A COMPILATION OF SUPREME COURT RULINGS ON ELECTION CASES

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Quezon City, Philippines

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A COMPILATION OF SUPREME COURT RULINGS ON ELECTION CASES
(Promulgated from 1901 to 2001)

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COMPILATION OF SUPREME COURT RULINGS ON ELECTION CASES

(Promulgated from 1901 to 2001)

CHAPTER I
General Principles

1. Source of Sovereign Power

§1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them. (Article II, Section 1, 1987 Philippine Constitution).

§2. In Tatlonghari v. COMELEC (199 SCRA 849), this Court has again reminded all and sundry that the law governing electoral contest must be liberally construed to the end that the will of the people may not be defeated. This primordial policy to ascertain the will of the people is evident in the constitutional mandate that "Sovereignty resides in the people and all government authority emanates from them." (Loyola vs. House of Representatives Electoral Tribunal, 229 SCRA 90 [1994], Nocon, J.).

2. Republicanism

§1. A republic is a representative government, a government run by and for the people. It is not a pure democracy where the people govern themselves directly. (Cruz, Philippine Political Law, 1987 edition, p. 48).

§2. Obviously, a republican government is a responsible government whose officials hold and discharge their position as a public trust and shall, according to the Constitution, "at all times be accountable to the people" (Article XI, Section 1, 1987 Philippine Constitution) they are sworn to serve. (Ibid)

§3. Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of established authority. He has a voice in his Government and whenever possible it is the duty of the judiciary, when called upon to act in justiciable cases, to give it efficacy and not to stifle or frustrate it. This, fundamentally, is the reason for the rule that ballots should be read and appreciated, if not with utmost, with reasonable, liberality. (Moya vs. Del Fierro, 69 Phil. 199 [1939], Laurel, J.).

CHAPTER II
Suffrage

1. Right of Suffrage, defined

§1. Suffrage is the right to vote in the election of all officers chosen by the people, and in the determination of all questions submitted to the people. (Paine, Law of Elections, p. 1).

§2. In our republican system of government, the exercise by the people of their right of suffrage is the expression of their sovereign will. It is, therefore, absolutely essential that the free and voluntary use of this right be effectively protected by the law and by governmental authority. (Lacson, Jr. vs. Posadas, 72 SCRA 168 [1976], Antonio, J.).

§3. The right to participate directly in the form of government, by secret ballot, is among the most important and

sacred of the rights of the people in self government and one which must be most vigilantly guarded if a people desire to maintain for themselves and their posterity a republican form of government in which the individual may, in accordance with law, have a voice in the form of his government. (United States vs. Iturrius, 37 Phil. 762 [1918], Johnson, J.).

§4. The right of suffrage is one reserved by the people to a definite portion of the population possessing the qualifications prescribed in the Constitution. This view is based on the theory that the sovereign political power in a democratic state remains with the people and is to be exercised only in the manner indicated by the Constitution. Consequently, a person who belongs to the class to whom the Constitution grants this right may not be deprived of it by any legislative act except by due process of law (5 State v. Kohler, 228 N.W. 895; State v. Phelps, 144 Wis. 1, 35 L.R.A. (NS) 353; in re Holman, 104 Atl. 212). It is in this sense that suffrage may be understood in the Philippines at present. (Sinco, Vicente, G., Philippine Political Law, Eleventh Edition, 1962, p. 381).

2. Source of Suffrage

§1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage. (Article V, Section 1, The 1987 Philippine Constitution).

§2. Article V of the Constitution was meant to be and is a grant or conferment of a right to persons possessing the qualifications and none of the disqualifications therein mentioned, which in turn, constitute a limitation of or restriction to said right, and cannot accordingly, be dispensed with, except by constitutional amendment. Obviously, every such constitutional grant or conferment of right is necessarily a negation of the authority of Congress or of any other branch of the government to deny said right to the subject of the grant — and, in this sense, only, may the same partake of the nature of a guarantee. But, this does not imply, not even remotely, that the Fundamental Law allows Congress or anybody else to vest in those lacking the qualifications and having the disqualifications mentioned in the Constitution the right of suffrage.

Since suffrage, according to Webster, is a voice given not only in the choice of a man for an office or trust, but, also, in deciding a controverted question, it follows, considering the said ruling in Alcantara (61 Phil. 459), that the constitutional qualifications for voters apply equally to voters in elections to public office and to voters in a plebiscite. (Javellana vs. Executive Secretary, 50 SCRA 30 [1973], Resolution, En Banc, Concepcion, C.J.).

§3. In the scheme of our present republican government, the people are allowed to have a voice therein through the instrumentality of suffrage to be availed of by those possessing certain prescribed qualifications (Art. V, Constitution of the Philippines; Sections 93 and 94, Election Code). The People in clothing a citizen with the elective franchise for the purpose of securing a consistent and perpetual administration of the government they ordain, charge him with the performance of a duty in the nature of a public trust, and in that respect constitute him a representative of the whole people. (Abañil vs. Justice of the Peace Court of Bacolod, Negros Occidental, 70 Phil. 28 [1940]).

§4. As numerous as they are insidious are long-standing techniques of terror and intimidation that have been conceived by man—in derogation of the right of suffrage—which we have repeatedly and unqualifiedly condemned. Sec. 133 of the Revised Election Code, an explicit and unequivocal guarantee of a voter’s free access to enter the polling place, has no other purpose than to maintain inviolate the right to vote by safeguarding the voter against

all manner of unauthorized interference and travesty that purveyors of fear can devise. Every unlawful obstacle, by whatever means or method, interposed to the free entry of a voter into the polling place to cast his vote, strikes at the very heart of the right of suffrage. (People vs. San Juan, 22 SCRA 498 [1968], Castro, J.).

§5. The equal protection of the law contemplates equality in the enjoyment of similar rights and privileges granted by law. It would have been discriminatory and a denial of the equal protection of the law if the statute prohibited an individual or group of voters in the city from voting for provincial officials while granting it to another individual or group of voters in the same city. Neither can it be considered an infringement upon the petitioners' rights of suffrage since the Constitution confers no right to a voter in a city to vote for the provincial officials of the province where the city is located. Their right is limited to the right to vote for elective city officials in local elections, which the questioned statutes neither withdraw nor restrict. (Ceniza vs. Commission on Elections, 95 SCRA 763 [1980], Concepcion, Jr., J.).

3. Nature of Suffrage

§1. The modern conception of suffrage is that voting is a function of government. It is a right created by law, not a natural right.

Suffrage is a privilege granted by the State to such person or classes as are most likely to exercise it for the public good. For reasons of public policy, certain classes of persons are excluded from the franchise. Among the generally excluded classes are minors, idiots, paupers, and convicts. (People vs. Corral, 62 Phil. 945 [1936], Abad Santos, J.).

§2. The right to vote is a political right or privilege, to be given or withheld at the exercise of the lawmaking power of the sovereignty. It is not a natural right of the citizen, but a franchise dependent upon law, by which it must be conferred to permit its exercise. It can emanate only from the people, either in their sovereign statement of the organic law or through legislative enactment, which they have authorized. It is not included among the rights of property or of person. Neither is it an absolute unqualified right, but it is altogether conventional. When once granted it may be taken away by the exercise of sovereign power, and if taken away no vested right is violated. (Gonzales, Neptali, A., Administrative Law, Law on Public Officers and Election Law, Second Edition 1966, p. 342, citing 20 C.J. 60-61 and People vs. Corral, 62 Phil. 945 [1936]).

§3. The right to vote being an attribute of sovereignty which in a democratic state, particularly one of the republican type, should reside in the Filipino people, courts are warned that they should ever endeavor to bar the possibility that judicial proceedings should be utilized to circumvent the policy of our constitution and laws, even temporarily. (Ozamiz vs. Zosa, 34 SCRA 424 [1970], Concepcion, C.J.).

4. Object of Suffrage

§1. The main object of suffrage is the continuity of government and the preservation and perpetuation of its benefits. This object is two-fold: it enables the people to choose their representatives to discharge sovereign functions, and to determine the will of the people upon such questions submitted to them; the first is done thru election, and the second by means of a plebiscite. (McCrary on Elections, p. 13).

§2. As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common weal. (Moya vs. Del Fierro, 69 Phil. 199 [1939], Laurel, J.).

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§3. Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts. They should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which do, in fact, defeat the true expression of the opinion and wishes of the voters of said municipality or precinct. The evidence in the present case shows an unmistakable intention and design on the part, not only of the election inspectors, but many of the voters, to defeat, by methods adopted, the true expression of opinion, through the ballot, of the people of said municipality. When the election has been conducted so irregularly and fraudulently that the true result cannot be ascertained, the whole return must be rejected. The rule is so well established that authorities need no longer be cited in its support that whenever the irregularities and frauds are sufficient to defeat the will of the people of the particular municipality or precinct, the entire vote should be rejected and those who are guilty of such frauds and irregularities should be punished to the very limit of the law. (Garchitorena vs. Crescini and Imperial, 39 Phil. 258 [1918], Johnson, J.).

§4. The fact that neither of the parties raised the question of the illegality of certain ballots either at the trial or in their pleadings, does not deprive the trial court of jurisdiction to examine them, for as this Court held in the case of Yalung vs. Atienza (52 Phil., 781), the institution of suffrage is a public and not a private interest, and the trial court may examine all the ballots after the ballot boxes are opened in order to determine which are legal and which are illegal, even when neither of the parties raised any question as to their illegality. (Olano vs. Tibayan, 53 Phil. 168 [1929], Villa-Real, J.).

5. Power of Congress to Regulate Suffrage

§1. Since the right of suffrage is a political and not a natural right, it is within the power of the state to prescribe the manner in which such right shall be exercised. Subject to constitutional restrictions, Congress has the right to define the qualifications of its voters. Furthermore, Congress has the power to regulate elections, to prescribe the form of the official ballot, to provide for the manner in which candidates shall be chosen and the names that shall be printed upon the ballot, to regulate the manner of ascertaining an elector’s qualifications and the manner of conducting elections, and, in the exercise of the police power, to suppress whatever evils may be incident to the election of public officers. (18 Am. Jur., 182).

§2. The right of the State to deprive persons of the right of suffrage by reason of their having been convicted of crime is beyond question. The manifest purpose of such restriction is to preserve the purity of elections. (9 R. C. L. 1042, cited in People vs. Corral, 62 Phil. 945 [1936], Abad Santos, J.).

6. Scope of Suffrage

§1. Suffrage includes both election which is the expression of a choice of persons for political offices by the voters of a body politic and plebiscite which is a name given to a vote of the enfranchised mass of the population expressing their choice for or against a proposed law or enactment submitted to them and which if adopted will work a radical change in the Constitution. (9 R.C.L. 976).

CHAPTER III
Election

1. Election, defined

§1. An election involves every element necessary to the complete ascertainment of the expression of the popular will, embracing the entire range, from the deposit of the ballot by the elector up to the final ascertainment and certification of the result. An election by the people means and includes the perfect ascertainment of such result.

The word “election” means the act of casting and receiving the ballots from the voters, counting the ballots, and making the returns thereon. That is the meaning of election in the ordinary usage, and it must be so construed, there being nothing in the law to suggest that the Legislature intended to use it in a different sense. (Hontiveros vs. Altavas, 24 Phil. 632 [1913]).

§2. Election is the means by which the people choose their officials for definite and fixed periods and to whom they entrust, for the time being, as their representatives the exercise of powers of government. (Garchitorena v. Crescini and Imperial, 39 Phil. 258 [1918], Johnson, J.).

§3. An election is the embodiment of the popular will, the expression of the sovereign power of the people. It involves the choice or selection of candidates to public office by popular vote. Specifically, the term “election,” in the context of the Constitution, may refer 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. (Taule vs. Santos, 200 SCRA 512 [1991], Gancayco, J.).

§4. In this jurisdiction, an election means “the choice or selection of candidates to public office by popular vote” through the use of the ballot, and the elected officials of which are determined through the will of the electorate. “An election is the embodiment of the popular will, the expression of the sovereign power of the people.” “Specifically, the term ‘election,’ in the context of the Constitution, may refer to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of votes.” The winner is the candidate who has obtained a majority or plurality of valid votes cast in the election. (Carlos vs. Angeles, 346 SCRA 571 [2000], Pardo, J.).

2. Purpose of Election

§1. The purpose of an election is to give the voters a direct participation in the affairs of their government, either in determining who shall be their public officials or in deciding some question of public interest; and for this purpose, all the legal voters should be permitted, unhampered and unmolested, to cast their ballots. When that is done, and no frauds have been committed, the ballot should be counted and the election should not be declared null. Innocent voters should not be deprived of their participation in the affairs of their government for mere irregularities on the part of election officers for which they are in no way responsible. A different rule would make the manner and method of performing a public duty of greater importance than the duty itself. (Luna vs. Rodriguez, 39 Phil. 208 [1918], Johnson, J.).

§2. The purpose of an election is to enable the electorate to choose the men that run their government, whether national, provincial, municipal or city. If so, no useful end will be served by allowing — in the absence of express legislative preference — the voters of a city to participate in the election of the officials of the province which has ceased to have any governmental jurisdiction and authority over said city. (Teves vs. Commission on Elections, 90 Phil. 370 [1951], Paras, C.J.).

§3. In elections, the first consideration of every democratic polity is to give effect to the expressed will of the majority. It is true that constitutional and statutory provisions requiring compliance with measures intended to enhance the quality of our democratic institutions must be obeyed. The restriction against turncoatism is one such measure. However, even as there should be compliance with the provision on turncoatism, an interpretation in

particular cases which respects the free and untrammelled expression of the voters' choice must be followed in its enforcement. (Yason vs. Commission on Elections, 134 SCRA 371 [1985], Gutierrez, Jr., J.).

§4. The purpose of an election is to give the voters a direct participation in the affairs of their government, either in determining who shall be their public officials or in deciding some question of public interest; and for this purpose, all of the legal voters should be permitted, unhampered and unmolested, to cast their ballots. (Grand Alliance for Democracy (GAD), et al., vs. Commission on Elections, 150 SCRA 665 [1987], Resolution, En Banc).

§5. True, election is the expression of the sovereign power of the people. In the exercise of suffrage, a free people expects to achieve the continuity of government and the perpetuation of its benefits. However, inspite of its importance, the privileges and rights arising from having been elected may be enlarged or restricted by law.

The performance of legitimate and even essential duties by public officers has never been an excuse to free a person validly in prison. The duties imposed by the "mandate of the people" are multifarious. The accused-appellant asserts that the duty to legislate ranks highest in the hierarchy of government. The accused-appellant is only one of the 250 members of the House of Representatives, not to mention the 24 members of the Senate, charged with the duties of legislation. Congress continues to function well in the physical absence of one or a few of its members.

We, therefore, find that election to the position of Congressman is not a reasonable classification in criminal law enforcement. The functions and duties of the office are not substantial distinctions which lift him from the class of prisoners interrupted in their freedom and restricted in liberty movement. Lawful arrest and confinement are germane to the purpose of the law and apply to all those belonging to the same class. (People of the Philippines vs. Jaloslos, 324 SCRA 689 [2000], Ynares-Santiago, J.).

3. System of Election Adopted in the Philippines

§1. The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.

The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then they shall be allowed to vote under existing laws and such rules as the Commission on Elections may promulgate to protect the secrecy of the ballot. (Article V, Section 2, The 1987 Philippine Constitution).

§2. The Philippines has since 1901 adopted the Australian ballot system. This system of balloting was first conceived by Francis S. Dutton, a member of the Legislature of South Australia. The distinguishing feature of the system is the strict secrecy in balloting. It is mostly adopted by many countries in Europe and practically in all the States of the Union. (Martin and Martin, Administrative Law, Law of Public Officers and Election Law, Revised Edition, 1983, pp. 310, 311).

§3. The central idea of the Election Law is to secure a secret ballot to the electors, to the end that they may express their choice of candidates uninfluenced by threats, intimidation, or corrupt motives.

The central idea of the Australian ballot law, as so often expressed in the cases, is to shroud the marking of the ballots in absolute secrecy. All the efforts to secure a free and untrammeled expression of the elector's will lead up to and depart from that point. (Gardiner vs. Romulo, 26 Phil. 254 [1914], Trent, J.).

§4. All of the authorities agreed, in order to preserve a secret ballot and to give the voter the largest, unhampered

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participation in the affairs of his Government, that the voter cannot be required, if he objects, to disclose the names of the persons for whom he voted. The manner of an elector's vote and the person or persons for whom he voted is a fact which no man has a right to learn until the elector himself chooses to make it public.

That rule grows out of the secret ballot system. The privilege, however, is a personal one and, if waived by the voter himself, he may then not only be permitted but compelled to testify as to whom he voted for.

The will of the majority of the qualified electors must be determined by a count of the legal ballots found in the ballot box at the close of the election. Subsequent changes in the ballots should not be permitted to affect the result of the election in order to destroy the will of the majority of the qualified electors. (Hontiveros vs. Altavas, 26 Phil. Rep., 213; Paulino vs. Cailles, 37 Phil. 825; Calangi vs. Jocson, R. G. No. 16108, decided February 7, 1920, not published.). (Dayrit vs. San Agustin and Valdez, 40 Phil. 782 [1920], Johnson, J.).

§5. Sound policy dictates that public elective offices are filled by those who have received the highest number of votes cast in the election for that office, and it is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election. (20 Corpus Juris 2nd, S 243, p. 676). (Geronimo vs. Ramos, 136 SCRA 435 [1985], Gutierrez, Jr., J.).

§6. In every election, the people's choice is the paramount consideration and their expressed will must, at all times, be given effect. When the majority speaks and elects into office a candidate by giving him the highest number of votes cast in the election for that office, no one can be declared elected in his place. (Benito vs. Commission on Elections, 235 SCRA 436 [1994], Kapunan, J.).

4. 4. Sources of Laws Governing Elections

§1. The first election law in the Philippines, enacted by the Philippine Commission in 1907 was Act 1582, which was modified by Acts Nos. 1669, 1709, 1926 and 1786. These acts were later on incorporated in the Administrative Code, in Chapter XVIII thereof. Under the Philippine Legislature, several changes were made through the passage of Acts Nos. 2310, 3336 and 3387. Under the Commonwealth the National Assembly passed Commonwealth Act No. 233 and later enacted Commonwealth Act No. 357, which was the law enforced until June 21, 1947, when the Revised Election Code (Rep. Act No. 180) was approved. Included as its basic provisions are the provisions of Commonwealth Acts Nos. 233, 357, 605, 657, 666 and 725 and further amended by Republic Acts Nos. 599, 867, 2242, 3036, 3522, and 3588, and 4648. In 1971, R.A. 6388 superseded R.A. 180 as our Election Code. In 1978, Presidential Decree No. 1296 was promulgated and cited as the Election Code of 1978. (Martin, Ruperto, G., and Martin, Melvyn S., Administrative Law, Law of Public Officers and Election Law, Revised Edition, 1983, pp. 310-311; Bernas, Joaquin, G., S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 1966 Edition, p. 580).

§2. These were later amended by Batas Pambansa Bilang No. 881, which was further modified and/or amended by the 1987 Philippine Constitution and Republic Acts Nos. 6636, 6637, 6646, 6653, 6679, 6734, 6635, 6766, 6679, 7041, 7166, 7647, 7808, 7887, 7904, 7941, 8045, 8046, 8171, 8173, 8176, 8189, 8295, 8436, 8524, 8746, 8753, and 9006.

§3. Likewise, Executive Orders Nos. 57 (November 6, 1986); 94 (December 17, 1986); 134 (February 27, 1987); 144 (March 2, 1987); 157 (March 30, 1987); 162 (May 5, 1987); 198 (June 18, 1987); and 270 (July 25, 1987) were issued to modify or amend existing election laws.

5. Aims and Objects of Election Laws

§1. The purity of elections is one of the most important and fundamental requisites of popular government. To banish the spectre of revenge from the minds of the timid or defenseless, to render precarious and uncertain the bartering of votes, and lastly, to secure a fair and honest count of the ballots cast, is the aim of the law. (Gardiner v. Romulo, 26 Phil. 254 [1914], Trent, J.).

§2. The whole purpose of the much amended Election Law is to provide for clean elections. The courts will assist in accomplishing this purpose just in so far as they make themselves the instruments of the public welfare. By giving to each of the leading political parties representation on election boards, honesty in the conduct of the election will be better assured. (Papa vs. Municipal Board of Canvassers of Manila, 47 Phil. 694 [1925], Malcolm, J.).

§3. The purpose of the Revised Election Code is to protect the integrity of elections and to suppress all evils that may violate its purity and defeat the will of the voters. The purity of elections is one of the fundamental requisites of popular government. (Cauton vs. Commission on Elections, 126 Phil. 291 [1967]; 19 SCRA 911 [1967], Zaldivar, J.)

6. Rules of Interpretation of Election Laws

§1. The provisions of the Election Law declaring that a certain irregularity in an election procedure is fatal to the validity of the ballot or of the returns, or when the purpose and spirit of the law would be plainly defeated by a substantial departure from the prescribed method, are mandatory.

When the Election Law does not provide that a departure from a prescribed form will be fatal and such departure has been due to an honest mistake or misinterpretation of the Election Law on the part of him who was obligated to observe it, and such departure has not been used as a means for fraudulent practices or for the intimidation of voters, and it is clear that there has been a free and honest expression of the popular will, the law will be held directory and such departure will be considered a harmless irregularity.

Irregularities may be so numerous as not to be attributed to ignorance or honest mistake but to design (which gives rise to a presumption of all-pervading fraud) or to such careless disregard of the law as to amount to laches. Either cause is sufficient to vitiate the returns. (Gardiner vs. Romulo, 26 Phil. 254 [1914], Trent, J.).

§2. It has been announced in many decisions that the rules and regulations, for the conduct of elections, are mandatory before the election, but when it is sought to enforce them after the elections, they are held to be directory only, if that is possible, especially where, if they are held to be mandatory, innocent voters will be deprived of their votes without any fault on their part. The various and numerous provisions of the Election Law were adopted to assist the voters in their participation in the affairs of the government and not to defeat that object. When the voters have honestly cast their ballots, the same should not be nullified simply because the officers appointed under the law to direct the election and guard the purity of the ballots have not done their duty. The law provides a remedy, by criminal action, against them. They should be prosecuted criminally, and the will of the honest voter, as expressed through his ballot, should be protected and upheld. (Luna vs. Rodriguez, 39 Phil. 208 [1918], Johnson, J.).

§3. The rules and regulations, for the conduct of elections, are mandatory before the election, but when it is sought to enforce them after the election, they are held to be directory only, if that is possible, especially where, if they are held to be mandatory, innocent voters will be deprived of their votes without any fault on their part. The

various and numerous provisions of the Election Law were adopted to assist the voters in their participation in the affairs of the government and not to defeat that object. (Delos Angeles vs. Rodriguez, 46 Phil. 595 [1924], Malcolm, J.).

§4. Interpretation of election laws should give effect to the expressed will of the electorate. Patent erasures and superimpositions in words and figures of the votes stated in the election returns strike at the reliability of said returns as basis for canvass and proclamation. A comparison with the other copies, and, in case of discrepancy, a recount, is the only way to remove grave doubts as to the correctness of said returns as well as of ascertaining that they reflect the will of the people. (Purisima vs. Salanga, 122 Phil. 1084 [1965]; 15 SCRA 704 [1965], Bengzon, J.P., J.).

§5. Since the early case of Gardiner v. Romulo (26 Phil. 521), this Court has made it clear that it frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results. This bent or disposition continues to the present. There are other considerations that constrain us to set aside the questioned order of dismissal. (Rodriguez vs. Commission on Elections, 119 SCRA 465 [1982], Gutierrez, Jr., J.).

§6. Upon a restudy of the case, the Court finds merit in the reconsideration prayed for, which would respect the will of the electorate instead of defeating the same through the invocation of formal or technical defects. (De Guzman vs. Board of Canvassers, 48 Phil. 211 [1925], citing Lino Luna vs. Rodriguez, 39 Phil. 208 [1918]; Badelles vs. Cabili, 27 SCRA 121 [1969]; Yra vs. Abaño, 52 Phil. 380 [1928]; Canceran vs. Comelec, 107 Phil. 607 [1960]; Corocoro vs. Bascara, 9 SCRA 522 [1963], Pungutan vs. Abubakar, 43 SCRA 1 [1972]; and Lacson, Jr. vs. Posadas, 72 SCRA 170 [1976]). (Villanueva vs. Commission on Elections, 140 SCRA 352 [1985], Teehankee, J.).

7. Kinds of Elections

Elections are of two kinds: (1) regular or general election, and (2) special election.

§1. A general or regular election is one provided by law for the election of officers throughout the state, or certain subdivisions thereof, which recurs at stated intervals fixed by law, to select officers who are to succeed to the office upon the expiration of the full terms of the incumbents. (20 C.J., 56; 18 Am. Jur., 181).

§2. A special election is one provided for by law under special circumstances. It is an election held to supply a vacancy in office before the expiration of the full term for which the incumbent was elected, or an election at which some question or proposition is submitted to the vote of the qualified electors, or an election for some particular emergency. (Ibid.).

§3. In the absence of restrictive terms or provisions in Republic Act 5777 specifying the year when the election should be held, the phrase “next general elections” means the next general elections for the offices which are to be filled. The reference is to the general election for local officials since the offices to be filled are local and not national in nature. (Yñiquez vs. Commission on Elections, 30 SCRA 328 [1969], Makalintal, J.).

§4. The term “any elections” as used in Sec. 56 of the Revised Election Code as amended, includes the election of delegates to the Constitutional Convention under Resolution of both Houses No. 2 of March 16, 1967, as amended by Resolution of both Houses No. 4 of June 17, 1969, as implemented by R. A. No. 6132. (Gatchalian vs. Commission on Elections, 35 SCRA 435 [1970], Makasiar, J.).

§5. Thus, subscribing to petitioner’s interpretation of the phrase regular local election to include the SK election will unduly circumscribe the novel provision of the Local Government Code on recall, a mode of removal of

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public officers by initiation of the people before the end of his term. And if the SK election which is set by R.A. No. 7808 to be held every three years from May 1996 were to be deemed within the purview of the phrase "regular local election," as erroneously insisted by petitioner, then no recall election can be conducted rendering inutile the recall provision of the Local Government Code. (Paras vs. Commission on Elections, 264 SCRA 49 [1996], Francisco, J.).

§6. It thus becomes very evident that the Constitution has mandated a synchronized national and local election prior to June 30, 1992 or more specifically as provided for in Article XVIII, Sec. 5—on the second Monday of May, 1992. On this point, it has to be stressed that the term of office of elective local officials, except barangay officials, is fixed by the Constitution at three years (Sec. 8. Art. X). The incumbent local officials were elected in January 1988. Therefore, their term would have expired on February 2, 1991. But their term was adjusted to expire at noon of June 30, 1992. The reason for the said adjustment, as well as those of the Senators, members of the House of Representatives, President and Vice-President, is the same—to synchronize the national and local elections. Upon the other hand, and contrary to the express mandate of the 1987 Constitution, Republic Act 7056 provides for two (2) separate elections in 1992. x x x With the clear mandate of the 1987 Constitution to hold synchronized (simultaneous) national and local elections on the second Monday of May, 1992, the inevitable conclusion would be that Republic Act 7056 is clearly violative of the Constitution because it provides for the holding of a desynchronized election. Stated differently, Republic Act 7056 particularly Sections 1 and 2 thereof contravenes Article XVIII, Sections 2 and 5 of the 1987 Constitution. (Osmeña vs. Commission on Elections, 199 SCRA 750 [1991], Paras, J.).

§7. It would, therefore, be more in keeping with the intent of the recall provision of the Code to construe regular local election as one referring to an election where the office held by the local elective official sought to be recalled will be contested and be filled by the electorate. (Paras vs. Commission on Elections, 264 SCRA 49 [1996], Francisco, J.).

8. Initiative, Referendum, Recall and Plebiscite

§1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum. (Article VI, Section 1, The 1987 Philippine Constitution).

§2. The Congress shall, as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters thereof. (Article VI, Section 32, The 1987 Philippine Constitution).

§3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanism of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units. (Article X, Section 3, The 1987 Philippine Constitution).

§4. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a

petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

The Congress shall provide for the implementation of the exercise of this right. (Article XVII, Section 2, The 1987 Philippine Constitution).

§5. Any amendment to, or revision of, this Constitution under Section 1 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the approval of such amendment or revision.

Any amendment under Section 2 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the certification by the Commission on Elections of the sufficiency of the petition. (Article XVII, Section 4, The 1987 Philippine Constitution).

§6. The term “plebiscite” is used to indicate a vote of the entire people who are enfranchised by law, expressing their choice or against a proposed law or enactment submitted to them and which, if adopted, will work a radical change in the constitution, or which is beyond the powers of a regular legislative body. (Maine, Popular Government, p. 40 cited in Martin and Martin, Administrative Law, Law of Public Officers and Election Law, Revised Edition, 1983, pp. 309-310).

§7. In order that a plebiscite for the ratification of an amendment to the Constitution may be validly held, it must provide the voter not only sufficient time but ample basis for an intelligent appraisal of the nature of the amendment per se as well as its relation to the other parts of the Constitution with which it has to form a harmonious whole. In the context of the present state of things, where the Convention has hardly started considering the merits of hundreds, if not thousands, of proposals to amend the existing Constitution, to present to the people any single proposal or a few of them cannot comply with this requirement. Under Section 1, Article XV of the Constitution, a proposal to amend the Constitution should be submitted to the people not separately from but together with all the other amendments to be proposed by this present Convention. (Tolentino vs. Commission on Elections, 41 SCRA 702 [1971], Barredo, J.).

§8. We find no way to reconcile the holding of a plebiscite that should conform to said constitutional requirement but eliminates the participation of either of these two component political units. No amount of rhetorical flourishes can justify exclusion of the parent province in the plebiscite because of an alleged intent on the part of the authors and implementors of the challenged statute to carry out what is claimed to be a mandate to guarantee and promote autonomy of local government units. The alleged good intentions cannot prevail and overrule the cardinal precept that what our Constitution categorically directs to be done or imposes as a requirement must first be observed, respected and complied with. No one should be allowed to pay homage to a supposed fundamental policy intended to guarantee and promote autonomy of local government units but at the same time transgress, ignore and disregard what the Constitution commands in Article XI Section 3 thereof. Respondents would be no different from one who hurries to pray at the temple but then spits at the idol therein. (Tan vs. Commission on Elections, 142 SCRA 727 [1986], Alampay, J.).

§9. Plebiscite issues are matters of public concern and importance. The people’s right to be informed and to be able to freely and intelligently make a decision would be better served by access to an unabridged discussion of the issues, including the forum. (Sanidad vs. Commission on Elections, 181 SCRA 529 [1990], Medialdea, J.).

§10. Chapter 3 (Sections 54 to 59) of B.P. Blg. 337 provides for the mechanism for recall of local elective

officials. Section 59 expressly authorizes the respondent COMELEC to conduct and supervise the process of and election on recall and in the exercise of such powers, promulgate the necessary rules and regulations.

We therefore rule that Resolution 2272 promulgated by respondent COMELEC is valid and constitutional. Consequently, the respondent COMELEC had the authority to approve the petition for recall and set the date for the signing of said petition.

However, recall at this time is no longer possible because of the limitation provided in Sec. 55 (2) of B.P. Blg. 337, which states "SEC. 55. Who May Be Recalled; Ground for Recall; When Recall May not be Held.¾x x x (2) No recall shall take place within two years from the date of the official's assumption of office or one year immediately preceding a regular local election."

The Constitution has mandated a synchronized national and local election prior to 30 June 1992, or more specifically, as provided for in Article XVIII, Sec. 5¾on the second Monday of May, 1992. Thus, to hold an election on recall approximately seven (7) months before the regular local election will be violative of the above provisions of the applicable Local Government Code (B.P. Blg. 337). (Evardone vs. Commission on Elections, 204 SCRA 464 [1991], Padilla, J.).

§11. It stands to reason that when the law states that the plebiscite shall be conducted "in the political units directly affected," it means that residents of the political entity who would be economically dislocated by the separation of a portion thereof have a right to vote in said plebiscite. Evidently, what is contemplated by the phrase "political units directly affected," is the plurality of political units which would participate in the plebiscite. (Padilla vs. Commission on Elections, 214 SCRA 735 [1992], Romero, J.).

§12. Recall is a mode of removal of a public officer by the people before the end of his term of office. The people's prerogative to remove a public officer is an incident of their sovereign power and in the absence of constitutional restraint, the power is implied in all governmental operations. Such power has been held to be indispensable for the proper administration of public affairs. Not undeservedly, it is frequently described as a fundamental right of the people in a representative democracy.

The Batasang Pambansa then enacted BP 337 entitled "The Local Government Code of 1983." Section 54 of its Chapter 3 provided only one mode of initiating the recall elections of local elective officials, i.e., by petition of at least twenty-five percent (25%) of the total number of registered voters in the local government unit concerned, x x x. In response to this constitutional call, Congress enacted R.A. 7160, otherwise known as the Local Government Code of 1991, which took effect on January 1, 1992. In this Code, Congress provided for a second mode of initiating the recall process through a preparatory recall assembly which in the provincial level is composed of all mayors, vice-mayors and sanggunian members of the municipalities and component cities. (Garcia vs. Commission on Elections, 227 SCRA 100 [1993], Puno, J.).

§13. In construing the meaning of the term, "regular local election" in Section 74 of the Local Government Code of 1991 which provides that "no recall shall take place within one (1) year x x x immediately preceding a regular local election," we ruled that for the time bar to apply, the approaching regular local election must be one where the position of the official to be recalled, is to be actually contested and filled by the electorate.

Section 69 (d) of the Local Government Code of 1991 expressly provides that "recall of any elective x x x municipal x x x official may also be validly initiated upon petition of at least twenty-five percent (25%) of the total number of registered voters in the local government unit concerned during the election in which the local official sought to be recalled was elected." The law is plain and unequivocal as to what initiates recall proceedings: only a petition of at least 25% of the total number of registered voters, may validly initiate recall

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proceedings. (Angobung vs. Commission on Elections, 269 SCRA 245 [1997], Hermosisima, Jr., J.).

§14. The Liga ng mga Barangay is undoubtedly an entity distinct from the Preparatory Recall Assembly. It just so happens that the personalities representing the barangays in the Liga are the very members of the Preparatory Recall Assembly, the majority of whom met on July 7, 1996, and voted in favor of the resolution calling for the recall of Mayor Malonzo, after deliberation reported in the record, in accordance with the existing law. Thus, the Punong Barangays and Sangguniang Barangay members convened and voted as members of the Preparatory Recall Assembly of the City of Caloocan, and not as members of the Liga ng mga Barangay. The recall proceedings, therefore, cannot be denied merit on this ground. (Malonzo vs. Commission on Elections, 269 SCRA 380 [1997], Torres, Jr., J.).

§15. In the case at bar, while the City of Pasig vigorously claims that the areas covered by the proposed Barangays Karangalan and Napico are within its territory, it can not deny that portions of the same area are included in the boundary dispute case pending before the Regional Trial Court of Antipolo. Surely, whether the areas in controversy shall be decided as within the territorial jurisdiction of the Municipality of Cainta or the City of Pasig has material bearing to the creation of the proposed Barangays Karangalan and Napico. Indeed, a requisite for the creation of a barangay is for its territorial jurisdiction to be properly identified by metes and bounds or by more or less permanent natural boundaries. Precisely because territorial jurisdiction is an issue raised in the pending civil case, until and unless such issue is resolved with finality, to define the territorial jurisdiction of the proposed barangays would only be an exercise in futility.

Neither do we agree that merely because a plebiscite had already been held in the case of the proposed Barangay Napico, the petition of the Municipality of Cainta has already been rendered moot and academic. The issues raised by the Municipality of Cainta in its petition before the COMELEC against the holding of the plebiscite for the creation of Barangay Napico are still pending determination before the Antipolo Regional Trial Court. (City of Pasig vs. Commission on Elections, 314 SCRA 179 [1999], Ynares-Santiago, J.).

§16. We can agree that recall is a process which begins with the convening of the preparatory recall assembly or the gathering of the signatures of at least 25% of the registered voters of a local government unit, and then proceeds to the filing of a recall resolution or petition with the COMELEC, the verification of such resolution or petition, the fixing of the date of the recall election, and the holding of the election on the scheduled date. However, as used in paragraph (b) Section 74, “recall” refers to the election itself by means of which voters decide whether they should retain their local official or elect his replacement. Several reasons can be cited in support of this conclusion.

There are two limitations in paragraph (b) on the holding of recalls: (1) that no recall shall take place within one year from the date of assumption of office of the official concerned, and (2) that no recall shall take place within one year immediately preceding a regular local election. The purpose of the first limitation is to provide a reasonable basis for judging the performance of an elective local official. In the Bower case cited by this Court in Angobung v. COMELEC, it was held that “The only logical reason which we can ascribe for requiring the electors to wait one year before petitioning for a recall election is to prevent premature action on their part in voting to remove a newly elected official before having had sufficient time to evaluate the soundness of his policies and decisions.” The one-year limitation was reckoned as of the filing of a petition for recall because the Municipal Code involved in that case expressly provided that “no removal petition shall be filed against any officer or until he has actually held office for at least twelve months.” But however the period of prohibition is

determined, the principle announced is that the purpose of the limitation is to provide a reasonable basis for evaluating the performance of an elective local official. Hence, in this case, as long as the election is held outside the one-year period, the preliminary proceedings to initiate a recall can be held even before the end of the first year in office of a local official. (Claudio vs. Commission on Elections, 331 SCRA 388 [2000], Mendoza, J.).

CHAPTER IV
Elective Constitutional Officers

1. President and Vice-President

§1. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election. (Article VII, Section 2, The 1987 Philippine Constitution).

§2. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He may be removed from office in the same manner as the President. (Article VII, Section 3, 1987 Philippine Constitution).

The Vice-President may be appointed as a Member of the Cabinet. Such appointment requires no confirmation. (Article VII, Section 3, The 1987 Philippine Constitution).

§3. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.

Unless otherwise provided by law, the regular elections for President and Vice-President shall be held on the second Monday of May.

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law,

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canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of majority of all the Members of both Houses of the Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.

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. (Article VII, Section 4, The 1987 Philippine Constitution).

§4. The President-elect and the Vice-President-elect shall assume office at the beginning of their terms.

If the President-elect fails to qualify, the Vice-President-elect shall act as President until the President-elect shall have qualified.

If a President shall not have been chosen, the Vice-President-elect shall act as President until a President shall have been chosen and qualified.

If at the beginning of the term of the President, the President-elect shall have died or shall have become permanently disabled, the Vice-President-elect shall become President.

Where no President and Vice-President shall have been chosen or shall have qualified, or where both shall have died or become permanently disabled, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives shall act as President until a President or a Vice-President shall have been chosen and qualified.

The Congress shall, by law, provide for the manner in which one who is to act as President shall be selected until a President or a Vice-President shall have qualified, in case of death, permanent disability, or inability of the officials mentioned in the next preceding paragraph. (Article VII, Section 7, The 1987 Philippine Constitution).

§5. In case of death, permanent disability, removal from office, or resignation of the President, the Vice-President shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and Vice-President, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives, shall then act as President until the President or

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Vice-President shall have been elected and qualified.

The Congress shall, by law, provide who shall serve as President in case of death, permanent disability, or resignation of the Acting President. He shall serve until the President or the Vice-President shall have been elected and qualified, and be subject to the same restrictions of powers and disqualifications as the Acting President. (Article VII, Section 8, The 1987 Philippine Constitution).

§6. Whenever there is a vacancy in the Office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the Members of the Senate and the House of Representatives who shall assume office upon confirmation by a majority vote of all the Members of both Houses of the Congress, voting separately. (Article VII, Section 9, The 1987 Philippine Constitution).

2. Senators

§1. The Senate shall be composed of twenty-four Senators who shall be elected at large by the qualified voters of the Philippines, as may be provided by law. (Article VI, Section 2, The 1987 Philippine Constitution).

§2. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five (35) years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election. (Article VI, Section 3, 1987 Philippine Constitution).

§3. The term of office of the Senators shall be six years and shall commence, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

No Senator shall serve for more than two consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. (Article VI, Section 4, 1987 Philippine Constitution).

3. House of Representatives

§1. The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis

of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations. (Article VI, Section 5, 1987 Philippine Constitution).

§2. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election. (Article VI, Section 6, 1987 Philippine Constitution).

§3. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

No Member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. (Article VI, Section 7, 1987 Philippine Constitution).

4. Party-list Representatives

§1. No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1) year immediately preceding the day of the election, able to read and write, a bona fide member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election. In case of a nominee of the youth sector, he must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue in office until the expiration of his term. (Section 9, Republic Act No. 7941).

§2. The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector. (Article VI, Section 5 (2), The 1987 Philippine Constitution).

§3. No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system as provided in this Constitution. (Article IX (C), Section 7, The 1987 Philippine Constitution).

§4. Section 1 of Executive Order No. 198 dated 18 June 1987 provided for the manner of nomination and appointment of sectoral representatives to the House of Representatives. It further added the Veterans Sector, Elderly Sector, Disabled Sector and Fisherfolk Sector to the party-list.

§5. Section 5 of Republic Act No. 7941 approved on 03 March 1995 provided for the election of party-list representatives through the party-list system. It furthermore added the Overseas Workers and Professionals to the party-list.

§6. The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. (Section 2, Republic Act No. 7941).

§7. For purposes of the May 1988 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.

In determining the allocation of seats for the second vote, the following procedure shall be observed:

(a.) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

(b.) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats. (Section 11, Republic Act No. 7941).

§8. The COMELEC shall tally all the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization, or coalition as against the total nationwide votes cast for the party-list system. (Section 12, Republic Act No. 7941).

CHAPTER V
Other Elective Officials

1. Local Officials

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§1. The qualifications for local elective officials are as follows:

(a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province, or in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

(b) Candidates for the position of governor, vice-governor or member of the sangguniang panlalawigan, or mayor, vice-mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty-three (23) years of age on election day.

(c) Candidates for position of mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

(d) Candidates for the position of member of the sangguniang panlungsod or sangguniang bayan must be at least eighteen (18) years of age on election day.

(e) x x x

(f) x x x

(Title Two, Chapter I, Section 39, R. A. No. 7160, otherwise known as the Local Government Code).

2. Regional Assembly of the Autonomous Regions

§1. No person shall be a Member of the Regional Assembly unless he is: (1) A natural-born citizen of the Philippines; (2) At least twenty-one (21) years of age on the day of the election; (3) Able to read and write; (4) A registered voter of the district in which he shall be elected on the day he files his certificate of candidacy; and (5) A resident thereof for a period of not less than five (5) years immediately preceding the day of the election. (Article VII, Section 7, Republic Act No. 6734 (Muslim Mindanao) approved on August 1, 1999.).

§2. No person may be elected Governor (Vice-Governor) of the Autonomous Region unless he is a natural-born citizen of the Philippines, a registered voter of the Autonomous Region, able to read and write, at least thirty-five (35) years of age on the day of the election, and a resident of the Autonomous Region for at least five (5) years immediately preceding the election. (Article VIII, Sections 3 and 4, Republic Act No. 6734 (Muslim Mindanao) approved on August 1, 1999).

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§3. The sole province of Ifugao cannot validly constitute the Cordillera Autonomous Region. It is explicit in Article X, Section 15 of the 1987 Constitution that: “Section 15. There shall be created autonomous regions in Muslim Mindanao and in the Cordillera consisting of provinces, cities, municipalities and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.” (Ordillo vs. Commission on Elections, 192 SCRA 100 [1990], Gutierrez, Jr., J.).

3. Barangay Officials

§1. Republic Act No. 6679 was approved on November 4, 1988 amending Republic Act No. 6653 to postpone the Barangay Elections provided for under Section 37, Article VI of the Omnibus Election Code to March 28, 1989, prescribing additional rules governing the conduct of Barangay Elections and for other purposes.

§2. The qualifications for local elective officials are as follows:

xxx xxx xxx

(e) Candidates for the position of punong barangay or member of the sangguniang barangay must be at least eighteen (18) years of age on election day.

(f) Candidates for the sangguniang kabataan must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day. (Title Two, Chapter I, Section 39, R. A. No. 7160, otherwise known as the Local Government Code).

§3. The justice of the peace court of the corresponding municipality has jurisdiction over a barrio election dispute seeking to nullify the barrio elections held therein on the ground of lack of notice to the barrio residents.

The Revised Election Code does not apply to the election of barrio officials but to provincial and municipal officials. The proper law applicable to the adjudication of a dispute over a barrio election is Republic Act No. 2370. (Bautista vs. De la Cruz, 9 SCRA 725 [1963], Bautista Angelo, J.).

§4. In this petition for certiorari and prohibition questioning the denial by the Laoag City Court of the petitioner’s appeal from its decision in a barangay election protest, we are asked to rule on the period within which the said decision may be appealed to the Court of First Instance. Batas Pambansa Blg. 222, otherwise known as the Barangay Election Act of 1982, fixed the period at ten days. This period, which is prescribed in Section 20 of the law, must be followed. (Villa vs. Llanes, Jr., 120 SCRA 81 [1983], Plana, J.).

§5. Outside of the cases where the Constitution clearly requires that the selection of particular officials shall be thru the ballot and with the participation of political parties, the lawmaking body, in the exercise of its power to enact laws regulating the conduct of elections, may in our view ban or restrict partisan elections. We are not aware of any constitutional provision expressly or impliedly requiring that barangay officials shall be elected thru partisan electoral process. Indeed, it would be within the competence of the National Assembly to prescribe that the barangay captain and councilmen, rather than elected, shall be appointed by designated officials such as the City or Municipal Mayors or Provincial Governors. If barangay officials could thus be made appointive, we do not think it would be constitutionally obnoxious to prescribe that they shall be elective, but without political party or partisan involvement in the process in order to promote objectivity and lack of partisan bias in the performance of their duties that are better discharged in the absence of political attachment. (Occeña vs. Commission on Elections, 127 SCRA 404 [1984], Plana, J.).

§6. It follows that the petitioner cannot insist that he was running not for kagawad only but ultimately also for punong barangay in the 28 March 1989 election. In fact, his certificate of candidacy was for kagawad and not for punong barangay. As the basic position being disputed in the barangay election was that of kagawad , that of punong barangay being conferred only by operation of law on the candidate placing first, the petitioner had to forfeit his position of punong barangay, which he was holding when he presented his candidacy for kagawad. Consequently, he cannot be credited with the four contested votes for “Flores” on the erroneous ground that he was still incumbent as punong barangay on the day of the election. (Flores vs. Commission on Elections, 184 SCRA 484 [1990], Cruz, J.).

§7. It is clear, therefore, that under the rules prevailing during the 1997 Barangay Elections, the failure to authenticate the ballots shall no longer be cause for the invalidation thereof. Rather, the Board of Election Inspectors shall merely note such failure in the minutes and declare the failure to authenticate the ballots as an election offense.

We likewise agree with the dissenting opinion that Article VI, Section 43 of the Omnibus Election Code and Section 6 of Republic Act No. 6679 do not apply to the 1997 Barangay Elections. We quote with approval the following portion of the dissent: It is not too difficult to discern why these two provisions quoted above so provide that any ballot not so authenticated by the Chairman and the poll clerk by their signatures shall be deemed spurious. This is so because the signatures were the only security marking in the ballot produced either by a mimeographing machine or any ordinary printer. The local government units which were tasked to produce them were not expected to put intricate security markings on the ballot paper such as phantom markings, watermarking or printing security marks. As the Supreme Court intimated in Libanan v. HRET, the difference in the rules may not be too difficult to discern considering that in those official ballots supplied and furnished by the local government units themselves, the possibility of the ballots being easily counterfeited might not have been discounted. Hence, the requirement that the chairman and poll clerk authenticate by their signatures at the back of such ballots prepared by the local government units. x x x However, in the 1997 Barangay elections, the ballots were not provided by the local government unit themselves. It was this Commission that furnished and provided the official barangay ballots during the 1997 Barangay Elections and these ballots were printed with security markings. Although the COMELEC General Instructions (Resolution No. 2888) requires the chairman of the board to authenticate the ballots, the same does not provide for the invalidation of the ballot in the event that the

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board failed to so authenticate it. Instead, their failure was only considered as an election offense. It is, therefore, inappropriate to apply the aforequoted legal provisions in this case and rule that these unsigned ballots are spurious. As these ballots were provided and furnished by this Commission and not by the local government unit concerned, the evil sought to be avoided by these provisions, are more imaginary than real. (Malabaguio vs. Commission on Elections, 346 SCRA 699 [2000], Ynares-Santiago, J.).

CHAPTER VI
Qualifications of Elective Officials

1. Citizenship

§1. All constitutional officers, starting with the President are required to be natural-born citizens of the Philippines.

§2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens. (Article IV, Section 2, The 1987 Philippine Constitution).

§3. While Frivaldo does not invoke either of the first two methods, he nevertheless claims he has reacquired Philippine citizenship by virtue of a valid repatriation. He claims that by actively participating in the elections in this country, he automatically forfeited American citizenship under the laws of the United States. Such laws do not concern us here. The alleged forfeiture is between him and the United States as his adopted country. It should be obvious that even if he did lose his naturalized American citizenship, such forfeiture did not and could not have the effect of automatically restoring his citizenship in the Philippines that he had earlier renounced. At best, what might have happened as a result of the loss of his naturalized citizenship was that he became a stateless individual.

This Court will not permit the anomaly of a person sitting as provincial governor in this country while owing exclusive allegiance to another country. That fact that he was elected by the people of Sorsogon does not excuse this patent violation of the salutary rule limiting public office and employment only to the citizens of this country. The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified. Obviously, this rule requires strict application when the deficiency is lack of citizenship. If a person seeks to serve in the Republic of the Philippines, he must owe his total loyalty to this country only, abjuring and renouncing all fealty and fidelity to any other state. (Frivaldo vs. Commission on Elections, 174 SCRA 245 [1989], Cruz, J.).

§4. The petitioner now claims that his naturalization in Australia made him at worst only a dual national and did not divest him of his Philippine citizenship. Such a specious argument cannot stand against the clear provisions of

CA No. 63, which enumerates the modes by which Philippine citizenship may be lost. x x x It is also worth mentioning in this connection that under Article IV, Section 5, of the present Constitution, "Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law."

Even if it be assumed that, as the petitioner asserts, his naturalization in Australia was annulled after it was found that his marriage to the Australian citizen was bigamous, that circumstance alone did not automatically restore his Philippine citizenship. x x x. What we must consider is the fact that he voluntarily and freely rejected Philippine citizenship and willingly and knowingly embraced the citizenship of a foreign country. The possibility that he may have been subsequently rejected by Australia, as he claims, does not mean that he has been automatically reinstated as a citizen of the Philippines. (Labo, Jr., vs. Commission on Elections, 176 SCRA 1 [1989], Cruz, J.).

§5. The cases of Juan Gallanosa Frivaldo v. COMELEC et al., (G.R. No. 87193, June 21,1989) and Ramon L. Labo v. COMELEC et al., (G.R. No. 86564, August 1, 1989) are not applicable to the case at bar. x x x. In the instant case, private respondent vehemently denies having taken the oath of allegiance to the United States (p. 81 Rollo). He is a holder of a valid and subsisting Philippine passport and has continuously participated in the electoral process in this country since 1963 up to the present, both as a voter and as a candidate (pp. 107-108, Rollo). Thus, private respondent remains a Filipino and the loss of his Philippine citizenship cannot be presumed. x x x Considering the fact that admittedly Osmeña was both a Filipino and an American, the mere fact that he has a Certificate stating he is an American does not mean that he is not still a Filipino. (Aznar vs. Commission on Elections, 185 SCRA 703 [1990], Paras, J.).

§6. Section 40 of Republic Act No. 7160 (Local Government Code of 1991) which took effect on January 1, 1992, provides that those with dual citizenship are disqualified from running for any elective local position, and effectively overturns the ruling in Aznar.

§7. Petitioner's argument, that to unseat him will frustrate the will of the electorate, is untenable. Both the Local Government Code and the Constitution require that only Filipino citizens can run and be elected to public office. We can only surmise that the electorate, at the time they voted for private respondent, was of the mistaken belief that he had legally reacquired Filipino citizenship. (Republic vs. De la Rosa, 232 SCRA 785 [1994], Quiason, J.).

§8. Under Philippine law, citizenship may be reacquired by direct act of Congress, by naturalization or by repatriation.

From the above, it will be noted that the law does not specify any particular date or time when the candidate must possess citizenship, unlike that for residence (which must consist of at least one year's residency immediately preceding the day of election) and age (at least twenty three years of age on election day).

Literally, such qualifications—unless otherwise expressly conditioned, as in the case of age and residence—should thus be possessed when the "elective [or elected] official" begins to govern, i.e., at the time he is proclaimed and at the start of his term—in this case, on June 30, 1995.

Paraphrasing this Court's ruling in Vasquez vs. Giap and Li Seng Giap & Sons, if the purpose of the citizenship requirement is to ensure that our people and country do not end up being governed by aliens, i.e., persons owing allegiance to another nation, that aim or purpose would not be thwarted but instead achieved by construing the citizenship qualification as applying to the time of proclamation of the elected official and at the start of his term.

But to remove all doubts on this important issue, we also hold that the repatriation of Frivaldo RETROACTED to the date of the filing of his application on August 17, 1994. (Frivaldo vs. Commission on Elections, 257 SCRA 727 [1996], Panganiban, J.).

§9. Dual citizenship is different from dual allegiance. The former arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of jus sanguinis is born in a state which follows the doctrine of jus soli. Such a person, ipso facto and without any voluntary act on his part, is concurrently considered a citizen of both states.

Considering the citizenship clause (Art. IV) of our Constitution, it is possible for the following classes of citizens of the Philippines to possess dual citizenship: (1) Those born of Filipino fathers and/or mothers in foreign countries which follow the principle of jus soli; (2) Those born in the Philippines of Filipino mothers and alien fathers if by the laws of their fathers' country such children are citizens of that country; (3) Those who marry aliens if by the laws of the latter's country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship. Dual allegiance, on the other hand, refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is involuntary, dual allegiance is the result of an individual's volition.

In including Section 5 in Article IV on citizenship, the concern of the Constitutional Commission was not with dual citizens per se but with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Hence, the phrase "dual citizenship" in R.A. No. 7160, Section 40(d) and in R.A. No. 7854, Section 20 must be understood as referring to "dual allegiance." Consequently, persons with mere dual citizenship do not fall under this disqualification. Unlike those with dual allegiance, who must, therefore, be subject to strict process with respect to the termination of their status, for candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states. (Mercado vs. Manzano, 307 SCRA 630 [1999], Mendoza J.).

§10. Before the 1935 Constitution, what served as the Constitution of the Philippines were the principal organic acts by which the United States governed the country.

The signing into law of the 1935 Constitution has established the principle of jus sanguinis as basis for the acquisition of Philippine citizenship.

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The mere fact that a person is a holder of an Australian passport and has an alien certificate of registration are not acts constituting an effective renunciation of citizenship and do not militate against her claim of Filipino citizenship.

The phrase “dual citizenship” in R.A. 7160 and in R.A. 7854 must be understood as referring to “dual allegiance” - persons with mere dual citizenship do not fall under this disqualification.

For candidates with dual citizenship, it is enough that they elect Philippine citizenship upon the filing of their certificate of candidacy, to terminate their status as persons with dual citizenship. A declaration in the certificate of candidacy that one is a Filipino citizen and that he or she will support and defend the Constitution and will maintain true faith and allegiance thereto, which is under oath, operates as an effective renunciation of foreign citizenship. (Valles vs. Commission on Elections, 337 SCRA 543 [2000], Purisima, J.).

2. Age

§1. In Espinosa vs. Aquino, (Electoral Case No. 9, Senate Electoral Tribunal (SET), the election of the late Senator Benigno S. Aquino, Jr. was upheld, despite his not being of the required age on the day of the election, although he celebrated his thirty-fifth birthday before his proclamation. The holding in Aquino was subsequently nullified by the adoption of the 1987 Constitution (Art. VI, Sec. 3), which specified that the age qualification must be possessed on the day of the elections, and not on the day of the proclamation of the winners by the board of canvassers.

§2. From the above, it will be noted that the law does not specify any particular date or time when the candidate must possess citizenship, unlike that for residence (which must consist of at least one year’s residency immediately preceding the day of election) and age (at least twenty three years of age on election day). (Frivaldo vs. Commission on Elections, 257 SCRA 727 [1996], Panganiban, J.).

§3. An elective municipal officer must, among others, be at least 23 years of age at the time of the election. He was thus disqualified to run for an elective municipal office under Section 2174 of the Revised Administrative Code (People vs. Yanza, G.R. No. L-12089, April 29, 1960; Feliciano vs. Aquino, G.R. No. L-10201, September 23, 1957). (Sanchez vs. Del Rosario, 111 Phil. 733 [1961]; 1 SCRA 1102 [1961], Reyes, J.B.L., J.).

§4. While Section 12 of the Dagupan City Charter (Republic Act No. 170, as amended) states that the elective members of the Municipal Board should not be less than 23 years of age, Section 6 of Republic Act No. 2259 fixes 25 years as the age limit. The last-named statute, which was enacted later, excludes from the operation thereof a number of cities, and the City of Dagupan is not one of them. Hence, the charter provision on the age limit is deemed repealed by Republic Act No. 2259. A duly elected councilor, who was below the age of 25 years at the time he filed his certificate of candidacy, at the time of the election and at the time he took his oath of office, is disqualified on the ground of non-age. (Gaerlan, Jr. vs. Catubig, 17 SCRA 376 [1966], Sanchez, J.).

§5. The phrase “not more than 21 years of age”, means not over 21 years, not beyond 21 years. It means 21 365-day cycles. It does not mean 21 years and one or some days or a fraction of a year because that would be more than 21 365-day cycles. “Not more than 21 years old” is not equivalent to “less than 22 years old,” contrary to petitioner’s claims. The law does not state that the candidate be less than 22 years on election day. The general rule is that an elected official of the Sangguniang Kabataan must not be more than 21 years of age on the day of his election. (Garvida vs. Sales, Jr., 271 SCRA 767 [1997], Puno, J.).

§6. The petition filed by private respondent Ututalum with the respondent Comelec to disqualify Loong on the ground that the latter made a false representation in his certificate of candidacy as to his age, clearly does not fall under the grounds of disqualification as provided for in Rule 25 but is expressly covered by Rule 23 of the Comelec Rules of Procedure governing petitions to cancel certificate of candidacy. Moreover, Section 3, Rule 25 which allows the filing of the petition at any time after the last day for the filing of certificates of candidacy but not later than the date of proclamation, is merely a procedural rule issued by respondent Commission which, although a constitutional body, has no legislative powers. Thus, it cannot supersede Section 78 of the Omnibus Election Code which is a legislative enactment. (Loong vs. Commission on Elections, 216 SCRA 760 [1992], Padilla, J.).

3. Residence

§1. The question of residence for the purposes of the Election Law is largely one of intention. (Yra vs. Abaño, 52 Phil. 380 [1928], Malcolm, J.).

§2. It is an established rule that “where a voter abandons his residence in a state and acquires one in another state, he cannot again vote in the state of his former residence until he has qualified by a new period of residence” (20 Corpus Juris, p. 71, par. 28). “The term ‘residence’ as so used, is synonymous with ‘domicile’ which imports not only intention to reside in a fixed place, but also personal presence in that place, coupled with conduct indicative of such intention.” (People vs. Bender, 144 N.Y. S., 145). (Nuval vs. Guray, 52 Phil. 645 [1928], Villa-Real, J.).

§3. A student living with his parents in a certain barrio of a municipality, which barrio is later separated to be organized as an independent municipality, who for several years pursues his studies in several provinces of the archipelago, supported by his parents, returning to the latter’s home during his vacations in the newly organized municipality, does not lose his residence in said municipality, either on account of having resided in different provinces as a student, or of having registered as a voter in the former municipality, and is eligible as municipal president of the new municipality even if his registration as a voter in the municipality to which the new one originally belonged has not been cancelled. (Vivero vs. Murillo, 52 Phil. 694 [1929], Villa-Real, J.).

§4. In Section 2071 of the Administrative Code, it is declared that no person shall be eligible for election to a provincial office unless at the time of the election he has, among other things, been a bona fide resident of the province for at least one year prior to the election. This provision requires personal residence in the province for

the period stated with a bona fide intention to make the place a home. One who has been brought up in a certain province but who, after qualifying as a lawyer, establishes his residence in Manila with the intention of remaining there for an indefinite time, thereby severs his domiciliary relation with his former province, and is not eligible to be a candidate for a provincial office therein until he returns to the province and lives there in good faith for one year prior to the election. (Tanseco vs. Arteche, 57 Phil. 227 [1932], Street, J.).

§5. Inasmuch as the respondent-appellant has had his legal residence in the municipality of Dumaguete from the year 1904 up to the present, without having acquired another in any other place, and inasmuch as he has all the other qualifications required by law in order to be a qualified elector, his election to the office of municipal president is valid and in accordance with law. (Larena vs. Teves, 61 Phil. 36 [1934], Villa-Real, J.).

§6. At present the nearest approach to a constitution that we have in the Philippines is our Organic Act, the Jones Law, enacted August 29, 1916, by the Congress of the United States. “The organic law (or Act) of a territory takes the place of a constitution as the fundamental law of the local government.” (Malcolm, Philippine Constitutional Law, p. 229.) The only provision contained in that law as to the qualification of voters appears in Section 15 thereof. Under the authority conferred upon it by said section the Philippine Legislature has prescribed the qualifications and disqualifications of voters in Sections 431 and 432 of the Revised Administrative Code.

The only question raised by the answer of the respondents is whether or not the petitioners have acquired a residence for voting purposes in the municipality in which they desire to vote. The petitioners allege that they have and the respondents deny this allegation. There is no hard and fast rule by which to determine where a person actually resides. “Each case must depend on its particular facts or circumstances. Three rules are, however, well established: first, that a man must have a residence or domicile somewhere; second, that where once established it remains until a new one is acquired; and third, a man can have but one domicile at a time.” (9 R. C. L., 1031.). (Alcantara vs. Secretary of Interior, 61 Phil. 459 [1935], Goddard, J.).

§7. The respondent, born in the municipality of Ibajay, baptized, grown up, married, paid his cedula tax, registered as a voter, exercised the right of suffrage, and elected once as councilor and three times as municipal president of said municipality, is legally a resident thereof notwithstanding the fact that he constructed a house in another municipality for purposes of business, had his family lived there and educated his children in the schools of said municipality. (De los Reyes vs. Solidum, 61 Phil. 893 [1935], Villa-Real, J.).

§8. The term “residence” as used in the election law is synonymous with “domicile,” which imports not only intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention.

In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. In other words, there must be an animus non revertendi and an animus manendi. The purpose to remain in or at the domicile of choice must be for an indefinite period of time. The acts of the person must conform with his purpose. The change of residence must be voluntary; the residence at the place chosen for the domicile must be actual; and to the fact of residence there

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must be added the animus manendi.

The manifest intent of the law in fixing a residence qualification is to exclude a stranger or newcomer, unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community; and when the evidence on the alleged lack of residence qualification is weak or inconclusive and it clearly appears, as in the instant case, that the purpose of the law would not be thwarted by upholding the right to the office, the will of the electorate should be respected. (Gallego vs. Verra, 73 Phil. 453 [1941], Ozaeta, J.).

§9. Mere absence from one's residence of origin – domicile - to pursue studies, engage in business, or practice his avocation, is not sufficient to constitute abandonment or loss of such residence. (Faypon vs. Quirino, 96 Phil. 294 [1954], Padilla, J.).

§10. Despite his vigorous disclaimer, Miguel's immigration to the United States in 1984 constituted an abandonment of his domicile and residence in the Philippines. For he did not go to the United States merely to visit his children or his doctor there; he entered the United States with the intention to live there permanently as evidenced by his application for an immigrant's (not a visitor's or tourist's) visa. Based on that application of his, he was issued by the U.S. Government the requisite green card or authority to reside there permanently. xxx. To be "qualified to run for elective office" in the Philippines, the law requires that the candidate who is a green card holder must have "waived his status as a permanent resident or immigrant of a foreign country." Therefore, his act of filing a certificate of candidacy for elective office in the Philippines, did not of itself constitute a waiver of his status as a permanent resident or immigrant of the United States. The waiver of his green card should be manifested by some act or acts independent of and done prior to filing his candidacy for elective office in this country. Without such prior waiver, he was "disqualified to run for any elective office". (Caasi vs. Court of Appeals, 191 SCRA 229 [1990], Griño-Aquino, J.).

§11. The determination of a person's legal residence or domicile largely depends upon intention which may be inferred from his acts, activities and utterances xxx xxx xxx. In the instant case, there is no evidence to prove that the petitioner temporarily left her residence in Kananga, Leyte in 1975 to pursue any calling, profession or business. What is clear is that she established her residence in Ormoc City with her husband and considers herself a resident therein. The intention of animus revertendi not to abandon her residence in Kananga, Leyte, therefore, is not present. The fact that she occasionally visits Kananga, Leyte, through the years does not signify an intention to continue her residence therein. (Abella vs. Commission on Elections, 201 SCRA 253 [1991], Gutierrez, Jr., J.)

§12. In election cases, the Court treats domicile and residence as synonymous terms, thus: "(t)he term "residence" as used in the election law is synonymous with "domicile", which imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention". Their going into self-exile until conditions favorable to them would have somehow stabilized is understandable. Certainly, their sudden departure from the country cannot be described as "voluntary", or as "abandonment of residence" at least in the context that these terms are used in applying the concept of "domicile by choice". (Romualdez vs. Regional Trial Court, Br. 7, Tacloban City, 226 SCRA 408 [1993], Vitug, J.).

§13. The deliberations of the 1987 Constitution on the residence qualification for certain elective positions have placed beyond doubt the principle that when the Constitution speaks of "residence" in election law, it actually means only "domicile". (Romualdez-Marcos vs. Commission on Elections, 248 SCRA 300 [1995], Kapunan, J.).

§14. We agree with COMELEC's contention that in order that petitioner could qualify as candidate for Representative of the Second District of Makati City, the latter "must prove that he has established not just residence but domicile of choice." The Constitution requires that a person seeking election to the House of Representatives should be a resident of the district in which he seeks election for a period of not less than one (1) year prior to the elections. Residence, for election law purposes, has a settled meaning in our jurisdiction. The absence of clear and positive proof showing a successful abandonment of domicile under the conditions stated above, the lack of identification—sentimental, actual or otherwise—with the area, and the suspicious circumstances under which the lease agreement was effected all belie petitioner's claim of residency for the period required by the Constitution, in the Second District of Makati. (Aquino vs. Commission on Elections, 248 SCRA 400 [1995], Kapunan, J.).

§15. It is doctrinally settled that the term "residence," as used in the law prescribing the qualifications for suffrage and for elective office, means the same thing as "domicile," which imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. "Domicile" denotes a fixed permanent residence to which, whenever absent for business, pleasure, or some other reasons, one intends to return. "Domicile" is a question of intention and circumstances. In the consideration of circumstances, three rules must be borne in mind, namely: (1) that a man must have a residence or domicile somewhere; (2) when once established it remains until a new one is acquired; and (3) a man can have but one residence or domicile at a time.

A person's "domicile" once established is considered to continue and will not be deemed lost until a new one is established. To successfully effect a change of domicile one must demonstrate an actual removal or an actual change of domicile; a bona fide intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose. In other words, there must basically be animus manendi coupled with animus non revertendi. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.

It is the contention of petitioner that his actual physical presence in Alabel, Sarangani, since December 1996 was sufficiently established by the lease of a house and lot located therein in January 1997 and by the affidavits and certifications under oath of the residents of that place that they have seen petitioner and his family residing in their locality. While this may be so, actual and physical is not in itself sufficient to show that from said date he had transferred his residence in that place. To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention. While "residence" simply requires bodily presence in a given place, "domicile" requires not only such bodily presence in that place but also a declared and probable intent to make it one's fixed and permanent place of abode, one's home. (Domino vs. Commission on Elections, 310 SCRA 546 [1999], Davide, Jr., C.J.).

§16. The meaning and purpose of the residency requirement were explained recently in our decision in Aquino v. COMELEC, as follows: . . . [T]he place "where a party actually or constructively has his permanent home," where he, no matter where he may be found at any given time, eventually intends to return and remain, i.e., his domicile, is that to which the Constitution refers when it speaks of residence for the purposes of election law. The manifest purpose of this deviation from the usual conceptions of residency in law as explained in Gallego vs. Vera is "to exclude strangers or newcomers unfamiliar with the conditions and needs of the community" from taking advantage of favorable circumstances existing in that community for electoral gain. While there is nothing wrong with the practice of establishing residence in a given area for meeting election law requirements, this nonetheless defeats the essence of representation, which is to place through the assent of voters those most cognizant and sensitive to the needs of a particular district, if a candidate falls short of the period of residency mandated by law for him to qualify. That purpose could be obviously best met by individuals who have either had actual residence in the area for a given period or who have been domiciled in the same area either by origin or by choice.

The fact that a person is registered as a voter in one district is not proof that he is not domiciled in another district. Thus, in Faypon v. Quirino, this Court held that the registration of a voter in a place other than his residence of origin is not sufficient to consider him to have abandoned or lost his residence. (Perez vs. Commission on Elections, 317 SCRA 641 [1999], Mendoza, J.).

§17. In requiring candidates to have a minimum period of residence in the area in which they seek to be elected, the Constitution or the law intends to prevent the possibility of a "stranger or newcomer unacquainted with the conditions and needs of a community and not identified with the latter from [seeking] an elective office to serve that community." Such provision is aimed at excluding outsiders "from taking advantage of favorable circumstances existing in that community for electoral gain." Establishing residence in a community merely to meet an election law requirement defeats the purpose of representation: to elect through the assent of voters those most cognizant and sensitive to the needs of the community. This purpose is "best met by individuals who have either had actual residence in the area for a given period or who have been domiciled in the same area either by origin or by choice."

We stress that the residence requirement is rooted in the desire that officials of districts or localities be acquainted not only with the metes and bounds of their constituencies but, more important, with the constituents themselves—their needs, difficulties, aspirations, potentials for growth and development, and all matters vital to their common welfare. The requisite period would give candidates the opportunity to be familiar with their desired constituencies, and likewise for the electorate to evaluate the former's qualifications and fitness for the offices they seek. In other words, the actual, physical and personal presence of herein private respondent in Cagayan de Oro City is substantial enough to show his intention to fulfill the duties of mayor and for the voters to evaluate his qualifications for the mayorship. Petitioners' very legalistic, academic and technical approach to the residence requirement does not satisfy this simple, practical and common-sense rationale for the residence requirement. (Torayno, Sr., vs. Commission on Elections, 337 SCRA 574 [2000], Panganiban, J.).

4. Registered Voter

§1. This connotes possession of the qualifications for suffrage as enumerated in Article V, Section I, of the Constitution.

§2. The Election Law makes use of the terms "qualified voter in his municipality," and "qualified elector therein." To be a qualified voter, does not necessarily mean that a person must be a registered voter. It is sufficient for the candidate to possess all of the qualifications prescribed in section 431 and none of the disqualifications prescribed in section 432. The fact that a candidate failed to register as an elector in the

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municipality does not deprive him of the right to become a candidate and to be voted for.

One may be a qualified voter without exercising the right to vote. Registering does not confer the right; it is but a condition precedent to the exercise of the right. Registration regulates the exercise of the right of suffrage. It is not a qualification of such right. (Yra vs. Abano, 52 Phil. 380 [1928], Malcolm, J.).

§3. Registration is essential to the exercise of the right of suffrage, not to the possession thereof. Indeed, only those who have such right may be registered. In other words, the right must be possessed before the registration. The latter does not confer it. (Aportadera vs. Sotto, 3 SCRA 626 [1961], Concepcion, J.).

§4. It should be emphasized that the Local Government Code requires an elective official to be a registered voter. It does not require him to vote actually. Hence, registration – not the actual voting – is the core of this "qualification." (Frivaldo vs. Commission on Elections, 257 SCRA 727 [1996], Panganiban, J.).

5. Literacy

§1. The literacy qualification is now expressly required because it is not deemed embraced in the suffrage qualification. The present Constitution not only does not require ability to read and write, but in fact prohibits its imposition as a qualification for voting, when it provides thus:

Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage. (Article V, Section 1, The 1987 Philippine Constitution).

CHAPTER VII
The Electoral Tribunals

1. Presidential Electoral Tribunal

§1. The Constitution makes no provision for election contests involving the office of President or Vice-President. The absence of a machinery to handle such contests was keenly felt when in the 1949 presidential elections, complaints of frauds and irregularities in the election was made and no recourse was available either under the Constitution or the statutes. For while the Constitution provides in each House of the Congress for an Electoral Tribunal which is given exclusive jurisdiction over all election contests involving the members and the election laws govern contests over elective local offices, neither the Constitution nor the statutes make provision for contests over the two highest elective positions in the land. Not until 1957 did Congress fill this legal hiatus by enacting a special law creating the Presidential Electoral Tribunal (Republic Act No. 1793 approved on June 21, 1957). (Sinco, Vicente G., Philippine Political Law, Eleventh Edition, 1962, p. 154).

§2. Prior to the approval of Republic Act No. 1793, a defeated candidate for president or vice-president, who

believe that he was the candidate who obtained the largest number of votes for either office, despite the proclamation by Congress of another candidate as the president-elect or vice-president-elect, had no legal right to demand by election protest a recount of the votes cast for the office concerned, to establish his right thereto. As a consequence, controversies or disputes on this matter were not justiciable. (Lopez vs. Roxas, et al., 17 SCRA 756 [1966], Concepcion, C.J.).

§3. Republic Act No. 1793, creating the Presidential Electoral Tribunal, has the effect of giving a defeated candidate the legal right to contest judicially the election of the President-elect or Vice-President-elect and to demand a recount of the votes cast for the office involved in the litigation, as well as to secure a judgment declaring that he, not the candidate proclaimed elected by Congress, is the one elected President or Vice-President, as the case may be, and that, as such, he is entitled to assume the duties attached to said office.

By providing that the Presidential Electoral Tribunal "shall be composed of the Chief Justice and the other ten members of the Supreme Court", Republic Act No. 1793 has conferred upon such Court an additional original jurisdiction of an exclusive character. Republic Act No. 1793 has not created a new or separate court. It has merely conferred upon the Supreme Court the functions of a Presidential Electoral Tribunal. The Presidential Electoral Tribunal is not inferior to the Supreme Court, since it is the same Court, although the functions peculiar to said Tribunal are more limited in scope than those of the Supreme Court in the exercise of its ordinary functions. The result of the enactment of Republic Act No. 1793 may be likened to the fact that Courts of First Instance perform the functions of such ordinary Courts of First Instance, those of courts of land registration, those of probate courts, and those of courts of juvenile and domestic relations. It is, also, comparable to the situation obtaining when the municipal court of a provincial capital exercises its authority, pursuant to law, over a limited number of cases which were previously within the exclusive jurisdiction of Courts of First Instance. In all of these instances, the court (Court of First Instance or municipal court) is only one, although the functions may be distinct and, even, separate. (Ibid.).

§4. In imposing upon the Supreme Court the additional duty of performing the functions of a Presidential Electoral Tribunal, Congress has not, through Republic Act No. 1793, encroached upon the appointing power of the Executive. The imposition of new duties constitutes, neither the creation of an office, nor the appointment of an officer. Said law is constitutional. (Ibid.).

§5. The power to be the judge of contests relating to the election, returns, and qualifications of any public officer is essentially judicial. As such — under the very principle of separation of powers — it belongs exclusively to the judicial department, except only insofar as the Constitution provides otherwise. This is precisely the reason why said organic law ordains that "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" (Article VI, Section 11 of the Constitution). In other words, the purpose of this provision was to exclude the power to decide such contests relating to Members of the Congress — which by nature is judicial — from the operation of the general grant of judicial power to "the Supreme Court and such inferior courts as may be established by law". (Ibid.).

§6. The power of Congress to declare who, among the candidates for President and/or Vice-President, has

obtained the largest number of votes, is entirely different in nature from and not inconsistent with the jurisdiction vested in the Presidential Electoral Tribunal by Republic Act No. 1793. Congress merely acts as a national board of canvassers, charged with the ministerial and executive duty to make said declaration, on the basis of the election returns duly certified by provincial and city boards of canvassers. (Article VII, Section 2, Constitution of the Philippines.) Upon the other hand, the Presidential Electoral Tribunal has the judicial power to determine whether or not said duly certified election returns have been irregularly made or tampered with, or reflect the true results of the elections in the areas covered by each, and, if not, to recount the ballots cast, and, pass upon the validity of each ballot or determine whether the same shall be counted, and, in the affirmative, in whose favor, which Congress has no power to do. (Ibid.).

§7. The authority of the Presidential Electoral Tribunal to determine whether or not the protestant has a better right than the President and/or Vice-President to be declared elected by Congress would not abridge the constitutional tenure. If the evidence introduced in the election protest shows that the person really elected President or Vice-President is the protestant, not the person declared elected by Congress, then the latter had legally no constitutional tenure whatsoever, and, hence, he can claim no abridgment thereof. (Ibid.).

§8. 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. (Article VII, Section 4, The 1987 Philippine Constitution).

§9. The Revised Rules of the Presidential Electoral Tribunal as of April 18, 1992 was published in the Manila Bulletin on April 24, 1992.

§10. It must also be stressed that under the Rules of the Presidential Electoral Tribunal, an election protest may be summarily dismissed, regardless of the public policy and public interest implications thereof, on the following grounds: (1) The petition is insufficient in form and substance; (2) The petition is filed beyond the periods provided in Rules 14 and 15 hereof; (3) The filing fee is not paid within periods provided for in these Rules; (4) The cash deposit, or the first P100,000.00 thereof, is not paid within 10 days after the filing of the protest; and (5) The petition or copies thereof and the annexes thereto filed with the Tribunal are not clearly legible. Other grounds for a motion to dismiss, e. g., those provided in the Rules of Court which apply in a suppletory character, may likewise be pleaded as affirmative defenses in the answer. After which, the Tribunal may, in its discretion, hold a preliminary hearing on such grounds. In sum, if an election protest may be dismissed on technical grounds, then it must be, for a decidedly stronger reason, if it has become moot due to its abandonment by the Protestant. (Defensor-Santiago vs. Ramos, 253 SCRA 559 [1996], En banc Resolution).

2. Senate Electoral Tribunal

a. Under the Jones Law

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§1. The Act of Congress of August 29, 1918, commonly known as the Jones Law, in its Section 18, provides: "That the Senate and the House of Representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their elective members." The grant of power to the Philippine Senate and the Philippine House of Representatives, respectively, is full, clear, and complete. The Judiciary, with its traditional regard for the balance of powers, must permit this exclusive privilege of the Legislature to remain where the sovereign authority has placed it. (Veloso vs. Boards of Canvassers of Leyte and Samar, 39 Phil. 886 [1919], Malcolm, J.).

§2. And it is a well-known fact that Section 18 of the Jones Law confers exclusive jurisdiction upon the Senate and the House of Representatives to hear and determine election protests against the members-elect of each respective house. (Veloso vs. Boards of Canvassers of Leyte and Samar, 39 Phil., 886.) (Rafols vs. Court of First Instance and Fiscal of Cebu, 47 Phil. 736 [1925], Villamor, J.).

§3. Upon principle, reason and authority, the Supreme Court has jurisdiction over the Electoral Commission and the subject matter of the present controversy for the purpose of determining the character, scope and extent of the constitutional grant to the Electoral Commission as "the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly."

The original provision regarding this subject in the Act of Congress of July 1, 1902 (sec. 7, par. 5) laying down the rule that "the assembly shall be the judge of the elections, returns, and qualifications of its members", was taken from clause 1 of section 5, Article I of the Constitution of the United States providing that "Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, ... " The Act of Congress of August 29, 1916 (sec. 18, par. 1) modified this provision by the insertion of the word "sole" as follows: "That the Senate and House of Representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their elective members, ... " apparently in order to emphasize the exclusive character of the jurisdiction conferred upon each House of the Legislature over the particular cases therein specified. This court has had occasion to characterize this grant of power to the Philippine Senate and House of Representatives, respectively, as "full, clear and complete". (Veloso vs. Boards of Canvassers of Leyte and Samar, 39 Phil. 886 [1919].)

b. Under the 1935 Constitution

§1. 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. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House three upon nomination of the party having the largest number of votes and three upon the nomination of the party having the second largest number of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman. (Article VI, Section 11, The 1935 Philippine Constitution).

§2. The transfer of the power of determining the election, returns and qualifications of the members of the Legislature long lodged in the legislative body, to an independent, impartial and non-partisan tribunal, is by no means a mere experiment in the science of government x x x.

From the deliberations of our Constitutional Convention it is evident that the purpose was to transfer in its totality all the powers previously exercised by the Legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal. It was not so much the knowledge and appreciation of contemporary constitutional precedents, however, as the long-felt need of determining legislative contests devoid of partisan considerations which prompted the people acting through delegates to the Convention to provide for this body known as the Electoral Commission. With this end in view, a composite body in which both the majority and minority parties are equally represented to off-set partisan influence in its deliberations was created, and further endowed with judicial temper by including in its membership three justices of the Supreme Court.

The Electoral Commission is a constitutional creation, invested with the necessary authority in the performance and execution of the limited and specific function assigned to it by the Constitution. Although it is not a power in our tripartite scheme of government, it is, to all intents and purposes, when acting within the limits of its authority, an independent organ. It is, to be sure, closer to the legislative department than to any other. The location of the provision (Sec. 4) creating the Electoral Commission under Article VI entitled “Legislative Department” of our Constitution is very indicative. Its composition is also significant in that it is constituted by a majority of members of the Legislature. But it is a body separate from and independent of the Legislature.

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, is intended to be as complete and unimpaired as if it had remained originally in the Legislature. The express lodging of that power in the Electoral Commission is an implied denial of the exercise of that power by the National Assembly x x x. If the power claimed for the National Assembly to regulate the proceedings of the Electoral Commission and cut off the power of the Electoral Commission to lay down a period within which protest should be filed were conceded, the grant of power to the commission would be ineffective. The Electoral Commission in such a case would be invested with the power to determine contested cases involving the election, returns, and qualifications of the members of the National Assembly but subject at all times to the regulative power of the National Assembly. Not only would the purpose of the framers of our Constitution of totally transferring this authority from the legislative body be frustrated, but a dual authority would be created with the resultant inevitable clash of powers from time to time x x x. The power to regulate on the part of the National Assembly in procedural matters will inevitably lead to the ultimate control by the Assembly of the entire proceedings of the Electoral Commission, and, by indirection, to the entire abrogation of the constitutional grant. It is obvious that this result should not be permitted.

The creation of the Electoral Commission carried with it ex necesitate rei the power regulative in character to limit the time within which protests entrusted to its cognizance should be filed. It is a settled rule of construction that where a general power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred (Cooley, Constitutional Limitations, eight ed., vol. I, pp. 138, 139). In the absence of any further constitutional provision relating to the procedure to be followed in filing protests before the Electoral Commission, therefore, the incidental power to promulgate such rules necessary for the proper exercise of its exclusive powers to judge all contests relating to the election, returns and qualifications

of members of the National Assembly, must be deemed by necessary implication to have been lodged in the Electoral Commission. (Angara vs. Electoral Commission, G.R. No. 45081, July 15, 1936; 63 Phil. 139 [1936], Laurel, J.).

§3. The Convention, however, bent on circumscribing the latter's authority to "contests" relating to the election, etc. altered the draft. The Convention did not intend to give it all the functions of the Assembly on the subject of election and qualifications of its members. The distinction is not without a difference. "As used in the constitutional provisions", election contest "relates only to statutory contests in which the contestant seeks not only to oust the intruder, but also to have himself inducted into the office." (Laurel on Elections, Second Edition, p. 250; 20 C.J., 58.).

§4. In all parliaments of the world, the invariable rule is to leave unto themselves the determination of controversies respecting the election and qualifications of their members. This practice was followed in our country for many years. But when the fundamental law of the Philippines was being drafted, the idea was conceived of transferring that power to a separate and independent body to be created by the Constitution, known as the Electoral Tribunal and to be composed of members of both the majority and minority parties, in the legislative body. But fearing that the Tribunal as thus composed might not still guarantee an impartial and just disposition of election contest, and that partisan influence might prevail over justice, it was conceived that three members of the Supreme Court should sit in judgment in the Tribunal. When the last idea was launched on the floor of the Convention, the same received the support of public opinion. The Constitutional Convention approved the proposal almost unanimously, and the corresponding provision was inserted in the Constitution as Section 11 of Article VI of the Constitution. It is the people's will that the Electoral Tribunal should act in accordance with the law and justice and with complete detachment from all political considerations. (Senate Electoral Tribunal Decision, Prospero Sanidad, et al., vs. Jose O. Vera, et al., Case No 1, April 19, 1947, cited in Francisco, Vicente, J., How To Try Election Cases, 1952, pp. 493, 496, 497).

§5. Our Constitution has unqualifiedly reposed upon the Electoral Tribunal the responsibility of being the "sole judge of all contests relating to election, returns and qualifications" of the members of the legislative houses.

The Electoral Tribunals are independent constitutional creations with specific powers and functions to execute and perform and the avowed purpose in creating them is to have independent constitutional organs pass upon all contests relating to the election returns and qualifications of members of the Congress, devoid of partisan influence or consideration, which object would be frustrated if Congress were to retain that power.

With the precise sphere of their functions, they are as sovereign over their internal affairs as are each of the other powers of government over their respective domains. Consequently, the employees of an Electoral Tribunal are its own, and not of the Senate nor of the House of Representatives nor of any other entity, and it stands to reason that the appointment, the supervision and the control over said employees rest wholly within the Tribunal itself.

The Electoral Tribunals must be independent not alone when they are deciding cases before them, but also when they are selecting their personnel which will aid them in the performance of their duties and when they are

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disposing of their funds for their necessary expenses. The selection of such personnel and the disposition of such funds have a substantial bearing upon the judicial functions of the Electoral Tribunals. If they may be forced to accept employees who deserve no trust from them and they may be dictated to in the disposition of their funds, the integrity of their proceedings and the correctness of their decisions may easily be impaired and defeated.

