.
CP 34, Barangay Nino Jesus, Bato,	251	22

<sup>212</sup> *Rollo* (Vol. XLVII), no pagination.

Camarines Sur		
CP 13, Barangay Haring, Canaman Camarines Sur	42 5	17
CP 27, Barangay Cubay, San Joaquin, Iloilo	183	12
<b>Total</b>	<b>859</b>	<b>51</b>

*Table 4*

The revision for the 5,415<sup>213</sup> clustered precincts in the three (3) pilot provinces then proceeded. The results of the revision and recount proceedings in the 5,415 clustered precincts are as follows:

	<b>Robredo</b>	<b>Marcos, Jr.</b>
Camarines Sur	657,99 1	40,794
Iloilo	562,811	93,245
Negros Oriental	255,576	66,456
<b>Total</b>	<b>1,476,378</b>	<b>200,495</b>

*Table 5*

The list of all the clustered precincts that were revised by the Tribunal is attached as **Annex "A"**.

#### Appreciation

The Tribunal proceeded with the appreciation of the ballots following the Ballot Appreciation Guidelines and taking into consideration the objections and claims of the parties.

The Tribunal pored over each ballot from all the clustered precincts involved both to rule on the objections and claims of the parties, and to determine the validity of each ballot and vote, regardless of whether the parties registered an objection or claim.

#### Objections

With the votes from revision as starting point, for objections, the Tribunal either sustained an objection, resulting in a deduction of a vote from the party for whom the vote was counted, or rejected an objection,

<sup>213</sup> 5,418 less 3.

resulting in the retention of the vote for the party for whom the vote was counted.

The following are the grounds for objections:

A. Spurious Ballots (SB)

Spurious ballots are those ballots which were not issued by the COMELEC as they do not contain the security features, or where the signature of the BEI chairperson is glaringly different compared to the BEI chairperson's signature appearing in the other ballots and other election paraphernalia (SB-BEI).

A ballot is spurious if it lacks any of the security features of the official ballots, which are the timing marks, ultraviolet ink mark, box for signature of the BEI chairperson, ballot ID, precinct in cluster, and the barcode (SB-FAKE).

A BEI chairperson's failure to sign or initial a ballot will, however, not invalidate a ballot, as this would otherwise disenfranchise the voters and place a premium on official ineptness.

B. Substituted Ballots (SuB)

Substituted ballots are ballots where the ballot ID on the paper ballot does not match the precinct-assigned ballot ID.

C. Shaded by One (SBO)

SBO ballots are two (2) or more ballots which were filled in by one (1) person. Evidence *aliunde* must be presented as proof. Absent such evidence, the Tribunal shall admit the ballots.

Evidence *aliunde* is required as it would not be possible to determine whether two (2) or more ballots were filled in by one (1) person just by looking at the ballot. Further, since the ballots are filled in by just shading the corresponding oval, it would be impossible to know just by looking at the ballots if one (1) person shaded two (2) or more ballots.

D. Shaded by Two or More (SBT)

SBT ballots are those which have been filled in by two (2) or more persons. Evidence *aliunde* must also be presented as proof and absent such evidence, the Tribunal shall admit the ballots.

#### E. Marked Ballots (MB)

Marked ballots are those which are marked by the voter for the purpose of identifying the ballot as one that the voter accomplished. Two (2) elements must concur to invalidate the marked ballot:

- (a) The voter must have placed the mark; and
- (b) The mark was placed deliberately for the purpose of identifying the voter or the ballot.

A marked ballot is invalidated when the following kinds of markings are made, upon which it is considered a Marked Ballot due to Unnecessary Markings (MB-UM):

- (a) Names, signatures, initials of voters; erasures of the candidates' names, written names of candidates, the words "valid" or "rejected" if written by the voter;
- (b) Irrelevant or impertinent expressions, comments, epithets prominently written by the voter in order to identify him/her or the ballot; and,
- (c) Use of marking which is prominent from a distance.

Further, a ballot may be considered as marked due to over-voting in positions other than the Vice President (MB-OV). It must be shown that the over-voting was done deliberately to mark the ballot.

