EN BANC

G.R. No. 260650 – ROBERTO 'PINPIN' T. UY, JR., Petitioner, **v. COMMISSION ON ELECTIONS, VERLY TABANCURA-ADANZA, in her capacity as PROVINCIAL ELECTION SUPERVISOR and CHAIRPERSON of the Provincial Board of Canvassers for the Province of Zamboanga del Norte, PROVINCIAL BOARD OF CANVASSERS FOR THE PROVINCE OF ZAMBOANGA DEL NORTE, and ROMEO M. JALOSJOS, JR.,** Respondents.

G.R. No. 260952 – FREDERICO P. JALOSJOS, Petitioner, **v. ROMEO M. JALOSJOS, JR. and the COMMISSION ON ELECTIONS,** Respondents.

Promulgated:

August 8, 2023

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DISSENTING OPINION

LEONEN, *J.*:

On June 23, 2022, the Provincial Board of Canvassers reconvened and proclaimed respondent Romeo M. Jalosjos, Jr. (Romeo) as the winning candidate for Zamboanga del Norte's first district representative.[1] He took his oath of office before Senator Cynthia A. Villar[2] and assumed office at noon on June 30, 2022.[3]

With these developments, the Petitions should be dismissed for lack of jurisdiction.

I

I take exception to the majority's ruling that the concurrence of three requisites—a valid proclamation, taking of oath, and assumption of duties—vests the House of Representatives Electoral Tribunal with jurisdiction over election contests. It is time that we abandon *Reyes v. Commission on Elections*,[4] which the majority cited as legal basis, for being contrary to the Constitution and established jurisprudence.

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1 *Rollo* (G.R. No. 260650), pp. 399–400.
2 *Id.* at 401.
3 *Id.* at 402.
4 712 Phil. 192 (2013) [Per J. Perez, *En Banc*].

Article VI, Section 17 of the Constitution provides: "The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the *sole judge* of all contests relating to the election, returns, and qualifications of their respective members."[5] In *Lazatin v. House of Representatives Electoral Tribunal*,[6] this Court stated that an electoral tribunal's jurisdiction is original and exclusive:

> The use of the word "*sole*" emphasizes the *exclusive* character of the jurisdiction conferred. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as *complete and unimpaired* as if it had remained originally in the legislature." Earlier, this grant of power to the legislature was characterized by Justice Malcolm as "*full, clear and complete*." Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.[7] (Citations omitted)

Further, in *Rasul v. Commission on Elections*,[8] this Court defined the extent of the tribunal's jurisdiction and again stressed its exclusivity:

> Section 17, Article VI of the 1987 Constitution as well as Section 250 of the Omnibus Election Code prove that "(t)he Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the *sole judge of all contents relating to the election, returns, and qualifications of their respective Members*. . . . ." In *Javier vs. Comelec*, this Court interpreted the phrase "election, returns and qualifications" as follows:
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> > "The phrase "election, returns and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. But if it is necessary to specify, we can say that "election" referred to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; "returns" to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and "qualifications" to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his certificate of candidacy."
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> The word "sole" in Section 17, Article VI of the 1987 Constitution and Section 250 of the Omnibus Election Code underscore the exclusivity of the Tribunal's jurisdiction over election contests relating to its members.

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5 (Emphasis supplied)

6 250 Phil. 390 (1988) [Per J. Cortes, *En Banc*].

7 *Id.* at 399–400.

8 371 Phil. 760 (1999) [Per J. Gonzaga-Reyes, *En Banc*].

> Inasmuch as petitioner contests the proclamation of herein respondent Teresa Aquino-Oreta as the 12th winning senatorial candidate, it is the Senate Electoral Tribunal which has exclusive jurisdiction to act on the complaint of petitioner.[9] (Citations omitted)

The Constitution grants the exclusive privilege to determine membership in the Senate and the House of Representatives through their respective electoral tribunals. The earliest moment when there can be members of each chamber is upon their proclamation as winners in the election.