The fact that the appropriation for the Senate Electoral Tribunal is included in the budget corresponding to the Senate, does not and cannot mean that employees of the Electoral Tribunal are also employees of the Senate, for both institutions are separate and independent of each other under the Constitution.

The Chief Justice, in the exercise of his constitutional power to designate associate justices as members of the Electoral Tribunals, has established the policy in conformity with what he believes to be the true meaning of the Constitution, that associate justices thus designated cannot be changed by him during the periods of their incumbency except in cases of vacancy. The evident purpose is to maintain the independence of each associate justice in the performance of his duties as a member of an electoral tribunal.

It is well-settled rule that when jurisdiction is conferred by law on a court or tribunal, that court or tribunal, unless otherwise provided by law, is deemed to have authority to employ all writs, processes and other means necessary to make its power effective. In the instant case, the Electoral Tribunal was created by the Constitution to perform a specific mission. That tribunal cannot accomplish its mission without subordinate personnel. Consequently, in the absence of any specific provision of law to the contrary, the Tribunal may, either by rules or by specific orders, provide for the manner of selecting its employees. And in this case, the Electoral Tribunal, by rule, provided that the power of appointment is lodged in its Chairman with the approval of the Tribunal.

When not contrary to any specific provision of law and when necessary for the accomplishment of purposes for which said tribunal is created, rules of judicial tribunals have force of law. (Suanes vs. Chief Accountant, G.R. No. L-2460, October 26, 1948; 46 Off. Gaz., 462; 81 Phil. 818 [1948], Moran, C.J.).

§6. Although the Constitution provides that the Senate shall choose six (6) Senators to be members of the Senate Electoral Tribunal, the latter is part neither of Congress nor of the Senate. (Angara vs. Electoral Commission, 63 Phil., 139; Suanes vs. Chief Accountant, 81 Phil., 818; 46 Off. Gaz., 462).

The main objective of the framers of the Constitution in providing for the establishment, first, of an Electoral Commission, and then of one Electoral Tribunal for each House of Congress was to insure the exercise of judicial impartiality in the disposition of election contests affecting members of the lawmaking body. To achieve this purpose, two devices were resorted to, namely: (a) the party having the largest number of votes, and the party having the second largest number of votes, in the National Assembly or in each House of Congress, were given the same number of representatives in the Electoral Commission or Tribunal so that they may realize that partisan considerations could not control the adjudication of said cases, and thus be induced to act with greater impartiality; and (b) the Supreme Court was given in said body the same number of representatives as each one of said political parties, so that the influence of the former may be decisive and endow said Commission or Tribunal

with judicial temper.

The most vital feature of the Electoral Tribunals is the equal representation of the parties having the largest and the second largest number of votes in each House therein, and the resulting equilibrium to be maintained by the Justices of the Supreme Court as members of said Tribunals.

The framers of the Constitution intended to prevent the majority party from controlling the Electoral Tribunals, and the structure thereof is founded upon the equilibrium between the majority and the minority parties therein, with the Justices of the Supreme Court, who are members of said Tribunals, holding the resulting balance of power. The procedure prescribed in Section 11 of Article VI of the Constitution for the selection of members of the Electoral Tribunals is vital to the role they are called upon to play. It constitutes the essence of said Tribunals. Hence, compliance with said procedure is mandatory, and acts performed in violation thereof are null and void.

While it is true that the membership of the Senate Electoral Tribunal, in the case at bar, would in effect be limited to seven (7), instead of nine (9), members, it must be conceded that the present composition of the Senate, wherein twenty-three (23) of its members belong to one party and one (1) member belongs to another, was not foreseen by the framers of the Constitution. Furthermore, the spirit of the law prevails over its letter, and the solution herein adopted maintains the spirit of the Constitution, for partisan considerations cannot be decisive in a tribunal consisting of three (3) Justices of the Supreme Court, three (3) members nominated by the majority party and either one (1) or two (2) members nominated by the party having the second largest number of votes in the House concerned.

The equilibrium between the political parties therein would be destroyed, and, what is worse, the decisive moderating role of the Justices of the Supreme Court would be wiped out, and, in lieu thereof, the door would be thrown wide open for the predominance of political considerations in the determination of election protests pending before said Tribunal, which is precisely what the fathers of our Constitution earnestly strove to forestall. (Tañada and Macapagal vs. Cuenco, et al. 103 Phil. 1051 [1957], Concepcion, J.).

§7. Past organic laws of the Philippines made each house of the legislature the sole judge of the elections, returns, and qualifications of its elective members. It is the method established by American constitutions for the settlement of election contests of members of the legislative bodies in the United States. The Constitution of the Philippines has adopted a different device. At first it established a body called Electoral Commission which acted as the judge of contests relating to the election, returns, and qualifications of members of the National Assembly. When by the amendments adopted in 1940 the National Assembly was replaced by the Congress of the Philippines, an Electoral Tribunal, with practically similar membership as that of the Electoral Commission, was created for each house of Congress. As provided in Article VI, Section 4, of the Constitution before its amendment, the Electoral Commission was constituted in this manner:

“There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes and three by the party having the second largest number of votes. The senior justice in the Commission shall be its Chairman. The Electoral Commission shall be the sole judge of all

contests relating to the election, returns and qualifications of the Members of the National Assembly". (Sinco, Vicente, G., Philippine Political Law, Eleventh Edition, 1962, pp. 153-514).

§8. In view of all the facts and the law, this Tribunal must adjudge, as it is hereby adjudged, that conformably to the provisions of Section 29 of the Revised Election Code, as amended, the protestees Gaudencio E. Antonino, Maria Kalaw-Katigbak and Raul S. Manglapus are disqualified to continue holding the office of Senator of the Philippines. The protest, with respect to the other Protestees, is dismissed.

And, as to the claim of protestant Ernesto C. Hidalgo that he be declared entitled to any of the posts to be vacated by the Protestees, the Tribunal rules that he has not established his right thereto. The established doctrine in this jurisdiction is that the disqualification of a proclaimed candidate-elect does not necessarily result in the election of a protestant (Calano vs. Cruz, 94 Phil. 230, 233; Llamoso vs. Ferrer, 84 Phil. 490). (Ernesto C. Hidalgo vs. Manglapus, et al., Senate Electoral Tribunal, Electoral Case No. 5, Decision and Resolution, Off. Gaz., Vol. 64, No. 14, 3186, 3228 [April 24, 1967], Reyes, J.B.L. Chairman).

§9. After such proclamation, and much more so after the oath of office was taken by the candidate proclaimed, with his exercise of the prerogatives vested in such position, it would not only curtail the plenary grant of authority to the Electoral Tribunal but likewise could result in an unseemly wrangling between such constitutional agency and the Supreme Court if the matter were not left to the sole and exclusive appraisal and judgment of the Electoral Tribunal. To the same effect is the resolution in Nacionalista Party v. Comelec, L-28242, Feb. 23, 1968, where the Supreme Court was confronted with the principal issue of determination of the eligibility or qualification of respondent Benigno Aquino, Jr. under Section 4, Article VI of the Constitution, which provides in part that "no person shall be a Senator unless he be a natural-born citizen of the Philippines and, at the time of his election, is at least thirty-five years of age x x x." In this latter case, it was held: "that inasmuch as respondent Benigno Aquino, Jr. has been proclaimed elected to that body and has assumed office as member thereof the determination of his eligibility or qualification properly and exclusively pertains to the Senate Electoral Tribunal x x x." (Lachica vs. Yap, 25 SCRA 140 [1968], Fernando, J.).

c. Under the 1973 Constitution

§1. The Commission on Elections shall be the sole judge of all contests relating to the election, returns and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials. (Article XII (C), Section 2, (2), The 1973 Philippine Constitution).

d. Under the 1987 Constitution

§1. 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. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman. (Article VI, Section 17, The 1987 Philippine

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Constitution).

§2. The Electoral Tribunals and the Commission on Appointments shall be constituted within thirty days after the Senate and the House of Representatives shall have been organized with the election of the President and the Speaker. (Article VI, Section 19, The 1987 Philippine Constitution).

§3. It seems quite clear to us that in thus providing for a Tribunal to be staffed by both Justices of the Supreme Court and Members of the Senate, the Constitution intended that both those "Judicial" and "Legislative" components commonly share the duty and authority of deciding all contests relating to the election, returns and qualifications of Senators. The respondent Tribunal correctly stated one part of this proposition when it held that said provision "x x x is a clear expression of an intent that all (such) contests x x x shall be resolved by a panel or body in which their (the Senators') peers in that Chamber are represented." The other part, of course, is that the constitutional provision just as clearly mandates the participation in the same process of decision of a representative or representatives of the Supreme Court.

Said intent is even more clearly signaled by the fact that the proportion of Senators to Justices in the prescribed membership of the Senate Electoral Tribunal is 2 to 1, an unmistakable indication that the "legislative component" cannot be totally excluded from participation in the resolution of senatorial election contests, without doing violence to the spirit and intent of the Constitution.

Let us not be misunderstood as saying that no Senator-Member of the Senate Electoral Tribunal may inhibit or disqualify himself from sitting in judgment on any case before said Tribunal. Every Member of the Tribunal may, as his conscience dictates, refrain from participating in the resolution of a case where he sincerely feels that his personal interests or biases would stand in the way of an objective and impartial judgment. What we are merely saying is that in the light of the Constitution, the Senate Electoral Tribunal cannot legally function as such, absent its entire membership of Senators and that no amendment of its Rules can confer on the three Justices-Members alone the power of valid adjudication of a senatorial election contest. (Abbas, et al., vs. Senate Electoral Tribunal, 166 SCRA 651 [1988], Gancayco, J.).

§4. In Pangilinan vs. Commission on Elections (228 SCRA 36), this Court has ruled that "where the candidate has already been proclaimed winner in the congressional elections, the remedy of petitioner is to file an electoral protest with the Electoral Tribunal of the House of Representatives." In like manner, where as in the case at bar, petitioner assails the Commission's resolution proclaiming the twelfth (12th) winning senatorial candidate, petitioner's proper recourse was to file a regular election protest which under the Constitution and the Omnibus Election Code exclusively pertains to the Senate Electoral Tribunal.

The word "sole" in Section 17, Article VI of the 1987 Constitution and Section 250 of the Omnibus Election Code underscores the exclusivity of the Tribunal's jurisdiction over election contests relating to its members (Co vs. Electoral Tribunal of the House of Representatives, 199 SCRA 692; Lazatin vs. House of Representatives Electoral Tribunal, 168 SCRA 391; Angara vs. Electoral Commission, 63 Phil. 139, cited in Chavez vs. Commission on Elections, 211 SCRA 315). 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.

The Office of the Solicitor General in its 'Manifestation in Lieu of Comment' filed before this Court had pointed out that 'in a Resolution dated October 6, 1998 (G.R. No. 133751- Roberto M. Pagdanganan vs. Commission on Elections, et al.), this Court dismissed the petitioner for certiorari filed by Roberto M. Pagdanganan involving the same issues as the case at bar for being moot and academic as Pagdanganan had already filed a case with the Senate Electoral Tribunal. Had petitioner properly filed her election protest before the Senate Electoral Tribunal in accordance with the Revised Rules of the Senate Electoral Tribunal, the same may have been consolidated with the protest of Roberto Pagdanganan "for good and sufficient reasons" as required by said rules. (Rasul vs. Commission on Elections, 313 SCRA 18 [1999], Gonzaga-Reyes, J.).

§5. The present Senate Electoral Tribunal has ruled, thus:

a.) Accordingly, what the protestant should have done when the COMELEC refused to act on her petition for a provisional proclamation pending submission of proof of discrepancies between the certificates of canvass and the election returns, was to appeal that decision in a petition for certiorari with the Supreme Court. Not having availed herself of that remedy, she is precluded from raising the same question before the Tribunal in an election protest.

The Tribunal agrees that the petition is insufficient in form and content, insufficient even to put the Protestees to the necessity (or duty) of calling for a bill of particulars, and certainly insufficient to warrant further proceedings that would in all probability ultimately involve examination of ballots from all the places alleged. This is a herculean task little justified by such unpromising postulates, let alone the insufficiency of the Protestant's deposit. (Rasul vs. Webb, SET Case No. 002-92 [1993], Senate Electoral Tribunal Resolution).

b.) From the foregoing definition, it is quite evident that an election contest always has a dual purpose or objective; one is to unseat the protestee and the other is to install the protestant to the office vacated by the protestee. Thus, in his protest, Protestant Pimentel prayed not only for the annulment of the proclamation and unseating of the protestees, but also his declaration as winner in the 1995 senatorial elections. In other words, the two reliefs sought are so inextricably intertwined that one cannot be had without the other. Certainly, when Protestant Pimentel sought the removal of the protestees herein, it was merely a consequence of his desire to occupy one of their seats in the 10th Congress. If one of the purposes or objectives of the election contest is no longer feasible or is lost in the process, an election contest as a remedy becomes wanting of an essential element, making it untenable.

In the instant case, the relief prayed for by Protestant Pimentel to be declared winner in the 1995 senatorial elections has been abandoned through Protestant Pimentel's filing of his candidacy for a senatorial seat in the 11th Congress of the Philippines, his active campaigning therefor and finally, his eventual victory and assumption to office as an elected Senator with a term of office of six (6) years beginning June 30, 1998, which term of office, it must be stressed, overlaps with that pertaining to the office being contested herein. (Pimentel vs. Honasan, et al., SET Case No. 001-95, Senate Electoral Tribunal Resolution [1999]).

§6. Under The 1987 Philippine Constitution, the Senate Electoral Tribunal adopted and approved its Rules on

September 24, 1987 and the said Rules was subsequently amended on June 4, 1992, April 24, 1996 and April 23, 1999, and published in a newspaper of general circulation.

3. House of Representatives Electoral Tribunal

§1. According to the Constitution: "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." (Sec. 11, Art. VI, Phil. Const.) The scope of such authority was set forth thus: "From the deliberations of our Constitutional Convention it is evident that the purpose was to transfer in its totality all the powers previously exercised by the legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal" (Angara v. Electoral Commission, 63 Phil. 139). The grant of power of the then Philippine Senate and House of Representatives under the Jones Law was characterized by the Supreme Court as "full, clear and complete" (Veloso v. Board of Canvassers, 39 Phil. 886). To such a doctrine the Supreme Court has remained committed. The power of the Electoral Tribunal remains full, clear and complete. It excludes the exercise of any authority on the part of the Supreme Court that would in any wise restrict or curtail it or even affect the same (Cf. Suanez vs. Chief Accountant, 81 Phil. 818 and Tañada vs. Cuenco, 103 Phil. 1051).

§2. Courts of first instance have no jurisdiction to nullify votes cast in a congressional election, and even if it has, there must first be a showing that the alleged illegal votes cast would affect the result of the election. (Osmeña vs. Hontanosas, 31 SCRA 48 [1970], Per Curiam).

§3. The power of the Comelec to set aside returns that are falsified or are not authentic and genuine and to order the same excluded from a canvass is distinct and separate from the authority inherent in the Electoral Tribunals of the House or the Senate, in the course of an electoral protest, to set aside such returns whenever the statements of votes cast contained therein do not tally with the valid votes enclosed within the ballot boxes themselves. No conflict of jurisdiction can arise since the powers of the Comelec and the Electoral Tribunals are exercised on different occasions and for different purposes. The Comelec is not concerned with the veracity of the returns, but with their genuineness and regularity; and it is self-evident that a return accomplished by the election inspectors under threats and coercion by armed men is in law no return at all that the canvassers may take into account. As a corollary, the Comelec can set aside an improper canvass, as well as the resulting proclamation. (Antonio, Jr. vs. Commission on Elections, 32 SCRA 319 [1970], Reyes, J.B.L., J.).

§4. The petition is impressed with merit because petitioner has been proclaimed winner of the Congressional elections in the first district of Pampanga, has taken his oath of office as such, and assumed his duties as Congressman. For this Court to take cognizance of the electoral protest against him would be to usurp the functions of the House Electoral Tribunal.

The alleged invalidity of the two proclamations (which had been previously ordered by the COMELEC itself)

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despite alleged irregularities in connection therewith, and despite the pendency of the protests of the rival candidates, is a matter that is also addressed, considering the premises, to the sound judgment of the Electoral Tribunal. (Lazatin vs. Commission on Elections, 157 SCRA 337 [1988], Paras, J.).

§5. That Sec. 250 of the Omnibus Election Code, as far as contests regarding the election, returns and qualifications of Members of the Batasang Pambansa is concerned, had ceased to be effective under the 1987 Constitution is readily apparent. First, the Batasang Pambansa has already been abolished and the legislative power is now vested in a bicameral Congress. Second, the Constitution vests exclusive jurisdiction over all contests relating to the election, returns and qualifications of the Members of the Senate and the House of Representatives in the respective Electoral Tribunals [Art. VI, Sec. 17]. The exclusive original jurisdiction of the COMELEC is limited by constitutional fiat to election contests pertaining to elective regional, provincial and city offices and its appellate jurisdiction to those involving municipal and barangay offices [Art. IV-C, Sec. 2 (2).].

The power of the HRET, as the sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Representatives, to promulgate rules and regulations relative to matters within its jurisdiction, including the period for filing election protests before it, is beyond dispute. Its rule-making power necessarily flows from the general power granted it by the Constitution.

The use of the word “sole” emphasizes the exclusive character of the jurisdiction conferred [Angara v. Electoral Commission, supra, at 162]. 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” [Id. at 175]. Earlier, this grant of power to the legislature was characterized by Justice Malcolm as “full, clear and complete” [Veloso v. Board of Canvassers of Leyte and Samar, 39 Phil. 886 (1919)]. Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal [Suanes vs. Chief Accountant of the Senate, 81 Phil. 818 (1948)] and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission [Lachica v. Yap, G.R. No. L-25379, September 25, 1968, 25 SCRA 140]. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution. (Lazatin vs. House Electoral Tribunal, 168 SCRA 391 [1988], Cortes, J.).

§6. The Court continued further, “... so long as the Constitution grants the HRET the power to be the sole judge of all contests relating to election, returns and qualifications of members of the House of Representatives, any final action taken by the HRET on the matter within its jurisdiction shall, as a rule, not be reviewed by this Court . . . the power granted to the Electoral Tribunal is full, clear and complete and excludes the exercise of any authority on the part of this Court that would in any wise restrict it or curtail it or even affect the same.” (pp. 403-404)

When may the Court inquire into acts of the Electoral Tribunals under our constitutional grants of power?

In the later case of Robles v. HRET (181 SCRA 780 [1990]) the Supreme Court stated that the judgments of the Tribunal are beyond judicial interference save only “in the exercise of this Court’s so-called extraordinary jurisdiction, x x x upon a determination that the Tribunal’s decision or resolution was rendered without or in excess of its jurisdiction, or with grave abuse of discretion or paraphrasing Morrero, upon a clear showing of such

arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated ERROR, manifestly constituting such GRAVE ABUSE OF DISCRETION that there has to be a remedy for such abuse." (at pp. 785-786).

In the leading case of Morrero v. Bocar (66 Phil. 429 [1938]) the Court ruled that the power of the Electoral Commission "is beyond judicial interference except, in any event, upon a clear showing of such arbitrary and improvident use of power as will constitute a denial of due process." The Court does not venture into the perilous area of trying to correct perceived errors of independent branches of the Government. It comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution calls for remedial action.

The Supreme Court under the 1987 Constitution, has been given an expanded jurisdiction, so to speak, to review the decisions of the other branches and agencies of the government to determine whether or not they have acted within the bounds of the Constitution. (See Article VIII, Section 1, Constitution). Yet, in the exercise thereof, the Court is to merely check whether or not the governmental branch or agency has gone beyond the Constitutional limits of its jurisdiction, not that it erred or has a different view. In the absence of a showing that the HRET has committed grave abuse of discretion amounting to lack of jurisdiction, there is no occasion for the Court to exercise its corrective power; it will not decide a matter which by its nature is for the HRET alone to decide. (See Marcos v. Manglapus, 177 SCRA 668 [1989]). It has no power to look into what it thinks is apparent error. (Co vs. Electoral Tribunal of the House of Representatives, 199 SCRA 692 [1991], Gutierrez, Jr., J.).

§7. Section 17 reechoes Section 11, Article VI of the 1935 Constitution, except the provision on the representation of the main political parties in the tribunal which is now based on proportional representation from all the political parties, instead of equal representation of three members from each of the first and second largest political aggrupations in the Legislature.

The use of the word "sole" in both Section 17 of the 1987 Constitution and Section 11 of the 1935 Constitution underscores the exclusive jurisdiction of the House Electoral Tribunal as judge of contests relating to the election, returns and qualifications of the members of the House of Representatives (Robles vs. House of Representatives Electoral Tribunal, G.R. No. 86647, February 5, 1990). The tribunal was created to function as a nonpartisan court although two-thirds of its members are politicians. It is a non-political body in a sea of politicians. What this Court had earlier said about the Electoral Commission applies as well to the electoral tribunals of the Senate and House of Representatives.

The resolution of the House of Representatives removing Congressman Camasura from the House Electoral Tribunal for disloyalty to the LDP, because he cast his vote in favor of the Nacionalista Party's candidate, Bondoc, is a clear impairment of the constitutional prerogative of the House Electoral Tribunal to be the sole judge of the election contest between Pineda and Bondoc.

Another reason for the nullity of the expulsion resolution of the House of Representatives is that it violates Congressman Camasura's right to security of tenure. Members of the HRET, as "sole judge" of congressional election contests, are entitled to security of tenure just as members of the judiciary enjoy security of tenure under our Constitution (Sec. 2, Art. VIII, 1987 Constitution). Therefore, membership in the House Electoral Tribunal may not be terminated except for a just cause, such as, the expiration of the member's congressional term of office, his death, permanent disability, resignation from the political party he represents in the tribunal, formal

affiliation with another political party, or removal for other valid cause. (Bondoc vs. Pineda, 201 SCRA 792 [1991], Griño-Aquino, J.).

§8. The Constitution vests in the COMELEC "exclusive original jurisdiction over all contests relating to the election, returns, and qualifications of all elective regional, provincial and city officials." It has no jurisdiction over contests relating to the election, returns, and qualifications of Members of the House of Representatives. On the other hand, under Sec. 17, Article VI of the 1987 Constitution, the Electoral Tribunal of the House of Representatives is the "sole judge of all contests relating to the election, returns and qualifications" of its members. Consequently, the phrase "including pre-proclamation controversies" used in Sec. 3, Article IX-C of the Constitution should be construed as referring only to "pre-proclamation controversies" in election cases that fall within the exclusive original jurisdiction of the COMELEC, i.e., election cases pertaining to the election of regional, provincial and city officials.

Since the 1973 Constitution has been replaced by the 1987 Constitution, the Batasang Pambansa stands abolished and the legislative power is now vested in the Congress of the Philippines consisting of the Senate and the House of Representatives. The Senate and the House of Representatives now have their respective Electoral Tribunals which are the "sole judge of all contests relating to the election, returns, and qualifications of their respective Members," thereby divesting the Commission on Elections of its jurisdiction under the 1973 Constitution over election cases pertaining to the election of the Members of the Batasang Pambansa (Congress). It follows that the COMELEC is now bereft of jurisdiction to hear and decide pre-proclamation controversies against members of the House of Representatives as well as the Senate.

Section 15 of R.A. 7166 is not, therefore, unconstitutional. On the contrary, it is in harmony with the 1987 Constitution. As aptly observed by the Solicitor General in his Comment¾"The petitioner's arguments are totally misplaced. In fact, Section 15, R.A. 7166 is consistent with Section 17, Article VI which makes the Electoral Tribunal of the Senate and the House of Representatives the sole judge of all contests relating to the election, returns, and qualifications of their respective members. Petitioner's objection relating to the preparation, transmission and appreciation of the election returns or certificates of canvass falls within the sole jurisdiction of the (House) Electoral Tribunal."

Finally, the private respondent Feliciano Belmonte, Jr. has already been proclaimed as the winner in the congressional elections in the fourth district of Quezon City. He has taken his oath of office and assumed his duties as representative; hence, the remedy open to the petitioner was to have filed an electoral protest with the Electoral Tribunal of the House of Representatives. (Pangilinan vs. Commission on Elections, 228 SCRA 36 [1993] Padilla, J.).

§9. 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 election, 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. (Romualdez-Marcos vs. Commission on Elections, 248 SCRA 300 [1995], Kapunan, J.).

§10. Under Section 17 of Article VI of the 1987 Constitution, 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

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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. (Aquino vs. Commission on Elections, 248 SCRA 400 [1995], Kapunan, J.).

§11. The Court has stressed that ". . . so long as the Constitution grants the HRET the power to be the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, any final action taken by the HRET on a matter within its jurisdiction shall, as a rule, not be reviewed by this Court . . . . the power granted to the Electoral Tribunal x x x excludes the exercise of any authority on the part of this Court that would in any wise restrict it or curtail it or even affect the same."

The Court did recognize, of course, its power of judicial review in exceptional cases. In Robles vs. HRET, the Court has explained that while the judgments of the Tribunal are beyond judicial interference, the Court may do so, however, but only "in the exercise of this Court's so-called extraordinary jurisdiction, . . . upon a determination that the Tribunal's decision or resolution was rendered without or in excess of its jurisdiction, or with grave abuse of discretion or paraphrasing Morrero, upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated error, manifestly constituting such grave abuse of discretion that there has to be a remedy for such abuse."

In the old, but still relevant, case of Morrero vs. Bocar, the Court has ruled that the power of the Electoral Commission "is beyond judicial interference except, in any event, upon a clear showing of such arbitrary and improvident use of power as will constitute a denial of due process." The Court does not, to paraphrase it in Co vs. HRET, venture into the perilous area of correcting perceived errors of independent branches of the Government; it comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution itself calls for remedial action. (Libanan vs. House of Representatives Electoral Tribunal, 283 SCRA 520 [1997], Vitug, J.).

§12. Under the Constitution, the HRET shall be the sole judge of all contests relating to the election, returns and qualifications of its members. This does not, however, bar us from entertaining petitions which charge the HRET with grave abuse of discretion. Indeed, in Libanan v. House of Representatives Electoral Tribunal, we explained our assumption of jurisdiction in election related cases involving the HRET as follows¾ "x x x. In Robles vs. HRET (181 SCRA 780), the Court has explained that while the judgments of the Tribunal are beyond judicial interference, the Court may do so, however, but only 'in the exercise of this Court's so-called extraordinary jurisdiction, . . . upon a determination that the Tribunal's decision or resolution was rendered without or in excess of jurisdiction, or with grave abuse of discretion or paraphrasing Morrero, upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a determination of a very clear unmitigated error, manifestly constituting such grave abuse of discretion, that there has to be a remedy for such abuse.' (Garcia vs. House of Representatives Electoral Tribunal, 312 SCRA 353 [1999], Ynarez-Santiago, J.).

§13. As already stated, the petition for disqualification against private respondent was decided by the First Division of the COMELEC on May 10, 1998. The following day, May 11, 1998, the elections were held. Notwithstanding the fact that private respondent had already been proclaimed on May 16, 1998 and had taken his oath of office on May 17, 1998, petitioner still filed a motion for reconsideration on May 22, 1998, which the COMELEC en banc denied on June 11, 1998. Clearly, this could not be done. Sec. 6 of R.A No. 6646 authorizes the continuation of proceedings for disqualification even after the elections if the respondent has not been proclaimed. The COMELEC en banc had no jurisdiction to entertain the motion because the proclamation of private respondent barred further consideration of petitioner's action. In the same vein, considering that at the time of the filing of this petition on June 16, 1998, private respondent was already a member of the House of Representatives, this Court has no jurisdiction over the same. Pursuant to Art. VI, Section 17 of the Constitution, the House of Representatives Electoral Tribunal has the exclusive original jurisdiction over the petition for the declaration of private respondent's ineligibility. (Perez vs. Commission on Elections, 317 SCRA 641 [1999], Mendoza, J.).

§14. In the present case, we find no grave abuse of discretion on the part of the COMELEC when it held that its jurisdiction over Case No. SPA 98-277 had ceased with the assumption of office of respondent Fariñas as Representative for the first district of Ilocos Norte. While the COMELEC is vested with the power to declare valid or invalid a certificate of candidacy, its refusal to exercise that power following the proclamation and assumption of the position by Fariñas is a recognition of the jurisdictional boundaries separating the COMELEC and the Electoral Tribunal of the House of Representatives (HRET). Under Article VI, Section 17 of the Constitution, the HRET has sole and exclusive jurisdiction over all contests relative to the election, returns, and qualifications of members of the House of Representatives. Thus, once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives, COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. Thus, the COMELEC's decision to discontinue exercising jurisdiction over the case is justifiable, in deference to the HRET's own jurisdiction and functions.

Petitioner contends that the jurisdiction of the HRET as defined under Article VI, Section 17 of the Constitution is limited only to the qualifications prescribed under Article VI, Section 6 of the Constitution. Consequently, he claims that any issue which does not involve these constitutional qualifications is beyond the realm of the HRET. The filing of a certificate of candidacy being a statutory qualification under the Omnibus Election Code is outside the pale of the HRET, according to him. This contention lacks cogency and is far from persuasive. Article VI, Section 17 of the Constitution cannot be circumscribed lexically. The word "qualifications" cannot be read as qualified by the term "constitutional". Ubi lex non distinguit noc nos distinguire debemos. Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish. There should be no distinction in the application of a law where none is indicated. For firstly, the drafters of the fundamental law, in making no qualification in the use of a general word or expression, must have intended no distinction at all. Secondly, the courts could only distinguish where there are facts or circumstances showing that the lawgiver intended a distinction or qualification. In such a case, the courts would merely give effect to the lawgiver's intent.

Petitioner further argues that the HRET assumes jurisdiction only if there is a valid proclamation of the winning candidate. He contends that if a candidate fails to satisfy the statutory requirements to qualify him as a candidate,

his subsequent proclamation is void ab initio. Where the proclamation is null and void, there is no proclamation at all and the mere assumption of office by the proclaimed candidate does not deprive the COMELEC at all of its power to declare such nullity, according to petitioner. But as we already held, in 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. (Guerrero vs. Commission on Elections, 336 SCRA 458 [2000], Quisumbing, J.).

§15. The 1998 Rules of the House of Representatives Electoral Tribunal was adopted on May 24, 1998 and published in The Philippine Star in its issue of 5 April 1998.

CHAPTER VIII
The Courts

1. Municipal Trial Courts

a.) Inclusion or Exclusion Proceedings

§1. The municipal and metropolitan trial courts shall have original and exclusive jurisdiction over all matters of inclusion and exclusion of voters from the list in their respective municipalities or cities. Decisions of the municipal or metropolitan trial courts may be appealed directly by the aggrieved party to the proper regional trial court within five (5) days from receipt of the notice thereof, otherwise said decision of the municipal or metropolitan trial court shall become final and executory after said period. The regional trial court shall decide the appeal within ten days from the time the appeal was received and its decision shall be immediately final and executory. No motion for reconsideration shall be entertained by the courts. (Article XII, Section 138, Omnibus Election Code).

§2. Considering the summary character of an exclusion case, the decision that a court of first instance may render thereon even if final and unappealable does not acquire the nature of res judicata (Nuval vs. Guray, 52 Phil. 645). In this sense, it does not operate as a bar to any future action that a party may take concerning the subject passed upon in the exclusion case. (Mayor vs. Villacete, 2 SCRA 542 [1961], Bautista Angelo, J.).

§3. In proceedings for the exclusion of voters, the court may pass upon any question necessary to decide the issue therein raised, including the question of citizenship of the person sought to be stricken from the list of voters, if the determination of said issue depends upon his political status. The authority to order the inclusion in or exclusion from the list of voters necessarily carries with it the power to inquire into and settle all matters essential to the exercise of said authority unless the law provides otherwise.

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Under such Code, the inclusion and exclusion proceedings were held in connection with the preparation of the list of voters for each election, so that, after such election, the proceedings became moot, since another list would be prepared for each subsequent election. Upon the other hand, under Rep. Act No. 3588, as amended, inclusion and exclusion proceedings take place always in relation to the contents of one and the same list of voters, the permanent one. (Ozamiz vs. Zosa, 34 SCRA 424 [1970], Concepcion, C.J.).

§4. Where the applicant-voters were in fact refused registration because the precincts where they sought to apply for registration had run out of registration forms, the court may take cognizance of their inclusion petitions notwithstanding that they have not filed any application for registration. (Buenviaje vs. Aquino, 42 SCRA 209 [1971], Teehankee, J.).

§5. Fifteen (15) days before the regular elections on 8 May 1995 the final list of voters was posted in each precinct pursuant to Sec. 148 of RA No. 7166. Based on the lists thus posted Canicosa could have filed a petition for inclusion of registered voters with the regular courts. The question of inclusion or exclusion from the lists of voters involves the right to vote which is not within the power and authority of COMELEC to rule upon. The determination of whether one has the right to vote is a justiciable issue properly cognizable by our regular courts.

If indeed the situation herein described was common in almost all of the 557 precincts as alleged by Canicosa, then it was more expedient on his part to avail of the remedies provided by law in order to maintain the integrity of the election. Since Canicosa failed to resort to any of the above options, the permanent list of voters as finally corrected before the election remains conclusive on the question as to who had the right to vote in that election, although not in subsequent elections. (Canicosa vs. Commission on Elections, 282 SCRA 512 [1997], Bellosillo, J.).

§6. The contention of DOMINO that the decision of the Metropolitan Trial Court of Quezon City in the exclusion proceedings declaring him a resident of the Province of Sarangani and not of Quezon City is final and conclusive upon the COMELEC cannot be sustained. The COMELEC has jurisdiction as provided in Sec. 78, Art. IX of the Omnibus Election Code, over a petition to deny due course to or cancel certificate of candidacy. In the exercise of the said jurisdiction, it is within the competence of the COMELEC to determine whether false representation as to material facts was made in the certificate of candidacy, that will include, among others, the residence of the candidate. The determination of the Metropolitan Trial Court of Quezon City in the exclusion proceedings as to the right of DOMINO to be included or excluded from the list of voters in the precinct within its territorial jurisdiction, does not preclude the COMELEC, in the determination of DOMINO’s qualification as a candidate, to pass upon the issue of compliance with the residency requirement.

The proceedings for the exclusion or inclusion of voters in the list of voters are summary in character. Thus, the factual findings of the trial court and its resultant conclusions in the exclusion proceedings on matters other than the right to vote in the precinct within its territorial jurisdiction are not conclusive upon the COMELEC. Although the court in inclusion or exclusion proceedings may pass upon any question necessary to decide the issue raised including the questions of citizenship and residence of the challenged voter, the authority to order the inclusion in or exclusion from the list of voters necessarily carries with it the power to inquire into and settle all matters essential to the exercise of said authority. However, except for the right to remain in the list of voters or for being

excluded therefrom for the particular election in relation to which the proceedings had been held, a decision in an exclusion or inclusion proceeding, even if final and unappealable, does not acquire the nature of res judicata. In this sense, it does not operate as a bar to any future action that a party may take concerning the subject passed upon in the proceeding. Thus, a decision in an exclusion proceeding would neither be conclusive on the voter's political status, nor bar subsequent proceedings on his right to be registered as a voter in any other election.

Moreover, the Metropolitan Trial Court of Quezon City in its 18 January decision exceeded its jurisdiction when it declared DOMINO a resident of the Province of Sarangani, approved and ordered the transfer of his voter's registration from Precinct No. 4400-A of Barangay Old Balara, Quezon City to precinct 14A1 of Barangay Poblacion, Alabel, Sarangani. It is not within the competence of the trial court, in an exclusion proceedings, to declare the challenged voter a resident of another municipality. The jurisdiction of the lower court over exclusion cases is limited only to determining the right of voter to remain in the list of voters or to declare that the challenged voter is not qualified to vote in the precinct in which he is registered, specifying the ground of the voter's disqualification. The trial court has no power to order the change or transfer of registration from one place of residence to another for it is the function of the Election Registration Board as provided under Section 12 of R.A. No. 8189. The only effect of the decision of the lower court excluding the challenged voter from the list of voters, is for the Election Registration Board, upon receipt of the final decision, to remove the voter's registration record from the corresponding book of voters, enter the order of exclusion therein, and thereafter place the record in the inactive file.

Finally, the application of the rule on res judicata is unavailing. Identity of parties, subject matter and cause of action are indispensable requirements for the application of said doctrine. Neither herein Private Respondents nor INTERVENOR, is a party in the exclusion proceedings. The Petition for Exclusion was filed by DOMINO himself and his wife, praying that he and his wife be excluded from the Voter's List on the ground of erroneous registration while the Petition to Deny Due Course to or Cancel Certificate of Candidacy was filed by private respondents against DOMINO for alleged false representation in his certificate of candidacy. For the decision to be a basis for the dismissal by reason of res judicata, it is essential that there must be between the first and the second action identity of parties, identity of subject matter and identity of causes of action. In the present case, the aforesaid essential requisites are not present. (Domino vs. Commission on Elections, 310 SCRA 546 [1999] Davide, Jr., C.J.).

b.) Barangay Elections

§1. A sworn petition contesting the election of a barangay officer shall be filed with the proper municipal or metropolitan trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election. The trial court shall decide the election protest within fifteen days after the filing thereof. The decision of the municipal or metropolitan trial court may be appealed within ten days from receipt of a copy thereof by the aggrieved party to the regional trial court which shall decide the case within thirty days from its submission, and whose decision shall be final. (Article XXI, Section 252, Batas Pambansa Blg. 881, otherwise known and cited as the Omnibus Election Code).

§2. Section 174 of the Revised Election Code applies to barrio election protests. The eligibility of a local elective

official may be contested only within one (1) week after the proclamation of his election, whereas his election may be contested, upon grounds other than ineligibility, within two (2) weeks after said proclamation. (Falcotelo v. Gali, L-24190, Jan. 8, 1968, 22 SCRA 16). (Abesamis vs. Reyes, 31 SCRA 178 [1970], Sanchez, J.).

§3. A petition for quo warranto for disqualification of an elected barangay captain must be filed in the municipal or metropolitan trial court. (Regatcho vs. Cleto, 126 SCRA 342 [1983], Aquino, J.).

§4. The doctrine in that case, although laid down under the 1935 Constitution, is still controlling under the present charter as the interpretation by this Court of Article IX-C, Section 2(2). Accordingly, Section 9 of Rep. Act No. 6679, insofar as it provides that the decision of the municipal or metropolitan court in a barangay election case should be appealed to the regional trial court, must be declared unconstitutional. (Flores vs. Commission on Elections, 184 SCRA 484 [1990], Cruz, J.).

§5. The jurisdiction of the COMELEC does not cover protests over the organizational set-up of the katipunan ng mga barangay composed of popularly elected punong barangays as prescribed by law whose officers are voted upon by their respective members. The COMELEC exercises only appellate jurisdiction over election contests involving elective barangay officials decided by the Metropolitan or Municipal Trial Courts which likewise have limited jurisdiction. The authority of the COMELEC over the katipunan ng mga barangay is limited by law to supervision of the election of the representative of the katipunan concerned to the sanggunian in a particular level conducted by their own respective organization. (Sec. 43, Batas Pambansa Blg. 337). (Taule vs. Santos, 200 SCRA 512 [1991], Gancayco, J.).

§6. A Municipal Circuit Trial Court has no jurisdiction to order the suspension of the canvassing of election returns. (Libardos vs. Casar, 234 SCRA 13 [1994], Padilla, J.).

§7. Under paragraph (2), Section 2, subdivision C, Article IX of the Constitution, it is the COMELEC, and not the Regional Trial Courts, that has exclusive jurisdiction over all contests involving elective barangay officials decided by courts of limited jurisdiction, which are the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts. In Flores v. Commission on Elections, this Court struck out as unconstitutional that portion of Section 9 of R.A. No. 6679 vesting upon the Regional Trial Courts appellate jurisdiction over such cases. (Guieb vs. Fontanilla, 247 SCRA 348 [1995], Davide, Jr., J.).

§8. Under subparagraph (5), paragraph (e), Article 203, Rule XXVII of the Rules and Regulations Implementing the Local Government Code of 1991, the conduct and administration of the elections for sangguniang kabataan members shall be governed by the rules promulgated by the COMELEC.

Section 252 of the Omnibus Election Code and that portion of paragraph (2), Section 2, Article IX-C of the Constitution on the COMELEC's exclusive appellate jurisdiction over contests involving elective barangay officials refer to the elective barangay officials under the pertinent laws in force at the time the Omnibus Election Code was enacted and upon the ratification of the Constitution. That law was B.P. Blg. 337, otherwise known as the Local Government Code, and the elective barangay officials referred to were the punong barangay and the six sangguniang bayan members. They were to be elected by those qualified to exercise the right of suffrage. They are also the same officers referred to by the provisions of the Omnibus Election Code of the Philippines on election of barangay officials. Metropolitan and municipal trial courts had exclusive original jurisdiction over contests relating to their election. The decisions of these courts were appealable to the Regional Trial Courts.

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In the light of the foregoing, it is indisputable that contests involving elections of SK (formerly KB) officials do not fall within Section 252 of the Omnibus Election Code and paragraph 2, Section 2, Article IX-C of the Constitution and that no law in effect prior to the ratification of the Constitution had made the SK chairman an elective barangay official. His being an ex-officio member of the sangguniang barangay does not make him one for the law specifically provides who are its elective members. (Mercado vs. Board of Election Supervisors of Ibaan, Batangas, 243 SCRA 422 [1995], Davide, Jr., J.).

§9. Based on Section 252 of the Omnibus Election Code (Batas Pambansa Blg. 881), it is clear that it is the ministerial duty of a Metropolitan Trial Court Judge to resolve election protests involving barangay offices within fifteen days from the filing thereof. (Mamamayan ng Zapote 1, Bacoor, Cavite vs. Balderian, 265 SCRA 360 [1996], Melo, J.).

§10. Any contest relating to the election of members of the Sangguniang Kabataan (including the chairman) - whether pertaining to their eligibility or the manner of their election - is cognizable by MTCs, MCTCs, and MeTCs. Section 6 of COMELEC Resolution No. 2824, which provides that: “cases involving the eligibility or qualification of candidates [of SK] shall be decided by the city/municipal Election Officer (EO) whose decision shall be final” applies only to proceedings before the election. This is evident from the use of the word “candidates” in Section 6 and the phrase “winning candidates” in Section 49. The distinction is based on the principle that it is the proclamation which marks off the jurisdiction of the courts from the jurisdiction of election officials. Before proclamation, cases concerning eligibility of SK officers and members are cognizable by the Election Officer or EO as he is called in Section 6. But after the election and proclamation, the same cases become quo warranto cases cognizable by MTCs, MCTCs, and MeTCs.

The case of Jose M. Mercado vs. Board of Election Supervisors, in which this Court ruled that election protests involving SK elections are to be determined by the Board of Election Supervisors was decided under the aegis of COMELEC Resolution No. 2499, which took effect on August 27, 1992, Article V, Section 24 of which provides: “The said board [of election supervisors] shall have direct general supervision in the conduct of elections of sangguniang kabataan in the barangay and shall act as final arbiter in the resolution of all election protests.” However, COMELEC Resolution No. 2824, which took effect on February 6, 1996 and was passed pursuant to R.A. 7808, in relation to Arts. 252-253 of the OEC, has since transferred the cognizance of such cases from the BES to the MTCs, MCTCs and MeTCs. So that Section 49 of COMELEC Resolution No. 2824, now provides that: “the Metropolitan Trial Courts/Municipal Trial Courts/Municipal Circuit Trial Courts (MeTC/MTC/MCTC) shall have original jurisdiction over all election protest cases, whose decision shall be final . . .” Thus, the doctrine of Mercado is no longer controlling.

It is also argued that Section 49 of COMELEC Resolution applies only to election protests, and does not include quo warranto suits. As already stated, quo warranto suits are now cognizable by the MTCs, MCTCs, and MeTCs pursuant to Art. 253 of the OEC and RA 7808. Section 49 of Resolution 2824 must be understood to cover both election protests and quo warranto cases, otherwise, to limit it only to election protests would leave parties in an SK election to file their quo warranto cases in the Regional Trial Court because of the absence of a specific provision. (Marquez vs. Commission on Elections, 313 SCRA 103 [1999], Purisima, J.).

2. Regional Trial Courts

§1. A sworn petition contesting the election of a municipal officer shall be filed with the proper regional trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after proclamation of the results of the election. (Article XXI, Section 251, Batas Pambansa Blg. 881, otherwise known and cited as the Omnibus Election Code of the Philippines.).

§2. Regional trial courts shall have exclusive original jurisdiction over contests relating to the elections, returns and qualifications involving elective municipal officials. (Part VI, Rule 35, Section 1, Commission on Elections Rules of Procedure approved on February 15, 1993).

§3. A petition contesting the election of any municipal official shall be filed with the proper Regional Trial Court or mailed at the post office as registered matter addressed to the said Court, together with six (6) legible copies thereof, by any candidate for the same office who has duly filed a certificate of candidacy and who was voted in the election. Each contest shall refer exclusively to one office, but contests for offices of the Sangguniang Bayan may be consolidated in one case. (Part VI, Rule 35, Section 2, Commission on Elections Rules of Procedure approved on February 15, 1993).

§4. A voter contesting the election of any municipal official on the ground of ineligibility or disloyalty to the Republic of the Philippines may file a petition for quo warranto with the appropriate Regional Trial Court. (Part VI, Rule 36, Section 1, Commission on Elections Rules of Procedure approved on February 15, 1993).

§5. The provisions of Section 145 of the Code of Civil Procedure authorizing the vacation of judgments and the granting of new trials, in certain cases, are not applicable to proceedings had in election contests under the provisions of Section 27 of Act No. 1582.

Courts of First Instance have no jurisdiction to vacate final judgments entered by them “determining” election contests had under the provisions of Section 27 of Act No. 1582. (Arnedo vs. Llorente and Liongson, 18 Phil. 257 [1911], Carson, J.).

§6. The jurisdiction of Courts of First Instance under Section 27 of the Election Law to try contested election cases, being special is strictly confined within the provisions of the statute. Such courts can take no additional power from their general jurisdiction in other matters.

Section 27, providing, as it does, for proceedings summary in the highest degree, must be strictly construed and must be exactly followed by those who act under or in pursuance of the powers therein conferred.

The subject matter of the jurisdiction conferred by Section 27 is confined to those matters which may be decided by an inspection of the registry list and of the ballots, and their RES GESTAE. (Castro vs. Wislizenus, 12 Phil. Rep., 468) (Topacio vs. Paredes, 23 Phil. 121 [1912], Trent, J.).

§7. In an election protest one of the essential facts to be alleged and proved is the election of the protestee. Where it appears that not all of the candidates who, at such election, received votes for the office concerning which the

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protest is filed were notified of the protest as required by law, the court acquires no jurisdiction of the proceeding. Service of the notice of protest upon all of such candidates, as required by law, is one of the steps necessary to give the court jurisdiction to proceed. (Navarro vs. Veloso, 23 Phil. 625 [1912], Moreland, J.).

§8. Section 576 of the Administrative Code confers plenary jurisdiction on Courts of First Instance with respect to election contests; and, as a necessary consequence, they have full power to decide every question within the issues which may arise during the progress of the contest.

If it should be held that a court loses jurisdiction every time it receives and counts a ballot which is in fact illegal there would be no termination of an election contest as every decision as to the validity of a ballot might lead to a petition for certiorari to this court. (Alvendia vs. Moir and Dinio, 35 Phil. 356 [1916], Moreland, J.).

§9. Where the jurisdiction of a court over the person or the subject matter depends upon the resolution of a question of fact and the court upon evidence presented determines the question of fact and decides in favor of its jurisdiction, such finding is conclusive on the Supreme Court in a petition for a writ of certiorari based upon the ground that the court had no jurisdiction of the subject matter or of the person.

The determination of whether or not an order dismissing an election contest for lack of jurisdiction shall be vacated and set aside on motion of the party alleged to have been aggrieved and be given an opportunity to be reheard upon additional evidence set out in his moving papers, does not affect the jurisdiction of the court and does not deprive it of jurisdiction whichever way the question may be decided. An order denying such a motion cannot be reviewed by certiorari proceedings.

A Court of First Instance has no power or authority to proceed with an election contest until it has been demonstrated in the manner required by law that all of the persons who are necessary parties to the contest have been made such and notified as required by law. (Campos vs. Wislizenus and Aldanese, 35 Phil. 373 [1916], Moreland, J.).

§10. Courts of First Instance have plenary jurisdiction over election contests and they are accordingly authorized in proper cases to annul elections as well as to order the returns corrected.

Even though it be admitted for the purposes of discussion that the finding of the court, that the ballots cast by illiterates and persons physically disabled were illegal, was erroneous, that fact does not affect its jurisdiction. It is authorized to decide; and whether it decides right or wrong is immaterial to the question of its jurisdiction. (Bustos vs. Moir and Fajardo, 35 Phil. 415 [1916], Moreland, J.).

§11. A writ of certiorari will not lie to review a judgment of the Court of First Instance in a municipal election contest on the alleged ground that the court was without jurisdiction because all the candidates were not notified,

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where it appears that the petitioner (contestee below) agreed in open court that he and the respondent (contestant below) were the only candidates for the office in question. (Javier vs. Nadres, 36 Phil. 226 [1917], Trent, J.).

§12. A motion of contest, if signed by a duly licensed and practicing attorney upon the authority of the contestant, confers jurisdiction upon the court over the subject matter of the proceedings, provided the necessary jurisdictional facts are alleged. The fact that the attorney was only employed and authorized to prepare, sign, and file the motion of contest does not affect the court's jurisdiction. (Bello vs. Reyes and Dacuycuy, 36 Phil. 83 [1917], Trent, J.).

§13. When the court which takes cognizance of an election contest has jurisdiction over the subject-matter of the controversy and the persons of the parties the decisions upon all questions material to the case are decisions rendered within its jurisdiction and no matter how irregular or erroneous they may be they can not be corrected by means of a writ of certiorari. (Topacio vs. Paredes, 23 Phil., 240.)

Under the provisions of Articles 479 and 481 of Act No. 2711, the Court of First Instance which takes cognizance of an election contest has jurisdiction to admit or reject evidence, to receive the report of referees, and to weigh them according to legal criterion and the mere error in the exercise of said jurisdiction does not constitute an excess thereof.

It is not an excess of jurisdiction for the court to receive the report of the referees appointed to open the ballot boxes without holding a public session in which the parties may be present. The court may receive it in person or by means of the clerk just as any other report or pleading submitted by the parties. (Guerrero vs. Villareal and Guerrero, 41 Phil. 50 [1920], Villamor, J.).

§14. In election cases what confers jurisdiction upon the court is not the appearance of the protestee or other candidates voted for in an election, but the filing of the protest in the court of the proper district within two weeks after the proclamation of the result of the election, the notification of said protest to all candidates voted for within the period of twenty days from the filing of the protest and the filing of the corresponding bond within the period fixed by the court. (Ocampo vs. Mina and Arejola, 41 Phil. 308 [1920], Villamor, J.).

§15. In courts of special and limited jurisdiction the record must show jurisdictional facts. The Election Law makes the Court of First Instance a court of special jurisdiction, and provides a special procedure for hearing and determining a "motion of protest" in election cases. The Court of First Instance has no jurisdiction over an election protest until the special facts upon which it may take jurisdiction are expressly shown in the "motion of protest." There is no presumption in favor of the jurisdiction of a court of limited or special jurisdiction. When a court is given special statutory jurisdiction, under proceedings different from the ordinary proceedings, the special jurisdictional facts must appear, both with respect to the subject-matter as well as with respect to the parties. Such court cannot, by a supposed analogy to ordinary proceedings, exercise any power beyond that which the legislature has given. (Tengco vs. Jocson, 43 Phil. 715 [1922], Johnson, J.).

§16. The jurisdiction of the courts of first instance over election contests has been construed by this court on several occasions, especially in the cases of Hontiveros vs. Altavas (24 Phil., 632); Manalo vs. Sevilla (24 Phil.,

609); Valenzuela vs. Judge of First Instance of Bulacan (40 Phil., 163); and it was uniformly held that said jurisdiction presupposes the filing in court of an election protest. The jurisdiction granted by law to the courts of first instance refers only to contested elections to which there is no other legal provision applicable. And it is a well-known fact that Section 18 of the Jones Law confers exclusive jurisdiction upon the Senate and the House of Representatives to hear and determine election protests against members elect of each respective house. (Veloso vs. Boards of Canvassers of Leyte and Samar, 39 Phil., 886). (Rafols vs. Court of First Instance and Fiscal of Cebu, 47 Phil. 736 [1925], Villamor, J.).

§17. The mere fact that in Section 27 of Act No. 3210 was omitted the provision contained in section 481 of the Administrative Code, as amended, to the effect that election contests shall be taken cognizance of "not upon pleadings or by action," does not change the jurisdiction of the courts of first instance over election contests from special and limited into a general one.

While the courts of first instance are superior courts of general jurisdiction, yet in taking cognizance of election contests, they exercise special jurisdiction conferred by a special law (Sec. 479, Administrative Code, as amended by Section 25 of Act No. 3210). (Viola vs. Court of First Instance of Camarines Sur, 47 Phil. 849 [1925].

§18. In view of the provision contained in the last paragraph of section 465 of the Election Law, the proper Court of First Instance has jurisdiction to authorize election inspectors to correct the returns sent to the provincial board, after said inspectors' petition to that effect. The proviso contained in said legal provision is permissive and, as such, gives the inspectors permission or authority which they may or may not exercise as they deem most convenient. (Benitez vs. Paredes and Dizon, 52 Phil. 1 [1928], Villamor, J.).

§19. In order to confer jurisdiction on the Court of First Instance over an election protest, it is sufficient to file a motion to that effect, alleging the following facts: (a) That the protestant has duly registered his candidacy and received votes in the election (Tengco vs. Jocson, 43 Phil., 715); (b) that the protestee has been proclaimed elected in said election (Manalo vs. Sevilla, 24 Phil., 609); and (c) that the motion of protest be filed within two weeks after such proclamation (Navarro vs. Veloso, 23 Phil., 625; Manalo vs. Sevilla, supra; Hontiveros vs. Altavas, 39 Phil., 226), and it is not necessary to allege that copies of the motion were furnished the sheriff to notify and summon the protestees, inasmuch as the purpose of the summons is to give the court jurisdiction over the persons of said protestees and not over the subject matter in controversy. (Ferrer vs. Gutierrez David and Lucot, 43 Phil. 795). (Pobre vs. Quevedo, 52 Phil. 359 [1928], Villa-Real, J.).

§20. In view of the repeated decisions of this court it is held that since the proclamation of an elected candidate is an essential fact of a jurisdictional character the same must appear in the motion of protest, otherwise the court in which the motion is filed does not acquire jurisdiction to try the case and such defect cannot be cured by a motion of amendment filed after the lapse of the period fixed by law for the filing of an election protest.

Inasmuch as the facts which confer special jurisdiction are not presumed, but must clearly appear in the motion, the trial court could not have acquired jurisdiction. (Tengco vs. Jocson, 43 Phil., 715; Viola vs. Court of First

Instance of Camarines Sur and Adolfo, 47 Phil., 849.). (Saldaña vs. Consunji, 52 Phil. 433 [1928], Villa-Real, J.).

§21. Since the motion of protest alleged all the essential facts for conferring jurisdiction on the court and included the names of the parties, protestant and protestee, which latter was summoned, and of the other registered candidates voted for, who appeared of their own free will, the respondent Court of First Instance acquired jurisdiction to try and decide the case. (Torres vs. Court First Instance of Capiz, and Molo, 52 Phil. 478 [1928], Villa-Real, J.).

§22. The election law provides that in order that the court may acquire jurisdiction, the contestant must allege that he is a candidate voted for at such election, and that he has duly filed his certificate of candidacy. (Sec. 479 of the Election Law.) The word "duly" has acquired a fixed legal meaning, and when used before any word implying action, it means that the act was done properly, regularly, and according to law, or some rule of law. (Anis vs. Contreras, 55 Phil. 923 [1931], Villamor, J.).

§23. The correction of any error in the order of the Commission on Elections to suspend the proclamation of the winner in an election does not lie within the authority of Courts of First Instance because Article X, Section 2 of the Constitution expressly prescribes "that the decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court" and by no other tribunal (Luison vs. Garcia, G.R. No. L-10916, May 20, 1957). The Commission on Elections would be reduced to impotence if the Court of First Instance of every province were to arrogate unto itself the power to disregard, suspend, or contradict any of its orders. (Albano vs. Arranz, 114 Phil. 318 [1962]; 4 SCRA 386 [1962], Reyes, J.B.L., J.).

§24. The authority given to a Court of First Instance to allow recount of votes under Section 163 of the Revised Election Code is restrictive in nature. The law is explicit that the proceeding is summary in character and merely consists in the mathematical counting of the votes received by each candidate. It does not involve any appreciation of the ballots or determination of their validity as is required in an election contest. Its only purpose is to count the number of votes as they appear in the face of the ballots.

The purpose of the law is to offer a prompt relief to a simple controversy that can immediately be settled through a summary judicial proceeding that may dispense with the long drawn and complicated proceedings of a full-dressed election contest and, at the same time, x x x to restore tranquility by dispelling all doubts as to the true number of votes cast in a given precinct. Legal technicalities should be used to help in arriving at a clear intention of the law and not to defeat said intention. (Albano vs. The Provincial Board of Canvassers of Isabela, 115 Phil. 6 [1962]; 5 SCRA 13 [1962], Bautista Angelo, J.).

§25. Decisions of the Court of First Instance in election protests affecting the position of vice-mayor in regular municipalities are not appealable except on pure questions of law (Sec. 178, Republic Act No. 180, as amended; Calano vs. Cruz, 91 Phil. 247; Tumakay vs. Orbiso, 97 Phil. 431), and the question whether the name written on the ballot is "Sasablo" or "Sasapco" is one of fact (Florido vs. Velez, 97 Phil. 984). (Perfecto vs. Sapico, et al., 17 SCRA 968 [1966], Concepcion, J.).

§26. The general rule is, of course, that once a Court of First Instance has acquired jurisdiction by virtue of the filing of an election protest all questions relative thereto must be decided in the case itself and not in a separate

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proceeding before a different forum (Reyes v. Reyes, L-28476, Jan. 31, 1968; Acain v. Board of Canvassers, L-16445, May 23, 1960).

The peculiar circumstances obtaining in the present case, in our opinion, justify its being treated as an exception to the general rule. In Reyes v. Reyes, the petition for annulment of the proclamation was filed in the Commission on Elections on December 2, 1967, and the election protest was filed by the same petitioner in the Court of First Instance on December 4. There was clearly a deliberate intent to abandon the proceeding in the Commission by a subsequent voluntary submission of the same question to the Court. A choice or option was open to the party seeking relief, with full knowledge of the fact that when he filed his protest his petition for annulment had already been lodged.

An election protest may be lodged only against a proclaimed candidate and within fourteen days thereafter (Sec. 174, Election Code). (Tuburan vs. Ballener, 24 SCRA 941 [1968], Makalintal, J.).

§27. Under Sections 163 and 168 of the Revised Election Law, the Court of First Instance has no concurrent jurisdiction with that of the board of canvassers to determine the question of whether or not there is discrepancy among authentic returns or outright falsification; the law requires that the board of canvassers first resolve the question of whether such discrepancy exists before the Court of First Instance can exercise its jurisdiction under said law. (Abrigo vs. Commission on Elections, 31 SCRA 26 [1970], Sanchez, J.).

§28. Courts of first instance have no jurisdiction to nullify votes cast in a congressional election, and even if it has, there must first be a showing that the alleged illegal votes cast would affect the result of the election. (Osmeña vs. Hontanosas, 31 SCRA 48 [1970], Per Curiam).

§29. The provisions of Section 187 of the Revised Election Code vesting exclusive jurisdiction on the Court of First Instance to conduct preliminary investigations of election offenses is explicit. While Provincial Fiscals are authorized to conduct preliminary investigations under the general law (Rep. Act No. 732), Section 187 of the Revised Election Code, which gives Courts of First Instance exclusive original jurisdiction to make preliminary investigations for violation of said Code, must be construed as a limitation upon the powers of the fiscal to conduct the preliminary investigations of criminal offenses. (Astorga vs. Puno, 67 SCRA 182 [1975], Antonio, J.).

§30. (C)onsequently, the Court of First Instance of Masbate acquired jurisdiction over the controversy to the exclusion of the Commission on Elections, before which the so-called pre-proclamation petition was filed only four days later—on February 11, 1980. This is consistent with the established rule that: “Once a court of first instance has acquired jurisdiction by virtue of the filing of an election protest, all questions relative thereto will be decided in the case itself and not in another proceeding before a different forum”. (Mogueis, Jr. vs. Commission on Elections, 104 SCRA 576 [1981], Makasiar, J.).

§31. Period within which to appeal to the Court of First Instance from a city court’s decision in a barangay election protest is 10 days. (Villa vs. Llanes, Jr., 120 SCRA 81 [1983], Plana, J.).

§32. The COMELEC not the CFI has jurisdiction under its enlarged powers to act on a petition contesting the

qualification of a mayoral-candidate elect on the ground of changing party-affiliation. (Gabatan vs. Commission on Elections, 122 SCRA 1 [1983], Fernando, C.J.).

§33. It is not true that, as contended by the petitioners, the jurisdiction of the Regional Trial Court under the election laws is limited to criminal actions for violations of the Omnibus Election Code. The Constitution itself grants to it exclusive original jurisdiction over contests involving elective municipal officials. Neither can We agree with the petitioners' assertion that the Special Civil Action filed in the court below involves the prosecution of election offenses; the said action seeks some reliefs incident to or in connection with alleged election offenses; specifically, what is sought is the prevention of the further commission of these offenses which, by their alleged nature, are continuing. (Gallardo vs. Tabamo, Jr., 218 SCRA 253 [1993], Davide, Jr., J.)

§34. Under the circumstances above described, and in consonance with the above-stated legal provision, it is patently evident that the controversy brought before the respondent Judge was a pre-proclamation controversy outside of the jurisdiction of the Regional Trial Court. (Re: Comelec Resolution No. 2521, A. M. No. 92-12-916-RTC, July 8, 1994; 234 SCRA 1 [1994], Kapunan, J.).

§35. The fact that petitioner initially paid P150.00 with the Regional Trial Court is of no moment. The Regional Trial Court has no appellate jurisdiction over decisions of the Municipal Trial Court in election cases involving the barangay elections.

Petitioner cannot invoke to his aid the provision of Section 18, Rule 40 of the COMELEC Rules and Procedure for the simple reason that under said Rule, the COMELEC is precisely given the discretion, in a case where the prescribed fees are not paid, to either refuse to take action on the case until the fees are paid, or to dismiss the action or proceeding. The COMELEC, unfortunately for petitioner, chose to exercise the second option. (Rodillas vs. Commission on Elections, 245 SCRA 702 [1995], Quiason, J.).

§36. In reality, Borja's petition was nothing but a simple election protest involving an elective municipal position which, under Section 251 of the Election Code, falls within the exclusive original jurisdiction of the appropriate Regional Trial Court. x x x.

The COMELEC in turn exercises appellate jurisdiction over the trial court's decision pursuant to Article IX-C, Section 2 (2) of the Constitution x x x. (Borja, Jr. vs. Commission on Elections, 260 SCRA 604 [1996], Romero, J.).

§37. In view of the Flores case, jurisprudence has consistently recognized that the COMELEC Rules of Procedure are controlling in election protests heard by a regional trial court. The Court en banc has held in Rodillas vs. COMELEC that "the procedure for perfecting an appeal from the decision of the Municipal Trial Court in a barangay election protest case is set forth in the COMELEC Rules of Procedure." More recently, in Calucag vs. Commission on Elections, the Court en banc had occasion to state that: "It follows that after the promulgation of Flores, the same arguments propounded therein by the petitioner may no longer be employed. Article 8 of the

Civil Code states that "(j)udicial decisions applying or interpreting the laws or the constitution shall form part of the legal system of the Philippines." Said pronouncement of the Court, having formed part of the law of the land, ignorance thereof can no longer be countenanced. Therefore, the COMELEC is the proper appellate court clothed with jurisdiction to hear the appeal, which appeal must be filed within five days after the promulgation of the MTC's decision. The erroneous filing of the appeal with the RTC did not toll the running of the prescriptive period. x x x. The five-day period having expired without the aggrieved party filing the appropriate appeal before the COMELEC, the statutory privilege of petitioner to appeal is deemed waived and the appealed decision has become final and executory."

Equally devoid of merit is the contention that petitioner was fast tracked because the COMELEC did not require the parties to file their appeal briefs; that the dismissal was issued motu proprio without prior notice and hearing; and that dismissal of the appeal defeats the people's will on procedural points. Suffice it to state that the period for filing an appeal is by no means a mere technicality of law or procedure. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal was filed at all. The right of appeal is merely a statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of the law. Further, by virtue of Section 9 (d), Rule 22 of the COMELEC Rules of Procedure which provides that "an appeal may be dismissed upon motion of either party or at the instance of the Commission for failure to file a notice of appeal within the prescribed period," the COMELEC is precisely given the discretion, in a case where the appeal is not filed on time, to dismiss the action or proceeding. (Antonio vs. Commission on Elections, 315 SCRA 62 [1999], Gonzaga-Reyes, J.).

3. Supreme Court

§1. In accordance with the provision of Section 9 of Commonwealth Act No. 657, this court cannot review the rulings or findings of fact of the Commission on Elections. (Sotto vs. Commission on Elections, 76 Phil. 516 [1946], Feria, J.).

§2. Although Section 178 of the Revised Election Code provides that the decisions of courts of first instance in election protests affecting the offices of vice-mayor and municipal councilors of regular municipalities shall not be appealable, the Supreme Court shall nevertheless entertain appeals therefrom in view of the constitutional mandate to the effect that said Court may not be deprived of its jurisdiction to review, reverse, modify or affirm on appeal, certiorari or writ of error, final judgments and decrees of inferior court in all cases in which an error or question of law is involved. (Calano vs. Cruz, 50 Off. Gaz., 610). (Sarmiento vs. Quemado, 115 Phil. 434 [1962]; 5 SCRA 438 [1962], Concepcion, J.).

§3. Section 178 of the Revised Election Code, in providing for an appeal to the Supreme Court or Court of Appeals, as the case may be, from any decision of the Court of First Instance in protests against the eligibility or the election of governors, board members, city councilors and mayors, impliedly denies the right to appeal from said decision in election protests involving the office of vice-mayor and municipal councilors. However, whenever legal questions are raised, a review may be sought from the Supreme Court. (Nalog vs. De Guzman, 20

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SCRA 338 [1967], Concepcion, C.J.).

§4. The factual findings of the Court of Appeals in election cases on evidence aliunde submitted by the parties are not open for review. The function of the Supreme Court is limited to a determination of whether the appreciation of ballots made by the Court of Appeals, apart from the evidence, was made in accordance with the rulings of the Supreme Court. (Juliano vs. Court of Appeals, 20 SCRA 808 [1967], Zaldivar, J.).

§5. While it is true that under Section 178 of the Revised Election Code, which provides for appeal from the decision in an election contest, there is no mention about appeal from a decision rendered by the Court of First Instance in an election contest involving the office of vice-mayor, it is now a settled rule that decisions of the Court of First Instance on election contests involving the office of vice-mayor (and also of municipal councilor) can be appealed to the Supreme Court on questions of law.

Where the record shows that petitioner filed his notice of appeal in due time and he made it clear in his notice of appeal that he was appealing on questions of law alone and where it is also shown that petitioner wanted to file the appeal bond as required by law, then respondent judge had no discretion whether to give, or not to give, due course to the appeal of petitioner to the Supreme Court. It is not for the trial judge to control the issues that would be raised, or could be raised, by the appellant before the Supreme Court. It is the Supreme Court, and the Supreme Court alone, that will determine whether or not the appeal brought before it involves purely questions of law, as announced in the notice of appeal. Once this Court finds that the issue involved in the appeal before it coming directly from the trial court relates to questions of fact, or to mixed questions of fact and law, this Court will necessarily dismiss the appeal or remand the appeal to the Court of Appeals as the case may be. (Deananeas vs. Mangosing, 21 SCRA 1051 [1967], Zaldivar, J.)

§6. Where the issue posed by appellant in relation to the ballots disputed in his brief is factual, going as it does into the appreciation of the ballots, the decision of the trial court on the admissibility of said ballots is final and the Supreme Court lacks jurisdiction to review the appeal. (Balason vs. Balido, 21 SCRA 1136 [1967], Angeles, J.).

§7. The Supreme Court cannot review the rulings or findings of fact of the Commission on Elections, for the following reasons: (1) the Constitution uses the term “review,” not “appeal,” and these terms have different connotations in our jurisdiction; (2) Congress is deemed to retain its general power to define the manner in which the Supreme Court shall exercise its power of review, in the absence of clear and specific provision to the contrary, and no such provision exists; (3) pursuant to our Administrative Law, the findings of fact of administrative organs created by ordinary legislation will not be disturbed by courts of justice, except when there is absolutely no evidence or no substantial evidence in support of such findings, and there is no reason to believe that the framers of our Constitution intended to place the Commission on Elections — created and explicitly made “independent” by the Constitution itself — on a lower level than said statutory administrative organs; and (4) the last paragraph of section 9 of Commonwealth Act No. 657 which provides that the Supreme Court may only review the rulings of the Commission on Elections by writ of certiorari, which means that only questions of law could be raised and decided, is presumed to be valid until otherwise declared by competent court. (Lucman vs. Dimaporo, 33 SCRA 387 [1970], Concepcion, C.J.).

§8. The same approach is reflected in the opinion of the Chief Justice in Lucman v. Dimaporo when as he pointed out if “pursuant to our Administrative Law, the findings of fact of administrative organs created by ordinary

legislation will not be disturbed by courts of justice, except when there is absolutely no evidence or no substantial evidence in support of such findings * * * there is no reason to believe that the framers of our Constitution intended to place the Commission on Elections—created and explicitly made 'independent' by the Constitution itself—on a lower level than said statutory administrative organs. (Puñgutan vs. Abubakar, 43 SCRA 1 [1972], Fernando, J.).

§9. While under the Constitution of 1935, "the decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court" (Sec. 2, first paragraph, Article X) and pursuant to the Rules of Court, the petition for "certiorari or review" shall be on the ground that the Commission "has decided a question of substance not theretofore determined by the Supreme Court, or has decided it in a way not in accord with law or the applicable decisions of the Supreme Court" (Sec. 3, Rule 43), and such provisions refer not only to election contests but even to pre-proclamation proceedings, the 1973 Constitution provides somewhat differently thus: "Any decision, order or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof" (Section 11, Article XII c), even as it ordains that the Commission shall "be the sole judge of all contests relating to the elections, returns and qualifications of all members of the National Assembly and elective provincial and city officials" (Section 2 [2]). (Aratuc vs. Commission on Elections, 88 SCRA 251 [1979], Barredo, J.).

§10. Under the 1935 Constitution, this Court exercised appellate jurisdiction to review any decision, ruling or order of the Comelec. Under the present Constitution, any decision, ruling or order of the Comelec can be assailed in this court only by means of the special civil action of certiorari. It should be stressed that the decisions, orders or rulings of the Comelec in pre-proclamation controversies, of which it is sole judge, are final and executory. (Sec. 175, 1978 Election Code).

That is the proper norm of conduct because "there are no ready-made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administrations of the laws relative to the conduct of elections" "we must not by any excessive zeal take away from the Commission the initiative which by constitutional and legal mandates properly belongs to it." (Sumulong vs. Commission on Elections, 73 Phil. 288, 295-296).

"The Commission may err, so may this Court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created — free, orderly and honest elections". (Omar vs. Commission on Elections, 102 SCRA 611 [1981], Aquino, J.).

§11. As was said in the early case of Morrero vs. Bocar, et al., 66 Phil. 429, the decision of the COMELEC is beyond judicial interference except upon a clear showing of such arbitrary and improvident use of its power as will constitute denial of due process of law. (Santos vs. Commission on Elections, 103 SCRA 628 [1981], De Castro, J.).

§12. "Indeed, in special civil actions for certiorari, the main issue is one of jurisdiction—lack of jurisdiction or

grave abuse of discretion amounting to excess of jurisdiction whereas petitions for review on certiorari are limited to the consideration of questions of law" (Lucman vs. Dimaporo, L-31558, May 29, 1970, 33 SCRA 387, 399-400. See Bashier vs. Commission on Elections, L-33692, February 24, 1972 and two other cases, 43 SCRA 238). A review of the decision, order or ruling of the Comelec by means of certiorari means that this Court cannot review its factual findings (Sotto vs. Commission on Elections, 76 Phil. 516, 521). (Ticzon vs. Commission on Elections, 103 SCRA 671 [1981], Aquino, J.).

§13. This Court has invariably followed the principle that in the absence of any jurisdictional infirmity or an error of law of the utmost gravity, the conclusion reached by respondent Commission on a matter that falls within its competence is entitled to the utmost respect. (Sidro vs. Commission on Elections, 123 SCRA 759 [1983], Fernando, C.J.).

§14. Absent any arbitrariness the factual findings of the COMELEC are binding on the Supreme Court in a certiorari proceeding. (Paredes vs. Commission on Elections, 127 SCRA 653 [1984], Fernando, C.J.).

§15. The principal relief sought by petitioner is predicated on the certiorari jurisdiction of this Court as provided in Section 11, Article XII-C, 1973 Constitution. It is, as explained in Aratuc vs. Commission on Elections, "not as broad as it used to be" under the old Constitution and it "should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process." Moreover, the legislative construction of the constitutional provision has narrowed down "the scope and extent of the inquiry the Court is supposed to undertake to what is strictly the office of certiorari as distinguished from review." And in Lucman vs. Dimaporo, a case decided under the Constitution of 1935, this Court, speaking through then Chief Justice Concepcion, ruled that "this Court can not x x x review rulings or findings of fact of the Commission on Elections," as there is "no reason to believe that the framers of our Constitution intended to place the [said] Commission—created and explicitly made 'independent' by the Constitution itself—on a lower level" than statutory administrative organs (whose factual findings are not "disturbed by courts of justice, except when there is absolutely no evidence or no substantial evidence in support of such findings"). Factual matters were deemed not proper for consideration in proceedings brought either "as an original action for certiorari or as an appeal by certiorari. . . [for] the main issue in . . . certiorari is one of jurisdiction—lack of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction" while "petitions for review on certiorari are limited to the consideration of questions of law." (Padilla vs. Commission on Elections, 137 SCRA 424 [1985], De La Fuente, J.).

§16. The doctrine in that case, although laid down under the 1935 Constitution, is still controlling under the present charter as the interpretation by this Court of Article IX-C, Section 2(2). Accordingly, Section 9 of Rep. Act No. 6679, insofar as it provides that the decision of the municipal or metropolitan court in a barangay election case should be appealed to the regional trial court, must be declared unconstitutional.

Obviously, the provision of Article IX-C, Section 2(2) of the Constitution that "decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable" applies only to questions of fact and not of law. That provision was not intended to divest the Supreme Court of its authority to resolve questions of law as inherent in the judicial power conferred upon it by the Constitution. We eschew a literal reading of that provision that would contradict such authority.

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(Flores vs. Commission on Elections, 184 SCRA 484 [1990], Cruz, J.).

§17. In Filipinas Engineering and Machine Shop vs. Ferrer, this Court held that "what is contemplated by the term 'final orders, rulings and decisions' of the COMELEC reviewable on certiorari by the Supreme Court as provided by law are those rendered in actions or proceedings before the COMELEC and taken cognizance of by said body in the exercise of its adjudicatory or quasi-judicial powers. " (People vs. Delgado, 189 SCRA 715 [1990], Gancayco, J.)

§18. In the present case, after a review of the trial court's decision, the respondent COMELEC found that fifteen (15) ballots in the same precinct containing the letter "C" after the name "Galido" are clearly marked ballots. May this COMELEC decision be brought to this court by a petition for certiorari by the aggrieved party (the herein petitioner)? Under Article IX (A), Section 7 of the Constitution, which petitioner cites in support of this petition, it is stated: "(U)nless otherwise provided by this Constitution or by law, any decision, order, or ruling of each (Constitutional) Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof." On the other hand, private respondent relies on Article IX, (C), Section 2(2), paragraph 2 of the Constitution which provides that decisions, final orders, or rulings of the Commission on Elections in contests involving elective municipal and barangay offices shall be final, executory, and not appealable. We resolve this issue in favor of the petitioner. The fact that decisions, final orders or rulings of the Commission on Elections in contests involving elective municipal and barangay offices are final, executory and not appealable, does not preclude a recourse to this Court by way of a special civil action of certiorari. (Galido vs. Commission on Elections, 193 SCRA 78 [1991], Padilla, J.).

§19. The environmental facts of this petition are similar to those in the Galido case (G.R. No. 95346, decided 18 January 1991). The issue of whether the decisions of the COMELEC in election contests involving elective municipal and barangay officials, being final and executory and not appealable, preclude the filing of a special civil action of certiorari, was decided in the said Galido case. The Court held: "Under Article IX (A), Section 7 of the Constitution, which petitioner cites in support of this petition, it is stated: '(U)nless otherwise provided by the Constitution or by law, any decision, order or ruling of each (Constitutional) Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.' On the other hand, private respondent relies on Article IX, (C), Section 2 (2), paragraph 2 of the Constitution which provides that decisions, final orders, or rulings of the Commission on Elections in contests involving elective municipal and barangay offices shall be final, executory and not appealable. (Emphasis supplied) We resolve this issue in favor of the petitioner. The fact that decisions, final orders or rulings of the Commission on Elections in contests involving elective municipal and barangay offices are final, executory and not appealable, does not preclude a recourse to this Court by way of a special civil action of certiorari. x x x Earlier, the Court had occasion to resolve the same issue in the case of Flores vs. COMELEC, (G.R. No. 89604, 20 April 1990) where the Court stated: "Obviously, the provision of Article IX-C, Section 2(2) paragraph 2 of the Constitution that 'decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable' applies only to questions of fact and not of law. That provision was not intended to divest the Supreme Court of its authority to resolve questions of law as inherent in the judicial power conferred upon it by the Constitution. We eschew a literal reading of that provision that would contradict such authority." (Rivera vs. Commission on Elections, 199 SCRA 178 [1991], Padilla, J.).

§20. A perusal of our election laws shows that they do not explicitly provide for an appeal from the COMELEC to the Supreme Court. Section 7, Art. IX-A of the 1987 Constitution provides that: “unless otherwise provided by this Constitution or by law, any decision, order or ruling of each [Constitutional] Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof.” The petition for certiorari shall be filed under Rule 65 of the Rules of Court (Rivera vs. COMELEC, 199 SCRA 178; Galido vs. COMELEC, 193 SCRA 79; Dario vs. Mison, 176 SCRA 84; Pedalizo vs. Mariano, UDK-9819, March 15, 1990).

Since no constitutional provision or law fixes a shorter period, the reglementary period within which a petition for certiorari may be filed in the Supreme Court against the COMELEC is thirty (30) days from receipt of a copy of the COMELEC’s order, decision, or ruling. Respondents did not correctly invoke Sec. 3, Rule 39 of the COMELEC Rules of Procedure because this is a petition for certiorari under Rule 65 of the Rules of Court, hence, it falls under Sec. 1 Rule 39 of the COMELEC Rules of Procedure and Sec. 257 of the Omnibus Election Code. This petition was therefore seasonably filed on July 23, 1992, within thirty (30) days after the petitioner received the COMELEC resolution on June 23, 1992. (Sardea vs. Commission on Elections, 225 SCRA 374 [1993], Griño-Aquino, J.).

§21. Conformably to these provisions of the Constitution all election cases, including pre-proclamation controversies, must be decided by the COMELEC in division. Should a party be dissatisfied with the decision he may file a motion for reconsideration before the COMELEC en banc. It is, therefore, the decision, order or ruling of the COMELEC en banc that, in accordance with Art. IX, A, Section 7 “may be brought to the Supreme Court on certiorari.” (Reyes vs. Regional Trial Court of Oriental Mindoro, Br. XXXIX, 244 SCRA 41 [1995], Mendoza, J.).

§22. This provisIon is inapplicable as there was no case or matter filed before the COMELEC. On the contrary, it was the COMELEC’s resolution that triggered this controversy. The “case” or “matter” referred to by the Constitution must be something within the jurisdiction of the COMELEC, i.e., it must pertain to an election dispute. The settled rule is that “decision, rulings, order” of the COMELEC that may be brought to the Supreme Court on certiorari under Sec. 7, Art. IX-A are those that relate to the COMELEC’s exercise of adjudicatory or quasi-judicial powers involving “elective regional, provincial, and city officials.” In this case, what is being assailed is the COMELEC’s choice of an appointee to occupy the Gutalac Post which is an administrative duty done for the operational set-up of an agency. (Garces vs. Court of Appeals, 259 SCRA 99 [1996], Francisco, J.).

§23. “We have interpreted this provision to mean final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers.” This decision must be a final decision or resolution of the Comelec en banc, not of a division, certainly not an interlocutory order of a division. The Supreme Court has no power to review via certiorari, an interlocutory order or even a final resolution of a Division of the Commission on Elections.

The mode by which a decision, order or ruling of the Comelec en banc may be elevated to the Supreme Court is by the special civil action of certiorari under Rule 65 of the 1964 Revised Rules of Court, now expressly provided in Rule 64, 1997 Rules of Civil Procedure, as amended. Rule 65, Section 1, 1997 Rules of Civil Procedure, as amended, requires that there be no appeal, or any plain, speedy and adequate remedy in the ordinary course of law. A motion for reconsideration is a plain and adequate remedy provided by law. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition.

In like manner, a decision, order or resolution of a division of the Comelec must be reviewed by the Comelec en banc via a motion for reconsideration before the final en banc decision may be brought to the Supreme Court on certiorari. The pre-requisite filing of a motion for reconsideration is mandatory.

Under the existing Constitutional scheme, a party to an election case within the jurisdiction of the Comelec in division can not dispense with the filing of a motion for reconsideration of a decision, resolution or final order of the Division of the Commission on Elections because the case would not reach the Comelec en banc without such motion for reconsideration having been filed and resolved by the Division. The instant case does not fall under any of the recognized exceptions to the rule in certiorari cases dispensing with a motion for reconsideration prior to the filing of a petition. In truth, the exceptions do not apply to election cases where a motion for reconsideration is mandatory by Constitutional fiat to elevate the case to the Comelec en banc, whose final decision is what is reviewable via certiorari before the Supreme Court. (Ambil, Jr., vs. Commission on Elections, 344 SCRA 358 [2000], Pardo, J.).

§24. In Garces vs. Court of Appeals (259 SCRA 99 [1996]) and Filipinas Engineering and Machine Shop vs. Ferrer (135 SCRA 25 [1985]), we found occasion to interpret the foregoing provision in this wise: “x x x. What is contemplated by the term ‘final orders, rulings and decisions’ of the COMELEC reviewable by certiorari by the Supreme Court as provided by law are those rendered in actions or proceedings before the COMELEC and taken cognizance of by the said body in the exercise of its adjudicatory or quasi-judicial powers.” In Filipinas, we have likewise affirmed that the powers vested by the Constitution and the law on the Commission on Elections may either be classified as those pertaining to its adjudicatory or quasi-judicial functions, or those which are inherently administrative and sometimes ministerial in character.

As aptly explained by the Solicitor General, in the instant case, after the COMELEC ascertained the issuance of the ordinance and resolution declaring the abolition of barangay San Rafael, it issued COMELEC Resolution No. 2987 calling for a plebiscite to be held in the affected barangays, pursuant to the provisions of Section 10 of Republic Act No. 7160. We agree with the Solicitor General that “x x x. [t]he issuance of [COMELEC] Resolution No. 2987 is thus a ministerial duty of the COMELEC that is enjoined by law and is part and parcel of its administrative functions. It involves no exercise of discretionary authority on the part of respondent COMELEC; let alone an exercise of its adjudicatory or quasi-judicial power to hear and resolve controversies defining the rights and duties of party-litigants, relative to the conduct of elections of public officers and the enforcement of the election laws.” (Citation omitted.) Briefly, COMELEC Resolution No. 2987 which provides for the rules and regulations governing the conduct of the required plebiscite, was not issued pursuant to the COMELEC’s quasi-judicial functions but merely as an incident of its inherent administrative functions over the conduct of plebiscites, thus, the said resolution may not be deemed as a “final order” reviewable by certiorari by this Court. Any question pertaining to the validity of said resolution may be well taken in an ordinary civil action before the trial courts. (Salva vs. Makalintal, 340 SCRA 506 [2000] Buena, J.).

CHAPTER IX
Commission on Elections

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1. Creation, Organization and Membership

§1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit. (Article IX (A), Section 1, The 1987 Philippine Constitution).

§2. There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective position in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten years. (Article IX (C), Section 1 (1), The 1987 Philippine Constitution).

§3. The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Members for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity. (Article IX (C), Section 1 (2), The 1987 Philippine Constitution).

2. Nature and Character of the Commission

§1. The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of less responsible organization. The Commission may err, so may this Court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created—free, orderly and honest elections. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere. Politics is a practical matter, and political questions must be dealt with realistically—not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions. (Sumulong vs. Commission on Elections, 73 Phil. 288 [1941], Abad Santos, J.).

§2. Article IX-A, Section 1, of the Constitution expressly describes all the Constitutional Commissions as “independent.” Although essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of their respective functions. Each of these Commissions conducts its own proceedings under the applicable laws and its own rules and in the exercise of its own discretion. Its decisions, orders and rulings are subject only to review on certiorari by this Court as provided by the Constitution in Article IX-A, Section 7.

The choice of a temporary chairman in the absence of the regular chairman comes under that discretion. That discretion cannot be exercised for it, even with its consent, by the President of the Philippines. x x x The lack of a statutory rule covering the situation at bar is no justification for the President of the Philippines to fill the void by extending the temporary designation in favor of the respondent. This is still a government of laws and not of men. The problem allegedly sought to be corrected, if it existed at all, did not call for presidential action. The situation could have been handled by the members of the Commission on Elections themselves without the participation of the President, however well-meaning. In the choice of the Acting Chairman, the members of the Commission on Elections would most likely have been guided by the seniority rule as they themselves would have appreciated it. In any event, that choice and the basis thereof were for them and not the President to make.