A ballot may also be considered as marked due to pattern voting (MB-PV). This means that the ballots were marked by several voters in an identical manner for the purpose of identifying themselves or their ballots. This requires the presentation of evidence *aliunde* and in the absence of such evidence, the ballot shall be admitted.

On the other hand, unintentional marks that the voter or some other person made will not invalidate the ballot. These may be any of the following:

- (a) Ink smudges;
- (b) Ink bled or blots;
- (c) Dirt on the face of the ballots which seem unintentional;
- (d) Random fingerprints, unless they are clearly made to easily identify the ballot or the voter;
- (e) Any other unintentional markings, which are not prominent from a distance; and,
- (f) Desistance markings, which may be:
  - a. Lines indicative of desistance (LID);
  - b. "X" marks or cross marks indicative of desistance (XID);
  - c. Erasure indicative of desistance (EID); or
  - d. Signs/symbols indicative of desistance (SID).

#### F. Pre-shaded Ballot (PSB)

Pre-shaded ballots are ballots which have been shaded prior to the conduct of elections. This requires evidence *aliunde*; otherwise, the ballot shall be admitted. Similar to SBO and SBT, it would not be possible to determine the validity of this objection by merely examining the ballots.

#### G. No stated objection (NSO)

The parties must specify their objections to the ballots. Ballots that have been objected to without specific grounds for objection shall be admitted.

The Tribunal also has the plenary power to deduct a vote from a party even if there is no registered objection to it if, upon its examination of the ballot, there exist grounds for the deduction of such vote from the party. /

From the objections that the parties registered, the total votes deducted from the parties are as follows:

	<b>Robredo</b>	<b>Marcos, Jr.</b>
Camarines Sur	(358)	(8)
Iloilo	(285)	(34)
Negros Oriental	(205)	(56)
<b>Total votes deducted</b>	<b>(848)</b>	<b>(98)</b>

*Table 6*

### Claims

Claims may be made on the following: (1) ballots with votes cast for candidates other than the parties; (2) machine-rejected ballots (ballots rejected by the VCMs); and (3) ballots with stray votes (those with no votes or those with over-votes). The Tribunal may admit or reject a claim. Only when a claim over a ballot is admitted will the party claiming gain one vote in his/her favor. The claims are as follows:

#### A. Ambiguous Votes (AV)

Ballots with ambiguous votes are those where the intent of the voter cannot be readily seen upon cursory inspection. This may occur when the voter did not fully shade the oval next to the name of the candidate, or when the voter placed a different mark in the oval (provided that the mark is not meant to identify the ballot). Extreme caution is observed before any ambiguous vote is invalidated and doubts are to be resolved in favor of the validity of the vote.

##### a. Admitted Ambiguous Vote (AAV)

A claim for ballots with Ambiguous Votes shall be admitted in the following circumstances:

- a) the shade made by the voter in the oval next to the name of the claimant is clear and well-defined (Clear Shading Rule); or
- b) the shade made by the voter in the oval next to the name of the claimant is not clear or is otherwise ambiguous, but the same is consistent with his/her manner of shading for all the other positions (Uniform Shading Rule); or

- c) the voter, instead of shading the oval to indicate his/her vote, made a different mark for the contested position (e.g. check (✓) mark), but such marking as manner of voting by the voter is consistent for all the other positions in the ballot (Uniform Marking Rule).

b. Rejected Ambiguous Vote (RAV)

A claim for ballots with Ambiguous Votes shall be rejected in the following circumstances:

- a) the shade in the oval next to the name of the claimant is not clear or appears to have been made inadvertently and is inconsistent with the manner of shading for the other positions; or
- b) the oval next to the name of the claimant contains a mark which is inconsistent with the markings made for other positions; *i.e.*, the voter placed an X mark on the oval for the contested position but placed check marks for the other positions; or
- c) the voter placed any other marks which indicate his/her desistance from voting for the claimant; or
- d) the voter, instead of shading the oval next to the claimant's name, placed marks outside such oval, unless it falls under the Uniform Marking Rule.