Accordingly, this Court has consistently ruled that once the winning candidate is proclaimed, jurisdiction over any election contest against the proclaimed candidate is vested in the electoral tribunal.[10]

This doctrine was pronounced as early as in *Angara v. Electoral Commission*,[11] where this Court held that the grant of power to the Electoral Commission to judge all contests relating to the election, returns, and qualifications of members of the National Assembly would begin with the certification by the proper provincial board of canvasser of the member-elect:

> From another angle, Resolution No. 8 of the National Assembly confirming the election of members against whom no protests had been filed at the time of its passage on December 3, 1935, can not be construed as a limitation upon the time for the initiation of election contests. While there might have been good reason for the legislative practice of confirmation of the election of members of the legislature at the time when the power to decide election contests was still lodged in the legislature, confirmation alone by the legislature cannot be construed as depriving the Electoral Commission of the authority incidental to its constitutional power to be "the sole judge of all contests relating to the election, returns, and qualifications of the members of the National Assembly", to fix the time for the filing of said election protests. Confirmation by the National Assembly of the returns of its members against whose election no protests have been filed is, to all legal purposes, unnecessary. As contended by the Electoral Commission in its resolution of January 23, 1936, overruling the motion of the herein petitioner to dismiss the protest filed by the respondent Pedro Ynsua, confirmation of the election of any member is not required by the Constitution before he can discharge his duties as such member. As a matter of fact, *certification by the proper provincial board of canvassers is sufficient to entitle a member-elect to a seat in the National Assembly and*

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9 *Id.* at 765–766.

10 *Penson v. Commission on Elections Constituted as the National Board of Canvassers for Senators and Party-List Representatives*, G.R. No. 211636, September 28, 2021 [Per J. J. Lopez, *En Banc*]; *Limkaichong v. Commission on Elections*, 601 Phil. 751, 779–780 (2009) [Per J. Peralta, *En Banc*]; *Planas v. Commission on Elections*, 519 Phil. 506 (2006) [Per J. Carpio Morales, *En Banc*]; *Barbers v. Commission on Elections*, 499 Phil. 570, 581, 585 (2005) [Per J. Carpio, *En Banc*]; *Caruncho III v. Commission on Elections*, 374 Phil. 308 (1999) [Per J. Ynares-Santiago, *En Banc*]; *Perez v. Commission on Elections*, 375 Phil. 1106, 1115 (1999) [Per J. Mendoza, *En Banc*]; *Rasul v. Commission on Elections*, 371 Phil. 760, 765 (1999) [Per J. Gonzaga-Reyes, *En Banc*].

11 63 Phil. 139 (1936) [Per J. Laurel, *En Banc*].

> *to render him eligible to any office in said body.*[12] (Emphasis supplied, citation omitted)

Through the years, this was the prevailing doctrine. Thus, in *Vinzons-Chato v. Commission on Elections*:[13]

> The Court has invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. Stated in another manner, *where the candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an electoral protest with the HRET.*[14] (Emphasis supplied, citations omitted)

And in *Jalosjos, Jr. v. Commission on Elections*:[15]

> The Court has already settled the question of when the jurisdiction of the COMELEC ends and when that of the HRET begins. *The proclamation of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representatives in favor of the HRET.*[16] (Emphasis supplied)

Proclamation is the operative act that removes jurisdiction from this Court or the Commission on Elections and vests it in the House of Representative Electoral Tribunal.[17] It is a validation by the Commission on Elections, to the best of its knowledge, that the winner is the choice of the people. By proclamation, the winner acquired a presumptively valid title to the office. As held in *Angara*, "certification by the proper provincial board of canvassers is sufficient to entitle a member-elect to a seat in the National Assembly and to render him eligible to any office in said body."[18]

Reyes did not change this doctrine. As pointed out in my dissenting opinion to the Resolution[19] in that case, the *ratio decidendi* of *Reyes* was based ultimately on the pronouncement in *Guerrero v. Commission on Elections*,[20] which existing jurisprudence does not support. I opined:

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12 *Id.* at 179–180.

13 548 Phil. 712 (2007) [Per J. Callejo, Sr., *En Banc*].

14 *Id.* at 725–726.

15 689 Phil. 192 (2012) [Per J. Abad, *En Banc*].

16 *Id.* at 198.

17 *Jalosjos, Jr. v. Commission on Elections*, 689 Phil. 192, 198 (2012) [Per J. Abad, *En Banc*]; *Vinzons-Chato v. Commission on Elections*, 548 Phil. 712, 726 (2007) [Per J. Callejo, Sr., *En Banc*]; *Barbers v. Commission on Elections*, 499 Phil. 570, 581, 585 (2005) [Per J. Carpio, *En Banc*]; *Aggabao v. Commission on Elections*, 490 Phil. 285, 291 [Per J. Ynares-Santiago, *En Banc*].

18 *Angara v. Electoral Commission*, 63 Phil. 139, 180 (1936) [Per J. Laurel, *En Banc*].

19 The Resolution of the Motion for Reconsideration in that case was supported by five justices, with four dissenting and five taking no part. One justice was on official leave.

20 391 Phil. 344 (2000) [Per J. Quisumbing, *En Banc*].