The Court has not the slightest doubt that the President of the Philippines was moved only by the best of motives when she issued the challenged designation. But while conceding her goodwill, we cannot sustain her act because it conflicts with the Constitution. Hence, even as this Court revoked the designation in the Bautista case, so too must it annul the designation in the case at bar. (Brillantes, Jr. vs. Yorac, 192 SCRA 358 [1990], Cruz, J.).

3. Qualifications

§1. Practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. “To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill.” (111 ALR 23) Interpreted in the light of the various definitions of the term “practice of law”, particularly the modern concept of law practice, and taking into consideration the liberal construction intended by the framers of the Constitution, Atty. Monsod’s past work experiences as a lawyer-economist, a lawyer-manager, a lawyer-entrepreneur of industry, a lawyer-negotiator of contracts, and a lawyer-legislator of both the rich and the poor—verily more than satisfy the constitutional requirement—that he has been engaged in the practice of law for at least ten years. (Cayetano vs. Monsod, 20I SCRA 210 [1991], Paras, J.).

4. Term of Office

§1. In Republic vs. Imperial (96 Phil. 770 [1955], we said that “the operation of the rotational plan requires two conditions, both indispensable to its workability: (1) that the terms of the first three (3) Commissioners should start on a common date, and (2) that any vacancy due to death, resignation or disability before the expiration of the term should only be filled for unexpired balance of the term.” Consequently, the terms of the first Chairmen and Commissioners of the Constitutional Commissions under the 1987 Constitution must start on a common date, irrespective of the variations in the dates of appointments and qualifications of the appointees, in order that the expiration of the first terms of seven, five and three years should lead to the regular recurrence of the two-year interval between the expiration of the terms.

Applying the foregoing conditions to the case at bar, we rule that the appropriate starting point of the terms of office of the first appointees to the Constitutional Commissions under the 1987 Constitution must be on February 02, 1987, the date of the adoption of the 1987 Constitution. In case of a belated appointment or qualification, the interval between the start of the term and the actual qualification of the appointee must be counted against the latter.

In the law of public officers, there is a settled distinction between “term” and “tenure.” “[T]he term of an office must be distinguished from the tenure of the incumbent. The term means the time during which the officer may

claim to hold office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. The term of office is not affected by the hold-over. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent." (Topacio Nueno v. Angeles, 76 Phil. 12, 21-22 [1946]; Alba v. Evangelista, 100 Phil. 683, 694 [1957]; Paredes v. Abad, 155 Phil. 494 [1974]; Aparri v. Court of Appeals, 127 SCRA 240 [1948]).

What the above-quoted Transitory Provisions contemplate is "tenure" not "term" of the incumbent Chairmen and Members of the Civil Service Commission, the Commission on Elections and the Commission on Audit, who "shall continue in office for one year after the ratification of this Constitution, unless they are sooner removed for cause or become incapacitated to discharge the duties of their office or appointed to a new term thereunder." The term "unless" imports an exception to the general rule. (Tajanlangit v. Cazenas, 115 Phil. 568 [1962]). Clearly, the transitory provisions mean that the incumbent members of the Constitutional Commissions shall continue in office for one year after the ratification of this Constitution under their existing appointments at the discretion of the appointing power, who may cut short their tenure by: (1) their removal from office for cause; (2) their becoming incapacitated to discharge the duties of their office, or (3) their appointment to a new term thereunder, all of which events may occur before the end of one year period after the effectivity of the Constitution. (Gaminde vs. Commission on Audit, 347 SCRA 655 [2000], Pardo, J.).

5. Factors Securing Independence

a.) Under the 1935 Constitution

§1. The membership of the Commission is for a fixed period of nine years, except as to the first members appointed who were to hold office for nine, six and three years. With these periods, it was the intention to have one position vacant every three years, so that no President can appoint more than one Commissioner, thereby preserving and safeguarding the independence and impartiality of the Commission. (Nacionalista Party vs. Bautista, 85 Phil. 101 [1949], Padilla, J.).

§2. The prohibition against reappointment comes as a continuation of the requirement that the Commissioners shall hold office for a term of nine years. This imports that the Commissioners may not be reappointed only after they have held office for nine years. Reappointment is not prohibited when a Commissioner has held office only for, say, three or six years, provided his term will not exceed nine years in all. (Nacionalista Party vs. De Vera, 85 Phil. 126 [1949], Moran, C.J.).

§3. The provision that of the first three commissioners appointed "one shall hold office for 9 years, another for 6 years, and the third for 3 years," when taken together with the prescribed term of office for 9 years, without reappointment, evidences a deliberate plan to have a regular rotation or cycle in the membership of the commission, by having subsequent members appointable only once every three years. This had already been indicated in previous opinions of the Supreme Court (Nacionalista Party vs. Bautista Angelo, 47 Off. Gaz. 2356; Nacionalista Party vs. Vera, 47 Off. Gaz. 2375), where it was declared that "with these periods it was the intention to have one position vacant every three years, so that no President can appoint more than one Commissioner, thereby preserving and safeguarding the independent and impartiality of the Commission" as a body for the impartiality and independence of such individual Commissioner's tenure was safeguarded by other provisions in the same Article X of the fundamental charter. Now, the operation of the rotational plan requires two conditions, both indispensable to its workability: (1) that the terms of the first three commissioners should start on

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a common date, June 21, 1941; and (2) that any vacancy due to death, resignation or disability before the expiration of the term should only be filled only for the unexpired balance of the term. Without satisfying these conditions, the regularity of the intervals between appointments would be destroyed, and the evident purpose of the rotation (to prevent that a four-year administration should appoint more than one permanent and regular commissioner) would be frustrated. (Republic vs. Imperial and Perez, 96 Phil. 770 [1955], Reyes, J.B.L., J.).

§4. In the decision of this Court in Republic vs. Imperial, 51 Off. Gaz. 1886, three lines of succession were established, to wit: (1) that of the chairman; (2) that of the second member, Enage; and (3) that of the third member. The terms of office were therein indicated.

When a member in the third line of succession was appointed chairman and assumes office, he left that third line and entered the line of succession of the chairman, with his tenure unimpaired. Therefore, his successor merely occupied the position vacated by him whose fixed term of office (third line) expired on June 20, 1962. This latter appointment could neither affect nor extend such fixed term of office in the third line.

Although the appointment of the chairman or of a member is generally for a period of nine years, his tenure can not extend beyond the fixed term of the position he is supposed to occupy in the fixed line of succession already indicated. (Visarra vs. Miraflor, 8 SCRA 1 [1963], Bengzon, C.J.).

b.) Under the 1987 Constitution

§1. No member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries. (Article IX-A, Section 2, The 1987 Philippine Constitution).

§2. The salary of the Chairman and the Commissioners shall be fixed by law and shall not be decreased during their tenure. (Article IX, (A), Section 3, Ibid.).

§3. The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released. (Article IX, (A), Section 5, Ibid.).

§4. The President, Vice-President, the Members of the Supreme Court, the members of the Constitutional Commission, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment. (Article XI, Section 2, Ibid.).

§5. Our fundamental law has placed the agency charged with the enforcement and administration of all laws relative to the conduct of elections beyond the control of the Executive and beyond the power of Congress to abolish it (the agency), in addition to adopting other measures tending to give thereto a reasonable degree of independence. This notwithstanding, the nature of its powers has remained essentially the same, namely,

executive in character. (Ututalum vs. Commission on Elections, 15 SCRA 465 [1965], Concepcion, J.).

6. Powers and Functions

§1. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

(3) Decide, except those involving the right to vote, all questions affecting elections, including the determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

(4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of insuring free, orderly, honest, peaceful, and credible elections.

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

(7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

(8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.

(9) Submit to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall. (Article IX (C), Section 2, The 1987 Philippine Constitution).

§2. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc. (Article IX (C), Section 3, Ibid.).

§3. The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections. (Article IX (C), Section 4, Ibid.).

§4. No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the Commission. (Article IX (C), Section 5, Ibid.).

a.) Enforce election laws

§1. The Commission on Elections is an independent administrative body which was established by our Constitution to take charge of the enforcement of all laws relative to the conduct of elections and devise means and methods that will insure the accomplishment of free, orderly, and honest elections (Sumulong vs. Commission on Elections, 73 Phil., 288; Nacionalista Party vs. The Solicitor General, 85 Phil. 101; 47 Off. Gaz. 2356). (Guevara vs. Commission on Elections, 104 Phil. 268 [1958], Bautista Angelo, J.).

§2. Under the Constitution, the Commission on Elections has exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. (Zaldivar vs. Estenzo, 23 SCRA 533 [1968], Fernando, J.).

§3. The power of the Commission in the language of the Constitution is to “have exclusive charge of (the) enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law.”

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The scope of activity of the Comelec is circumscribed by the Election Code. Subsequent amendments may broaden its field of action, but they must so provide, whether in express terms or by clear implication. It is not vested with direct constitutional authority unlike the executive, legislative and judicial departments. There are set boundaries to its power, limits beyond which it cannot go. Outside lies a terrain where its writ will not run. It is not vested with a roving commission to inquire into all electoral evils and correct them. It is thus cabined and combined. (Dipatuan vs. Commission on Elections, 47 SCRA 258 [1972], Fernando, J.).

§4. In Zaldivar vs. Estenzo, (23 SCRA 533) this Court emphatically ruled that since the Commission on Elections is vested by the Constitution with the exclusive charge of the enforcement of all laws relative to the conduct of elections, assumption of jurisdiction by the Regional Trial Court over a case involving the enforcement of the Election Code "is at war with the plain constitutional command, the implementing statutory provisions and the hospitable scope afforded such grant of authority so clear and unmistakable in recent decisions". (Gallardo vs. Tabamo, Jr., 232 SCRA 690 [1994], Kapunan, J.; Re: COMELEC Resolution No. 2521, A.M. No. 92-12-916-RTC, July 8, 1994; 234 SCRA 1 [1994]).

§5. The big issue, one of first impression, is whether the COMELEC committed grave abuse of discretion amounting to lack of jurisdiction when it ordered a manual count in light of R.A. No. 8436. The post election realities on ground will show that the order for a manual count cannot be characterized as arbitrary, capricious or whimsical.

It bears stressing that the ballots used in the case at bar were specially made to suit an automated election. The ballots were uncomplicated. They had fairly large ovals opposite the names of candidates. A voter needed only to check the oval opposite the name of his candidate. When the COMELEC ordered a manual count of the votes, it issued special rules as the counting involved a different kind of ballot, albeit, more simple ballots. The Omnibus Election Code rules on appreciation of ballots cannot apply for they only apply to elections where the names of candidates are handwritten in the ballots.

In enacting R.A. No. 8436, Congress obviously failed to provide a remedy where the error in counting is not machine-related for human foresight is not all-seeing. We hold, however, that the vacuum in the law cannot prevent the COMELEC from levitating above the problem. Section 2(1) of Article IX(C) of the Constitution gives the COMELEC the broad power "to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." Undoubtedly, the text and intent of this provision is to give COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections. Congruent to this intent, this Court has not been niggardly in defining the parameters of powers of COMELEC in the conduct of our elections. (Loong vs. Commission on Elections, 305 SCRA 832 [1999], Puno, J.).

§6. There is admittedly a lacuna leges in R.A. No. 8436 which prescribes the adoption of an automated election system. However, while conceding as much, this Court ruled in Tupay Loong v. COMELEC, that the Commission is nevertheless not precluded from conducting a manual count when the automated counting system

fails, reasoning thus: . . . In enacting R.A. No. 8436, Congress obviously failed to provide a remedy where the error in counting is not machine related for human foresight is not all-seeing. We hold, however, that the vacuum in the law cannot prevent the COMELEC from levitating above the problem. Section 2(1) of Article IX (C) of the Constitution gives the COMELEC the broad power "to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." Undoubtedly, the text and intent of this provision is to give the COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections. Congruent to this intent, this Court has not been niggardly in defining the parameters of powers of COMELEC in the conduct of our elections . . . In the case at bar, the COMELEC order for a manual count was not only reasonable. It was the only way to count the decisive local votes . . . The bottom line is that by means of the manual count, the will of the voters of Sulu was honestly determined. We cannot kick away the will of the people by giving a literal interpretation to R.A. 8436. RA 8436 did not prohibit manual counting when machine count does not work. Counting is part and parcel of the conduct of an election which is under the control and supervision of the COMELEC . . . (Maruhom vs. Commission on Elections, 331 SCRA 473 [2000], Ynares-Santiago, J.).

b.) Insure free, orderly, honest, peaceful and credible elections

§1. The Commission on Elections has been established as an independent body by constitutional mandate, for the purpose of insuring free, orderly and honest elections. The Constitution has entrusted to the Commission on Elections the enforcement and administration of all laws relative to the conduct of elections x x x. (Lava vs. Hon. Lopez Vito, 73 Phil. 390 [1941], Abad Santos, J.).

§2. The purpose of the Revised Election Code is to protect the integrity of elections and to suppress all evils that may violate its purity and defeat the will of the voters. The purity of elections is one of the fundamental requisites of popular government.

The Commission on Elections, by constitutional mandate, must do everything in its power to secure a fair and honest canvass of the votes cast in the elections. In the performance of its duties, it must be given a considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created - to promote free, orderly and honest elections. The choice of means taken by the Commission, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with. Technicalities, which may defeat the will of the sovereign people, as expressed in their votes, should not be allowed to hamper the Commission in the performance of its duties. (Cauton vs. Commission on Elections, 126 Phil. 291 [1967]; 19 SCRA 911 [1967], Zaldivar, J.).

§3. In the performance of its constitutional duty of insuring free, orderly and honest elections the Comelec possesses a wide latitude of discretion which, unless shown to have been exercised in an arbitrary or improvident manner, will not be interfered with by the Supreme Court. (Ligot vs. Commission on Elections, 31 SCRA 45 [1970], Resolution, Per Curiam).

§4. That is the proper norm of conduct because "there are no ready-made formulas for solving public problems.

Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administrations of the laws relative to the conduct of elections" "we must not by any excessive zeal take away from the Commission the initiative which by constitutional and legal mandates properly belongs to it." (Sumulong vs. Commission on Elections, 73 Phil. 288, 295-6.). The Commission may err, so may this Court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which is was created – free, orderly and honest elections. (Omar vs. Commission on Elections, 102 SCRA 611 [1981], Aquino, J.).

§5. From the foregoing, it is clear that the COMELEC has ample power to see to it that the elections are held in a clean and orderly manner and it may decide all questions affecting the elections and has original jurisdiction on all matters relating to election returns, including the verification of the number of votes received by opposing candidates in the election returns as compared to the statement of votes in order to insure that the true will of the people is known. Such a clerical error in the statement of votes can be ordered corrected by the COMELEC. (Villaroya vs. Commission on Elections, 155 SCRA 633 [1987], Gancayco, J.).

c. Decide administrative questions affecting elections

§1. There are no ready-made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of the laws relative to the conduct of elections, as well as in the appointment of election inspectors, we must not by any excessive zeal take away from the Commission on Elections the initiative which by constitutional and legal mandates properly belongs to it x x x. (Sumulong vs. The Commission on Elections, 73 Phil. 288 [1941], Abad Santos, J.).

§2. The power given to the Commission by Section 2 of Article X of the Constitution, "to decide all administrative questions concerning location of polling places, is a power that should be exercised when a question is brought before the Commission, and its decision should be rendered in accordance with law and not in contravention of law. The functions and powers of the Commission on Elections are limited by law. It has no legislative power to change or modify the law, nor may such power be delegated to the Commission." (Cortez vs. Commission on Elections, 79 Phil. 352 [1947], Moran, C.J.).

§3. The Commission has the power to decide all administrative questions affecting elections, except the question involving the right to vote. (Cauton vs. Commission on Elections, 126 Phil. 291 [1967]; 19 SCRA 911 [1967], Zaldivar, J.).

§4. Decisions, orders and rulings of the Commission on Elections on administrative questions affecting elections are reviewable only by the Supreme Court. Since the power of the Commission are limited to matters connected with the conduct of elections, necessarily its adjudicatory or quasi-judicial powers are likewise limited to controversies connected with the conduct of elections. This phrase covers all the administrative process of preparing and operating the election machinery so that the people could exercise their right to vote at the given time. All questions and controversies that may arise therefrom are to be resolved exclusively by the Commission,

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subject to review only by the Supreme Court. (Monroy vs. Court of Appeals, 20 SCRA 620 [1967], Bengzon, J.P., J.).

§5. A declaration of a failure to elect, notwithstanding the fact that 1,363 valid votes have been cast and recounted, cannot be considered an "administrative question" affecting an election that the Comelec has power to decide. Such a certification has no bearing on the conduct of the elections or the electoral process, but concerns the results thereof. (Antonio, Jr. vs. Comelec, 32 SCRA 319 [1970], Reyes, J.B.L., J.).

§6. From the foregoing, it is clear that the COMELEC has ample power to see to it that the elections are held in a clean and orderly manner and it may decide all questions affecting the elections and has original jurisdiction on all matters relating to election returns, including the verification of the number of votes received by opposing candidates in the election returns as compared to the statement of votes in order to insure that the true will of the people is known. Such a clerical error in the statement of votes can be ordered corrected by the COMELEC. (Villaroya vs. Commission on Elections, 155 SCRA 633 [1987], Gancayco, J.).

§7. By virtue of that power, added to its over-all function to "decide all questions affecting elections" (Article IX [C]) Section 2[3], 1987 Constitution), a question pertaining to the proceedings of said Board may be raised directly with the COMELEC as a pre-proclamation controversy. (Duremdes vs. Commission on Elections, 178 SCRA 746 [1989], Melencio-Herrera, J.).

§8. In Filipinas Engineering and Machine Shop vs. Ferrer, this Court held that "what is contemplated by the term 'final orders, rulings and decisions' of the COMELEC reviewable on certiorari by the Supreme Court as provided by law are those rendered in actions or proceedings before the COMELEC and taken cognizance of by said body in the exercise of its adjudicatory or quasi-judicial powers." Thus, the decisions of the COMELEC on election contests or administrative questions brought before it are subject to judicial review only by this Court. (People vs. Delgado, 189 SCRA 715 [1990], Gancayco, J.).

d.) Supervise and control election officials, board

of election inspectors and board of canvassers

§1. The duty of the Commission on Elections to investigate and act on the propriety or legality of a canvass of election made by the municipal board of canvassers, is discretionary, and said commission may not therefore be compelled to perform such duty through mandamus proceedings. (Ramos vs. Commission on Elections, et al., 80 Phil. 722 [1948], Paras, J.).

§2. Although the Commission on Elections is an administrative body, it has power to see to it that officers performing administrative functions connected with elections shall comply with the duties assigned to them.

The duty of the board of canvassers to make the proclamation in accordance with the election returns of all the precincts of the municipality is ministerial; so that, where the board proclaimed only four councilors, where six councilors should have been proclaimed – the Commission may order it to reconvene and make a new proclamation by including the other two councilors who received the highest number of votes. (Olano vs. Ronquillo, 118 Phil. 204 [1963]; 8 SCRA 204 [1963], Bengzon, C.J.).

§3. Since the dismissal of the petition for recount and the dissolution of the writ of preliminary injunctions were premised on a finding by the court of lack of jurisdiction to act thereon in view of the ruling of the Commission on Elections regarding the futility of said recount because of its findings that one of the returns was found to be falsified, which was impliedly upheld by the Supreme Court, the Commission on Elections acted properly and within its functions and prerogatives when it suspended four members of the municipal board of canvassers and substituted them with others upon their refusal to proceed with the canvass as ordered by the said Commission.

The pretext of the suspended members of the municipal board of canvassers, that they refused to make a new canvass as ordered by the Commission on Elections because they might be held in contempt of court in view of the motion filed by one of the candidates for a reconsideration of the decision of the court dissolving the injunction and dismissing the petition for recount of votes, is flimsy considering that the injunction had already been dissolved and that they were ordered to comply with their duty by a superior constitutional authority whose power under the law is clear. It was an attempt on their part to further delay the canvass of votes and befuddle the situation in the hope that in the process they might still succeed in proclaiming their colleague thru a ruse or a technicality. (Municipal Board of Canvassers of Bansud, Oriental Mindoro vs. Commission on Elections, 116 Phil. 307 [1962]; 5 SCRA 1154 [1962], Bautista Angelo, J.).

§4. A valid directive of a representative of the Commission on Elections directing the suspension of the proclamation of a mayoralty candidate serves to nullify the continuation of the canvass and consequent proclamation of a candidate to the contested position. The Commission on Elections can order the suspension of a municipal board of canvassers and appoint substitutes to take their place in a new canvass of the election returns of all the precincts even after the old board had completed the canvass and proclamations were made in violation of the lawful order of the Commission. The defiance by the original members of a board of canvassers of a lawful order and instruction of the Commission on Elections is a valid cause for their removal and substitution by qualified persons. There is no res judicata in the dismissal by the Court of First Instance of a petition for recount of votes based on the fact that a winner for the contested position has been proclaimed, where said proclamation was declared null and void for violation of lawful orders of the Commission on Elections. (Javier vs. Commission on Elections, 13 SCRA 156 [1965], Barrera, J.).

§5. The Commission on Elections has the power to investigate and act on the propriety or legality of the canvass of election returns made by the board of canvassers. The power of the Commission in this respect is simply administrative and supervisory. It is intended to secure the proclamation of the winning candidate based on the true count of the votes cast.

The object of the canvass is to determine the result of the elections based on the official election returns. In order that the result of the canvass would reflect the true expression of the people's will, it must be based on genuine and untampered election returns. The Commission exercises its jurisdiction, relative to the conduct of elections, in order to attain that result. (Cauton vs. Commission on Elections, 126 Phil. 291 [1967]; 19 SCRA 911 [1967], Zaldivar, J.).

§6. The Commission on Elections, by specific articulation in Section 3 of the Revised Election Code, possesses supervisory powers over boards of canvassers. The latter cannot, with impunity, disregard any order of the Commission made in pursuance of its constitutional duty of enforcement and administration of all laws relative to the conduct of elections, and of insuring free, orderly and honest elections. It certainly is within the realm of the Commission's concerns to direct that only genuine returns be considered where, as here, dastardly attempts were made to subvert the people's choice by a resort to patently doctored returns. (Espino vs. Zaldivar, 21 SCRA 1204 [1967], Sanchez, J.).

§7. The board of canvassers is a ministerial body enjoined by law to canvass all votes on election returns submitted to it in due form, and its powers are "limited generally to the mechanical or mathematical functions of ascertaining and declaring the apparent results of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained" (29 CJS., p. 656). The Comelec is the constitutional body charged with the duty to enforce all laws relative to elections, duty bound to see to it that the board of canvassers perform its proper function (Sec. 3, Revised Election Code; Cauton vs. Comelec, L-25467, April 27, 1967). Neither Constitution nor statute has granted Comelec or the board of canvassers the power, in the canvass of election returns, to look beyond the face thereof, once satisfied of their authenticity.

Where the petition does not indicate that the election returns have been falsified after they had left the hands of the election inspectors or that such returns are not genuine, the Supreme Court cannot give its stamp of approval to suspend canvass and proclamation, for, to stop both Comelec and the board of canvassers from their legal duty, and worse, to suspend canvassing and proclamation at a late date, may result in a vacuum in office of elective officials after the term of the present incumbents shall have ended on December 31st. Canvassing and proclamation must proceed, otherwise, it "would result in a lack of incumbents in the offices concerned after the termination of the current term and while the case remains pending in court" (City Board of Canvassers vs. Moscoso, L-16365, Sept. 3, 1963). (Abes vs. Commission on Elections, 21 SCRA 1252 [1967], Sanchez, J.).

§8. The city board of canvassers is an entity that is entirely different and distinct from the city board or city council of a chartered city. Similarly, a provincial board of canvassers, or a municipal board of canvassers, is an entity entirely different and distinct from the provincial board of a province, or the municipal council of a municipality, as the case may be. While members of a city board (or city council), or a provincial board or of a municipal council, are members also of a city board of canvassers, or provincial board of canvassers, or of a municipal board of canvassers, as the case may be, they do not act in the board of canvassers, in the capacity of city councilmen, or in the capacity of a member of the provincial board, or in the capacity of a member of a municipal council, but as election officials to perform functions specially provided by law.

The specific function of a board of canvassers is to canvass the results of the election as shown in the election returns and to proclaim the winning candidates. Once this specific function had been performed the existence of the board of canvassers is ended and terminated. (Cordero v. CFI of Rizal, 40 Phil. 246).

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Members of the board of canvassers are election officials. Since under the provision of Section 2 of Article X of the Constitution, the Commission on Elections is empowered to appoint “other officials, ” it follows that when there is a vacancy in the membership of the board of canvassers, the only authority empowered to appoint a member to fill the vacancy is the Comelec. Said constitutional provision was implemented by Sections 159 and 167 of the Revised Election Code. And even under the Revised Election Code, no authority other than the Comelec is empowered to appoint substitute members in the board of canvassers.

The Comelec must appoint as substitute members of the board of canvassers the officials specifically mentioned in said Section 159, and if more substitutes are needed after those officials have been appointed, the Comelec may appoint other officials of the province or city until the provincial or city board of canvassers, as the case may be, had been fully constituted. The power of the Comelec to appoint officials within a province or city, other than those mentioned in Section 159 of the Revised Election Code has been upheld in at least two decided cases (See City Board of Canvassers of Tacloban City v. Moscoso, L-16065, Sept. 30, 1963; and Espino v. Zaldivar, etc., L-22325, Dec. 11, 1967).

For said Section 28 of the Revised Election Code has become obsolete when the provincial board, municipal or city councils have been relieved of duties relative to elections since the enactment of Republic Act No. 599 on March 28, 1951. With the passage of Republic Act No. 599 aforesaid, Section 28 of the Revised Election Code would serve no more purpose.

The decision of this Court in the Torres case must be understood to mean that in the event of vacancies in the provincial board of canvassers the Commission on Elections must appoint substitutes from among officials that are named in Section 159 of the Revised Election Code, if they are available. x x x. That dictum in the decision does not preclude an appointment by the Comelec of other officials in case those named in Section 159 who have been appointed are not available and there is need of appointing more substitutes in order to complete the membership of the board of canvassers. (Aquino vs. Commission on Elections, 22 SCRA 288 [1968], Zaldivar, J.).

§9. Where a member of the Board of Canvassers designated by law is excluded from the canvass by reason of which he did not take part therein, the canvass and the resulting proclamation are both null and void.

The canvassing board will not be compelled to canvass returns which are obviously manufactured. But this does not mean that the board and Comelec should right away disregard the votes cast in precincts where the returns are doctored. It is the duty of the Board to report the matter to the Comelec.

Where the election returns are tampered, it is within the power of the Comelec to issue such order as would ascertain the existence of the genuine, authentic and untampered election returns. It should inquire into the copies of the returns from the provincial treasurer. And if these copies are not authentic it should look into the copies of the returns in the ballot boxes.

The broad sweep of the Comelec’s duty to administer and enforce the election law gives it ample authority to direct the board of canvassers to include in the canvass returns from the questioned precincts. It should summon the members of the board of inspectors, take evidence and ascertain which are the genuine returns; then it should direct the board to use these returns in the canvass of the votes. (Pacis vs. Commission on Elections, 22 SCRA 539 [1968], Sanchez, J.).

§10. While the Comelec in its role as senatorial canvasser has the power to reject returns before it which in its opinion were illegal and not authentic, neither law nor precedent authorizes it to impose the same criterion in advance upon the provincial boards of canvassers. The latter are entitled to use their own judgment in determining

whether the irregularities appearing on the returns before them warrant their rejection. (Alonto vs. Commission on Elections, 22 SCRA 878 [1968], Reyes, J.B.L., Actg. C.J.).

§11. Where the return sought to be voided is regular and complete on its face, so that when it was canvassed, the petitioner did not raise any objection to it or point to any defect or infirmity in its contents, said return is not "obviously manufactured" within the meaning of this Court's decision in Lagumbay vs. Commission on Elections, L-25444, January 21, 1966, just because of a discrepancy between the statement therein that 279 ballots had been cast and an entirely different document, namely, the certification of the election registrar that only 80 voters actually voted. This certification was not material insofar as the board of canvassers was concerned, since its ministerial duty was to read and canvass the result of the election on the basis of the returns, once satisfied that the same were genuine. (Dizon vs. Tizon, 22 SCRA 1317 [1968], Makalintal, J.).

§12. The duty of the municipal board of canvassers to count the votes cast for candidates for municipal offices as shown in all the election returns produced by the municipal treasurer, can not be avoided. The board is to be guided by election returns transmitted to it which are in due form. Indeed, the board must be satisfied of the genuineness of the returns. A canvass made on incomplete returns may be annulled.

By Section 3 of the Revised Election Code, Comelec has "direct and immediate supervision" over the municipal board of canvassers. That statutory provision empowers Comelec to suspend from the performance of their duties any member of the board of canvassers who shall fail to comply with its instructions, orders, decisions, or rulings and appoint their temporary substitutes. This, of course, is in pursuance of Comelec's constitutionally prescribed duty to enforce "all laws relative to the conduct of elections," to decide "all administrative questions affecting elections," and to insure "free, orderly, and honest elections." (Pedido vs. Commission on Elections, 22 SCRA 1403 [1968], Sanchez, J.).

§13. The purpose of the Election Code "to protect the integrity of elections and to suppress all evils that may vitiate its purity and defeat the will of the voters" gives Comelec authority to ascertain whether the genuineness of a given election return may yet be salvaged by an examination of said return. Otherwise, the unscrupulous can easily prevent the proclamation of the true winner by falsifying the returns. For this reason, the Comelec has all the power to order the municipal board of canvassers to use, other than the copy for the municipal treasurer, Comelec's own finding of correct votes obtained, and the votes as indicated in the provincial treasurer's copy if it finds that the copy of the municipal treasurer was tampered with.

An election return prepared at the point of a gun is no return at all. It is no better than a falsified or spurious return. (Pacis vs. Commission on Elections, 25 SCRA 377 [1968], Sanchez, J.).

§14. While nominally, the procedure of bringing to the Commission objections to the actuations of boards of canvassers has been quite loosely referred to in certain quarters, even by the Commission and by this Court, such as in the guidelines of May 23, 1978 quoted earlier in this opinion, as an appeal, the fact of the matter is that the authority of the Commission in reviewing such actuations does not spring from any appellate jurisdiction conferred by any specific provision of law, for there is none such provision anywhere in the Election Code, but from the plenary prerogative of direct control and supervision endowed to it by the above-quoted provision of Section 168. (Aratuc vs. Commission on Elections, 88 SCRA 251 [1979], Barredo, J.).

§15. The COMELEC did not abuse its discretion in changing the San Pablo City board of canvassers, directing the canvassing to be held in Manila, and allowing a recanvass as the COMELEC's action was based on its

fact-finding investigation. (Ticzon vs. Commission on Elections, 103 SCRA 671 [1981], Aquino, J.).

§16. DUREMDES' proclamation having been based on an incomplete canvass, no grave abuse of discretion can be ascribed to the COMELEC for directing the Provincial Board of Canvassers of Iloilo "to immediately reconvene and to include in the canvass of votes for Vice-Governor the questioned/contested returns." All the votes cast in an election must be considered because to disregard returns is in effect to disenfranchise the voters (Mutuc vs. COMELEC, L-28517, February 21, 1968, 22 SCRA 662). A canvass can not be reflective of the true vote of the electorate unless all returns are considered and none is omitted. (Duremdes vs. Commission on Election, 178 SCRA 746 [1989], Melencio-Herrera, J.).

e.) Postpone elections

§1. The functions of the Commission on Elections under the Constitution are essentially executive and administrative in nature. Upon the other hand, the authority to order the holding of elections on any date other than that fixed in the Revised Election Code is merely incidental to or an extension or modality of the power to fix the date of elections. This is, in turn, neither executive nor administrative, but legislative in character, not only by nature, but, also, insofar as national elections are concerned, by specific provisions of the Constitution, for, pursuant thereto, the elections for Senators and Members of the House of Representatives and those for President and Vice-President, shall be held on the dates "fixed by law" (Article VI, Sec. 8 [1] and Article VII, Sec. 4, Constitution), meaning an Act of Congress. Hence, no elections may be held on any other date, except when so provided by another act of Congress or upon orders of a body or officer to whom Congress may have delegated, either its aforementioned power, or the authority to ascertain or fill in the details in the execution of said power. There is, however, no such statutory grant of authority to the Commission on Elections.

Under Section 8 of the Revised Election Code, the power to postpone an election is vested exclusively in the President, although "upon recommendation" of the Commission. Besides, the language of Section 8 indicates that the power therein granted must be exercised before the election or not later than the date thereof. (Ututalum vs. Commission on Elections, 15 SCRA 465 [1965], Concepcion, J.).

§2. Nothing in Section 2, Article X of the Constitution will imply authority for Comelec to annul an election. So, too, did the Revised Election Code withhold from it such specific power.

Enforcement and administration of all election laws by Comelec do not include the power to annul an election which may not have been free, orderly and honest, as such power is merely preventive, and not curative, and if it fails to accomplish that purpose, it is not for such body to cure or remedy the resulting evil, but for some other agencies of the Government: The Senate Electoral Tribunal, the House Electoral Tribunal, or the courts, as the case may be, who have the power to decide election contests (Nacionalista Party vs. Comelec, 85 Phil. 149, 155-156).

There is no constitutional or legal precept that empowers the Comelec to direct a new election after one had already been held. All that there is in the statute books is Section 8 of the Revised Election Code which empowers the President to postpone an election fixed by law upon recommendation of the Comelec, but this refers to postponement before elections, and not a remedy thereafter.

The Comelec being powerless to annul an election or to direct a new one, no grave abuse of discretion is involved, and mandamus will not issue. (Abes vs. Commission on Elections, 21 SCRA 1252 [1967], Sanchez, J.).

§3. The basic issue implicit in the petition concerns the authority of the COMELEC to order the holding of a new election in a particular precinct where, for some reason, the election failed to take place on the date specified by law, and, by inference, the authority of this Court to direct the COMELEC to issue such an order. There are two

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provisions in the Revised Election Code which have to do with the contingency thus envisioned. In either, the authority is given to the President: in the first (Sec. 8), to postpone the election upon the recommendation of the COMELEC, the order of postponement, by its very nature, to be issued before the date fixed by law for the election arrives; and in the second (Sec. 21 [c]), to issue a proclamation calling for a special election to fill the office concerned. There is no law which gives similar authority to the courts or to the COMELEC. (Janairo vs. Commission on Elections, 21 SCRA 1173 [1967], Makalintal, J.).

§4. Section 5 of the Omnibus Election Code enumerates the causes which may justify the COMELEC to postpone the election. Where after hearing, the Commission finds that there is extreme difficulty in conducting a free, orderly, honest, peaceful, and credible election on the date set by law and there is need for close supervision by the Commission and effective military presence, which either can definitely provide if elections were not postponed, the Commission may postpone the election in the province or locality concerned. (Agpalo, Ruben, E., Comments on the Omnibus Election Code, 1998 Revised Edition, p. 22, citing Dimaporo vs. Commission on Elections, G.R. No. 81151, Jan. 7, 1988).

§5. No other body or officer has the power to postpone or reset an election date except the Commission en banc itself. Hence, the postponement or resetting of the election date by the COMELEC Assistant Director or the COMELEC Special Action Team, not having any authority to do so, is invalid. (Ibid., citing Sumbing vs. Davide, G.R. No. 86850, July 20, 1989).

§6. The setting of the special elections not later than thirty days after the cessation of the cause of the postponement of election or suspension of the election or failure to elect is directory depending upon the exigencies and peculiar circumstances attendant as determined by the Commission, and its determination, in the absence of abuse of discretion, is binding. (Ibid., citing Sumbing vs. Commission on Elections, G.R. No. 91545, June 18, 1990).

f.) Declare failure of elections

§1. The basic issue implicit in the petition concerns the authority of the COMELEC to order the holding of a new election in a particular precinct where, for some reason, the election failed to take place on the date specified by law, and, by inference, the authority of this Court to direct the COMELEC to issue such an order. There are two provisions in the Revised Election Code which have to do with the contingency thus envisioned. In either, the authority is given to the President: in the first (Sec. 8), to postpone the election upon the recommendation of the COMELEC, the order of postponement, by its very nature, to be issued before the date fixed by law for the election arrives; and in the second (Sec 21 [c]), to issue a proclamation calling for a special election to fill the office concerned. There is no law which gives similar authority to the courts or to the COMELEC.

The alternative prayer of the petitioners, that this Court recommend to the President that he call a special election in Precinct No. 10 of Caluya, Antique, must likewise be denied for several reasons: first, the function of this Court is to adjudicate justiciable cases, not to make recommendation concerning the powers and functions of the other department of the government; second, the petitioners may make such recommendation by themselves; and third, it is at best doubtful if the fact that no election was held in one out of eleven precincts in the municipality may be considered as a failure of “election for a local office to take place on the date fixed by law,” as provided in Section 21(c) of the Revised Election Code. (Janairo vs. Commission on Elections, 21 SCRA 1173 [1967], Makalintal, J.).

§2. The destruction and loss of the copies of the election returns intended for the Municipal Board of Canvassers on account of violence committed on May 13, 1992 is not one of the causes that would warrant the declaration of a failure of election because voting actually took place as scheduled on May 11, 1992 and other valid election

returns still existed. Moreover, the incident did not affect the result of the election.

Section 233 of B.P. 881 ought to be harmonized with Section 27, par. b (5) of R.A. 7166. Section 27, par. b (5) of R.A. 7166 presupposes that other copies of the election returns are existent and may be compared with the copies of the MTC. It does not preclude the use of such authentic copies in the canvass when the copies submitted to the Board of Canvassers have been lost or destroyed. The letter of Provincial Election Supervisor Atty. Adolfo Ilagan dated May 15, 1992 and the minutes of the special meeting of respondent COMELEC held on May 22, 1992 constitute sufficient authority for the use of such returns in the canvass. (Sardea vs. Commission on Elections, 225 SCRA 374 [1993], Griño-Aquino, J.).

§3. Before COMELEC can act on a verified petition seeking to declare a failure of election, two (2) conditions must concur: first, no voting has taken place in the precinct or precincts on the date fixed by law or, even if there was voting, the election nevertheless resulted in failure to elect; and, second, the votes not cast would affect the result of the election.

In the case before us, it is indubitable that the votes not cast will definitely affect the outcome of the election. But, the first requisite is missing, i.e., that no actual voting took place, or even if there is, the results thereon will be tantamount to a failure to elect. Since actual voting and election by the registered voters in the questioned precincts have taken place, the results thereof cannot be disregarded and excluded. COMELEC therefore did not commit any abuse of discretion, much less grave, in denying the petitions outright. There was no basis for the petitions since the facts alleged therein did not constitute sufficient grounds to warrant the relief sought. For, the language of the law expressly requires the concurrence of these conditions to justify the calling of a special election. (Mitmug vs. Commission on Elections, 230 SCRA 54 [1994], Bellosillo, J.).

§4. In the case of Mitmug vs. Commission on Elections, we held that before COMELEC can act on a verified petition seeking to declare a failure of election, two (2) conditions must concur: first, no voting has taken place in the precincts concerned on the date fixed by law or, even if there was voting, the election nevertheless resulted in failure to elect; and, second, the votes not cast would affect the result of the election. We must add, however, that the cause of such failure of election should have been any of the following: force majeure, violence, terrorism, fraud or other analogous causes. (Loong vs. Commission on Elections, 257 SCRA 1 [1996], Hermosisima, J.).

§5. The mere fact that the transfer of polling place was not made in accordance with law does not warrant a declaration of failure of election and the annulment of the proclamation of the winning candidate, unless the number of uncast votes will affect the result of the election. (Balindong vs. Commission on Elections, 260 SCRA 494 [1996], Mendoza, J.).

§6. A petition to declare a failure of election is neither a pre-proclamation controversy as classified under Section 5(h), Rule 1 of the Revised COMELEC Rules of Procedure, nor an election case.

It must be remembered that Capco was duly elected and proclaimed as Mayor of Pateros. “Such proclamation enjoys the presumption of regularity and validity.” To destroy the presumption, Borja must convincingly show that his opponent’s victory was procured through extra-legal means. This he tried to do by alleging matters in his petition which he thought constituted failure of election, such as lack of notice of the date and time of canvass; fraud, violence, terrorism and analogous causes; disenfranchisement of voters; presence of flying voters; and unqualified members of the Board of Election Inspectors. These grounds, however, as correctly pointed out by the COMELEC, are proper only in an election contest but not in a petition to declare a failure of election and to nullify a proclamation.

In other words, the COMELEC can call for the holding or continuation of election by reason of failure of election

only when the election is not held, is suspended or results in a failure to elect. The latter phrase, in turn, must be understood in its literal sense, which is “nobody was elected.” None of these circumstances is present in the case at bar. At best, the “grounds” cited by Borja are simply events which give rise to the three consequences just mentioned.

In reality, Borja’s petition was nothing but a simple election protest involving an elective municipal position which, under Section 251 of the Election Code, falls within the exclusive original jurisdiction of the appropriate Regional Trial Court. (Borja, Jr., vs. Commission on Elections, 260 SCRA 604 [1996], Romero, J.).

§7. [n]onetheless, in the instant case, the June 17, 1995 electoral exercise was not a failed election, as voting had taken place and the election did not result in a failure to elect. In other words, the people spoke freely and honestly in a contest voluntarily participated in by both parties herein. Hence, the popular will as clearly expressed in the votes cast and counted should prevail over dubious election documents of a previous failed election in the same precinct. (Garay vs. Commission on Elections, 261 SCRA 222 [1996], Panganiban, J.).

§8. In several cases, the Court has ruled that the pre-conditions for declaring a failure of election are: (1) that no voting has been held in any precinct or precincts because of force majeure, violence or terrorism, and (2) that the votes not cast therein suffice to affect the results of the elections. The concurrence of these two (2) circumstances are required to justify the calling of a special election. (Hassan vs. Commission on Elections, 264 SCRA 125 [1996], Kapunan, J.).

§9. Clearly, there are only three (3) instances where a failure of election may be declared, namely: (a) the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud, or other analogous causes; (b) the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud, or other analogous causes; or (c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud, or other analogous causes.

Canicosa bewails that the names of the registered voters in the various precincts did not appear in their respective lists of voters. But this is not a ground to declare a failure of election. The filing of a petition for declaration of failure of election therefore is not the proper remedy. The day following the last day for registration of voters, the poll clerk delivers a certified list of voters to the election registrar, election supervisor and the COMELEC, copies of which are open to public inspection. On the same day, the poll clerk posts a copy of the list of registered voters in each polling place. Each member of the board of election inspectors retains a copy of the list which may be inspected by the public in their residence or in their office during office hours. (Canicosa vs. Commission on Elections, 282 SCRA 512 [1997], Bellosillo, J.).

§10. Under the pertinent codal provision of the Omnibus Election Code, there are only three (3) instances where a failure of elections may be declared, namely: (a) the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud, or other analogous causes; (b) the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud, or other analogous causes; or (c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud, or other analogous causes. (Sison vs. Commission on Elections, 304 SCRA 170 [1999], Romero, J.).

§11. However, as election officer, she has no authority to declare a failure of election. Indeed, only the Comelec itself has legal authority to exercise such awesome power. An election officer alone, or even with the agreement

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of the candidates, cannot validly postpone or suspend the elections. (Basher vs. Commission on Elections, 330 SCRA 736 [2000], Panganiban, J.).

§12. While petitioner may have intended to institute an election protest by praying that the said action may also be considered an election protest, in our view, petitioner's action is a petition to declare a failure of elections or annul election results. It is not an election protest. First, his petition before the COMELEC was instituted pursuant to Section 4 of Republic Act No. 7166 in relation to Section 6 of the Omnibus Election Code. Section 4 of RA 7166 refers to "postponement, failure of election and special elections" while Section 6 of the Omnibus Election Code relates to "failure of election." It is simply captioned as "Petition to Declare Failure of Elections and/or For Annulment of Elections."

Petitioner argues that the COMELEC should not have treated his prayer for annulment of elections as a prayer for declaration of failure of elections. This argument is plainly gratuitous as well as immaterial. A prayer to declare failure of elections and a prayer to annul the election results for vice mayor in this case are actually of the same nature. Whether an action is for declaration of failure of elections or for annulment of election results, based on allegations of fraud, terrorism, violence or analogous cause, the Omnibus Election Code denominates them similarly. No positive gain will accrue to petitioner's cause by making a distinction without a difference. (Banaga, Jr. vs. Commission on Elections, 336 SCRA 701 [2000], Quisumbing, J.).

g.) Annul elections

§1. Where the evidence shows that in a particular precinct the secrecy of the vote was violated x x x and tampered with the ballots and mixed them; the election in said precinct must be annulled, as the intent to defraud the will of the electorate is manifest, and it is impossible to tell with certainty just what was the true result of the election.

Where the legal votes cannot be separated from the illegal votes, it is improper to deduct a certain number of votes from those obtained by one candidate and award them to another and the election in that precinct must be annulled. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§2. When the fraudulent ballots are so mixed up with the legal ballots that the legal cannot be separated from the illegal ballots, and the election returns are not reliable by reason of certain marks thereon, indicating that they have been falsified, the election must be annulled. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§3. Elections should never be held void unless they are clearly illegal; it is the duty of the court to sustain an election authorized by law if it has been so conducted as to give a free and fair expression of the popular will, and the actual result thereof is clearly ascertained. It has been held that gross irregularities not amounting to fraud do not vitiate an election. (20 C.J., 181, par. 222.)

The power to throw out an entire election should be exercised with the greatest care and only under circumstances which demonstrate beyond all reasonable doubt either that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever, or that the great body of the voters have been prevented by violence, intimidation and threats from exercising their franchise. (20 C.J., pars. 179-181.). (Demeterio vs. Lopez, 50 Phil. 45 [1927], Villa-Real, J.).

§4. The registration of voters made outside the date fixed by law, though void, is not sufficient reason for the annulment of the election. Annulment of an election can be justified where as a result of said irregularity "many voters, without any qualification whatsoever succeeded in having their names inscribed in the official list" and that it was "impossible to segregate the legal from the illegal votes" and because the frauds and irregularities committed had affected the entire election to such an extent that it is impossible to ascertain the true will of the

voters authorized to exercise the right of suffrage (Reyes v. Bitong, 57 Phil. 100, 113-114 [1932]). (Florendo, Sr. vs. Buyser, 21 SCRA 1106 [1967], Castro, J.).

§5. In other words, in line with the plenitude of its powers and its function to protect the integrity of elections, the COMELEC must be deemed possessed of authority to annul elections where the will of the voters has been defeated and the purity of elections sullied. It would be unreasonable to state that the COMELEC has the legal duty to perform and at the same time deny it the wherewithal to fulfill that task. The fact that widespread terrorism occurred after the elections, and not in the casting of votes, should make no difference. (Sanchez vs. Commission on Elections, 114 SCRA 454 [1982], Melencio-Herrera, J.).

§6. While, however, the COMELEC acted within its jurisdiction in taking cognizance of the private respondents' petition to annul the election results of or to declare failure of elections in Parang, Sulu, it committed grave abuse of discretion when confronted with essentially the same situation in petitioners' own petition to annul the elections of or to declare failure of elections in the municipalities of Tapul, Panglima Estino, Pata, Siasi and Kalinggalang Caluang. The COMELEC arbitrarily and without valid ground dismissed the said petition respecting the aforementioned five municipalities. The untimeliness of the petition is an untenable argument for such dismissal, because as Commissioner Regalado Maambong pointed out in his own dissenting opinion, no law provides for a reglementary period within which to file annulment of elections when there is as yet no proclamation.

It was also grave abuse of discretion on the part of the COMELEC to have, after assuming jurisdiction over SPA No. 95-284 upon the strength of its statutory grant of power under Section 4 of R.A. No. 7166 in relation to Section 6 of the Omnibus Election Code of the Philippines, disregarded the mandate of said provisions and done away with the holding of special elections in Parang, Sulu. While the majority acknowledged that a decision annulling an election no less requires a special election in its aftermath, citing the aforecited legal provisions, the majority considered such provisions anyway negotiable from which they can deviate by using "reasonable, practicable and equitable" solutions "to end the instant election controversy" because "exceptional and supervening events so preponderate." (Loong vs. Commission on Elections, 257 SCRA 1 [1996], Hermosisima, Jr., J.).

h.) Hold special elections

§1. A reading of Section 17 (e) of Republic Act 6132 makes it apparent that Congress has delegated to the Comelec the power to call for a special election—a power essentially legislative in nature, being merely an incident to or an extension or modality of the power to fix the date of the elections. However, in the proper exercise of the delegated power, Congress saw fit to require the Comelec to ascertain that (1) no voting has been held in any precinct or precincts because of force majeure, violence or terrorism, and (2) that the votes not cast therein suffice to affect the results of the elections. The language of the provision clearly requires the concurrence of the two circumstances to justify the calling of a special election.

The Comelec concedes that what transpired in Karomatan constitutes "not merely a simple case of irregularity in the voting but a case of no voting or no election at all." However, the Comelec attributes this to "massive fraud" rather than to force majeure, violence or terrorism—the three causes explicitly enumerated by Section 17 (e). Unlike Section 17 (d) which empowers the Comelec to postpone the election in any political division or subdivision whenever it finds that the holding of a free, orderly and honest election therein is rendered impossible by reason of fraud, violence, coercion, terrorism, or any other serious cause or causes, Section 17 (e) excludes the situation where no voting has been held because of fraud. Furthermore, doubt exists whether or not the

irregularities committed in Karomatan properly partake of violence or terrorism. This being the case, we find that the first circumstance is not attendant. (Usman vs. Commission on Elections, 42 SCRA 667 [1971], [Castro, J.).

§2. Clearly, under Section 5 of Batas Pambansa Blg. 52, above-quoted, when the election results in a failure to elect, the COMELEC may call for the "holding or continuation of the election as soon as practicable." We construe this to include the calling of a special election in the event of a failure to elect in order to make the COMELEC truly effective in the discharge of its functions. In fact, Section 8 of the 1978 Election Code, supra, specifically allows the COMELEC to call a special election for the purpose of filling a vacancy or a newly created position, as the case may be. There should be no reason, therefore, for not allowing it to call a special election when there is a failure to elect.

It would be to circumscribe the power of the COMELEC to ensure free, orderly and honest elections if we were to hold that the COMELEC authority to call for the holding of the election is applicable only when the causes therefor occurred before the elections; in other words, that the grounds for calling special elections do not include post-election terrorism. That interpretation would not only hamper the effectiveness of the COMELEC in the discharge of its functions but it would also, in case of failure to elect due to post-election terrorism, delay the opportunity to the voters to cast their votes at the earliest possible time. The electorate should not be disenfranchised for long and the COMELEC should not be prevented from taking the necessary steps to complete the elections. After all, the casting of ballots is not the only act constitutive of elections. An election is not complete until proclamation has been made. (Sanchez vs. Commission on Elections, 114 SCRA 454 [1982], Melencio-Herrera, J.).

§3. Similarly, where there is failure of election due to loss of lists of voters in the precincts affected, the Commission may order the holding of special election in the said precincts if the number of voters therein may affect the results of the election. (Agpalo, Ruben, E., Comments on the Omnibus Election Code, 1998 Revised Edition, p. 28, citing Barabu vs. Commission on Elections, G.R. No. 78820, May 17, 1988).

§4. Where the voters were not notified of the clustering of precincts so that a great number of voters were unable to vote, resulting in failure of election, the Commission is empowered to call a special election in the precincts affected. (Ibid., citing Mangudadatu vs. Commission on Elections, G.R. No. 86953, May 4, 1988).

§5. There are, therefore, two requisites for the holding of special elections under Section 6 of the Omnibus Election Code, viz., (1) that there is a failure of election, and (2) that such failure would affect the results of the election.

Pursuant to Section 6 of the Omnibus Election Code (B.P. Blg. 881), a special election may be held in Precinct No. 13 only if the failure of the election therein "would affect the result of the election." This "result of the election" means the net result of the election in the rest of the precincts in a given constituency, such that if the margin of a leading candidate over that of his closest rival in the latter precincts is less than the total number of votes in the precinct where there was failure of election, then such failure would certainly affect "the result of the election"; hence, a special election must be held.

In the course of the deliberations on these cases, the Court considered the possible application, by analogy, of Section 10, Article VII of the 1987 Constitution providing that no special election in the event of a vacancy in the Offices of the President and Vice-President "shall be called if the vacancy occurs within eighteen months before the date of the next presidential election," and of the second paragraph of Section 4 of R.A. No. 7166. x x x A view was expressed that we should not hold the special election because the underlying philosophy for the prohibition to hold the special election if the vacancy occurred within a certain period before the next presidential election or the next regular election, as the case may be, is obviously the avoidance of the expense to be incurred

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in the holding of a special election when a regular election is, after all, less than a year away. The Court ultimately resolved that the aforesaid constitutional and statutory proscriptions are inapplicable to special elections which may be called under Section 6 of the Omnibus Election Code. (Lucero vs. Commission on Elections, 234 SCRA 280 [1994], Davide, Jr., J.).

§6. In several cases, the Court has ruled that the pre-conditions for declaring a failure of election are: (1) that no voting has been held in any precinct or precincts because of force majeure, violence or terrorism, and (2) that the votes not cast therein suffice to affect the results of the elections. The concurrence of these two (2) circumstances are required to justify the calling of a special election. (Hassan vs. Commission on Elections, 264 SCRA 125 [1996], Kapunan, J.).

§7. If the special election and counting of ballots were to be held only for the position of mayor, then unfairness would result. In Tupay T. Loong v. Commission on Elections and Abdusakur Tan, we held that a special election only for the position of Governor cannot be sanctioned since other officials already serving their terms were proclaimed on the basis of the same manually counted votes. Thus, to hold a special election only for one position would be discriminatory and violative of the private respondent's right to equal protection of the laws. Such is not the case here. (Immam vs. Commission on Elections, 322 SCRA 866 [2000], Ynares-Santiago, J.).

i.) Act as a national board of canvassers

§1. Section 166 of the Revised Election Code constitutes the Commission on Elections as a national board of canvassers with respect to the election of senators. Such a board is a ministerial body empowered only to accept as correct returns transmitted to it which are in due form and to ascertain and declare the result as its appears therefrom. Questions of illegal voting and fraudulent practices are passed on by another tribunal. However, it must satisfy itself of the genuineness of the returns. Where the returns are obviously manufactured, as where they show a great excess of votes over what could legally have been cast, the board will not be compelled to canvass them. (Nacionalista Party vs. Commission on Elections, 85 Phil. 149 [1949], Ozaeta, J.).

§2. While the Comelec in its role as senatorial canvasser has the power to reject returns before it which in its opinion were illegal and not authentic, neither law nor precedent authorizes it to impose the same criterion in advance upon the provincial boards of canvassers. The latter are entitled to use their own judgment in determining whether the irregularities appearing on the returns before them warrant their rejection. (Alonto vs. Commission on Elections, 22 SCRA 878 [1968], Reyes, J.B.L., Actg., C.J.).

j.) Suspend/annul canvass and proclamation

§1. In a number of cases, the Supreme Court has held that the Commission on Elections has the authority to annul proclamations on certain grounds, such as an illegal canvass (Mintu vs. Enage, et al., G. R. No. L- 1834, December 31, 1947; Ramos vs. Commission on Elections, 80 Phil., 722); proclamation based on incomplete returns (Abendante vs. Relatato, 94 Phil., 8); proclamation made despite a timely petition filed with the board of canvassers by all the members of the Board of Election Inspectors calling attention to an inadvertent and unintentional mistake in the election return and correcting the same, as well as a petition by the candidate affected, for suspension to give an opportunity to go to court, both of which petitions were denied by the board (Lacson vs. Commission on Elections, G. R. No. L-16261, December 28, 1959); and a proclamation made in an unauthorized meeting of the board of canvassers because held over the objections of the Commission's representative and against the express instructions of the Commission itself in the exercise of its supervisory powers (Santos vs. Commission on Elections, 106 Phil., 877). (Salcedo, Jr., vs. Commission on Elections, et al., 108 Phil. 1164 [1960], Barrera, J.).

§2. In view of the exclusive authority conferred upon it by the Constitution for the administration and enforcement of all laws relative to elections, the Commission on Elections has the power to suspend the proclamation of the winning candidate pending an inquiry into irregularities brought to its attention. The Commission has the right to inquire whether or not discrepancies exist between the various copies of election returns for the precincts in question, and suspend the canvass in the meantime, so the parties can ask for a recount in case of variance.

The correction of any error in the order of the Commission on Elections to suspend the proclamation of the winner in an election does not lie within the authority of Courts of First Instance, because Article X, Section 2 of the Constitution expressly prescribes “that the decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court” and by no other tribunal (Luison vs. Garcia, G.R. No. L-10916, May 20, 1957). The Commission on Elections would be reduced to impotence if the Court of First Instance of every province were to arrogate unto itself the power to disregard, suspend, or contradict any of its orders. (Albano vs. Arranz, 114 Phil. 318 [1962]; 4 SCRA 386 [1962], Reyes, J.B.L., J.).

§3. Where, as in the case at bar, there were patent erasures and superimpositions in words and figures on the face of the election returns submitted to the board of canvassers, it was imperative for said board to stop the canvass so as to allow time for verification of authentic copies and recourse to the courts (Javier vs. Commission on Elections, L-22248, January 30, 1965). A canvass or proclamation made notwithstanding such patent defects, without awaiting proper remedies, is null and void (Ibid).

Where a candidate was prevented from securing the Commission on Elections’ copies of the returns to establish a discrepancy between them and the Provincial Treasurer’s copies, the failure to submit the said copies to the board should not prejudice his right to petition for recount before the court.

Patent erasures and superimpositions in words and figures of the votes stated in the election returns strike at the reliability of said returns as basis for canvass and proclamation. A comparison with the other copies, and, in case of discrepancy, a recount, is the only way to remove grave doubts as to the correctness of said returns as well as of ascertaining that they reflect the will of the people. (Purisima vs. Salanga, 122 Phil. 1084 [1965]; 15 SCRA 704 [1965], Bengzon, J.P., J.).

§4. It is the ministerial function of a board of canvassers to count the results as they appear in the returns which on their face do not reveal any irregularities or falsities. The return in this case shows nothing on its face from which the canvassers might conclude that it does not speak the truth. It is only when it is compared with the certificate of the election registrar that a discrepancy appears as to the number of registered voters. The return therefore is by no means “obviously manufactured” so to justify its exclusion.

It is now settled doctrine that the COMELEC has the power to annul an illegal proclamation as when they are based on incomplete returns, and order a new canvass to be made by counting the returns wrongfully excluded. (Demafiles vs. Commission on Elections, 21 SCRA 1462 [1967], Castro, J.).

§5. The duty of the municipal board of canvassers to count the votes cast for candidates for municipal offices as shown in all the election returns produced by the municipal treasurer, can not be avoided. The board is to be guided by election returns transmitted to it which are in due form. Indeed, the board must be satisfied of the genuineness of the returns. A canvass made on incomplete returns may be annulled. (Pedido vs. Commission on Elections, 22 SCRA 1403 [1968], Sanchez, J.).

§6. Time and again, the Supreme Court has given its imprimatur on the principle that Comelec is with authority to annul any canvass and proclamation which was illegally made. The fact that a candidate proclaimed has assumed

office is no bar to the exercise of such power. Therefore, a petition before the Comelec which is directed at the annulment of the canvass and proclamation is within the area allocated by the Constitution and the law to the Comelec to inquire.

Advanced copies of election returns cannot be the basis of proclamation. Proclamation should be based on the copies of the returns for the municipal treasurer, or if unserviceable, on three other authentic copies of the returns, namely: that for the Comelec, or for the provincial treasurer, or that in the ballot box.

It is true that after proclamation the usual remedy of any party aggrieved in an election is to be found in an election protest. But that is only on the assumption that there has been a valid proclamation. Where the proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues.

The election law does not provide for a time limit within which a candidate may challenge the validity of a proclamation before the Comelec. But inaction for an unreasonable period may block such remedy to challenge the validity of the proclamation. Considering the steps taken by respondent in the case at bar, first, in the Court of First Instance, and second, in the Comelec, the time gap between the alleged illegal proclamation of November 20, 1967 and the petition before the Comelec of January 6, 1968 does not authorize this Court to say that respondent Alim Balindong is guilty of laches. (Aguam vs. Commission on Elections, 23 SCRA 883 [1968], Sanchez, J.).

§7. Boards of Canvassers may suspend the canvass only if it should clearly appear: (1) that another copy or other authentic copies of the statement of the election return from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election; or (2) that there is a difference between the votes of the same candidate written in words and those written in figures in the same election return; or (3) that the entry of votes in the election return is on its face clearly falsified; or (4) that it is not legible. In this case, precinct No. 5 does not come under any of these situations. (Felix vs. Commission on Elections, 23 SCRA 1288 [1968], Concepcion, C.J.).

§8. Where the board of canvassers with knowledge that the return from one precinct is undoubtedly vitiated by clerical mistake, continued the canvass and proclaimed a winner based on the result of such canvass, the proclamation may be annulled. (Solidum vs. Macalalag, 28 SCRA 200 [1969], Sanchez, J.).

§9. Proclamation cannot be held where there are still questions pending before the Court of First Instance involving the election returns.

Where the canvassing board has found the provincial treasurer’s copies to be authentic, clean and regular on their face, and the Comelec copies were tampered, the canvass should be based on the provincial treasurer’s untampered copies without need of requiring Comelec to make a comparison between the different copies if the purpose is to ascertain whether said copies were prepared by different hands.

Once the election return is made and the certificate of votes of candidates is issued, no one, including the inspectors themselves, may make any change without authority. Where the chairman of the board of inspectors made a correction on the return without the authority of the other members of the board and such correction not having been initiated by them, the original entry in the return may not be considered as altered.

Failure of the board of inspectors of the precinct to write the name of the candidate on the returns makes the same incomplete. Because of the incompleteness of the returns, no complete canvass of votes can be had and cannot be the basis of a subsequent proclamation. In such a case, the Comelec should order the board of inspectors concerned to open the ballot boxes, count the votes and make new returns for the candidates whose name and votes were not reflected in the returns. (Tiglao vs. Commission on Elections, 31 SCRA 719 [1970], Sanchez, J.).

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§10. Failure of the Board of Canvassers to investigate and to disregard patent irregularities such as where some of the returns considered by the canvassers were plainly irregular on their face, authorizes the Comelec to annul the canvass and resulting proclamation. (Antonio, Jr. vs. Commission on Elections, 32 SCRA 319 [1970], Reyes, J.B.L., J.).

§11. Under the circumstances, therefore, and considering that any error in the Statement of Votes would affect the proclamation made on the basis thereof, and primordially, in order to determine the true will of the electorate, the COMELEC Decision ordering the Board of Canvassers to reconvene and prepare a new Statement of Votes and Certificate of Canvass should be upheld.

It is DUREMDES' further submission that his proclamation could not be declared null and void because a pre-proclamation controversy is not proper after a proclamation has been made, the proper recourse being an election protest. This is on the assumption, however, that there has been a valid proclamation. Where a proclamation is null and void, the proclamation is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to declare such nullity and annul the proclamation.

DUREMDES' proclamation having been based on an incomplete canvass, no grave abuse of discretion can be ascribed to the COMELEC for directing the Provincial Board of Canvassers of Iloilo "to immediately reconvene and to include in the canvass of votes for Vice-Governor the questioned/contested returns." All the votes cast in an election must be considered because to disregard returns is in effect to disenfranchise the voters (Mutuc vs. COMELEC, L-28517, February 21, 1968, 22 SCRA 662). A canvass can not be reflective of the true vote of the electorate unless all returns are considered and none is omitted. (Duremdes vs. Commission on Elections, 178 SCRA 746 [1989], Melencio-Herrera, J.).

§12. Assuming however that the date of proclamation was January 24, 1988, the filing of the protest on February 4, 1988 was still within the period since private respondent filed a "Pre-Proclamation Protest Appeal" on January 24, 1988 effectively suspending the running of the period for filing an election protest as provided for in Section 248, Article XX of BP 881: "Sec. 248. Effect of filing petition to annul or to suspend the proclamation.¾The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings." (Macias II vs. Commission on Elections, 182 SCRA 137 [1990], Paras, J.).

§13. The filing of the petition on 05 April 1993, following petitioner's proclamation on 28 March 1993, is well within the ten-day period required for the purpose. This Court has held that the filing of a petition to annul a proclamation suspends the running of the ten-day period within which to file an election protest or a petition for quo warranto, provided that there are allegations which, when proved, will render the proclamation null and void. Such petition may be filed directly with the COMELEC even as a pre-proclamation controversy provided that it is done within ten (10) days following the proclamation.

The petitioner argues that after proclamation and assumption of office, a pre-proclamation controversy is no longer viable. Indeed, we are aware of cases holding that pre-proclamation controversies may no longer be entertained by the COMELEC after the winning candidate has been proclaimed. This rule, however, is premised on an assumption that the proclamation is valid. Where a proclamation is null and void, the proclamation is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to make such declaration a nullity. (Mentang vs. Commission on Elections, 229 SCRA 666 [1994], Vitug, J.).

§14. Where, as in this case, the proclamation is null and void, the same is no proclamation at all and the

proclaimed candidate's assumption of office does not deprive the COMELEC of the power to declare such nullity and annul the proclamation. (Benito vs. Commission on Elections, 235 SCRA 436 [1994], Kapunan, J.).

§15. It is settled jurisprudence that COMELEC can suspend the canvass of votes pending its inquiry whether there exists a discrepancy between the various copies of election returns from the disputed voting centers. Corollarily, once the election returns were found to be falsified or tampered with, the COMELEC can annul the illegal canvass and order the Board of Canvassers to reconvene and proclaim the winners on the basis of the genuine returns or, if it should refuse, replace the members of the board or proclaim the winners itself. (Mastura vs. Commission on Elections, 285 SCRA 493 [1998], Bellosillo, J.).

k.) Compel new proclamation

§1. The duty of the board of canvassers to make the proclamation in accordance with the election returns of all the precincts of the municipality is ministerial; so that, where the board proclaimed only four councilors, where six councilors should have been proclaimed—the Commission may order it to reconvene and make a new proclamation by including the other two councilors who received the highest number of votes. (Olano vs. Ronquillo, 118 Phil. 205 [1963]; 8 SCRA 204 [1963], Bengzon, C.J.).

l.) Deputize law enforcement agencies

§1. The contention of private respondents that the deputation by the Comelec of the prosecuting arms of the Government would be warranted only before the elections and only to ensure free, honest, orderly, peaceful and credible elections, that is, to perform the peace-keeping functions of policemen, lacks substance. There is nothing in Section 2 (4) of Article IX-C of the Constitution which requires such a pinched and niggardly interpretation of the authority of the Comelec to appoint as its deputies, officials or employees of other agencies and instrumentalities of the government. The prompt investigation and prosecution and disposition of election offenses constitute an indispensable part of the task of securing free, orderly, honest, peaceful and credible elections. The investigation and prosecution of election offenses are, in an important sense, more important than the maintenance of physical order in election precincts. x x x. The only limitation the Constitution itself places upon the Comelec's authority over its deputies relates to the enforcement of such authority through administrative sanctions. Such sanctions—e.g., suspension or removal—may be recommended by the Comelec to the President (Sec. 2 [8], Article IX-C, 1987 Constitution) rather than directly imposed by the Comelec, evidently, to pre-empt and avoid potential difficulties with the executive department of the Government where the prosecution and other officers deputized are ordinarily located. All this the respondent Judge disregarded when he motu proprio dismissed the criminal informations filed in this case. The cases he cited in his identical orders—De Jesus v. People, 120 SCRA 760 (1983) and Corpus, et al.. v. Tanodbayan, 149 SCRA 281 (1987) can offer him no comfort at all; for these cases do not relate to the authority of the Comelec to deputize the regular prosecution arms of the Government for the investigation and prosecution of election offenses and those cases are not in conflict with our ruling here. (People vs. Basilla, 179 SCRA 87 [1989], Feliciano, J.).

§2. It should be stressed that the administrative case against petitioner, taken cognizance of by, and still pending with, the COMELEC, is in relation to the performance of his duties as an election canvasser and not as a city prosecutor. The COMELEC's mandate includes its authority to exercise direct and immediate supervision and control over national and local officials or employees, including members of any national or local law enforcement agency and instrumentality of the government, required by law to perform duties relative to the conduct of elections. In order to help ensure that such duly deputized officials and employees of government carry out their respective assigned tasks, the law has also provided that upon the COMELEC's recommendation, the corresponding proper authority (the Secretary of the Department of Justice in the case at bar) shall take

appropriate action, either to suspend or remove from office the officer or employee who may, after due process, be found guilty of violation of election laws or failure to comply with instructions, orders, decisions or rulings of the COMELEC. (Tan vs. Commission on Elections, 237 SCRA 353 [1994], Vitug, J.).

m.) Investigate and prosecute election offenses

§1. The grant to the COMELEC of the power, among others, to enforce and administer all laws relative to the conduct of election and the concomitant authority to investigate and prosecute election offenses is not without compelling reason. The evident constitutional intendment in bestowing this power to the COMELEC is to insure the free, orderly and honest conduct of elections, failure of which would result in the frustration of the true will of the people and make a mere idle ceremony of the sacred right and duty of every qualified citizen to vote. To divest the COMELEC of the authority to investigate and prosecute offenses committed by public officials in relation to their office would thus seriously impair its effectiveness in achieving this clear constitutional mandate. (De Jesus vs. People, 120 SCRA 760 [1983], Escolin, J.).

§2. In effect the 1987 Constitution mandates the COMELEC not only to investigate but also to prosecute cases of violation of election laws. This means that the COMELEC is empowered to conduct preliminary investigations in cases involving election offenses for the purpose of helping the Judge determine probable cause and for filing an information in court. This power is exclusive with the COMELEC.

Hence, the Provincial Fiscal, as such, assumes no role in the prosecution of election offenses. If the Fiscal or Prosecutor files an information charging an election offense or prosecutes a violation of election law, it is because he has been deputized by the COMELEC. He does not do so under the sole authority of his office. (People vs. Inting, 187 SCRA 788 [1990], Gutierrez, Jr., J.).

§3. Under the present law, however, except in case of urgent need, the appointment or hiring of new employees or the creation or filling up of new positions in any government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, is banned during the period of forty-five (45) days before a regular election and thirty (30) days before a special election if made without the prior authority of the Commission on Elections. A violation thereof constitutes an election offense. Then too, no less than the present Constitution¾and not just the Election Law as was the case at the time of Zaldivar¾expressly provides that the Commission may "[R]ecommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision." Moreover, the present Constitution also invests the Commission with power to "investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices."

It is not true that, as contended by the petitioners, the jurisdiction of the Regional Trial Court under the election laws is limited to criminal actions for violations of the Omnibus Election Code. The Constitution itself grants to it exclusive original jurisdiction over contests involving elective municipal officials. Neither can We agree with the petitioners' assertion that the Special Civil Action filed in the court below involves the prosecution of election offenses; the said action seeks some reliefs incident to or in connection with alleged election offenses; specifically, what is sought is the prevention of the further commission of these offenses which, by their alleged nature, are continuing.

Under the COMELEC Rules of Procedure, initiation of complaints for election offenses may be done motu proprio by the Commission on Elections or upon written complaint by any citizen, candidate or registered political party or organization under the party-list system or any of the accredited citizens arms of the Commission. However, such written complaints should be filed with the "Law Department of the Commission; or

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with the offices of the Election Registrars, Provincial Election Supervisors or Regional Election Directors, or the State Prosecutor, Provincial Fiscal or City Fiscal." (Gallardo vs. Tabamo, Jr., 218 SCRA 253 [1993], Davide, Jr., J.).

n.) Supervise and regulate use of franchise

§1. Consistent with the opinion expressed in the cases of Imbong vs. Comelec and Gonzales vs. Comelec (L-32432 & L-32443, Sept. 11, 1970), this slight limitation of the freedom of expression of the individual, whether candidate or not, as expressed in par. F of Sec. 12, is only one of the many devices employed by the law to prevent a clear and present danger of the perversion and prostitution of the electoral apparatus and of the denial of the equal protection of the laws.

The fears and apprehensions of petitioner concerning his liberty of expression in these two cases, applying the less stringent balancing-of-interests criterion, are far outweighed by the all-important substantive interests of the State to preserve the purity of the ballot and to render more meaningful and real the guarantee of the equal protection of the laws.

Special recognition should be made of the circumspection with which Congress couched the limitation in par. F of Sec. 12, revealing its deep respect for the freedom of expression guaranteed in the Bill of Rights. It should be noted that Congress did not impose on the publishers of newspapers, magazines and periodicals the duty to allocate for free a Comelec space in their newspapers, magazines or periodicals, but merely required the Comelec to endeavor to acquire such free Comelec space for the benefit of all the candidates. Congress thereby realized that to compel the publishers to provide free Comelec space would be an undue abridgment of the publisher's own freedom.

We cannot with justification pontificate that the limitation contained in Sec. 12 (F) of R.A. 6132 is not a reasoned and reasonable judgment on the part of Congress, which is also the ultimate guardian of the liberties and welfare of the people in quite as great a degree as the Courts. (Badoy, Jr., vs. Commission on Elections, 35 SCRA 285 [1970], Makasiar, J.).

§2. (I)t is clear from Art. IX-C of the 1987 Constitution that what was granted to the Comelec was the power to supervise and regulate the use and enjoyment of franchises, permits or other grants issued for the operation of transportation or other public utilities, media of communication or information to the end that equal opportunity, time and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates are ensured. The evil sought to be prevented by this provision is the possibility that a franchise holder may favor or give any undue advantage to a candidate in terms of advertising space or radio or television time. This is also the reason why a columnist, commentator, announcer or personality, who is a candidate for elective office is required to take a leave of absence from his work during the campaign period (2nd par. Section 11 (b) R.A. 6646). It cannot be gainsaid that a columnist or commentator who is also a candidate would be more exposed to the voters to the prejudice of other candidates unless required to take a leave of absence.

(N)either Article IX-C of the Constitution nor Section 11 (b), 2nd par. of R.A. 6646 can be construed to mean that the Comelec has also been granted the right to supervise and regulate the exercise by media practitioners themselves of their right to expression during plebiscite periods. Media practitioners exercising their freedom of expression during plebiscite periods are neither the franchise holders nor the candidates. In fact, there are no candidates involved in a plebiscite. Therefore, Section 19 of Comelec Resolution No. 2167 has no statutory basis.

In the case of Badoy, Jr. vs. Comelec, L-32546, Oct. 16, 1970, where the constitutionality of the prohibition of

certain forms of election propaganda was assailed, We ruled therein that the prohibition is a valid exercise of the police power of the state "to prevent the perversion and prostitution of the electoral apparatus and of the denial of equal protection of the laws." The evil sought to be prevented in an election which led to Our ruling in that case does not obtain in a plebiscite. In a plebiscite, votes are taken in an area on some special political matter unlike in an election where votes are cast in favor of specific persons for some office. In other words, the electorate is asked to vote for or against issues, not candidates in a plebiscite.

Anent respondent Comelec's argument that Section 19 of Comelec Resolution 2167 does not absolutely bar petitioner-columnist from expressing his views and/or from campaigning for or against the organic act because he may do so through the Comelec space and/or Comelec radio/television time, the same is not meritorious. While the limitation does not absolutely bar petitioner's freedom of expression, it is still a restriction on his choice of the forum where he may express his view. No reason was advanced by respondent to justify such abridgment. We hold that this form of regulation is tantamount to a restriction of petitioner's freedom of expression for no justifiable reason.

Plebiscite issues are matters of public concern and importance. The people's right to be informed and to be able to freely and intelligently make a decision would be better served by access to an unabridged discussion of the issues, including the forum. The people affected by the issues presented in a plebiscite should not be unduly burdened by restrictions on the forum where the right to expression may be exercised. Comelec spaces and Comelec radio time may provide a forum for expression but they do not guarantee full dissemination of information to the public concerned because they are limited to either specific portions in newspapers or to specific radio or television times. (Sanidad vs. Commission on Elections, 181 SCRA 529 [1990], Medialdea, J.).

§3. The Comelec has thus been expressly authorized by the Constitution to supervise or regulate the enjoyment or utilization of the franchises or permits for the operation of media of communication and information. The fundamental purpose of such "supervision or regulation" has been spelled out in the Constitution as the ensuring of "equal opportunity, time, and space, and the right to reply," as well as uniform and reasonable rates of charges for the use of such media facilities, in connection with "public information campaigns and forums among candidates."

Section 11 (b) does, of course, limit the right of free speech and of access to mass media of the candidates themselves. The limitation, however, bears a clear and reasonable connection with the constitutional objective set out in Article IX (C) (4) and Article II (26) of the Constitution. For it is precisely in the unlimited purchase of print space and radio and television time that the resources of the financially affluent candidates are likely to make a crucial difference. (National Press Club vs. Commission on Elections, 207 SCRA 1 [1992], Feliciano, J.).

§4. The COMELEC's prohibition on posting of decals and stickers on "mobile" places whether public or private except in designated areas provided for by the COMELEC itself is null and void on constitutional grounds.

The resolution prohibits the posting of decals and stickers not more than eight and one-half (8-1/2) inches in width and fourteen (14) inches in length in any place, including mobile places whether public or private except in areas designated by the COMELEC. Verily, the restriction as to where the decals and stickers should be posted is so broad that it encompasses even the citizen's private property, which in this case is a privately-owned vehicle. In consequence of this prohibition, another cardinal rule prescribed by the Constitution would be violated. Section 1, Article III of the Bill of Rights provides that no person shall be deprived of his property without due process of law. (Adiong vs. Commission on Elections, 207 SCRA 712 [1992], Gutierrez, Jr., J.).

§5. That Resolution No. 2772 does not, in express terms, threaten publishers who would disregard it or its implementing letters with some criminal or other sanction, does not by itself demonstrate that the Comelec's

original intention was simply to solicit or request voluntary donations of print space from publishers. A written communication officially directing a print media company to supply free print space, dispatched by a government (here a constitutional) agency and signed by a member of the Commission presumably legally authorized to do so, is bound to produce a coercive effect upon the company so addressed.

To compel print media companies to donate: "Comelec space" of the dimensions specified in Section 2 of Resolution No. 2772 (not less than one-half page), amounts to: "taking" of private personal property for public use or purposes. (Philippine Press Institute, Inc. vs. Commission on Elections, 244 SCRA 272 [1995], Feliciano, J.).

§6. The term political "ad ban," when used to describe Section 11(b) of R.A. No. 6646, is misleading, for even as Section 11 (b) prohibits the sale or donation of print space and air time to political candidates, it mandates the COMELEC to procure and itself allocate to the candidates space and time in the media. There is no suppression of political ads but only a regulation of the time and manner of advertising.

On the other hand, the validity of regulations of time, place and manner, under well-defined standards, is well-nigh beyond question. What is involved here is simply regulation of this nature. Instead of leaving candidates to advertise freely in the mass media, the law provides for allocation, by the COMELEC, of print space and air time to give all candidates equal time and space for the purpose of ensuring "free, orderly, honest, peaceful, and credible elections."

The main purpose of Section 11(b) is regulatory. Any restriction on speech is only incidental, and it is no more than is necessary to achieve its purpose of promoting equality of opportunity in the use of mass media for political advertising. The restriction on speech, as pointed out in NPC, is limited both as to time and as to scope. (Osmeña vs. Commission on Elections, 288 SCRA 447 [1998], Mendoza, J.).

§7. For reasons hereunder given, we hold that Sec. 5.4 lays a prior restraint on freedom of speech, expression, and the press by prohibiting the publication of election survey results affecting candidates within the prescribed periods of fifteen (15) days immediately preceding a national election and seven (7) days before a local election. Because of the preferred status of the constitutional rights of speech, expression and the press, such a measure is vitiated by a weighty presumption of invalidity. (Ayer Productions Pty. Ltd. vs. Capulong, 160 SCRA 861, 873 [1988]).

(t)he grant of power to the COMELEC under Art. IX-C, Sec. 4 is limited to ensuring "equal opportunity, time, space, and the right to reply" as well as uniform and reasonable rates of charges for the use of such media facilities for "public information campaigns and forums among candidates." (National Press Club vs. COMELEC, 207 SCRA 1 [1992]; Osmena vs. COMELEC, 288 SCRA 447 [1998]).

What test should then be employed to determine the constitutional validity of Sec. 5.4? The United States Supreme Court, through Chief Justice Warren, held in United States vs. O'Brien:

[A] government regulation is sufficiently justified [1] if it is within the constitutional power of the Government; [2] if it furthers an important or substantial governmental interest; [3] if the governmental interest is unrelated to the suppression of free expression; and [4] if the incidental restriction on alleged First Amendment freedoms [of speech, expression and press] is no greater than is essential to the furtherance of that interest. (391 U.S. 367, 377, 20 L.Ed.2d 672, 680 [1968]).

This is so far the most influential test for distinguishing content-based from content-neutral regulations and is said to have "become canonical in the review of such laws". (G. GUNTHER & K. SULLIVAN, CONSTITUTIONAL LAW 1217, 13TH ED. 1997).

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The prohibition may be for a limited time, but the curtailment of the right of expression is direct, absolute, and substantial. It constitutes a total suppression of a category of speech and is not made less so because it is only for a period of fifteen (15) days immediately before a national election and seven (7) days immediately before a local election.

This sufficiently distinguishes Sec. 5.4 from R.A. No. 6646, Sec. 11 (b), which this Court found to be valid in National Press Club vs. COMELEC and Osmena v. COMELEC. For the ban imposed by R.A. No. 6646, Sec. 11 (b) is not only authorized by a specific constitutional provision, (Art. IX-C, Sec. 4.) but it is also provided an alternative so that, as this Court pointed out in Osmena, there was actually no ban but only a substitution of media advertisements by the COMELEC space and COMELEC hour.

To summarize then, we hold that Sec. 5.4 is invalid because (1) it imposes a prior restraint on the freedom of expression, (2) it is a direct and total suppression of a category of expression even though such suppression is only for a limited period, and (3) the governmental interest sought to be promoted can be achieved by means other than the suppression of freedom of expression. (Social Weather Stations, Incorporated vs. Commission on Elections, G.R. No. 147571, May 5, 2001, Mendoza, J.).

o.) Initiative

§1. In initiative and referendum, the Comelec exercises administration and supervision of the process itself, akin to its powers over the conduct of elections. These law-making powers belong to the people, hence the respondent Commission cannot control or change the substance or the content of legislation. In the exercise of its authority, it may (in fact it should have done so already) issue relevant and adequate guidelines and rules for the orderly exercise of these “people-power” features of our Constitution. (Subic Bay Metropolitan Authority vs. Commission on Elections, 262 SCRA 492 [1996], Panganiban, J.).

§2. It logically follows that the COMELEC cannot validly promulgate rules and regulations to implement the exercise of the right of the people to directly propose amendments to the Constitution through the system of initiative. It does not have that power under R.A. No. 6735. Reliance on the COMELEC’s power under Section 2(1) of Article IX-C of the Constitution is misplaced, for the laws and regulations referred to therein are those promulgated by the COMELEC under (a) Section 3 of Article IX-C of the Constitution, or (b) a law where subordinate legislation is authorized and which satisfies the “completeness” and the “sufficient standard” tests.

Under Section 2 of Article XVII of the Constitution and Section 5(b) of R.A. No. 6735, a petition for initiative on the Constitution must be signed by at least 12% of the total number of registered voters of which every legislative district is represented by at least 3% of the registered voters therein. The Delfin Petition does not contain signatures of the required number of voters. Delfin himself admits that he has not yet gathered signatures and that the purpose of his petition is primarily to obtain assistance in his drive to gather signatures. Without the required signatures, the petition cannot be deemed validly initiated.

The COMELEC acquires jurisdiction over a petition for initiative only after its filing. The petition then is the initiatory pleading. Nothing before its filing is cognizable by the COMELEC, sitting en banc. The only participation of the COMELEC or its personnel before the filing of such petition are (1) to prescribe the form of the petition; (2) to issue through its Election Records and Statistics Office a certificate on the total number of registered voters in each legislative district; (3) to assist, through its election registrars, in the establishment of signature stations; and (4) to verify, through its election registrars, the signatures on the basis of the registry list of voters, voters’ affidavits, and voters’ identification cards used in the immediately preceding election.

Since the Delfin Petition is not the initiatory petition under R.A. No. 6735 and COMELEC Resolution No. 2300,

it cannot be entertained or given cognizance of by the COMELEC. The respondent Commission must have known that the petition does not fall under any of the actions or proceedings under the COMELEC Rules of Procedure or under Resolution No. 2300, for which reason it did not assign to the petition a docket number. Hence, the said petition was merely entered as UND, meaning, undocketed. That petition was nothing more than a mere scrap of paper, which should not have been dignified by the Order of 6 December 1996, the hearing on 12 December 1996, and the order directing Delfin and the oppositors to file their memoranda or oppositions. In so dignifying it, the COMELEC acted without jurisdiction or with grave abuse of discretion and merely wasted its time, energy, and resources. (Defensor Santiago vs. Commission on Elections, 270 SCRA 106 [1997], Davide, Jr., J.).

p.) Reapportionment of legislative districts

§1. District apportionment laws are subject to review by the courts. The constitutionality of a legislative apportionment act is a judicial question. (Macias vs. Commission on Elections, 3 SCRA 1 [1961], Bengzon, C.J.).

§2. The basic powers of respondent COMELEC, as enforcer and administrator of our election laws, are spelled out in black and white in Section 2(c), Article IX of the Constitution. Rightly, respondent COMELEC does not invoke this provision but relies on the Ordinance appended to the 1987 Constitution as the source of its power of redistricting which is traditionally regarded as part of the power to make laws. The Ordinance is entitled "Apportioning the Seats of the House of Representatives of the Congress of the Philippines to the Different Legislative Districts in Provinces and Cities and the Metropolitan Manila Area."

Clearly then, the Constitutional Commission denied to the COMELEC the major power of legislative apportionment as it itself exercised the power. Section 2 of the Ordinance only empowered the COMELEC "to make minor adjustments of the reapportionment herein made."

Consistent with the limits of its power to make minor adjustments, Section 3 of the Ordinance did not also give the respondent COMELEC any authority to transfer municipalities from one legislative district to another district. The power granted by Section 3 to the respondent COMELEC is to adjust the number of members (not municipalities) "apportioned to the province out of which such new province was created. . ."