B. Ballots with Over-Votes

Over-votes occur where the voter voted for more than one (1) candidate for the position of Vice President. The vote will *not* be counted for any of the candidates.

a. Admitted Over-Vote (AOV)

However, a claim on an over-vote shall be admitted and counted for the claimant if:

- a) there is actually only one (1) vote cast for the contested position as when the oval next to the name of the claimant is



clearly shaded (Clear Shading Rule) and the shaded ovals for other candidates have marks indicating desistance; or

- b) the shaded ovals for other candidates have marks indicating desistance, while the shading of the oval for the claimant is not clear or is otherwise ambiguous, but the same is consistent with the voter's shadings for all the other elective positions (Uniform Shading Rule); or
- c) the shaded ovals for other candidates have marks indicating desistance, while the oval next to the name of the claimant is not shaded but contains marks consistent with the voter's manner of voting for the other positions (Uniform Marking Rule).

b. Rejected Over-Vote (ROV)

A claim on an over-vote shall not be admitted for the claimant in the following instances:

- a) where the voter shaded clearly more than one (1) oval in the contested position and there are no marks indicating desistance from voting for any candidate in that position, the vote shall not be counted for either protestant or protestee; or
- b) if the shaded ovals for the other candidates have markings indicating desistance but the shading made by the voter in the oval for the claimant is not clear and not otherwise consistent with his/her manner of voting for the other elective positions; and
- c) if the shaded ovals for other candidates have marks indicating desistance and the oval for the claimant contains marks not consistent with the voter's manner of voting for the other elective positions.

C. Machine-Rejected Ballots (MRB)

Machine-Rejected Ballots are ballots which were not read by the machines when fed during the election.

- a. Admitted Machine-rejected Ballot (AMRB)

A claim on a vote on a machine-rejected ballot may be admitted in favor of a party if, upon its physical examination, it is found to contain a valid vote for the claimant; provided that the ballot is authentic (contains all the security features of an official ballot), belongs to the contested clustered precinct concerned, and is not otherwise a marked ballot (MB).

b. Rejected Machine-rejected Ballot (RMRB)

A claim on a vote on a machine-rejected ballot may be rejected if the ballot does not contain a vote for the claimant even if the ballot does not suffer from any infirmity, or the ballot contains a vote for the claimant but the ballot suffers from an infirmity.

D. No Specific Claim (NSC)

The parties must specify the grounds for their claims on ambiguous votes, ballots with over-votes and machine-rejected ballots. Otherwise, their claims shall be denied.

Similar to objections, the Tribunal has the plenary power to *motu proprio* add a vote to a party even if a party did not register a claim to it if, upon its examination of the ballot, there exist grounds for the addition of such vote to the party.

From the foregoing, the total votes added to the parties, which correspond to their respective total admitted claims, are as follows:

	<b>Robredo</b>	<b>Marcos, Jr.</b>
Camarines Sur	12,004	734
Iloilo	16,825	2,127
Negros Oriental	5,819	1,254
<b>Total votes added</b>	<b>34,648</b>	<b>4,115</b>

Table 7

The rulings on protestant's objections are marked as **Annex "B"**, on protestee's objections as **Annex "B-1"**, on protestant's claims as **"Annex C"**, on protestee's claims as **Annex "C-1"**, on uncontested ballots as **Annex "D"** and on unclaimed ballots as **"Annex D-1"**. These annexes will be maintained at the Tribunal's Revision Hall at the 5<sup>th</sup> Floor of the SC-CA Gymnasium and are available for the parties to view.

***Overall Result of Revision and Appreciation of Ballots***

To determine the effect of the revision and appreciation of the ballots in the 5,415 pilot clustered precincts, the Tribunal uses as its base figure the overall votes received by protestant and protestee in all the clustered precincts which functioned during the 2016 National and Local Elections based on the canvass by the National Board of Canvassers (votes as proclaimed). As shown in Table 1, protestee garnered 14,418,817 votes and protestant obtained 14,155,344 votes.

From these figures, the votes received by the parties in the 5,418 clustered precincts of the three (3) pilot provinces is then to be subtracted as these figures or votes will be replaced by the results of the revision and appreciation of the ballots to determine the effect of the revision and appreciation on the results of the 2016 National Local Elections.