In *Guerrero*, this Court held that ". . . once a winning candidate has been *proclaimed, taken his oath*, and *assumed office* as a member of the House of Representatives, [the] COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins." The case cited *Aquino v. Commission on Elections* and *Romualdez-Marcos v. Commission on Elections* to support the statement.

A closer reading of *Aquino* and *Romualdez-Marcos* will reveal that this Court did not rule that three requisites must concur so that one may be considered a "member" of the House of Representatives subject to the jurisdiction of the electoral tribunal. On the contrary, this Court held in *Aquino* that:

> Petitioner conveniently confuses the distinction between an unproclaimed candidate to the House of Representatives and a member of the same. Obtaining the highest number of votes in an election does not automatically vest the position in the winning candidate.
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> . . . .
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> Under the above-stated provision, the electoral tribunal clearly assumes jurisdiction over all contests relative to the election, returns and qualifications of candidates for either the Senate or the House only when the latter become members of either the Senate or the House of Representatives. A candidate who has not been proclaimed and who has not taken his oath of office cannot be said to be a member of the House of Representatives subject to Section 17 of Article VI of the Constitution. While the proclamation of the winning candidate in an election is ministerial, B.P. 881 in conjunction with Sec. 6 of R.A. 6646 allows suspension of proclamation under circumstances mentioned therein. . . . .

In *Romualdez-Marcos*, this Court held that:

> As to the House of Representatives Electoral Tribunal's supposed assumption of jurisdiction over the issue of petitioner's qualifications after the May 8, 1995 elections, suffice it to say that HRET's jurisdiction as the sole judge of all contests relating to the elections, returns, and qualifications of members of Congress begins only after a candidate has become a member of the House of Representatives. Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.

To be sure, the petitioners who were the winning candidates in *Aquino* and *Romualdez-Marcos* invoked the jurisdiction of the House of Representatives Electoral Tribunal though they had not yet been proclaimed. Thus, this Court held that the Commission on Elections still had jurisdiction over the disqualification cases.

This Court did not create a new doctrine in *Aquino* as seen in the Concurring and Dissenting Opinion of Justice Francisco where he said:

> The operative acts necessary for an electoral candidate's rightful assumption of the office for which he ran are his proclamation and his taking an oath of office. Petitioner cannot in anyway be considered as a member of the House of Representatives for the purpose of divesting the Commission on Elections of jurisdiction to declare his disqualification and invoking instead HRET's jurisdiction, it indubitably appearing that he has yet to be proclaimed, much less has he taken an oath of office. Clearly, petitioner's reliance on the aforecited cases which when perused involved Congressional members, is totally misplaced, if not wholly inapplicable. That the jurisdiction conferred upon HRET extends only to Congressional members is further established by judicial notice of HRET Rules of Procedure, and HRET decisions consistently holding that the proclamation of a winner in the contested election is the essential requisite vesting jurisdiction on the HRET.

In fact, the Separate Opinion of Justice Mendoza in *Romualdez-Marcos* will tell us that he espoused a more radical approach to the jurisdiction of the electoral tribunals. Justice Mendoza is of the opinion that "the eligibility of a [candidate] for the office [in the House of Representatives] may only be inquired into by the [House of Representatives Electoral Tribunal]," even if the candidate in *Romualdez-Marcos* was not yet proclaimed. Justice Mendoza explained, thus:

> Three reasons may be cited to explain the absence of an authorized proceeding for determining before election the qualifications of a candidate.
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> . . . .
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> Third is the policy underlying the prohibition against pre-proclamation cases in elections for President, Vice President, Senators and members of the House of Representatives. (R.A. No. 7166, Section 15) The purpose is to preserve the prerogatives of the House of Representatives Electoral Tribunal and the other Tribunals as "sole judges" under the Constitution of the election, returns, and qualifications of members of Congress of the President and Vice President, as the case may be.

Thus, the pronouncement in *Guerrero* that is used in the main *ponencia* as the basis for its ruling is not supported by prior Decisions of this Court. More importantly, it cannot be considered to have changed the doctrine in *Angara v. Electoral Commission.* Instead, it was only made in the context of the facts in *Guerrero* where the Decision of the Commission on Elections *En Banc* was issued only after the proclamation and the assumption of office of the winning candidate. In other words, the contention that there must be proclamation, taking of the oath, and

> assumption of office before the House of Representatives Electoral Tribunal takes over is not *ratio decidendi*.[21] (Citations omitted)

Parenthetically, in *Guerrero*, this Court stressed the importance of the mutually exclusive jurisdiction of the Commission on Elections and the House of Representatives Electoral Tribunal:

> [I]n an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as Congressman is raised, that issue is best addressed to the HRET. The reason for this ruling is self-evident, for *it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate*.[22] (Emphasis supplied)

At any rate, Reyes was the "most unusual case"[23] considering the procedural actions taken by this Court. There, the majority[24] went beyond hastily dismissing the Petition outright. Without fully hearing the parties, it attempted to declare a new doctrine on the jurisdiction of the Commission of Elections vis-à-vis the House of Representatives Electoral Tribunal without any clear or special reason to do so. It proceeded to rule on the validity of the petitioner's proclamation without this even being raised as an issue, and without any comment required from and filed by the respondents.[25]

Reyes cannot be used as authority to depart from the time-honored doctrine first pronounced in *Angara*. It is an aberration that must be abandoned.