The issue involves a problem of reapportionment of legislative districts and petitioner's remedy lies with Congress. Section 5(4), Article VI of the Constitution categorically gives Congress the power to reapportion, thus: "Within three (3) years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section." In Macias vs. COMELEC, we ruled that the validity of a legislative apportionment is a justiciable question. But while this Court can strike down an unconstitutional reapportionment, it cannot itself make the reapportionment as petitioner would want us to do by directing respondent COMELEC to transfer the municipality of Tolosa from the First District to the Second District of the province of Leyte. (Montejo vs. Commission on Elections, 242 SCRA 415 [1995], Puno, J.).

q.) Promulgate rules of procedure

§1. Cognizance may also be taken of the fact that at the time PENAFLORIDA filed the Supplemental Petition on 20 June 1988, there was no clear-cut rule on the matter. It was only in the COMELEC Rules of Procedure, which took effect on 15 November 1988, wherein it was provided under subparagraph (2), paragraph (a), Section 4 of Rule 27, that the matter of correction of the statement of votes may be the subject of a pre-proclamation case which may be filed directly with the Commission. Nonetheless, there should be no question, considering the aforequoted Section 241 in relation to Section 227 of the Omnibus Election Code, that the issue is one that can be raised directly with the COMELEC. It is a procedure that best recommends itself specially considering that the Statement of Votes is a vital component in the electoral process. It supports the Certificate of Canvass and is the

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basis for proclamation.

Said rule, therefore, cannot be given retroactive effect the legal truth being that laws of procedure may be retroactively applied provided no substantial rights are impaired. (Duremdes vs. Commission on Elections, 178 SCRA 746 [1989], Melencio-Herrera, J.).

§2. Assuming however that the date of proclamation was January 24, 1988, the filing of the protest on February 4, 1988 was still within the period since private respondent filed a "Pre-Proclamation Protest Appeal" on January 24, 1988 effectively suspending the running of the period for filing an election protest as provided for in Section 248, Article XX of BP 881: "Sec. 248. Effect of filing petition to annul or to suspend the proclamation.¾The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings."

Anent the second issue, petitioner argues that because private respondent failed to allege in his original petition that he "duly filed a certificate of candidacy," respondent COMELEC did not acquire jurisdiction over the election protest. Petitioner's argument is untenable. As correctly held by the COMELEC in the assailed Decision: "The Commission, First Division, notes that the above-mentioned legal provision does not require that a protest must state that it is being filed "by a candidate who has duly filed his certificate of candidacy." Sec. 250 of the Omnibus Election Code only provides that a protest must be filed by a candidate who "has duly filed his certificate of candidacy and has been voted for the same office", without requiring in said section that this matter must be specifically alleged in the protest. (Macias II vs. Commission on Elections, 182 SCRA 137 [1990], Paras, J.).

§3. It is settled that the best authority to interpret a rule is the source itself of the rule (Advincula v. Commission on Appointments, 5 SCRA 1179), in this case the COMELEC. The COMELEC rejects the petitioner's interpretation as a misreading of the rule. Its own interpretation must prevail, of course. At any rate, it is established that there was in fact such an initial evaluation and that the ballots revised were actually examined by the Third Division before it issued the show-cause order. The record belies the petitioner's allegation that the COMELEC sent for the ballots only after its show-cause order.

We find that the public respondent committed no error in issuing the show-cause order in accordance with its own interpretation of its own rule.

As for the allegedly fake ballots, no better authority than the COMELEC itself can determine their authenticity, having itself ordered and supervised the printing of all the official ballots. (Bocobo vs. Commission on Elections, 191 SCRA 576 [1990], Cruz, J.).

§4. It is clear from the abovequoted provision of the 1987 Constitution that election cases include pre-proclamation controversies, and all such cases must first be heard and decided by a Division of the Commission. The Commission, sitting en banc, does not have the authority to hear and decide the same at the first instance. In the COMELEC RULES OF PROCEDURE, pre-proclamation controversies are classified as Special Cases and, in compliance with the above provision of the Constitution, the two (2) Divisions of the Commission are vested with the authority to hear and decide these Special Cases. Rule 27 thereof governs Special Cases; specifically, Section 9 of the said Rule provides that appeals from rulings of the Board of Canvassers are cognizable by any of the Divisions to which they are assigned and not by the Commission en banc. (Sarmiento vs. Commission on Elections, 212 SCRA 307 [1992], Davide, Jr., J.).

§5. No violation of due process, amounting to grave abuse of discretion or lack of jurisdiction, was committed by the COMELEC's First Division when it promulgated the Resolution of 18 September 1992 without any hearing,

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and by the COMELEC en banc when it likewise resolved petitioner's motion for reconsideration without a hearing.

It is precisely for this reason, and his awareness of the legal consequences thereof, that the petitioner carefully avoided characterizing the Callar report as "hearsay". Nowhere in his pleadings are We to find any objections to the Callar report on that ground. Petitioner purposely omitted such argument because he knew only too well that the Callar report is an official act of an officer of the COMELEC made after an investigation conducted in the performance of a lawful official duty. It thus enjoys the presumption of regularity. Besides, by the parties' compliance with the aforesaid paragraph (e), Section 8, Rule 27 of the COMELEC Rules of Procedure, petitioner was estopped from objecting to the admission in evidence of the Callar report, in effect leaving to the PBC—and then the First Division of the COMELEC on appeal¾the determination of the factual issue concerning the validity of the COC in question. More importantly, the Callar report falls under Section 44, Rule 130 of the Rules of Court which provides for an exception to the hearsay rule. The Rules of Court applies suppletorily to proceedings before the COMELEC.

We have said, through then Chief Justice Concepcion in Lucman vs. Dimaporo (33 SCRA 387), that this Court cannot review rulings or findings of fact of the Commission on Elections as there is no reason to believe that the framers of the Constitution intended to place the Commission, created and explicitly made independent by the Constitution itself, on a lower level than ordinary administrative organs, the findings of which are not even disturbed by courts of justice except when there is absolutely no evidence or no substantial evidence to support the same. These exceptions, just as any other in respect to the rule on conclusiveness of findings of fact of the Court of Appeals, which may equally apply to the findings of fact of the COMELEC, are not present in this case. (Pangarungan vs. Commission on Elections, 216 SCRA 522 [1992], Davide, Jr., J.).

§6. The present Constitution, however, implicitly grants the Commission the power to promulgate such rules and regulations. The pertinent portion of Section 2 of Article IX-C thereof reads as follows: "SEC. 2. The Commission on Elections shall exercise the following powers and functions: (1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall." (Emphasis supplied). x x x The word regulations is not found in either the 1935 or 1973 Constitutions. It is thus clear that its incorporation into the present Constitution took into account the Commission's power under the Omnibus Election Code (Batas Pambansa Blg. 881), which was already in force when the said Constitution was drafted and ratified, to: x x x "Promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer, x x x." (Gallardo vs. Tabamo, Jr., 218 SCRA 253 [1993], Davide, Jr., J.).

§7. Petitioner filed the election protest (Civil Case No. 343-M-92) with the Regional Trial Court, whose proceedings are governed by the Revised Rules of Court. Section 1, Rule 13, Part III of the COMELEC Rules of Procedure is not applicable to proceedings before the regular courts. As expressly mandated by Section 2, Rule 1, Part I of the COMELEC Rules of Procedure, the filing of motions to dismiss and bill of particulars, shall apply only to proceedings brought before the COMELEC.

It must be noted that nowhere in Part VI of the COMELEC Rules of Procedure is it provided that motions to dismiss and bill of particulars are not allowed in election protests or quo warranto cases pending before the regular courts.

Constitutionally speaking, the COMELEC cannot adopt a rule prohibiting the filing of certain pleadings in the regular courts. The power to promulgate rules concerning pleadings, practice and procedure in all courts is vested on the Supreme Court.

Private respondent received a copy of the order of the Regional Trial Court denying his motion for a bill of particulars on August 6, 1992. Under Section 1(b), Rule 12 of the Revised Rules of Court, a party has at least five days to file his answer after receipt of the order denying his motion for a bill of particulars. Private respondent, therefore, had until August 11, 1992 within which to file his answer. The Answer with Counter-Protest and Counterclaim filed by him on August 11, 1992 was filed timely. (Aruelo, Jr. vs. Court of Appeals, 227 SCRA 311 [1993], Quiason, J.).

§8. The Supplemental Petition which was meant to be suppletory to the original petition involving a pre-proclamation controversy, is a prohibited pleading. Rule 13 of the 1993 COMELEC Rules of Procedure states: "Section 1. What Pleadings are not Allowed: x x x "(g) supplemental pleadings in special actions and in special cases. A pre-proclamation controversy is a special case in accordance with Section 5 (h), Rule 1, 1993 COMELEC Rules of Procedure, thus: "Sec. 5. Meaning of Words.¾Whenever used in these Rules, the following words or terms shall mean: x x x "(h) Special Cases¾shall refer to Pre-proclamation cases."

As the name connotes, a supplemental petition merely supplies deficiencies in aid of the original petition. It cannot be used to introduce a new matter or a new cause of action or defense which is precisely what the petitioner had done in the instant case. "A supplemental pleading is not like an amended pleading¾a substitute for the original one. It does not supersede the original, but assumes that the original pleading is to stand, and the issues joined under the original pleading remain as issues to be tried in the action." (Trinidad vs. Commission on Elections, 320 SCRA 836 [1999], Buena, J.).

r.) Power of contempt

§1. Contempt proceedings are in their nature penal, and denial of a motion for contempt after trial amounts to a virtual acquittal from which an appeal would not lie (II Moran's Comments on the Rules of Court, 3rd ed. 125). (Pajao vs. Provincial Board of Canvassers of Leyte, 88 Phil. 588 [1951], Reyes, J.).

§2. Under Section 2, Article X of the Constitution and Section 5 of the Revised Election Code, the Commission on Elections not only has the duty to enforce and administer all laws relative to the conduct of elections but the power to try, hear and decide any controversy that may be submitted to it in connection with the elections. And as an incident of this power, it may also punish for contempt in those cases provided for in Rule 64 of the Rules of Court under the same procedure and with the same penalties provided therein. In this sense, the Commission, although it cannot be classified as a court of justice within the meaning of the Constitution (Section 13, Art. VIII) for it is merely an independent administrative body (The Nacionalista Party vs. Vera, 85 Phil., 126), may however exercise quasi-judicial functions in so far as controversies that by express provision of the law come under its jurisdiction. As to what questions may come within this category, neither the Constitution nor the Revised Election Code specifies. The former merely provides that it shall come under its jurisdiction, saving those involving the right to vote, all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of elections inspectors and other election officials, while the latter is silent as to what questions may be brought before it for determination. But it is clear that, to come under its jurisdiction, the questions should be controversial in nature and must refer to the enforcement and administration of all laws relative to the conduct of elections. (Guevara vs. Commission on Elections, 104 Phil. 268 [1958], Bautista Angelo, J.).

§3. We had occasion to stress in the case of Guevara vs. The Commission on Elections (G.R. No. L-12596, July 31, 1958) that under the law and the constitution, the Commission on Elections has not only the duty to enforce and administer all laws relative to the conduct of elections, but also the power to try, hear and decide any controversy that may be submitted to it in connection with the elections. In this sense, we said, the Commission,

although it cannot be classified as a court of justice within the meaning of the Constitution (Section 30, Article VIII), for it is merely an administrative body, may however exercise quasi-judicial functions insofar as controversies that by express provision of law come under its jurisdiction. The difficulty lies in drawing the demarcation line between the duty which inherently is administrative in character and a function which calls for the exercise of the quasi-judicial function of the Commission. In the same case, we also expressed the view that when the Commission exercises a ministerial function it cannot exercise the power to punish for contempt because such power is inherently judicial in nature, as can be clearly gleaned from the following doctrine we laid down therein: x x x.

The Commission on Elections, in the exercise of its ministerial functions, such as the distribution of ballots and other election paraphernalia among the different municipalities, has no power to punish for contempt, because such power is inherently judicial in nature. (Masangcay vs. Commission on Elections, 6 SCRA 27 [1962], Bautista Angelo, J.).

7. Jurisdiction

a.) Original Jurisdiction

§1. The Commission on Elections shall exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, x x x (Article IX (C), Section 2, The 1987 Philippine Constitution)

§2. Any voter contesting the election of any Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for quo warranto with the Commission within ten days after the proclamation of the results of the election. (Article XXI, Section 253, Batas Pambansa Blg. 881, otherwise known and cited as the Omnibus Election Code of the Philippines).

§3. An election protest filed by one of the losing candidates with the Electoral Tribunal pending the election contest with the Comelec does not deprive the Comelec of its jurisdiction where the protest was filed ex abundante cautela. (Antonio, Jr. vs. Commission on Elections, 32 SCRA 319 [1970], Reyes, J.B.L., J.).

§4. Anyway the question whether there has been substitution of ballots and what the actual result of the election is, will still be determined by the Commission when it undertakes its own independent evaluation and appreciation of the contested ballots and election documents. x x x. As for the allegedly fake ballots, no better authority than the COMELEC can determine their authenticity, having itself ordered and supervised the printing of all the official ballots. We cannot overemphasize the fact that the Commission on Elections under the Constitution is the agency vested with exclusive original jurisdiction over election contests involving regional, provincial and city officials x x x. (Bulaong vs. Commission on Election, 241 SCRA 180 [1995], Mendoza, J.).

§5. Blanco was not denied due process when the COMELEC (First Division) suspended his proclamation as mayor pending determination of the petition for disqualification against him. Section 6 of R.A. No. 6646 and Sections 4 and 5 of the Rule 25 of the Comelec Rules of Procedure merely require that evidence of guilt should be strong to justify the COMELEC in suspending a winning candidate’s proclamation. It ought to be emphasized that the suspension order is provisional in nature and can be lifted when the evidence so warrants. It is akin to a temporary restraining order which a court can issue ex parte under exigent circumstances.

In any event, Blanco was given all the opportunity to prove that the evidence on his disqualification was not strong. On May 25, 1995, he filed a Motion to Lift or Set Aside the Order suspending his proclamation. On May 29, 1995, he filed his Answer to the petition to disqualify him. The COMELEC considered the evidence of the

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parties and their arguments and thereafter affirmed his disqualification. The hoary rule is that due process does not mean prior hearing but only an opportunity to be heard. Petitions for disqualification are subject to summary hearings. (Nolasco vs. Commission on Elections, 275 SCRA 762 [1997], Puno, J.).

§6. Further, Section 6, Rule 20 of the COMELEC Rules of Procedure reads: "When the allegations in a protest or counter-protest so warrant, or whenever in the opinion of the Commission or Division, the interest of justice so demands, it shall immediately order the ballot boxes containing ballots and their keys, list of voters with voting records, book of voters, and other documents used in the election to be brought before the Commission, and shall order the revision of the ballots." While the abovementioned rule pertains to election protests falling within the exclusive original jurisdiction of the Commission, the same procedure is prescribed for election contests which are within the exclusive original jurisdiction of courts of general jurisdiction as well as election contests within the exclusive original jurisdiction of courts of limited jurisdiction. (Miguel vs. Commission on Elections, 335 SCRA 172 [2000], Buena, J.).

b.) Appellate Jurisdiction

§1. A court order granting or denying the board of inspectors' unanimous petition for correction of the election return is unappealable and the summary proceeding comes to an end with the court's ruling.

No matter how worthy the COMELEC's motives may be, it lacks jurisdiction and authority to review the judicial correction ordered by the court of first instance as the court of competent jurisdiction under Section 154 of the Revised Election Code. (Tiglao vs. Commission on Elections, 43 SCRA 535 [1972], Teehankee, J.).

§2. The jurisdiction of the COMELEC does not cover protests over the organizational set-up of the katipunan ng mga barangay composed of popularly elected punong barangays as prescribed by law whose officers are voted upon by their respective members. The COMELEC exercises only appellate jurisdiction over election contests involving elective barangay officials decided by the Metropolitan or Municipal Trial Courts which likewise have limited jurisdiction. The authority of the COMELEC over the katipunan ng mga barangay is limited by law to supervision of the election of the representative of the katipunan concerned to the sanggunian in a particular level conducted by their own respective organization (Sec. 43, Batas Pambansa Blg. 337). (Taule vs. Santos, 200 SCRA 512 [1991], Gancayco, J.).

§3. We have already ruled in Gallardo vs. Rimando, 187 SCRA 463; Salvacion vs. COMELEC, 170 SCRA 513; Casimiro vs. COMELEC, 171 SCRA 468, that pre-proclamation controversies may no longer be entertained by the COMELEC after the winning candidates have been proclaimed and assumed office. The proper remedy of the aggrieved party is an election contest in the Regional Trial Court as provided in Sec. 250 of B.P. 881 and Sec. 2(2), Art. IX-C of the Constitution.

Section 17, R.A. 7166 deals with the commencement of pre-proclamation controversies while Sec. 19 provides that "parties adversely affected by a ruling of the Board of Canvassers on questions affecting the composition or proceedings of the board may appeal the matter to the Commission within three (3) days from a ruling thereon." (Sardea vs. Commission on Elections, 225 SCRA 374 [1993], Griño-Aquino, J.).

§4. In the face of the foregoing disquisitions, the Court must, as it now does, abandon the ruling in the Garcia and Uy and Veloria cases. We now hold that the last paragraph of Section 50 of B. P. Blg. 697 providing as follows: The Commission is hereby vested with exclusive authority to hear and decide petitions for certiorari, prohibition and mandamus involving election cases, remains in full force and effect but only in such cases where, under paragraph (2), Section 1, Article IX-C of the Constitution, it has exclusive appellate jurisdiction. Simply put, the COMELEC has the authority to issue the extraordinary writs of certiorari, prohibition, and mandamus only in aid

of its appellate jurisdiction. (Relampagos vs. Cumba, 243 SCRA 690 [1995], Davide, Jr., J.).

§5. Section 252 of the Omnibus Election Code and that portion of paragraph (2), Section 2, Article IX-C of the Constitution on the COMELEC's exclusive appellate jurisdiction over contests involving elective barangay officials refer to the elective barangay officials under the pertinent laws in force at the time the Omnibus Election Code was enacted and upon the ratification of the Constitution. That law was B. P. Blg. 337, otherwise known as the Local Government Code, and the elective barangay officials referred to were the punong barangay and the six sangguniang bayan members. They were to be elected by those qualified to exercise the right of suffrage. They are also the same officers referred to by the provisions of the Omnibus Election Code of the Philippines on election of barangay officials. Metropolitan and municipal trial courts had exclusive jurisdiction over contests relating to their election. The decisions of these courts are appealable to the Regional Trial Courts. (Mercado vs. Board of Election Supervisors of Ibaan, Batangas, 243 SCRA 422 [1995], Davide, Jr., J).

§6. The present rule therefore established by the aforecited case of Relampagos v. Cumba, G.R. No. 118861 (April 27, 1995), is as follows: "In the face of the foregoing disquisitions, the Court must, as it now does, abandon the ruling in the Garcia and Uy and Veloria cases. We now hold that the last paragraph of Section 50 of B. P. Blg. 697 * * * remains in full force and effect but only in such cases where, under paragraph (2), Section 1, Article IX-C of the Constitution, it [COMELEC} has exclusive appellate jurisdiction. Simply put, the COMELEC has the authority to issue the extraordinary writs of certiorari, prohibition and mandamus only in aid of its appellate jurisdiction." (Edding vs. Commission on Elections, 246 SCRA 502 [1995], Francisco, J.).

§7. Under paragraph (2), Section 2, subdivision C, Article IX of the Constitution, it is the COMELEC, and not the Regional Trial Courts, that has exclusive appellate jurisdiction over all contests involving elective barangay officials decided by courts of limited jurisdiction, which are the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts. In Flores vs. Commission on Elections, this Court struck out as unconstitutional that portion of Section 9 of R.A. No. 6679 vesting upon the Regional Trial Courts appellate jurisdiction over such cases. (Guieb vs. Fontanilla, 247 SCRA 348 [1995], Davide, Jr., J).

§8. In reality, Borja's petition was nothing but a simple election protest involving an elective municipal position which, under Section 251 of the Election Code, falls within the exclusive original jurisdiction of the appropriate Regional Trial Court. x x x.

The COMELEC in turn exercises appellate jurisdiction over the trial court's decision pursuant to Article IX-C, Section 2 (2) of the Constitution x x x. (Borja, Jr. vs. Commission on Elections, 260 SCRA 604 [1996], Romero, J.).

§9. By Constitutional fiat, the Commission on Elections (Comelec) has appellate jurisdiction over election protest cases involving elective municipal officials decided by courts of general jurisdiction, as provided for in Article IX (C), Section 2 of the 1987 Constitution.

The Comelec has original jurisdiction to issue writs of certiorari, prohibition and mandamus involving election cases in aid of its appellate jurisdiction.

Both the Supreme Court and Comelec have concurrent jurisdiction to issue writs of certiorari, prohibition, and mandamus over decisions of trial courts of general jurisdiction (regional trial courts) in election cases involving elective municipal officials. The Court that takes jurisdiction first shall exercise exclusive jurisdiction over the case. (Carlos vs. Angeles, 346 SCRA 571 [2000], Pardo, J.).

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CHAPTER X
Registration of Political Parties

1. Political Parties

§1. In concurrence with a "political group" in the locality, the political party is entitled to preferential recognition, if it had taken part in the immediately preceding election and had received votes and the claim of the party to representation is made in good faith. (Sumulong vs. Commission on Elections, 70 Phil. 703 [1940], Laurel, J.).

§2. Under the Constitution, the Commission on Elections is empowered to decide administrative questions affecting the appointment of election inspectors and other election officials, and the requirement that, to be entitled to propose the appointment of one inspector and his substitute, a political party must have polled at least ten per centum of the total number of votes cast in the preceding election, is germane to the general subject of the reorganization of the Commission on Elections. (Sumulong vs. Commission on Elections, 73 Phil. 288 [1941], Abad Santos, J.).

§3. The right to have the name of a candidate included in a party ticket is granted by law not to the candidate, but to the party concerned.

The Commission was justified in requiring the petitioner to state specifically the party to which he belongs, in view of the express provision of Section 27 of the Election Code that the candidate shall state in his certificate of candidacy the name of the political party to which he belongs, if he belongs to any party. (Lava vs. Hon. Lopez Vito, 73 Phil. 390 [1941], Abad Santos, J.).

§4. `The Commission on Elections has no jurisdiction to determine a question regarding a matter of policy of a party (Section 3, Commonwealth Act No. 657 in connection with Section 2, Article X, Philippine Constitution). (Sotto vs. Commission on Elections, 76 Phil. 516 [1946], Feria, J.).

§5. Not illegal for a political party to adopt a complete set of candidates of another political party. (Lakas ng Bayan vs. Commission on Elections, 82 SCRA 196 [1978], Barredo, J.).

§6. The COMELEC's determination of whether the KBL was a political party from the inception of its existence, distinct and separate from the NP is undoubtedly an exercise of its constitutional power of administering the laws relative to the conduct of elections. This power is exclusive. (Santos vs. Commission on Elections, 103 SCRA 628 [1981], De Castro, J.).

§7. More importantly, under the express provisions of Section 77 of the Code, not just any person, but only "an official candidate of a registered or accredited political party" may be substituted. In Bautista vs. Comelec (G.R. No. 133840, November 13, 1998), this Court explicitly ruled that "a cancelled certificate does not give rise to a valid candidacy". A person without a valid certificate of candidacy cannot be considered a candidate in much the same way as any person who has not filed any certificate of candidacy at all can not, by any stretch of the imagination, be a candidate at all. (Miranda vs. Abaya, 311 SCRA 617 [1999], Melo, J.).

§8. The fact that EMMANUEL was an independent candidate prior to his nomination is immaterial. What is more significant is that he had previously withdrawn his certificate of candidacy as independent candidate for Sangguniang member before he filed his certificate of candidacy as a substitute for TEODORO at which time he was, for all intents and purposes, already deemed a member of the LAKAS party "MATUGAS wing." As such, EMMANUEL is obliged to pursue and carry out the party's ideology, political ideas and platforms of government. As the official candidate of an organized political party, he is bound by the party's rule. He owes loyalty to the party, its tenet and its policies, its platforms and programs of government. To the electorate he

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represents the party, its principles, ideals and objectives.

Even the fact that EMMANUEL only became a member of the LAKAS party after the disqualification of TEODORO, will not affect the validity of the substitution. There is nothing in the Constitution or the statute which requires as a condition precedent that a substitute candidate must have been a member of the party concerned for a certain period of time before he can be nominated as such. Section 77 of the Omnibus Election Code only mandates that a substitute candidate should be a person belonging to and certified by the same political party as the candidate to be replaced. We cannot provide for an additional requirement or condition not provided under the said provision without encroaching into the domain of the legislative department.

We also agree with the contention of EMMANUEL that the decision as to which member a party shall nominate as its candidate is a party concern which is not cognizable by the courts. A political party has the right to identify the people who constitute the association and to select a standard bearer who best represents the party's ideologies and preference. Political parties are generally free to conduct their internal affairs free from judicial supervision. This common-law principle of judicial restraint, rooted in the constitutionally protected right of free association, serves the public interest by allowing the political processes to operate without undue interference. Thus, the rule is that the determination of disputes as to party nominations rests with the party, in the absence of statutes giving the courts jurisdiction.

Quintessentially, where there is no controlling statute or clear legal right involved, the court will not assume jurisdiction to determine factional controversies within a political party, but will leave the matter for determination by the proper tribunals of the party itself or by the electors at the polls. Similarly, in the absence of specific constitutional or legislative regulations defining how nominations are to be made, or prohibiting nominations from being made in certain ways, political parties may handle party affairs, including nominations, in such manner as party rules may establish.

An election in which the voters have fully, fairly, and honestly expressed their will is not invalid even though an improper method is followed in the nomination of candidates. This is because in determining the effect of a particular irregularity in a party nomination for office on the result of the general election, the pivotal issue is whether the irregularity complained of has prevented a full, fair and free expression of the public will. Thus, in the absence of a statutory provision to the contrary, an election may not even be invalidated by the fact that the nomination of the successful candidate was brought about by fraud, and not in the manner prescribed by the statute, provided it appears that non-compliance with the law did not prevent a fair and free vote. (Sinaca vs. Mula, 315 SCRA 266 [1999], Davide, Jr., C.J.).

2. Party-List

§1. The Constitution makes the number of district representatives the determinant in arriving at the number of seats allocated for party-list lawmakers, a formulation which means that any increase in the number of district representatives, as may be provided by law, will necessarily result in a corresponding increase in the number of party-list seats.

Section 5 (2), Article VI of the Constitution is not mandatory - it merely provides a ceiling for party-list seats in Congress.

The prerogative to determine whether to adjust or change the two percent threshold rests in Congress, as the function of the Supreme Court, as well as of all judicial and quasi-judicial agencies, is to apply the law as they find it, not to reinvent or second-guess it.

Under a republican or representative state, all government authority emanates from the people, but is exercised by

representatives chosen by them, but to have meaningful representation, the elected persons must have the mandate of a sufficient number of people.

The statutory provision on the two percent requirement is precise and crystalline - when the law is clear, the function of courts is simple application, not interpretation or circumvention.

“Qualified” as used in Republic Act 7941 means having hurdled the two percent vote threshold.

Under the Niemeyer formula, the number of additional seats to which a qualified party would be entitled is determined by multiplying the remaining number of seats to be allocated by the total number of votes obtained by that party and dividing the product by the total number of votes garnered by all the qualified parties.

The Niemeyer formula, while no doubt suitable for Germany, finds no application in the Philippine setting, because of our three-seat limit and the non-mandatory character of the twenty-percent allocation.

Parameters of the Filipino Party-List System: First, the twenty percent allocation - the combined number of all party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list. Second, the two percent threshold - only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are “qualified” to have a seat in the House of Representatives. Third, the three-seat limit - each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one “qualifying” and two additional seats. Fourth, proportional representation - the additional seats which a qualified party is entitled to shall be computed “in proportion to their total number of votes.”

Obtaining absolute proportional representation is restricted by the three-seat-per party limit to a maximum of two additional slots. (Veterans Federation Party vs. Commission on Elections, 342 SCRA 244 [2000], Panganiban, J.).

§2. We disagree. At bottom, petitioners attack the validity of Comelec Omnibus Resolution 3785 for having been issued with grave abuse of discretion, insofar at it allowed respondents to participate in the party-list elections of 2001. Indeed, under both the Constitution (Section 1, Article VIII of the Constitution) and the Rules of Court, such challenge may be brought before this Court in a verified petition for certiorari under Rule 65.

Moreover, the assailed Omnibus Resolution was promulgated by Respondent Commission en banc; hence, no motion for reconsideration was possible, it being a prohibited pleading under Section 1 (d), Rule 13 of the Comelec Rules of Procedure.

In any event, this case presents an exception to the rule that certiorari shall lie only in the absence of any other plain, speedy and adequate remedy (Section 1, Rule 65. See Filoteo v. Sandiganbayan, 263 SCRA 222, October 16, 1996; BF Corporation v. CA, 288 SCRA 267, March 27, 1998; GSIS v. Olisa, 304 SCRA 421, March 10, 1999; National Steel Corporation v. CA, GR No. 134437, January 31, 2000; Sahali v. Comelec, GR No. 134169, February 2, 2000). It has been held that certiorari is available, notwithstanding the presence of other remedies, “where the issue raised is one purely of law, where public interest is involved, and in case of urgency. (Republic v. Sandiganbayan, 269 SCRA 316, March 7, 1997, per Panganiban, J. See also ABS-CBN Broadcasting Corporation v. Commission on Elections, GR No. 133486, January 28, 2000; Central Bank v. Cloribel, 44 SCRA 307, April 11, 1972).

Moreover, this case raises transcendental constitutional issues on the party-list system, which this Court must urgently resolve, consistent with its duty to “formulate guiding and controlling constitutional principles, precepts, doctrines, or rules.” (Salonga v. Cruz Pano, 134 SCRA 438, February 18, 1985, per Gutierrez, Jr., J. See also Tanada v. Angara, 272 SCRA 18, May 2, 1997; Guingona v. Gonzales, 219 SCRA 326, March 1, 1993).

Finally, procedural requirements “may be glossed over to prevent a miscarriage of justice, when the issue involves the principle of social justice x x x when the decision sought to be set aside is a nullity, or when the need for relief is extremely urgent and certiorari is the only adequate and speedy remedy available.” (ABS-CBN v. Comelec, GR No. 133486, January 28, 2000, per Panganiban, J.).

We now rule on this issue. Under the Constitution and RA 7941, private respondents cannot be disqualified from the party-list elections, merely on the ground that they are political parties. Section 5, Article VI of the Constitution provides that members of the House of Representatives may be “elected through a party-list system of registered national, regional, and sectoral parties or organizations.”

Furthermore, under Sections 7 and 8, Article IX (C) of the Constitution, political parties may be registered under the party-list system. (Emphasis supplied. See also Sections 17 and 18, Article VI of the Constitution).

For its part, Section 2 of RA 7941 also provides for “a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, x x x.” Section 3 expressly states that a “party” is “either a political party or a sectoral party or a coalition of parties.” More to the point, the law defines “political party” as “an organized group of citizens advocating an ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office.”

Furthermore, Section 11 of RA 7941 leaves no doubt as to the participation of political parties in the party-list system.

Indubitably, therefore, political parties – even the major ones - may participate in the party-list elections.

That political parties may participate in the party-list elections does not mean, however, that any political party – or any organization or group for that matter – may do so. The requisite character of these parties or organizations must be consistent with the purpose of the party-list system, as laid down in the Constitution and RA 7941. Section 5, Article VI of the Constitution, provides as follows:

x x x x x x x x x x x x

The foregoing provision on the party-list system is not self-executory. It is, in fact, interspersed with phrases like “in accordance with law” or “as may be provided by law”; it was thus up to Congress to sculpt in granite the lofty objective of the Constitution. Hence, RA 7941 was enacted. It laid out the statutory policies in this wise:

x x x x x x x x x x x x

The foregoing provision mandates a state policy of promoting proportional representation by means of the Filipino-style party-list system, which will “enable” the election to the House of Representatives of Filipino citizens,

1. who belong to marginalized and underrepresented sectors, organizations and parties; and

2. who lack well-defined constituencies; but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole.

The key words in this policy are “proportional representation,” “marginalized and underrepresented,” and “lack [of] well-defined constituencies.”

“Proportional representation” here does not refer to the number of people in a particular district, because the party-list election is national in scope. Neither does it allude to numerical strength in a distressed or oppressed group. Rather, it refers to the representation of the “marginalized and underrepresented” as exemplified by the

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enumeration in Section 5 of the law; namely, “labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.”

However, it is not enough for the candidate to claim representation of the marginalized and underrepresented, because representation is easy to claim and to feign. The party-list organization or party must factually and truly represent the marginalized and underrepresented constituencies mentioned in Section 5. Concurrently, the persons nominated by the party-list candidate-organization must be “Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties.”

Finally, “lack of well-defined constituenc[y]” refers to the absence of a traditionally identifiable electoral group, like voters of a congressional district or territorial unit of government. Rather, it points again to those with disparate interests identified with the “marginalized or underrepresented.”

In the end, the role of the Comelec is to see to it that only those Filipinos who are “marginalized and underrepresented” become members of Congress under the party-list system, Filipino-style.

The intent of the Constitution is clear: to give genuine power to the people, not only by giving more law to those who have less in life, but more so by enabling them to become veritable lawmakers themselves. Consistent with this intent, the policy of the implementing law, we repeat, is likewise clear: “to enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, x x x to become members of the House of Representatives.”

While the enumeration of marginalized and underrepresented sectors is not exclusive, it demonstrates the clear intent of the law that not all sectors can be represented under the party-list system. It is fundamental principle of statutory construction that words employed in a statute are interpreted in connection with, and their meaning is ascertained by reference to, the words and phrases with which they are associated or related. Thus, the meaning of a term in a statute may be limited, qualified or specialized by those in immediate association (82 C.J.S. Statutes Sec. 331).

From its assailed Omnibus Resolution, it is manifest that the Comelec failed to appreciate fully the clear policy of the law and the Constitution. On the contrary, it seems to have ignored the facet of party-list system discussed above.

§3. Guidelines for screening Party-list participants culled from the law and the Constitution:

First, the political party, sector, organization or coalition must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941.

Second, while even major political parties are expressly allowed by RA 7941 and the Constitution to participate in the party-list system, they must comply with the declared statutory policy of enabling “Filipino citizens belonging to marginalized and underrepresented sectors x x x to be elected to the House of Representatives.”

Third, in view of the objections directed against the registration of Ang Buhay Hayaang Yumabong, which is allegedly a religious group, the Court notes the express constitutional provision that the religious sector may not be represented in the party-list system.

Fourth, a party or an organization must not be disqualified under Section 6 of RA 7941, which enumerates the grounds for disqualification as follows: x x x.

Fifth, the party or organization must not be an adjunct of, or a project organized or an entity funded or assisted by, the government. By the very nature of the party-list system, the party or organization must be a group of citizens, organized by citizens and operated by citizens. It must be independent of the government. The participation of the

government or its officials in the affairs of a party-list candidate is not only illegal (See Sec. 2 (4), Article IX (B) of the Constitution. See also Article 261 (o) BP 881).

Sixth, the party must not only comply with the requirements of the law, its nominees must likewise do so. Section 9 of RA 7941 reads as follows: x x x.

Seventh, not only the candidate party or organization must represent marginalized and underrepresented sections; so also must its nominees. To repeat, under Section 2 of RA 7941, the nominees must be Filipino citizens "who belong to marginalized and underrepresented sectors, organizations and parties."

Eighth, as previously discussed, while lacking a well-defined political constituency, the nominee must likewise be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole. (Ang Bagong Bayani-OFW Labor Party (under the acronym OFW), represented herein by its Secretary-General, Mohammad Omar Fajardo vs. Commission on Elections, 359 SCRA 698 [2001], Panganiban, J.).

CHAPTER XI
Registration of Voters

1. Qualified Voter

§1. Registration in a given precinct is mentioned in Section 98 of the Revised Election Code in order that a person "may vote in said precinct." Said Section 98 cannot be construed as adding registration to the original requirements of a qualified voter, for, otherwise, it would conflict with Article V of the Constitution, under which "Suffrage may be exercised by male citizens of the Philippines not otherwise disqualified by law, who are twenty-one years of age or over and are able to read and write, and who shall have resided in the Philippines for one year and in the municipality wherein they propose to vote for at least six months preceding the election xxx". (Aportadera vs. Sotto, 3 SCRA 626 [1961], Concepcion, J.).

§2. The language of Section 92 of Republic Act No. 4413, the charter of the City of Rajah Buayan, is clear and unequivocal. When the Congress used the phrase "majority of qualified voters" it could not have meant "majority of the votes cast." The two phrases are as different as the words employed, and it stands to reason that the Congress did not intend the first to be taken in the same sense as the latter is understood. And in this jurisdiction the phrase "majority of the qualified voters" means "majority of the registered voters". Consequently the charter of the City of Rajah Buayan was not duly accepted by such majority of the qualified voters of the municipality of General Santos in the elections of November 9, 1965 as provided in Republic Act No. 4413. (Leyva vs. Commission on Elections, 18 SCRA 504 [1966], Makalintal, J.).

§3. Registration as a voter is not a qualification for a candidate or a voter, within the meaning of "qualified voter" in Section 2174 of the Revised Administrative Code; it is merely a step towards voting (Rocha v. Cordis, 103 Phil. 327). (Lacuna vs. Abes, 24 SCRA 780 [1968], Reyes, J.B.L., J.).

2. Registered Voter

§1. The term "registered voters" is not synonymous with "actual voters." It is of judicial notice that not all registered voters vote on election day. (Calimbas vs. Commission on Elections, 139 SCRA 171 [1985], Melencio-Herrera, J.).

§2. In a representative democracy such as ours, the right of suffrage, although accorded a prime niche in the hierarchy of rights embodied in the fundamental law, ought to be exercised within the proper bounds and

framework of the Constitution and must properly yield to pertinent laws skillfully enacted by the Legislature, which statutes for all intents and purposes, are crafted to effectively insulate such so cherished right from ravishment and preserve the democratic institutions our people have, for so long, guarded against the spoils of opportunism, debauchery and abuse.

As to the procedural limitation, the right of a citizen to vote is necessarily conditioned upon certain procedural requirements he must undergo: among others, the process of registration. Specifically, a citizen in order to be qualified to exercise his right to vote, in addition to the minimum requirements set by the fundamental charter, is obliged by law to register, at present, under the provisions of Republic Act No. 8189, otherwise known as the "Voter's Registration Act of 1996."

Proceeding from the significance of registration as a necessary requisite to the right to vote, the State undoubtedly, in the exercise of its inherent police power, may then enact laws to safeguard and regulate the act of voter's registration for the ultimate purpose of conducting honest, orderly and peaceful election.

Likewise, Section 35 of R.A. 8189, x x x speaks of a prohibitive period within which to file a sworn petition for exclusion of voters from the permanent voter's list. (Akbayan-Youth, et al. vs. Commission on Elections, 355 SCRA 318 [2001], Buena, J.).

3. Registration Outside Date Fixed by Law

§1. The registration of voters on January 11 and 12, 1964, even if there was an agreement by the parties to permit the registration of additional voters after January 5, 1964, which in this case was the deadline date fixed by law, was palpably void. No manner of form or agreement by the parties can validate registration of voters held subsequent to the deadline date fixed by law.

The registration of voters made outside the date fixed by law, though void, is not sufficient reason for the annulment of the election. Annulment of an election can be justified where as a result of said irregularity "many voters, without any qualification whatsoever succeeded in having their names inscribed in the official list" and that it was "impossible to segregate the legal from the illegal votes".

The trial court erred in annulling the election without making factual findings which would justify the annulment because the factual findings of the municipal court were necessarily vacated by the appeal and the case stood for trial de novo, as though the same had never been tried before and had been originally there commenced. (Florendo, Sr. vs. Buyser, 21 SCRA 1106 [1967], Castro, J.).

4. Annulment of List of Voters

§1. The Commission on Elections is authorized to annul illegal registry lists of voters. (Feliciano, et al. vs. Lugay et al., 93 Phil. 744 [1953], Paras, C.J.).

§2. The subsequent annulment of the precinct book of voters in a separate proceeding initiated motu proprio by COMELEC and in which the protagonists were not parties, cannot retroactively and without due process result in nullifying accepted election returns in a previous election simply because such returns came from towns where the book of voters were ordered annulled due to serious irregularities in their preparation. (Bashier vs. Commission on Elections, 43 SCRA 238 [1972], Teehankee, J.).

5. Voters in highly urbanized cities

§1. The purpose of an election is to enable the electorate to choose the men that run their government, whether national, provincial, municipal, or city. If so, no useful end will be served by allowing — in the absence of express legislative preference — the voters of a city to participate in the election of the officials of the province which has

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ceased to have any governmental jurisdiction and authority over said city. (Teves vs. Commission on Elections, 90 Phil. 370 [1951], Paras, C.J.).

§2. Voters in highly urbanized cities do not have the right to select elective provincial officials. (Ceniza vs. Commission on Elections, 95 SCRA 763 [1980], Concepcion, Jr., J.).

CHAPTER XII
Certificate of Candidacy

1. Filing of Certificate of Candidacy

§1. Generally a candidate for an office is one who offers himself or is offered by others for an office. Any one who seeks an office is a candidate; it is not necessary that he should have been nominated for the particular office. A candidate is one who offers himself or is put forward by others as a suitable person, or an aspirant, or a contestant for an office, privilege or honor. (Santos vs. Miranda and Clemente, 35 Phil. 643 [1916], Johnson, J.).

§2. The certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. (Papa vs. Municipal Board of Manila, 47 Phil. 694 [1925], Malcolm, J.).

§3. In the expression "voted candidate, with certificate of candidacy" used in a motion of protest, the last phrase "with certificate of candidacy" is not equivalent to the word "registered," and therefore said motion of protest does not meet one of the essential requirements prescribed by the law in order that the court may acquire jurisdiction to try and decide said protest (Viola vs. Court of First Instance of Camarines Sur and Adolfo, 47 Phil. 849). (Tabada vs. Zandueta and Vergara, 47 Phil. 859 [1925], Villa-Real, J.).

§4. While Act No. 3030, in its Section 3, requires the candidate to file a "certificate of candidacy duly verified," that is, sworn to, in order that he may be eligible, yet the lack of oath of the certificate of candidacy, while fatal to the recognition of the status of the candidate before election, is not a sufficient ground for annulling his election after the people has manifested its will, the provincial secretary having certified that said candidate was a legal candidate for the office. (De Guzman vs. Board of Canvassers of La Union and Lucero, 48 Phil. 211 [1925], Villamor, J.).

§5. Certificates of candidacy, like any other documentary evidence, must be presented to the court during the probatory period. For reasonable grounds, however, upon proper motion, they may be presented after said period and admitted for due consideration of the contentions of the parties. (Cecilio vs. Belmonte, 51 Phil. 540 [1928], Villamor, J.).

§6. Where a candidate for municipal office has filed his certificate of candidacy in proper form, the election inspectors have no authority to ignore votes cast for him for said office on the ground that he was not enrolled as a voter in any precinct of the municipality.The question of the eligibility of a candidate for office is one with which the inspectors have no concern, their duties being confined to the conduct of the election, the counting of the votes, and the certification of the results, in so far as relates to the certified candidates.

The ineligibility of the mover of an election contest is not available as a defense in the contest proceeding. The contest raises merely a question as to the number of votes received by the different certified candidates; while the eligibility of the candidate depends upon different considerations. The issue of the eligibility of a candidate is incongruous with the issue involved in the election contest. (Caesar vs. Garrido, 53 Phil. 97 [1929], Street, J.).

§7. Failure of a candidate to state in his certificate of candidacy a nickname by which he is likewise known, bars him from claiming in his favor certain ballots in which he was voted by that nickname (Reyes vs. Mendiola, G. R. No. 36304, 56 Phil. 851). (Villavert vs. Lim, 62 Phil. 178 [1935], Villa-Real, J.).

§8. That the lack of a sworn statement in the certificates of candidacy of the petitioners cannot be invoked by the respondents as a ground to prevent them from prosecuting the protest which they have commenced, nor does the defect deprive the respondent court of the jurisdiction which it has acquired by virtue of the protest filed in due time and form. (Gundan vs. Court of First Instance of Cagayan, 66 Phil. 125 [1938], Imperial, J.).

§9. The Commission on Elections cannot go beyond its powers and arrogate unto itself the dangerous prerogative of determining whether to give due course to a candidacy or not, on its own belief or impressions, even when a candidate has all the qualifications and none of the disqualifications prescribed by law. Such arrogation of powers is beyond the jurisdiction of the Commission. (Reyes vs. Commission on Elections, 103 Phil. 940 [1958], Labrador, J.).

§10. While the Commission on Elections may look into patent defects in the certificates of candidacy, it may not go into matters not appearing on their face. The question of eligibility or ineligibility of a candidate for nonage is beyond the usual and proper cognizance of said body and could not have consequently been litigated therein. (Sanchez vs. Del Rosario, 111 Phil. 733 [1961]; 1 SCRA 1102 [1961], Reyes, J.B.L., J.).

§11. If the winning candidate was not eligible to be a candidate for the office because he failed to file properly his certificate of candidacy as required by law, the remedy is to contest his election after he has been duly proclaimed. But such remedy can only be availed of within one (1) week after the proclamation of the winning candidate. (Miralles vs. Gariando, 111 Phil. 1001 [1961]; 2 SCRA 63 [1961], Bautista Angelo, J.).

§12. The fact that the certificate of candidacy filed by the Chairman of a local chapter of a political party is without the signature of its Secretary does not render said certificate invalid, and the departure from the form prescribed by Sec. 35 of the Revised Election Law, when not used as a means for fraudulent practice, will be considered a harmless irregularity.

The amendment of the certificate in question, although made at a date after the deadline for filing the same, but before the election, is a substantial compliance with the law and cures the defect of said certificate. (Alialy vs. Commission on Elections, 112 Phil. 856 [1961]; 2 SCRA 957 [1961], Paredes, J.).

§13. The filing of a certificate of candidacy is a rule that should be enforced before the election, but can be disregarded after the electorate has made the choosing. (Collado vs. Alonzo, 122 Phil. 957 [1965]; 15 SCRA 562 [1965], Bengzon, C.J.).

§14. It is true that Sections 31 and 32 of the Revised Election Code relating to certificates of candidacy are mandatory in terms. However, as regards election laws, it is an established rule of interpretation that mandatory provisions requiring certain steps before elections will be construed as directory, after the elections, to give effect to the will of the electorate.

The defects in the certificate of candidacy should be questioned on or before the election and not after the will of the people has been expressed through the ballots. (Lambonao vs. Tero, 15 SCRA 716 [1965], Bengzon, J.P., J.).

§15. The former (candidate) according to Act No. 4880 “refers to any person aspiring for or seeking an elective public office, regardless of whether or not said person has already filed his certificate of candidacy or has been nominated by any political party as its candidate.” (Gonzales vs. Commission on Elections, 27 SCRA 835 [1969], Fernando, J.).

§16. The mere filing of a certificate of candidacy constitutes forfeiture of his right to the controverted office under Section 29 of the Election Code of 1978. (Perez vs. Provincial Board of Nueva Ecija, 113 SCRA 187 [1982], Escolin, J.).

§17. Indeed, it would be entirely different where the protestant pursued the new position through a popular election, as in the case of Protestant Santiago who filed a certificate of candidacy for Senator on 8 May 1995 election, campaigned for such office, and submitted herself to be voted upon. She knew that the term of office of the Senators who would then be elected would be six years, to commence at noon on the thirtieth day of June next following their election and to end at noon of 30 June 2001. Knowing her high sense of integrity and candor, it is most unlikely that during her campaign, she promised to serve the electorate as Senator, subject to the outcome of this protest. In short, she filed her certificate of candidacy for the Senate without any qualification, condition, or reservation. In so doing, she entered into a political contract with the electorate that if elected, she would assume the office of Senator, discharge its functions and serve her constituency as such for the term for which she was elected. These are givens which are in full accord with the principle enshrined in the Constitution that public office is a public trust, and public officers and employees must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty and efficiency. (Defensor-Santiago vs. Ramos, 253 SCRA 559 [1996], Resolution).

2. Effect of Filing Certificate of Candidacy

§1. The resignation of the office by the contestee does not remove him ipso facto as an adversary of the contestant. Even if the contestee has no personal interest in the proceedings, he has a party interest, which is to keep his political opponent out of the office and to see that the man who succeeded him by appointment is not disturbed. (De los Angeles vs. Rodriquez, 46 Phil. 595 [1924], Malcolm, J.).

§2. By filing said certificate of candidacy, the respondent automatically lost and forfeited any right which he might have had to the office of justice of the peace of Solano and Bagabag.

Sec. 26, Article II of the Election Code contemplates the complete severance and cutting off of all relations with and right to a public appointive office on the part of one who files his certificate of candidacy in an election. (Maddumba vs. Ozaeta, 82 Phil. 345 [1948], Montemayor, J.).

§3. The vice-mayor who had filed a certificate of candidacy for reelection to the same post, and who on the next day became Mayor, due to the vacancy in the mayoralty, should not be considered resigned from office, since he was a candidate for a position that he was actually holding at the time he filed his certificate of candidacy. That he came later to the mayoralty by operation of law does not alter the case. Section 27 of the Election Law (R. A. No. 180) provides that the vacating shall be made effective as of the moment of the filing of the certificate of candidacy. It does not decree that an elective municipal official must be considered resigned if he runs for an office other than the one held by him at or subsequently to the filing of his certificate of candidacy; neither does it decree that he must vacate if he runs for an office other than the one actually held by him at any time before the day of the election. (Castro vs. Gatuslao, 98 Phil. 194 [1956], Reyes, J.B.L., J.).

§4. While Section 31 of the Revised Election Code is definite in requiring the filing of a certificate of candidacy within the statutory period, and in providing that if one files certificates of candidacy for more than one office, he shall not be eligible for any of them, neither said section nor any other section provides that the withdrawal of a certificate should be made on or before the last day of filing the same. In the present case, the petitioner's withdrawal of his certificate of candidacy for provincial board member one day after the expiration of the statutory period, was effective for all legal purposes, and left in full force his certificate of candidacy for mayor. There is no provision of law forbidding withdrawal of candidacy at any time before the election. (Montinola vs. Commission on Elections, 98 Phil. 220 [1956], Paras, C.J.).

§5. A Vice-Mayor who files his certificate of candidacy for the office of Mayor, even while acting as Mayor, is considered resigned from the Office of Vice-Mayor for the reason that that is the only office that he "actually

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holds" within the contemplation of Section 27 of the Revised Election Code and the office he is running for (Mayor) is naturally other than the one he is actually holding (Vice-Mayor); and that having ceased to be a Vice-Mayor, he automatically lost all right to act as Mayor. Section 27 of Republic Act 180 in providing that a local elective official running for an office other than the one he is actually holding, is considered resigned from his office, must necessarily refer to an office which said official can resign, or from which he could be considered resigned, even against his will. A Vice-Mayor acting as Mayor cannot resign or be made to resign from the office of Mayor because the law itself requires that as Vice-Mayor he must act as Mayor during the temporary disability of the regular or incumbent. Considered from the point of view of the incumbent retaining his office provided that he runs for the office, as Vice-Mayor acting as Mayor and running for said office of Mayor, may not and cannot keep the office of Mayor up to the end of the term because his holding the same is temporary and may end at any time that the incumbent Mayor returns to duty. (Salaysay vs. Castro, et al., 98 Phil. 364 [1956], Montemayor, J.).

§6. The approval, by the Commission on Elections, of the withdrawal of a certificate of candidacy for a Congressional seat does not give rise to any administrative question or controversy reviewable by the Supreme Court.

The legal issue of whether a mayor, who filed a certificate of candidacy for the position of Congressman and who later withdrew said certificate with the approval of the Commission on Elections, forfeited his position as mayor properly falls within the cognizance of the courts. It did not give rise to any ruling of the Commission on Elections reviewable by the Supreme Court.

An elective provincial, municipal or city official running for an office, other than the one which he is actually holding, is considered resigned from his office from the moment of the filing of his certificate of candidacy. The forfeiture is automatic and irrevocably effective upon the filing of the certificate of candidacy for another office. Only the moment and act of filing are considered. Once the certificate is filed, the position is forever forfeited and nothing, save a new election or appointment, can restore the ousted official. The forfeiture is not dependent upon future contingencies, unforeseen or unforeseeable, since the vacating is expressly made as of the moment of the filing of the certificate of candidacy.

The withdrawal of a certificate of candidacy does not necessarily render it void ab initio. Once filed, the permanent legal effects produced thereby remain even if the certificate itself be subsequently withdrawn. (Monroy vs. Court of Appeals, 20 SCRA 620 [1967], Bengzon, J.P., J.).

§7. It goes without saying that although petitioner, by filing his certificate of candidacy for the Batasan Pambansa ceased, ipso facto, to be an appointive member of the Sangguniang Panlungsod, he remains an elective Barangay Captain from which position he may be considered as having been on "forced leave of absence." (Sanciangco vs. Roño, 137 SCRA 671 [1985], Melencio-Herrera, J.).

§8. In Monroy vs. Court of Appeals, a case involving Section 27 of R.A. No. 180 above-quoted, this Court categorically pronounced that "forfeiture (is) automatic and permanently effective upon the filing of the certificate of candidacy for another office. Only the moment and act of filing are considered. Once the certificate is filed, the seat is forever forfeited and nothing save a new election or appointment can restore the ousted official.

As the mere act of filing the certificate of candidacy for another office produces automatically the permanent forfeiture of the elective position being presently held, it is not necessary, as petitioner opines, that the other position be actually held. (Dimaporo vs. Mitra, Jr., 202 SCRA 779 [1991], Davide, Jr., J.)

§9. Be this as it may, it seems obvious to the Court that a government-owned or controlled corporation does not lose its character as such because not possessed of an original charter but organized under the general law. If a

corporation's capital stock is owned by the Government, or it is operated and managed by officers charged with the mission of fulfilling the public objectives for which it has been organized, it is a government-owned and controlled corporation even if organized under the Corporation Code and not under a special statute; and employees thereof, even if not covered by the Civil Service but by the Labor Code, are nonetheless "employees in government-owned or controlled corporations," and come within the letter of Section 66 of the Omnibus Election Code, declaring them "ipso facto resigned from * * office upon the filing of * * (their) certificate of candidacy." (PNOC-Energy Development Corporation vs. NLRC, 222 SCRA 831 [1993], Narvasa, C.J.).

3. Withdrawal of Certificate

§1. There is no question as to the right of a candidate to withdraw or annul his own certificate of candidacy, there being no legal prohibition against such withdrawal.

A candidate voted for who has not presented a certificate of candidacy has no right to contest the election.

The only instance wherein the law permits the filing of a certificate of candidacy after the expiration of the time limit for filing it is when a candidate with a certificate of candidacy duly filed dies or becomes disqualified. (Monsale vs. Nico, 83 Phil. 758 [1949], Ozaeta, J.).

§2. The approval, by the Commission on Elections, of the withdrawal of a certificate of candidacy for a Congressional seat does not give rise to any administrative question or controversy reviewable by the Supreme Court.

An elective provincial, municipal or city official running for an office, other than the one which he is actually holding, is considered resigned from his office from the moment of the filing of his certificate of candidacy. The forfeiture is automatic and irrevocably effective upon the filing of the certificate of candidacy for another office. Only the moment and act of filing are considered. Once the certificate is filed, the position is forever forfeited and nothing, save a new election or appointment, can restore the ousted official. The forfeiture is not dependent upon future contingencies, unforeseen or unforeseeable, since the vacating is expressly made as of the moment of the filing of the certificate of candidacy.

The withdrawal of a certificate of candidacy does not necessarily render it void ab initio. Once filed, the permanent legal effects produced thereby remain even if the certificate itself be subsequently withdrawn. (Monroy vs. Court of Appeals, 20 SCRA 620 [1967], Bengzon, J.P., J.).

§3. Upon a restudy of the case, the Court finds merit in the reconsideration prayed for, which would respect the will of the electorate instead of defeating the same through the invocation of formal or technical defects. (De Guzman vs. Board of Canvassers, 48 Phil. 211 [1925], citing Lino Luna vs. Rodriguez, 39 Phil. 208 [1918]; Badelles vs. Cabili, 27 SCRA 121 [1969]; Yra vs. Abaño, 52 Phil. 380 [1928]; Canceran vs. Comelec, 107 Phil. 607 [1960]; Corocoro vs. Bascara, 9 SCRA 522 [1963], Pungutan vs. Abubakar, 43 SCRA 1 [1972]; and Lacson, Jr. vs. Posadas, 72 SCRA 170 [1976]).

The fact that Mendoza's withdrawal was not sworn is but a technicality which should not be used to frustrate the people's will in favor of petitioner as the substitute candidate. In Guzman vs. Board of Canvassers, 48 Phil. 211, clearly applicable, mutatis muntandis, this Court held that "(T)he will of the people cannot be frustrated by a technicality that the certificate of candidacy had not been properly sworn to. This legal provision is mandatory and non-compliance therewith before the election would be fatal to the status of the candidate before the electorate, but after the people have expressed their will, the result of the election cannot be defeated by the fact that the candidate has not sworn to his certificate of candidacy" (See also Gundan vs. Court of First Instance, 66 Phil. 125). As likewise ruled by this Court in Canceran vs. Comelec, 107 Phil. 607, the legal requirement that a

withdrawal be under oath will be held to be merely directory and Mendoza's failure to observe the requirement should be "considered a harmless irregularity."

The Comelec's post-election act of denying petitioner's substitute candidacy certainly does not seem to be in consonance with the substance and spirit of the law. Section 28 of the 1978 Election Code provides for such substitute candidates in case of death, withdrawal or disqualification up to mid-day of the very day of the elections. Mendoza's withdrawal was filed on the last hour of the last day for regular filing of candidacies on January 4, 1980, which he had filed earlier that same day. For all intents and purposes, such withdrawal should therefore be considered as having been made substantially and in truth after the last day, even going by the literal reading of the provision by the Comelec. Indeed, the statement of former Chief Justice Enrique M. Fernando in his dissent that "the bona fides of petitioner Crisologo Villanueva y Paredes as a substitute candidate cannot, (in his opinion), be successfully assailed. It follows that the votes cast in his favor must be counted. Such being the case, there is more than sufficient justification for his proclamation as Vice Mayor. (Villanueva vs. Commission on Elections, 140 SCRA 352 [1985], Teehankee, J.).

4. Substitution of Candidate

§1. Substitution of a candidate by reason of withdrawal of such candidate is proper only when such withdrawal is made after the last day for filing certificates of candidacy, not when the withdrawal is effected on or before such last day. (Paredes vs. Commission on Elections, 122 SCRA 636 [1983], De Castro, J.).

§2. Petitioner capitalizes on the fact that the Comelec ruled to disqualify Jose "Pempe" Miranda in the May 5, 1998 resolution and he heavily relies upon the above-quoted provision allowing substitution of a candidate who has been disqualified for any cause. While there is no dispute as to whether or not a nominee of a registered or accredited political party may substitute for a candidate of the same party who had been disqualified for any cause, this does not include those cases where the certificate of candidacy of the person to be substituted had been denied due course and cancelled under Section 78 of the Code. Expressio unius est exclusio alterius. While the law enumerated the occasions where a candidate may be validly substituted, there is no mention of the case where a candidate is excluded not only by disqualification but also by denial and cancellation of his certificate of candidacy. Under the foregoing rule, there can be no valid substitution for the latter case, much in the same way that a nuisance candidate whose certificate of candidacy is denied due course and/or cancelled may not be substituted. If the intent of the lawmakers were otherwise, they could have so easily and conveniently included those persons whose certificates of candidacy have been denied due course and/or cancelled under the provisions of Section 78 of the Code.

By its express language, the foregoing provision of law is absolutely mandatory. It is but logical to say that any person who attempts to run for an elective office but does not file a certificate of candidacy, is not a candidate at all. No amount of votes would catapult him into office. In Gador vs. Comelec (95 SCRA 431 [1980]), the Court held that a certificate of candidacy filed beyond the period fixed by law is void, and the person who filed it is not, in law, a candidate. Much in the same manner as a person who filed no certificate of candidacy at all and a person who filed it out of time, a person whose certificate of candidacy is cancelled or denied due course is no candidate at all. No amount of votes should entitle him to the elective office aspired for.

A deceased candidate is required to have duly filed a valid certificate of candidacy, otherwise his political party would not be allowed to field a substitute candidate in his stead under Section 77 of the Code. In the case of withdrawal of candidacy, the withdrawing candidate is required to have fully filed a valid certificate of candidacy in order to allow his political party to field a substitute candidate in his stead. Most reasonable it is then, under the foregoing rule, to hold that a valid certificate of candidacy is likewise an indispensable requisite in the case of a

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substitution of a disqualified candidate under the provisions of Section 77 of the Code, just as it is in the two previous instances. (Miranda vs. Abaya, 311 SCRA 617 [1999], Melo, J.).

§3. The rule on substitution of an official candidate of a registered or accredited political party who dies, withdraws or is disqualified for any cause after the last day for the filing of certificates of candidacy is governed by Section 77 of the Omnibus Election Code which provides: If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid day of election day, said certificate maybe filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission. Thus, under the said provision it is necessary, among others, that the substitute candidate must be of the same political party as the original candidate and must be duly nominated as such by the political party.

A certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated. (Sinaca vs. Mula, 315 SCRA 266 [1999], Davide, Jr., C.J.).

§4. Whether respondent Fariñas validly substituted Chevylle V. Fariñas and whether respondent became a legitimate candidate, in our view, must likewise be addressed to the sound judgment of the Electoral Tribunal. Only thus can we demonstrate fealty to the Constitutional provision that the Electoral Tribunal of each House of Congress shall be the "sole judge of all contests relating to the election, returns, and qualifications of their respective members." (Guerrero vs. Commission on Elections, 336 SCRA 458 [2000], Quisumbing, J.).

5. False Representation in the Certificate

§1. The petition filed by private respondent Ututalum with the respondent Comelec to disqualify petitioner Loong on the ground that the latter made a false representation in his certificate of candidacy as to his age, clearly does not fall under the grounds of disqualification as provided for in Rule 25 but is expressly covered by Rule 23 of the Comelec Rules of Procedure governing petitions to cancel certificate of candidacy. Moreover, Section 3, Rule 25 which allows the filing of the petition at any time after the last day for the filing of certificates of candidacy but not later than the date of proclamation, is merely a procedural rule issued by respondent Commission which, although a constitutional body, has no legislative powers. Thus, it can not supersede Section 78 of the Omnibus Election Code which is a legislative enactment. (Loong vs. Commission on Elections, 216 SCRA 760 [1992], Padilla, J.).

§2. As stated in the law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein pertain to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate - the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court has interpreted this phrase in a line of decisions applying Section 78 of the Code.

The Court has likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 since they both deal with the qualifications of a candidate. In the case of Aznar vs. Commission on Elections, wherein a

petition was filed asking the Comelec to disqualify private respondent Emilio Osmena on the ground that he does not possess the requisite Filipino citizenship, the Court said - There are two instances where a petition questioning the qualifications of a registered candidate to run for the office for which his certificate of candidacy was filed can be raised under the Omnibus Election Code (B.P. Blg. 881), to wit: "(1) Before election, pursuant to Section 78 thereof; and (2) After election, pursuant to Section 253 thereof."

The only difference between the two proceedings is that, under Section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for quo warranto under Section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under Section 253, a candidate is ineligible if he is disqualified to be elected to office, and he is disqualified if he lacks any of the qualifications for elective office.

It may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation is his certificate of candidacy are grave - to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just and innocuous mistake.

Aside from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office. The use of a surname, when not intended to mislead or deceive the public as to one's identity, is not within the scope of the provision. (Salcedo II vs. Commission on Elections, 312 SCRA 447 [1999], Gonzaga-Reyes, J.).

6. Cancellation of Certificate

§1. Under the same Rules of Procedure, jurisdiction over a petition to cancel a certificate of candidacy lies with the COMELEC sitting in Division, not en banc. Cases before a Division may only be entertained by the COMELEC en banc when the required number of votes to reach a decision, resolution, order or ruling is not obtained in the Division. Moreover, only motions to reconsider decisions, resolutions, orders or rulings of the COMELEC in Division are resolved by the COMELEC en banc. It is therefore the COMELEC sitting in Division that can hear and decide election cases. x x x In the instant case, the COMELEC en banc did not refer the case to any of its Divisions upon receipt of the petition. It therefore acted without jurisdiction or with grave abuse of discretion when it entertained the petition and issued the order of May 2, 1996. (Garvida vs. Sales, Jr., 271 SCRA 767 [1997], Puno, J.).

§2. Ideally, the matter should have been finally resolved prior to election day. Its pendency on election day exposed petitioner to the evils brought about by the inclusion of a then potential, later shown in reality to be nuisance candidate. We have ruled that a nuisance candidate is one whose certificate of candidacy is presented and filed to cause confusion among the electorate by the similarity of the names of the registered candidate or by other names which demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate (Fernandez vs. Fernandez, 36 SCRA 1 [1970]).

Strictly speaking, a cancelled certificate cannot give rise to a valid candidacy, and much less to valid votes. (Bautista vs. Commission on Elections, 298 SCRA 480 [1998], Melo, J.).

7. Correction of Certificate

§1. As correctly observed by the First Division of COMELEC and affirmed by COMELEC En Banc, the information omitted in the Certificate of Candidacy was supplied in the Certificate of Nomination and Acceptance attached thereto specifying that ALARILLA was nominated as the Lakas NUCD-UMDP's official candidate for the position of Municipal Mayor of Meycauayan, Bulacan, and that such nomination had been accepted by ALARILLA. As the COMELEC itself has clarified, certificates of nomination and acceptance are procedurally required to be filed with, and form an integral part of, the certificates of candidacy of official candidates of political parties.

ALARILLA timely rectified the deficiency in his original Certificate of Candidacy by filing an Amended Certificate on 21 April 1998 specifically stating that he was running for the position of Municipal Mayor of Meycauayan, Bulacan, in the 11 May 1998 elections. In Alialy v. Commission on Elections where petitioners sought the reversal of a COMELEC resolution denying due course to a certificate of candidacy on the ground that it was not subscribed under oath by the secretary of the Nacionalista Party as required by Sec. 35 of the Revised Election Code, this Court ruling on the effectiveness of the amended certificate of candidacy filed to correct the defect declared that the filing of an amended certificate even after the deadline but before the election was substantial compliance with the law which cured the defect.

The purpose in requiring a certificate of candidacy (which is to enable the voters to know before the elections the candidates among whom they are to make a choice) was deemed satisfied not only by the Amended Certificate of Candidacy filed before the elections but also by the Certified List of Candidates issued by the Office of the Election Officer, Meycauayan, Bulacan, indubitably listing therein EDUARDO A. ALARILLA as candidate for the position of "mayor" of said municipality. (Conquilla vs. Commission on Elections, 332 SCRA 861 [2000], Bellosillo, J.).

CHAPTER XIII
Disqualifications

1. Non-Filipino Citizen

§1. A perusal of the above provision would readily disclose that the Comelec can legally suspend the proclamation of petitioner Labo, his reception of the winning number of votes notwithstanding, especially so where, as in this case, Labo failed to present any evidence before the Comelec to support his claim of reacquisition of Philippine citizenship.

Undoubtedly, petitioner Labo, not being a Filipino citizen, lacks the fundamental qualification for the contested office. Philippine citizenship is an indispensable requirement for holding an elective office. As mandated by law: "An elective local official must be a citizen of the Philippines." (Labo, Jr. vs. Commission on Elections, 211 SCRA 297 [1992], Bidin, J.).

§2. Inasmuch as Frivaldo had been declared by this Court as a non-citizen, it is therefore incumbent upon him to show that he has reacquired citizenship; in fine, that he possesses the qualifications prescribed under the said statute. (Frivaldo vs. Commission on elections, 257 SCRA 727 [1996], Panganiban, J.)

2. Lack of Residency

§1. The contention that the dismissal of the pre-proclamation controversy would render the disqualification case

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(lack of residency) moot and academic is also untenable. The two cases are independent of each other and one may be resolved separately without affecting the other. The purpose of a pre-proclamation controversy is to ascertain the winner or winners in the elections on the basis of the election returns duly authenticated by the boards of inspectors and admitted by the board of canvassers. The purpose of a disqualification proceeding is to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. Obviously, the mere fact that a candidate has been proclaimed elected does not signify that his disqualification is deemed condoned and may no longer be the subject of a separate investigation. (Abella vs. Larrazabal, 180 SCRA 509 [1989], Cruz, J.).

3. Term Limits

§1. Not only historical examination but textual analysis as well supports the ruling of the COMELEC that Art. X, Section 8 contemplates service by local officials for three consecutive terms as a result of election. The first sentence speaks of "the term of office of elective local officials" and bars "such official [s]" from serving for more than three consecutive terms. The second sentence, in explaining when an elective local official may be deemed to have served his full term of office, states that "voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected." The term served must therefore be one "for which [the official concerned] was elected." The purpose of this provision is to prevent a circumvention of the limitation on the number of terms an elective local official may serve. Conversely, if he is not serving a term for which he was elected because he is simply continuing the service of the official he succeeds, such official cannot be considered to have fully served the term notwithstanding his voluntary renunciation of office prior to its expiration.

To recapitulate, the term limit for elective local officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Consequently, it is not enough that an individual has served three consecutive terms in an elective local office, he must also have been elected to the same position for the same number of times before the disqualification can apply. (Borja, Jr., vs. Commission on Elections, 295 SCRA 157 [1998], Mendoza, J.).

§2. This Court held that the two conditions for the application of the disqualification must concur: 1) that the official concerned has been elected for three consecutive terms in the same local government post and 2) that he has fully served three consecutive terms. It stated: "To recapitulate, the term limit for elective local officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Consequently, it is not enough that an individual has served three consecutive terms in an elective local office, he must also have been elected to the same position for the same number of times before the disqualification can apply."

The petitioner cannot be deemed to have served the May 1995 to 1998 term because he was ordered to vacate his post before the expiration of the term. The respondents' contention that the petitioner should be deemed to have served one full term from May 1995-1998 because he served the greater portion of that term has no legal basis to support it; it disregards the second requisite for the application of the disqualification, i.e., that he has fully served three consecutive terms. The second sentence of the constitutional provision under scrutiny states, "Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which he was elected." The clear intent of the framers of the constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term is evident in this provision. Voluntary renunciation of a term does not cancel the renounced term in the computation of the three-term limit; conversely, involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service. The petitioner vacated his post a few months before the next mayoral elections, not by

voluntary renunciation but in compliance with the legal process of writ of execution issued by the COMELEC to that effect. Such involuntary severance from office is an interruption of continuity of service and thus, the petitioner did not fully serve the 1995-1998 mayoral term.

The petitioner's contention that the COMELEC ceased to have jurisdiction over the petition for disqualification after he was proclaimed winner is without merit. The instant petition for disqualification was filed on April 21, 1998 or before the May 1998 elections and was resolved on May 21, 1998 or after the petitioner's proclamation. It was held in the case of Sunga vs. COMELEC and Trinidad that the proclamation nor the assumption of office of a candidate against whom a petition for disqualification is pending before the COMELEC does not divest the COMELEC of jurisdiction to continue hearing the case and to resolve it on the merits. Section 6 of RA 6646 specifically mandates that: "Sec. 6. Effects of Disqualification Case. - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the court or commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong."

This court held that the clear legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, i.e., until judgment is rendered. The outright dismissal of the petition for disqualification filed before the election but which remained unresolved after the proclamation of the candidate sought to be disqualified will unduly reward the said candidate and may encourage him to employ delaying tactics to impede the resolution of the petition until after he has been proclaimed. (Lonzanida vs. Commission on Elections, 311 SCRA 602 [1999], Gonzaga-Reyes, J.).

4. Ineligibility

§1. Any voter contesting the election of any municipal or barangay official on the ground of ineligibility or disloyalty to the Republic of the Philippines may file a petition for quo warranto with the regional trial court or metropolitan or municipal trial court, respectively, within ten days after the proclamation of the results of the election. (Article XXI, Section 253, Batas Pambansa Blg. 881).

§2. A protest to disqualify a protestee on the ground of ineligibility is different from that of a protest based on frauds and irregularities where it may be shown that protestant was the one really elected for having obtained a plurality of the legal votes. (Luison vs. Garcia, 103 Phil. 453 [1958], Bautista Angelo, J.).

§3. As a general rule, the filing of an election protest or a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy, or amounts to the abandonment of one earlier filed, thus depriving the COMELEC of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation. The reason is that once the competent tribunal has acquired jurisdiction of an election protest or a petition for quo warranto, all questions relative thereto will have to be decided in the case itself and not in another proceeding. This procedure will prevent confusion and conflict of authority. Conformably, we have ruled in a number of cases that after a proclamation has been made, a pre-proclamation case before the COMELEC is no longer viable. The rule admits of exceptions, however, as where: 1) the board of canvassers was improperly constituted; 2) quo warranto was not the proper remedy; 3) what was filed was not really a petition for quo warranto or an election protest but a petition to annul a proclamation; 4) the filing of a quo warranto petition or an election protest was expressly made without prejudice to the pre-proclamation controversy or was made ad cautelam; and 5) the proclamation was null and void.

Moreover, quo warranto was not the proper remedy because both the petitioner and the private respondent claimed to have assumed the office of the mayor of Kabuntalan. In a quo warranto proceeding, the petitioner is not occupying the position in dispute. Moreover, under the Omnibus Election Code, quo warranto is proper only for the purpose of questioning the election of a candidate on the ground of disloyalty or ineligibility.

A petition for quo warranto under the Omnibus Election Code raises in issue the disloyalty or ineligibility of the winning candidate. It is a proceeding to unseat the respondent from office but not necessarily to install the petitioner in his place. (Samad vs. Commission on Elections, 224 SCRA 631 [1993], Cruz, J.).

§4. As already stated, the petition for disqualification against private respondent was decided by the First Division of the COMELEC on May 10, 1998. The following day, May 11, 1998, the elections were held. Notwithstanding the fact that private respondent had already been proclaimed on May 16, 1998 and had taken his oath of office on May 17, 1998, petitioner still filed a motion for reconsideration on May 22, 1998, which the COMELEC en banc denied on June 11, 1998. Clearly, this could not be done. Sec. 6 of R.A No. 6646 authorizes the continuation of proceedings for disqualification even after the elections if the respondent has not been proclaimed. The COMELEC en banc had no jurisdiction to entertain the motion because the proclamation of private respondent barred further consideration of petitioner's action. In the same vein, considering that at the time of the filing of this petition on June 16, 1998, private respondent was already a member of the House of Representatives, this Court has no jurisdiction over the same. Pursuant to Art. VI, Section 17 of the Constitution, the House of Representatives Electoral Tribunal has the exclusive original jurisdiction over the petition for the declaration of private respondent's ineligibility. (Perez vs. Commission on Elections, 317 SCRA 641 [1999], Mendoza, J.).

5. Misconduct

§1. The next question is whether the reelection of petitioner rendered the administrative charges against him moot and academic. Petitioner invokes the ruling in Aguinaldo v. COMELEC, in which it was held that a public official could not be removed for misconduct committed during a prior term and that his reelection operated as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor. But that was because in that case, before the petition questioning the validity of the administrative decision removing petitioner could be decided, the term of office during which the alleged misconduct was committed expired. Removal cannot extend beyond the term during which the alleged misconduct was committed. If a public official is not removed before his term of office expires, he can no longer be removed if he is thereafter reelected for another term. This is the rationale for the ruling in the two Aguinaldo cases.

Garcia's plea that the votes cast for Reyes be invalidated is without merit. The votes cast for Reyes are presumed to have been cast in the belief that Reyes was qualified and for that reason can not be treated as stray, void, or meaningless. The subsequent finding that he is disqualified cannot retroact to the date of the elections so as to invalidate the votes cast for him. (Reyes vs. Commission on Elections, 254 SCRA 514 [1996], Mendoza, J.).

§2. Blanco was not denied due process when the COMELEC (First Division) suspended his proclamation as mayor pending determination of the petition for disqualification against him. Section 6 of R.A. No. 6646 and Sections 4 and 5 of the Rule 25 of the Comelec Rules of Procedure merely require that evidence of guilt should be strong to justify the COMELEC in suspending a winning candidate's proclamation. It ought to be emphasized that the suspension order is provisional in nature and can be lifted when the evidence so warrants. It is akin to a temporary restraining order which a court can issue ex-parte under exigent circumstances.

In any event, Blanco was given all the opportunity to prove that the evidence on his disqualification was not strong. On May 25, 1995, he filed a Motion to Lift or Set Aside the Order suspending his proclamation. On May 29, 1995, he filed his Answer to the petition to disqualify him. The COMELEC considered the evidence of the

parties and their arguments and thereafter affirmed his disqualification. The hoary rule is that due process does not mean prior hearing but only an opportunity to be heard. Petitions for disqualification are subject to summary hearings. (Nolasco vs. Commission on Elections, 275 SCRA 762 [1997], Puno, J.).

6. Fugitive from Justice

§1. The Court believes and thus holds, albeit with some personal reservations of the ponente (expressed during the Court's en banc deliberations), that Article 73 of the Rules and Regulations Implementing the Local Government Code of 1991, to the extent that it confines the term "fugitive from justice" to refer only to a person (the fugitive) "who has been convicted by final judgment," is an inordinate and undue circumscription of the law.

Unfortunately, the COMELEC did not make any definite finding on whether or not, in fact, private respondent is a "fugitive from justice" as such term must be interpreted and applied in the light of the Court's opinion. The omission is understandable since the COMELEC dismissed outrightly the petition for quo warranto on the basis instead of Rule 73 of the Rules and Regulations promulgated by the Oversight Committee. The Court itself, not being a trier of facts, is thus constrained to remand the case to the COMELEC for a determination of this unresolved factual matter. (Marquez, Jr., vs. Commission on Elections, 243 SCRA 538 [1995], Vitug, J.).

§2. To reiterate, a "fugitive from justice": "x x x includes not only those who flee after conviction to avoid punishment but likewise who, after being charged, flee to avoid prosecution." The definition thus indicates that the intent to evade is the compelling factor that animates one's flight from a particular jurisdiction. And obviously, there can only be an intent to evade prosecution or punishment when there is knowledge by the fleeing subject of an already instituted indictment, or of a promulgated judgment of conviction.

Rodriguez' case just cannot fit in this concept. There is no dispute that his arrival in the Philippines from the US on June 25, 1985, as per certifications issued by the Bureau of Immigrations dated April 27 and June 26 of 1995, preceded the filing of the felony complaint in the Los Angeles Court on November 12, 1985 and of the issuance on even date of the arrest warrant by that same foreign court, by almost five (5) months. It was clearly impossible for Rodriguez to have known about such felony complaint and arrest warrant at the time he left the US, as there was in fact no complaint and arrest warrant - much less conviction - to speak of yet at such time. What prosecution or punishment then was Rodriguez deliberately running away from with his departure from the US? The very essence of being a "fugitive from justice" under the MARQUEZ Decision definition, is just nowhere to be found in the circumstances of Rodriguez.

However, Marquez and the COMELEC (in its "COMMISSION'S EVALUATION" as earlier quoted) seem to urge the Court to redefine "fugitive from justice." They espouse the broader concept of the term as culled from foreign authorities (mainly of U.S. vintage) cited in the MARQUEZ Decision itself, i.e., that one becomes a "fugitive from justice" by the mere fact that he leaves the jurisdiction where a charge is pending against him, regardless of whether or not the charge has already been filed at the time of his flight. Suffice it to say that the "law of the case" doctrine forbids the Court to craft an expanded redefinition of "fugitive from justice" (which is at variance with the MARQUEZ Decision) and proceed therefrom in resolving the instant petition.

To elaborate, the same parties (Rodriguez and Marquez) and issue (whether or not Rodriguez is a "fugitive from justice") are involved in the MARQUEZ Decision and the instant petition. The MARQUEZ Decision was an appeal from EPC No. 92-28 (the Marquez' quo warranto petition before the COMELEC). The instant petition is also an appeal from EPC No. 92-28 although the COMELEC resolved the latter jointly with SPA No. 95-089 (Marquez' petition for the disqualification of Rodriguez). Therefore, what was irrevocably established as the controlling legal rule in the MARQUEZ Decision must govern the instant petition. And we specifically refer to the concept of "fugitive from justice" as defined in the main opinion in the MARQUEZ Decision which

highlights the significance of an intent to evade but which MARQUEZ and the COMELEC, with their proposed expanded definition, seem to trivialize. (Rodriguez vs. Commission on Elections, 259 SCRA 296 [1996], Francisco, J.).

7. Turncoatism

§1. There is thus no proper course to take in the premises other than to remand also the present cause and give full force and effect to Singco's proclamation without prejudice to the disqualification suit with the directive that COMELEC should hold a full dress hearing in accordance with the requirements of due process, and the parties given full opportunity to present all evidence relevant to the issue of turncoatism. x x x

Pendency of a disqualification case before the COMELEC will not justify suspension of proclamation of a candidate after winning the election. (Singco vs. Commission on Elections, 101 SCRA 420 [1980], De Castro, J.).

§2. After the election a claim of disqualification on the ground of turncoatism should be sought in a quo warranto petition. (Aguinaldo vs. Hon. Commission on Elections, 102 SCRA 1 [1981], Fernando, C.J.).

CHAPTER XIV
Electoral Campaign, Contributions and Expenditures

1. Campaign

§1. "Election campaign" or "partisan political activity" refers to "acts designed to have a candidate elected or not or promote the candidacy of a person or persons to a public office." (Gonzales vs. Commission on Elections, 27 SCRA 835 [1969], Fernando, J.).

§2. Threats by persons prominent in local government and adherents of a particular faction, addressed to electors on election day as they were entering the polls, that a candidate for reelection to the office of provincial governor would be governor until October, that they had better vote for him, and that if they did not look out as he would be governor until October anyway, accompanied by the forcible substitution of provisional ballots of another candidate for those of the candidate favored by these persons, must be considered as having prevented a free and untrammeled expression of the popular will. (Gardiner vs. Romulo, 26 Phil. 254 [1914], Trent, J.).

§3. In the case of Badoy, Jr. v. Comelec, L-32546, Oct. 16, 1970, where the constitutionality of the prohibition of certain forms of election propaganda was assailed, We ruled therein that the prohibition is a valid exercise of the police power of the state "to prevent the perversion and prostitution of the electoral apparatus and of the denial of equal protection of the laws." The evil sought to be prevented in an election which led to Our ruling in that case does not obtain in a plebiscite. In a plebiscite, votes are taken in an area on some special political matter unlike in an election where votes are cast in favor of specific persons for some office. In other words, the electorate is asked to vote for or against issues, not candidates in a plebiscite.

Anent Respondent Comelec's argument that Section 19 of Comelec Resolution 2167 does not absolutely bar petitioner-columnist from expressing his views and/or from campaigning for or against the organic act because he may do so through the Comelec space and/or Comelec radio/television time, the same is not meritorious. While the limitation does not absolutely bar petitioner's freedom of expression, it is still a restriction on his choice of the forum where he may express his view. No reason was advanced by respondent to justify such abridgment. We hold that this form of regulation is tantamount to a restriction of petitioner's freedom of expression for no justifiable reason.

Plebiscite issues are matters of public concern and importance. The people's right to be informed and to be able

to freely and intelligently make a decision would be better served by access to an unabridged discussion of the issues, including the forum. The people affected by the issues presented in a plebiscite should not be unduly burdened by restrictions on the forum where the right to expression may be exercised. Comelec spaces and Comelec radio time may provide a forum for expression but they do not guarantee full dissemination of information to the public concerned because they are limited to either specific portions in newspapers or to specific radio or television times. Accordingly, the instant petition is GRANTED. Section 19 of Comelec Resolution No. 2167 is declared null and void and unconstitutional. (Sanidad vs. Commission on Elections, 181 SCRA 529 [1990], Medialdea, J.).

§4. The term political "ad ban," when used to describe Section 11(b) of R.A. No. 6646, is misleading, for even as Section 11(b) prohibits the sale or donation of print space and air time to political candidates, it mandates the COMELEC to procure and itself allocate to the candidates space and time in the media. There is no suppression of political ads but only a regulation of the time and manner of advertising.

In Adiong v. COMELEC this Court quoted the following from the decision of the U.S. Supreme Court in a case sustaining a Los Angeles City ordinance which prohibited the posting of campaign signs on public property: A government regulation is sufficiently justified if it is within the constitutional power of the Government, if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incident restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest (Id., at 377, 20 L Ed 2d 672, 88 S Ct 1673, City Council v. Taxpayers For Vincent, 466 US 789, 80 L Ed 2d 772, 104 S Ct 2118 [1984]). This test was actually formulated in United States v. O'Brien. It is an appropriate test for restrictions on speech which, like Section 11(b), are content-neutral. Unlike content-based restrictions, they are not imposed because of the content of speech. For this reason, content-neutral restrictions are tests demanding standards. For example, a rule such as that involved in Sanidad v. COMELEC, prohibiting columnists, commentators, and announcers from campaigning either for or against an issue in a plebiscite must have a compelling reason to support it, or it will not pass muster under strict scrutiny. These restrictions, it will be seen, are censorial and therefore they bear a heavy presumption of constitutional invalidity. In addition, they will be tested for possible overbreadth and vagueness.

Justice Panganiban's dissent invokes the clear-and-present-danger test and argues that "media ads do not partake of the 'real substantive evil' that the state has a right to prevent and that justifies the curtailment of the people's cardinal right to choose their means of expression and of access to information." The clear-and-present-danger test is not, however, a sovereign remedy for all free speech problems. As has been pointed out by a thoughtful student of constitutional law, it was originally formulated for the criminal law and only later appropriated for free speech cases. For the criminal law is necessarily concerned with the line at which innocent preparation ends and a guilty conspiracy or attempt begins. Clearly, it is inappropriate as a test for determining the constitutional validity of laws which, like Section 11(b) of R.A. No. 6646, are not concerned with the content of political ads but only with their incidents. To apply the clear-and-present-danger test to such regulatory measures would be like using a sledgehammer to drive a nail when a regular hammer is all that is needed.