However, as discussed above, the paper ballots and ballot images in three (3) of the 5,418 clustered precincts of the pilot provinces were not revised and appreciated as they were unavailable, and were thus excluded from the 5,418 clustered precincts. Given this, the Tribunal was able to revise and appreciate ballots from only 5,415 clustered precincts of the pilot provinces, and the results of what the parties garnered are in the following table:

	<b>Robredo</b>	<b>Marcos, Jr.</b>
Votes in the 5,418 clustered precincts of the three pilot provinces based on the Provincial COCs	1,493,517	202,136
Less: Votes in the three (3) clustered precincts with unavailable paper ballots and ballots images	(859)	(51)
<b>Total votes in the 5,415 clustered precincts</b>	<b>1,492,658</b>	<b>202,085</b>

*Table 8*

As mentioned, the votes of the parties in the 5,415 pilot clustered precincts must then be deducted from the votes as proclaimed, and this yields the total votes of the parties in all the clustered precincts other than the 5,415 pilot precincts revised and appreciated (TOTAL A), thus:

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

Table 9

On the other hand, the revision and appreciation of ballots in the 5,415 pilot clustered precincts yielded the following results (TOTAL B):

	<b>Robredo</b>	<b>Marcos, Jr.</b>
Votes in the 5,415 pilot clustered precincts after revision	1,476,378	200,495
Less: Votes deducted from sustained objections	(848)	(98)
Total Votes in the 5,415 pilot clustered precincts after revision after deducting sustained objections	1,475,530	200,397
Add: Votes added due to admitted claims (ballots with stray votes, ballots with over-votes, and VCM-rejected ballots)	34,648	4,115
<b>Total votes in the 5,415 pilot clustered precincts after revision and appreciation (TOTAL B)</b>	<b>1,510,178</b>	<b>204,512</b>

Table 10

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

	<b>Robredo</b>	<b>Marcos, Jr.</b>
<b>Total votes in the clustered precincts other than the 5,415 pilot clustered precincts</b>	<b>12,926,159</b>	<b>13,953,259</b>
Add: Total votes in the 5,415	1,510,178	204,512

pilot clustered precincts after revision and appreciation		
<b>Total votes in all clustered precincts after revision and appreciation of the ballots from the pilot clustered precincts<sup>214</sup></b>	<b>14,436,337</b>	<b>14,157,771</b>

*Table 11*

Thus, based on the final tally after revision and appreciation of the votes in the pilot provinces, protestee Robredo maintained, as in fact she increased, her lead with 14,436,337 votes over protestant Marcos who obtained 14,157,771 votes. After the revision and appreciation, the lead of protestee Robredo increased from 263,473 to 278,566.

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

Likewise, the Tribunal deems it essential to meet due process requirements to require protestant and protestee to now provide their position in relation to the Third Cause of Action also articulated in the Preliminary Conference Order. The Tribunal notes the pending Motion for Technical Examination<sup>215</sup> dated July 10, 2017 and Extremely Urgent Manifestation of Grave Concern with Omnibus Motion<sup>216</sup> dated December 10, 2018, as well as protestee's Manifestation dated October 14, 2019, and the earlier deferments made by the Tribunal of the various issues related to the Third Cause of Action.

This controversy has spawned very serious but unfounded and careless speculations on the part of many partisan observers who, on the basis of incomplete information, would rather latch on to their favorite conspiratorial theories rather than critically examine the facts and the law involved in this case. This Tribunal, however, will comply with its constitutionally mandated duty allowing the parties the opportunity to examine the results of the revision and appreciation of the pilot provinces as well as comment so that they are fully and fairly heard on all the related legal issues. Based on the submissions of the parties, the Tribunal can therefore confidently and judiciously deliberate on the proper course of action as clarified by the actual position of the parties on the common issues that we have identified.

<sup>214</sup> This includes the votes of the parties in the three (3) clustered precincts of the pilot provinces which were not revised and appreciated.

<sup>215</sup> *Rollo*, Vol. XXXI, pp. 23966-23972.

<sup>216</sup> *Rollo*, Vol. XLV, pp. 36231-36239.