Here, the Commission on Elections *En Banc* issued a Resolution on June 7, 2022, affirming its Second Division's ruling that petitioner Frederico P. Jalosjos (Frederico) was a nuisance candidate and directing that his votes be credited to respondent Romeo.[26] The Resolution became final and executory, such that on June 15, 2022, the Commission *En Banc* issued a Writ of Execution[27] ordering the Provincial Board of Canvassers to reconvene, credit the votes of petitioner Frederico to respondent Romeo, and proclaim the winning candidate. Thus, the Provincial Board of Canvassers was well within its right and duty to proclaim Romeo as the winning candidate on June 23, 2022.

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21 J. Leonen, Dissenting Opinion in *Reyes v. Commission on Elections*, 720 Phil. 174, 299–302 (2013) [Per J. Perez, *En Banc*].

22 *Guerrero v. Commission on Elections*, 391 Phil. 344, 354 (2000) [Per J. Quisumbing, *En Banc*].

23 J. Brion, Dissenting Opinion in *Reyes v. Commission on Elections*, 712 Phil. 192, 222 (2013) [Per J. Perez, *En Banc*].

24 The Resolution was supported by seven members of this Court, with four dissenting and another three taking no part. One was on official leave.

25 J. Leonen, Dissenting Opinion in *Reyes v. Commission on Elections*, 720 Phil. 174, 307–308 (2013) [Per J. Perez, *En Banc*].

26 *Rollo* (G.R. No. 260650), pp. 167–178.

27 *Id.* at 258–261.

II

The *Status Quo Ante* Order is no longer within this Court's jurisdiction because June 30, 2022 had lapsed.

In G.R. No. 260650, petitioner Roberto T. Uy, Jr. (Roberto) prays for a temporary restraining order and/or writ of preliminary injunction and/or *status quo ante* order against the implementation of the Commission *En Banc*'s May 12, 2022 Order suspending his proclamation and its subsequent June 7, 2022 Resolution.[28] On the other hand, petitioner Frederico in G.R. No. 260952 prays for a temporary restraining order, *status quo ante* order, and/or writ of preliminary injunction against its June 7, 2022 directive to credit his votes to Romeo.[29]

Events transpired after the filing of the Petitions, resulting in respondent Romeo's proclamation on June 23, 2022. By operation of the Constitution, Romeo's term of office began at noon of June 30, 2022.

Status quo ante, in its ordinary meaning, refers to "the state of affairs that existed previously."[30] Hence, "[a]n order of this nature is imposed to maintain the existing state of things before the controversy."[31]

In *Garcia v. Mojica*[32] and *Megaworld Properties and Holdings, Inc. v. Majestic Finance and Investment Company, Inc.*,[33] this Court distinguished between a *status quo ante* order and a temporary restraining order:

> There have been instances when the Supreme Court has issued a *status quo* order which, as the very term connotes, is merely intended to maintain the last, actual, peaceable and uncontested state of things which preceded the controversy. *This was resorted to when the projected proceedings in the case made the conservation of the status quo desirable or essential, but the affected party neither sought such relief or the allegations in his pleading did not sufficiently make out a case for a temporary restraining order.* The status quo order was thus issued *motu proprio* on equitable considerations. Also, *unlike a temporary restraining order or a preliminary injunction, a status quo order is more in the nature of a cease and desist order*, since it neither directs the doing or undoing of acts as in the case of prohibitory or mandatory injunctive relief. The further distinction is provided by the present amendment in the sense that, unlike

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28 *Id.* at 159.
29 *Rollo* (G.R. No. 260952), pp. 43–44.
30 *Dynamic Builders & Construction Co. (Phil.), Inc. v. Presbitero, Jr.*, 757 Phil. 454, 481 (2015) [Per J. Leonen, *En Banc*]. (Citation omitted)
31 *Remo v. Bueno*, 784 Phil. 344, 385 (2016) [Per J. Leonardo-De Castro, *En Banc*].
32 *Garcia v. Mojica*, 372 Phil. 892 (1999) [Per J. Quisumbing, Second Division].
33 775 Phil. 34 (2015) [Per J. Bersamin, First Division].