The reason for this difference in the level of justification for the restriction of speech is that content-based restrictions distort public debate, have improper motivation, and are usually imposed because of fear of how people will react to a particular speech. No such reasons underlie content-neutral regulations, like regulations of time, place and manner of holding public assemblies under B.P. Blg. 880, the Public Assembly Act of 1995. Applying the O'Brien test in this case, we find that Section 11(b) of R.A. No. 6646 is a valid exercise of the power of the State to regulate media of communication or information for the purpose of ensuring equal opportunity, time and space for political campaigns; that the regulation is unrelated to the suppression of speech;

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that any restriction on freedom of expression is only incidental and no more than is necessary to achieve the purpose of promoting equality. (Osmeña vs. Commission on Elections, 288 SCRA 447 [1998], Mendoza, J.).

§7. An exit poll is a species of electoral survey conducted by qualified individuals or groups of individuals for the purpose of determining the probable result of an election by confidentially asking randomly selected voters whom they have voted for, immediately after they have officially cast their ballots. The results of the survey are announced to the public, usually through the mass media, to give an advance overview of how, in the opinion of the polling individuals or organizations, the electorate voted. In our electoral history, exit polls had not been resorted to until the recent May 11, 1998 elections. (ABS-CBN Broadcasting Corporation vs. Commission on Elections, 323 SCRA 811 [2000], Panganiban, J.).

2. Contributions and Expenditures

§1. The circumstance that a candidate for the office of provincial governor made a small contribution for the repair of a dangerous road leading to one of the precincts and that a few electors testified that they voted for him because of this liberality, does not justify the subtraction of their votes from the votes of said candidate in a contest subsequently instituted over the office. A manifestation of interest by a candidate in public work of this nature is not to be reprehended. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§2. A promise made by a candidate for election that he will, if elected, donate his salary for the education of indigent but deserving students, is not prohibited by Section 49 of the Election Law. (Collado vs. Alonzo, 122 Phil. 957 [1965]; 15 SCRA 562 [1965], Bengzon, C.J.).

§3. The prohibition contained in the Revised Election Code, R.A. 180, against a candidate spending for his election campaign more than the equivalent of one year's salary for the position he is running for applies also to non-candidates who makes excess contributions. (Vda. de Halili vs. Court of Appeals, 83 SCRA 633 [1978], Aquino, J.).

§4. Section 14 of R.A. No. 7166 states that "every candidate" has the obligation to file his statement of contributions and expenditures.

Well-recognized is the rule that where the law does not distinguish, courts should not distinguish. Ubi lex non distinguit nec nos distinguere debemos (Philippine British Assurance Co., Inc. v. Intermediate Appellate Court, 150 SCRA 520 [1987]; cf. Olfato v. Commission on Elections, 103 SCRA 741 [1981]). No distinction is to be made in application of a law where none is indicated.

In the case at bench, as the law makes no distinction or qualification as to whether the candidate pursued his candidacy or withdrew the same, the term "every candidate" must be deemed to refer not only to a candidate who pursued his campaign, but also to one who withdrew his candidacy.

The COMELEC, the body tasked with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall (The Constitution of the Republic of the Philippines, Art. IX[C], Sec. 2[1]), issued Resolution No. 2348 in implementation or interpretation of the provisions of Republic Act No. 7166 on election contributions and expenditures. Section 13 of Resolution No. 2348 categorically refers to "all candidates who filed their certificates of candidacy."

Lastly, we note that under the fourth paragraph of Section 73 of the B.P. Blg. 881 or the Omnibus Election Code of the Philippines, it is provided that "[t]he filing or withdrawal of certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred." Petitioner's withdrawal of his candidacy did not extinguish his liability for the administrative fine. (Pilar vs. Commission on

Elections, 245 SCRA 759 [1995], Quiason, J.).

CHAPTER XV
Casting and Counting of Votes

1. Precincts and Polling Places

§1. The requirements of the Election Law providing for the location of polling stations and the construction of booths and guard rails for the latter may be departed from in some particulars and yet preserve in substantial form the secrecy which the law requires. But the failure to provide doors and guard rails for the booths and the placing of the writing shelf so that it faces the side instead of the rear of the booth are, combined, a fatal disregard of the law, inasmuch as such an arrangement does not offer, even in substantial form, the secrecy and seclusion which, according to the purpose and spirit of the Election Law, is its most mandatory requirement. (Gardiner vs. Romulo, 26 Phil. 254 [1914], Trent, J.).

§2. While the law provides the manner of constructing voting booths, and while the provisions are in a sense mandatory yet the purpose of the law is to require voting booths which afford the voter an opportunity, if he desires, to prepare his ballot in absolute secrecy. Secrecy is the object of the booth. An opportunity to prepare the ballot in private is the purpose of the provision. When the booth affords that protection the purpose of the law is fulfilled. To hold otherwise—to establish a different rule—would make the manner of performing a public duty more important than the performance of the duty itself. (Luna vs. Rodriguez, 39 Phil. 208 [1918], Johnson, J.).

§3. The circumstance that the walls and partitions of the voting booths were constructed of light and fragile material and that a few small holes existed in the plaited coconut leaves of which the partitions were constructed does not constitute a sufficient irregularity to justify the annulment of the election, especially where there is no convincing proof that the defects referred to were used for the commission of fraud in the conduct of the election. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§4. The fact that the walls of the election booths were only 80 centimeters high, permitting those on the outside to see within, is not sufficient reason for annulling the election in a precinct, it not appearing that the secrecy of the ballot was violated (20 C.J., 173). (Demeterio vs. Lopez, 50 Phil. 45 [1927], Villa-Real, J.).

§5. The mere fact that the transfer of polling place was not made in accordance with law does not warrant a declaration of failure of election and the annulment of the proclamation of the winning candidate, unless the number of uncast votes will affect the result of the election. Thus, in Co v. COMELEC (G.R. No. 78820, May 17, 1988), We upheld the transfer of polling places ordered by the Election Registrar four days before the election, allegedly because the teachers, who were members of the Board of Election Inspectors, were afraid of reported terrorists' plans to disrupt the elections in the affected areas. Only barangay captains in the areas were notified of the change. Despite claims that the transfer of polling place was illegal, because it was made in disregard of Sections 152, 153 and 154 of the OEC, and that it had resulted in the disfranchisement of 15,000 voters, We upheld the COMELEC in refusing to declare a failure of election, it appearing that the disfranchised voters were only 2,978 and represented only 22.6% of the entire electorate, and their votes would not affect the result of the election even if they were counted. (Balindong vs. Commission on Elections, 260 SCRA 494 [1996], Mendoza, J.).

§6. It must be noted that under the Omnibus Election Code, there should be at least one precinct per barangay. In

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designating election precincts, the COMELEC usually refers to them by number. Nevertheless, the determination of whether a certain election precinct actually exists or not and whether the voters registered in said precinct are real voters is a factual matter. On such issue, it is a time-honored precept that factual findings of the COMELEC based on its own assessments and duly supported by evidence, are conclusive upon this Court, more so, in the absence of a substantiated attack on the validity of the same. Upon review of the records, the Court finds that the COMELEC had exerted efforts to investigate the facts and verified that there were no public or private buildings in the said place, hence its conclusion that there were no inhabitants. If there were no inhabitants, a fortiori, there can be no registered voters, or the registered voters may have left the place.

The findings of administrative agency cannot be reversed on appeal or certiorari particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have substantially affected the outcome of the case. (Sarangani vs. Commission on Elections, 334 SCRA 379 [2000], Buena, J.).

2. Voting Time

§1. The law provides that “at all elections, the polls shall be open from seven o’clock in the morning until six o’clock in the afternoon.” The polls should be open and closed in strict accord with said provisions. Voters who do not appear and offer to vote within the hours designated by the law should not be permitted to vote if the time for closing the polls has arrived. Upon the other hand, if the voter is prevented, during the voting hours, from voting, and is not permitted to vote by reason of the failure of the inspectors to do their duty, then, certainly, in the absence of some fraud, neither such votes nor the entire vote of the precinct should be annulled simply because some votes were cast after the regular hours x x x. The election inspectors should be held to comply strictly with the law. If they violate the law, they should be punished and not the innocent voter. (Luna vs. Rodriquez, 39 Phil. 208 [1918], Johnson, J.).

§2. At the hour appointed by law for the closing of the election many voters had been unable to vote owing to lack of facilities and excessive number of persons desiring to vote. The polls were, however, promptly closed, with the result that many were disenfranchised. It was held that the closing of the election at the hour appointed supplied no ground for nullifying the returns as the proof did not show that any systematic and effective effort had been made by the election officers to discriminate persons of any particular faction or party.

In another precinct the proof showed that, by the devices of the precinct leaders of the two dominant political factions, voters who were known to be supporters of the contestant were systematically excluded from the polls during the lawful hours of voting, and this had been done with the approval of the election inspectors. Nevertheless in this case the polls were kept open until everybody who desired to vote had voted. It was held that under the circumstances stated the irregularity was non-prejudicial to the contestant and afforded no ground for annulling the election in that municipality. (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428 [1921], Street, J.).

§3. Where it was proven that some ballots were distributed and cast in a election precinct even after the permitted hour of 6:00 o’clock p.m. on election day, but there is no way of determining which of the ballots read by the board of inspectors were cast after said hour, it is held that the action of the trial court and the respondent Court in preferring to leave the ballots as they are is not incorrect. (Protacio vs. De Leon, 118 Phil. 1310 [1963]; 9 SCRA 472 [1963], Paredes, J.).

3. Board of Election Inspectors

§1. Where the election inspectors are conclusively proved guilty of perpetrating frauds in the marking of ballots of

illiterates, the presumption of veracity which ordinarily attaches to their records is destroyed, and he who claims under them is put to his proof. (Gardiner vs. Romulo, 26 Phil. 254 [1914], Trent, J.).

§2. It has been the constant practice of the courts to see that a minority party is given representation on the election board so as to make the election as pure as possible. (Aquisola vs. Municipal Council of Barili, 43 Phil. 286 [1922], Malcolm, J.).

§3. Bi-partisan representation on the board of inspectors is only possible, as indeed is expressly provided by law, "should there be in such municipality one or more political parties or branches or fractions thereof, or political groups" (Section 417, as amended, of the Election Law). (De los Angeles vs. Rodriguez, 46 Phil. 595 [1924], Malcolm, J.).

§4. For the sole purpose of securing the data needed to complete the returns, the Board of Inspectors may open the ballot boxes, in the premises of the Comelec, in its presence and under its supervision, after satisfying itself that the identity and the integrity of the ballot boxes have not been violated, and also in the presence of the representatives of the parties. But none may recount the votes or read the ballots contained in the ballot boxes. (Claudio vs. Commission on Elections, 42 SCRA 586 [1971], Barredo, J.).

§5. The appreciation of the ballots cast in the precincts is not a "proceeding of the board of canvassers" for purposes of pre-proclamation proceedings under Section 241, Omnibus Election Code, but of the boards of election inspectors who are called upon to count and appreciate the votes in accordance with the rules of appreciation provided in Section 211, Omnibus Election Code. Otherwise stated, the appreciation of ballots is not part of the proceedings of the board of canvassers. The function of ballots appreciation is performed by the boards of election inspectors at the precinct level. (Sanchez vs. Commission on Elections, 153 SCRA 67 [1987], Per Curiam).

§6. As a general rule, the failure on the part of the officials to do their duties will not invalidate the ballot, for to rule otherwise would disenfranchise the voters and place a premium on official ineptness and make it possible for a small group of functionaries, by their negligence or their deliberate inaction to frustrate the will of the electorate. (Fernandez vs. Commission on Elections, G.R. No. 91351, {April 3, 1990}, Supreme Court En Banc Minute Resolution).

§7. It is a well-settled rule that the failure of the BEI chairman or any of the members of the board to comply with their mandated administrative responsibility, i.e., signing, authenticating and thumbmarking of ballots, should not penalize the voter with disenfranchisement, thereby frustrating the will of the people. (Punzalan vs. Commission on Elections, 289 SCRA 702 [1998], Kapunan, J.).

§8. Under the rules prevailing during the 1997 Barangay Elections, the failure to authenticate the ballots shall no longer be cause for the invalidation thereof. Rather, the BEI shall merely note such failure in the minutes and declare the failure to authenticate the ballots as an election offense.

In applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms. (Malabaguio vs. Commission on Elections, 346 SCRA 699 [2000}, Ynares-Santiago, J.).

4. Illiterate or Physically Disabled Voters

§1. Under the facts stated in the opinion, (1) that the fact that incapacitated voters had been permitted to vote without taking the oath did not invalidate the election, that the election inspectors who permitted incapacitated voters to vote without taking the oath of office may be prosecuted criminally; (2) that ballots which are marked

before they are cast should not be counted, that ballots marked after they are cast should be counted; (3) that voting booths must be constructed so as to afford the voter an opportunity to prepare his ballot in secret. (Paulino vs. Cailles, 37 Phil. 825 [1918], Johnson, J.).

§2. The election inspector, in giving assistance to a disabled voter, has but one function to perform, namely, the mechanical act of preparing the ballot. The exercise of any discretion as to the selection of candidates for the voter assisted is prohibited to the marker, and the substitution of his own for the voter's choice in such selection is a flagrant violation of an official trust. (United States vs. Cueto, 38 Phil. 935 [1918], Malcolm, J.).

§3. In the absence of fraud, however, all of the ballots of the precinct should not be invalidated by the mere fact that the inspectors did not comply with their duty. Innocent voters should not be deprived of their participation in the election for a violation of the law for which they were in no way responsible. Incapacitated persons are usually persons who are unable to acquaint themselves with the provisions of the law. They are, therefore, absolutely dependent upon the advice and counsel of others. Generally, they have no idea whatever as to the form and requirements in casting their ballots. (Luna vs. Rodriquez, 39 Phil. 208 [1918], Johnson, J.).

§4. The failure of an illiterate voter to take an oath as to his incapacity before voting does not invalidate his vote, unless it appears that it was a part of a fraudulent scheme to defeat the free expression of the will of the voter. The requirement that the illiterate or incapacitated should take an oath is mandatory before the election, that is, the vote cast by an illiterate who has not taken the prescribed oath to his incapacity, may be challenged before it is deposited in the box, on the ground that he was assisted by other persons in preparing it without having taken the required oath as to his incapacity, and in that case it should not be admitted, but if the voter is not challenged and his vote is actually deposited in the box, then it cannot be annulled, in the absence of evidence of fraud (Valenzuela vs. Carlos and Lopez de Jesus, supra.). (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§5. It is presumed that the persons who took an oath to assist the voters complied therewith, and the contrary not having been proven, it must be taken for granted that they were assisted x x x. The taking of the oath gives rise to the presumption that the incapacity sworn to is real, unless the contrary is shown. (Demeterio vs. Lopez, 50 Phil. 45 [1927], Villa-Real, J.).

§6. Petitioner's complaints about supposed irregularities involving illiterate voters appear to assume that it is improper or unlawful for a third person — e.g., the assistor who had helped the illiterate to cast his vote — to write the name of the assisted illiterate in the voting record. As the Comelec pointed out, however, the proper procedure for indicating that illiterate voters have cast their votes has not been specifically set out in the Omnibus Election Code. (Dipatuan vs. Commission on Elections, 185 SCRA 86 [1990], Feliciano, J.).

5. Ballots and Election Documents

§1. Where the conservation of the boxes is prima facie shown and their contents are found intact upon being opened according to law, the ballots themselves become the best evidence of the votes cast; and it is the duty of the court to determine the contest, so far as dependent upon the count, by the proof afforded by the ballots.

Ballots which are found in the box for spoiled ballots cannot be counted for any candidate in the absence of proof that such ballots were lawfully cast and were placed in the wrong box by mistake. The appearance of the ballot itself cannot be accepted as supplying the necessary proof that it was a valid ballot. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§2. Section 38 of the Election Law, Act No. 3030, clearly indicates that the ballot boxes, which must be kept by the municipal treasurer after the elections, are subject to the order of the courts of competent jurisdiction until the

final determination of any protest, or at any event, if no protest is presented, for the period of six months. (Rafols vs. Court of First Instance and Fiscal of Cebu, 47 Phil. 736 [1925], Villamor, J.).

§3. A ballot found in a box of invalid ballots which, in the opinion of the court was placed there by mistake, may be valid. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.)

§4. x x x, so that if in the revision of the ballots some illegal ballots are found which have not been specifically impugned in the motion of protest, the court may reject them motu proprio, since it is not essential that the contestant set forth the grounds of his contest with the same precision required of a pleading in ordinary civil cases. The trial court, did not err in taking into account in the revision of the ballots, irregularities not set forth in the motion of protest. (Yalung vs. Atienza, 52 Phil. 781 [1929], Villa-Real, J.).

§5. The fact that neither of the parties raised the question of the illegality of certain ballots either at the trial or in their pleadings, does not deprive the trial court of jurisdiction to examine them, for as this court held in the case of Yalung vs. Atienza, 52 Phil., 781, the institution of suffrage is a public and not a private interest, and the trial court may examine all the ballots after the ballot boxes are opened in order to determine which are legal and which are illegal, even when neither of the parties raised any question as to their illegality. (Olano vs. Tibayan, 53 Phil. 168 [1929], Villa-Real, J.).

§6. In the absence of evidence showing with sufficient certainty that the substituted ballots had been cast for the contestant, there is no ground for holding that they were indeed cast for him. No matter how strong the presumption may be that the substituted ballots were made out in his favor, it is not sufficient to sustain a finding to that effect. (Kiamzon vs. Pugeda, 54 Phil. 755 [1930], Villamor, J.).

§7. In the instant controversy, it would appear that the HRET “reviewed and passed upon the validity of all the ballots in the protested and counter-protested precincts, including those not contested and claimed by the parties.” The Tribunal, added that “(t)his course of action was adopted not only to give effect to the intent of each and every voter, but also to rectify any mistake in appreciation, deliberate or otherwise, committed at the precinct level and overlooked during the revision stage of this case.” In holding that the absence of the signature of the Chairman of the BEI at the back of the ballot does not invalidate it, the HRET has ratiocinated in this wise: “No spurious ballot was found in this case. For a ballot to be rejected for being spurious, the ballot must not have any of the following authenticating marks: a) the COMELEC watermark; b) the signatures or initial of the BEI Chairman at the back of the ballot; and c) red and blue fibers. In the present case, all the ballots examined by the Tribunal had COMELEC watermarks.”

As so aptly observed by the Solicitor General, House Bill (“HB”) No. 34811 (which later become R.A. No. 7166), approved by the House of Representatives on third reading, was a consolidation of different bills. Two of the bills consolidated and considered in drafting H.B. No. 34811 were H.B. No. 34639 and H.B. No. 34660. Section 22 of the two latter bills provided that: “In every case before delivering an official ballot to the voter, the chairman of the Board of Election Inspectors, shall in the presence of the voter, affix his signature at the back thereof. Any ballot which is not so authenticated shall be deemed spurious. Failure to so authenticate shall constitute an election offense.” During the deliberation of the Committee on Suffrage and Electoral Reforms, held on 08 August 1991, the members agreed to delete the phrase “Any ballot which is not so authenticated shall be deemed spurious.”

Reliance by petitioner on this alleged “ruling,” obviously deserves scant consideration. What should, instead, be given weight is the consistent rule laid down by the HRET that a ballot is considered valid and genuine for as long as it bears any one of these authenticating marks, to wit: (a) the COMELEC watermark; or (b) the signature or initials, or thumbprint of the Chairman of the BEI; and (c) in those cases where the COMELEC watermarks are

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blurred or not readily apparent to the naked eye, the presence of red and blue fibers in the ballots. It is only when none of these marks appears extant that the ballots can be considered spurious and subject to rejection. (Libanan vs. House of Representatives Electoral Tribunal, 283 SCRA 520 [1997], Vitug, J.).

6. Spoiled Ballots

§1. x x x, deposited by the election inspectors in the spoiled-ballot box, not because it was spoiled, since it does not bear the words “spoiled ballot” as required by Section 454 of the Election Law, but because in the column for municipal president appears a little slanting pencil line which the inspectors considered as a distinguishing mark and hence rejected the ballot as marked, cannot be considered spoiled, and its deposit in the spoiled-ballot box was due to an error. (Yalung vs. Atienza, 52 Phil. 781 [1929], Villa-Real, J.).

§2. Where the election returns showed that 254 valid ballots were cast in the election for the candidates for a particular office and that the spoiled ballots were 33 in number, and upon opening the boxes only 253 ballots were found in the box of used ballots while 34 were found in the box for spoiled ballots, including an apparently good one for one of the candidates to the contested office, the court sustained the trial judge in holding that the apparently good ballot found in the box of spoiled ballots might be claimed by the contestant, with the result that the official returns with respect to the vote for the contested office were allowed to stand. (Aviado vs. Talens, 52 Phil. 665 [1929], Street, J.).

§3. The ballots found in the boxes for spoiled ballots are presumed to be spoiled ballots, and if it was the duty of the court to examine said ballots, the petitioner had, of course, the right to present evidence with respect thereto. (Balon vs. Moreno, 57 Phil. 60 [1932], Vickers, J.).

§4. The mere fact that a ballot otherwise having no sign or indication of being legally a spoiled one is found in the course of the trial inside the red box for spoiled ballots does not preclude the court from determining whether or not it is a valid ballot mistakenly or inadvertently placed in said red box. (Moraleja vs. Relova, 42 SCRA 10 [1971], Barredo, J.).

7. Excess Ballots

§1. But the trial judge entertained the view that many persons had voted more than once in this precinct, resulting in an excess of ballots. This may have been the case, as there is some evidence tending to show that on election day the voters were admitted to the polling place in this precinct without identification. If so, the inspectors, at the beginning of the count, would have been confronted with the fact that they had decidedly more ballots on hand than would be accounted for by the number who had voted. In view of this, it is a plausible conjecture that the inspectors may have discarded excess ballots sufficient to reduce the number of used ballots to about the number who ought to have voted. (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428 [1921], Street, J.).

§2. There are nine senatorial candidates who received votes ranging from 300 to 375, or a total number of votes of 3,265. The maximum number of votes cast by the 375 voters will be only 3,000 votes, assuming that all of them voted and cast their votes. The total number of votes credited for the aforesaid nine candidates for senator is 3,265. There is therefore produced an excess 265 votes. The foregoing facts appearing on the face of said election return itself show that the election return is obviously manufactured. (Tagoranao vs. Commission on Elections, 22 SCRA 978 [1968], Castro, J.).

§3. As the rule of our jurisprudence now stands, a conclusion of statistical improbability may be drawn only from what appears on the face of a return, but evidence aliunde may be admitted to overcome the same.

Excess votes is not a matter of statistical improbability; it is plain mathematical impossibility, if all the relevant

facts are extant in the return. In any event, the decisive point is the number of alleged excess votes. The test is whether the number of excess votes is within the margin of possible error or mistake, which, cannot be so categorized if not honest. The fact that the number of votes which appear to have been credited to petitioner of 525 is unusually big compared with the highest number of votes among all the other candidates in said precinct in the 1967 elections of 315, even if added to the other fact that the total of the votes for all the candidates for Governor and Vice-Governor were only 367 and 359, respectively, do not sufficiently exclude the possibility of error in any of such entries. (Villalon vs. Commission on Elections, 34 SCRA 594 [1970], Barredo, J.).

§4. We are not here dealing with occasional or sporadic irregularities that succeeded in surprising the good faith of the election inspectors. All the evidence and circumstances point to a systematic plan of allowing persons who were not registered voters in Sagada to cast their ballots in all the precincts of Sagada, and to count such spurious ballots and take them into account in the returns. There is thus no alternative but to consider said returns as deliberately prepared with a view to alter the real results of the voting, through either malice or coercion. In their case, the returns must be deemed manufactured or falsified, without any title to be included in the canvass of votes for delegates by the Provincial Board of Canvassers for the Mountain Province. (Diaz, Sr. vs. Commission on Elections, 42 SCRA 426 [1971], Reyes, J.B.L., J.).

§5. We see no cogent reason, and petitioner has not shown any, why returns in voting centers showing that the votes of the candidate obtaining the highest number of votes exceeds the highest possible number of valid votes cast therein should not be deemed as spurious and manufactured just because the total number of excess votes in said voting centers were not more than 40%. (Aratuc vs. Commission on Elections, 88 SCRA 251 [1979], Barredo, J.).

§6. The decisive factors in the determination of the existence of excess votes should be the number of registered voters, the number of registered voters who actually cast their votes, and the number of ballots found in the ballot box. (Calimbas vs. Commission on Elections, 139 SCRA 171 [1985], Melencio-Herrera, J.).

8. Counting of Votes

§1. Petitioner may not claim ignorance of the aforesaid provisions as these are matters directly affecting his political fortune. Consequently, with or without notice, it was the duty of the petitioner and all candidates for that matter to assign their watchers or representatives in the counting of votes and canvassing of election returns in order to insure the sanctity and purity of the ballots (Sabeniano vs. Comelec, 101 SCRA 289, 301). It is a matter of judicial notice that the candidates, their representatives and watchers station or deploy themselves among the various voting and canvassing centers to watch the proceedings from the first hour of voting through the counting of votes in the voting centers until the completion of the canvassing of election returns so that they can make of record in the minutes of the election committee and canvassing board their objections or remarks regarding the conduct of the proceedings.

There is therefore no merit in petitioner’s claim that respondent Commission on Elections gravely abused its discretion in issuing its questioned decision. And, as emphatically stated in Sidro v. Comelec, 102 SCRA 853, this Court has invariably followed the principle that “in the absence of any jurisdictional infirmity or an error of law of the utmost gravity, the conclusion reached by the respondent Commission on a matter that falls within its competence is entitled to the utmost respect, x x x x.” There is justification in this case to reiterate this principle. (Quilala vs. Commission on Elections, 188 SCRA 502 [1990], Paras, J.).

CHAPTER XVI

Appreciation of Ballots

1. Liberal Interpretation

§1. The utmost liberality must be observed in reading ballots written by persons unskilled in the use of the pen. Errors of spelling and casual blurs and erasures are to be ignored, where the intention to vote for a particular person is discoverable. (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428 [1921], Street, J.).

§2. It is sufficient to observe, however, in this connection that whatever might have been said in cases heretofore decided, no technical rule or rules should be permitted to defeat the intention of the voter, if that intention is discoverable from the ballot itself, not from evidence aliunde. This interpretation goes to the very root of the system. (Moya vs. Del Fierro, 69 Phil. 199 [1939], Laurel, J.).

§3. The purpose of election laws is to give effect to, rather than frustrate the will of the voter. Thus, extreme caution should be observed before any ballot is invalidated and in the appreciation of ballots, doubts are to be resolved in favor of their validity. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon, J.P., J.).

§4. No ballot shall be rejected unless clear and sufficient reasons justify that action, and any doubt must be resolved in favor of the legality of the ballot. (Juliano vs. Court of Appeals, 20 SCRA 808 [1967], Zaldivar, J.).

§5. The cardinal objective in the appreciation of the ballots is to discover and give effect to the intention of the voter. That intention would be nullified by the strict interpretation of the said section as suggested by the petitioner for it would result in the invalidation of the ballot even if duly accomplished by the voter, and simply because of an omission not imputable to him but to the election officials. (Fernandez vs. Commission on Elections, G.R. No. 91351, [April 3, 1990], Supreme Court En Banc Minute Resolution).

2. Rules for the Appreciation of Ballots

In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. (Section 211, Omnibus Election Code)

Rule 1: Only the first name of a candidate or only his surname is written.

§1. Where only the first name of candidate or only his surname is written, the vote for such candidate is valid, if there is no other candidate with the same first name or surname for the same office. (Section 211, Omnibus Election Code, par. 1).

§2. The ballot in which only the initial letter of the Christian name and the surname of one candidate, or his surname only appears, or where there are written first, the surname, and then the Christian name, is valid for said candidate. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§3. The ballots which contain only the initials of the candidate, upon positive proof, must be counted in his favor, and it is not necessary to prove the intention of the voter by his testimony. And those which contain only the surname of the candidate must also be counted in his favor when it is not claimed that there are more than one candidate with the same name. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§4. The fact that in an election a vote is cast for a person designated on the ballot by only his Christian name or by only his surname does not, in the absence of indications of intentional marking of the ballot, invalidate the ballot as to other candidates voted for. (Guekeko vs. Pascual, 50 Phil. 221 [1927], Ostrand, J.).

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§5. The circumstance that the voter writes the Christian name after the surname of the person voted for does not invalidate the ballot. (Aviado vs. Talens, 52 Phil. 665 [1929], Street, J.).

§6. According to the doctrine laid down by this court in the case of Cailles vs. Gomez and Barbaza (42 Phil., 496), "a Christian name without the surname is not sufficient to identify the intention of the voter." (Yalung vs. Atienza, 52 Phil. 781 [1929], Villa-Real, J.).

§7. Since the contestant and appellant, Simeon Y. Abiera, did not state in his certificate of candidacy that he was also known as Simeon Abiera or S. Abiera, he cannot claim the ballots where those names appear, as votes cast in his favor; such votes, however, may be claimed by the contestee and appellee, Simeon P. Abiera, who stated that he was known by said names, in his certificate of candidacy filed in the general elections of June, 1925, as well as in his certificate of candidacy filed in the general elections held on June 5, 1928. (Abiera vs. Abiera, 54 Phil. 793 [1930], Villa-Real, J.).

§8. Where it appears that no other candidate for the same office has the same Christian name and surname, or the same initials, and the voter's intention to vote for the candidate with the Christian name and the initial of the surname which he writes in his ballot is manifest, the will of said voter must be complied with. (Namocatcat vs. Adag, 52 Phil., 789). (Balon vs. Moreno, 57 Phil. 60 [1932], Vickers, J.).

§9. x x x, [t]hat where a ballot contains a Christian name distinct from that of the candidate the ballot cannot be counted for him although the surname be the same, because in the cited cases and other later ones the Christian names appearing in the ballots are so different from those of the candidates, that it was not possible to confuse them x x x . In enunciating the cited rule, this court meant that a candidate cannot claim in his favor a ballot containing a Christian name so different from his that the voter could not have been confused. (Villavert vs. Lim, 62 Phil. 178 [1935], Villa-Real, J.).

§10. Under Rule No. 1 of Section 149 of the Revised Election Code, any ballot where only the Christian name of a candidate or only his surname appears is valid for such candidate if there is no other candidate with the same name or surname for the same office. The purpose of this new rule is to validate the vote provided the name written on the ballot identifies the candidate voted for beyond any question or possible confusion with any other candidate for the same office. (Abrea vs. Lloren, 81 Phil. 809 [1948], Ozaeta, J.).

§11. Paragraph (1), Section 149 of the Revised Election Code refers to the case when only the Christian name, or the surname, or one word, which is the Christian name of a candidate and the surname of his opponent, has been written by the voter. It does not apply when said word is accompanied by initials, as in the ballots involved in the case at bar. Neither does paragraph (6) of the said Section apply when the initials or initial and the surname written are those of another candidate, although for another office, inasmuch as the latter must be deemed to be the person voted for. (Calo vs. Court of Appeals, 118 Phil. 1056 [1963]; 9 SCRA 222 [1963], Concepcion, J.).

§12. Where the ballot contains a Christian name distinct and different from that of the candidate, although the surname written is correct, said ballot cannot be counted for him, even there is no other candidate bearing the same surname. (Protacio vs. De Leon, 118 Phil. 1310 [1963]; 9 SCRA 472 [1963], Paredes, J.).

§13. Where two candidates have the same surname and middle name, the initial of their Christian names may be the deciding factor in the appreciation of votes. Thus, where the lower court rejected the vote as invalid for the protestee on the ground that the family name "Gadon" (which is the family name of both the protestant and the protestee) is preceded only by the letter R, which is the middle initial of both, it is held that the ruling is erroneous, because the letter is not R at all but P, which stands for Pedro, the Christian name of the protestee. (Gadon vs. Gadon, 118 Phil. 1502 [1963]; 9 SCRA 652 [1963], Makalintal, J.).

§14. That ballot with “Teodoro R.” written slightly below the line for mayor but not on a space for another office is valid for private respondent Rodriguez because the voter intended to vote for him and Section 189, par. 1 of the Election Code of 1971, provides: “Where only the Christian names of a candidate x x x is written, the vote for such candidate is valid, if there is no other candidate with the same name or surname for the same office. (Lontoc vs. Pineda, 64 SCRA 681 [1975], Esguerra, J.).

Rule 2: Only the first name of a candidate is written which has a sound similar to the surname of another candidate

§1. Where only the first name of a candidate is written on the ballot, which when read, has a sound similar to the surname of another candidate, the vote shall be counted in favor of the candidate with such surname. If there are two or more candidates with the same full name, first name or surname and one of them is the incumbent, and on the ballot is written only such full name, first name or surname, the vote shall be counted in favor of the incumbent. (Section 211, Omnibus Election Code, par.2).

§2. Rule 16 on the appreciation of ballots provides that if there are two or more candidates bearing the same name or surname, the voter shall add the correct name, surname, or initial that will identify the candidate for whom he votes. This only means that the voter, to identify his vote, should add either the initial of the correct name, the initial of the correct surname, or any initial that might identify the candidate for whom he votes. The word initial does not necessarily refer either to the name or surname of the candidate, it being sufficient that it identifies the candidate chosen by the voter.

The voter may write on the ballot not only the initial letter of a correct name or surname, but also the initial letter of any intermediate name the candidate may have.

Ballots bearing the words “D. Seno” were held valid in his favor, because the word initial in Rule 16 can also apply to a nickname. (Gonzaga vs. Seno, 117 Phil. 751 [1963]; 7 SCRA 741 [1963], Bautista Angelo, J.).

§3. “Lavilla” is not idem sonans to “Eleuterio,” Christian name of De Leon. Where the ballot contains a Christian name distinct and different from that of the candidate, although the surname written is correct, said ballot cannot be counted for him, even if there is no other candidate bearing the same surname (Lucero v. De Guzman, 45 Phil. 852; Villavert v. Lim, 62 Phil. 178; Villavert v. Fornier, 47 O.G., 1789; Gutierrez v. Aquino, L-14252, Feb. 28, 1959). P-65 is, therefore, invalid for De Leon. (Protacio vs. De Leon, 118 Phil. 1310 [1963]; 9 SCRA 472 [1963], Paredes, J.).

Rule 3: Candidate is a woman who uses her maiden or married surname or both

§1. In case the candidate is a woman who uses her maiden or married surname or both and there is another candidate with the same surname, a ballot bearing only such surname shall be counted in favor of the candidate who is an incumbent. (Section 211, Omnibus Election Code, par. 3).

§2. These two ballots containing the name “Conui” and “C. Conui” voted for in the proper spaces for councilors, respectively, were counted by the lower court in favor of Asuncion Conui-Omega under the rule that a ballot where only the surname of the candidate appears is valid (Sec. 149, par. 1, Revised Election Code). We agree with this ruling it appearing that there is no dispute that “Conui” is the maiden surname of appellee. On the second ballot, the initial “C” before “Conui” is the correct initial of appellee’s nickname Conching (Gonzaga v. Seno, G.R. No. L-20522, April 23, 1963). In the case of Ochoa v. Calo (46 O.G., 2657), it was held that the name “E. Rosales” was valid vote for Elisa Ochoa whose maiden name was Elisa Rosales. These two ballots were correctly counted for appellee.

A ballot where only the maiden surname of the candidate appears is valid; but a ballot where only the nickname of the candidate appears cannot be counted in her favor. (Conui-Omega vs. Samson, 118 Phil. 1333 [1963]; 9 SCRA 493 [1963], Bautista Angelo J.).

§3. In her certificate of candidacy, Lerias gave her full name as “Rosette Yniguez Lerias.” It is for this reason that the Tribunal during the appreciation of the ballots in its executive sessions admitted as votes for Lerias ballots containing, “Yniguez R”, “Yniguez L”, “Yniguez Roset”, “R. Yniguez” or “L. Yniguez” written on the first line of senators for it is very clear that said ballots were intended to be cast for Lerias. Under subsec. 3 of Section 211 of the Omnibus Election Code, said ballots should be counted as votes for Lerias inasmuch as there is no other candidate for the same position of Representative who is an incumbent. (Lerias vs. House of Representatives Electoral Tribunal, 202 SCRA 808 [1991], Paras, J.)

Rule 4: Two or more words are written on the same line on the ballots, all of which are the surnames of two or more candidates or two or more words are written on different lines on the ballot

§1. When two of more words are written on the same line on the ballot, all of which are the surnames of two or more candidates, the same shall not be counted for any of them, unless one is a surname of an incumbent who has served for at least one year in which case it shall be counted in favor of the latter.

When two or more words are written on different lines on the ballot all of which are the surnames of two or more candidates bearing the same surname for an office for which the law authorize the election of more than one and there are the same number of such surnames written as there are candidates with that surnames, the vote shall be counted in favor of all the candidates bearing the surname. (Section 211, Omnibus Election Code, par. 4).

§2. There being no person voted for mayor on the space provided for it in the ballot, the word “Mayor” on the third space for councilors and the name “F. del Castillo” on the fourth space for councilors written by the voter sufficiently indicate his intention to vote in favor of F. del Castillo for mayor of the municipality. The vote must be counted in his favor. (Caraecle vs. Court of Appeals, 94 Phil. 308 [1954], Padilla, J.).

§3. x x x [t]he persons who prepared these ballots appear to be well educated, judging from their good penmanship. They could have had no possible reason to write “Nietes” twice, except to mark their respective ballots. (Sarmiento vs. Quemado, 115 Phil. 434 [1962]; 5 SCRA 438 [1962], Concepcion, J.).

Rule 5: Single word which is the first name of a candidate and which is at the same time the surname of his opponent

§1. When on the ballot is written a single word which is the first name of a candidate and which is at the same time the surname of his opponent, the vote shall not be counted in favor of the latter. (Section 211, Omnibus Election Code, par. 5).

Rule 6: Two words are written on the ballot, one of which is the first name of the candidate and the other is the surname of his opponent

When two words are written on the ballot, one of which is the first name of the candidate and the other is the surname of his opponent, the vote shall not be counted for either. (Section 211, Omnibus Election Code, par. 6).

Rule 7: A name or surname incorrectly written which, when read has a sound similar to the name or surname of a candidate

§1. A name or surname incorrectly written which, when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in his favor. (Section 211, Omnibus Election Code, par. 7).

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§2. When the name and surname appear incorrectly written they should be admitted, whenever they give the same or similar sound, when read, to that of the true name of the candidate, under the rule generally known as “idem sonans.” (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§3. The idem sonans rule is that if the name as spelled in the ballot, although different from its orthographically correct spelling, sounds practically the same when pronounced, according to our methods of pronunciation, it is a sufficient designation of the individual to whom it refers, and the error of the writer must not be taken into account. But if the ballot is so defective that the intention of the voter cannot be determined, it must be rejected. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§4. The Christian names “Roberto”, “Roperto” and “Mamerto” cannot easily be confused with “Alberto”, although they are idem sonans to a certain extent, when the scribes thereof fairly know how to write said names. (Villavert vs. Lim, 62 Phil. 178 [1935], Villa-Real, J.).

§5. The vote “Cebarle” has the same sound as “Caraecle” and should be counted for the latter. (Caraecle vs. Court of Appeals, 94 Phil. 308 [1954], Padilla, J.).

§6. The words “S. Amado” and “Serafin”, written on the ballots in the spaces for vice-mayor, are idem sonans with the name of Serafin Quemado, a candidate for vice-mayor, and should be counted in his favor. (Sarmiento vs. Quemado, 115 Phil. 434 [1962]; 5 SCRA 438 [1962], Concepcion, J.).

§7. The words “Cadia” and “Cuans” appearing on the line for mayor, respectively, do not sufficiently identify the candidate for whom the vote was intended. The rule of idem sonans, the test of which is whether the sound of the variant spelling is the same or similar, does not apply to these two ballots. (Tajanlangit vs. Cazeñas, 115 Phil. 564 [1962]; 5 SCRA 567 [1962], Bautista Angelo, J.).

§8. Under the idem sonans rule “F. Vuvis”, “F. Pabes (or Pabis), Sr.”, “F. Babes”, or “F. Babeis”, or “F. Bobkis”, written on the space for mayor, should be counted in favor of Francisco Bobis, Sr., a candidate for said office. Under this rule “S.arsaaa”, written on the space for mayor, is a valid vote for E. Arzaga, candidate for that office.

“F. Boslro”, written on the space for mayor, has no similarity with Francisco Bobis, Sr., a candidate for that office, and may not be counted in his favor. (Arzaga vs. Bobis, Sr., 116 Phil. 702 [1962]; 6 SCRA 386 [1962], Reyes, J.B.L., J.).

§9. Where the name written on the space for mayor is “S. Kato”, considering that “K” is used in many parts of the Philippines in lieu of “C” and that the “t” in “Kato” is written like an “I”, although with a horizontal bar at the top and the voter has a very poor handwriting, said word “Kato” may be considered idem sonans with “Calo”. (Calo vs. Court of Appeals, 118 Phil. 1056 [1963]; 9 SCRA 222 [1963], Concepcion, J.).

§10. The word “Comga” in a ballot is idem sonans with “Conui-Omega”, where it was prepared by a poor writer who might have intended the letter C as initial for appellee’s middle name “Conui”, connected with the word “Omga” which might have been intended for Omega. Also, the word “B. Omegas” was properly admitted for appellee, the erroneous initial “B” does not annul the vote in her favor. So, also, the words “C. Omuga” and “C. Omga” are valid for appellee under the same rule of idem sonans. “Sansor” is idem sonans with “Samson”. (Conui-Omega vs. Samson, 118 Phil. 1333 [1963]; 9 SCRA 493 [1963], Bautista Angelo J.).

§11. The following votes were considered idem sonans with and valid for Añonuevo: “R. Ano”, “A. Anebo”, and “Anonuivo”; while the vote for “Monarin” was considered idem sonans with and valid for Ferraren. (Ferraren vs. Añonuevo, 118 Phil. 1428 [1963]; 9 SCRA 583 [1963], Regala, J.).

§12. Section 149 (2), Revised Election Code (rule on idem sonans) appears to be applicable. This applies, however, only to cases of misspelling the name or surname or both of the candidates. The claim that the letter "A" in "A. Ramos" stands for "Ando", the common contraction of the name "Fernando" cannot be sustained. Section 149 (1) and (6) of the Revised Election code speaks of initial of a name or surname, not of a nickname. (Domingo vs. Ramos, 124 Phil. 153 [1966]; 17 SCRA 749 [1966], Regala, J.).

§13. Appellee Querubin Perfecto established that in some places, he is familiarly known or addressed as "Ruben". His testimony that "votes having 'Ruben Perfecto' can be identified," means that the candidate voted for, when the name written was Ruben Perfecto, could be identified. "Ruben" is idem sonans with Querubin. (Perfecto vs. Sapico, et al., 17 SCRA 968 [1966], Concepcion, J.).

§14. Following the rule of idem sonans, a vote for "Sabilo yran" (the only vote cast) on the space for mayor should be counted for petitioner Isabelo Lloren, a candidate for that position. In the second ballot, the word "Eisabilo" written on the first space for provincial board members appeared to have been erased. And, on the space for mayor, the voter tried to write the name of his candidate, but his effort produced only the word "Eisabi". The intent of the voter, who is another poor writer, to cast his vote for the petitioner is apparent. (Lloren vs. Court of Appeals, 125 Phil. 529 [1967]; 19 SCRA 110 [1967], Reyes, J.B.L., J.).

§15. The word "Peisna" is idem sonans with Espina, a candidate for councilor. The name "M. Ncso" is idem sonans with Inciso, the name of the protestee. (Trajano vs. Inciso, 125 Phil. 746 [1967]; 19 SCRA 340 [1967], Bengzon, J.P., J.).

§16. The word "Conoyaes" or "Conozaes" is idem sonans with Gonzales, a candidate for councilor. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon J.P., J.).

§17. The name "Narog" written on the space for vice-mayor is idem sonans with "Nalog", the name of candidate for vice-mayor. It should be credited as a vote for Nazario Nalog. The same is true with the name "Naro". (Nalog vs. De Guzman, 126 Phil. 701 [1967]; 20 SCRA 338 [1967], Concepcion, C. J.).

§18. A vote for "P. Matilaza" is a valid vote for Pablo Monteza. The initial "P" corresponds to his first name, while Matilaza is idem sonans with Monteza. (Monteza vs. Court of Appeals, 20 SCRA 773 [1967], Reyes, J.B.L., J.).

§19. "Isidoro" or "Isidro" are idem sonans to "Teodoro," so is "Ente" for "Vicente". (Lontoc vs. Pineda, 64 SCRA 681 [1975], Esguerra, J.).

§20. Furthermore, since votes for "GIRLIE" written in the space for Representative were in fact claimed by VILLAROSA and credited in her favor, then the HRET correctly ruled that "JTV" votes or variations thereof, under the idem sonans rule, cannot be counted for VILLAROSA because only one nickname or stage name is allowed. (Villarosa vs. The House of Representatives Electoral Tribunal, 340 SCRA 396 [2000], Davide, Jr., C. J.).

§21. Incorrect spelling of a candidate's name does not invalidate the ballot. The Comelec was not correct when it ruled that Exhibit "ZZZ" of Precinct 28A, 28A1 was invalid considering that the voter "appeared to be literate." Even the most literate person is bound to commit a mistake in spelling. (Ong vs. Commission on Elections, 347 SCRA 681 [2000], Pardo, J.)

Rule 8: A name of a candidate appears in a space of the ballot for an office for which he is a candidate and in another space for which he is not a candidate

§1. When a name of a candidate appears in a space of the ballot for an office for which he is a candidate and in

another space for which he is not a candidate, it shall be counted in his favor for the office for which he is a candidate and the vote for the office for which he is not a candidate shall be considered as stray, except when it is used as a means to identify the voter, in which case, the whole ballot shall be void.

If the word or words written on the appropriate blank on the ballot is the identical name or surname or full name, as the case may be, of two or more candidates for the same office none of whom is an incumbent, the vote shall be counted in favor of that candidate to whose ticket belong all the other candidates voted for in the same ballot for the same constituency. (Section 211, Omnibus Election Code, par. 8).

§2. A vote in favor of a candidate for a certain office is not to be discarded merely because the name of the same person appears to be voted in connection with some other different office for which he is not a candidate. (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428 [1921], Street, J.).

§3. When the name of one candidate appears written in two spaces of the ballot, it shall be counted in favor of the candidate for the position with respect to which he has presented his certificate of candidacy. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§4. Where names of candidates have been written on the ballots in spaces designated for votes for offices other than those for which said candidates were registered, the entire ballot is invalid under Section 19 of Act No. 3210 of the Administrative Code, as amended. (Guekeko vs. Pascual, 50 Phil. 221 [1927], Ostrand, J.).

§5. In order that a vote may be counted in favor of the candidate for a particular office, his name must be written in the space reserved on the ballot for the name of the candidate for that office. If the name is written in the space reserved for another office, the ballot cannot be counted as a vote for such person for the office for which he is a candidate. (Aviado vs. Talens, 52 Phil. 665 [1929], Street, J.).

§6. The provision of Section 135 of the Revised Election Code that the voter shall fill his ballot by writing in the proper space for each office the name of the person for whom he desires to vote, does not necessarily invalidate votes cast for a candidate for provincial governor whose name is written not on the dotted line following the words “Provincial Governor” but on the double line immediately above said words and below the instructions to the voter. The purpose of said provision is to identify the office for which each candidate is voted. It cannot be doubted that the intention of the voter in writing the name of said candidate was to vote for him for one of the offices specified on the ballot. Neither can there be any reasonable doubt that the office for which the voter intended to vote said candidate was that of provincial governor (1) because that was the office for which he was a registered candidate, (2) because the space on which his name was written was such that the vote could not have been intended for a member of the provincial board or for any other office specified farther down in the ballot, and (3) because no other name was written on the dotted line immediately following the words “Provincial Governor.”

If the intention of the voter can be ascertained in an indubitable manner, as in this case, it should be given effect – not frustrated. (Villavert vs. Fornier, 84 Phil. 756 [1949], Ozaeta, J.).

§7. Under Section 149 paragraph 13 of the Revised Election Code, a vote cast in favor of a candidate for an office for which he did not present himself is void but will not invalidate the whole ballot. The vote is merely considered stray vote. Since there is no evidence showing an intention to mark the ballot, the votes for these candidates shall only be considered stray votes which cannot have the effect of invalidating the vote in favor of the appellant. (Ferrer vs. De Alban, 101 Phil. 1018 [1957], Bautista Angelo, J.).

§8. The name “Nietes” — a candidate for mayor — was written after the printed word “vice-mayor”. Immediately following the printed term “councilors” and at the same level thereof — but not in the space for councilors — the

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voter wrote “Sarmiento” — the protestant. Below the same, in the space for councilors, he wrote the names of the persons voted therefor. It was held that Protestant Sarmiento cannot be credited with the vote, because the space for vice-mayor had not been left blank, but the name of Nietes is written thereon, and there is no means by which to justify its being counted as a vote in favor of Sarmiento, for the office.

Where the name of a candidate for vice-mayor is written slightly under the space for vice-mayor, but outside the space for other officers, the vote should be credited to that candidate. (Sarmiento vs. Quemado, 115 Phil. 434 [1962]; 5 SCRA 438 [1962], Concepcion, J.).

§9. Space for vice-mayor filled up with name of candidate for mayor; name of protestant for office of vice-mayor written on space immediately following space for councilors, protestant not to be credited with vote.

Name of candidate for vice-mayor under space for vice-mayor but outside space for other officers, vote counted in favor of said candidate for vice-mayor.

Name of candidate for vice-mayor written in wrong space but sufficiently described and located to indicate voter’s intent. (Ibid.)

§10. Rule 3, Section 149, of the Revised Election Code, contemplates the writing of a name of a candidate in two spaces of the ballot, whereby the vote for the office for which he is not candidate shall be counted as stray vote; but the rule is inapplicable to a case where the name of a candidate was written three or more times on the same ballot, in which case the ballot shall be considered invalid as marked (Gutierrez vs. Aquino, L-14252, Feb. 28, 1959). (Arzaga vs. Bobis, Sr., 116 Phil. 702 [1962]; 6 SCRA 386 [1962], Reyes, J.B.L., J.).

§11. The circumstance that the name of a candidate for mayor appears not only on the space for mayor but also on the space for senator, does not invalidate the ballot. The vote cast for senator should be considered merely as a stray vote. (Pangontao vs. Alunan, 116 Phil. 1170 [1962]; 6 SCRA 853 [1962], Dizon, J.).

§12. The name “A. Ramos” was written on the space for mayor and on the first line for councilors; and there was one name — that of a candidate for vice-mayor — written on the space between them. Held: Having written the same name on both spaces, the voter must be deemed to have intended to vote for the same individual, since identity of names necessarily connotes identity of persons, unless the contrary is satisfactorily established by competent evidence. Hence, said name cannot be considered a vote for mayor candidate Fernando Ramos. (Domingo vs. Ramos, 124 Phil. 153 [1966]; 17 SCRA 749 [1966], Regala, J.).

§13. Where there were two candidates for councilor known as Ding Cristino and “Doc” Cristino, brothers, all ballots containing the name “D. Cristino” for councilor should be considered stray votes since it cannot be ascertained as to who was intended by the voters when they placed said name on their ballots. The intention of the voter should be given effect, not stifled or frustrated, but then his intention cannot be known by means of surmise, speculation or guesswork. While it is true that Ding Cristino was running for reelection, and “Doc” Cristino was not, the rule that “when two or more candidates have the same surname and one of them is seeking reelection, a ballot wherein only such surname is written shall be counted in favor of the candidate seeking reelection”, cannot be applied because the name written in the contested ballots was not “Cristino” alone but “D. Cristino”. (Cristino vs. Cavite, 125 Phil. 757 [1967]; 19 SCRA 350 [1967], Sanchez, J.).

§14. The writing of a name more than twice on the ballot is considered to be intentional and serves no other purpose than to identify the ballot.

The letters “MEND K.” on the space for vice-mayor cannot be credited as a vote for either Mendoza or Katigbak, the candidates for vice-mayor. The voter’s intention is not clear. (Katigbak vs. Mendoza, 125 Phil. 943 [1967]; 19

SCRA 543 [1967], Regala, J.).

§15. Votes for the candidate for vice-mayor written on the space, other than that for vice-mayor, are stray votes. They cannot be counted for him. (Nalog vs. De Guzman, 126 Phil. 701 [1967]; 20 SCRA 338 [1967], Concepcion, C.J.).

§16. Where the name of a candidate is not written in the proper space in the ballot but is preceded by the name of the office for which he is a candidate, the vote should be counted as valid for such candidate. Such rule stems from the fact that in the appreciation of the ballot, the object should be to ascertain and carry into effect the intention of the voter, if it could be determined with reasonable certainty. (Farin vs. Gonzales, 53 SCRA 237 [1973], Antonio, J.).

§17. The rule that if the name is written in the space reserved for another office, the ballot cannot be counted as a vote for such person for the office for which he is a candidate (Section 155 [5] and [15] of the 1978 Election Code) admits of exceptions, where, as in this case, the intention of the voters to vote for protestant CORDERO and protestee ORRICA, respectively, is unmistakable and should not be frustrated. (Cordero vs. Moscardon, 132 SCRA 413 [1984], Melencio-Herrera, J.).

§18. Exhibit "6" was invalidated by both respondent court and the city court as stray vote on the ground that petitioner's name, written as "Bo. Barangay Bautista" was placed on the first line intended for councilmen. In the case of Farin v. Gonzales and C.A.-G.R. No. L-36893, September 28, 1973, 53 SCRA 237, cited by petitioner, it was ruled that where the name of a candidate is not written in the proper space in the ballot but is preceded by the name of the office for which he is a candidate, the vote should be counted as valid for such candidate. Such rule stems from the fact that in the appreciation of the ballot, the object should be to ascertain and carry into effect the intention of the voter, if it could be determined with reasonable certainty. (Bautista vs. Castro, 206 SCRA 305 [1992], Medialdea, J.)

Rule 9: A name of a candidate is erased and another is clearly written

§1. When in a space in the ballot there appears a name of a candidate that is erased and another clearly written, the vote is valid for the latter. (Section 211, Omnibus Election Code, par. 9).

§2. When in a given space of the ballot there is a name that is erased and another clearly written, the ballot is valid for the latter. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§3. Although erasures appear on ballots, if it is clearly shown that it was the voter's intention to vote for the candidate whose name appears to have been written over the one previously erased, the ballot is valid. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§4. The fact alone that a name written under that of a candidate, in a ballot, has been erased, is not sufficient to constitute a distinguishing mark. (Balon vs. Moreno, 57 Phil. 60 [1932], Vickers, J.).

§5. A candidate's name written over an erasure. – The fact that a voter erroneously wrote "L. Importante" in the space for the office of provincial governor, and on noting his mistake, erased the same and wrote over it the name "A. Lim", does not invalidate his ballot, inasmuch as in the space for the office of municipal president he wrote the name "L. Importante." (Villavert vs. Lim, 62 Phil. 178 [1935], Villa-Real, J.).

§6. The name "N. Nalog" written on the space for vice-mayor, having been crossed-out, cannot be counted as a vote for Nalog. (Nalog vs. De Guzman, 126 Phil. 701 [1967]; 20 SCRA 338 [1967], Concepcion, C.J.).

§7. The vote having been cancelled, it may not be counted for any candidate, for such cancellation indicates desistance. Although an initial remained, the same could not be considered as a valid vote for a candidate, as

ballots with initial only are considered not a valid vote. (Farin vs. Gonzales, 53 SCRA 237 [1973], Antonio, J.).

§8. The erasures in Exhibits “YYY” and “JJJJ” of Precinct 28A, 28A1 would not invalidate the ballot absent any showing that another person wrote the name of Ong after the erasure was made. In fact, the rules on appreciation of ballots provide that: “When in a space in the ballot there appears a name of candidate that is erased and another clearly written, the vote is valid for the latter”. (Ong vs. Commission on Elections, 347 SCRA 681 [2000], Pardo, J.).

Rule 10: Erroneous initial of the first name which accompanies the correct surname of a candidate; erroneous initial of the surname accompanying the correct first name of a candidate; or erroneous middle initial of the candidate

§1. The erroneous initial of the first name which accompanies the correct surname of a candidate, the erroneous initial of the surname accompanying the correct first name of a candidate, or the erroneous middle initial of the candidates shall not annul the vote in favor of the latter. (Section 211, Omnibus Election Code, par. 10).

§2. The ballots which contain only the initials of the candidate upon positive proof, must be counted in his favor, and it is not necessary to prove the intention of the voter by his testimony. And those which contain only the surname of the candidate must also be counted in his favor when it is not claimed that there are more than one candidate with the same name. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§3. The voter may write on the ballot not only the initial letter of a correct name or surname, but also the initial letter of any intermediate name the candidate may have. (Gonzaga vs. Seno, 117 Phil. 751 [1963]; 7 SCRA 741 [1963], Bautista Angelo, J.).

§4. Paragraph (1), Section 149 of the Revised Election Code refers to the case when only the Christian name, or the surname, or one word, which is the Christian name of a candidate and the surname of his opponent, has been written by the voter. It does not apply when said word is accompanied by initials, as in the ballots involved in the case at bar. Neither does paragraph (6) of the said Section apply when the initial or initials and the surname written are those of another candidate, although for another office, inasmuch as the latter must be deemed to be the person voted for. (Calo vs. Court of Appeals, 118 Phil. 1056 [1963]; 9 SCRA 222 [1963], Concepcion, J.).

§5. Candidate for mayor Fernando Ramos claims as votes cast for him ballots with “A. Ramos” written on the spaces for mayor. In the same election there was candidate for councilor named Aurora Ramos. Held: The votes cast for “A. Ramos” for mayor are stray. Since the written name was accompanied by an initial, paragraph (1), Section 149 of the Revised Election Code does not apply. This provision refers to a case when only the Christian name, or one word, which is the Christian name of a candidate and the surname of his opponent, has been written by the voter. Neither does paragraph (6) of the said Section 149 apply, because the initial and the surname written are those of another candidate, although for another office, in which case the latter must be deemed to be the person voted for (Calo vs. Court of Appeals, L-21256, September 30, 1963). (Domingo vs. Ramos, 124 Phil. 153 [1966]; 17 SCRA 749 [1966], Regala, J.).

§6. An erroneous initial of the name which accompanies the correct surname of a candidate does not annul the vote in his favor. (Bisnar vs. Lapasa, 125 Phil. 932 [1967]; 19 SCRA 534 [1967], Makalintal, J.).

§7. Regarding ballots with wrong initials of respondent Rodriguez (J.M. Rodriguez), the law (Sec. 189, par. 8, of the Election Code of 1971) succinctly provides that erroneous initial of the name and middle name of a candidate will not annul the vote in his favor. (Lontoc vs. Pineda, 64 SCRA 681 [1975], Esguerra, J.).

Rule 11: Another person who is not a candidate having the first name or surname of a candidate

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§1. The fact that there exists another person who is not a candidate with the first name or surname of a candidate shall not annul the vote in favor of the latter. (Section 211, Omnibus Election Code, par. 11).

Rule 12: Ballots containing prefixes

§1. Ballots which contain prefixes such as “Sr.”. “Mr.”. “Datu”, “Don”, “Ginoo”, “Hon.”, “Gob.” Or suffixes like “Hijo”, “Jr.”, “Segundo”, are valid. (Section 211, Omnibus Election Code, par. 12).

§2. The ballots which bear the prefixes: “Mr.,” “Don,” “Guinoo,” “Hon.,” “Dr.” and the suffixes: “hijo” (junior), “segundo,” are valid. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§3. Under Section 149, paragraph 5 of the Revised Election Code, ballots which contain prefixes such as “Hon.” are valid. (Ferrer vs. De Alban, 101 Phil. 1018 [1957], Bautista Angelo, J.).

§4. The voter wrote, in the space for Provincial Vice-Governor, “Mayor Magluyan” and in the spaces for members of the provincial board, “Visi S. Quemada sobranco, O Ncon la grnosa, V Junco L. Jungco”. Held: This ballot should be counted for Serafin Quemado, candidate for vice-mayor not only because his name is preceded by the prefix “visi” meaning “vice”, but, also, because in the space immediately preceding the voter wrote “Mayor Magluyan”, thereby indicating that the latter was a vote for “mayor” and that the name immediately following the same was intended for the “vice-mayor”. (Sarmiento vs. Quemado, 115 Phil. 434 [1962]; 5 SCRA 438 [1962], Concepcion, J.).

§5. Although Section 149, paragraph 5, of the Revised Election Code provides that ballots which contain prefixes are valid, yet this law only applies where the prefixes were not used as identification marks.

The lower court committed no error in rejecting as “marked” ballots containing the prefixes “Sr.”, “Mr.”, “Datu”, “Don”, “Ginoo”, “Hon.”, “Dra.”, “Gob.”, etc., where these prefixes were used under the following circumstances among others: (a) in every ballot only one candidate is given a prefix, the rest none; and (b) in several ballots in the same precinct, the prefixes given to one and the same candidate are of different nature, never repeated to facilitate the identification of the electors who prepared them. (Jimenez vs. Lofranco, 118 Phil. 1303 [1963]; 9 SCRA 465 [1963], Bengzon, C.J.).

§6. Prefixes before the names of candidates are not considered marks on the ballots, in the absence of valid evidence aliunde to support such claim. (Felisilda vs. Achacoso, 118 Phil.1366 [1963]; 9 SCRA 523 [1963], Barrera J.).

§7. Although Rule 5, Section 149 of the Revised Election Code allows the prefix “Dr.”, it can be tolerated only if not used as an identification mark. Where it recurs in a pattern or system to mark and identify ballots and votes in different precincts, the ballots containing the same should be rejected as marked ballots. The same rule applies to the word “Datu”. A ballot wherein the word “Datu” was placed before the name of Sarmiento is not marked. The word was not used in other ballots. There is no discernible pattern in the use of the word “Datu” which would reveal an intention to mark the ballots.

The placing of “(Catigbak)” in the middle of the name of candidate “Consing Aguilon”, although allegedly denoting that, to the voter’s mind, Consing Aguilon is Senator Katigbak’s counterpart in the town of Cateel, clearly serves to identify said ballot. A ballot, wherein suffix “Jr.” was written after the name of “P. Castro” so that the space separating them is longer than the space covered by the name itself, is a marked ballot. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon, J.P., J.).

§8. It cannot be said that these writings were accidental. As a general rule, a voter must write on the ballot only the names of candidates voted for the offices appearing thereon. Certain exceptions, however, were provided in

Section 149 of the Revised Election Code. For example, prefixes such as “Sr.,” “Mr.,” and the like and suffixes such as “hijo,” “Jr.,” etc. will not invalidate the ballot (par. 5). Initials (paragraph 15), nicknames or appellation of affection and friendship will not invalidate the ballot, if accompanied by the name or surname of the candidate, and above all, if they were not used as a means to identify the voter. Even under a liberal view, the words written on the ballots under consideration cannot be considered as falling within the exception to the rule. Consequently, they are irrelevant expressions that nullified the ballots (Lloren v. CA, et al., No. L-25907, January 25, 1967, 19 SCRA 110). Hence, respondent court excluded Exhibits “Z” and “Z-1.” (Bautista vs. Castro, 206 SCRA 305 [1992], Medialdea, J.).

Rule 13: Use of nicknames and appellations of affection and friendship accompanied by the first name or surname of the candidate

§1. The use of the nickname and appellations of affection and friendship, if accompanied by the first name or surname of the candidate, does not annul such vote, except when they were used as a means to identify the voter, in which case the whole ballot is invalid: Provided, That if the nickname used is unaccompanied by the name or surname of a candidate and it is the one by which he is generally or popularly known in the locality, the name shall be counted in favor of said candidate, if there is no other candidate for the same office with the same nickname. (Section 211, Omnibus Election Code, par. 13).

1.) Nicknames

§1. Neither is it considered as a distinguishing or identification mark if upon the ballot appear the name of a woman, names with pet names, nicknames, names of councilors with the same surnames, or different surnames with the same name, names with surnames of Chinese origin, names of priests, or contemptuous or exclamatory names. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§2. Although in the case of Mandac vs. Samonte (54 Phil., 706), it was held that the ballots bearing only the name or nicknames were admitted because in that case there was only one candidate for the same office with the said name and nickname, this court has not adopted this rule in the other cases wherein the same question was raised. The rule uniformly followed by this court is that votes cast in which the name or nickname alone appears are not valid and should not be counted.

Following the rule laid down in the case of Lucero vs. De Guzman (45 Phil., 852), said ballots should not be counted as validly cast in favor of the appellant because the Christian names do not correspond to his. (Reyes vs. Bitong, 57 Phil. 100 [1932], Imperial, J.).

§3. Failure of a candidate to state in his certificate of candidacy a nickname by which he is likewise known, bars him from claiming in his favor certain ballots in which he is voted by that nickname. (Villavert vs. Lim, 62 Phil. 178 [1935], Villa-Real).

§4. In precinct No. 6 of Muñoz, the appellant claims 5 ballots, Exhibits 235 to 239. In the first two, “Tomi” and “Tomy” were voted for governor. The appellant lays claim to these votes upon the statement in his certificate of candidacy that he is known by said familiar name throughout the Province of Nueva Ecija, and upon the abundant testimony adduced by him that his friends and acquaintances have invariably called and known him by said nickname. We have uniformly held in the cases of Molina vs. Nuesa (G.R. No. 30548, June 5, 1929, not reported); Alegre vs. Perey (G.R. No. 31017, March 26, 1929, not reported); Bayona vs. Siaotong (G.R. No. 36065, 56 Phil., 831); Marquez vs. Santiago (G.R. No. 36502, 57 Phil., 969); Fausto vs. Ramos (G.R. No. 42601, 61 Phil., 1035), and Sarenas vs. Generoso (61 Phil., 549); that votes cast with only the nickname or familiar name should not be counted in favor of any candidate because they do not sufficiently identify the person voted for.

(Cecilio vs. Tomacruz, 62 Phil. 689 [1935], Imperial, J.).

§5. Rule No. 9, of Section 149 of the Revised Election Code provides only for the determination of whether a ballot or vote shall or shall not be annulled on the ground that it is marked by means of a nickname. It says that it shall not be annulled on that ground unless the nickname, accompanied by the name or surname of the candidate, was used as a means to identify the voter. It does not say that when a nickname alone is written to identify the candidate voted for the vote is invalid. If it had been the intention of the Congress to annul such vote it would have preserved in the Revised Election Code the provision of a previous election law (Act No. 4203, section 16), which said: * * * Nor shall any vote be counted on which the candidate is designated by his nickname or alias, although mention thereof is made on his certificate of candidacy.

When the nickname of a candidate is a derivative or contraction of his Christian name or of his surname, and when he is popularly and commonly known by that nickname, a ballot where only such nickname appears is valid for such candidate if there is no other candidate with the same nickname for the same office. (Abrea vs. Lloren, 81 Phil. 809 [1948], Ozaeta, J.).

§6. The use of a nickname in a ballot, if accompanied by the name or surname of the candidate, does not annul such vote, except when it was used as a means to identify the voter. And if the family nickname of the candidate is written between his name and surname, that does not identify the voter.

When the nickname of a candidate is a derivative or contraction of his Christian name or his surname and if he is popularly and commonly known by that nickname, a ballot where only such nickname appears is valid for such candidate if there is no other candidate with the same nickname for the same office. (Illescas vs. Court of Appeals, 94 Phil. 215 [1953], Paras, C.J.).

§7. The use of the words “Kiko Padrieno Bobis, Sr.” in the space for mayor, will not invalidate a ballot as marked, and the vote shall be counted for Francisco Bobis, Sr., one of the candidates for that office, because “Kiko” is just a nickname for Francisco and “Padrieno” is but an expression of respect. (Arzaga vs. Bobis, Sr., 116 Phil. 702 [1962]; 6 SCRA 386 [1962], Reyes, J.B.L., J.).

§8. Where the word “Nubia”, which was the name or nickname of a person, was written in the first line for councilors, the vote cast is a stray vote, but the ballot is valid. (Pangontao vs. Alunan, 116 Phil. 1170 [1962]; 6 SCRA 853 [1962], Dizon, J.).

§9. Appellee was well known in the place where he was a candidate as “Dado Seno”, the first word being his nickname, and that nickname appears in his sample ballots. Ballots bearing the words “D. Seno” were held valid in his favor, because the word initial in Rule 16 can also apply to a nickname (Moya vs. Del Fierro, 69 Phil. 199.). (Gonzaga vs. Seno, 117 Phil. 751 [1963]; 7 SCRA 741 [1963], Bautista Angelo, J.).

§10. The Court of Appeals committed no error in counting as valid such votes as were cast in the name by which a candidate was known in the community, although such name was not given in his certificate of candidacy, where it appears that, in a meeting with the boards of election inspectors, his rivals had conceded in writing that votes cast for him in that name should be counted in his favor. (Corocoro vs. Bascara, 118 Phil. 1362 [1963]; 9 SCRA 519 [1963], Dizon J.).

§11. A ballot containing only the nickname of a candidate cannot be counted in his favor, unless accompanied by either his name or surname (Section 129 [9], Revised Election Code). (Felisilda vs. Achacoso, 118 Phil. 1366 [1963]; 9 SCRA 523 [1963], Barrera J.).

§12. A vote in the nickname alone, unaccompanied by the name or surname, of the candidate, is insufficient.

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(Gadon vs. Gadon, 118 Phil. 1502 [1963]; 9 SCRA 652 [1963], Makalintal, J.).

§13. The word “lowlow” was written before and after the name “Compendio”, who was voted for councilor. In the absence of evidence aliunde that these words are not a nickname or appellation of affection or friendship, and were intended to mark the ballot, its validity should be upheld. (Lloren vs. Court of Appeals, et al. 125 Phil. 529 [1967]; 19 SCRA 110 [1967], Reyes, J.B.L., J.).

§14. Ballots containing the nicknames “Oto”, “Titoy”, “Mano” and “Bobby” are not marked, there being no clear and convincing proof that they were used to identify the voters. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon, J.P., J.).

§15. For a ballot containing the nickname of a candidate to be counted in his favor, the nickname must be accompanied by either his name or surname, unlike a ballot which contains only the Christian name or surname of a candidate, which is considered valid if there is no candidate with the same name or surname for the same office. Ballots containing only the name “Bala” in the space for vice-mayor cannot be considered in favor of Braulio Lapasa, a candidate for vice-mayor, there being no proof that that is his nickname, and, even if it were his nickname, that fact would not justify the counting of said ballots in his favor. (Bisnar vs. Lapasa, 125 Phil. 932 [1967]; 19 SCRA 534 [1967], Makalintal, J.).

§16. The use of the nickname of a candidate, without being accompanied by his surname is not a valid vote. (Katigbak vs. Mendoza, 125 Phil. 943 [1967]; 19 SCRA 543 [1967], Regala, J.).

§17. The use of nicknames, accompanied by the surname of the candidate, is allowed. The prefix “Mr.” is permissible. If no evidence of an intent to identify the voter was presented, the ballot should not be annulled as a marked ballot. (Monteza vs. Court of Appeals, 20 SCRA 773 [1967], Reyes, J.B.L., J.).

§18. While the name written was “BLBIOY,” there was no doubt that the voter intended to vote for “BIBOY,” the name of which petitioner was popularly known and which nickname was duly registered in his certificate of candidacy. Hence, the respondent court’s decision as regards Exhibit “5” is reversed and the vote is counted for petitioner. (Bautista vs. Castro, 206 SCRA 305 [1992], Medialdea, J.).

§19. Even if VILLAROSA decided to use “JTV” as her nickname for purposes of the 11 May 1998 elections, one must never forget that she never used it as a nickname before she filed her certificate of candidacy. The nickname which the second paragraph of Section 74 of the Omnibus Election Code allows to be included in the certificate of candidacy is that “by which [the candidate] is generally or popularly known.” This clearly means the nickname by which one has been generally or popularly known BEFORE the filing of the certificate of candidacy, but NOT what the candidate wants to THEREAFTER use. By her own statement under oath in her affidavit of 16 April 1998, VILLAROSA solemnly declared that she was generally and popularly known in every barangay in Occidental Mindoro as “GIRLIE” BEFORE and AFTER she filed her certificate of candidacy. And, as asserted by her counsel during the oral argument on 15 August 2000, her other nickname before she filed her certificate of candidacy was “MRS. JTV,” not “JTV.”

Rule 13 of Section 211 of the Omnibus Election Code cannot be applied in favor of VILLAROSA. That rule allows the use of (a) a nickname and appellation of affection and friendship, provided that it is accompanied by the first name or surname of the candidate, unless the nickname or appellation is used to identify the voter; and (b) a nickname, which is not accompanied by the name or surname of a candidate, provided that it is the one by which the candidate is generally or popularly known in the locality. In both instances, the vote cast for the nickname is a valid vote for the candidate concerned. The “JTV” votes are unaccompanied by her first name or surname; and “JTV” is not, to repeat, a nickname by which VILLAROSA was generally and popularly known in

the Legislative District of Occidental Mindoro. The HRET then committed no error in not applying in favor of VILLAROSA Rule 13, Section 211 of the Omnibus Election Code. (Villarosa vs. House of Representatives Electoral Tribunal, 340 SCRA 396 [2000], Davide, Jr., C.J.).

§20. The printed name "NIKKI" does not show any intention on the part of the voters to identify or distinguish themselves. Therefore, the ballots are not considered marked. The name "NIKKI" only showed that it was the voters' intention to emphasize and stress their adulation for a senator with the name "NIKKI," rather than to identify themselves. The votes are stray for the senatorial candidates but will not invalidate the entire ballot. (Ong vs. Commission on Elections, 347 SCRA 681 [2000], Pardo, J.).

2.) Appellation of Affection or Friendship

§1. A ballot, containing the words "Mahal kong Lloren" on the space for mayor and "Ganon den Lapasa" in the space for vice-mayor is valid since those expressions are but appellations of friendship or affection for Isabelo Lloren and Braulio Lapasa, candidates for mayor and vice-mayor, respectively. (Bisnar vs. Lapasa, 125 Phil. 932 [1967]; 19 SCRA 534 [1967], Makalintal, J.).

§2. The use of the word "Minamahal" is merely an expression of affection which does not invalidate the ballot. (Monteza vs. Court of Appeals, 20 SCRA 773 [1967], Reyes, J.B.L., J.).

3.) Descriptio Personae

§1. The word "Bulag" written after the name "Kiliron" on the first space for councilors, was merely descriptio personae and does not invalidate the ballot (Cruz vs. Court of Appeals, L-14095, April 10, 1959). (Pangontao vs. Alunan, 116 Phil. 1170 [1962]; 6 SCRA 853 [1962], Dizon, J.).

§2. Where the name voted for Mayor was Delfin Antonio, and evidence aliunde submitted proved that petitioner was also known as Dr. Antonio, because when he began his medical practice he put up a drugstore and named it "Farmacia Antonio", it is held that petitioner is sufficiently identified and such vote is valid for petitioner. (Protacio vs. De Leon, 118 Phil. 1310 [1963]; 9 SCRA 472 [1963], Paredes, J.).

§3. Wherein in the line for Vice-Governor appear the words "Bomba Arienda", which is not exactly the name of any of the candidates for said position, it is the unanimous opinion of the members of the Court that the trial judge committed no error in counting the ballot as valid, " x x x" and the word "Bomba" evidently refers to the name by which the candidate Roger Arienda is popularly known as a radio-commentator. (Moraleja vs. Relova, 42 SCRA 10 [1971], Barredo, J.).

§4. Insertion of word "apulid" to describe the candidate does not annul the vote. "Apulid" is nothing more than a descriptio personae. (Lontoc vs. Pineda, 64 SCRA 681 [1975], Esquerra, J.).

Rule 14: Vote containing initials only or which is illegible or which does not sufficiently identify the candidate

§1. Any vote containing initials only or which is illegible or which does not sufficiently identify the candidate for whom it is intended shall be considered as a stray vote but shall not invalidate the whole ballot. (Section 211, Omnibus Election Code, par. 14).

§2. The ballots, bearing the Christian name only or the Christian name and the initial of the surname of one candidate, should be rejected as insufficient to identify the person voted for. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921), Villamor, J.).

§3. The fact that one of the names written in the ballot is illegible does not annul it as to those whose names are legible. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

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§4. The word “Colonel” alone, written in the space for Mayor does not identify, with sufficiency, the person voted for. Being general and not followed by the name or surname of respondent, it could refer to anybody who was a possessor of such rank. (Protacio vs. De Leon, 118 Phil. 1310 [1963]; 9 SCRA 472 [1963], Paredes, J.).

§5. Voting with initials only is not valid. (Conui-Omega vs. Samson, 118 Phil. 1333 [1963]; 9 SCRA 493 [1963], Bautista Angelo J.).

§6. Where the name written is illegible, it was considered as a stray vote for either party. (Gadon vs. Gadon, 118 Phil. 1502 [1963]; 9 SCRA 652 [1963], Makalintal, J.).

§7. The claim that the letter “A” in “A. Ramos” stands for “Ando”, the common contraction of the name “Fernando”, cannot be sustained. Section 149 (1) and (6) of the Revised Election Code speaks of initial of a name or surname, not of a nickname. As a matter of fact, certificates of candidacy cannot contain nicknames of candidates (Section 34, Revised Election Code). (Domingo vs. Ramos, 125 Phil. 153 [1966]; 17 SCRA 749 [1966], Regala, J.).

§8. An illegible vote is a stray vote (Rule 15, Sec. 149, Revised Election Code). (Trajano vs. Inciso, 125 Phil. 746 [1967]; 19 SCRA 340 [1967], Bengzon, J.P., J.).

§9. The rule is that an erroneous initial of the name which accompanies the correct surname of a candidate does not annul the vote in his favor (Sec. 149, paragraph 6, Revised Election Code). This is a valid vote for protestee-appellant.

Ballots with the words “Mede”, “Daling”, “Cardo”, “Rudy”, “Coper” and “Talay”, “Zenon Mones” and “Lowlow”, were considered valid. Said words were considered stray votes. (Bisnar vs. Lapasa, 125 Phil. 932 [1967]; 19 SCRA 534 [1967], Makalintal, J.).

§10. The vote having been cancelled, it may not be counted for any candidate, for such cancellation indicates desistance. Although an initial remained, the same could not be considered as a valid vote for a candidate, as ballots with initials only are considered not a valid vote. (Farin vs. Gonzales, 53 SCRA 237 [1973], Antonio, J.).

§11. “I. Rodriguez” considered by the lower court as “T. Rodriguez” appearing on the space for mayor, was correctly counted for private respondent, the “T.” being the initial of “Teodoro” and even if the “T” is really an “I.” the erroneous initial of the name which accompanies the correct surname will not annul the vote in favor of the candidate (Section 189, par. 8, Election Code of 1971). (Lontoc vs. Pineda, 64 SCRA 681 [1975], Esguerra, J.).

§12. Under this rule three kinds of votes are considered stray: (1) a vote containing initials only, (2) a vote which is illegible, and (3) a vote which does not sufficiently identify the candidate for whom it is intended. The only error of the HRET is its ruling that if the votes are in initials only, they are to be considered stray votes if they do not sufficiently identify the candidate for whom the votes are intended. The first category of stray votes under this rule is not to be qualified by the third category in the sense that votes in initials only may be counted for a candidate provided that the initials would sufficiently identify the candidate voted for. Such construction of the rule fails to give meaning to the disjunctive conjunction OR separating the first category from the second, and the second from the third. (Villarosa vs. The House of Representatives Electoral Tribunal, 340 SCRA 396 [2000], Davide, Jr., C.J.).

Rule 15: First name of a candidate is correctly written but with a different surname or vice versa

§1. If on the ballot is correctly written the first name of a candidate but with a different surname, or the surname of the candidate is correctly written but with different first name, the vote shall not be counted in favor of any

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candidate having such first name and/or surname but the ballot shall be considered valid for other candidates. (Section 211, Omnibus Election Code, par. 15).

§2. It was held that these votes could not be lawfully counted for the candidate Tomas F. de Guzman: Bernabe Guzman, Gregorio Guzman, Anastacio Guzman, Alejandro Guzman, and the like; nor is the case altered by the circumstance that there was only one candidate for the office of provincial governor bearing the name of Guzman. Where the ballot contains a complete and distinct name different from that of the candidate, the ballot cannot be counted for him although the surname be the same. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§3. Where the names written on the space for mayor and governor in most of the ballots involved were either "D.O. PLAZA", or "Monting Plaza", and one of the candidates for governor of the same province was Democrito O. Plaza, the conclusion drawn by the Court of Appeals that the voters who filled these ballots had in mind for mayor a person other than the one voted for Governor is clearly untenable, for, having written the same name in both spaces, the voter must be deemed to have intended the same individual, since identity of names necessarily connotes identity of persons, unless the contrary is satisfactorily established by competent evidence; and therefore said votes should be considered as stray votes for mayor. (Calo vs. Court of Appeals, 118 Phil. 1056 [1963]; 9 SCRA 222 [1963], Concepcion, J.).

§4. A ballot wherein "Manuel Roxas" and "Antonio Climaco" were voted for in the space for Senators cannot be considered marked ballots since there were senatorial candidates named Gerardo Roxas and Cesar Climaco. Caution against the disenfranchisement of electors lean more to the conclusion that the wrong given name, with correct surname, as written, was an innocent error. (Monteza vs. Court of Appeals, 20 SCRA 773 [1967], Reyes, J.B.L., J.).

Rule 16: Ballot written with crayon, lead pencil, or in ink, wholly or in part

§1. Any ballot written with crayon, lead pencil, or in ink, wholly or in part, shall be valid. (Section 211, Omnibus Election Code, par. 16).

§2. Ballots on which the names of the candidates are written with lead pencil or with ink are not invalidated for that reason, there being no prohibition in the Election Law against the use of such instruments in marking the ballot. The provision in the Election Law that each booth shall be furnished with an indelible pencil is not couched in such language as to make a ballot written with a lead pencil or with a pen invalid. (Manalo vs. Sevilla, 24 Phil. 609 [1913], Moreland, J.).

§3. The ballots written with lead pencil or ink, wholly or in part, will not be considered as marked for the purposes of Section 452 of the Election Law, in the absence of proof of fraudulent intent. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§4. Ballots written with indelible pencil are legal and valid. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§5. The use of lead pencil, indelible pencil, and pen in certain ballots is not of itself sufficient to nullify said ballots as marked, in the absence of other circumstances or evidence indicative that the voter's intention in availing himself of said writing instruments was to mark his ballot; because the point of the indelible pencil may break, and the voter has to resort to a lead pencil, and the latter may also break, necessitating the use by the voter of a pen, in view of the fact that the top of the writing desk or table in the election precincts is rough not being provided with a table-cover (Valenzuela vs. Carlos and Lopez de Jesus, supra; Sinogba vs. Reganit, G.R. No. 36244, 57 Phil. 955). (Villavert vs. Lim, 62 Phil. 178 [1935], Villa-Real, J.).

§6. The use of two or more kinds of writings shall be considered innocent and shall not invalidate the ballot unless it should appear that they have been deliberately put by the voter to serve as identification marks (Article 149 [18], Revised Election Code). (Sarmiento vs. Quemado, 115 Phil. 434 [1962]; 5 SCRA 438 [1962], Concepcion, J.).

Rule 17: Two or more candidates voted for in an office for which the law authorizes the election of one

§1. Where there are two or more candidates voted for in an office for which the law authorizes the election of only one, the vote shall not be counted in favor of any of them, but this shall not affect the validity of the other votes therein. (Section 211, Omnibus Election Code, par. 17).

§2. When there are two names voted for the same position for which the law authorizes the election of only one person, the ballot should not be counted in favor of any of those voted for. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§3. Only names written within the space (encasillado) set apart for a particular office can be counted as properly voted for that office; and this rule applies not only where there appears to have been an error in the placing of the name of a single candidate but to cases where there is a general misplacement of the entire series of names intended to be voted for the successive offices. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

Rule 18: The candidates voted for exceed the number of those to be elected

§1. If the candidates voted for exceed the number of those to be elected, the ballot is valid, but the votes shall be counted only in favor of the candidates whose names were firstly written by the voter within the spaces provided for said office in the ballot until the authorized number is covered. (Section 211, Omnibus Election Code, par. 18).

§2. When there is an excess of candidates voted for councilor, the ballot shall not be annulled, and unless there is evidence to the contrary, the names in excess are not considered as signatures or as identification marks. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

Rule 19: Vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he is not a candidate

§1. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot. (Section 211, Omnibus Election Code, par. 19).

§2. Writing in a particular space the name of a person who is not a candidate for said position, or failing to fill blank spaces, will not be considered as distinguishing marks. Neither is it considered as a distinguishing or identification mark if upon the ballot appear the name of a woman, names with pet names, nicknames, names of councilors with the same surnames, or different surnames with the same name, names with surnames of Chinese origin, name of priests, or contemptuous or exclamatory names. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§3. According to paragraph 3 of Section 19 of Act No. 3210, any ballot cast for a deceased or imaginary person or for a person for an office for which he has not filed a certificate of candidacy or when the circumstances show that the purpose of the voter is to identify the ballot, shall be illegal, null, and void. This nullity not only affects the person for whom the vote was cast, but the whole ballot. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§4. Under Section 452 of the Election Law, as amended by Act No. 3387, the circumstance that the voter votes for a person for a certain office, when such person is not a candidate for that office, does not invalidate the ballot; nor

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does this fact justify the rejection of the ballot as a marked ballot, with respect to the candidates whose names appear on the ballot in connection with other offices. (Aviado vs. Talens, 52 Phil. 665 [1929], Street, J.).

§5. When the name written in a ballot is complete and distinct from that of any of the candidates the ballot should be rejected. (Lucero vs. De Guzman, 45 Phil., 789). (Balon vs. Moreno, 57 Phil. 60 [1932], Vickers, J.).

§6. Where an intelligent voter wrote the names of the candidates for mayor on the space intended for senators, could it be considered as to identify the ballot? Under Section 149, paragraph 13 of the Revised Election Code, a vote cast in favor of a candidate for an office for which he did not present himself is void but will not invalidate the whole ballot. The vote is merely considered stray vote.