**WHEREFORE**, the parties are directed to submit a **MEMORANDUM** within twenty (20) working days, starting from receipt of a copy of this Resolution containing:

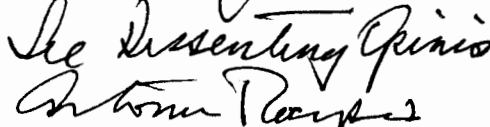
- I. Their comments on the report on the revision and appreciation of votes relating to the three pilot provinces, Camarines Sur, Iloilo, and Negros Oriental as it relates to the Second Cause of Action;
- II. Their position on the following issues related to the Third Cause of Action:
  - A) Whether or not the results in the revision and appreciation of votes with respect to the Protestant's second cause of action moots or renders unnecessary the consideration of the Protestant's Third Cause of Action;
  - B) Whether or not the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action;
  - C) Assuming that the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action which is not mooted by the results of Tribunal's findings with respect to the second cause of action:
    - 1) What are the filing rules and requirements that a party must observe if he or she seeks the relief of annulment of elections before the Presidential Electoral Tribunal?
    - 2) What is the threshold of evidence that is required to prove failure or annulment of elections?
    - 3) Will evidence other than those listed by the parties during the preliminary conference be considered?


- 4) What percentage of votes/precincts needs to be proven as having been affected by the grounds for failure or annulment of elections?
  - 5) Will the threshold apply per province or to all three (3) provinces? Can there be failure or annulment in some but not all three (3) provinces?
  - 6) Should a similar pilot testing rule be equally applied in annulment of election cases?
- D) Assuming that the Tribunal is convinced that there is basis to find for the Protestant in the Third Cause of Action:
- 1) Will this mean that the elections for all the elective positions in the ballot be nullified with all its attendant legal consequences?
  - 2) Can our declaration as the Presidential Electoral Tribunal or the Supreme Court be a bar for any question relative to any present and future electoral protest involving the same area and for any position?
  - 3) Will it be necessary to call for special elections for the position of Vice President? If so, who has the competence to call for such elections?
  - 4) Will this mean “recovery” for the Protestant under Rule 65, which will, in turn, mean revision of all his contested precincts nationwide?
  - 5) What will be the effect of our ruling on Protestant’s Third Cause of Action on protestee’s counter protest?

The voluminous documents mentioned in this Resolution as its Annexes shall be made available to the Parties or their counsels or authorized representatives for their inspection, review or, when practicable and with prior leave, for their photocopying within reasonable business hours at the office of the Tribunal.


**SO ORDERED.**

  
**LUCAS P. BERSAMIN**  
Chief Justice

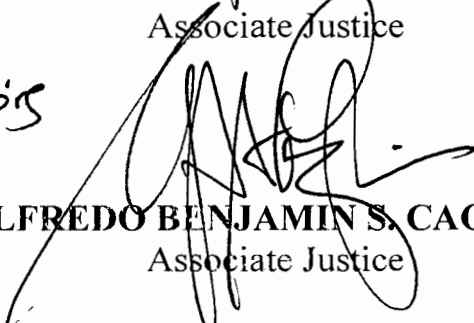
*See Dissenting Opinion*  
  
**ANTONIO T. CARPIO**  
Associate Justice

  
**DIOSDADO M. PERALTA**  
Associate Justice

*Ma Neil*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

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

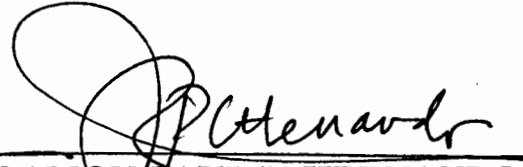
*See Dissenting opinion.*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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

*Agosmundo*  
**ALEXANDER G. GESMUNDO**  
Associate Justice


(On Leave)  
**JOSE C. REYES, JR.**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**ROSMARI D. CARANDANG**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

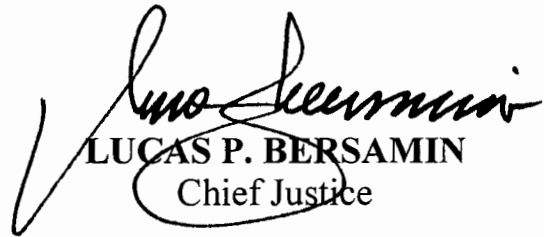
  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice




**CERTIFICATION**

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



**LUCAS P. BERSAMIN**  
Chief Justice

**CERTIFIED TRUE COPY**



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