> the amended rule on restraining orders, a *status quo* order does not require the posting of a bond.[34] (Emphasis supplied)

A *status quo ante* order is similar to a temporary restraining order or preliminary injunctive writ, as both are ancillary to the main action and aims to preserve the status quo until the merits of the case are fully heard.[35] However, while a temporary restraining order or preliminary injunctive writ operates on unperformed or unexecuted acts,[36] a *status quo ante* order may be issued even when the event has happened or the act has been done. It restores or maintains the condition prior to the challenged act or event.[37]

However, there are instances when a *status quo ante* is deemed infeasible or improper. For instance, in *Remonte v. Bonto*,[38] this Court stated that a *status quo ante* cannot be restored because the acts complained of cannot be undone. In that case, the investigation conducted by agents of the National Bureau of Investigation, which the petitioner sought to restrain, had long since been concluded. It resulted in the filing of a criminal case against the petitioner's officials and its manager, although subsequently dismissed for reasons undisclosed.

In *Juan P. Pellicer & Company, Inc. v. Phil. Realty Corporation*,[39] this Court held that a return to the *status quo ante* would undo the consolidations of titles over the parcels of land and be a waste of time, effort, and money when there was still a pending action.

In *Repol v. Commission on Elections*,[40] this Court found that the Commission on Elections acted with grave abuse of discretion when it issued the *status quo ante* order, which effectively overturned the trial court's order allowing execution pending appeal in the petitioner's favor.[41] This Court held that it was well within the trial court's discretion to grant execution pending appeal of its judgment in the election protest case.[42] It further held that the *status quo ante* order—which was actually a temporary restraining order because it ordered the petitioner to desist from assuming the position of municipal mayor—exceeded the 20-day life span under the Rules of Court.[43]

Unlike a temporary restraining order, which is governed by Rule 58 of the Rules of Court, no specific rule governs a *status quo ante* order. Instead, this Court has been guided by the following considerations in issuing a *status*

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34 *Id.* at 52.
35 *See Los Baños Rural Bank, Inc. v. Africa*, 433 Phil. 930 (2002) [Per J. Panganiban, Third Division].
36 *Bernardez v. Commission on Elections*, 628 Phil. 720, 732 (2010) [Per J. Peralta, *En Banc*]; *Remonte v. Bonto*, 123 Phil. 63 (1966) [Per J. Sanchez, *En Banc*].
37 *See Banzon v. Cruz*, 150-A Phil. 865 (1972) [Per J. Teehankee, *En Banc*].
38 123 Phil. 63 (1966) [Per J. Sanchez, *En Banc*].
39 87 Phil. 302, 308–309 (1950) [Per J. Tuason, *En Banc*].
40 472 Phil. 335 (2004) [Per J. Carpio, *En Banc*].
41 *Id.* at 356.
42 *Id.* at 355.
43 *Id.* at 354.

quo ante order: "justice and equity considerations, when conservation of the *status quo* is desirable or essential, [to prevent] any serious damage, and where constitutional issues are raised."[44]

These factors are wanting here. More important, this Court, through a *status quo ante* order, cannot undo or render inoperative Romeo's proclamation and assumption into office without violating the Constitution. Such power now lies only with the House of Representatives Electoral Tribunal, which has exclusive jurisdiction over contests relating to the election of respondent Romeo, now a member of the House.

There is no legal impediment to the proclamation. Allowing the *status quo ante* would effectively suppress the will of the electorate and create a vacuum in the congressional post, which is prejudicial to public interest. In *Limkaichong v. Commission on Elections*:[45]

> The unseating of a Member of the House of Representatives should be exercised with great caution and after the proper proceedings for the ouster has been validly completed. For to arbitrarily unseat someone, who obtained the highest number of votes in the elections, and during the pendency of the proceedings determining one's qualification or disqualification, would amount to disenfranchising the electorate in whom sovereignty resides.[46] (Citation omitted)

ACCORDINGLY, I vote to dismiss the Petitions on the ground of lack of jurisdiction. The *Status Quo Ante* Order dated July 17, 2022 must be lifted.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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[44] J. Leonen, Separate Concurring Opinion in *ABS-CBN Corp. v. National Telecommunications Commission*, 879 Phil. 507, 551 (2020) [Per J. Perlas-Bernabe, *En Banc*].
[45] 601 Phil. 751 (2009) [Per J. Peralta, *En Banc*].
[46] *Id.* at 791.