Where the ballots contain names of relatives of the candidates they shall only be considered as stray votes which do not invalidate the whole ballot as provided for in Section 149 paragraph 13 of the Revised Election Code. (Ferrer vs. De Alban, 101 Phil. 1018 [1957], Bautista Angelo, J.).

§7. The voter should write the name of the person he intends to vote for in the proper space indicated in the ballot for the office for which he is a candidate in order to avoid doubt or confusion as to the candidate he intends to vote for. The provision of the law on this point should be strictly followed so that a deviation therefrom would render the vote invalid and of no effect. x x x. The philosophy behind the rulings above adverted to is to make these legal provisions mandatory in order to avoid any confusion in the minds of the officials in charge of election as to the candidates actually voted for and stave off any scheming design to identify the vote of the elector thereby defeating secrecy of the ballot which is cardinal feature of our Election Law.

When the name of a candidate appears in two spaces of the ballot, it shall be counted in favor of the candidate for the office with respect to which he is a candidate. The vote for the office for which he is not a candidate shall be counted as stray. (Amurao vs. Calangi, 104 Phil. 347 [1958], Bautista Angelo, J.).

§8. Where the name of the candidate for the office of mayor was written on other spaces of the ballots pertaining to the offices of governor, senators, members of the provincial board, and councilors, said ballots were cast in contravention of Section 149, paragraph 13, of the Revised Election Code, which provides that “Any vote * * * in favor of a candidate for an office for which he did not present himself, shall be void and counted as stray.” (Reforma vs. De Luna, 104 Phil. 278 [1958], Bautista Angelo, J.).

§9. The writing of the name of a person who is not a candidate on a space intended for an office for which he is not a candidate, is only considered as stray vote and will not invalidate the whole ballot. (Jaucian vs. Callos, 104 Phil. 603 [1958], Bautista Angelo, J.).

§10. Under Rules 3 and 13, Section 149 of the Revised Election Code, any vote in favor of a candidate for an office for which he did not present himself shall be void and counted as a stray vote.

Misplaced votes are considered “stray and invalid for having been cast in violation of the provisions of Sections 135 and 149 (13) of the Revised Election Code.”

It is true that Rule 13, Section 149 of the Revised Election Code contemplates a vote for a non-candidate which was innocently placed by the voter in the belief that said person was a candidate, but if the voter writes the name of a person who is not a candidate three times on three spaces provided for different offices, such writing is deemed intentional as it serves no other purpose than to identify or mark the ballot. (Delgado vs. Tiu, et al., 105 Phil. 835 [1959], Bautista Angelo, J.).

§11. A ballot should be rejected where the manner in which the candidate’s name is written gives the impression of an intention to mark or identify the ballot.

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In the absence of evidence aliunde that names of non-candidates were intended for purposes of identification, the same shall be considered as stray votes which shall not invalidate the whole ballot.

It is a well-settled rule in election contest that the marks which shall be considered sufficient to invalidate the ballot are those which the voter himself deliberately placed on his ballot for the purpose of identifying it thereafter. (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428). In other words, a mark placed on the ballot by a person other than the voter himself does not invalidate the ballot as marked. (Tajanlangit vs. Cazeñas, 115 Phil. 564 [1962]; 5 SCRA 567 [1962], Bautista Angelo, J.).

§12. The writing of the name of a non-candidate for any office does not invalidate the ballot in the absence of evidence aliunde that said name was intended for purposes of identification. (Trajano vs. Inciso, 125 Phil. 746 [1967]; 19 SCRA 340 [1967], Bengzon, J.P., J.).

§13. A vote in favor of a candidate for an office for which he did not present himself is a stray vote. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon, J.P., J.).

§14. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for any office for which he did not present himself is void and is counted as a stray vote but it does not invalidate the whole ballot. (Katigbak vs. Mendoza, 125 Phil. 943 [1967]; 19 SCRA 543 [1967], Regala, J.).

§15. Likewise, the word “Sarangaya” written on the first line for senator simply gives rise to a stray vote for Gaudencio Sarangaya who was a candidate for member of the provincial board, but does not constitute a mark that would render the ballot invalid. (Garcia vs. Court of Appeals, 36 SCRA 582 [1970], Zaldivar, J.).

§16. The vote for a person to an office for which he is not a candidate is considered a stray vote. It should be noted that the voter wrote correctly in the proper spaces his choices for Governor, Vice-Governor and Members of the Provincial Board. The name of the candidate which is written in the space for Vice-Mayor is not preceded by the name of the office for which the said candidate was a candidate. The explicit provision of Section 189, paragraph 15, of Republic Act 6388 states that any vote in favor of a candidate for an office for which he did not present himself shall be void and counted as stray. (Farin vs. Gonzales, 53 SCRA 237 [1973], Antonio, J.).

§17. Vote for non-candidate will not annul the ballot. (Lontoc vs. Pineda, 64 SCRA 681 [1975], Esguerra, J.).

§18. Votes cast in favor of a non-candidate in view of his unlawful change in party affiliation cannot be counted in the canvass of election returns. (Ticzon vs. Commission on Elections, 103 SCRA 671 [1981], Aquino, J.).

§19. It has also been held that in the absence of evidence aliunde that names of non-candidates were intended for purposes of identification, the same shall be considered as stray votes which shall not invalidate the whole ballot. Further, it is a well-settled rule in election contests that the marks which shall be considered sufficient to invalidate the ballots are those which the voter himself deliberately placed on his ballot for the purpose of identifying it thereafter. (Geromo vs. Commission on Elections, 118 SCRA 165 [1982], Melencio-Herrera, J.).

§20. The above ballots must be appreciated in favor of Ong. There is no showing that the words/letters/names written therein have been intentionally placed to identify the voters. Notice that these markings are appellations or nicknames of famous showbiz personalities who might have been mistaken as candidates. At most, these may be considered as stray votes for the position where they were written, as provided in Sec. 211 (19), Omnibus Election Code, to wit: “19. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot.” (Ong vs. Commission on Elections, 347 SCRA 681 [2000], Pardo, J.).

Rule 20: Name of a candidate printed and pastedor affixed through any mechanical process

§1. Ballots containing the name of a candidate printed and pasted on a blank space of the ballot or affixed thereto through any mechanical process are totally null and void. (Section 211, Omnibus Election Code, par. 20).

§2. The ballots which bear the names of the candidates printed on slips of paper and pasted in any space of the ballot are considered as marked. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§3. A ballot, where the name of the candidate for vice-mayor appears printed on a sticker pasted on the space for vice-mayor is a marked ballot. It is void. (Nalog vs. De Guzman, 126 Phil. 701 [1967]; 20 SCRA 338 [1967], Concepcion, C. J.).

Rule 21: Circles, crosses or lines on the spaces

on which the voter has not voted

§1. Circles, crosses or lines put on the spaces on which the voter has not voted shall be considered as signs to indicate his desistance from voting and shall not invalidate the ballot. (Section 211, Omnibus Election Code, par. 21).

§2. Neither are the ballots invalidated by one or more circles placed in a space in which the voter failed to vote, for it is seen that his intention in placing said sign was to indicate his desistance. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§3. A ballot wherein five big circles appear on the first line for Senators was not considered marked, considering that the voter appears to be a poor writer who left the spaces blank except those for mayor and the first line for councilors. The disputed circles could have indicated the voter’s desistance to vote for other candidates (Gutierrez vs. Aquino, L-14252, February 28, 1959). (Lloren vs. Court of Appeals, et al., 125 Phil. 529 [1967]; 19 SCRA 110 [1967], Reyes, J.B.L., J.).

§4. The vote having been cancelled, it may not be counted for any candidate, for such cancellation indicates desistance. Although an initial remained, the same could not be considered as a valid vote for a candidate, as ballots with initials only are considered not a valid vote. (Farin vs. Gonzales, 53 SCRA 237 [1973], Antonio, J.).

§5. Crosses, lines and other marks will not invalidate the ballot. (Lontoc vs. Pineda, 64 SCRA 681 [1975], Esguerra, J.).

Rule 22: Marks not deliberately put by the voter to serve as

identification marks such as commas, dots, lines, or

hyphens, use of two or more kinds of writing,

or accidental flourishes, strokes, or strains

§1. Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the first name and surname of a candidate, or in other parts of the ballot, traces of the letter “T”, “J”, and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or accidental flourishes, strokes, or strains, shall not invalidate the ballot. (Section 211, Omnibus Election Code, par. 22).

§2. In order for a ballot to be considered marked, in the sense necessary to invalidate it, it must appear that the voter has designedly placed some superfluous sign or mark on the ballot which might serve to identify it thereafter. No ballot should be discarded as marked ballot unless its character as such is unmistakable. (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428 [1921], Street, J.).

§3. The distinguishing mark which the law forbids to be placed on the ballot is that which the elector may have placed with the intention of facilitating the means of identifying said ballot, for the purpose of defeating the secrecy of the suffrage which the law establishes. As this is a question of fact, it should be resolved with the ballot itself in view.

If the mark or sign appears to have been accidentally placed, and it shall be so presumed unless there is evidence to the contrary, such as a comma or a period, a dash or a hyphen, between the name and surname of a candidate, or in another part of the ballot, or if there are found traces of the letters “t” and “j” etc., or the first letter or syllable of a name, which the elector abandons in order to write another name; the perpendicular, parallel, circular, or sinuous lines which at times are found on the ballots, as if to indicate that the voter did not attempt to vote for the positions which appear to be so cancelled, these marks or signs will not be considered as distinguishing marks. Unless there is evidence to the contrary, the numbers which are written in order to indicate the number of persons voted for the position of councilor or the number of the date of the election such as “3,” “June 3, 1919,” will not be considered as distinguishing marks. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§4. In the course of the opinion numerous trivial defects are pointed out as not affecting the validity of ballots and the general doctrine reiterated that innocent and unintentional blemishes resulting from the lack of skill or ignorance of the person writing the ballot do not affect its validity. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§5. No ballot should be discarded as marked unless its character as such is unmistakable.

The contrast is always between marks that were apparently accidentally, carelessly, or innocently made, which do

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not invalidate the ballot, and marks designedly placed thereon by the voter with a view to possible future identification of the ballot, which do invalidate it. (Cacho vs. Abad, 62 Phil. 564 [1935], Malcolm, J.).

§6. Although in the contested ballots the voters exhibited lack of skill in calligraphy their intention to vote for the protestee was sufficiently manifest to justify the trial court's appreciation of votes in protestee's favor. (Corpuz vs. Ibay, 84 Phil. 184 [1949], Ozaeta, J.).

§7. The determinative factor in the nullification of ballots for being marked as following a design or pattern, is the existence of evidence aliunde tending to show the intention or purpose in the use of the contested manner or means of voting, which is to identify the ballots. (Gabuya vs. Dajao, 118 Phil. 1046 [1963]; 9 SCRA 213 [1963], Barrera, J.).

§8. The disenfranchisement of electors is not to be declared except upon the strongest evidence of an intention to sully the purity of suffrage (Gadon vs. Gadon, L-20015, November 30, 1963). No ballot should be rejected as marked unless clear and sufficient reasons justify that action (Amour vs. Calangi, L-12631, August 22, 1958); and the doubt must be resolved in favor of the legality of the ballot (Ferrer vs. Alban, 101 Phil. 1018; Pagonatao vs. Alunan, L-18926, November 30, 1962). (Lloren vs. Court of Appeals, et al., 125 Phil. 529 [1967]; 19 SCRA 110 [1967], Reyes, J.B.L., J.).

§9. A showing alone that several voters belonging to the same precinct have written the names of particular candidates in an identical manner cannot justify the inference that the voters had a plan to identify their votes. The determinative factor in the nullification of ballots for being marked, as following a design or pattern, is the existence of evidence aliunde tending to show the intention or purpose in the use of the contested manner or means of voting, which is to identify the ballot. Indeed, an identification mark cannot be presumed. No ballot should be declared void as marked, unless there are clear and sufficient reasons to justify such a conclusion. In the absence of evidence that the name of a candidate was incorrectly written designedly to identify the voter, the vote cannot be held invalid for said candidate. (Katigbak vs. Mendoza, 125 Phil. 943 [1967]; 19 SCRA 543 [1967], Regala, J.).

§10. No ballot should be discarded as marked unless its character as such is unmistakable. Distinction should be made between marks that were accidentally, carelessly or innocently made, and those designedly placed thereon by the voter with a view to possible identification of the ballot, which, therefore, invalidates it. In the absence of any circumstance showing that the intention of the voter to mark the ballot is unmistakable, or of any evidence aliunde to show that the words were deliberately written to identify the ballot, the ballot should not be discarded. (Farin vs. Gonzales, 53 SCRA 237 [1973], Antonio, J.).

1. Signs/Marks Not Considered as Marking

1. 1.) Use of Two or More Kinds of Writing

§1. Where it appears that the names of the candidates from the second space for members of the provincial board down to the space for councilors were written in capital letters while those of other candidates were written in small letters. Held: that under Section 149, paragraph 18 of the Revised Election Code, the use of two or more kinds of writing cannot have the effect of invalidating the ballot unless it clearly appears that they had been deliberately put by the voter to serve as identification mark. (Ferrer vs. De Alban, 101 Phil. 1018 [1957], Bautista Angelo, J.).

§2. The use of two kinds of writing appearing in the ballot is a good example of the exemption provided in paragraph 18, Section 149 of the Election Code, which provides that unless it should clearly appear that it has been deliberately put by the voter to serve as identification mark, the use of two or more kinds of writing shall be considered innocent and shall not invalidate the ballot. A ballot should be rejected where the manner in which the candidate's name is written gives the impression of an intention to mark or identify the ballot. (Tajanlangit vs. Cazeñas, 115 Phil. 564 [1962]; 5 SCRA 567 [1962], Bautista Angelo, J.).

§3. The use of two kinds of writings written by the same hand shall not invalidate the ballot. (Conui-Omega vs. Samson, 118 Phil. 1333 [1963]; 9 SCRA 493 [1963], Bautista Angelo, J.).

§4. The use of two or more kinds of writing in the ballot, such as ordinary script and block letters, does not invalidate the ballot or render it a marked ballot unless it should clearly appear that they have been deliberately used by the voter to serve as identification marks. (Trajano vs. Inciso, 125 Phil. 746 [1967]; 19 SCRA 340 [1967], Bengzon, J.P., J.).

§5. A ballot with votes written in ordinary script and others in block letters was considered valid. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon, J.P., J).

§6. The use of two or more kinds of writing on the ballot, in the absence of evidence that the voter had deliberately done this to identify his ballot, does not invalidate it. (Juliano vs. Court of Appeals, 20 SCRA 808 [1967], Zaldivar, J.).

§7. We already held a long time ago (Ferrer vs. Alban, 101 Philippine Reports 1018, G.R. No. L-12083, July 31, 1957) that the use of two or more kinds of writing cannot have the effect of invalidating the ballot unless it clearly appears that they had been deliberately put by the voter to serve as identification mark. (Lontoc vs. Pineda, 64 SCRA 681 [1975], Esquerra, J.).

§8. The rule is in favor of the validity of the ballot, not otherwise. The term "unless" imports an exception rather than the general rule. This was enunciated in Tajanlangit vs. Cazeñas, 5 SCRA 567 (1962) where we ruled that: "x x x. The use of two kinds of writing appearing in this ballot is a good example of the exception provided for in paragraph 18, Section 149 of the Revised Election Code, which provides that unless it should clearly appear that it has been deliberately put by the voter to serve as identification mark, the use of two or more kinds of writing shall

be considered innocent and shall not invalidate the ballot.”

The appearance of print and script writings in a single ballot does not necessarily imply that two persons wrote the ballot. The strokes of print and script handwriting would naturally differ but would not automatically mean that two persons prepared the same. A visual examination of the ballots belies the claim that these ballots were prepared by two persons. In the absence of any deliberate intention to put an identification mark, the ballots must not be rejected. (Ong vs. Commission on Elections, 347 SCRA 681 [2000], Pardo, J.).

1.2.) Writing in Capital Letters

§1. While it is true that some of the names and surnames are written in capital letters in some of the ballots, it is evident that the voter desired to attain greater clearness. As it does not clearly and positively appear that said manner of writing was adopted by way of identification, said ballots must be deemed valid. (Yalung vs. Atienza, 52 Phil. 781 [1929], Villa-Real, J.).

§2. The form of the letters in which certain names of the candidates are written x x x which is similar to the printed form and different from the ordinary form of the letters in which the other names are written – does not constitute distinguishing mark, there being no indication either in the ballots themselves or in the testimony that the adoption of the form of printed letters in writing certain names is with a view to marking said ballots for purposes of identification.

A slight variation in the formation of the capital letter may be due to the writer’s caprice of the moment, particularly if he writes well. (Villavert vs. Lim, 62 Phil. 178 [1935], Villa-Real, J.).

§3. In the absence of evidence showing that the writing of the names of the candidates for mayor and vice-mayor in capital letters slightly bigger than the capital letters with which the names of the councilors were written was deliberately done to identify the ballot, it cannot be considered marked. (Juliano vs. Court of Appeals, 20 SCRA 808 [1967], Zaldivar, J.).

1.3.) Use of Block Letters

§1. A ballot, wherein all the names voted for were written in very large block letters, was not considered marked. The appearance of the ballot did not indicate any irregularity. The size of the writing, maintained uniformly throughout, simply conforms to the space provided for in the ballot itself. The writing could be the voter’s habitual one. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon, J.P., J.).

1.4.) Writing of Numbers

§1. Numbers “3”, ”4” and “5” in the corresponding spaces for senators, were crossed out and the numerals “4”, “5” and “6”, respectively, were written after the aforesaid numbers, before filling the names of candidates voted

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for. Held: The ballot is not marked. The poor penmanship of the voter clearly indicates his humble condition and suggests strongly that he may have deemed it necessary to reproduce the numbers appearing in the tickets or sample ballots which are commonly used in rural areas. (Sarmiento vs. Quemado, 115 Phil. 434 [1962]; 5 SCRA 438 [1962], Concepcion, J.).

§2. Where a number written on the reverse side of a ballot does not appear to have been written by the voter himself, the ballot is valid. (Pangontao vs. Alunan, 116 Phil. 1170 [1962]; 6 SCRA 853 [1962], Dizon, J.)

1.5.) Erasures and Cancellations

§1. Printed numbers in spaces for senators crossed out and other numbers handwritten by voter in place thereof, ballot not marked. (Sarmiento vs. Quemado, supra).

§2. Certain erasures and cancellation, which are plainly corrections of errors, not evidencing any purpose of marking, did not invalidate the ballots. (Silverio vs. Castro, supra).

1.6.) Parentheses

§1. A ballot wherein the name “Espiritu” appears on the first and last spaces for councilors and on each of the spaces in-between are two curved lines resembling close parentheses is not a marked ballot. (Katigbak vs. Mendoza, 125 Phil. 943 [1967]; 19 SCRA 543 [1967], Regala, J.).

1.7.) Blemishes, Smudges and Fingerprints

§1. The big traces of indelible pencils generally used in election precincts and the impressions of the fingers of the voter in handling his ballot are not considered distinguishing marks. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§2. When the smears on ballots appear to have been made by the voter’s fingers, the ballot is valid. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§3. Ballots with smudges, not fingerprints, and ballots with fingerprints, which were not proven to be the fingerprints of the voters who filled them, cannot be considered marked. The general appearance of the ballots suggests that the alleged marks were, probably, accidental in nature. (Nalog vs. De Guzman, 126 Phil. 701 [1967]; 20 SCRA 338 [1967], Concepcion, C. J.).

1.8.) Signs Indicative of Desistance

a.) Blank Spaces

§1. Desistance from completely filling the spaces in the ballot does not render the ballot marked, where there is no evidence aliunde of a purpose to identify the ballots through said means, and where said purpose is not discernible upon the face of said ballots. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon, J.P., J.).

b.) Erasures

§1. The vote having been cancelled, it may not be counted for any candidate, for such cancellation indicates desistance. Although an initial remained, the same could not be considered as a valid vote for a candidate, as ballots with initials only are considered not a valid vote. (Farin vs. Gonzales, 53 SCRA 237 [1973], Antonio, J.).

c.) Words

§1. In Exhibit “BB” of Precinct 28A, 28A1, the term “None that I know” written on the space for party list does not render the ballot marked. The term simply implies that the voter did not know any candidate or did not wish to vote for any candidate to the position. Thus, the Comelec correctly ruled that the ballot is valid for Ong. (Ong vs. Commission on Elections, 347 SCRA 681 [2000], Pardo, J.).

d.) Parallel lines

§1. Two short parallel lines on spaces where the voter did not vote merely indicate the voter’s desistance from voting and should not invalidate the ballot. (Katigbak vs. Mendoza, 125 Phil. 943 [1967]; 19 SCRA 543 [1967], Regala, J.).

e.) Diagonal lines

§1. A ballot with a diagonal line drawn across the ballot, from the third to the last space for Senators, is valid, considering that the first two spaces are properly filled. The voter must have drawn the line to indicate his desistance from voting for other senatorial candidates. (Bisnar vs. Lapasa, 125 Phil. 932 [1967]; 19 SCRA 534 [1967], Makalintal, J.).

1.9.) Other signs/marks not considered as identification or marking

§1. The use of surplusage in the filling out of a ballot by the voter will not invalidate the ballot as a marked ballot,

when it appears that such surplusage was probably due merely to lack of skill on the part of the voter. Thus, a vote for a candidate for the office of senator is good although the voter unnecessarily places the word "Senator" before the name of the candidate. (Aviado vs. Talens, 52 Phil. 665 [1929), Street, J.).

§2. The voters had written "Borja Borja" in the second space for senators, "Pajo Pajo" in the first space for senators in another ballot, and ""Eca Pilaez Pilaez" in the last space for senators in another ballot. Held: The three ballots are not marked, because there is no evidence aliunde of the intent to identify the ballots and such intent is not manifest on the face thereof. (Sarmiento vs. Quemado, 115 Phil. 434 [1962]; 5 SCRA 438 [1962], Concepcion, J.).

§3. In the absence of any evidence aliunde showing that the ballot was purposely marked, the writing of "Perez Bungcad" on one of the spaces for councilors, where there is a candidate for councilor by the surname of "Bungcad", should not be considered as mark. Likewise, in the absence of such evidence as to the meaning of "Cabus Cabus", the ballot should not be considered as marked merely because "R. Perez Cabus Cabus" appears on one of the spaces for senators. x x x The words "Casoy Guzman", written on a space for councilors, the words "Dreo Boro Sosoc", written on the third space for councilors in another ballot, and the words "Bienes I Love y Darling", written on the fourth space for councilors on the ballot, will not invalidate the ballots as marked in the absence of evidence aliunde to show the intended meaning of the word "Casoy" or the words "Dreo Boro Sosoc". The phrase " I Love y Darling" merely expresses preference for Bienes, a candidate, and does not invalidate the ballot (Delgado vs. Tui, L-14143, May 27, 1959). (Arzaga vs. Bobis, Sr., 116 Phil. 702 [1962]; 6 SCRA 386 [1962], Reyes, J.B.L., J.).

§4. The following circumstances of the ballots involved in the case at bar do not render them marked ballots: (1) Writing the word "vocales" on the second space thereof, because one of the candidates for members of the provincial board was "Morales" and the penmanship of the voter is so poor that he could have actually intended to write "Morales" and not "vocales", and, moreover, this word is the Spanish term for members of the provincial board; (2) Writing on the space for vice mayor the word "Conbaburd," in the absence of evidence aliunde; (3) Writing "E. CHEZ" on the second space for councilors, in block letters, like the name "PEREZ" appearing in the next lower space, unlike other names on the ballot, which were written in ordinary script, especially where there is a candidate for councilor by the name of Sanchez, and the voter appears to be of the unenlightened type; (3) Writing "Badong Calo-Nanong"; the last term "Nanong" not being sufficing as identification mark; (4) Writing the words "That's all" in the third space for councilors, after filling the previous spaces; (5) Writing on the first space for Senators the words "Grand Allaian", instead of writing the names of persons on the spaces for Senators; (6) Writing on the third space for councilors the word "Air" or "Ais", considering that this word may be idem sonans with "Asis", the surname of a candidate for councilor; (7) Writing "sun B sanci" on the space for vice mayor, "di palsa" on the space for Provincial Governor, and "Ba Calo" on the space for mayor, considering the poor penmanship and that there was a candidate surnamed Sanchez; (8) Writing "Martha" on the last space for councilor, where the intent to mark is not clear; (9) Writing "Pasing" on the last space for councilor, without evidence aliunde on the intent to identify the ballot; (10) Writing "D.O. Plaza ako" on the space for Provincial Governor, the term "ako" being merely to stress the voter's desire; (11) Writing the ballot in ink (par. 10, Sec. 149, Revised Election Code). (Calo vs. Court of Appeals, 118 Phil. 1056 [1963]; 9 SCRA 222 [1963], Concepcion, J.).

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§5. The following circumstances were considered in holding the respective ballots as not marked and therefore valid: (1) indentions not sufficient to identify the voters; (2) writing the word “sorry” after the name of a candidate, as an expression of regret for having committed a mistake; (3) writing the words “Street”, or “Grand Alliance”, or “and party”; (4) canceling names and rewriting them to conform with a sample ballot; (5) writing a candidate’s name to occupy all three spaces for members of the Provincial Board; (6) writing the name of a particular candidate for councilor as the last councilor voted for in each of several ballots; (7) misspelling the name of a candidate; (8) writing the expression “carancho” before the name of a candidate, as an appellation of affection or friendship; (9) numerals on the back of a ballot written by the board of inspectors as a tally guide; (10) illegible writings, being imprints of other names written on the ballot caused by the folding of the same; (11) canceling the name of a candidate in a wrong place and putting it in the right place; (12) different ways of writing the letter “i” in several ballots caused by individual mannerisms of voters; (13) writing circles and crosses signifying desistance of voter to write any other name; and (14) affixing the nickname of a candidate. (Protacio vs. De Leon, 118 Phil. 1310 [1963]; 9 SCRA 472 [1963], Paredes, J.).

§6. Under the following circumstances the ballots concerned were not considered marked: (1) innocent erasures in spaces for mayor and vice-mayor; (2) corrected name written over cancelled one on space for councilor although he is a candidate for mayor; (3) mistake in writing names of local candidates in spaces for senators and writing again the names of his candidates for councilors in the proper spaces; (4) misspelling innocently the name of a candidate; (5) an attempt to write the name of a candidate, not constituting a distinguishing mark; (6) an unintentional or accidental unintelligible mark appearing below the printed word “Official Ballot”; (7) writing the words “Sampion” after the name of a candidate and “Mabohay” after another candidate as an expression of affection and friendship; (8) writing the figure “1” accidentally; (9) writing the names of prominent politicians not candidates, in the absence of clear evidence that they were used as identifying marks; (10) unintelligible words like “Mcino”, “Basual”, and “Oray” on spaces for candidates, in the absence of evidence of intent to identify; (11) writing the word “Afag” before the name of a candidate, referring to an organization headed by said candidate; (12) accidental placing of a stain; (13) voting names of non-candidates, in the absence of evidence that these names were used as identifying marks; (14) writing the word “ala”, the first syllable of a name which the voter does not continue; (15) writing the word “Oki”, indicating the voter’s desistance from voting further; (16) writing the words “Botax”, “Poyon”, and “Balas” in spaces for candidates, in the absence of evidence of intent to identify. (Conui-Omega vs. Samson, 118 Phil. 1333 [1963]; 9 SCRA 493 [1963], Bautista Angelo J.).

§7. The following expressions set forth opposite the ballots concerned were not considered written to identify the voter: “Madalang”, “Saiyo lamang”, “Sa Pepe Kit”, “Ponsing”, and “Piniong (or penyong) Alcantara”. (Ferraren vs. Añonuevo, 118 Phil. 1428 [1963]; 9 SCRA 583 [1963], Regala, J.).

§8. The following circumstances were considered innocent mistakes and not sufficient to render the ballots marked: Writing the name “Pajo”, a candidate for Senator, at a wrong place, below the last line for councilors; writing “Eco Baranda” the names of two candidates, one for Senator and the other for Provincial Board member, on one line; a scrawl of an imperfect figure 8 before the name written for mayor, which may have resulted from the voter’s inexperience in writing; desisting from filling all the spaces on the ballot; writing the name “Gaac”, a candidate for Vice-Mayor, on one of the spaces for Senators; writing prefixes to the name of the candidate like “Manong”, “Nong”, “Ping”, “Don”, “Tio”, where there is no discernible pattern to the use of such prefixes which would reveal an intention to mark the ballots; writing the prefixes “manoy”, “mandoy” and “pare enoy” before the names voted for various positions, where the prefixes are explained to be colloquial expressions in

Visayan which connote respect, equivalent to the Tagalog “ka” or the English “Mr.”, and, writing the prefix “Dr.” before names of candidates who are either a Doctor of Medicine or a Doctor of Pharmacy. (Gadon vs. Gadon, 118 Phil. 1502 [1963]; 9 SCRA 652 [1963], Makalintal, J.).

§9. A ballot wherein the name “I. Lloren Biloy Lloren” in the space for mayor was written is valid. The voter merely emphasized his intention to vote for Isabelo Lloren for mayor. (Ibid.).

§10. A ballot containing the word “opalao” written on space 6 for councilors was considered valid. There was no evidence that the word was used to identify the ballot. (Bisnar vs. Lapasa, 125 Phil. 932 [1967]; 19 SCRA 534 [1967], Makalintal, J.).

§11. Twelve ballots wherein the same candidates for lieutenant governor, board member and mayor were voted for, were not considered marked, as that circumstance does not sufficiently indicate a pattern of marking. The use of initials, instead of given names, in the space for councilors in certain ballots was allowed in the absence of evidence aliunde that this was done for identification purposes. (Monteza vs. Court of Appeals, 20 SCRA 773 [1967], Reyes, J.B.L., J.).

2. Signs/Marks Considered as Marking

2.1.) Irrelevant, Impertinent or Derogatory Remarks

§1. A ballot upon which the voter appears to have intentionally written an irrelevant or impertinent phrase is properly rejected as a marked ballot; but the general rule is that no ballot should be considered to be marked because of the fact that it contains flourishes, touches, or marks innocently or unconsciously placed by the voter upon the ballot in the course of preparing the same. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§2. When patently irrelevant or impertinent words appear to have been written on the ballot for no other purpose than to identify the votes, such ballot should be rejected.

Although in contested ballots the voters exhibited lack of skill in calligraphy, their intention to vote for the protestee was sufficiently manifest to justify the trial court’s appreciation of said votes in protestee’s favor. (Corpuz vs. Ibay, 84 Phil. 184 [1949], Ozaeta, J.).

§3. The writing of the capital letters “MBDC” on third space for Senators does not come under the provisions of Section 149, paragraphs 15 and 18, of the Revised Election Code. It is clearly for identification purposes, and the ballot should be rejected.

The writing of impertinent expressions on the ballot invalidates it. The following are impertinent expressions if written on the ballot: “Daguit (to swoop) written on the last space for councilors; “Wala na cag walo rine (you do not have 8 here) written on one of the spaces for councilors; “Datu Bulac” (blind datu); Castillo walamapatay

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(Castillo was not killed) written on one of the spaces for Senators; “Datu Bilat”, “bilat” meaning in Visayan (the genitals of a woman); “Carlos Virgo 17 Lt Inf”. (Lucero vs. De Guzman, 45 Phil., 852; Fausto vs. Villarta, 53 Phil., 166; Villavert vs. Lim, 62 Phil., 178; Cecilio vs. Tomacruz, 62 Phil., 689, 710). (Caraecle vs. Court of Appeals, 94 Phil. 308 [1954], Padilla, J.).

§4. Where it appears that the capital letter “A” was written on the first space for councilors in each of them it was held that the use of that letter by several electors could not be innocent but must have been in pursuance of a previous agreement to identify these ballots.

Where the ballot contains an impertinent expression such as “Manila Rum” it is sufficient to nullify the ballot for it serves no other purpose than to identify the voter.

Where the ballot contains insulting words such as “witch” or “gambler” the ballot should be rejected. (Ferrer vs. De Alban, 101 Phil. 1018 [1957], Bautista Angelo, J.).

§5. The use by the voter of indecent words after the name of a candidate invalidates the ballot as marked.

The appearance of three ballots from the same precinct, having in connection with a particular candidate, the same expression “lagare”, which is an impertinent and derogatory word meaning a person who would want to profit or get from both sides, strongly implies its use as a mark and therefore invalidates the ballots. (Arzaga vs. Bobis, Sr., 116 Phil. 702 [1962]; 6 SCRA 386 [1962], Reyes, J.B.L., J.).

§6. Considering the evidence aliunde, the following expressions or remarks opposite the spaces for candidates were considered written for the purpose of identification and therefore the ballots affected were held invalid for being marked ballots: “Nako si Kristo”, “Agdan Pook”, “Tres Lease”, “A.P.O.”, “Marcos Maligalig”, “Joe”, “D. Florida”. “Pira”, “V. Rayos”, and “Epolod”. (Ferraren vs. Añonuevo, 118 Phil. 1428 [1963]; 9 SCRA 583 [1963], Regala, J.).

§7. The following circumstances were considered in declaring the ballots affected as marked and invalid. The unexplained presence of the letters “O.P.” after the name of one of those voted for councilors, quite prominent letters written with a remarkably good hand; the word “Daldo” written on the blank space opposite the word “councilors”, with no reasonable explanation for its presence; an impertinent unnecessary and identifying expression below the last line for councilors, namely: “My vote is heartily dedicated”; and, writing a big figure “O”, not the initial of the candidate. (Gadon vs. Gadon, 118 Phil. 1502 [1963]; 9 SCRA 652 [1963], Makalintal, J.).

§8. The writing of the word “engat” in a ballot in a way different from the rest of the writings on the same ballot, cannot be regarded as innocent or unintentional. It is rather a clear indication that the voter intended to identify his ballot. For the same reason, the irrelevant word “pansay” appearing in a place other than the proper space for voting cannot be considered as done accidentally or innocently (Conui-Omega vs. Samson, L-21010, November 11, 1963).

The words “seniorito” without accompanying the name of any candidate, “shot” written downwards on the left margin opposite the voted candidate for councilors, and the statement “binabati kong vice-mayor ug Beloy

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mayor", written on the right margin, are neither appellations of friendship nor nicknames of candidates. Thus, they could not have been intended for any purpose other than to identify the ballots. The appearance of such words as "engat" or "ingat" or "ensat" or "Menong" or "Minong" or "sorab," or "curab" or the name "Mines," "Menis" or "Menes" in practically the same spaces in several sets of ballots in the same precincts, is a clear and convincing proof of a design to identify them (Delgado vs. Tiu, L-14143, May 17, 1959). Where in three ballots, capital letters "AAD" were written uniformly on line 1 for Senators and there is no showing that these were the initials of any candidate, the appearance of these initials in three ballots in the same precinct, on the same space, cannot be merely coincidental, but intended to mark the ballots. Irrelevant expressions, such as "have a good time Mr. Pacito," "forget me not" and "Tse na lang" nullify the ballots on which they were written. (Lloren vs. Court of Appeals, 125 Phil. 529 [1967]; 19 SCRA 110 [1967], Reyes, J.B.L., J.).

§9. Ballots containing the words "Egg", "Toli", "Pudpud", "Salokot", "Towang" and "C Vote" are obviously marked ballots. Also considered marked was a ballot containing the figure "5", which was not an accidental stroke, and the figure "7" before the name "Sarmiento" in the space for governor. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon, J.P., J.).

§10. Ballots containing the words "engat" (meaning, luminous in Visayan), "boy", "Have a good time Mr. Pacito", "Forget me not," "Medi Hingasoko Jabines," "Kowacnit Sigordo," "Tse na lang" and "Ci na lang" which are irrelevant and impertinent expressions, are marked ballots (Lloren vs. Abrea, L-25907, January 25, 1967).

A ballot containing the word "Señorito" was considered marked. A ballot where the initial "R.L." appears below the seal of the Republic of the Philippines and the word "Sorab" on the space for governor is marked. Ballots with the words "Menong" or "Minong" are marked.

A ballot with the initial "A.A.D." on space 1 for Senators and a ballot containing the name "C. Pausto" written before the name "Cuenco" and the name "Pausto" written before the name "De la Rosa" in the space for Senators are marked ballots. (Bisnar vs. Lapasa, 125 Phil. 932 [1967]; 19 SCRA 534 [1967], Makalintal, J.).

§11. Section 135 of the Revised Election Code, as amended by R.A. 599 makes it 'unlawful to use . . . any . . . means to identify the vote of the voter.' Where in a ballot is written "Pasensya na ang hindi kasama" the same is an identifying mark which invalidates the ballot. But the words "Casas-Garapon" written in the space for councilors where the registered name of a candidate for councilor is Casas will not invalidate the ballot as the word "Garapon" appears to be no more than a descriptio personae. The same is also true where the words written for councilor are "Bomba Arienda" since the word "Bomba" evidently refers to candidate Roger Arienda who is popularly known as a radio-commentator. (Moraleja vs. Relova, 42 SCRA 10 [1971], Barredo, J.).

§12. There are in the above ballots distinct initials and words such as "DLR," "DOLLIN," "DOLLINS," "GINA," "EVA," "SOSANG TORIS," "SABANG BULAC," "CORY," "GREECE," "GRACES," "LOS," "LUZ," "BONG," "ELIN," "ROSE," "ALONG RARO," "BONOO," "ALONG" "PONBI," "ROVEN GATA,"

"NORMAN," "RIC," "VIA," "AMEN," "NANIG," "SABAS," "MIMIG" and "LOLOY TORRES" written on spaces for different positions. These writings can only be construed as an intention to mark and identify the ballots since these words were repeatedly written and in other instances, two or three of these words were written on a single ballot. These words are impertinent, irrelevant, unnecessary and clearly show the voter's purpose to identify the ballots or voters. As held in Gadon vs. Gadon, the unexplained presence of prominent letters and words written with remarkably good hand marked the ballots and must be considered invalid. (Ong vs. Commission on Elections, 347 SCRA 681 [2000], Pardo, J.).

2.2.) Signed Ballots

§1. When the ballot is signed by a voter, as is the case with the ballot G-25 of the first precinct of the municipality of San Pablo which is signed "A. Dizon," and the ballot "T," signed on the back "Santiago Lasaga," of the fourth precinct of the municipality of Santa Cruz, it should be rejected, because the intention of the voter to identify his ballot is evident. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§2. Where the signature of the voter as found in the registry list is written on the ballot, that invalidates it. (Corpuz vs. Ibay, 84 Phil. 184 [1949], Ozaeta, J.).

§3. It is well-settled rule that a ballot signed by the voter himself is a marked ballot. (Ferrer vs. De Alban, 101 Phil. 1018 [1957], Bautista Angelo, J.).

2.3.) Indented name

§1. Where in each of the four ballots cast in one precinct, the name of one candidate for senator is clearly and markedly indented to the right as to render the ballot easily distinguishable, the ballots should be annulled. (Sarmiento vs. Quemado, 115 Phil. 434 [1962]; 5 SCRA 438 [1962], Concepcion, J.).

2.4.) Placing of "x" Mark

§1. A ballot with a small "x" written to the left of the name "Silverio" and another small "x" written after said name, towards the end of the line, was considered marked. The ballot was otherwise neat and filled only with a few names. But a ballot with a letter "x" before the name "Peñanueva" for councilor, was held valid, it appearing that it was meant to be an initial, as shown by the use of initials throughout the other seven names voted for councilor. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon, J.P., J.).

2.5.) Design/pattern for identification

§1. Where all the 170 ballots in dispute were voted for in the following manner: The name of the candidate first voted for councilor was written with his surname prefixed by a nickname or what appears to be a derivative or contraction of his first or Christian name, while the rest of the candidates were voted for by their surnames and initials of their respective first or Christian names, and there is evidence aliunde that such manner of voting was planned to identify the votes of certain voters or groups of voters, it is held that said ballots are marked ballots and invalid.

The determinative factor in the nullification of ballots for being marked as following a design or pattern, is the existence of evidence aliunde tending to show the intention or purpose in the use of the contested manner or means of voting, which is to identify the ballots. (Gabuya vs. Dajao, 118 Phil. 1046 [1963]; 9 SCRA 213 [1963], Barrera, J.)

§2. The fact that the nine (9) ballots all came from one precinct taken together with the circumstances that the initials were written preceding the printed numbers on the ballots all of which correspond to the lines for councilor, impliedly suggests that the marking was a preconceived pattern designedly placed on the ballot to identify it there after. (Inting vs. Clarin, 21 SCRA 1421 [1967], Angeles, J.).

2.6.) Other signs/marks considered as marking

§1. The words “Bienes-OPA”, with the letter OPA written in capitals at the bottom of the ballot and away from the rest of the names of the persons voted for, which are all in current script, invalidates the ballot as marked, in the absence of evidence aliunde as to the meaning of the words in question, and in the absence of any showing that the letters were the initials of a candidate. (Arzaga vs. Bobis, Sr., 116 Phil. 702 [1962]; 6 SCRA 386 [1962], Reyes, J.B.L., J.).

§2. Where in several ballots the last person voted for councilor is “Atty. Aquino” and it appears that Atty. Aquino was a nephew of the protestee and one of the lawyers who represented him in the election protest, the ballots, being marked, should be considered as invalid. (Pangontao vs. Alunan, 116 Phil. 1170 [1962]; 6 SCRA 853 [1962], Dizon, J.).

§3. The following circumstances of the ballots involved in the case at bar render them marked ballots: (1) Pasted stickers bearing the printed name of persons; (2) “Plaza” was written successively in the first four (4) spaces for Senators; (3) “D.O. Plaza” was written on the eight (8) spaces for senators apart from the space for Governor; (4) Written on the fourth space for Senators the words “Mga lider sopsop elang tian guipaboro”. (Calo vs. Court of Appeals, 118 Phil. 1056 [1963]; 9 SCRA 222 [1963], Concepcion, J.).

§4. The following circumstances were considered in holding the respective ballots as marked and therefore invalid: (1) The inclusion of the names of two well known movie stars who were not candidates; (2) writing the name of a registered voter not a candidate where the handwriting on the ballot is identical to the signature on the

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registered voter's list in the precinct; (3) the words "Minte" and "Kabayan" in block or printed form, both enclosed in parenthesis, written after two names in the second and seventh spaces for councilors; (4) the placing, without explanation, of initials after the corrected names of candidates for mayor and vice-mayor; (5) the writing of the phrase "Liberal Party" eleven times on the space for vice-governor, on all the spaces for board members and from the 2nd to the 8th space for councilors, and the word "Factor" on the first space for councilor; (6) writing the word "saging" (banana), an irrelevant epithet, after the name of a candidate for councilor; (7) placing a big letter "X" immediately after the name of a candidate for councilor; (8) writing the name of "Pelaez" a national political figure and not a candidate for councilor on the fourth space for councilors and placing a big "X" immediately after it; (9) writing the name "Sony Boy" on the 8th space for councilors, which is not related to the name of any candidate for councilor; (10) writing a big "M" in block or printed letter on the eight space for councilors, with the remaining spaces in blank; and (11) printing a big "M" after "R. Rodriguez" on the sixth space for senators conspicuously and distinctly different from all the letter Ms in the ballot. (Protacio vs. De Leon, 118 Phil. 1310 [1963]; 9 SCRA 472 [1963], Paredes, J.).

§5. Under the following circumstances, the ballots concerned were considered marked and invalid: (1) the capital letter "N" opposite the printed words for Senators; (2) writing the word "Sinador" in a place far and separate from the proper spaces for candidates; (3) writing the words "Kid Morjon" or "Dracula, good for hanging day" as impertinent, irrelevant and unnecessary expressions; (4) placing fingerprint of voter without reason. (Conui-Omega vs. Samson, 118 Phil. 1333 [1963]; 9 SCRA 493 [1963], Bautista Angelo J.).

§6. The following circumstances were considered in declaring the ballots affected as marked and invalid. The unexplained presence of the letters "O.P." after the name of one of those voted for councilors, quite prominent letters written with a remarkably good hand; the word "Daldo" written on the blank space opposite the word "councilors", with no reasonable explanation for its presence; an impertinent unnecessary and identifying expression below the last line for councilors, namely: "My vote is heartily dedicated"; and, writing a big figure "O", not the initial of the candidate. (Gadon vs. Gadon, 118 Phil. 1502 [1963]; 9 SCRA 652 [1963], Makalintal, J.).

§7. A ballot wherein the name "Montego" was written on the space for mayor, with some illegible strokes underneath, and wherein all other spaces were unfilled, except on the sixth line for councilor, where "POEj" was written upside-down in bold letters, is a marked ballot. (Monteza vs. Court of Appeals, 20 SCRA 773 [1967], Reyes, J.B.L., J.).

§8. It cannot be said that these writings were accidental. As a general rule, a voter must write on the ballot only the names of candidates voted for the offices appearing thereon. Certain exceptions, however, were provided in Section 149 of the Revised Election Code. For example, prefixes such as "Sr.," "Mr.", and the like and suffixes such as "hijo," "Jr.," etc. will not invalidate the ballot (par. 5). Initials (paragraph 15), nicknames or appellation of affection and friendship will not invalidate the ballot, if accompanied by the name or surname of the candidate, and above all, if they were not used as a means to identify the voter. Even under a liberal view, the words written on the ballots under consideration (presence of an arrow with the words "and party") cannot be considered as falling within the exception to the rule. Consequently, they are irrelevant expressions that nullified the ballots (Lloren v. CA, et al., No. L-25907, January 25, 1967, 19 SCRA 110). Hence, respondent court excluded Exhibits "Z" and "Z-1". (Bautista vs. Castro, 206 SCRA 305 [1992], Medialdea, J.).

3. Repetitions of Name (marked or not marked)

§1. The circumstance that the voter writes the names of two different candidates, or that he repeats the name of the same candidate in connection with an office for which only one can be elected does not invalidate the ballot or justify its rejection as a marked ballot. (Aviado vs. Talens, 52 Phil. 665 [1929], Street, J.).

§2. Under Section 149, pars. 3 and 13, of the Revised Election Code, “When the name of a candidate appears in two spaces of the ballot, it shall be counted in favor of the candidate for the office with respect to which he is a candidate. The vote for the office for which he is not a candidate shall be counted as stray.” (Amurao vs. Calangi, 104 Phil. 347 [1958], Bautista Angelo, J.).

§3. It is true that Rule 13, Section 149 of the Revised Election Code contemplates a vote for a non-candidate which was innocently placed by the voter in the belief that said person was a candidate, but if the voter writes the name of a person who is not a candidate three times on three spaces provided for different offices, such writing is deemed intentional as it serves no other purpose than to identify or mark the ballot. (Delgado vs. Tiu, et al., 105 Phil. 835 [1959], Bautista Angelo, J.).

§4. In two ballots the vote for mayor is “J. Nietes Nietes” and the persons who prepared these ballots appear to be well educated, judging from their good penmanship. They could have had no possible reason to write “Nietes” twice, except to mark their respective ballots. (Sarmiento vs. Quemado, 115 Phil. 434 [1962]; 5 SCRA 438 [1962], Concepcion, J.).

§5. Ballot invalid as marked by the use of a candidate name more than twice (Gutierrez vs. Aquino,G.R. No. L-14252, February 28, 1959). (Arzaga vs. Bobis, Sr., 116 Phil. 702 [1962]; 6 SCRA 386 [1962], Reyes, J.B.L., J.).

§6. Ballots, where there were repetitions of name, are void marked ballots, it appearing that the voters who wrote them were intelligent and familiar with the scriptural process, and the repetitions do not appear justified by mistakes or by any necessity to clarify the names as originally written on the ballots. Furthermore, there is evidence aliunde that a party inspector, during the canvassing of votes, was seen holding a list, apparently of voters who sold their votes, and checking it every time a ballot was read where names of candidates were twice written. (Monteza vs. Court of Appeals, 20 SCRA 773 [1967], Reyes, J.B.L., J.).

§7. The rule is that in the absence of evidence to show that the purpose was to identify the ballot, a single repetition of the name of a candidate does not invalidate the ballot. And what has been considered as a marked ballot is one where a candidate’s name is written more than twice (at least three times), in which case it is deemed intentional and as serving no other purpose than to identify the ballot. This rule, however, refers to one or two ballots or several ballots in different precincts.

Where, as in this case, thirteen ballots, all cast in the same precinct, contain this common feature—the repetition of one candidate’s surname - the same evidences a pattern designed to mark said ballots in that precinct. Furthermore, the repetition in these thirteen ballots occur on the same line, and thus cannot be deemed unintentional, innocent or due to oversight, unlike the single repetition held as not showing markings, where the name of the candidate was written on the first line and repeated on the last line for councilors. (Inguito vs. The Court of Appeals, 21 SCRA 1015 [1967], Bengzon, J.P., J.).

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§8. We have no doubt on the well established rule that the mere repetition of the names of candidates will not nullify the ballot on the ground that it is marked (voter intended it as a means to identify himself) in the absence of evidence aliunde. (Lontoc vs. Pineda, 64 SCRA 681 [1975], Esguerra, J.).

§9. Respondent court correctly invalidated Exhibit "7." This ballot cannot be considered as a vote for petitioner whose name was written seven (7) times in the ballot. The writing of a name more than twice on the ballot is considered to be intentional and serves no other purpose than to identify the ballot. (Bautista vs. Castro, 206 SCRA 305 [1992], Medialdea, J.).

Rule 23: Ballot filled by two distinct persons

§1. Any ballot which clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void. (Section 211, Omnibus Election Code, par. 23).

§2. While in the case at hand some ballots were cast disclosing a certain disparity in the formation of the letters, this is not sufficient to warrant the conclusion that the said ballots have been prepared by two persons, the character of the letters in each of them being the same. A slight variation in the formation of the capital letter may be due to the writer's caprice of the moment, particularly if he writes well. (Villavert vs. Lim, 62 Phil. 178 [1935], Villa-Real).

1.) Ballots Marked After They Are Cast

§1. On a recount, marks on ballots do not invalidate them when such marks are placed after they have been cast and counted by the election judges, without the knowledge or consent of the voters who cast them, but maliciously for the purpose of invalidating them on a recount. (Hontiveros vs. Altavas, 26 Phil. 213).

§2. xxx, [t]hat ballots which are marked before they are cast should not be counted, that ballots marked after they are cast should be counted x x x. (Paulino vs. Cailles, 37 Phil. 825 [1918], Johnson, J.).

§3. The will of the majority of the qualified electors must be determined by a count of the legal ballots found in the ballot box at the close of the election. Subsequent changes in the ballots should not be permitted to affect the result of the election in order to destroy the will of the majority of the qualified electors. (Dayrit vs. San Agustin and Valdez, 40 Phil. 782 [1920], Johnson, J.).

§4. It is a well settled rule in election contest that the marks which shall be considered sufficient to invalidate the ballot are those which the voter himself deliberately placed on his ballot for the purpose of identifying it thereafter (Valenzuela v. Carlos and Lopez de Jesus, 42 Phil. 428). In other words, a mark placed on the ballot by a person other than the voter himself does not invalidate the ballot as marked. (Tajanlangit vs. Cazeñas, 115 Phil. 564 [1962]; 5 SCRA 567 [1962], Bautista Angelo, J.).

§5. The marks "?" and "x", written by persons other than the voters concerned, do not invalidate the ballot. (Juliano vs. Court of Appeals, 20 SCRA 808 [1967], Zaldivar, J.).

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2.) Ballot Written by Two Persons (WBT)

§1. Where a vote was written by two persons, one evidently not well schooled and the other skilled in writing, the ballot should be rejected. (Illescas vs. Court of Appeals, 94 Phil. 215 [1953], Paras, C.J.).

§2. A ballot written by two different hands is invalid. (Protacio vs. De Leon, 118 Phil. 1310 [1963]; 9 SCRA 472 [1963], Paredes, J.).

§3. The allowance or rejection of a ballot filled in by more than one person depends on its condition before it was cast in the ballot box. If at the time it was cast it was filled by only one person, but thereafter it was tampered and entries were made thereon by other persons, the ballot is valid. If, on the other hand, it already bore the fillings of two or more persons when cast, said ballot is deemed marked and is thus void. The rebuttable presumption is that a ballot found to be in the handwriting of two or more persons suffered this defect before it was placed in the ballot box. Where the trial court found that certain ballots were tampered with only after they had been placed in the ballot box and that finding is supported by convincing evidence, it should be respected by this Court. (Trajano vs. Inciso, 125 Phil. 746 [1967]; 19 SCRA 340 [1967], Bengzon, J.P., J.).

3.) Ballots Written By One Person (WBO)

§1. The mere fact that each group of ballots appears to be written by one man is not, in itself, sufficient to destroy the presumption of their legality, arising from their being found in the valid-ballot box in which they were deposited in the presence of the inspectors or watchers for the contending candidates. It might be that the voters who cast their votes were incapacitated, and had been assisted in the preparation of their ballots by two unauthorized persons in the polling place, but this fact alone is not enough to invalidate the aforementioned ballots, when it does not appear that such irregularity was part of a scheme devised to adulterate suffrage (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil., 428; Cailles vs. Gomez and Barbaza, 42 Phil., 496). (Olano vs. Tibayan, 53 Phil. 168 [1929], Villa-Real, J.).

§2. Applying the rule of liberality in the appreciation of ballots, it should be noted that general resemblance or pictorial effect is not enough to warrant the conclusion that certain ballots were prepared by one person. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon, J.P., J.).

§3. x x x , the failure or omission of protestant to raise the question of identical handwriting or of impugning the validity of the ballots on that ground, resulting in the invalidation of 466 ballots for petitioner, does not preclude respondent COMELEC from rejecting them on that ground.

Unlike an ordinary suit, an election protest is of utmost public concern. The rights of the contending parties in the position aspired for must yield to the far greater interest of the citizens in the sanctity of the electoral process. This being the case, the choice of the people to represent them may not be bargained away by the sheer negligence of a party, nor defeated by technical rules of procedure. Thus, COMELEC cannot just close its eyes to the illegality of the ballots brought before it, where the ground for the invalidation was omitted by the protestant. (Arao vs. Commission on Elections, 210 SCRA 290 [1992], Bellosillo, J.).

Rule 24: Vote cast in favor of a candidate who has

been disqualified by final judgment

Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray vote and shall not be counted but it shall not invalidate the ballot. (Section 211, Omnibus Election Code, par. 24).

Rule 25: Ballots wholly written in Arabic

§1. Ballot wholly written in Arabic in localities where it is of general use are valid. To read them, the board of election inspectors may employ an interpreter who shall take an oath that he shall read the votes correctly. (Section 211, Omnibus Election Code, par. 25).

§2. Where the name of one candidate is written on the ballot in Arabic characters, while those of the other candidates voted for are written in Roman characters, the ballot should be rejected as marked. (Caraecle vs. Court of Appeals, 94 Phil. 308 [1954], Padilla, J.).

§3. The Court takes judicial notice that in Cotabato a large segment of the population is composed of Muslims who speak and write the Arabic language. With the spread of instruction in the English language through the schools, it is to be expected that Muslim inhabitants have learned to speak and write the English language. It is not surprising, therefore, that those Muslim voters, who knew how to write Romanized script, would write their ideas either in the Arabic or Romanized way, or mixed Arabic and Roman way. In the absence of evidence that the mixed writing of names in ballots of Muslims voters was a device deliberately resorted to identify the ballots of the voters who prepared them, the doubt must be resolved in favor of their validity. (Juliano vs. Court of Appeals, 20 SCRA 808 [1967], Zaldivar, J.).

Rule 26: Accidental tearing or perforation of a ballot

§1. The accidental tearing or perforation of a ballot does not annul it. (Section 211, Omnibus Election Code, par. 26).

§2. The fact that a ballot is accidentally torn does not annul it. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

Rule 27: Failure to remove the detachable coupon

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§1. Failure to remove the detachable coupon from a ballot does not annul such ballot. (Section 211, Omnibus Election Code, par. 27).

§2. The circumstance that the coupon bearing the number of a ballot is not detached at the time the ballot is voted does not justify the court in rejecting the ballot. The duty of detaching the coupon is placed by law upon the election officials, and the voter must not be deprived of the franchise by reason of their failure to perform this duty. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§3. The language of Section 442, as amended, of the Election Law is directory. As a general rule, the failure of the election board to follow these provisions of law does not invalidate the votes. (De los Angeles vs. Rodriguez, 46 Phil. 595 [1924], Malcolm, J.).

§4. And the fact that the lower court adjudicated certain ballots, with detachable coupon numbers, to the protestant or the protestee in an election contest, does not constitute an excess of jurisdiction in the exercise of its powers and does not justify the issuance of a writ of certiorari. (Ello vs. Judge of First Instance of Antique, and Valdevin, 49 Phil. 152 [1926], Villamor, J.).

§5. It is the duty of the chairman of the election inspectors to remove the coupon from the ballot, and, if through an oversight, he fails to do so the ballot ought not to be invalidated for that reason. (Balon vs. Moreno, 57 Phil. 60 [1932], Vickers, J.).

CHAPTER XVII
Election Returns and Certificates of Votes

1. Election Returns

a.) Prima facie status of ER

§1. Frauds in the holding of an election should be settled by the corresponding courts or Electoral Tribunals where testimonial or documentary evidence is necessary; but where the fraud is so palpable from the return itself, there is no reason to give it prima facie value.

Where the returns were obviously false or fabricated, the Commission on Elections has the power and duty to reject them. (Lagumbay vs. Commission on Elections, 122 Phil. 1274 [1966]; 16 SCRA 175 [1966], Bengzon, C.J.).

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§2. The decisive factor is that where it has been duly determined by Comelec after investigation and examination of the voting and registration records that actual voting and election by the registered voters had taken place in the questioned precincts, the election returns cannot be disregarded and excluded with the resulting disenfranchisement of the voters but must be accorded prima facie status as bona fide reports of the result of the voting for canvassing and proclamation purposes. (Anni vs. Izquierdo, 57 SCRA 692 [1974], Teehankee, J.).

§3. Election returns are accorded prima facie status as bona fide reports of the result of the count of the votes in a precinct on the underlying assumption that the election inspectors have faithfully complied with their official duty. The moment such assumption is destroyed by unrebutted clear and convincing evidence before the COMELEC that not only did the inspectors not comply with the duty required of them by law but that the serious defects shown by the voting records amounting to falsification thereof could not have happened without the active participation of the inspectors themselves, the election returns thus prepared by them lose their prima facie status as bona fide reports of the true count of the votes and must be deemed falsified and spurious. (Bashier vs. Commission on Elections, 43 SCRA 238 [1972], Teehankee, J.).

§4. We start by noting that the Comelec (both Second Division and the Commission En Banc) correctly emphasized that, under the regime of the Omnibus Election Code, pre-proclamation controversies are properly limited to challenges directed against the Board of Canvassers and proceedings before such Board of Canvassers, and not the Board of Election Inspectors nor proceedings before such latter Board and that such challenges should relate to particular election returns to which petitioner should have made specific verbal objection subsequently confirmed in writing. In a pre-proclamation controversy, it is axiomatic that the Comelec is not to look beyond or behind election returns which are on their face regular and authentic returns. A party seeking to raise issues resolution of which would compel the Comelec to pierce the veil, so to speak, of election returns prima facie regular, has his proper remedy in a regular election protest. (Dipatuan vs. Commission on Elections, 185 SCRA 86 [1990], Feliciano, J.).

§5. That the election returns were obviously manufactured must be evident from the face of said documents. In the absence of a strong evidence establishing spuriousness of the returns, the basic rule that the election returns shall be accorded prima facie status as bona fide reports of the results of the count of the votes for canvassing and proclamation purposes must perforce prevail. The COMELEC en banc did not find any signs of alterations or tampering on the election returns nor did the petitioner present any hard evidence of such irregularity. The only thing which we surmise came too close to such a change was the written superimposition made on the family names of the candidates in the election returns of the clustered Precincts 93-A and 94-A. This was certainly not an alteration or tampering since the COMELEC en banc found that such superimposition was necessarily done in order to make the names readable. Nonetheless, petitioner failed to deduce evidence to the contrary. (Ocampo vs. Commission on Elections, 325 SCRA 636 [2000], Kapunan, J.).

b.) Authentic copies of ER

§1. Where the alleged discrepancies in the election returns of a precinct appear in a certificate of votes given to a

watcher of a candidate and in a certificate executed by a Constabulary officer, it is held that said documents are not those which can be considered authentic copies of the election returns, and that, consequently, the ruling of the lower court that judicial recount was not warranted is correct. (Matanog vs. Alejandro, 11 SCRA 499 [1964], Paredes, J.).

§2. In applying Section 163 of the Revised Election Code, the phrase "another copy or other authentic copy" therein used shall not be construed to include any of the additional copies of the election returns distributed to the two major political parties, pursuant to a resolution of the Commission on Elections, for the simple reason that, in using the aforementioned phrase, the framers of the Revised Election Code evidently had in mind the four (4) copies mentioned in Section 150 thereof and intended, one for the ballot box, another for the municipal treasurer, still another for the provincial treasurer and the last for the Commission on Elections. In other words, the lawmakers could not have referred to any other copies, for no such copies were prescribed in the Code.

Section 163 of the Revised Election Code should be construed restrictively (Parlade vs. Quicho, L-16259, December 29, 1959; Samson vs. Estenzo, L-16268, January 30, 1960; Lawsin vs. Escalona, L-22540, July 31, 1964), because of the special nature of the authority conferred therein and because otherwise that authority could be so used as to delay the proclamation of the winning candidate beyond the date set for the beginning of the term of the office involved. The effect of said delay is, in the case of national offices, for which there is no hold-over, to leave the office without any incumbent, and, in the case of local offices, whose incumbents may hold over, to often permit the defeated candidate to unduly extend his tenure, at the expense of the true choice of the electorate.

The resolution of the Commission on Elections requiring the preparation of additional copies of the election returns and the distribution thereof among the two (2) major political parties, does not contravene the law. The existence of said additional copies in the possession of the major political parties may discourage or deter the tampering of the four (4) copies contemplated in Section 150, owing to the probability, if not certainty, of detecting the irregularity. (Acuña vs. Golez, 122 Phil. 1129 [1966]; 16 SCRA 32 [1966], Concepcion, J.).

§3. The copy of the Nacionalista Party of the election returns is not one of those contemplated by law for purposes of judicial recount under Section 163 of the Revised Election Code. In using the phrase "another copy or other authentic copies," the framers of the Revised Election Code evidently had in mind the four copies mentioned in Section 150 thereof and intended, one for the ballot box, another for the municipal treasurer, still another for the provincial treasurer and the last for the Commission on Elections. The lawmakers could not have referred to any other copies, for no such "other" copies were prescribed in the Code (Acuña vs. Golez, L-25399, January 27, 1966). (Palarca vs. Arrieta, 124 Phil. 1033 [1966]; 18 SCRA 441 [1966], Reyes, J.B.L., J.).

§4. Once the Commission on Elections is convinced that the election returns in the hands of the board of canvassers do not constitute the proper basis in ascertaining the true result of the elections, it is duty bound to take the necessary steps in order that the proper basis for the canvass is made available. It would be absurd to say the Commission has a legal duty to perform and at the same time it is denied the necessary means to perform that duty.

Where the three copies of the election returns outside the ballot box do not constitute a reliable basis for a canvass, then the Commission on Elections, in the exercise of its power to administer and enforce the laws relative to the conduct of elections, may order the opening of the ballot boxes to ascertain whether the copy inside each ballot box, corresponding to each precinct, is also tampered like the three copies outside the ballot box. The Commission may do this on its own initiative, or upon petition by the proper party. That order does not affect the right to vote or the validity of the votes cast.

Once it is found that the copy of the election return inside the ballot box is tampered, the Commission on Elections would then have accomplished two things, namely: (1) secured a basis for the prosecution for the violation of the laws relative to elections and (2) afforded the party aggrieved by the alteration of the election returns outside the ballot box a basis for a judicial recount of the votes. (Cauton vs. Commission on Elections, 126 Phil. 291 [1967]; 19 SCRA 911 [1967], Zaldivar, J.).

§5. The Commission on Elections' copies of election returns are authentic copies within the meaning of Section 163 of the Revised Election Code (Lawsin vs. Escalona, L-22540, July 31, 1964; Matanog vs. Alejandro, L-22502-03, June 30, 1964).

Where, as in the case at bar, there were patent erasures and superimpositions in words and figures on the face of the election returns submitted to the board of canvassers, it was imperative for said board to stop the canvass so as to allow time for verification of authentic copies and recourse to the courts (Javier vs. Commission on Elections, L-22248, January 30, 1965). A canvass or proclamation made notwithstanding such patent defects, without awaiting proper remedies, is null and void (Ibid).

Where a candidate was prevented from securing the Commission on Elections' copies of the returns to establish a discrepancy between them and the Provincial Treasurer's copies, the failure to submit the said copies to the board should not prejudice his right to petition for recount before the court.

Patent erasures and superimpositions in words and figures of the votes stated in the election returns strike at the reliability of said returns as basis for canvass and proclamation. A comparison with the other copies, and, in case of discrepancy, a recount, is the only way to remove grave doubts as to the correctness of said returns as well as of ascertaining that they reflect the will of the people. (Purisima vs. Salanga, 122 Phil. 1084 [1965]; 15 SCRA 704 [1965], Bengzon, J.P., J.).

§6. While the Comelec in its role as senatorial canvasser has the power to reject returns before it which in its opinion were illegal and not authentic, neither law nor precedent authorizes it to impose the same criterion in advance upon the provincial boards of canvassers. The latter are entitled to use their own judgment in determining whether the irregularities appearing on the returns before them warrant their rejection. It must not be forgotten that the copies of the returns upon which the provincial canvassers act are different from those in the possession of the Comelec, and the irregularities noted in the latter may not necessarily exist in the former. Should there be any discrepancy between the official copies, the petitioners can recourse to a judicial recount under Section 163 of the Election Law. But certainly, an a priori rejection on the basis of previous Comelec action is not justifiable.

The alleged excess of votes cast (detailed and enumerated in the petition) does not necessarily support the conclusion that the returns are obviously manufactured for reasons of statistical improbability. There is here no uniformity of tallies in favor of candidates belonging to one party and the systematic blanking of the opposing candidates that led this Court to reject the returns in the Lagumbay case. In Sangki vs. Comelec, L-28359, Dec. 26, 1967, this Court warned against the undue expansion of the Lagumbay doctrine without due regard to the

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factual basis upon which it was based.

While in Lagumbay vs. Comelec, this Court has taken official cognizance of the spread of the pernicious practice of tolerating or abetting the tampering or manufacture of returns just to get the proclamation and then let the victimized candidate file the protest and spend his money to work for an empty victory, the Court has likewise adverted to the equally pernicious effects of excessive delay of proclamations. The Comelec and the Court should guard both against proclamation-grabbing through tampered returns as well as against attempts to paralyze canvassing and proclamation in order to prolong hold-overs by officials whose terms are officially ended. (Alonto vs. Commission on Elections, 22 SCRA 878 [1968], Reyes, J.B.L., J.).

§7. Advanced copies of election returns cannot be the basis of proclamation. Proclamation should be based on the copies of the returns for the municipal treasurer, or if unserviceable, on three other authentic copies of the returns, namely: that for the Comelec, or for the provincial treasurer, or that in the ballot box. (Aguam vs. Commission on Elections, 23 SCRA 883 [1968], Sanchez, J.).

§8. Section 233 of B.P. 881 ought to be harmonized with Section 27, par. b(5) of R.A. 7166. Section 27, par. b(5) of R.A. 7166 presupposes that other copies of the election returns are existent and may be compared with the copies of the MTC. It does not preclude the use of such authentic copies in the canvass when the copies submitted to the Board of Canvassers have been lost or destroyed. The letter of Provincial Election Supervisor Atty. Adolfo Ilagan dated May 15, 1992 and the minutes of the special meeting of respondent COMELEC held on May 22, 1992 constitute sufficient authority for the use of such returns in the canvass. (Sardea vs. Commission on Elections, 225 SCRA 374 [1993], Griño-Aquino, J.).

c.) When ER prevails over ballots

§1. It is a well settled rule in election contests that when the protest alleges that the election officers have improperly judged the ballots, the latter constitute the best proof and the court must examine them in order to determine the claim of the protestant, unless the same shall have been substituted after the election or altered in any manner, for then they lose their probatory value and the election returns must prevail. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§2. Where the election returns showed that 254 valid ballots were cast in the election for the candidates for a particular office and that the spoiled ballots were 33 in number, and upon opening the boxes only 253 ballots were found in the box of used ballots while 34 were found in the box for spoiled ballots, including an apparently good one for one of the candidates to the contested office, the court sustained the trial judge in holding that the apparently good ballot found in the box of spoiled ballots might be claimed by the contestant, with the result that the official returns with respect to the vote for the contested office were allowed to stand. (Aviado vs. Talens, 52 Phil. 665 [1929], Street, J.).

§3. When it appears that a ballot box has been unlawfully opened and its contents disturbed to the extent that it is uncertain whether the ballots found therein were actually cast by the voters, such ballots cannot be accepted for purposes of revision, and the official returns, if not otherwise impeached, must be accepted as stating the true number of votes cast.

The particular fraud accomplished in this case consisted in the fact that, after the official count had been made, the box of a certain precinct was opened and a large number of ballots removed, bearing the name of the successful candidate for municipal president. In place of these ballots an equal number of counterfeit ballots bearing the name of the same candidate for municipal president were introduced into the box. Upon contest instituted by the unsuccessful candidate, these ballots should not be subtracted from the contestee's vote and that the official returns must prevail. (San Juan vs. Cornejo, 53 Phil. 230 [1929], Street, J.).

d.) Tampered or manufactured ER

§1. When the fraud or intimidation is flagrant and its influence diffusive so that it becomes impossible to separate the good votes from the bad and determine the true result of all the good ballots cast, the returns should be avoided. (Gardiner vs. Romulo, 26 Phil. 254 [1914], Trent, J.).

§2. Where the returns from a certain precinct are impugned as fraudulent, and it is found upon opening the boxes that they have been violated, the candidate in whose interest the act of violation is alleged to have been committed may introduce as witnesses voters who, waiving their privilege of secrecy, will swear that they voted for him. Such evidence is admissible for the purpose of rehabilitating the returns.

Where the correctness of the official returns is thus established as to the vote of one of the candidates, said returns should be adhered to as to both, it being manifest that the boxes were not violated in the interest of either. Where the spoliation is the work of a stranger, neither candidate should be penalized therefor.

Where the proof shows that the official returns in a certain precinct with regard to particular office are false, secondary evidence is admissible to show what the true vote was. In this case the testimony of three witnesses who had been present when the votes were counted and one of whom had kept accurate tally upon the votes as called out is accepted as sufficient to show the true result.

Where the evidence shows that the ballot boxes have been violated and their contents changed, the original count must prevail. Before the ballots found in a box can be used to set aside the returns the court must be sure that it has before it the ballots deposited by the voters. (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428 [1921] Street, J.).

§3. Frauds in the holding of an election should be settled by the corresponding courts or Electoral Tribunals where testimonial or documentary evidence is necessary; but where the fraud is so palpable from the return itself, there

is no reason to give it prima facie value.

Where the returns were obviously false or fabricated, the Commission on Elections has the power and duty to reject them. (Lagumbay vs. Commission on Elections, 122 Phil. 1274 [1966]; 16 SCRA 175 [1966], Bengzon, C.J.).

§4. Under Section 163 of the Revised Election Code, canvassers are given quasi-judicial powers to determine whether the return is genuine and to disregard one which is obviously a forgery. (Espino vs. Zaldivar, 21 SCRA 1204 [1967], Sanchez, J.).

§5. It is true that in Espino vs. Zaldivar, L-22325, December 11, 1967, citing Nacionalista Party vs. Commission on Elections, 85 Phil. 149, 158, we declared that the canvassing board will not be compelled to canvass returns which are obviously manufactured. This does mean however that the board and Comelec, when faced with this situation, should right away disregard the votes cast in precincts where returns are doctored. There are four copies of official returns. Allegedly both the municipal treasurer's and Comelec's copies were tampered. But it was the duty of the board to report the matter to Comelec. Comelec could then hew to the line drawn in Cauton vs. Commission on Elections, 1967B Phil. 248, 255, where this Court declared that, in case the election returns were tampered, "it is certainly within the power of the Commission on Elections to issue such order as would ascertain the existence of the genuine, authentic and untampered election returns." Comelec could inquire into the copies of the returns for the provincial treasurer. And if these copies are not authentic, Comelec should look into the copies of the returns in the ballot boxes. These should have been done.

Maniago vs. Commission on Elections, L-28413 and Guevara vs. Commission on Elections, L-28414 (Resolution), December 20, 1967, are not to be read as dispensing with the canvass of votes of all precincts.

As is its practice, Comelec should summon members of the board of inspectors, take evidence, and ascertain which are the genuine returns. And then it should direct the board of canvassers to use these returns in the canvass of the votes. Our pronouncement in Minte vs. Enage, L-1836, December 31, 1947, cited in Ramos vs. Commission on Elections, 80 Phil. 722, 723-724; Abendante vs. Relato, 94 Phil. 8, 14-15; and in Javier vs. Commission on Elections, L-22248, January 30, 1967, which still holds true, is that the broad sweep of the Comelec's duty to administer and enforce the election law gives it ample authority to direct the board of canvassers to include in the canvass returns from the said precincts. (Pacis vs. Commission on Elections, 22 SCRA 539 [1968], Sanchez, J.).

§6. An election return prepared at the point of a gun is no return at all. It is no better than a falsified or spurious return. (Pacis vs. Commission on Elections, 25 SCRA 377 [1968], Sanchez, J.).

§7. It is the ministerial function of a board of canvassers to count the results as they appear in the returns which on their face do not reveal any irregularities or falsities (Defamiles vs. Commission on Elections, 21 SCRA 1462,

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1468). A contrario a canvass based on tampered returns is illegal (Abes vs. Commission on Elections, 21 SCRA 1252, 1256). Alleged tampering must therefore be ascertained, first by the canvassing board, then by Comelec (Ong vs. Commission on Elections, 22 SCRA 241, 249-251). (Balindong vs. Commission on Elections, 27 SCRA 567 [1969], Sanchez, J.).

§8. All the evidence and circumstances point to a systematic plan of allowing persons who were not registered voters in Sagada to cast their ballots in all the precincts of Sagada, and to count such spurious ballots and take them into account in the returns. There is thus no alternative but to consider said returns as deliberately prepared with a view to alter the real results of the voting, through either malice or coercion. In their case, the returns must be deemed manufactured or falsified, without any title to be included in the canvass of votes for delegates by the Provincial Board of Canvassers for the Mountain Province. (Diaz, Sr. vs. Commission on Elections, 42 SCRA 426 [1971], Reyes, J.B.L., J.).

§9. In Diaz vs. Comelec, L-33378, this Court sanctioned the Comelec's procedure, upon establishment of a strong prima facie case, of causing the examination and analysis of the signatures and fingerprints of the precinct books of voters and the CE 39's and voting records, in order to determine whether the reported elections were sham and tantamount to no election at all and accordingly accord no prima facie value to the election returns and reject them as manufactured and false returns. (Estaniel vs. Commission on Elections, 42 SCRA 436 [1971], Teehankee, J.).

§10. It is well settled that the question, whether or not certain electoral returns are falsified or tampered with, and should not be included in the canvass, must first be raised before the Board of Canvassers, subject to appeal from its decision to the Commission on Elections, and that if such question is not raised before the Board, the same can not be raised for the first time before the Commission on Elections in the latter's exercise of its appellate jurisdiction. (Filart vs. Commission on Elections, 53 SCRA 457 [1973], Antonio, J.).

§11. Thus, in principle, the issues raised by petitioner do constitute issues properly raised in pre-proclamation controversies. That the assailed returns were "obviously manufactured" must, however, be evident from the face of the election returns themselves. In the case at bar, petitioner does not claim that the election returns from Precincts Nos. 15 and 17 had not been made or issued by the Board of Election Inspectors or that they had been manufactured by some unknown third party or parties; petitioner does not, in other words, claim that the returns themselves were not authentic. What petitioner in effect contends is that where election returns, though genuine or authentic in character, are reflective of fraudulent acts done before or carried out by the Board of Election Inspectors, the returns should be deemed as "obviously manufactured." (Dipatuan vs. Commission on Elections, 185 SCRA 86 [1990], Feliciano, J.).

e.) Statistical improbability

§1. It must be noted that this is not an instance wherein one return gives to one candidate all the votes in the precinct, even as it gives exactly zero to the other. This is not a case where some senatorial candidates obtain zero exactly, while some others receive a few scattered votes. Here, all the eight candidates of one party garnered all the votes, each of them receiving exactly the same number, whereas all the eight candidates of the other party got precisely nothing.

x x x. We hold such return to be evidently fraudulent or false because of the inherent improbability of such a result – against statistical probabilities – specially because at least one vote should have been received by the Nacionalista candidates, i.e., the vote of the Nacionalista inspector. It is, of course, "possible" that such inspector did not like his party's senatorial line-up; but it is not probable that he disliked all of such candidates, and it is not

likely that he favored all the eight candidates of the Liberal Party. Therefore, most probably, he was made to sign an obviously false return, or else he betrayed his party, in which case, the election therein – if any – was no more than a barefaced fraud and a brazen contempt of the popular polls. (Lagumbay vs. Commission on Elections, 122 Phil. 1274 [1966]; 16 SCRA 175 [1966], Bengzon, C.J.).

§2. In Lagumbay, the declaration that the election returns therein questioned were "utterly improbable and clearly incredible," and thus should be rejected, emphasized that the number of registered voters in about 50 precincts equal the number of ballots reportedly cast and tallied for each and every candidate of one party — the L.P. Here, the number of registered voters in the questioned precincts is not the same as the number of ballots cast and tallied for the candidate of the L.P.

In Lagumbay, too, all the L.P. candidates were credited with exactly the same number of votes while all the N.P. candidates received nothing. Here, only candidates A.S. and C.S. were shown to have received zero votes; other candidates of the N.P. for other positions voted upon were not blanked in the disputed returns.

In Lagumbay, there was uncertainty as to what happened to the vote of the N.P. inspector in the disputed precincts, because the absence of his vote was unexplained. Here, it was explained, among others, that some inspectors did not vote because they were not able to register as voters.

Also, in Lagumbay, the circumstantial evidence that the election returns were "obviously manufactured," was overwhelming. The same does not hold true in the case at bar.

The duty of the board of canvassers to take the returns as made from the different voting precincts, add them up, and declare the result, is almost wholly ministerial. The canvassers are to be satisfied of the genuineness of the returns, that is that the papers presented to them are not forged and spurious, that they are returns, and are signed by the proper officers. The simple purpose and duty of the canvassing board is to ascertain and declare the apparent result of the voting. Questions of illegal voting and fraudulent practices are passed on by another tribunal. (Sangki vs. Commission on Elections, 21 SCRA 1392 [1967], Sanchez, J.).

§3. Where there exists uniformity of tallies in favor of candidates belonging to one party, and the systematic blanking of the opposing candidates, the election returns may be rejected under the Lagumbay doctrine (L-25444, Jan. 31, 1966). (Kibad vs. Comelec, 23 SCRA 588 [1968], Fernando, J.).

§4. The thrust of all subsequent cases after the case of Lagumbay v. Climaco, L-25444, Jan. 31, 1966, is to restrict the doctrine of the Lagumbay case to the unique uniformity of tally in favor of candidates belonging to one party and the systematic blanking of the opposing candidates in the same locality, such as to make the fraud "palpable from the return itself x x x and there is no reason to accept it and give it prima facie value," and leading to no other reasonable conclusion than that the returns were obviously manufactured because they were as "utterly improbable and clearly incredible" as "to win the sweepstakes ten times." Here, the citing of certain instances where a candidate obtained 100% of the votes cast or an overwhelming majority thereof in his bailiwicks in Mindanao as against a much lesser number of votes cast for his opponents is inadequate to justify the exclusion of the returns as obviously manufactured for reasons of statistical improbability.

Canvass proceedings are administrative and summary in nature, and a strong prima facie case backed up by a

specific offer of the evidence and indication of its nature and importance has to be made out to warrant the reception of evidence aliunde and the presentation of witnesses and the delays necessarily entailed thereby. Otherwise, the paralyzation of canvassing and proclamation proceedings leading to a vacuum in government offices could easily be brought about.

The general allegation of petitioner that his objections to the canvass include an unspecified number of precinct returns involved in congressional districts with pending cases due to terrorism and other similar charges is untenable. Aside from being unsubstantiated, the pendency of charges of returns having been obtained through force and violence in congressional districts does not automatically mean their applicability to the national office of senator. (Ilarde vs. Commission on Elections, 31 SCRA 72 [1970], Per Curiam).

§5. If it is shown that in the election return there appears the unique uniformity of tally of all the votes cast in favor of all the candidates belonging to one party and the systematic blanking of all the candidates of the opposing party, then the doctrine of statistical improbability enunciated in the Lagumbay case must be applied. The situation of the 22 election returns, now in question, fully warrants the application of the doctrine of the statistical improbability. In these 22 election returns, there is a clear case of the unique uniformity of tallies of all the votes reported cast in favor of all the candidates belonging to one party and the systematic blanking of all the opposing candidates.

The returns involved in the Sangki v. Comelec, 21 SCRA 1392 (1967) did not reflect a “unique uniformity” of tally of all the votes cast in favor of all the candidates of one party and the systematic blanking of all the candidates of the opposing party, for while it appears in those returns that Sangki obtained zero the other candidates of his party (Nacionalista) obtained scattered votes.

In the Lagumbay decision, it is the entire election return, which necessarily includes the report of votes obtained by candidates for all offices therein indicated, not just on office of senator, that is not given prima facie value and should be rejected. In other words, where a return is statistically improbable the doubt is cast not only on one office mentioned in the return but on all the offices included therein.

The thrust of the decision in the Lagumbay case is to consider an election return that is statistically improbable as of no value and should be rejected, no votes in the precinct concerned be counted in the canvass, and the recourse of the party affected by the rejection of the return is to file an election protest before the proper court or tribunal. This means that the rejected returns can not be substituted by returns to be made anew by the boards of inspectors upon order of the Comelec.

Canvassing boards are not compelled to canvass returns that are obviously manufactured. Neither is the Commission on Elections required to strain efforts to order the production of other copies of election returns or order the opening of the ballot boxes in order to retrieve the ballot box copies, nor order the recount of the votes, if it approves the action of the canvassing board in rejecting the election return as manufactured. (Sinsuat vs. Pendatum, 33 SCRA 630 [1970], Zaldivar, J.).

§6. The doctrine of statistical improbability does not apply where there was neither uniformity of tallies nor systematic blanking of candidates of one party. (Doruelo vs. Commission on Elections, 133 SCRA 376 [1984], Escolin, J.).

§7. From the foregoing tables, the substantial correctness of the data therein not having been successfully

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contested by petitioners, it appears to the Court that there is no need to pass upon and resolve the central issue raised by petitioners - whether or not the doctrine of "statistical improbability" adopted in Lagumbay v. Commission on Elections should be re-examined with a view to expanding the scope thereof, i.e., with a view to characterizing election returns differing, in varying degrees, from the specific fact situation dealt with by the Court in Lagumbay as "statistically improbable" and hence excludable from canvass as "obviously manufactured" without need of evidence aliunde. In the specific circumstances of the cases at bar, whatever conclusion the Court might have reached on this issue would, strictly speaking, merely constitute dictum, considering that even if the Court were to nullify all the returns objected to by petitioners on grounds of "statistical improbability", private respondents Candao and Loong would still show a very substantial margin over the total votes of petitioners. Such nullification will not, in other words, materially affect the results of the election per the official certificates of canvass.

Petitioners ask the Court to re-examine its decision in Dianalan v. Commission on Elections, so as to permit petitioners to subject to handwriting and fingerprint examination the voter's affidavits and voting lists and other voting records in the contested precincts. We are not persuaded by petitioners' arguments on this point. It is important to bear in mind that the nature, scope and ambit of a pre-proclamation controversy as set out in Dianalan and Dipatuan and other cases there cited are determined by statutory provisions: Sections 243 (entitled "Issues that may be Raised in Pre-Proclamation Controversy"), 245 ("Contested Election Returns") and 246 ("Summary Proceedings before the Commission") of the Omnibus Election Code. As pointed out above in Dipatuan, these statutory provisions reflect a very definite view of what public policy requires on the matter. It may well be true that that public policy may occasionally permit the occurrence of "grab the proclamation and prolong the protest" situations; that public policy, however, balances the possibility of such situations against the shortening of the period during which no winners are proclaimed, a period commonly fraught with tension and danger for the public at large. For those who disagree with that public policy, the appropriate recourse is not to ask this Court to abandon case law which merely interprets faithfully existing statutory norms, to engage in judicial legislation and in effect to rewrite portions of the Omnibus Election Code. The appropriate recourse is, of course, to the Legislative Department of the Government and to ask that Department to strike a new and different equilibrium in the balancing of the public interests at stake.

On the second and third issues raised by petitioners, the Comelec En Banc Decision of 4 June 1990 said: "The second and third issues raised by petitioners are related to each other. They refer to the procedure to be observed in the registration of objections at the board of canvassers level and the bringing of adverse rulings on appeal to the Commission. We reiterate the mandatory requirement to comply with procedure for pre-proclamation controversies in view of the public policy to have a quick determination of the result of the election. By [their] nature, pre-proclamation controversies already delay proclamation. To allow the deviation from procedural requirements is to open cases of this nature to protracted uncertainty because new grounds and new issues can be raised at the different levels of jurisdiction. Even ordinary cases not impressed with public policy considerations are not allowed to be litigated this way." (Italics supplied) Once more, we agree with the above ruling of the Comelec since that ruling simply flows from the character and scope of a pre-proclamation controversy under the Omnibus Election Code. (Dimaporo vs. Commission on Elections, 186 SCRA 769 [1990], Feliciano, J.).

§8. The other thing which petitioner considered the returns to be "obviously manufactured" was the fact the petitioner garnered zero (0) votes in three (3) precincts which was allegedly statistically improbable. To this claim, the case of Sanki v. COMELEC is worth reiterating: x x x Indeed, the bare fact that candidates for public office had received zero votes is not enough to make the returns statistically improbable. In the Lagumbay decision itself, Chief Justice Cesar Bengzon, who delivered the majority opinion, did not say that when one candidate receives nothing in an election return, such a circumstance alone will make said return statistically

improbable. (Ocampo vs. Commission on Elections, 325 SCRA 636 [2000], Kapunan, J.).

§9. Standing alone and without more, the bare fact that a candidate for public office received zero votes in one or two precincts can not adequately support a finding that the subject election returns are statistically improbable. A no-vote for a particular candidate in election returns is but one strand in the web of circumstantial evidence that those election returns were prepared under "duress, force and intimidation." In the case of Una Kibad v. Comelec, we warned that the doctrine of statistical improbability must be viewed restrictively, the utmost care being taken lest in penalizing the fraudulent and corrupt practices, which indeed is called for, innocent voters become disenfranchised, a result which hardly commends itself. This specially applies to the case at bar where respondent COMELEC's ruling is premised on questionable affidavits of private respondent's witnesses, and election returns which appear to be regular on their face. Moreover, the doctrine of statistical improbability involves a question of fact and more prudential approach prohibits its determination ex parte. (Velayo vs. Commission on Elections, 327 SCRA 713 [2000], Puno, J.).

f.) No power to look beyond face of ER

§1. The board of canvassers is a ministerial body enjoined by law to canvass all votes on election returns submitted to it in due form, and its powers are "limited generally to the mechanical or mathematical function of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained" (29 CJS., p. 656). The Comelec is the constitutional body charged with the duty to enforce all laws relative to elections, duty bound to see to it that the board of canvassers perform its proper function (Sec. 3, Revised Election Code; Cauton vs. Comelec, L-25467, April 27, 1967). Neither Constitution nor statute has granted Comelec or the board of canvassers the power, in the canvass of election returns, to look beyond the face thereof, once satisfied of their authenticity. (Abes vs. Commission on Elections, 21 SCRA 1252 [1967], Sanchez, J.).

§2. We have recently reiterated the Dianalan and Dimaporo rulings in the case of Alfonso vs. Commission on Elections, promulgated in June 1994. The prevailing doctrine in this jurisdiction, therefore, is that as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting or the counting of the votes. Corollarily, technical examination of voting paraphernalia involving analysis and comparison of voters' signatures and thumbprints thereon is prohibited in pre-proclamation cases which are mandated by law to be expeditiously resolved without involving evidence aliunde and examination of voluminous documents which take up much time and cause delay in defeat of public policy underlying the summary nature of pre-proclamation controversies.

While, however, the COMELEC is restricted, in pre-proclamation cases, to an examination of the election returns on their face and is without jurisdiction to go beyond or behind them and investigate election irregularities, the COMELEC is duty bound to investigate allegations of fraud, terrorism, violence and other analogous causes in actions for annulment of election results or for declaration of failure of elections, as the Omnibus Election Code denominates the same. Thus, the COMELEC, in the case of actions for annulment of election results or declaration of failure of elections, may conduct technical examination of election documents and compare and analyze voters' signatures and fingerprints in order to determine whether or not the elections had indeed been free, honest and clean. Needless to say, a pre-proclamation controversy is not the same as an action for annulment of election results or declaration of failure of elections. (Loong vs. Commission on Elections, 257 SCRA 1 [1996], Hermosisima, Jr., J.).

§3. For as long as the election returns which on their face appear regular and wanting of any physical signs of

tampering, alteration or other similar vice, such election returns cannot just be unjustifiably excluded. To look beyond or behind these returns is not a proper issue in a pre-proclamation controversy as in the case at bar. (Ocampo vs. Commission on Elections, 325 SCRA 636 [2000], Kapunan, J.).

g.) Use of evidence aliunde

§1. The broad power of the Comelec, conferred upon it by the Constitution, to enforce and administer "all laws relative to the conduct of elections" and to decide all administrative questions affecting elections "for the purpose of insuring free, orderly and honest elections," has been the key in the resolution of many pre-proclamation controversies involving the integrity and authenticity of election returns. Invoking the aforestated power of the Comelec, we justified the action and upheld the authority of the Comelec to order the exclusion of "obviously manufactured" returns (Lagumbay vs. Climaco and Comelec, 16 SCRA 175), or tampered returns (Cauton vs. Comelec and Sanidad, 19 SCRA 911), or returns prepared under threats and coercion or under circumstances affecting the returns' integrity and authenticity (Pacis vs. Comelec, 25 SCRA 391; Antonio, Jr. vs. Comelec, et al., 32 SCRA 319), emphasizing the duty of the Comelec to see to the use and inclusion in the canvass of only genuine and regular election returns for determining the true result of the elections.

Several circumstances, defying exact description and dependent mainly on the factual milieu of the particular controversy, have the effect of destroying the integrity and authenticity of disputed election returns and of avoiding their prima facie value and character. If satisfactorily proven, although in a summary proceeding, such circumstances as alleged by the affected or interested parties, stamp the election returns with the indelible mark of falsity and irregularity, and, consequently, of unreliability, and justify their exclusion from the canvass.

In the performance of its duty to guard against the use and inclusion of returns prepared under circumstances showing their falsity in the canvass of election results, the Comelec should not be hampered in the choice of effective means and methods to fully ascertain the genuineness and regularity of disputed election returns. To establish the indubitable existence of any of such circumstances — necessarily not evident from an examination of the election returns themselves — demands recourse to proof independent of the election returns or to evidence aliunde. (Usman vs. Commission on Elections, 42 SCRA 667 [1971], Castro, J.).

h.) Inclusion/exclusion of ER

§1. The power of the Comelec to set aside returns that are falsified or are not authentic and genuine and to order the same excluded from a canvass is distinct and separate from the authority inherent in the Electoral Tribunals of the House or the Senate, in the course of an electoral protest, to set aside such returns whenever the statements of votes cast contained therein do not tally with the valid votes enclosed within the ballot boxes themselves. No conflict of jurisdiction can arise since the powers of the Comelec and the Electoral Tribunals are exercised on different occasions and for different purposes. The Comelec is not concerned with the veracity of the returns, but with their genuineness and regularity; and it is self-evident that a return accomplished by the election inspectors under threats and coercion by armed men is in law no return at all that the canvassers may take into account. As a corollary, the Comelec can set aside an improper canvass, as well as the resulting proclamation. (Antonio, Jr. vs.

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Commission on Elections, 32 SCRA 319 [1970], Reyes, J.B.L., J.).

§2. We hold that the Comelec did not commit any grave abuse of discretion in requiring experts to examine the fingerprints and signatures on the questioned voting records to determine whether substitute voters or flying voters cast their votes in voting centers Nos. 3 and 5. That proceeding would be a continuation of the pre-proclamation controversy which started on election day when Alapa asked that the voting in voting centers Nos. 3 and 5 be stopped because three nieces of Omar and a certain Romero Nasser voted therein although they were not registered voters in those precincts. And during the canvass, Alapa asked for the exclusion of the returns for voting centers Nos. 3 and 5. (Omar vs. Commission on Elections, 102 SCRA 611 [1981], Aquino, J.).

§3. With respect to the alleged mistakes committed by the Board of Canvassers in the inclusion of certain returns, petitioner failed to follow the procedure laid down in Section 245 of the Omnibus Election Code. This provision requires that the party contesting the inclusion or exclusion in the canvass of any election returns should interpose his verbal objections to the Chairman of the Board of Canvassers at the time the questioned return is presented for inclusion or exclusion. (Navarro vs. Commission on Elections, 228 SCRA 596 [1993], Quiason, J.).

§4. First, it is clear to us that the COMELEC, which has in its possession the so-called “Comelec Copy” of the questioned election returns of Precinct No. 7 and heard the witnesses who testified thereon, doubts the authenticity of the so-called “Comelec Copy” of the election returns of Precinct No. 7; hence, it authorizes the PBC to decide the issue of a recount “pursuant to Section 236 of the Omnibus Election Code.” Since it doubts such authenticity, it could not, without arbitrariness and abuse of discretion, order the inclusion of the “votes” of Ong and Lucero found in the doubtful “Comelec Copy” of the election returns in the municipal certificate of canvass. (Lucero vs. Commission on Elections, 234 SCRA 280 [1994], Davide, Jr.).

§5. The Second Division of the COMELEC largely relied on the affidavit executed by the members of the Board of Inspectors who alleged therein that they prepared the returns after the counting of the votes. Proceeding therefrom, the Second Division leaped to the conclusion that the questioned returns were fictitious, manufactured or fraudulent and must, as such, be excluded from the canvass. This allegation, however, barely makes out a valid pre-proclamation controversy on the ground of fictitious or manufactured election returns, for ultimately, the grounds relied upon by the Second Division in order to justify its order to exclude the election returns from Precinct Nos. 10 and 10-A, necessitate evidence of sham voting and such fraudulent schemes perpetrated by private respondent Alonzo, but no such evidence was proffered and had there been so, the same is hardly proper in a pre-proclamation controversy such as the instant case. In other words, on the basis only of the election returns which, on their face, appear regular and wanting of any physical signs of tampering, alteration, or other similar vice, the Second Division could not justifiably exclude said returns on the occasion of a pre-proclamation controversy whose office is limited to incomplete, falsified or materially defective returns which appear as such on their face. If there had been sham voting or minimal voting which was made to appear as normal through the falsification of the election returns by private respondent Alonzo’s followers, such grounds are properly cognizable in an election protest and not in a pre-proclamation controversy. Our ruling in the landmark case of Gov. Tupay T. Loong, et al. v. COMELEC, et al. and its companion cases, leaves no room for entertaining such grounds in a pre-proclamation controversy.

"The prevailing doctrine in this jurisdiction, therefore, is that as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting or the counting of the votes." As the election returns from Precinct Nos. 10 and 10-A, which were excluded by the Second Division of the COMELEC, are undisputedly prima facie regular and untampered on their face, the COMELEC en banc correctly reversed the Second Division and ordered the inclusion of said returns in the canvass of the votes cast in the mayoralty elections in the Municipality of Tandubas, Tawi-Tawi. As such, there is clearly no basis to ascribe grave abuse of discretion to the COMELEC en banc. (Salih vs. Commission on Elections, 279 SCRA 19 [1997], Hermosisima, Jr., J.).

§6. Issuances of the Municipal Board of Canvassers "setting aside" the election returns from a precinct for "further investigation," or "to go deeper into the contradicting testimonies of the Chairman *** and the watchers," or to "summon the two BEIs who failed to affix their signatures and explain the alleged increase of votes of a candidate and the use of unauthorized envelope without seal containing the Election Returns and thereafter a ruling on the matter shall be rendered" are not definitive rulings of exclusion by the MBC because they merely defer the inclusion of the election returns pending "further investigation."

Where there is no ruling on the inclusion or exclusion of the disputed returns, there could be no complete and valid canvass which is a prerequisite to a valid proclamation.

Another fatal infirmity that vitiated petitioner's proclamation was the violation of Section 245 of the Omnibus Election Code which prohibits the proclamation by the Board of Canvassers of a candidate as winner where returns are contested, unless authorized by the COMELEC. No authority had been given by the COMELEC to the MBC for the proclamation of petitioner Jamil.

Said proclamation had clearly no basis in fact and in law. It is a settled rule that an incomplete canvass of votes is illegal and cannot be the basis of a valid proclamation. All of the votes cast in the election must be counted and all the returns presented to the board must be considered as the disregard of the same would in effect disenfranchise the voters affected. A canvass cannot be reflective as the true vote of the electorate unless all the returns are considered. (Jamil vs. Commission on Elections, 283 SCRA 349 [1997], Kapunan, J.).

i.) Amendment of ER

§1. The amendment to the Election Law prohibits, after the proclamation of the result of the election, any amendments or changes in the election returns, and only permits the inspectors to make amendments by authority of a competent court. The consent of the inspectors is necessary to make the correction in order that the court may grant the authority requested. (Benitez vs. Paredes and Dizon, 52 Phil. 1 [1928], Villamor, J.).

§2. An amended return which has received judicial approval and has been duly certified to the board has the effect of abrogating the original return.

The duties of the provincial board of canvassers in tabulating and summing up election returns are of a ministerial nature; and the writ of mandamus is available to compel them, in canvassing the votes for the office of provincial governor, to give effect to a return from a particular precinct which is properly certified to them, with judicial approval, as an amended return. (Dizon vs. Prov. Board of Canvassers of Laguna, 52 Phil. 47 [1928], Street, J.).

§3. The power to order the correction of election returns, vested by law in the courts, is discretionary; it is an administrative and supervisory power intended to secure correctness in the amendment of such returns. Rulings made in pursuance of this power, granting or denying the petition to correct, are interlocutory in nature.

The petition to correct election returns is a summary proceeding taken before the proclamation of the results. With the ruling of the court, granting or denying it, the proceeding comes to an end, giving way, as the case may be, to the proper election contest. (Aguilar and Casapao vs. Navarro, 55 Phil. 898 [1931], Villamor, J.).

§4. Any alteration or amendment in the statements of election, or any contradiction or discrepancy appearing therein, whether due to clerical error or otherwise, cannot be made without the intervention of a competent court, once the announcement of the result of the election, or the proclamation of the winners had been made. (De Leon vs. Imperial, 94 Phil. 680 [1954], Bautista Angelo, J.).

§5. The correction mentioned in Section 162 and that which may be required by the result of the recount authorized in Section 163, can only take place after the corresponding election return has been examined by the board of canvassers.

Section 154 of the Revised Election Code does not specify the party who may institute the proceedings therein contemplated. Upon the other hand, it is well settled that the alteration herein provided may not be sanctioned unless the members of the corresponding board of elections inspectors are unanimous on the existence of an error in the return and are willing to rectify the same (Benitez vs. Paredes and Dizon, 52 Phil. 1; Board of Inspectors of Bongabon vs. Sison, 55 Phil. 914). So long, therefore, as these conditions are present and the proceedings have been instituted by a party who has a justiciable interest in the matter, the court may authorize the aforementioned correction. A candidate affected by the alleged mistake has such justiciable interest. (Gumpal vs. Arranz, 110 Phil. 287 [1960], Concepcion, J.).

§6. Correction of election returns cannot be sanctioned by the court unless the members of the corresponding board of election inspectors are unanimous on the existence of an error in the returns and are willing to rectify the same.

The Supreme Court has construed Section 154 of the Revised Election Code: (a) as authorizing merely a summary proceeding, taken before the proclamation of the results of the election; (b) as not allowing the exercise of the judicial power therein provided for, except when there is unanimity among the members of the corresponding board of inspectors; (c) as conferring judicial discretion to exercise or not to exercise said power; and (d) as not permitting an appeal from the action taken by said court. (Astilla vs. Asuncion, 119 Phil. 739 [1964]; 10 SCRA 456 [1964], Concepcion, J.).

§7. No judicial recount where official copy of election returns was properly corrected. The clerical error in the official copy of the election returns of a precinct in the possession of the municipal treasurer having been properly shown in a hearing before a judge of a court of first instance and all members of the board of inspectors and the poll clerk of said precinct having asked for the correction, and said judge having authorized the board of

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inspectors to make the correction, it is held that the refusal of said trial court to require the recounting of the ballots in said precinct was not improper. (Tango vs. Alejandro, 119 Phil. 960 [1964]; 10 SCRA 682 [1964], Bengzon, C.J.).

§8. Under Section 154 of the Revised Election Code the election inspectors may not make any amendment in their returns unless authorized by a competent court; and the court may not issue such authority unless the members of the corresponding board of inspectors are unanimous in acknowledging the error and are willing to rectify the same (Benitez vs. Paredes and Dizon, 52 Phil. 1; Board of Inspectors vs. Sison, 55 Phil. 914; Gumpal vs. Court of First Instance of Isabela, L-16409, Nov. 29, 1960; Astilla vs. Court of First Instance of Leyte, L-22246, Feb. 26, 1964).

The refusal of one of the members of the Board of Inspectors to proceed with the petition for judicial correction of the election returns which he and the other members of the Board have previously filed, results in the lack of unanimity among the inspectors and bars the court from authorizing a correction that would jeopardize the claims of either candidate, without a proper review of the ballots themselves. (Javier vs. Court of First Instance of Antique, et al. 123 Phil. 180 [1966]; 16 SCRA 360 [1966], Reyes, J.B.L., J.).

§9. Where there is unanimity of all the members of the board of inspectors that a mistake was committed, the court may direct the correction of the election returns so as to reflect the correct number of votes received by a candidate.

In the exercise of its discretion whether to grant or deny the authority to correct mistakes, the court may satisfy itself as to the truth of the inspectors' petition and of the error.

Where the court made no findings that in the recount made, the votes tallied for the respondent candidate were increased from 60 to 64, the correction of the returns can not be made especially where the board of inspectors after the recount in the election case, unanimously asked for a correction of the returns of the votes cast for the petitioner but failed to make a similar request as to the alleged increased votes of respondent. To correct the returns on the basis only of the respondent's statement as to the votes he received is to pass the line which divides averment from established fact. (Peña vs. Tengco, 21 SCRA 1398 [1967], Sanchez, J.).

§10. In a number of decisions, the Supreme Court has held that there are two requisites that must concur in order to make out a case for correction of an election return: (1) there must be an error therein; and (2) the members of the board of election inspectors must be unanimous in the fact that such an error exists and that they are willing to rectify the same. The reason for the requirement of unanimity is that the proceeding for correction is a summary one, is not supposed to raise controversial issues, and does not call for a recount or revision of the ballots themselves, either of which contemplates a different remedy.

A conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution, and only upon the most convincing proof. The decision in the Lagumbay case speaks of "inherent improbability" in the data shown on the return. Any plausible explanation, one which is acceptable to a reasonable man in the light of experience and of the probabilities of the situation, should suffice to avoid outright nullification, with the resulting disfranchisement of those who exercised their right of suffrage. (Ejercito Estrada vs. Navarro, 21 SCRA 1514 [1967], Makalintal, J.).

§11. Where the three election inspectors admitted unanimously their error in the election return, the election

returns may be corrected or amended pursuant to Section 154 of the Revised Election Code.

Where the three election inspectors unanimously represented to the court that the election return should be corrected and amended to conform to the facts, the court of first instance can order the correction pursuant to Section 154 of the Revised Election Code.

Mistakes of all sorts are too common in human experience to justify anyone denying the possibility of such errors that the lawmakers provided for their correction with judicial approval.

Proclamation on incomplete returns is null and void.

The remedy of mandamus for the purpose of securing the correction of an election return must be brought within the two-week period within which an election contest may be contested, otherwise the right of the candidate proclaimed to the office is deemed vested. (Solidum vs. Macalalag, 28 SCRA 200 [1969], Sanchez, J.).

§12. Where the correction of an election return was made without the positive authority of the other members of the board of election inspectors by the Chairman of said board and such correction was not initialed by them, the original entry in such return may not be considered altered.

Where the name of a candidate was omitted in the election return, the COMELEC should order the board of election inspectors to open, in the presence of all parties concerned, the ballot boxes for the precinct concerned, count the votes therein of the candidates affected and make new returns therefore with the proper corrections.

In correction proceedings, it is required as a matter of due process, that notice of the correction proceedings be given to all the candidates affected just as such notice is required under Section 163 of the Revised Election Code governing recount proceedings. It is further required, in contested correction proceedings that the court should satisfy itself that there exists a prima facie case and that the integrity of the ballot box and of its contents has been duly preserved, in which case, the court shall thereafter open the ballot box and conduct a summary recount of the ballots themselves as in judicial recount proceedings under Section 163 of the Revised Election Code. This procedure should be strictly followed unless the correction sought is indubitable or unopposed and may therefore be summarily ordered. (Tiglao vs. Commission on Elections, 43 SCRA 535 [1972], Teehankee, J.)

j.) Correction of manifest errors

§1. The Court is not inclined to support petitioner’s contention that the action at bar is imprescriptible, specially in view of the COMELEC Rules and Procedures which now provide a five-day (5) prescriptive period for filing petitions relating to correction of manifest errors in the tabulation or tallying of the results during canvassing following the date of proclamation.

More, what is involved in the case at bar is purely mathematical and/or mechanical error in the operation of the adding machine committed by the board of canvassers which is admitted by all the parties. It does not involve any opening of the ballot boxes, examination and appreciation of ballots and/or election returns. As said error was discovered sometime after proclamation, all that is required is to convene the board of canvassers to rectify the error it inadvertently committed in order that the true will of the voters will be effected. The correction of the manifest mistake in mathematical addition calls for a mere clerical task of the board of canvassers. The remedy invoked was purely administrative for which no prescriptive period has been provided at the time of the filing of the petition. (Tatlonghari vs. Commission on Elections, 199 SCRA 849 [1991], Bidin, J.).

§2. While the Commission has exclusive jurisdiction over pre-proclamation controversies involving local elective officials (Sec. 242, Omnibus Election Code), nevertheless, pre-proclamation cases are not allowed in elections for President, Vice-President, Senator and Member of the House of Representatives.

It is clear from the above-quoted provision of the law that “pre-proclamation cases (are) not allowed in elections for President, Vice-President, Senator and Member of the House of Representatives.” What is allowed is the correction of “manifest errors in the certificate of canvass or election returns.” To be manifest, the errors must appear on the face of the certificates of canvass or election returns sought to be corrected and/or objections thereto must have been made before the board of canvassers and specifically noted in the minutes of their respective proceedings.

It is quite obvious that petitioner’s prayer does not call for the correction of “manifest errors in the certificates of canvass or election returns” before the Comelec but for the re-opening of the ballot boxes and appreciation of the ballots contained therein. Indeed, petitioner has not even pointed to any “manifest error” in the certificates of canvass or election returns he desires to be rectified. There being none, petitioner’s proper recourse is to file a regular election protest which, under the Constitution and the Omnibus Election Code, exclusively pertains to the Senate Electoral Tribunal. (Chaves vs. Commission on Elections, 211 SCRA 315 [1992], Bidin, J.).

§3. Assuming for the sake of argument that the petition was filed out of time, this incident alone will not thwart the proper determination and resolution of the instant case on substantial grounds. Adherence to a technicality that would put a stamp of validity on a palpably void proclamation, with the inevitable result of frustrating the people’s will cannot be countenanced.

Undoubtedly therefore, the only issue that remains unresolved is the allowance of the correction of what are purely mathematical and/or mechanical errors in the addition of the votes received by both candidates. It does not involve the opening of ballot boxes. The correction sought by private respondent and respondent MBCs of Tayug and San Manuel is correction of manifest mistakes in mathematical addition. Certainly, this only calls for a mere clerical act of reflecting the true and correct votes received by the candidates by the MBCs involved. In this case, the manifest errors sought to be corrected involve the proper and diligent addition of the votes in the municipalities of Tayug and San Manuel, Pangasinan.

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Consequently, by margin of 72 votes, private respondent indisputably won the challenged seat in the Sangguniang Panlalawigan of the sixth district of Pangasinan. Petitioner's proclamation and assumption into public office was therefore flawed from the beginning, the same having been based on a faulty tabulation. Hence, respondent COMELEC did not commit grave abuse of discretion in setting aside the illegal proclamation. (Bince, Jr. vs. Commission on Elections, 242 SCRA 273 [1995], Kapunan, J.).

§4. To be sure, the COMELEC did not itself annul the proclamation of petitioner, but, by "direct[ing] the Municipal Board of Canvassers of said municipality to reconvene to annul the proclamation of Nicolas C. Castromayor," the COMELEC in effect did so. After all, the authority of the COMELEC was sought because, without such authority, the MBC would not have the power to annul the proclamation of petitioner.

The proceedings before the MBC should be summary. Should any party be dissatisfied with the ruling of the MBC, the party concerned shall have a right to appeal to the COMELEC en banc, in accordance with Rule 27, Sec. 7 of the COMELEC Rules of Procedure.

Although this provision applies to pre-proclamation controversies and here the proclamation of petitioner has already been made, there is nothing to suggest that it cannot be applied to cases like the one at bar, in which the validity of the proclamation is precisely in question. On the contrary, in Duremdes v. COMELEC, this Court sustained the power of the COMELEC en banc to order a correction of the Statement of Votes to make it conform to the election returns in accordance with a procedure similar to the procedure now embodied in Rule 27, Sec. 7. (Castromayor vs. Commission on Elections, 250 SCRA 298 [1995], Mendoza, J.).

§5. Although in Ong, Jr. v. COMELEC it was said that "By now it is settled that election cases which include pre-proclamation controversies must first be heard and decided by a division of the Commission" - and a petition for correction of manifest error in the Statement of Votes, like SPC No. 95-198 is a pre-proclamation controversy - in none of the cases cited to support this proposition was the issue on the correction of a manifest error in the Statement of Votes under Sec. 231 of the Omnibus Election Code (B.P. Blg. 881) or Sec. 15 of R.A. No. 7166. On the other hand, Rule 27, Sec. 5 of the 1993 Rules of the COMELEC expressly provides that pre-proclamation controversies involving, inter alia, manifest errors in the tabulation or tallying of the results may be filed directly with the COMELEC en banc. Accordingly in Castromayor v. Commission on Elections, and Mentang v. Commission on Elections, this Court approved the assumption of jurisdiction by the COMELEC en banc over petitions for correction of manifest error directly filed with it. Our decision today in Torres v. COMELEC again gives imprimatur to the exercise by the COMELEC en banc of the power to decide petition for correction on manifest error. (Ramirez vs. Commission on Elections, 270 SCRA 590 [1997], Mendoza, J.).

§6. Contrary to what the COMELEC perceived, the Supplemental Petition is a petition for correction of manifest errors, not a petition for declaration of nullity. It squarely falls within the definition provided in the case of Mentang vs. Commission on Elections, "(c)orrection of manifest errors has reference to errors in the election returns, in the entries of the statement of votes by precinct/per municipality, or in the certificate of canvass."

Some of the definitions given for the word "manifest" are that it is evident to the eye and understanding; visible to the eye; that which is open, palpable, uncontrovertible; needing no evidence to make it more clear; not obscure or hidden. (citations omitted) "A manifest clerical error is -" '. . . one that is visible to the eye or obvious to the understanding, and is apparent from the papers to the eye of the appraiser and collector, and does not include an error which may, by evidence dehors the record be shown to have been committed.' " (Trinidad vs. Commission on Elections, 320 SCRA 836 [1999], Buena, J.).

§7. The authority to rule on petitions for correction of manifest error is vested in the COMELEC en banc. Section 7 of Rule 27 of the 1993 COMELEC Rules of Procedure provides that if the error is discovered before

proclamation, the board of canvassers may motu proprio, or upon verified petition by any candidate, political party, organization or coalition of political parties, after due notice and hearing, correct the errors committed. The aggrieved party may appeal the decision of the board to the Commission and said appeal shall be heard and decided by the Commission en banc. Section 5, however, of the same rule states that a petition for correction of manifest error may be filed directly with the Commission en banc provided that such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the winning candidate had already been made. (Sandoval vs. Commission on Elections, 323 SCRA 403 [2000], Puno, J.).

§8. This case likewise involves manifest errors. Election Return No. 3700088 from Precinct Nos. 84-A/84-A-1 is claimed to show 92 votes in favor of private respondent but indicate a total in words and figures of only 82 votes. On the other hand, Election Return No. 3700023 allegedly shows 13 votes for petitioner but indicates in words and figures 18 votes. These discrepancies can be easily resolved without opening the ballot boxes and recounting the ballots. COMELEC Resolution No. 2962 provides that "in case there exist discrepancies in the votes of any candidate in taras/tally as against the votes obtained in words/figures in the same returns/certificates, the votes in taras/tally shall prevail." (Angelia vs. Commission on Elections, 332 SCRA 757 [2000], Mendoza, J.).

k.) Annulment of ER

§1. The COMELEC does not commit any grave of abuse of discretion in relying upon the opinion of its handwriting experts regarding the election returns and not affording the party adversely affected the opportunity to refute said experts' findings where the parties waived the submission of evidence and relied merely on their memorandum for COMELEC's resolution.

Under Section 172 of the Election Code, it is not the COMELEC but the board of canvassers that can order the return of the election returns to the election committee to supply any data omitted therein, like signatures of the members of the election committee.

Omission of signatures or initials of election committee members raises doubts as to genuineness thereof.

Existence of flying voters and terrorism are grounds by which COMELEC may properly annul an election return. (Garcia vs. Commission on Elections, 105 SCRA 250 [1981], Makasiar, J.).

§2. "Mere alphabetical and chronological voting does not itself constitute sufficient evidence to establish fraud that would justify the setting aside of election returns. As counsel for appellant had occasion to assert in Lucman vs. Dimaporo, SPC No. 87-190, October 15, 1987, '[I]t is unfair to conclude that alphabetical voting is indicative of fraud.' and '[I]n some precincts of Lanao, alphabetical voting is imposed to promote an orderly election.' We do not make such factual finding here. But the evidence is ambiguous and is susceptible of several interpretations. For this reason, we are bound by the presumption of regularity in the performance of official functions." (Dipatuan vs. Commission on Elections, 185 SCRA 86 [1990], Feliciano, J.).

l.) Effect of threat, coercion, intimidation

§1. If the Comelec in the exercise of its duties under Section 3 of the Revised Election Code, can require Boards of Canvassers to consider only genuine and authentic, not falsified, returns, it can logically require such boards to exclude from the canvass any returns that were actually the product of coercion, even if they be clean in their face. (Antonio, Jr. vs. Comelec, 32 SCRA 319).

§2. In the Resolution of the public respondent dated July 21, 1988, the following disquisition was made: x x x While the statement of the legal doctrine on the board of canvassers authority to exclude from canvass election returns which are prepared under conditions of coercion or threats is correct, the First Division failed to apply a crucial part of the doctrine that the circumstances must affect the regularity or the genuineness of the contested returns. In other words, the conditions of threat, intimidation, duress and coercion must have resulted in the preparation of election returns that falsifies the true results of the voting at the precinct level, as for example, candidate A obtained five (5) votes in a precinct, and by reason of force or intimidation the Board of Election Inspectors was compelled to make an entry of fifty (50) votes for such candidate. If the election returns reflects the results of the voting at the precinct level, any coercion and intimidation that may have been committed in the course of its preparation may give rise to legal, including criminal liability but will not justify the exclusion of the returns. x x x" It is thus clear that while partisans of petitioner used some threatening and harassing language, this did not at all affect the correctness of the counting of votes cast in Precinct No. 12 or the correct and exact recording of the votes in said precinct in the election returns. In fact the testimony of the principal witness Mrs. Dagasdas is to the effect that when she signed and thumbmarked each page of the election returns there was no interference whatsoever from any source and the entries were all correct. There is therefore no basis for the exclusion of the returns from Precinct No. 12." We agree. While it may be true that duress, threats, intimidation or coercion attended the preparation of the election returns for Precinct No. 12, there is no showing that the same affected the regularity or the genuineness of the contested election return. There is no evidence presented to public respondent that the election return in question was falsified in such a way that the true results of the voting had been altered. The court is bound by the finding of public respondent as there is no showing that it committed a grave abuse of discretion.

It appearing that the questioned Resolution of public respondent had already been implemented and the private respondent had been proclaimed as the elected mayor of the Municipality of Leyte, Leyte by the inclusion of the election return for Precinct No. 12 and that he has taken his oath of office and assumed the duties of said Office, the remedy of the petitioner is not a pre-proclamation contest but an electoral protest filed at the proper time before the competent court. (Salvacion vs. Commission on Elections, 170 SCRA 513 [1989], Gancayco, J.).

m.) Effect of annulment of voting list

§1. It is our considered view, however, that given the factual setting, it can not justifiably be contended that the Siasi returns, per se, were "obviously manufactured" and, thereby, a legitimate issue in a pre-proclamation controversy. It is true that in Lagumbay vs. COMELEC (L-2544, 31 January 1966, 16 SCRA 175), relied upon heavily by Petitioner Ututalum, this Court ruled that the returns are obviously manufactured where they show a great excess of votes over what could have been legally cast. The Siasi returns, however, do not show prima facie that on the basis of the old List of Voters, there is actually a great excess of votes over what could have been

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legally cast considering that only 36,000 persons actually voted out of the 39,801 voters. Moreover, the Lagumbay case dealt with the "manufacture" of returns by those charged with their preparation as shown prima facie on the questioned returns themselves. Not so in this case which deals with the preparation of the registry list of voters, a matter that is not reflected on the face of said returns.

In the case of Bashier vs. COMELEC (L-33692, 24 February 1972, 43 SCRA 238), this Court categorically ruled: "The subsequent annulment of the voting list in a separate proceeding initiated motu proprio by the Commission and in which the protagonists here were not parties, cannot retroactively and without due process result in nullifying accepted election returns in a previous election simply because such returns came from municipalities where the precinct books of voters were ordered annulled due to irregularities in their preparation."

Moreover, the preparation of a voter's list is not a proceeding before the Board of Canvassers. A pre-proclamation controversy is limited to challenges directed against the Board of Canvassers, not the Board of Election Inspectors (Sanchez vs. COMELEC, ante), and such challenges should relate to specified election returns against which petitioner should have made specific verbal objections (Sec. 245, Omnibus Election Code; Pausing vs. Yorac, et al., G.R. No. 82700, 4 August 1988, Endique vs. COMELEC, G.R. Nos. 82020-21, 22 November 1988), but did not. (Ututalum vs. Commission on Elections, 181 SCRA 335 [1990], Melencio-Herrera, J.).

2. Tally Board or Sheet

§1. At the beginning of the counting, there shall be placed within the plain view of the board of election inspectors, watchers and the public, a tally board where the names of all the registered candidates or the issues or questions to be voted upon shall be written, and the poll clerk shall record thereon the votes received by each of them as the chairman of the board of election inspectors reads the ballot. (Section 161, Omnibus Election Code).

§2. x x x The poll clerk, and the third member, respectively, shall record on the election returns and the tally board or sheet each vote as the names voted for each office are read.

x x x Each vote shall be recorded by a vertical line, except every fifth vote which shall be recorded by a diagonal line crossing the previous four vertical lines. X x x. (Section 210, Omnibus Election Code).

§3. In like manner, neither is the tally board sufficient evidence of the real results of the election. Moreover, in the instant case, the fact that the tally board made its appearance only when Gata attached it to his appeal makes it highly suspect and therefore unreliable. x x x. Section 217 of B.P. Blg. 881 (The Omnibus Election Code) requires that the tally board or sheet shall, together with other election documents, be placed inside the ballot box. (Garay vs. Commission on Elections, 261 SCRA 222 [1996], Panganiban, J.).

3. Statement of Votes

§1. From the foregoing, it is clear that the COMELEC has ample power to see to it that the elections are held in a

clean and orderly manner and it may decide all questions affecting the elections and has original jurisdiction on all matters relating to election returns, including the verification of the number of votes received by opposing candidates in the election returns as compared to the statement of votes in order to insure that the true will of the people is known. Such a clerical error in the statement of votes can be ordered corrected by the COMELEC. (Villaroya vs. Commission on Elections, 155 SCRA 633 [1987], Gancayco, J.).

§2. “Indeed, errors in the Statement of Votes do not indubitably appear to be issues that may be raised in a pre-proclamation controversy under Section 243 of the Omnibus Election Code. In this respect, the law is silent as to when the same may be raised. We are, however, not unmindful of the fact that the statement of votes supports the certificate of canvass and shall be the basis of proclamation (Sec. 231, paragraph 2). Consequently, any error in the Statement of Votes would affect the proclamation made on the basis thereof. The true will of the electorate may thus be not fully and faithfully reflected by the proclamation”.

It is DUREMDES’ further submission that his proclamation could not be declared null and void because a pre-proclamation controversy is not proper after a proclamation has been made, the proper recourse being an election protest. This is on the assumption, however, that there has been a valid proclamation. Where a proclamation is null and void, the proclamation is no proclamation at all and the proclaimed candidate’s assumption of office cannot deprive the COMELEC of the power to declare such nullity and annul the proclamation. (Duremdes vs. Commission on Elections, 178 SCRA 746 [1989], Melencio-Herrera, J.).

§3. In Castromayor v. Comelec, we held that although the above provision applies to pre-proclamation controversies, and even if the proclamation of a winning candidate has already been made, there is nothing to prevent its application to cases like the one at bar in which the validity of the proclamation is precisely in question. In Duremdes v. Comelec, this Court sustained the power of the COMELEC En Banc to order a correction of the Statement of Votes to make it conform to the election returns in accordance with a procedure similar to the procedure now embodied in Sec. 7, Rule 27, of the COMELEC Rules of Procedure. Since the Statement of Votes forms the basis of the Certificate of Canvass and of the proclamation, any error in the statement ultimately affects the validity of the proclamation.

The Statement of Votes is merely a tabulation per precinct of the votes obtained by the candidates as reflected in the election returns. What is involved in the instant case is simple arithmetic. In making the correction in the computation, the Municipal Board of Canvassers acted in an administrative capacity under the control and supervision of the COMELEC. Pursuant to its constitutional function to decide questions affecting elections, the COMELEC En Banc has authority to resolve any question pertaining to the proceedings of the Municipal Board of Canvassers. (Torres vs. Commission on Elections, 270 SCRA 583 [1997], Bellosillo, J.).

4. Certificate of Votes

§1. After the counting of the votes cast in the precinct and announcement of the results of the election, and before leaving the polling place, the board of election inspectors shall issue a certificate of votes upon request of the duly

accredited watchers. The certificate shall contain the number of votes obtained by each candidate written in words and figures, the number of the precinct, the name of the city or municipality and province, the total number of voters who voted in the precinct, and the date and time issued, and shall be signed and thumbmarked by each member of the board.

The provisions of Sections 235 and 236 of Batas Pambansa Blg. 881 notwithstanding, the certificate of votes shall be admissible in evidence to prove tampering, alteration, falsification or any anomaly committed in the election returns concerned, when duly authenticated by testimonial or documentary evidence presented to the board of canvassers by at least two members of the board of election inspectors who issued the certificate: Provided, that failure to present any certificate of votes shall not be a bar to the presentation of other evidence to impugn the authenticity of the election returns. (Section 215, Omnibus Election Code, as amended by RA 6646).

§2. Within the contemplation of Section 163 of the Revised Election Code, discrepancy between the certificates of votes issued under Section 153 to the watchers, and the statements or returns sent to the authorities indicated in the law, is a ground for recounting of the votes in a precinct. (Board of Election Inspectors, et al., vs. Piccio, 81 Phil. 577 [1948], Perfecto, J.).

§3. The Certificate of Votes is evidence not only of tampering, alteration, falsification or any other anomaly in the preparation of election returns but also of the votes obtained by candidates (See Balindong v. COMELEC, 27 SCRA 567 [1969]). (Patoray vs. Commission on Elections, 249 SCRA 440 [1995], Mendoza, J.).

§4. According to Section 17, a certificate of votes can only be “evidence to prove tampering, alteration, falsification or any other anomaly committed in the election returns concerned, when duly authenticated x x x.” A certificate of votes does not constitute sufficient evidence of the true and genuine results of the election; only election returns are, pursuant to Sections 231, 233-236, and 238 of B.P. Blg. 881. (Garay vs. Commission on Elections, 261 SCRA 222 [1996], Panganiban, J.).

§5. To begin with, the corrections should be made either by inserting corrections in the Statement of Votes which was originally prepared and submitted by the MBC, or by preparing an entirely new Statement of Votes incorporating therein the corrections. The certification issued by the MBC is thus not the proper way to correct manifest errors in the Statement of Votes. More importantly, the corrections should be based on the election returns but here the corrections appear to have been made by the MBC on the bases of the Certificates of Votes issued.

Certificates of Votes are issued by Boards of Election Inspectors (BEI) to watchers, pursuant to Section 215 of the Omnibus Election Code (OEC). While such certificates are useful for showing tampering, alteration, falsification or any other irregularity in the preparation of election returns, there is no reason for their use in this case since the integrity of the election returns is not in question. On the other hand, in the canvass of votes, the MBC is directed to use the election returns. Accordingly, in revising the Statement of Votes supporting the Certificate of Canvass, the MBC should have used the election returns from the precincts in question although in fairness to the MBC, it proposed the use of election returns but the COMELEC en banc rejected the proposal. The Statement of Votes is a tabulation per precinct of votes garnered by the candidates as reflected in the election returns.

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The Statement of Votes is a vital component of the electoral process. It supports the Certificate of Canvass and is the basis for proclamation. But in this case, the Statement of Votes was not even prepared until after the proclamation of the winning candidate. This is contrary to the Omnibus Election Code, Sec. 231 of which provides in part: . . . . The respective board of canvassers shall prepare a certificate of canvass duly signed and affixed with the imprint of the thumb of the right hand of each member, supported by a statement of votes received by each candidate in each polling place and, on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay.

But what is clear is that the Statement of Votes was not prepared with the care required by its importance. Accordingly, as the Solicitor General states, what the COMELEC should have ordered the MBC to do was not merely to recompute the number of votes for the parties, but to revise the Statement of Votes, using the election returns for this purpose. (Ramirez vs. Commission on Elections, 270 SCRA 590 [1997], Mendoza, J.).

§6. In Garay vs. Commission on Elections, we had occasion to rule that: “x x x. According to Section 17, a certificate of votes can only be “evidence to prove tampering, alteration, falsification or any other anomaly committed in the election returns concerned, when duly authenticated x x x.” A certificate of votes does not constitute sufficient evidence of the true and genuine results of the election; only election returns are, pursuant to Sections 231, 233-236, and 238 of B.P. Blg. 881.”

The doctrine that a mere technicality cannot be used to frustrate the people’s will finds no application in the case at bar considering that the results of the election have not been duly established. (Recabo, Jr., vs. Commission on Elections, 308 SCRA 793 [1999], Gonzaga-Reyes, J.).

CHAPTER XVIII
Canvass and Proclamation

1. Board of Canvassers

a.) Composition

§1. A member of the municipal board of canvassers who becomes a candidate in an election must be replaced by a person who is a registered voter of the same party. For if the choice were made to fall on a person belonging to a different party, it might upset the balance of power unnecessarily.

The choice by the Commission on Elections of a replacement of a member of the municipal board of canvassers who becomes a candidate in an election is not restricted to the person recommended by the candidate or chairman of the party; all that the law requires is that the replacement be a registered voter of such party.

The language of Section 167 of the Revised Election Code should be made more explicit, so that it may be crystal clear and free from doubt. The task properly belongs to the Legislature. (Ibuna vs. Commission on Elections, 21 SCRA 1457 [1967], Fernando, J.).

§2. The city board of canvassers is an entity that is entirely different and distinct from the city board or city council of a chartered city. Similarly, a provincial board of canvassers, or a municipal board of canvassers, is an entity entirely different and distinct from the provincial board of a province, or the municipal council of a municipality, as the case may be. While members of a city board (or city council), or a provincial board or of a municipal council, are members also of a city board of canvassers, or provincial board of canvassers, or of a municipal board of canvassers, as the case may be, they do not act in the board of canvassers, in the capacity of city councilmen, or in the capacity of a member of the provincial board, or in the capacity of a member of a municipal council, but as election officials to perform functions specially provided by law. (Aquino vs. Commission on Elections, 22 SCRA 288 [1968], Zaldivar, J.).

§3. Although Sec. 17 of R.A. 7166 and Sec. 5, par. (a)(1) (not Sec. 4 as erroneously cited by petitioner), of Rule 27 of the COMELEC Rules of Procedure also allow filing of a petition directly with respondent COMELEC when the issue involves the illegal composition of the Board, Sec. 5, par. (b), of the same Rules requires that it must be filed immediately when the Board begins to act as such, or at the time of the appointment of the member whose capacity to sit as such is objected to if it comes after the canvassing of the Board, or immediately at the point where the proceedings are or begin to be illegal. In the present case, the petition was filed five (5) days after respondent Longcop had been proclaimed by the Board. At any rate, the real issue appears to be - not what it appears to petitioner - whether he can still dispute the composition of the Board after having actively participated in the proceedings therein. In this regard, we sustain respondent COMELEC. (Laodenio vs. Commission on Elections, 276 SCRA 705 [1997], Bellosillo, J.).

b.) Ministerial Duty

§1. After the municipal board of canvassers, in a municipal election, has completed its canvass of the votes cast, the making of the certificate required by law becomes a purely ministerial duty. If that certificate does not conform with the result of the canvass of the votes cast, the writ of mandamus will issue to compel said board to correct its certificate in accordance with the canvass. If the certificate is not in accordance with the facts as they appear from the “acta electoral [election returns],” the writ of mandamus will issue for the purpose of compelling the board to correct its certificate. Mandamus is the proper remedy to correct its certificate in accordance with its return or canvass. (Cordero vs. Judge of First Instance of Rizal, 40 Phil. 246 [1919], Johnson, J.).

§2. The canvass in question was held premature and illegal, as the provincial board of canvassers had before it not defective returns but papers or documents that were not returns at all. The requirement of Section 160 that “the provincial board of canvassers shall meet as soon as possible within fifteen days next following the day of election” and that “as soon as all the statements are before it but not later than fifteen days next following the date of the election, the provincial board of canvassers shall proceed to make a canvass of all the votes cast in the

province for national, provincial and city candidates, etc.," is directory (120 C.J. 199) and does not legalize the making and completing of the canvass before all the returns are in. (Torres vs. Ribo, 81 Phil. 44 [1948], Tuason, J.).

§3. Section 166 of the Revised Election Code constitutes the Commission on Elections as a national board of canvassers with respect to the election of senators. Such a board is a ministerial body empowered only to accept as correct returns transmitted to it which are in due form and to ascertain and declare the result as it appears therefrom. Questions of illegal voting and fraudulent practices are passed on by another tribunal. However, it must satisfy itself of the genuineness of the returns. Where the returns are obviously manufactured, as where they show a great excess of votes over what could legally have been cast, the board will not be compelled to canvass them. (Nacionalista Party vs. Commission on Elections, 85 Phil. 149 [1949], Ozaeta, J.).

§4. Under Section 168 of the Revised Election Code, it is the duty of the municipal board of canvassers to meet immediately after the election and to count the votes cast for the candidates of the different municipal offices from the statement of elections that may be submitted to it by the municipal treasurer and thereafter to proclaim as elected those who have pooled the largest number of votes for said offices. Said board is considered merely as a ministerial body which is empowered only to accept as correct those returns submitted to it which are in due form and to ascertain and declare the result as it appears therefrom. Its duty is purely mechanical and extends only to the counting up of the votes and awarding the certificate to those who may have received the highest number.

It being the imperative duty of the board of canvassers to meet immediately after the election, the courts cannot intervene to prevent that board from fulfilling such duty, except only in those cases that are expressly provided for in Section 163 of the Revised Election Code. (Miralles vs. Gariando, 111 Phil. 1001 [1961]; 2 SCRA 63 [1961], Bautista Angelo, J.).

§5. The question of whether or not there had been terrorism, vote-buying and other irregularities in the elections should be ventilated in a regular election protest, pursuant to Section 174 of the Election Code, and not in a petition to enjoin the city board of canvassers from canvassing the election returns and proclaiming the winning candidate for municipal offices.

The duty of the city board of canvassers to canvass the election returns and proclaim the winning candidates for municipal offices is more or less ministerial; it does not pass upon the validity or invalidity of the ballots cast, and its action is necessarily without prejudice to the determination of such question in a proper court proceeding later. (City Board of Canvassers, Tacloban City vs. Moscoso, 118 Phil. 934 [1963]; 9 SCRA 91 [1963], Makalintal, J.).

§6. The board of canvassers is a ministerial body enjoined by law to canvass all votes on election returns submitted to it in due form, and its powers are "limited generally to the mechanical or mathematical function of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained" (29 CJS., p. 656). The Comelec is the constitutional body charged with the duty to enforce all laws

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relative to elections, duty bound to see to it that the board of canvassers perform its proper function (Sec. 3, Revised Election Code; Cauton vs. Comelec, L-25467, April 27, 1967). Neither Constitution nor statute has granted Comelec or the board of canvassers the power, in the canvass of election returns, to look beyond the face thereof, once satisfied of their authenticity.

Where the petition does not indicate that the election returns have been falsified after they had left the hands of the election inspectors or that such returns are not genuine, the Supreme Court cannot give its stamp of approval to suspend canvass and proclamation, for, to stop both Comelec and the board of canvassers from their legal duty, and worse, to suspend canvassing and proclamation at a late date, may result in a vacuum in office of elective officials after the term of the present incumbents shall have ended on December 31st. Canvassing and proclamation must proceed, otherwise, it "would result in a lack of incumbents in the offices concerned after the termination of the current term and while the case remains pending in court" (City Board of Canvassers vs. Moscoso, L-16365, Sept. 3, 1963). (Abes vs. Commission on Elections, 21 SCRA 1252 [1967], Sanchez, J.)

§7. It is the ministerial function of a board of canvassers to count the results as they appear in the returns which on their face do not reveal any irregularities or falsities. The return in this case shows nothing on its face from which the canvassers might conclude that it does not speak the truth. It is only when it is compared with the certificate of the election registrar that a discrepancy appears as to the number of registered voters. The return therefore is by no means "obviously manufactured" so as to justify its exclusion.

The question of whether or not more people than registered voters were allowed to vote in Precinct 7 should be threshed out in an election contest.

Section 28 of the Revised Election Code which provides that any member of the provincial board who is a candidate for an elective office shall be incompetent to act in said board, draws no distinction between the provincial board acting as a provincial board of canvassers and the same board acting as a municipal canvassing body for new municipalities. Hence, reelectionist members of the provincial board are disqualified under said section even when they sit as a municipal board of canvassers. Where two of the four members of the board of canvassers were disqualified from sitting in it because they were candidates for reelection, then the canvass and proclamation made by said board should be annulled.

It is now settled doctrine that the COMELEC has the power to annul an illegal proclamation as when they are based on incomplete returns, and order a new canvass to be made by counting the returns wrongfully excluded. (Demafiles vs. Commission on Elections, 21 SCRA 1462 [1967], Castro, J.).

§8. The duty of the municipal board of canvassers to count the votes cast for candidates for municipal offices as shown in all the election returns produced by the municipal treasurer, can not be avoided. The board is to be guided by election returns transmitted to it which are in due form. Indeed, the board must be satisfied of the genuineness of the returns. A canvass made on incomplete returns may be annulled. (Pedido vs. Commission on Elections, 22 SCRA 1403 [1968], Sanchez, J.).

c.) Remedies

§1. A valid directive of a representative of the Commission on Elections directing the suspension of the proclamation of a mayoralty candidate serves to nullify the continuation of the canvass and consequent proclamation of a candidate to the contested position.

The Commission on Elections can order the suspension of a municipal board of canvassers and appoint substitutes to take their place in a new canvass of the election returns of all the precincts even after the old board had completed the canvass and proclamations were made in violation of the lawful order of the Commission.

There is no res judicata in the dismissal by the Court of First Instance of a petition for recount of votes based on the fact that a winner for the contested position has been proclaimed, where said proclamation was declared null and void for violation of lawful orders of the Commission on Elections. (Javier vs. Commission on Elections, 121 Phil. 168 [1965]; 13 SCRA 156 [1965], Barrera, J.).

§2. The election law never intended that where, in a given precinct, some of the returns are authentic and others are falsified, both the COMELEC and the Court of First Instance will have concurrent jurisdiction — prior to proclamation. To avoid confusion under such a situation, the remedies are drawn and delineated as follows: (1) Where before or during canvassing or before proclamation representations are made that returns are falsified, it becomes the primary duty, first of the board of canvassers, and then of the COMELEC to ascertain this fact. (2) If finally the COMELEC summarily finds that there was falsification of the copies to be used for canvassing purposes, then canvassing must be made upon the basis of authentic copies, because a falsified return or spurious return amounts to no return at all. (3) If, on the other hand, the discrepancy in the returns was the result of honest mistakes of the board of inspectors, two courses of action are open in the court of first instance: first, a petition for correction of returns with the consent of all the members of the board of inspectors under Section 154 of the Revised Election Code; and second, a petition by the said board or any candidate affected for summary judicial recount under Sections 163 and 168 of the same Code. A summary judicial recount is merely for the purpose of counting the number of votes received by each candidate as they appear on the face of the ballots" (Cawa vs. Del Rosario, L-16837-40 May 30, 1960). After all, ballot appreciation is proper in an election contest after proclamation.

The remedies thus delineated are explicit. They serve as guidelines. The right course to pursue given the fact of discrepancy — by reason of mistake or otherwise — is there.

If the board of canvassers for one reason or another makes a wrong decision, or takes no immediate action whether to consider or shunt aside returns which appear to have been falsified or to be spurious, the matter may be elevated forthwith to the COMELEC. And it is within the realm of COMELEC's concerns to direct that only genuine returns be considered where dastardly attempts were made to subvert the people's choice by a resort to patently doctored returns. (Ong vs. Commission on Elections, 22 SCRA 241 [1968], Sanchez, J.).

§3. A municipal board of canvassers must therefore count all the votes cast in the election and, for this purpose, must consider all returns presented to it by the municipal treasurer. If material defects there are in the form of the returns, it must send them back to the corresponding boards of inspectors for correction. If certain precincts have

not sent in their returns, the board must send for them, and the fiscal should forthwith institute criminal proceedings against those who may be criminally responsible for the delay. If there is a discrepancy between two authentic copies of an election return and the difference affects the result of the election, the board may ask the proper court of first instance to order a recount of the ballots.

All these serve to underscore the need to count all the votes cast in an election. Only when the returns are palpably irregular or obviously manufactured may they be rejected but even then the board must exercise "extreme caution." And where a return is falsified, the board may apply to the Comelec for authority to use another copy which is genuine and authentic. (Mutuc vs. Commission on Elections, 22 SCRA 662 [1968], Castro, J.).

§4. It is clear from this provision that the board of canvassers is under the obligation to make a written ruling on the formal objections made by any of the parties, who may then appeal the same to the COMELEC. It is equally clear that the failure or refusal of the board of canvassers to discharge this obligation should not in any way prejudice the objecting party's right to elevate the matter to the COMELEC for proper review. Otherwise, all that a board of canvassers, partial to one of the candidates, has to do to favor him would be to refuse to make a written ruling on his opponent's objections and thereby prevent their review by the COMELEC. In the case at bar, however, there does not appear to be any such prejudice. The issue is the refusal of the COMELEC to consider objections to 24 election returns on which the board of canvassers had not made a written ruling. But it would seem that, strictly speaking, no ruling was necessary, or even proper. By the petitioners' own contention "in all those 24 returns, the Christian name, nickname or maternal surname of private respondent's husband was used with her Christian name or nickname which, as we will show at length infra, did not constitute a valid vote for private respondent. If so, the total 1,912 votes in these returns credited for private respondent should be discounted." This matter was obviously beyond the competence of the board of canvassers to resolve. Neither was it cognizable in a pre-proclamation controversy before the COMELEC as defined in Section 243 of the Omnibus Election Code.

The inclusion or exclusion in the canvass of certain election returns where votes allegedly cast for Emeterio Larrazabal were counted for his wife is an issue appropriate in an election contest and not in a pre-proclamation controversy. And it is also immaterial that, as also contended, the inclusion of such votes would affect the over-all results of the election and swing it in his favor. The accepted rule is that as long as the returns appear to be authentic and duly accomplished, the board of canvassers cannot look beyond them to verify allegations of irregularities in the casting or the counting of the votes. These issues cannot be resolved by the board of canvassers. A long line of decisions has established the doctrine that the board of canvassers has only the ministerial task of tallying the votes as reported in the election returns and cannot exercise the judicial power of deciding an election contest.

All pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing, and its decisions shall be executory after the lapse of five days from receipt by the losing party of the decision of the Commission, unless restrained by the Supreme Court. And the reason for this rule is obvious. As we stressed in Alonto v. COMELEC, "the policy of the election law is that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible." That is why such questions as those involving the appreciation of the votes and the conduct of the campaign and the balloting, which require more deliberate and necessarily longer consideration, are left for examination in the

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corresponding election protest.

The contention that the dismissal of the pre-proclamation controversy would render the disqualification case moot and academic is also untenable. The two cases are independent of each other and one may be resolved separately without affecting the other. The purpose of a pre-proclamation controversy is to ascertain the winner or winners in the elections on the basis of the election returns duly authenticated by the boards of inspectors and admitted by the board of canvassers. The purpose of a disqualification proceeding is to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. Obviously, the mere fact that a candidate has been proclaimed elected does not signify that his disqualification is deemed condoned and may no longer be the subject of a separate investigation. (Abella vs. Larrazabal, 180 SCRA 509 [1989], Cruz, J.).

§5. To be sure, the COMELEC did not itself annul the proclamation of petitioner, but, by "direct[ing] the Municipal Board of Canvassers of said municipality to reconvene to annul the proclamation of Nicolas C. Castromayor," the COMELEC in effect did so. After all, the authority of the COMELEC was sought because, without such authority, the MBC would not have the power to annul the proclamation of petitioner.

The proceedings before the MBC should be summary. Should any party be dissatisfied with the ruling of the MBC, the party concerned shall have a right to appeal to the COMELEC en banc, in accordance with Rule 27, Section 7 of the COMELEC Rules of Procedure.

Although this provision applies to pre-proclamation controversies and here the proclamation of petitioner has already been made, there is nothing to suggest that it cannot be applied to cases like the one at bar, in which the validity of the proclamation is precisely in question. On the contrary, in Duremdes v. COMELEC, this Court sustained the power of the COMELEC en banc to order a correction of the Statement of Votes to make it conform to the election returns in accordance with a procedure similar to the procedure now embodied in Rule 27, Sec. 7. (Castromayor vs. Commission on Elections, 250 SCRA 298 [1995], Mendoza, J.).

§6. Section 20 of R.A. 7166 provides for the procedure in the disposition of contested election returns, thus: When a party contests the inclusion or exclusion of a return in the canvass, on the grounds provided under Article XX or Sections 234-236, Article XIX of the Omnibus Election Code, the board of canvassers shall defer the canvass of the contested return, and within 24 hours receive the evidence of the objecting party. Within 24 hours, opposition to the objection may be made by the other party. Upon receipt of the evidence, the board of canvassers shall make a ruling thereon.

We find that the MBC did not err in refusing to consider the objections raised by private respondent during the canvass of the returns. Section 20 of R.A. 7166 applies only where the objection on the return being canvassed refers to issues proper in a pre-proclamation controversy. Under the Omnibus Election Code, pre-proclamation controversies are limited to: (1) challenges directed against the composition or proceedings of the board of canvassers (not the board of election inspectors), or (2) challenges related to election returns to which a party must have made specific objections.

In the case of Abella v. Larrazabal, we ruled that the objection raised before the board of canvassers that certain

votes reflected in certain returns are not valid votes as they should not have been counted at all is not a valid ground for a pre-proclamation controversy. It is beyond the competence of the board of canvassers; neither is it a pre-proclamation issue, and the refusal of the board canvassers to consider such objection or rule on the same is not erroneous. (Patoray vs. Commission on Elections, 274 SCRA 470 [1997], Puno, J.).

§7. Section 20, paragraph (i) of Rep. Act 7166 reads: "SEC. 20. Procedure in Disposition of Contested Election Returns.¾x x x x x x x x x (i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election. x x x x x x x x x." The inapplicability of the abovementioned provision to the present case is very much patent on its face considering that the same refers only to a void proclamation in relation to contested returns and NOT to contested qualifications of a candidate.

Moreover, there is no reason why the Manila City BOC should not have proclaimed Basco as the sixth winning City Councilor. Absent any determination of irregularity in the election returns, as well as an order enjoining the canvassing and proclamation of the winner, it is a mandatory and ministerial duty of the Board of Canvassers concerned to count the votes based on such returns and declare the result. This has been the rule as early as in the case of Dizon v. Provincial Board of Canvassers of Laguna where we clarified the nature of the functions of the Board of Canvassers, viz.: "The simple purpose and duty of the canvassing board is to ascertain and declare the apparent result of the voting. All other questions are to be tried before the court or other tribunal for contesting elections or in quo warranto proceedings" (9 R.C.L., p. 1110). (Grego vs. Commission on Elections, 274 SCRA 481 [1997], Romero, J.).

§8. In the present case, although the COMELEC annulled the proclamation of petitioner, it merely directed the Municipal Board of Canvassers to "RECONVENE within five (5) days from receipt hereof and effect the corrections in the total number of votes received by the candidates in Precinct Nos. 84-A/84-A-1 (clustered) and Precinct No. 23-A and thereafter PROCLAIM the winning candidate/s for Municipal Kagawad based on the corrected results." It was the Municipal Board of Canvassers which the COMELEC ordered to actually effect the necessary corrections, if any, in the said election returns and, on the basis thereof, proclaim the winning candidate or candidates as member or members of the Sangguniang Bayan. In accordance with our ruling in Castromayor, the expedient action to take is to direct the Municipal Board of Canvassers to reconvene and, after notice and hearing in accordance with Rule 27, Section 7 of the COMELEC Rules of Procedure, to effect the necessary corrections, if any, in the election returns and, on the basis thereof, proclaim the winning candidate or candidates as member or members of the Sangguniang Bayan. (Angelia vs. Commission on Elections, 332 SCRA 757 [2000], Mendoza, J.).

§9. It cannot be correctly argued that the 3-day period set by law for the submission of an appeal from a ruling contesting the composition or proceedings of Board of Canvassers had expired where the Board of Canvassers never ruled on a party's objections to the board's proceeding.

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An incomplete canvass is illegal and cannot be the basis of a valid proclamation. A proclamation made where the contested returns set aside will affect the result of the election and the board of canvassers proceeded to proclaim without the authority from the COMELEC is null and void. (Sema vs. Commission on Elections, 347 SCRA 633 [2000], Kapunan, J.).

d.) Functus officio

§1. When the duties of the municipal board of canvassers are completed and it makes its certificate as required by law, its work as such municipal board of canvassers is ended, and there is no provision made in the law for its continuance as a board of canvassers. The court may order it to reconvene as such board for the purpose of correcting its canvass in accordance with the facts found by the Judge. The work of the municipal board of canvassers is completed when it has finished the canvass of the votes in accordance with Section 477 of the Administrative Code, and it ceases to exist as such board until an order of the Court of First Instance is issued, directing it to reconvene and to correct its canvass. (Cordero vs. Judge of First Instance of Rizal, 40 Phil. 246 [1919], Johnson, J.).

§2. The duties of the provincial board of canvassers in tabulating and summing up election returns are of a ministerial nature; and the writ of mandamus is available to compel them, in canvassing the votes for the office of provincial governor, to give effect to a return from a particular precinct which is properly certified to them, with judicial approval, as an amended return. (Dizon vs. Provincial Board of Canvassers of Laguna, 52 Phil. 47 [1928], Street, J.).

§3. When a board of canvassers has fully performed its duty and proclaimed the result of the election according to law and adjourned sine die, it may be deemed functus oficio in the sense that the members of the board have no power voluntarily to reassemble and recanvass the returns. (Bautista vs. Fugoso and Sison, 60 Phil. 383 [1934], Butte, J.).

§4. The duty of the board of canvassers to make the proclamation in accordance with the election returns of all the precincts of the municipality is ministerial; so that, where the board proclaimed only four councilors, where six councilors should have been proclaimed — the Commission may order it to reconvene and make a new proclamation by including the other two councilors who received the highest number of votes. (Olano vs. Ronquillo, 118 Phil. 205 [1963]; 8 SCRA 204 [1963], Bengzon, C.J.).

§5. The specific function of a board of canvassers is to canvass the results of the election as shown in the election returns and to proclaim the winning candidates. Once this specific function had been performed, the existence of the board of canvassers is ended and terminated (Cordero v. CFI of Rizal, 40 Phil. 246). (Aquino vs. Commission on Elections, 22 SCRA 288 [1968], Zaldivar, J.).

§6. The board of canvassers is created for a specific purpose: canvass and proclamation, and no more. Its term of

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office does not coincide with the term of office of the officials concerned. It terminates as soon as its functions are finished. Only then does it adjourn sine die and thus become functus officio (Bautista v. Fugoso, 60 Phil. 383, 389). As a corollary thereto, it normally retains its authority as a board until it shall have completed its functions and accomplished its purposes. They may be public officers in another capacity. Yet they are never functus officio as election officers until they have totally discharged their duties. They cannot be disrobed until then. Public policy and interest prop up this position. For, they are agents of the State. They are purely and distinctly election officers. (Pelayo, Jr. vs. Commission on Elections, 23 SCRA 1374 [1968], Sanchez, J.).

2. Canvass and Proclamation

§1. Where the election inspectors of a particular precinct have obtained judicial approval to an amendment of their returns with respect to a particular office, and such amended return is duly certified to the provincial board of canvassers prior to the making of official proclamation by the board, such amended return should be adopted and incorporated into the result of the canvass. An amended return which has received judicial approval and has been duly certified to the board has the effect of abrogating the original return. Where power is conceded to any person or body to modify a legal act, the document expressive of such modification necessarily takes precedence over the thing modified. (Dizon vs. Prov. Board of Canvassers, 52 Phil. 47 [1928], Street, J.).

§2. The purpose of an election contest is to correct the canvass of which the proclamation is a public manifestation, and the power granted by law to the courts must agree with and be adequate to such an object. (Aquino vs. Calabia and Sahagun, 55 Phil. 984 [1931], Romualdez, J.).

§3. The duty of the Commission on Elections to investigate and act on the propriety or legality of a canvass of election made by the municipal board of canvassers, is discretionary, and said commission may not therefore be compelled to perform such duty through mandamus proceedings. (Ramos vs. Commission on Elections, et al., 80 Phil. 722 [1948], Paras, J.).

§4. The powers of the Commission on Elections are defined in the Constitution and powers not expressly or impliedly granted to it are deemed withheld. Any alteration or amendment in the statements of election, or any contradiction or discrepancy appearing therein, whether due to clerical error or otherwise, cannot be made without the intervention of a competent court, once the announcement of the result of the election, or the proclamation of the winners had been made. (De Leon vs. Imperial, 94 Phil. 680 [1954], Bautista Angelo, J.).

§5. The proclamation of one of the candidates for mayor by the board of canvassers after a canvass based on a photastic copy of the duplicate of the returns received by the Commission on Elections, and not on the original returns received by the Municipal Treasurer as prescribed by law, although it had not been established that the latter was not available, is null and void. (Santos vs. Commission on Elections, 106 Phil. 877 [1960], Reyes, J.B.L., J.).

§6. Under Section 168 of the Revised Election Code, it is the duty of the municipal board of canvassers to meet immediately after the election and to count the votes cast for the candidates of the different municipal offices from the statement of elections that may be submitted to it by the municipal treasurer and thereafter to proclaim as elected those who have pooled the largest number of votes for said offices. Said board is considered merely as a ministerial body which is empowered only to accept as correct those returns submitted to it which are in due form and to ascertain and declare the result as it appears therefrom. Its duty is purely mechanical and extends only to the counting up of the votes and awarding the certificate to those who may have received the highest number.

It being the imperative duty of the board of canvassers to meet immediately after the election, the courts cannot intervene to prevent that board from fulfilling such duty, except only in those cases that are expressly provided for in Section 163 of the Revised Election Code. (Miralles vs. Gariando, 111 Phil. 1001 [1961]; 2 SCRA 63 [1961], Bautista Angelo, J.).

§7. The duty of the board of canvassers to make proclamation in accordance with the election returns of all the precincts of the municipality is ministerial; so that, where the board proclaimed only four councilors, where six councilors should have been proclaimed—the Commission may order it to reconvene and make a new proclamation by including the other two councilors who received the highest number of votes. (Olano vs. Ronquillo, 118 Phil. 205 [1963], 8 SCRA 204 [1963], Bengzon, C.J.).

§8. The question of whether or not there had been terrorism, vote-buying and other irregularities in the elections should be ventilated in a regular election protest, pursuant to Section 174 of the Election Code, and not in a petition to enjoin the city board of canvassers from canvassing the election returns and proclaiming the winning candidates for municipal offices.

The duty of the city board of canvassers to canvass the election returns and proclaim the winning candidates for municipal offices is more or less ministerial; it does not pass upon the validity or invalidity of the ballots cast, and its action is necessarily without prejudice to the determination of such question in a proper court proceeding later.

The city board of canvassers may not be enjoined from assessing the returns, because it would result in a lack of incumbents in the offices concerned after the termination of the current term and while the case remains pending in court. This is not within the contemplation of the Election Code, which provides for election contests only after proclamation of the winning candidates. Furthermore, an injunction such as that issued by respondent court would prevent the city board of canvassers from certifying the results of the election even with respect of national offices. (City Board of Canvassers, Tacloban City vs. Moscoso, 118 Phil. 934 [1963]; 9 SCRA 91 [1963], Makalintal, J.).

§9. The Commission on Elections has the power to investigate and act on the propriety or legality of the canvass of election returns made by the board of canvassers. The power of the Commission in this respect is simply administrative and supervisory. It is intended to secure the proclamation of the winning candidate based on the true count of the votes cast.

The object of the canvass is to determine the result of the elections based on the official election returns. In order that the result of the canvass would reflect the true expression of the people’s will, it must be based on genuine and untampered election returns. The Commission exercises its jurisdiction, relative to the conduct of elections, in order to attain that result. (Cauton vs. Commission on Elections, 126 Phil. 291 [1967]; 19 SCRA 911 [1967], Zaldivar, J.).

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§10. The board of canvassers is a ministerial body enjoined by law to canvass all votes on election returns submitted to it in due form, and its powers are "limited generally to the mechanical or mathematical functions of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained" (29 CJS., p. 656). The Comelec is the constitutional body charged with the duty to enforce all laws relative to elections, duty bound to see to it that the board of canvassers perform its proper function (Sec. 3, Revised Election Code; Cauton vs. Comelec, L-25467, April 27, 1967). Neither Constitution nor statute has granted Comelec or the board of canvassers the power, in the canvass of election returns, to look beyond the face thereof, once satisfied of their authenticity.

Where the petition does not indicate that the election returns have been falsified after they had left the hands of the election inspectors or that such returns are not genuine, the Supreme Court cannot give its stamp of approval to suspend canvass and proclamation, for, to stop both Comelec and the board of canvassers from their legal duty, and worse, to suspend canvassing and proclamation at a late date, may result in a vacuum in office of elective officials after the term of the present incumbents shall have ended on December 31st. Canvassing and proclamation must proceed, otherwise, it "would result in a lack of incumbents in the offices concerned after the termination of the current term and while the case remains pending in court" (City Board of Canvassers vs. Moscoso, L-16365, Sept. 3, 1963). (Abes vs. Commission on Elections, 21 SCRA 1252 [1967], Sanchez, J.).

§11. The duty of the board of canvassers to take the returns as made from the different voting precincts, add them up, and declare the result, is almost wholly ministerial. The canvassers are to be satisfied of the genuineness of the returns, that is that the papers presented to them are not forged and spurious, that they are returns, and are signed by the proper officers. The simple purpose and duty of the canvassing board is to ascertain and declare the apparent result of the voting. Questions of illegal voting and fraudulent practices are passed on by another tribunal. (Sangki vs. Commission on Elections, 21 SCRA 1392 [1967], Sanchez, J.).

§12. It is the ministerial function of a board of canvassers to count the results as they appear in the returns which on their face do not reveal any irregularities or falsities. The return in this case shows nothing on its face from which the canvassers might conclude that it does not speak the truth. It is only when it is compared with the certificate of election registrar that a discrepancy appears as to the number of registered voters. The return therefore is by no means "obviously manufactured" so as to justify its exclusion.

The question of whether or not more people than registered voters were allowed to vote in Precinct 7 should be threshed out in an election contest. (Demafiles vs. Commission on Elections, 21 SCRA 1462 [1967], Castro, J.).

§13. The duty of the municipal board of canvassers to count the votes cast for candidates for municipal offices as shown in all the election returns produced by the municipal treasurer, can not be avoided. The board is to be guided by election returns transmitted to it which are in due form. Indeed, the board must be satisfied of the genuineness of the returns. A canvass made on incomplete returns may be annulled. (Pedido vs. Commission on Elections, 22 SCRA 1403 [1968], Sanchez, J.).

§14. Where a member of the Board of Canvassers designated by law is excluded from the canvass by reason of which he did not take part therein, the canvass and the resulting proclamation are both null and void.

The canvassing board will not be compelled to canvass returns which are obviously manufactured. But this does not mean that the board and Comelec should right away disregard the votes cast in precincts where the returns are

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doctored. It is the duty of the Board to report the matter to the Comelec.

Where the election returns are tampered, it is within the power of the Comelec to issue such order as would ascertain the existence of the genuine, authentic and untampered election returns. It should inquire into the copies of the returns for the provincial treasurer. And if these copies are not authentic it should look into the copies of the returns in the ballot boxes. Here, every effort should be strained to ascertain the existence of serviceable returns from Precincts 18, 19, 21 and resort to the copies of the returns in the hands of the provincial treasurer and, if necessary, those in the ballot boxes, is justified. The returns from these precincts not canvassed are vital to the political fortunes of the contending candidates, and ascertainment of the results thereof should not so easily be done away with.

The broad sweep of the Comelec's duty to administer and enforce the election law gives it ample authority to direct the board of canvassers to include in the canvass returns from the questioned precincts. It should summon the members of the board of inspectors, take evidence and ascertain which are the genuine returns; then it should direct the board to use these returns in the canvass of the votes.

It is true that respondent Negre filed in the CFI an "election protest" after he had petitioned the Comelec to suspend or annul the canvass of the votes and/or annul the election returns. But said petition filed in Court sought to impugn not necessarily the election of his opponent but "the election returns and ballots cast" in the questioned precincts and the proclamation of Pacis; he also sought to enjoin Pacis from assuming office. These allegations are mere repetitions of his petition before the Comelec where he also assailed the illegality of the canvass and the proclamation of his opponent. His petition in court was to have a new board of canvassers, the exclusion from the canvass of the alleged tampered returns and his own proclamation as mayor-elect of Sanchez Mira. In this case there was no valid canvass and proclamation.

The Acain doctrine, L-16445, May 23, 1960, where this Court ruled that the CFI of Agusan acquired exclusive jurisdiction to inquire into and pass upon the title of Degamo and the validity of the proclamation made by the Board of Canvassers, does not govern in this case. First, in the Acain case, there was an actual protest; here, what was desired in court was merely a valid proclamation where the Board was made a party respondent. Second, unlike in Acain, where petitioners did not pursue their remedy of recount, Negre here persisted in pursuing his petition to annul the wrongful proclamation of his adversary. Third, in Acain, private respondents assumed office becoming at least de facto officers, here, both candidates aver that they assumed office so quo warranto cannot be the remedy of either. Fourth, in Acain, the board of canvassers was found to be lawfully constituted; here, the board was found to have been unlawfully constituted. Here, both proclamations are declared null and void as if no proclamation was at all made. (Pacis vs. Commission on Elections, 22 SCRA 539 [1968], Sanchez, J.).

§15. It is now a settled doctrine that an incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation. Indeed, it is the ministerial duty of a municipal canvassing body to count the votes cast "in the same manner as hereinbefore provided for the provincial board (of canvassers)," which means to say to count all the votes cast. Thus, Section 160 of the Election Code enjoins provincial boards of canvassers as follows: "As soon as all the statements are before it but not later than fifteen days next following the date of election, the provincial board of canvassers shall proceed to make a canvass of all the votes in the province for national, provincial, and city candidates and upon the completion of the canvass, shall make, as the case may be,

separate statements of all the votes received by each candidate x x x .” A municipal board of canvassers must therefore count all the votes cast in the election and, for this purpose, must consider all returns presented to it by the municipal treasurer. If material defects there are in the form of the returns, it must send them back to the corresponding boards of inspectors for correction. If certain precincts have not sent in their returns, the board must send for them, and the fiscal should forthwith institute criminal proceedings against those who may be criminally responsible for the delay. If there is a discrepancy between two authentic copies of an election return and the difference affects the result of the election, the board may ask the proper court of first instance to order a recount of the ballots.

All these serve to underscore the need to count all the votes cast in an election. Only when the returns are palpably irregular or obviously manufactured may they be rejected but even then the board must exercise “extreme caution.” And where a return is falsified, the board may apply to the Comelec for authority to use another copy which is genuine and authentic. Why must all the votes be counted when there is a need to finish the canvass on time so that proclamation can be made before the beginning of the term of office? Because to disregard returns is in effect to disfranchise the voters.

Where it appears that election returns in the municipality of Makati are incomplete in the sense that the election return in Precinct No. 124 of the said municipality did not contain at all the entry of votes cast for each candidate as mayor, hence the municipal board of canvassers cannot proceed with the canvassing of votes, the Comelec is bereft of power to order the board of canvassers of Makati to disregard the return from Precinct 124, even if it noted from its copy (which was likewise blank or incomplete) that the number of votes cast in the precinct (263) was too small to be of any significance to any candidate. This, because the Comelec has no power to decide questions involving the right to vote, as to disregard a return is in effect to deny the voters their votes.

What the Comelec should have done is to take the logically obvious and simple step of ordering the opening of the ballot box to find if the copy of the return deposited therein was properly accomplished and, if it was, to order that it be used in the canvassing of votes. This it had the power to do in the fulfillment of its constitutional duty of insuring “free, orderly, and honest elections.” And this it was unimpeded and had ample time to do, considering that from November 24 when it ordered the proclamation, there were still 37 days to go to the statutory date of assumption of office by the elected candidates (January 1). This is the reason why in two other cases, we upheld the power of the Comelec to direct canvassing boards to use returns other than those specified by law if the latter are found to have been falsified.

Although respondents have been proclaimed and have subsequently assumed office, and that as a matter of fact some the petitioners, more specifically the petitioner Michael Joseph, have pending election protests in the Court of First Instance of Rizal against some of the respondents, and although it is also indeed true that after proclamation the usual remedy of any party aggrieved in an election is to be found in an election protest, that is so only when the assumption was made under a valid proclamation. On the other hand, where as in the case at bar the proclamation itself is illegal, the assumption of office cannot in any way affect the jurisdiction of the Supreme Court to take cognizance of the case.

The Comelec should direct the opening of the ballot box corresponding to Precinct 124 for the purpose of

retrieving the copy of the election return deposited therein so that it may be used in canvassing anew the votes cast for the local official of Makati, and, should it be found that the ballot box copy is likewise blank or incomplete, the Commission should order a count of the ballots, giving notice, for this purpose, to all the candidates. This is the procedure that best recommends itself, what with the lack of specific procedure for dealing with the situation such as this. Judicial recount of the ballots under Section 163 of the Code cannot be the remedy because there is no discrepancy between one authentic copy and another authentic copy of the same return. As we have earlier stated, the copies of the election return in this case contain no entries as to the number of votes received by each candidate. So there really is no discrepancy, but only a failure to accomplish the form of the return properly. Indeed what has been submitted is no return at all. The Commission on Elections is hereby directed (1) to order the board of inspectors of Precinct 124 of Makati, after due notice to all the candidates, to open the ballot box corresponding to the said precinct for the purpose of retrieving therefrom the copy of the election return for use in the new canvass to be held by the municipal board of canvassers, if said copy has been properly accomplished, or, in the event that the said copy is blank or incomplete, to count all the votes cast in the said precinct and then properly accomplish a return based on such count; and (2) thereafter to order the municipal board of canvassers of Makati, without delay and after due notice to all the candidates, to hold a new canvass of all the votes cast in that municipality, and to proclaim the winning candidates in accordance with the results thereof. (Mutuc vs. Commission on Elections, 22 SCRA 662 [1968], Castro, J.).

§16. While the Comelec in its role as senatorial canvasser has the power to reject returns before it which in its opinion were illegal and not authentic, neither law nor precedent authorizes it to impose the same criterion in advance upon the provincial boards of canvassers. The latter are entitled to use their own judgment in determining whether the irregularities appearing on the returns before them warrant their rejection. It must not be forgotten that the copies of the returns upon which the provincial canvassers act are different from those in the possession of the Comelec, and the irregularities noted in the latter may not necessarily exist in the former. Should there be any discrepancy between the official copies, the petitioners can recourse to a judicial recount under Section 163 of the Election Law. But certainly, an a priori rejection on the basis of previous Comelec action is not justifiable.

The alleged excess of votes cast (detailed and enumerated in the petition) do not necessarily support the conclusion that the returns are obviously manufactured for reasons of statistical improbability. There is here no uniformity of tallies in favor of candidates belonging to one party and the systematic blanking of the opposing candidates that led this Court to reject the returns in the Lagumbay case. In Sangki vs. Comelec, L-28359, Dec. 26, 1967, this Court warned against the undue expansion of the Lagumbay doctrine without due regard to the factual basis upon which it was based.

While in Lagumbay vs. Comelec, this Court has taken official cognizance of the spread of the pernicious practice of tolerating or abetting the tampering or manufacture of returns just to get the proclamation and then let the victimized candidate file the protest and spend his money to work for an empty victory, the Court has likewise adverted to the equally pernicious effects of excessive delay of proclamations. The Comelec and the Court should guard both against proclamation-grabbing through tampered returns as well as against attempts to paralyze canvassing and proclamation in order to prolong hold-overs by officials whose terms are officially ended. (Alonto vs. Commission on Elections, 22 SCRA 878 [1968], Reyes, J.B.L., J.).

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§17. Time and again, the Supreme Court has given its imprimatur on the principle that Comelec is with authority to annul any canvass and proclamation which was illegally made. The fact that a candidate proclaimed has assumed office is no bar to the exercise of such power. Therefore, a petition before the Comelec which is directed at the annulment of the canvass and proclamation is within the area allocated by the Constitution and the law to the Comelec to inquire.

The election law does not provide for a time limit within which a candidate may challenge the validity of a proclamation before the Comelec. But inaction for an unreasonable period may block such remedy to challenge the validity of the proclamation. Considering the steps taken by respondent in the case at bar, first, in the Court of First Instance, and second, in the Comelec, the time gap between the alleged illegal proclamation of November 20, 1967 and the petition before the Comelec of January 6, 1968 does not authorize this Court to say that respondent Alim Balindong is guilty of laches. (Aguam vs. Commission on Elections, 23 SCRA 883 [1968], Sanchez, J.).

§18. Boards of Canvassers may suspend the canvass only if it should clearly appear: (1) that another copy or other authentic copies of the statement of the election return from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election; or (2) that there is a difference between the votes of the same candidate written in words and those written in figures in the same election return; or (3) that the entry of votes in the election return is on its face clearly falsified; or (4) that it is not legible. In this case, Precinct No. 5 does not come under any of these situations.

The allegation that the canvass and proclamation made by the board of canvassers is based on a falsified or altered election returns is insufficient to characterize the returns as falsified or altered or to authorize the ex parte annulment of said canvass and proclamation when the allegation is predicated merely upon “a tabulation of the election result as per election returns submitted x x x to the Liberal Party President.”

Where a candidate files an election protest assailing the proclamation of his opponent and prays that he (the former) be declared elected, the question whether the election returns reflect the true result of the elections should be elucidated and decided in said election protest, not in another proceeding, either administrative or judicial in character.

Under Section 154 of the Revised Election Code, if one of the members of the board of inspectors object or does not agree, the proceedings under said section being non-contentious in character, a petition for correction of the election return would not prosper without notice to the adverse party. (Felix vs. Commission on Elections, 23 SCRA 1288 [1968], Concepcion, C.J.).

§19. Proclamation is but a formal act to confirm the canvass previously held. It is just a ceremony which follows canvass as a matter of course. (Pacis vs. Commission on Elections, 25 SCRA 377 [1968], Sanchez, J.).

§20. It is well settled that the question whether certain returns are falsified or have been tampered with and should

not be included in the canvass, must first be raised before the board of canvassers, subject to appeal from its decision to the Comelec. Where petitioner does not do so and instead took it up directly with the Comelec, in violation of the explicit provision of Section 163, R.A. No. 180, as amended, will cause the dismissal of the petition. (Moore vs. Commission on Elections, 31 SCRA 60 [1970], Per Curiam).

§21. Canvass proceedings are administrative and summary in nature, and a strong prima facie case backed up by a specific offer of the evidence and indication of its nature and importance has to be made out to warrant the reception of evidence aliunde and the presentation of witnesses and the delays necessarily entailed thereby. Otherwise, the paralyzation of canvassing and proclamation proceedings leading to a vacuum in government offices could easily be brought about. (Ilarde vs. Commission on Elections, 31 SCRA 72 [1970], Per Curiam).

§22. The function of a canvassing board in the canvass of the returns is purely ministerial in nature. Equally ministerial, therefore, is the function of the Commission on Elections, in the exercise of its supervisory power over said Board, pursuant to our Constitution and laws. So long as the election returns have been accomplished in due form, the Board, and on appeal therefrom, the Commission on Elections, must include said returns in the canvass.

In the exercise of its appellate jurisdiction the Commission on Elections cannot take up any question not originally set up before the Board of Canvassers. (Lucman vs. Dimaporo, 33 SCRA 387 [1970], Concepcion, C.J.).

§23. The COMELEC in a pre-proclamation controversy does not commit a grave abuse of discretion in authorizing the proclamation of two candidates for the provincial board where the results of the pending examination of 164 questioned precincts cannot conceivably alter the winner status of said proclaimed candidates.

Petitioners' contention that under the Comelec's instructions to the canvassing board, the duty to object to the election returns during the canvass and to appeal to the Comelec from the adverse ruling of the canvassing board is imposed on the "losing party" which could not apply to them as they were the prevailing party in the canvassing ingeniously disregards the clear text and mandate of such instructions that a party who challenges any return during the canvass must duly interpose his objection and that the "adverse party" who is aggrieved by the board's ruling — not necessarily the "losing party" has the duty of appealing the board's ruling to Comelec.

The question whether certain returns are falsified or have been tampered with and should not be included in the canvass, must first be raised before the board of canvassers, subject to appeal from its decision to the Comelec. Any question not originally set up before said board cannot legally be raised before the Commission in the exercise of its appellate jurisdiction. (Anni vs. Rasul, 46 SCRA 758 [1972], Teehankee, J.).

§24. Pendency of a disqualification case before the COMELEC will not justify suspension of proclamation of a candidate after winning the election. (Singco vs. Commission on Elections, 101 SCRA 420 [1980], De Castro, J.).

§25. A petition which asks for nullification of a Board of Canvassers' proclamation cannot limit itself to the nullification of the proclamation of one candidate only.

Partial or advance proclamation of any winning candidate under Sec. 56 of B.P. 697 refers to absence of any proclamation by the Board of Canvassers, not where all winning candidates had been proclaimed.

The time to object to an election return is when it is still being examined by the Board of Canvassers, not after it has proclaimed the winners.

Resort to general objections have long been proscribed by this Court. Such cannot justify the exclusion of election returns from the canvass. Otherwise, the paralyzation of canvassing and proclamation proceedings leading to a vacuum in government offices could easily be brought about (Ilarde vs. COMELEC, G.R. No. 31446, Jan. 23, 1970, 31 SCRA 72, 81). (Guiao vs. Commission on Elections, 137 SCRA 356 [1985], Alampay, J.).

§26. The letter having clearly referred also to transfer of "the venue of the canvass," petitioners cannot justifiably claim that notice was lacking or that said notice was meant only for the transfer of election returns. If petitioners' representatives were absent during the canvassing it was because they had opted to leave the proceedings for reasons of their own. No grave abuse of discretion can be attributed to the COMELEC, therefore, in upholding the validity of the canvassing at its Main Office.

Aside from said sworn statements, the records do not indicate any other substantial evidence that would justify the exclusion of election returns in the canvassing for being fraudulent in character or a declaration that the proceedings wherein the returns were canvassed were null and void. The evidence presented by petitioners is not enough to overturn the presumption that official duty had been regularly performed (Section 5[m], Rule 131). In the absence of clearly convincing evidence, the election returns and the canvassing proceedings must be upheld. A conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution, and only upon the most convincing proof.

Nor can COMELEC be faulted for merely requiring the parties to submit their respective Memoranda in support of their respective positions. The requirement under Section 246 of the Omnibus Election Code is that the parties be notified and heard. Petitioners were so notified. They were also given an opportunity to submit evidence in support of their allegations. They were required to submit a Memorandum in amplification of their position. Such procedure is fair, valid and acceptable and is consistent with the summary character of proceedings in election cases. As held in Alonto vs. COMELEC (22 SCRA 878), the policy of election laws is that pre-proclamation cases should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible.

Finally, it must be stressed that private respondent Rosalino Riguera and the other winning candidates had already been proclaimed and had assumed office. The Petitions below had ceased to be pre-proclamation controversies.

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As held in Padilla vs. COMELEC (137 SCRA 424) and in a number of cases, a pre-proclamation controversy is no longer viable at this point of time and should be dismissed, the proper remedy being an electoral protest before the proper forum. Instead of the submission of mere affidavits, the parties would be able to present witnesses subject to the right of confrontation. Recourse to such a remedy would settle the matters in controversy conclusively and once and for all. (Casimiro vs. Commission on Elections, 171 SCRA 468 [1989], Melencio-Herrera, J.).

§27. DUREMDES' proclamation having been based on an incomplete canvass, no grave abuse of discretion can be ascribed to the COMELEC for directing the Provincial Board of Canvassers of Iloilo "to immediately reconvene and to include in the canvass of votes for Vice-Governor the questioned/contested returns." All the votes cast in an election must be considered because to disregard returns is in effect to disenfranchise the voters (Mutuc vs. COMELEC, L-28517, February 21, 1968, 22 SCRA 662). A canvass can not be reflective of the true vote of the electorate unless all returns are considered and none is omitted. (Duremdes vs. Commission on Election, 178 SCRA 746 [1989], Melencio- Herrera, J.).

§28. The inclusion or exclusion in the canvass of certain election returns where votes allegedly cast for Emeterio Larrazabal were counted for his wife is an issue appropriate in an election contest and not in a pre-proclamation controversy. And it is also immaterial that, as also contended, the inclusion of such votes would affect the over-all results of the election and swing it in his favor. The accepted rule is that as long as the returns appear to be authentic and duly accomplished, the board of canvassers cannot look beyond them to verify allegations of irregularities in the casting or the counting of the votes. These issues cannot be resolved by the board of canvassers. A long line of decisions has established the doctrine that the board of canvassers has only the ministerial task of tallying the votes as reported in the election returns and cannot exercise the judicial power of deciding an election contest. (Abella vs. Larrazabal, 180 SCRA 509 [1989], Cruz, J.).

§29. Petitioner may not claim ignorance of the aforesaid provisions as these are matters directly affecting his political fortune. Consequently, with or without notice, it was the duty of the petitioner and all candidates for that matter to assign their watchers or representatives in the counting of votes and canvassing of election returns in order to insure the sanctity and purity of the ballots (Sabeniano vs. Comelec, 101 SCRA 289, 301). It is a matter of judicial notice that the candidates, their representatives and watchers station or deploy themselves among the various voting and canvassing centers to watch the proceedings from the first hour of voting through the counting of votes in the voting centers until the completion of the canvassing of election returns so that they can make of record in the minutes of the election committee and canvassing board their objections or remarks regarding the conduct of the proceedings. (Quilala vs. Commission on Elections, 188 SCRA 502 [1990], Paras, J.).

§30. The argument is devoid of merit. For one thing, records indicate that respondent's assumption of office was effected by a clerical error or simple mathematical mistake in the addition of votes and not through the legitimate will of the electorate. Thus, respondent's proclamation was flawed right from the very beginning. Having been based on a faulty tabulation, there can be no valid proclamation to speak of insofar as respondent Castillo is concerned. (Tatlonghari vs. Commission on Elections, 199 SCRA 849 [1991], Bidin, J.).

§31. In the case at bar, when the proclamation was made by the BOARD on 31 January 1988, there was no pending appeal filed by petitioners before the COMELEC from the rulings made by the BOARD on their objections to election returns rendered on 29, 30 and 31, 1988 (Annexes B to B-17, Petition). The "Appeal" and "Appeal Memorandum," docketed as SPC Nos. 88-490 and 88-506, respectively, which appealed to the COMELEC the rulings of the BOARD denying petitioners' objections to election returns were filed by them only on 1 February 1988, after the proclamation of private respondents had been made by the BOARD on 31 January 1988. What was filed by petitioners on 30 January 1988, before the proclamation, was a petition seeking merely to restrain the canvass and proclamation or suspend the effects of any proclamation. This petition, however, is clearly not the appeal referred to in Section 245 that will operate to bar the BOARD from making any proclamation of the winning candidates without authority from the COMELEC after the latter has ruled on the objections elevated to it on appeal. Consequently, there was no legal impediment to the proclamation of private respondents by the BOARD on 31 January 1988. In dismissing the Suspension of Proclamation Case (SPC No. 88-453), the First Division also disposed of the other petition filed in the same case by petitioners on 9 February 1988, praying that the proclamation made by the BOARD be declared null and void ab initio. As pointed out earlier, however, the proclamation was validly done by the BOARD since this is not an instance calling for the application of Section 245. Moreover, it is well settled that after the proclamation of the winning candidates, a pre-proclamation controversy ceases and is no longer viable at this point and should be dismissed, the proper remedy of the aggrieved party being an election protest.

While the aforesaid grounds may, indeed, involve a violation of the rules governing the preparation and delivery of election returns for canvassing, they do not necessarily affect the authenticity and genuineness of the subject election returns as to warrant their exclusion from the canvassing. The grounds for objection to the election returns made by petitioners are clearly defects in form insufficient to support a conclusion that the election returns were tampered with or spurious. "A conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution and only upon the most convincing proof" (Estrada vs. Navarro, L-28340, 29 December 1967, 21 SCRA 1514). It is only when the election returns are palpably irregular that they may be rejected (Mutuc vs. Commission on Elections, L-28517, 21 February 1968, 22 SCRA 662). On the basis of formal defects alone, such palpable irregularity can not be said to have been established herein.

Petitioners also assail the dismissal of their petitions by the COMELEC without hearing. Suffice it to cite the ruling in Ilarde vs. Commission on Elections (L-31446, 23 January 1970, 31 SCRA 72) that "canvass proceedings are administrative and summary in nature, and a strong prima facie case backed up by a specific offer of the evidence and indication of its nature and importance has to be made out to warrant the reception of evidence aliunde and the presentation of witnesses and the delays necessarily entailed thereby. Otherwise, the paralyzation of canvassing and proclamation leading to a vacuum in an important office could easily be brought about." In their case before us, the petitions and appeals filed by petitioners in their pre-proclamation cases before the COMELEC did not even point prima facie to a tampering of election returns, nor to returns with patent erasures and superimpositions, but merely raised objections based on defects that are, at best, formal in nature. The COMELEC, therefore, did not gravely abuse its discretion in concluding that in the absence of genuine pre-proclamation issues a full-blown hearing was rendered unnecessary. (Baterina vs. Commission on Elections, 205 SCRA 1 [1992], Melencio-Herrera, J.).

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§32. It is settled that an incomplete canvass of votes is illegal and cannot be the basis of a valid proclamation. All the votes cast in the election must be counted and all the returns presented to the board must be considered, as the disregard of some returns would in effect disenfranchise the voters affected. A canvass cannot be reflective of the true vote of the electorate unless all the returns are considered. (Samad vs. Commission on Elections, 224 SCRA 631 [1993], Cruz, J.).

§33. Where, as in this case, the proclamation is null and void, the same is no proclamation at all and the proclaimed candidate's assumption of office does not deprive the COMELEC of the power to declare such nullity and annul the proclamation. (Benito vs. Commission on Elections, 235 SCRA 436 [1994], Kapunan, J.).

§34. To go by the explanation as proposed by the petitioner would be tantamount to tolerating and licensing boards of canvassers to "make an erroneous proclamation" and still be exculpated by just putting up the inexcusable defense that the "foul-up resulted from the erroneous arrangement of the names of candidates" in one municipality or that "the basis of their proclamation was the erroneous ranking made by the tabulation committee." That would be a neat apology for allowing the board to be careless in their important task by simply claiming that they cannot be held liable because they did their "duty" of proclaiming the winning candidates on the basis of the certificate of canvass¾even "erroneous" certificates - which they made. (Agujetas vs. Court of Appeals, 261 SCRA 17 [1996], Torres, Jr., J.).

§35. The two requisites for the application of the three-term rule are absent. First, the petitioner cannot be considered as having been duly elected to the post in the May 1995 elections, and second, the petitioner did not fully serve the 1995-1998 mayoral term by reason of involuntary relinquishment of office. After a re-appreciation and revision of the contested ballots, the COMELEC itself declared by final judgment that petitioner Lonzanida lost in the May 1995 mayoral elections and his previous proclamation as winner was declared null and void. His assumption of office as mayor cannot be deemed to have been by reason of a valid election but by reason of a void proclamation. It has been repeatedly held by this court that a proclamation subsequently declared void is no proclamation at all and while a proclaimed candidate may assume office on the strength of the proclamation of the Board of Canvassers he is only a presumptive winner who assumes office subject to the final outcome of the election protest. Petitioner Lonzanida did not serve a term as mayor of San Antonio, Zambales from May 1995 to March 1998 because he was not duly elected to the post; he merely assumed office as presumptive winner, which presumption was later overturned by the COMELEC when it decided with finality that Lonzanida lost in the May 1995 mayoral elections. (Lonzanida vs. Commission on Elections, 311 SCRA 602 [1999], Gonzaga-Reyes, J.).

§36. An incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation. A canvass cannot be reflective of the true vote of the electorate unless all returns are considered and none is omitted. However, this is true only where the election returns missing or not counted will affect the results of the election. It bears stressing that in the case at bar, the COMELEC has categorically found that the election returns which were not counted by respondent canvassers represented only 4,400 votes. To be sure, this number will not affect the result of the election considering that Lanot's lead over petitioner was already 17,971 votes. (Caruncho III vs. Commission on Elections, 315 SCRA 693 [1999], Ynarez-Santiago, J.).

§37. As already stated, the petition for disqualification against private respondent was decided by the First

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Division of the COMELEC on May 10, 1998. The following day, May 11, 1998, the elections were held. Notwithstanding the fact that private respondent had already been proclaimed on May 16, 1998 and had taken his oath of office on May 17, 1998, petitioner still filed a motion for reconsideration on May 22, 1998, which the COMELEC en banc denied on June 11, 1998. Clearly, this could not be done. Sec. 6 of R.A No. 6646 authorizes the continuation of proceedings for disqualification even after the elections if the respondent has not been proclaimed. The COMELEC en banc had no jurisdiction to entertain the motion because the proclamation of private respondent barred further consideration of petitioner's action. In the same vein, considering that at the time of the filing of this petition on June 16, 1998, private respondent was already a member of the House of Representatives, this Court has no jurisdiction over the same. Pursuant to Art. VI, Section 17 of the Constitution, the House of Representatives Electoral Tribunal has the exclusive original jurisdiction over the petition for the declaration of private respondent's ineligibility. (Perez vs. Commission on Elections, 317 SCRA 641 [1999], Mendoza, J.).

§38. The mere pendency of a disqualification case against a candidate, and a winning candidate at that, does not justify the suspension of his proclamation after winning in the election. To hold otherwise would unduly encourage the filing of baseless and malicious petitions for disqualification if only to effect the suspension of the proclamation of the winning candidate, not only to his damage and prejudice but also to the defeat of the sovereign will of the electorate, and for the undue benefit of undeserving third parties. (Bagatsing vs. Commission on Elections, 320 SCRA 220 [1999], Kapunan, J.).

§39. At the time the proclamation was made, the COMELEC had not yet resolved the Petition for Canvassing of Votes and Petition for Special Elections filed on May 22, 1998. Pursuant to Sections 245 and 238 of the Omnibus Election Code, the Board of Canvassers should not have proclaimed any candidate absent the authorization from the COMELEC. Any proclamation made under such circumstances is void ab initio.

An incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation. A canvass cannot be reflective of the true vote of the electorate unless all returns are considered and none is omitted. This is true when the election returns missing or not counted will affect the results of the election. (Immam vs. Commission on Elections, 322 SCRA 866 [2000], Ynares-Santiago, J.).

3. Recount of votes

§1. A protest under oath, alleging facts sufficient to establish that illegal votes were cast and counted for the respondent, which is sufficient, if rejected, to change the election, makes a prima facie case under the Election Law for the opening of the ballot boxes and the recounting of the ballots.

Where allegations are made by one of the respondents charging fraud and misconduct in a particular precinct not mentioned in the protest and in which the ballots had not been ordered recounted, and showing that illegal ballots had been voted and counted for the protestant, and praying that the ballot boxes of that precinct be opened and the ballots recounted, and the judge hears evidence presented by the parties relative to said allegations and finds such evidence insufficient to sustain the allegations and enters judgment denying the application to open the ballot boxes and recount the ballots of said precinct, such judgment will not be disturbed by this court unless it is shown to be against the fair preponderance of the evidence. (Manalo vs. Sevilla, 24 Phil. 609 [1913], More-land, J.).

§2. Upon an issue properly presented by the motion of protest, it is the mandatory duty of the Court of First Instance not only to permit but to order all of the ballots used at the election to be examined, and to hear proof

with reference to the legality of the questioned ballots. (De la Merced vs. Revilla and Camacho, 40 Phil. 190 [1919], Johnson, J.).

§3. Where the conservation of the boxes is prima facie shown and their contents are found intact upon being opened according to law, the ballots themselves become the best evidence of the votes cast; and it is the duty of the court to determine the contest, so far as dependent upon the count, by the proof afforded by the ballots. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§4. Where in the motion of protest certain irregularities committed by the election inspectors in the count of the votes are alleged, this constitutes sufficient ground for the opening of the ballot boxes and the examination of the questioned ballots. (Cecilio vs. Belmonte, 48 Phil. 243 [1925], Villamor, J.).

§5. It is a well settled rule in election contests that when the protest alleges that the election officers have improperly judged the ballots, the latter constitute the best proof and the court must examine them in order to determine the claim of the protestant, unless the same shall have been substituted after the election or altered in any manner, for then they lose their probatory value and the election returns must prevail. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§6. The recount of the votes cast in a given precinct when “another copy or other authentic copies of the statement from an election precinct submitted to the board gives a candidate a different number of votes and the difference affects the result of the election * * *, “authorized under Section 168, in relation to Section 163 of Republic Act No. 180, must be made by the Court of First Instance itself, not by the Board of Canvassers, and is “for the sole purpose of determining,” not who is the elected candidate, but “which is the true statement or which is the true result of the count of the votes cast” in the precinct in question. The aforementioned sections are inapplicable where the alleged conflicts exist between the election returns, or statements of the count alluded to in Section 150 of said Act, on one hand, and the certificate mentioned in Section 153 thereof, on the other. (Samson vs. Estenzo, 106 Phil. 1140 [1960], Concepcion, J.).

§7. The election return for Precinct 2-A in the instant case which is in possession of the municipal treasurer which was submitted to the municipal board of canvassers, appears not only to contain discrepancies on its face but is in conflict with the entries appearing in the election returns for the same precinct in possession of the provincial treasurer and of the Commission on Elections. A motion for correction, or, in the alternative, for recount, was filed not only by the chairman and poll clerk, but also by the candidate affected. Under Section 168 of the Revised Election Code, the court of first instance should have granted the motion for recount.

The proceeding in a recounting of votes is summary in nature, and merely consists in the mathematical counting of the votes received by each candidate. It does not involve any appreciation of the ballots or determination of their validity as is required in an election contest. The only purpose of the recount is to count the number of votes received by each candidate as they appear on the face of the ballots. (Cawa vs. Del Rosario, 108 Phil. 520 [1960], Bautista Angelo, J.).

§8. The Provincial Board of Canvassers is charged by law (Sec. 160, Republic Act No. 180) with the duty to make a canvass, not of the “election returns” for each precinct, but “of all the votes cast in the province for national,

provincial and city candidates", and such duty is complied with until: (1) "upon completion of the canvass * * * separate statements of all the votes received" by said candidates shall have been made; and (2) the board shall have proclaimed, in accordance with said statements, "who has been elected to the House of Representatives from each legislative district and who has been elected to each provincial and city office.

The correction mentioned in Section 162 and that which may be required by the result of the recount authorized in Section 163, can only take place after the corresponding election return has been examined by the board of canvassers. (Gumpal vs. Arranz, 110 Phil. 287 [1960], Concepcion, J.).

§9. Where there exists discrepancy between the number written in words and the corresponding figures in the statement of an election returns, the Court of First Instance is empowered by law to recount the votes cast in the precincts concerned in order to determine which number should be followed by the Board of Canvassers (Parlade vs. Quicho, et al., G.R. No. L-16259, December 29, 1959. (Lim vs. Maglanoc, 112 Phil. 1087 [1961]; 2 SCRA 1189 [1961], Paredes, J.).

§10. The authority given to a Court of First Instance to allow the recount of votes under Section 163 of the Revised Election Code is restrictive in nature. The law is explicit that the proceeding is summary in character and merely consists in the mathematical counting of the votes received by each candidate. It does not involve any appreciation of the ballots or determination of their validity as is required in an election contest. Its only purpose is to count the number of votes as they appear in the face of the ballots. (Albano vs. Provincial Board of Canvassers of Isabela, 115 Phil. 6 [1962]; 5 SCRA 13 [1962], Bautista Angelo, J.).

§11. The discrepancy in number of votes mentioned in Section 163 of the Revised Election Code, which would justify a recount, has reference to the number of votes appearing in different copies of the election returns required by Section 150, and not to the discrepancy between the election returns and any certificate given by the board of inspectors to the watchers who may request them under Section 153 (Parlade, et al., vs. Quicho, et al., G.R. No. L-16259, December 29, 1959). (Villacarlos vs. Jimenez, 116 Phil. 1254 [1962]; 6 SCRA 966 [1962], Makalintal, J.).

§12. Where the proclamation of an elected councilor is disputed, and there being a discrepancy between the election return and the report of the precinct board of inspectors submitted to the municipal treasurer, the controversy comes under the provisions of Section 168 in connection with Section 163 of the Revised Election Code and not under the provisions of Section 174 of the same Code. (Nataño vs. Moya, 7 SCRA 529 [1963], Padilla, J.).

§13. When the motion of protest contains sufficient allegations that frauds, errors and irregularities in the count committed, and as long as they refer to the ballots involved in the contested precincts, the trial court is justified in requiring the production of said ballots even if the parties did not deem it necessary to present them in evidence. (Conui-Omega vs. Samson, 9 SCRA 493 [1963], Bautista Angelo, J.).

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§14. The clerical error in the official copy of the election returns of a precinct in the possession of the municipal treasurer having been properly shown in a hearing before a judge of a court of first instance and all members of the board of inspectors and the poll clerk of said precinct having asked for the correction, and said judge having authorized the board of inspectors to make the correction, it is held that the refusal of said trial court to require the recounting of the ballots in said precinct was not improper. (Tango vs. Alejandro, 119 Phil. 960 [1964]; 10 SCRA 682 [1964], Bengzon, C.J.).

§15. Where the alleged discrepancies in the election returns of a precinct appear in a certificate of votes given to a watcher of a candidate and in a certificate executed by a Constabulary officer, it is held that said documents are not those which can be considered authentic copies of the election returns, and that, consequently, the ruling of the lower court that judicial recount was not warranted is correct. (Matanog vs. Alejandro, 11 SCRA 499 [1964], Paredes, J.).

§16. An alleged discrepancy between the tally sheet or tally board and the election return does not constitute sufficient ground for the Court of First Instance to order a recount for the votes cast in the precinct affected, since said sheet is not a copy of the return.

A petition for judicial recount should be denied where the petitioner is guilty of splitting a single cause of action by filing separate proceedings for the correction of the returns and for the recount of votes based on the same operative facts. (Lawsin vs. Escalona, 11 SCRA 643 [1964], Reyes, J.B.L., J.).

§17. A candidate affected can file a petition for recount alone, without the concurrence of the provincial board of canvassers (Cawa vs. Del Rosario, L-16837-40, May 30, 1960). From the fact, therefore, that the provincial board of canvassers has not petitioned for a recount, it cannot be inferred that they were not convinced a discrepancy existed.

The Commission on Elections' copies of election returns are authentic copies within the meaning of Section 163 of the Revised Election Code (Lawsin vs. Escalona, L-22540, July 31, 1964; Matanog vs. Alejandro, L-22502-03, June 30, 1964).

Where, as in the case at bar, there were patent erasures and superimpositions in words and figures on the face of the election returns submitted to the board of canvassers, it was imperative for said board to stop the canvass so as to allow time for verification of authentic copies and recourse to the courts (Javier vs. Commission on Elections, L-22248, January 30, 1965). A canvass or proclamation made notwithstanding such patent defects, without awaiting proper remedies, is null and void (Ibid.).

Where a candidate was prevented from securing the Commission on Elections' copies of the returns to establish a discrepancy between them and the Provincial Treasurer's copies, the failure to submit the said copies to the board should not prejudice his right to petition for recount before the court.

Patent erasures and superimpositions in words and figures of the votes stated in the election returns strike at the reliability of said returns as basis for canvass and proclamation. A comparison with the other copies, and, in case of discrepancy, a recount, is the only way to remove grave doubts as to the correctness of said returns as well as of ascertaining that they reflect the will of the people. (Purisima vs. Salanga, 122 Phil. 1084 [1965]; 15 SCRA 704 [1965], Bengzon, J.P., J.).

§18. It is now settled doctrine that the discrepancy which justifies a judicial recount is such only as appears in the different copies of the election returns required to be accomplished by Section 150. Section 163 should be construed restrictively because of the special nature of the authority conferred therein, and because otherwise that authority would be utilized to delay the proclamation of the winning candidate to beyond the date set for the beginning of the term of office in the position involved. Therefore, the discrepancy between a copy of the election returns in the hands of the provincial treasurer and another copy of the same returns given to one of the major political parties is not a discrepancy which justifies a judicial recount.

Additional copies of election returns in the hands of the major political parties may have the general salutary effect of discouraging attempts to tamper with the copies required by the Code owing to the greater probability of detection of irregularities. However, they cannot serve as a legal basis for comparison with any of those prescribed by the Code for the purpose of a judicial recount. (Calo vs. Enage, 21 SCRA 1416 [1967], Castro, J.).

§19. While the Comelec in its role as senatorial canvasser has the power to reject returns before it which in its opinion were illegal and not authentic, neither law nor precedent authorizes it to impose the same criterion in advance upon the provincial boards of canvassers. The latter are entitled to use their own judgment in determining whether the irregularities appearing on the returns before them warrant their rejection. It must not be forgotten that the copies of the returns upon which the provincial canvassers act are different from those in the possession of the Comelec, and the irregularities noted in the latter may not necessarily exist in the former. Should there be any discrepancy between the official copies, the petitioners can recourse to a judicial recount under Section 163 of the Election Law. But certainly, an a priori rejection on the basis of previous Comelec action is not justifiable. (Alonto vs. Commission on Elections, 22 SCRA 878 [1968], Reyes, J.B.L., J.).

§20. Where the discrepancy between the different copies of the return consists of only one (1) vote which would not materially affect the result of the election for the contested office, the lower court correctly held that a judicial recount was not in order. Under Section 163 of the Revised Election Code, the difference must really be such as to affect the result of the election in order to justify a judicial recount. (Dizon vs. Tizon, 22 SCRA 1311 [1968], Makalintal, J.).

§21. Section 163 of the Revised Election Code confers on a judge of First Instance a special authority to recount votes. A judge of First Instance under Section 163 of the Election Code is called upon to perform a duty specially conferred by law separate and apart from the general exercise of jurisdiction set forth in the Judiciary Act of 1948, as amended, and only as a step in the election process leading to canvass and proclamation. The findings of the judge under said section are not by any means conclusive in an election contest. Recount does not in itself involve a decision in a judicial controversy. In fact, there is no appeal from the findings and conclusions reached at a recount. The special authority to recount is aimed at delaying as little as possible proclamation of a winning candidate (Ong v. Etcubañez, L-28415, Jan. 29, 1968, etc.). The special authority to recount is restrictively construed. The judge's duty is limited to the recount of the votes as the statute prescribes — not the appreciation of ballots which "is proper in an election contest after proclamation" (Ong v. Etcubañez, supra). He is not to exercise discretion as to the validity of the ballots cast. Ballot appreciation and validity of ballots are matters proper in a full-dress election protest, after proclamation of the winning candidate. He must promptly perform his

task, particularly where the district affected is without any representation in Congress. (Sanidad vs. Saquing, 23 SCRA 878 [1968], Per Curiam).

§22. The resolution of the Commission on Elections ignoring the issue of tampering and authorizing the recanvass runs counter to the rulings in Espino v. Zaldivar, L-22325, Dec. 11, 1967, and Ong v. Commission on Elections, L-28415, January 29, 1968, that a resort to judicial recount may not be invoked where, as in the present case, the returns have been tampered with after they have left the hands of the election inspectors because a falsified return or spurious return amounts to no return at all. (French vs. Commission on Elections, 24 SCRA 23 [1968], Reyes, J.B.L., J.).

§23. A judicial recount of votes will only be directed by the courts in cases of contradictions or discrepancies between the copies or "other authentic copies" of the statement or return from an election precinct, or when the entry of votes in return on its face is clearly falsified, such that the difference in the number of votes will affect the result of the election (Parlade v. Quicho, et al., L-16259, Dec. 29, 1959, etc.). The existence of erasures or apparent superimpositions or alterations on one of the four copies does not by itself alone justify judicial recount. If they are susceptible of reasonable explanation, and do not constitute contradictions or discrepancies with what appear in the other copies, this remedy is not available. If anything they may be evidence of fraud, which must be ventilated in an election protest, not in the summary proceeding envisioned in Section 163 of the Election Code. (Navarro vs. Tizon, 24 SCRA 374 [1968], Makalintal, J.).

§24. Where election returns have been tampered with, the remedy is with the Comelec and not a judicial recount with the court of first instance. (Pacis vs. Commission on Elections, 25 SCRA 377 [1968], Sanchez, J.).

§25. A petition for judicial correction of the returns is a privilege left to the members of the board of inspectors themselves. More than this, "unanimous consent of all the members of the board" is required to effect correction. Courts may not coerce inspectors to file petitions for correction. It is a distinct remedy, unrelated to the investigatory procedure for tampered returns before the Comelec.

It would seem that the only reliable and untampered documents reflecting the results of the election in Precinct 8 are the certificates of votes of candidates issued to the watchers. But said certificates certainly cannot serve as returns for canvassing purposes. Judicial recount cannot legally be made either. Under Sec. 168, in relation to Sec. 163, of the Revised Election Code, such remedy is possible only "in case of contradictions or discrepancies between the copies of the same statements." And, jurisprudence that has already taken root is that said discrepancies must appear amongst the authentic returns, not tampered returns.

Election returns should be maintained inviolate. Once the return is made and the certificates of votes of candidates are issued, no one, not even the inspectors themselves, may make any change without authority. The fortunes of the candidates for a given position should not be placed at the whim of the inspectors, or any person for that matter. Because, the candidates' fate depends in a great measure upon the election return preserved and unsullied, and unspoiled by hands of man. Tampering, falsification, spoliation of returns or making spurious returns must

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have to be discouraged. (Balindong vs. Commission on Elections, 27 SCRA 567 [1969], Sanchez, J.).

§26. Where there was discrepancy between the figures and words appearing in the election return which conflict or discrepancy would materially affect the result of the election, and there was no showing of alteration or falsification committed on the said statement or return, the case clearly calls for a judicial recount pursuant to Section 163, in relation to Section 168, of the Revised Election Code (Ong vs. Comelec, L-28415, Jan. 29, 1968, 22 SCRA 241; also Espino v. Zaldivar, L-22325, Dec. 11, 1967, 21 SCRA 1204). (Binging Ho vs. Mun. Board of Canvassers of Bongao, Sulu, 28 SCRA 829 [1969], Reyes, J.B.L., J.).

§27. The authority of the Court of First Instance under Section 163 of the Revised Election Code to order a recount is preconditioned upon, first, the averment that a discrepancy exists between two or more genuine returns; second, the alleged discrepancy being brought to the attention of the board of canvassers; third, the board of canvassers ruling that such a discrepancy in the authentic copies of the returns exists; and fourth, the difference in the number of votes which affects the result of the election. (Abrigo vs. Commission on Elections, 31 SCRA 26 [1970], Sanchez, J.).

§28. On the contrary, in providing under Sections 188 and 190 of the said law for the tallying on the election return itself of the votes of the candidates in the manner therein prescribed, it is obvious that the legislature intended to provide an additional safeguard against the tampering of the results of an election by means of altering the entry of the votes in words and in figures in the return.

In order that the tally in the return may be used as a basis for judicial recount, it is imperative that the same must be closed by the signatures of the inspectors as required by Section 190 of the Election Law. (Respicio vs. Cusi, Jr., 44 SCRA 392 [1972], Barredo, J.).

§29. Absence of proof that the questioned flying voters had actually cast their votes, a recount of the ballots is proper to determine the true will of the electorate. (Aleman vs. Genato, 133 SCRA 797 [1984], Melencio-Herrera, J.).

§30. Since there was no counting of the votes of Precinct No. 7, no valid election returns could be made and any copy of election returns purporting to come therefrom is a fabrication. A recount thereof, which presupposes a prior count, would obviously be unwarranted. (Lucero vs. Commission on Elections, 234 SCRA 280 [1994], Davide, Jr.).

§31. We hold that respondent COMELEC was correct in ordering the opening of the ballot box to recount the votes cast for mayor in Precinct No. 22-A. x x x From the foregoing, it is clear that a recount of votes is in order where a discrepancy exists between the votes written in words or in figures. The recount merely consists in the mathematical counting of the votes received by each candidate and it does not involve any appreciation of ballots or the determination of their validity as is required in an election contest. The reason for this provision is to offer a prompt relief to a simple controversy and to restore public tranquility by dispelling all doubts as to the true and

correct number of the votes cast in a given polling place. That way, the chances whereby a candidate may grab a proclamation to which he is not entitled to are minimized. (Olondriz, Jr., vs. Commission on Elections, 313 SCRA 128 [1999], Kapunan, J.).

CHAPTER XIX
Pre-proclamation Controversy

§1. A pre-proclamation controversy refers to "any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns." (Art. XX, Omnibus Election Code).

2. Scope

§1. The broad power of the Comelec, conferred upon it by the Constitution, to enforce and administer "all laws relative to the conduct of elections" and to decide all administrative questions affecting elections "for the purpose of insuring free, orderly and honest elections," has been the key in the resolution of many pre-proclamation controversies involving the integrity and authenticity of election returns. Invoking the aforestated power of the Comelec, we justified the action and upheld the authority of the Comelec to order the exclusion of "obviously manufactured" returns (Lagumbay vs. Climaco and Comelec, 16 SCRA 175), or tampered returns (Cauton vs. Comelec and Sanidad, 19 SCRA 911), or returns prepared under threats and coercion or under circumstances affecting the returns' integrity and authenticity (Pacis vs. Comelec, 25 SCRA 391; Antonio, Jr. vs. Comelec, et al., 32 SCRA 319), emphasizing the duty of the Comelec to see to the use and inclusion in the canvass of only genuine and regular election returns for determining the true result of the elections. (Usman vs. Commission on Elections, 42 SCRA 667 [1971], Castro, J.).

§2. Thus, it becomes clear from the above rulings that respondent Commission on Elections has the power and authority to inquire into the allegation of fake voters, with fake IDs, fake identification slips in a pre-proclamation controversy in order to determine the authenticity or integrity of the election returns or whether such election returns faithfully record that only registered or genuine electors were allowed to vote.

While admittedly the Commission on Elections has no jurisdiction over election contests involving municipal or municipal offices (Sec. 190, 1978 Election Code), We must not lose sight of the fact that the instant suit involved a pre-proclamation controversy filed by the private respondent before the respondent Commission. Indeed, it is immaterial if some of the grounds adduced by the private respondent (petitioner therein) are grounds for an election contest rather than grounds for a pre-proclamation controversy. (Olfato vs. Commission on Elections, 103

SCRA 741 [1981], Makasiar, J.).

§3. The basic issue at bar—which Sanchez himself avers in his petition as "a case of first impression"—is whether his petition for recount and/or re-appreciation of ballots filed with the Comelec may be considered a summary pre-proclamation controversy falling within the Comelec's exclusive jurisdiction (Sec. 242, Omnibus Election Code) or properly pertains to the realm of election protest falling within the exclusive jurisdiction of the Senate Electoral Tribunal as "the sole judge of all contests relating to the election, returns and qualification of the [Senate's] members" (Art. VI, Sec. 17, Constitution). Without prejudice to the issuance of an extended opinion and after taking into consideration the applicable legal provisions and the contentions of the contending candidates as well as the two conflicting decisions of the Comelec, the Court rules that Sanchez' petition for recount and/or re-appreciation of the ballots cast in the senatorial elections does not present a proper issue for a summary pre-proclamation controversy. Considerations of definition, usage, doctrinal jurisprudence and public policy demand such a ruling.

Sanchez anchors his petition for recount and/or re-appreciation on Section 243, paragraph (b) of the Omnibus Election Code in relation to Section 234 thereof with regard to material defects in canvassed election returns. He contends that the canvassed returns discarding "Sanchez" votes as stray were "incomplete" and therefore warrant a recount or re-appreciation of the ballots under Section 234. A simple reading of the basic provisions of the cited section shows readily its inapplicability. By legal definition and by the very instructions of the Comelec (Res. No. 1865, Sec. 6, promulgated on March 11, 1987), an election return is incomplete if there is "omission in the election returns of the name of any candidate and/or his corresponding votes" (Sec. 234) or "in case the number of votes for a candidate has been omitted" (Sec. 6, Res. No. 1865). Here, the election returns are complete and indicate the name of Sanchez as well as the total number of votes that were counted and appreciated as votes in his favor by the boards of inspectors. The fact that some votes written solely as "Sanchez" were declared stray votes because of the inspectors' erroneous belief that Gil Sanchez had not been disqualified as a candidate, involves an erroneous appreciation of the ballots. It is established by the law as well as jurisprudence (the cited section being a substantial reproduction of Section 172 of the 1978 Election Code and previous election laws) that errors in the appreciation of ballots by the board of inspectors are proper subject for election protest and not for recount or re-appreciation of the ballots.

The appreciation of the ballots cast in the precincts is not a "proceeding of the board of canvassers" for purposes of pre-proclamation proceedings under Section 241, Omnibus Election Code, but of the boards of election inspectors who are called upon to count and appreciate the votes in accordance with the rules of appreciation provided in Section 211, Omnibus Election Code. Otherwise stated, the appreciation of ballots is not part of the proceedings of the board of canvassers. The function of ballots appreciation is performed by the boards of election inspectors at the precinct level.

The scope of pre-proclamation controversy is limited to the issues enumerated under Sec. 243 of the Omnibus Election Code. The enumeration therein of the issues that may be raised in pre-proclamation controversy, is restrictive and exclusive. In the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects (Sec. 234), appear to have been tampered with, falsified or prepared under

duress (Sec. 235) and/or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (Sec. 236), which are the only instances where a pre-proclamation recount may be resorted to, granted the preservation of the integrity of the ballot box and its contents, Sanchez' petition must fail. The complete election returns whose authenticity is not in question, must be prima facie considered valid for the purpose of canvassing the same and proclamation of the winning candidates.

To expand the issues beyond those enumerated under Sec. 243 and allow a recount/reappreciation of votes in every instance where a claim of misdeclaration of stray votes is made would open the floodgates to such claims and paralyze canvass and proclamation proceedings, given the propensity of the loser to demand a recount. The law and public policy mandate that all pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing and just as summarily decided. (Sec. 246, Omnibus Election Code).

The Court has always stressed as in Alonto vs. Comelec (22 SCRA 878) that "the policy of the election law is that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible. As declared in Abes, et al. vs. Commission on Elections, L-28348, December 15, 1967, the powers of the Comelec are essentially executive and administrative in nature, and the question of whether or not there had been terrorism, vote buying and other irregularities in the election should be ventilated in a regular election protest, and the Commission on Elections is not the proper forum for deciding such matters," and that the Comelec and the courts should guard "both against proclamation grabbing through tampered returns" and "the equally pernicious effects of excessive delay of proclamations" and "attempts to paralyze canvassing and proclamation." To allow the recount here notwithstanding the multifarious administrative and financial problems of conducting such a recount, as enumerated by the Comelec in its two decisions—when now three months after the elections the question of who is entitled to the 24th seat of the Senate would remain unresolved for how long no one can tell—is unthinkable and certainly contrary to public policy and the mandate of the law that the results of the election be canvassed and reported immediately on the basis of the authentic returns which must be accorded prima facie status as bona fide reports of the votes cast for and obtained by the candidates. (Sanchez vs. Commission on Elections, 153 SCRA 67 [1987], Per Curiam).

§4. "Indeed, errors in the Statement of Votes do not indubitably appear to be issues that may be raised in a pre-proclamation controversy under Section 243 of the Omnibus Election Code. In this respect, the law is silent as to when the same may be raised. We are, however, not unmindful of the fact that the statement of votes supports the certificate of canvass and shall be the basis of proclamation (Section 231, paragraph 2). Consequently, any error in the Statement of Votes would affect the proclamation made on the basis thereof. The true will of the electorate may thus be not fully and faithfully reflected by the proclamation."

We find no grave abuse of discretion in the foregoing COMELEC pronouncement. The Statement of Votes is a tabulation per precinct of the votes garnered by the candidates as reflected in the election returns. Its preparation is an administrative function of the Board of Canvassers. As pointed out by the Solicitor General, "it is a purely mechanical act of the Board of Canvassers in the performance of which the Commission has direct control and supervision," pursuant to Section 227 of the Omnibus Election Code.

By virtue of that power, added to its over-all function to “decide all questions affecting elections” (Article IX [C] Section 2[3], 1987 Constitution), a question pertaining to the proceedings of said Board may be raised directly with the COMELEC as a pre-proclamation controversy.

Cognizance may also be taken of the fact that at the time PENAFLORIDA filed the Supplemental Petition on 20 June 1988, there was no clear-cut rule on the matter. It was only in the COMELEC Rules of Procedure, which took effect on 15 November 1988, wherein it was provided under subparagraph (2), paragraph (a), Section 4 of Rule 27, that the matter of correction of the statement of votes may be the subject of a pre-proclamation case which may be filed directly with the Commission. Nonetheless, there should be no question, considering the aforequoted Section 241 in relation to Section 227 of the Omnibus Election Code, that the issue is one that can be raised directly with the COMELEC. It is a procedure that best recommends itself specially considering that the Statement of Votes is a vital component in the electoral process. It supports the Certificate of Canvass and is the basis for proclamation.

DUREMDES also calls attention to Rule 13, Section 1 (g) of the COMELEC Rules of Procedures, which does not allow the filing of supplemental pleadings. As stated heretofore, however, these Rules took effect only on 15 November 1988, or five months after the Supplemental Petition was filed. Said rule, therefore, cannot be given retroactive effect the legal truth being that laws of procedure may be retroactively applied provided no substantial rights are impaired. (Duremdes vs. Commission on Elections, 178 SCRA 746 [1989], Melencio-Herrera, J.).

§5. We start by noting that the Comelec (both Second Division and the Commission En Banc) correctly emphasized that, under the regime of the Omnibus Election Code, pre-proclamation controversies are properly limited to challenges directed against the Board of Canvassers and proceedings before such Board of Canvassers, and not the Board of Election Inspectors nor proceedings before such latter Board and that such challenges should relate to particular election returns to which petitioner should have made specific verbal objection subsequently confirmed in writing. In a pre-proclamation controversy, it is axiomatic that the Comelec is not to look beyond or behind election returns which are on their face regular and authentic returns. A party seeking to raise issues resolution of which would compel the Comelec to pierce the veil, so to speak, of election returns prima facie regular, has his proper remedy in a regular election protest.

By their nature, and given the obvious public interest in the speedy determination of the results of elections, pre-proclamation controversies are to be resolved in summary proceedings. The delicate policy equilibrium here involved was explained by the Court in the following terms in Alonto v. Commission on Elections: “[P]re-proclamation controversies should be summarily decided, consistent with the law’s desire that the canvass and proclamation be delayed as little as possible x x x [and that the Comelec and the courts should guard both] against proclamation grabbing through tampered returns as well as against attempts to paralyze canvassing and proclamation in order to prolong hold-overs.”

Thus, in principle, the issues raised by petitioner do constitute issues properly raised in pre-proclamation controversies. That the assailed returns were “obviously manufactured” must, however, be evident from the face

of the election returns themselves. In the case at bar, petitioner does not claim that the election returns from Precincts Nos. 15 and 17 had not been made or issued by the Board of Election Inspectors or that they had been manufactured by some unknown third party or parties; petitioner does not, in other words, claim that the returns themselves were not authentic. What petitioner in effect contends is that where election returns, though genuine or authentic in character, are reflective of fraudulent acts done before or carried out by the Board of Election Inspectors, the returns should be deemed as "obviously manufactured."

That the padding of the List of Voters may constitute fraud, or that the Board of Election Inspectors may have fraudulently conspired in its preparation, would not be a valid basis for a pre-proclamation controversy either. For, whenever irregularities, such as fraud, are asserted, the proper course of action is an election protest. "Such irregularities as fraud, vote-buying and terrorism are proper grounds in an election contest but may not as a rule be invoked to declare a failure of election and to disenfranchise the greater number of the electorate through the misdeeds, precisely, of only a relative few. Otherwise, elections will never be carried out with the resultant disenfranchisement of the innocent voters, for the losers will always cry fraud and terrorism."

Mere alphabetical and chronological voting does not itself constitute sufficient evidence to establish fraud that would justify the setting aside of election returns. As counsel for appellant had occasion to assert in Lucman v. Dimaporo, SPC No. 87-190, October 15, 1987, '[I]t is unfair to conclude that alphabetical voting is indicative of fraud.' And '[I]n some precincts of Lanao, alphabetical voting is imposed to promote an orderly election.' We do not make such factual finding here. But the evidence is ambiguous and is susceptible of several interpretations. For this reason, we are bound by the presumption of regularity in the performance of official functions."

Petitioner's complaints about supposed irregularities involving illiterate voters appear to assume that it is improper or unlawful for a third person, e.g., the assistor who had helped the illiterate to cast his vote, to write the name of the assisted illiterate in the voting record. As the Comelec pointed out, however, the proper procedure for indicating that illiterate voters have cast their votes has not been specifically set out in the Omnibus Election Code. (Dipatuan vs. Commission on Elections, 185 SCRA 86 [1990], Feliciano, J.).

§6. As We said earlier, SPA No. 92-282 does not solely involve pre-proclamation controversies. On its face, only the following appear to be pre-proclamation issues: (a) suspension of proclamation, (b) correction of the certificate of canvass of Las Navas, (c) recount of votes for Representative in the 52 precincts enumerated therein because the votes for "Lucero" were declared stray votes when they should have been credited to the private respondent, since the other candidate, Alice D. Lucero, was disqualified as a substitute for one Jesus C. Laodemio who had earlier withdrawn his candidacy, and (d) the recount of votes in Precincts Nos. 7 and 16. Over these pre-proclamation issues, the COMELEC, sitting en banc, has no original jurisdiction. Accordingly, we correctly voided its Order of June 2, 1992. However, as to the Resolution of June 13, 1992, our ruling thereon may be modified insofar as the matter of special election in Precinct No. 13 of Silvino Lobos is concerned since the calling or holding thereof is within the original jurisdiction of the COMELEC, sitting en banc. (Ong, Jr. vs. Commission on Elections, 221 SCRA 475 [1993], Romero, J.).

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§7. Invoking Section 234 of the Omnibus Election Code, petitioner claims that a recount or reopening of the ballot boxes is necessary, considering that in some election returns her name was omitted and that of her father was not deleted. She argues that it would be difficult to determine which votes should be credited in her favor by a mere recanvass. At the outset, petitioner's prayer for a reopening of the ballots is not a proper issue for a pre-proclamation controversy. The issues raised by petitioner should be threshed out in election protest. The case of Chavez v. Comelec, 211 SCRA 315 (1992), citing Sanchez v. Comelec, 153 SCRA 67 (1987) is quite instructive on the matter.

We cannot over-emphasize the public policy involved in the rule that pre-proclamation controversies shall be resolved in summary proceedings. The public interest requires that: "xxx that the position for the filling of which the election was held should be filled as promptly as possible, even if the proclamation of the winning candidates be provisional in nature, in the sense that such would be subject to the results of the election protest or protests that may be expected to be filed. The Court is bound by high duty and responsibility to give effect to this public policy which is enshrined in statutory norms (infra). Petitioners' principal remedy is to file election protests before the appropriate agency of government - i.e., the Comelec (Article IX[C] [2] [2], 1987 Constitution) - and there to litigate all the issues raised by them in as much detail as they might deem necessary or appropriate x x x" (Dimaporo v. Comelec, 186 SCRA 769 [1990]). (Alfonso vs. Commission on Elections, 232 SCRA 777 [1994], Quiason, J.).

§8. It is contended that if a technical examination of the List of Voters and the Voters' Affidavits had been ordered, the COMELEC would have discovered massive substitute voting which would convince it that indeed the election return from Precinct No. 4 is "obviously manufactured" within the meaning of Section 243(c) of the OEC. This contention is without merit. As we recently ruled in Loong v. COMELEC, "as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting or the counting of the votes. Corollarily, technical examination of voting paraphernalia involving analysis and comparison of voters' signatures and thumbprints thereon is prohibited in pre-proclamation cases which are mandated by law to be expeditiously resolved without involving evidence aliunde and examination of voluminous documents which take up much time and cause delay in defeat of the public policy underlying the summary nature of pre-proclamation controversies."

By contrast whether the election return in this case is manufactured is not obvious, but would depend for its showing on an examination of C.E. Forms No. 1 and 2. Sec. 243 (c), in relation to Sec. 242, in giving the COMELEC jurisdiction over pre-proclamation controversies and allowing the suspension or annulment of any proclamation, requires, if the basis of the controversy is that election returns are manufactured, that this fact be obvious on the face of the returns. Such would be the case, for example, if all votes therein reported are cast in favor of a candidate or candidates belonging to the same party, or, if the results of the canvass are statistically improbable. In such a case, the results of the election would be unascertainable, making it necessary to conduct a technical examination of the Voters' List and Voters' Affidavits. (Balindong vs. Commission on Elections, 260 SCRA 494 [1996], Mendoza, J.).

§9. The Omnibus Election Code defines a pre-proclamation controversy as "any question pertaining to or

affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns."

Stressing that the said enumeration is restrictive and exclusive, the Court in Sanchez vs. Commission on Elections held that: "The scope of pre-proclamation controversy is limited to issues enumerated under Section 243 of the Omnibus Election Code. The enumeration therein of the issues that may be raised in pre-proclamation controversy, is restrictive and exclusive. In the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects (Sec. 234), appear to have been tampered with, falsified or prepared under duress (Sec. 235) and/or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (Sec. 236), which are the only instances where a pre-proclamation recount may be resorted to, granted the preservation of the integrity of the ballot box and its contents, Sanchez' petition must fail.

That the election returns were obviously manufactured must be evident from the face of the said documents themselves. In a pre-proclamation controversy, the Comelec, as a rule, is restricted to an examination of the election returns and is without jurisdiction to go beyond or behind them and investigate election irregularities. Indeed, in the recent case of Loong vs. Comelec, the Court, through Mr. Justice Regino Hermosisima, Jr., declared that "the prevailing doctrine in this jurisdiction x x x is that as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting or the counting of votes."

A party seeking to raise issues the resolution of which would compel or necessitate the Comelec to pierce the veil of election returns which appear prima facie regular on their face, has his proper remedy in a regular election contest.

A technical examination of the handwriting and fingerprints in the voter's affidavits and voting lists is not allowed in a pre-proclamation controversy. (Matalam vs. Commission on Elections, 271 SCRA 733 [1997], Panganiban, J.).

§10. The petition resolved by COMELEC in the assailed resolution was lodged to declare illegal the proceedings of the Municipal Board of Canvassers of Navotas due to non-inclusion of votes which herein petitioner claims to be valid. On this score, we agree with petitioner that the matter falls under the category of special cases, particularly a pre-proclamation controversy raising the issue of the illegality of the proceedings of the board of canvassers (Sec. 3, Rule 27, Part V, Comelec Rules of Procedure). (Bautista vs. Commission on Elections, 298 SCRA 480 [1998], Melo, J.).

§11. With respect to pre-proclamation controversy, it is well to note that the scope of pre-proclamation controversy is only limited to the issues enumerated under Section 243 of the Omnibus Election Code, and the enumeration therein is restrictive and exclusive. The reason underlying the delimitation both on substantive

ground and procedure is the policy of the election law that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible. That is why such questions which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest. (Sison vs. Commission on Elections, 304 SCRA 170 [1999], Romero, J.).

§12. For as long as the election returns which on their face appear regular and wanting of any physical signs of tampering, alteration or other similar vice, such election returns cannot just be unjustifiably excluded. To look beyond or behind these returns is not a proper issue in a pre-proclamation controversy as in the case at bar. (Ocampo vs. Commission on Elections, 325 SCRA 636 [2000], Kapunan, J.).

§13. This petition stemmed from a pre-proclamation controversy. In a long line of cases, we have consistently held that a pre-proclamation controversy is limited to an examination of the election returns on their face. The COMELEC as a general rule need not go beyond the face of the returns and investigate alleged election irregularities. We see no reason to depart from this rule in this petition.

To require the COMELEC to examine the circumstances surrounding the preparation of election returns would run counter to the rule that a pre-proclamation controversy should be summarily decided.

Where the resolution of the issues raised would require the COMELEC to "pierce the veil" of election returns that appear prima facie regular, the remedy is a regular election protest, ". . . wherein the parties may litigate all the legal and factual issues raised by them in as much detail as they may deem necessary or appropriate."

We are constrained to agree with the OSG's submission that on the basis of our holding in Salih v. COMELEC, 279 SCRA 19, respondent COMELEC herein "could not justifiably exclude said returns on the occasion of a pre-proclamation controversy whose office is limited to incomplete, falsified or materially defective returns which appear as such on their face." (Sebastian vs. Commission on Elections, 327 SCRA 406 [2000], Quisumbing, J.).

3. Jurisdiction

§1. The COMELEC in a pre-proclamation controversy does not commit a grave abuse of discretion in authorizing the proclamation of two candidates for the provincial board where the results of the pending examination of 164 questioned precincts cannot conceivably alter the winner status of said proclaimed candidates.

Petitioners' contention that under the Comelec's instructions to the canvassing board, the duty to object to the election returns during the canvass and to appeal to the Comelec from the adverse ruling of the canvassing board is imposed on the "losing party" which could not apply to them as they were the prevailing party in the

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canvassing ingeniously disregards the clear text and mandate of such instructions that a party who challenges any return during the canvass must duly interpose his objection and that the “adverse party” who is aggrieved by the board’s ruling — not necessarily the “losing party” - has the duty of appealing the board’s ruling to Comelec.

The question whether certain returns are falsified or have been tampered with and should not be included in the canvass, must first be raised before the board of canvassers, subject to appeal from its decision to the Comelec. Any question not originally set up before said board cannot legally be raised before the Commission in the exercise of its appellate jurisdiction. (Anni vs. Rasul, 46 SCRA 758 [1972], Teehankee, J.).

§2. Correspondingly, the Election Code of 1978, which is the first legislative construction of the pertinent constitutional provisions, makes the Commission also the “sole judge of all pre-proclamation controversies” and further provides that “any of its decisions, orders or rulings (in such controversies) shall be final and executory,” just as in election contests, “the decision of the Commission shall be final, executory and inappealable” (Section 193). (Aratuc vs. Commission on Elections, 88 SCRA 251 [1979], Barredo, J.).

§3. Under the 1935 Constitution, this Court exercised appellate jurisdiction to review any decision, ruling or order of the Comelec. Under the present Constitution, any decision, ruling or order of the Comelec can be assailed in this court only by means of the special civil action of certiorari . It should be stressed that the decisions, orders or rulings of the Comelec in pre-proclamation controversies, of which it is sole judge, are final and executory. (Sec. 175, 1978 Election Code). (Omar vs. Commission on Elections, 102 SCRA 611 [1981], Aquino, J.).

§4. While the Commission has exclusive jurisdiction over pre-proclamation controversies involving local elective officials (Sec. 242, Omnibus Election Code), nevertheless, pre-proclamation cases are not allowed in elections for President, Vice-President, Senator and Member of the House of Representatives.

It is clear from the above-quoted provision of the law that “pre-proclamation cases (are) not allowed in elections for President, Vice-President, Senator and Member of the House of Representatives.” What is allowed is the correction of “manifest errors in the certificate of canvass or election returns.” To be manifest, the errors must appear on the face of the certificates of canvass or election returns sought to be corrected and/or objections thereto must have been made before the board of canvassers and specifically noted in the minutes of their respective proceedings.

It is quite obvious that petitioner’s prayer does not call for the correction of “manifest errors in the certificates of canvass or election returns” before the Comelec but for the re-opening of the ballot boxes and appreciation of the ballots contained therein. Indeed, petitioner has not even pointed to any “manifest error” in the certificates of canvass or election returns he desires to be rectified. There being none, petitioner’s proper recourse is to file a regular election protest which, under the Constitution and the Omnibus Election Code, exclusively pertains to the Senate Electoral Tribunal. (Chavez vs. Commission on Elections, 211 SCRA 315 [1992], Bidin, J.).

§5. It is clear from the abovequoted provision of the 1987 Constitution that election cases include pre-proclamation controversies, and all such cases must first be heard and decided by a Division of the Commission. The Commission, sitting en banc, does not have the authority to hear and decide the same at the first instance. In the COMELEC RULES OF PROCEDURE, pre-proclamation cases are classified as Special Cases and, in compliance with the above provision of the Constitution, the two (2) Divisions of the Commission are vested with the authority to hear and decide these Special Cases. Rule 27 thereof governs Special Cases; specifically, Section 9 of the said Rule provides that appeals from rulings of the Board of Canvassers are cognizable by any of the Divisions to which they are assigned and not by the Commission en banc.

Indisputably then, the COMELEC en banc acted without jurisdiction, or with grave abuse of discretion, when it resolved the appeals of petitioners in the abovementioned Special Cases without first referring them to any of its Divisions. Said resolutions are, therefore, null and void and must be set aside. Consequently, the appeals are deemed pending before the Commission for proper referral to a Division.

A resolution directing the COMELEC to assign said Special Cases to the Divisions pursuant to Section 8, Rule 3 of its Rules on assignment of cases would, logically, be in order. However, Section 16 of R.A. No. 7166 provides that all pre-proclamation cases pending before it shall be deemed terminated at the beginning of the term of the office involved. The said section provides as follows: x x x "All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari." The terms of the offices involved in the Special Cases subject of these petitions commenced at noon of 30 June 1992. These cases have thus been rendered moot and such a resolution would only be an exercise in futility. (Sarmiento vs. Commission on Elections, 212 SCRA 307 [1992], Davide, Jr., J.).

§6. By now it is well-settled that election cases which include pre-proclamation controversies must first be heard and decided by a division of the Commission. The Commission en banc does not have the authority to hear and decide it in the first instance.

Consequently, since for purposes of elections, no pre-proclamation case is allowed against, among others, a candidate of the House of Representatives as stated in Section 15 of Republic Act No. 7166, the COMELEC gravely abused its discretion when it issued its June 2, 1992 order suspending the proclamation of the winner of the congressional seat of the second district of Northern Samar and in ordering a recount of Precincts 7 and 16 through a resolution dated June 13, 1992. (Ong, Jr., vs. Commission on Elections, 216 SCRA 806 [1992], Romero, J.).

§7. Consequently, the phrase "including pre-proclamation controversies" used in Sec. 3, Article IX-C of the Constitution should be construed as referring only to "pre-proclamation controversies" in election cases that fall within the exclusive original jurisdiction of the COMELEC, i.e., election cases pertaining to the election of regional, provincial and city officials. (Pangilinan vs. Commission on Elections, 228 SCRA 36 [1993], Padilla,

J.).

§8. While, however, the COMELEC is restricted, in pre-proclamation cases, to an examination of the election returns on their face and is without jurisdiction to go beyond or behind them and investigate election irregularities, the COMELEC is duty bound to investigate allegations of fraud, terrorism, violence and other analogous causes in actions for annulment of election results or for declaration of failure of elections, as the Omnibus Election Code denominates the same. (Loong vs. Commission on Elections, 257 SCRA 1 [1996], Hermosisima, Jr., J.).

§9. On the first issue, we uphold the jurisdiction of the COMELEC over the petitions filed by private respondent. As a general rule, candidates and registered political parties involved in an election are allowed to file pre-proclamation cases before the COMELEC. Pre-proclamation cases refer to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of election returns. The COMELEC has exclusive jurisdiction over all pre-proclamation controversies. As an exception, however, to the general rule, Section 15 of Republic Act 7166 prohibits candidates in the presidential, vice-presidential, senatorial and congressional elections from filing pre-proclamation cases.

The prohibition aims to avoid delay in the proclamation of the winner in the election, which delay might result in a vacuum in these sensitive posts. The law, nonetheless, provides an exception to the exception. The second sentence of Section 15 allows the filing of petitions for correction of manifest errors in the certificate of canvass or election returns even in elections for president, vice-president and members of the House of Representatives for the simple reason that the correction of manifest error will not prolong the process of canvassing nor delay the proclamation of the winner in the election. This rule is consistent with and complements the authority of the COMELEC under the Constitution to “enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall” and its power to “decide, except those involving the right to vote, all questions affecting elections.”

Although the COMELEC is clothed with jurisdiction over the subject matter and issue of SPC No. 98-143 and SPC No. 98-206, we find the exercise of its jurisdiction tainted with illegality. We hold that its order to set aside the proclamation of petitioner is invalid for having been rendered without due process of law. Procedural due process demands prior notice and hearing. Then after the hearing, it is also necessary that the tribunal show substantial evidence to support its ruling. In other words, due process requires that a party be given an opportunity to adduce his evidence to support his side of the case and that the evidence should be considered in the adjudication of the case. The facts show that COMELEC set aside the proclamation of petitioner without the benefit of prior notice and hearing and it rendered the questioned order based solely on private respondent’s allegations.

We likewise reject private respondent’s assertion that the hearing held on June 9, 1998 substantially satisfies the due process requirement. The law requires that the hearing be held before the COMELEC rules on the petition. Here, the public respondent first issued an order annulling the proclamation of petitioner and then set the date of

the hearing. We explained in Farinas vs. COMELEC the pernicious effect of such procedure: “As aptly pointed out by the Solicitor General, ‘to sanction the immediate annulment or even the suspension of the effects of a proclamation before the petition seeking such annulment or suspension of its effects shall have been heard would open the floodgates of unsubstantiated petitions after the results are known, considering the propensity of the losing candidates to put up all sorts of obstacles in an open display of unwillingness to accept defeat, or would encourage the filing of baseless petitions not only to the damage and prejudice of winning candidates but also to the frustration of the sovereign will of the electorate.’ ”

Taking cognizance of private respondent’s petitions for annulment of petitioner’s proclamation, COMELEC was not merely performing an administrative function. The administrative powers of the COMELEC include the power to determine the number and location of polling places, appoint election officials and inspectors, conduct registration of voters, deputize law enforcement agencies and government instrumentalities to ensure free, orderly, honest, peaceful and credible elections, register political parties, organizations or coalitions, accredit citizens’ arms of the Commission, prosecute election offenses, and recommend to the President the removal of or imposition of any other disciplinary action upon any officer or employee it has deputized for violation or disregard of its directive, order or decision. In addition, the Commission also has direct control and supervision over all personnel involved in the conduct of election. However, the resolution of adverse claims of private respondent and petitioner as regards the existence of a manifest error in the questioned certificate of canvass requires the COMELEC to act as an arbiter. It behooves the Commission to hear both parties to determine the veracity of their allegations and to decide whether the alleged error is a manifest error. Hence, the resolution of this issue calls for the exercise by the COMELEC of its quasi-judicial power. (Sandoval vs. Commission on Elections, 323 SCRA 403 [2000], Puno, J.).

4. Summary Procedure

§1. All pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing, and its decisions shall be executory after the lapse of five days from receipt by the losing party of the decision of the Commission, unless restrained by the Supreme Court. And the reason for this rule is obvious. As we stressed in Alonto v. COMELEC, “the policy of the election law is that pre-proclamation controversies should be summarily decided, consistent with the law’s desire that the canvass and proclamation be delayed as little as possible.” That is why such questions as those involving the appreciation of the votes and the conduct of the campaign and the balloting, which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest. (Abella vs. Larrazabal, 180 SCRA 509 [1989], Cruz, J.).

§2. The Court does not agree. We find that the petitioner’s real intention in filing the election protest ad cautelam was merely to insure the preservation of all the ballot boxes used in the January 18, 1988 local elections in the province of Pangasinan. Under COMELEC Res. No. 2035 dated September 7, 1988, all such ballot boxes would be made available for the then forthcoming barangay elections as long as they were not involved in any pre-proclamation controversy, election protest, or official investigation. As the above-mentioned cases involved only nine precincts, it was only prudent for the petitioner to file his protest ad cautelam in case the

pre-proclamation controversy was ultimately dismissed and it became necessary for him to activate his protest. The protest would involve all the precincts in the province. If he had not taken this precaution, all the other ballot boxes would have been emptied and their contents would have been burned and forever lost.

Considering the summary nature of the pre-proclamation controversy, we see no reason why the above-mentioned cases cannot be speedily resolved on the basis of the evidence and the arguments already submitted by the parties. These must have been thoroughly examined by now by the COMELEC. And if more evidence is to be adduced, this should not take too much more time; at least the COMELEC should see to it that it does not. The COMELEC must be especially wary of dilatory tactics that may further postpone the final resolution of this contest. The Court cannot stress too strongly the need for an early resolution of the pending cases to ultimately determine the winner in the gubernatorial election or, if an election protest is inevitable, to pave the way for it as soon as possible.

The petitioner has correctly pointed out that the Order of the First Division of the COMELEC dismissing the pre-proclamation controversy and the Resolution of the COMELEC en banc denying the motion for reconsideration were both penned by Commissioner Abueg, in violation of its rule that - x x x No member shall be the “ponente” of an en banc decision, resolution or a motion to reconsider a decision/resolution written by him in a Division. This is still another reason why the challenged acts must be reversed. The Commission on Elections should be the first to respect and obey its own rules, if only to provide the proper example to those appearing before it and to avoid all suspicion of bias or arbitrariness in its proceedings. (Agbayani vs. Commission on Elections, 186 SCRA 484 [1990], Cruz, J.).

§3. From the foregoing tables, the substantial correctness of the data therein not having been successfully contested by petitioners, it appears to the Court that there is no need to pass upon and resolve the central issue raised by petitioners - whether or not the doctrine of “statistical improbability” adopted in Lagumbay v. Commission on Elections should be re-examined with a view to expanding the scope thereof, i.e., with a view to characterizing election returns differing, in varying degrees, from the specific fact situation dealt with by the Court in Lagumbay as “statistically improbable” and hence excludable from canvass as “obviously manufactured” without need of evidence aliunde. In the specific circumstances of the cases at bar, whatever conclusion the Court might have reached on this issue would, strictly speaking, merely constitute dictum, considering that even if the Court were to nullify all the returns objected to by petitioners on grounds of “statistical improbability”, private respondents Candao and Loong would still show a very substantial margin over the total votes of petitioners. Such nullification will not, in other words, materially affect the results of the election per the official certificates of canvass.

In resolving upon this course of action, the Court has also taken particular account of the need for speedy resolution of these cases, considering the length of time which has gone by since the election was held last 17 February 1990 without the winning candidates for Regional Governor and Regional Vice-Governor being proclaimed. The public policy involved in the rule that pre-proclamation controversies shall be resolved in summary proceedings, is very real and insistent. The public interest requires that the positions for the filling of which the election was held should be filled as promptly as possible, even if the proclamation of the winning candidates be provisional in nature, in the sense that such would be subject to the results of the election protest or protests that may be expected to be filed. The Court is bound by high duty and responsibility to give effect to this public policy which is enshrined in statutory norms (infra). Petitioners’ principal remedy is to file election

protests before the appropriate agency of government - i.e., the Comelec (Article IX [C] [2] [2], 1987 Constitution) - and there to litigate all the issues raised by them in as much detail as they might deem necessary or appropriate. Another remedy open to petitioners is the filing of criminal charges for election offenses against those who, petitioners believe, are responsible for the frauds and assorted trickery alleged to have been committed.

Petitioners ask the Court to re-examine its decision in Dianalan v. Commission on Elections (G.R No. 79712, 12 November 1987), so as to permit petitioners to subject to handwriting and fingerprint examination the voter's affidavits and voting lists and other voting records in the contested precincts. We are not persuaded by petitioners' arguments on this point. It is important to bear in mind that the nature, scope and ambit of a pre-proclamation controversy as set out in Dianalan and Dipatuan and the other cases there cited are determined by statutory provisions: Sections 243 (entitled "Issues that may be Raised in Pre-Proclamation Controversy"), 245 ("Contested Election Returns") and 246 ("Summary Proceedings before the Commission") of the Omnibus Election Code. As pointed out above in Dipatuan, these statutory provisions reflect a very definite view of what public policy requires on the matter. It may well be true that that public policy may occasionally permit the occurrence of "grab the proclamation and prolong the protest" situations; that public policy, however, balances the possibility of such situations against the shortening of the period during which no winners are proclaimed, a period commonly fraught with tension and danger for the public at large. For those who disagree with that public policy, the appropriate recourse is not to ask this Court to abandon case law which merely interprets faithfully existing statutory norms, to engage in judicial legislation and in effect to rewrite portions of the Omnibus Election Code. The appropriate recourse is, of course, to the Legislative Department of the Government and to ask that Department to strike a new and different equilibrium in the balancing of the public interests at stake.

On the second and third issues raised by petitioners, the Comelec En Banc Decision of 4 June 1990 said: "[The second and third issues raised by petitioners] are related to each other. They refer to the procedure to be observed in the registration of objections at the board of canvassers level and the bringing of adverse rulings on appeal to the Commission. We reiterate the mandatory requirement to comply with procedure for pre-proclamation controversies in view of the public policy to have a quick determination of the result of the election. By [their] nature, pre-proclamation controversies already delay proclamation. To allow the deviation from procedural requirements is to open cases of this nature to protracted uncertainty because new grounds and new issues can be raised at the different levels of jurisdiction. Even ordinary cases not impressed with public policy considerations are not allowed to be litigated this way." (Italics supplied) Once more, we agree with the above ruling of the Comelec since that ruling simply flows from the character and scope of a pre-proclamation controversy under the Omnibus Election Code. (Dimaporo vs. Commission on Elections, 186 SCRA 769 [1990], Feliciano, J.).

§4. The instant case is different from a pre-proclamation controversy which the law expressly mandates to be resolved in a summary proceeding (B.P. Blg. 881, Art. XX, Sec. 246; COMELEC Rules of Procedure, Part V, Rule 27, Sec. 2; Dipatuan v. Commission on Elections, 185 SCRA 86 [1990]). Pre-proclamation controversies should be summarily decided, consistent with the legislators' desire that the canvass of the votes and the proclamation of the winning candidate be done with dispatch and without unnecessary delay. Questions as those involving the appreciation of the votes and the conduct of the balloting, which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest. (Aruelo, Jr. vs.

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Court of Appeals, 227 SCRA 311 [1993], Quiason, J.).

§5. Section 2 of the above-stated Rule provides that all pre-proclamation controversies shall be heard summarily after due notice. Hence, the COMELEC only has to give notice to the parties by issuing summons and by serving a copy of the petition. The proceedings being summary, the COMELEC may rely on whatever pleading that may have been filed by the parties. A hearing wherein the parties engage in oral argument is not required. (Bautista vs. Commission on Elections, 298 SCRA 480 [1998], Melo, J.).

§6. The non-inclusion of a proclaimed winner in a pre-proclamation controversy and his lack of notice of the proceedings in the COMELEC which resulted in the cancellation of his proclamation constitute clear denial of due process.

It is true that RA No. 7166 provides for summary proceedings in pre-proclamation cases and does not require a trial type hearing. Nevertheless, summary proceedings cannot be stretched to mean ex parte proceedings. Summary simply means with dispatch, with the least possible delay. It signifies that the power may be exercised without a trial in the ordinary manner prescribed by law for regular judicial proceedings. But although the proceedings are summary, the adverse party nevertheless must at the very least be notified so that he can be apprised of the nature and purpose of the proceeding. In the case at bar, all the proceedings were conducted by the respondent COMELEC without the participation of the petitioner. Worse, respondent Natividad was allowed to file various motions without the knowledge of the petitioner. Plainly, these ex parte proceedings offend fundamental fairness and are null and void.

R.A. No. 7166 explicitly provides that it is only on the basis of these official records that the COMELEC can decide the pre-proclamation controversy in a summary manner. Without the official records, the respondent COMELEC cannot validly decide a pre-proclamation controversy. There is no showing that the official records of the Board of Canvassers were forwarded to the respondent COMELEC and were used to cancel Velayo's proclamation. (Velayo vs. Commission on Elections, 327 SCRA 713 [2000], Puno, J.).

5. Not Viable After Proclamation

§1. In the first place, the report of Regional Election Director Mamasapunod Aguam that there was a failure of election in Sultan Gumander was not presented in evidence. In the second place, even if it had been presented the COMELEC had no duty to act on it considering that under the circumstances, the alleged failure of election was not a proper issue in a pre-proclamation case. It should be recalled that the COMELEC dismissed the pre-proclamation petition for annulment of the election (PP Case No. 426), without prejudice to the filing of an election protest or quo warranto, whichever is proper, in the appropriate forum for ventilation. The COMELEC's action is logical because settled is the doctrine that once a proclamation has been made, as in this case, a pre-proclamation controversy is no longer viable. (Mangca vs. Commission on Elections, 112 SCRA 273 [1982],

Abad Santos, J.).

§2. After the proclamation of the winning candidate, a pre-proclamation controversy is no longer viable.

Where a mayoralty candidate filed an election protest with the COMELEC instead of the CFI (now RTC) 22 days after the proclamation of his opponent as candidate-elect, he is deemed to have abandoned the remedy of filing an election protest in court. (Robes vs. Commission on Elections, 123 SCRA 193 [1983], Makasiar, J.).

§3. Since there has already been an election and a proclamation of petitioner, this case to borrow the phrase of the Chief Justice in Potencion v. COMELEC (99 SCRA 595), cannot with precision be considered as a pre-proclamation controversy. As in the cases of Potencion, Singco and Gonzales v. COMELEC (101 SCRA 752), it is more fitting to return this case to the COMELEC to avoid the long delay in the disposition of this case. (Goboy vs. COMELEC, 126 SCRA 441 [1983], De Castro, J.).

§4. In several cases arising from pre-proclamation controversies, this Court has spelled out the governing rule: A pre-proclamation controversy is no longer viable after the elections. (Batino, Jr. vs. Commission on Elections, 137 SCRA 698 [1985], Dela Fuente, J.).

§5. It appearing that the questioned resolution of public respondent had already been implemented and the private respondent had been proclaimed as the elected mayor of the Municipality of Leyte, Leyte by the inclusion of the election return for Precinct No. 12 and that he has taken his oath of office and assumed the duties of said Office, the remedy of the petitioner is not a pre-proclamation contest but an electoral protest filed at the proper time before the competent court. (Salvacion vs. Commission on Elections, 170 SCRA 513 [1989], Gancayco, J.).

§6. The reglementary period for filing an election protest was suspended during the pendency of the pre-proclamation case. Rimando was proclaimed by the Municipal Board of Canvassers as the duly elected municipal mayor of Naguilian on January 19, 1988. Two (2) days later, or on January 21, 1988, Gallardo filed in the COMELEC a pre-proclamation petition to annul the proclamation. Hence, only eight (8) days of the reglementary period for filing an election protest remained. This period was suspended during the pendency of the pre-proclamation case, i.e., while it was pending in the COMELEC and in the Supreme Court, until Gallardo received on June 23, 1989 the Supreme Court's final resolution dismissing his petition for review of the COMELEC's decision in said case.

In the light of Section 248, the lower court's statement that "the running of the ten-day period to file an election protest is not stopped by protestant's elevation to the Supreme Court of the COMELEC's decision" in the pre-proclamation case, is not correct. The appeal by certiorari to the Supreme Court, which is a right secured to the defeated party under Section 7, Title A, Article IX of the 1987 Constitution, is part of the annulment proceeding. The case is not over until the Supreme Court has given its verdict, hence, the computation of the ten-day period for filing an election contest does not begin until that verdict has been handed down by the Supreme Court.

The right of the prevailing party in a pre-proclamation case to the execution of the COMELEC's decision (i.e., to be proclaimed and to assume office) after the lapse of five (5) days from receipt of said decision by the losing party, unless restrained by the Supreme Court, does not bar the losing party from filing an election contest within the ten-day period fixed in Section 251. The absence of a restraining order from the Supreme Court simply allows the prevailing party to be proclaimed and assume office.

In "Gallardo vs. COMELEC," G.R. No. 85974, May 30, 1989, the appellant did not ask this Court to restrain the execution of the COMELEC decision for the simple reason that his opponent, Rimando, had already been proclaimed even before the pre-proclamation case was filed by him (Gallardo) in the COMELEC. That circumstance was precisely the reason why the COMELEC dismissed the pre-proclamation case, for the rule is that after the winning candidate has been proclaimed and assumed office, a pre-proclamation petition does not lie against him.

But, although already proclaimed and installed in office, he may still be unseated: (1) when his opponent is adjudged the true winner of the election by a final judgment of the courts in the election contest (Sec. 251, Omnibus Election Code); (2) when the prevailing party is declared ineligible or disqualified by final judgment in a quo warranto case (Sec. 253, Omnibus Election Code); and (3) when the incumbent is removed from office for cause. (Gallardo vs. Rimando, 187 SCRA 463 [1990], Griño-Aquino, J.).

§7. It appearing that no restraining order was issued in these cases and the winning candidates have already been proclaimed, these pre-proclamation issues have thereby been rendered moot and academic when the proclaimed elected officials commenced their terms in the afternoon of June 30, 1992, pursuant to Section 16 of R.A. 7166, which provides: "All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari". (Verceles vs. Commission on Elections, 214 SCRA 159 [1992], Bellosillo, J.).

§8. We have already ruled in Gallardo vs. Rimando, 187 SCRA 463; Salvacion vs. COMELEC, 170 SCRA 513; Casimiro vs. COMELEC, 171 SCRA 468, that pre-proclamation controversies may no longer be entertained by the COMELEC after the winning candidates have been proclaimed and assumed office. The proper remedy of the aggrieved party is an election contest in the Regional Trial Court as provided in Sec. 250 of B.P. 881 and Sec. 2(2), Art. IX-C of the Constitution.

Section 17, R.A. 7166 deals with the commencement of pre-proclamation controversies while Sec. 19 provides that "parties adversely affected by a ruling of the Board of Canvassers on questions affecting the composition or proceedings of the board may appeal the matter to the Commission within three (3) days from a ruling thereon." (Sardea vs. Commission on Elections, 225 SCRA 374 [1993], Griño-Aquino, J.).

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§9. All pre-proclamation cases pending before the COMELEC in the 11 May 1998 elections were deemed terminated at noon of 30 June 1998, the beginning of the term of office involved; and the rulings of the board of canvassers concerned were deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. (Barroso vs. Ampig, Jr., 328 SCRA 530 [2000], Puno, J.).

6. Rules on the presentation of evidence

§1. In pre-proclamation controversies, the rules on presenting evidence and appealing the rulings of the board of canvassers are mandatory. The plain and simple procedure prescribed is outlined in detail in Section 20 of Republic Act No. 7166.

Clearly, not only must the objecting party reduce his objections to writing in the form prescribed by the Comelec; he must also present within 24 hours evidence in support thereof. Under subsection h, non-compliance with the mandatory procedure shall result in the summary dismissal of the appeal, as in this case. In the petitioner lies the burden of proving that he has a prima facie case and of presenting, at the same time, evidence that the exclusion he seeks will change the results of the election. A party's mere allegation that an election return is spurious, altered or manufactured does not automatically operate to exclude it from the canvassing.

The summary nature of a pre-proclamation controversy allows it to be resolved on the basis of the arguments as well as the evidence submitted by the parties within the period allowed by law. Thus, the importance of appending the evidence that will substantiate one's objections. Absent any clear and convincing evidence, the election returns and the canvassing proceedings must be upheld. Mere affidavits cannot be relied on. Two years ago, this Court had occasion to rule that election controversies based on flimsy averments could not be allowed to prosper; otherwise, the whole election process will deteriorate into an endless stream of crabs pulling at each other, racing to disembark from the water. (Cordero vs. Commission on Elections, 310 SCRA 118 [1999], Panganiban, J.).

§2. It is improper for the COMELEC to annul the proclamation of a winning candidate on the basis of new and additional evidence which were not presented before the Board of Canvassers and which were not furnished to said candidate.

In fine, the affidavits of private respondent Natividad are insufficient proofs to annul petitioner Velayo's proclamation for as we held in Casimiro, et al. v. COMELEC, et al.: "Obviously, the evidence relied upon mainly by petitioners to support their charges of fraud and irregularities in the election returns and in the canvassing consisted of Affidavits prepared by their own representatives. The self-serving nature of said Affidavits cannot be discounted. As this Court has pronounced, reliance should not be placed on mere affidavits x x x. Aside from said sworn statements, the records do not indicate any other substantial evidence that would justify the exclusion of election returns in the canvassing for being fraudulent in character nor a declaration that the proceedings wherein the returns were canvassed were null and void. The evidence presented by petitioners is not enough to overturn

the presumption that official duty had been regularly performed. x x x In the absence of clearly convincing evidence, the election returns and the canvassing proceedings must be upheld. A conclusion that an election return is obviously manufactured in the canvass must be approached with extreme caution, and only upon the most convincing proof." (Velayo vs. Commission on Elections, 327 SCRA 713 [2000], Puno, J.).

CHAPTER XX
Election Contest

1. Rules of interpretation

§1. Statutes providing for election contests are to be liberally construed, to the end that the will of the people in the choice of public official may not be defeated by merely technical objections. To that end, immaterial defects in pleadings should be disregarded and necessary and proper amendments should be allowed as promptly as possible. (Galang vs. Miranda and De Leon, 35 Phil. 269 [1916], Johnson, J.).

§2. Statutes providing for election contest are to be liberally construed, to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. (Ali vs. Court of First Instance of Lanao, 80 Phil. 506 [1948], Tuason, J.).

§3. In the trial of election cases, the guiding fundamental principle is that technicalities or procedural barriers should not be allowed to stand if the same would tend to defeat rather than promote the interest of justice. In other words, the Election Laws should be liberally construed to the end that the will of the people may not be defeated. (Ibasco vs. Ilao, 110 Phil. 553 [1960], Bautista Angelo, J.).

§4. Election contests involve public interest. Technicalities should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. Laws governing electoral contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. It is the court's imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate. (Juliano vs. Court of Appeals, 20 SCRA 808 [1967], Zaldivar, J.).

§5. It is the settled ruling of this Court that laws governing election cases must be liberally construed, and that technical and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. (Ginete vs. Arcangel, 21 SCRA 1178 [1967], Zaldivar, J.).

§6. It has been frequently decided, and it may be stated as a general rule recognized by all courts, that statutes providing for election contests are to be liberally construed to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. To that end, immaterial defects in pleadings should be disregarded and necessary and proper amendments should be allowed as promptly as possible. (Unda vs. Commission on Elections, 190 SCRA 827 [1990], Regalado, J.).

§7. An election protest does not merely concern the personal interests of rival candidates for an office. Over and

above the desire of the candidates to win, is the deep public interest to determine the true choice of the people. For this reason, it is well-established principle that laws governing election protests must be liberally construed to the end that the popular will, expressed in the election of public officers, will not, by purely technical reasons, be defeated. (Aruelo, Jr. vs. Court of Appeals, 227 SCRA 311 [1993], Quiason, J.).

§8. It represents a legal wisdom postulated on the basis of the fundamental principle that technicalities or procedural barriers should not be allowed to stand if the same would tend to defeat rather than promote the interest of justice. In Tatlonghari v. COMELEC, this Court has again reminded all and sundry that the law governing electoral contest must be liberally construed to the end that the will of the people may not be defeated. This primordial policy to ascertain the will of the people is evident in the constitutional mandate that "Sovereignty resides in the people and all government authority emanates from them." (Loyola vs. House of Representatives Electoral Tribunal, 229 SCRA 90 [1994], Nocon, J.).

§9. Well-settled is the doctrine that election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of elective officials. And also settled is the rule that laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. In an election case the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate. (Benito vs. Commission on Elections, 235 SCRA 436 [1994], Kapunan, J.).

§10. Assuming for the sake of argument that the petition was filed out of time, this incident alone will not thwart the proper determination and resolution of the instant case on substantial grounds. Adherence to a technicality that would put a stamp of validity on a palpably void proclamation, with the inevitable result of frustrating the people's will cannot be countenanced. In Benito v. COMELEC, we categorically declared that: x x x Adjudication of cases on substantive merits and not on technicalities has been consistently observed by this Court. In the case of Juliano v. Courts of Appeals (20 SCRA 808) cited in Duremdes vs. Commission on Elections (178 SCRA 746), this Court had the occasion to declare that: Well-settled is the doctrine that election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. And also settled is the rule that laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections (Gardiner v. Romulo, 26 Phil. 521; Galang v. Miranda, 35 Phil. 269; Jalandoni v. Sarcon, G.R. No. L-6496, January 27, 1962; Macasundig v. Macalangan, G.R. No. L-22779, March 31, 1965; Cauton vs. Commission on Elections, G.R. No. L-25467, April 27, 1967). In an election case the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate. (Bince, Jr. vs. Commission on Elections, 242 SCRA 273 [1995], Kapunan, J.).

§11. It is doctrinal that election cases involve public interest; thus, laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. The possible delay and potential threat to the sanctity of the ballot which the grant of

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the motion to photocopy the ballots might engender are indeed valid concerns, but as earlier explained, such concerns of the trial judge are unfounded because sufficient safeguards may be put in place to ensure that the proceedings shall be expeditious and the handling of the ballots adequately guarded and supervised.

There is no gainsaying the fact that trial courts and other bodies hearing election cases are mandated by law to resolve such cases expeditiously and promptly. In San Juan vs. Abordo, this Court has had occasion to rule that "election contests should be rapidly and economically decided, avoiding unnecessary delays. In this way, the uncertainty as to the result of the election is done away with, the ardor of party contests is quenched, and political repose which is so necessary to the progress of the country, is restored in the community." However, at the same time, courts should not lose sight of the contending parties' right to avail of every reasonable opportunity to support their claim to the office in question. It should be stressed that the prompt resolution of election cases must not be accomplished at the expense of determining the true choice of the electorate. Thus, the courts and other electoral bodies are enjoined, not only to maintain their sense of urgency in resolving election cases, but also to explore every reasonable and feasible means of ascertaining which candidate was duly elected because, in the final analysis, it is the will of the people that is the ultimate concern. (Alberto vs. Commission on Elections, 311 SCRA 215 [1999], Romero, J.).

2. Scope

§1. An election contest under Section 27 of Act No. 1582 is exclusive of all other proceedings to determine the same question upon the same facts; and, while such proceeding is pending, an action of quo warranto based on the same facts to determine the title to the same office cannot be maintained. (Luna vs. Rodriguez, 36 Phil. 401 [1917], Moreland, J.).

§2. Section 175 of the Revised Election Code refers to the right of any party in an election to file the corresponding petition of protest. The provisions that the court may "motu proprio, if the interest of justice so requires," immediately order that documents be produced and ballots examined and votes recounted evidently refers to a case where an election contest has already been presented and the court desires to make further examination in the interest of justice. (Matas vs. Romero, 114 Phil. 253 [1962]; 4 SCRA 313 [1962], Labrador, J.).

§3. A motion of protest filed in due time against a protestee which contains all the jurisdictional facts and statements of a cause of action to warrant the hearing of the case on its merits should not be dismissed simply because another motion of protest against the same protestee had previously been filed in the same court.

Where two independent motions of protest have been filed against the same protestee, the court should not dismiss the latter protest but should hear the two cases together and decide them in one decision. (Macasundig vs. Macalangan, 121 Phil. 554 [1965]; 13 SCRA 577 [1965], Zaldivar, J.).

§4. An election contest is a proceeding imbued with public interest which elevates it to a plane above ordinary civil actions. It is the duty of the courts to ascertain in an expeditious manner without being fettered by technicalities and procedural barriers, the real candidate elected to the end that the will of the people may not be frustrated. (Vda. De Mesa vs. Mencias, 124 Phil. 1187 [1966]; 18 SCRA 533 [1966], Castro, J.).

§5. The purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is really the lawful choice of the electorate. What is sought in an election protest is the correction of the canvass of the votes, which is the basis of the proclamation of the winning candidate. An election contest involves a public office in which the public has an interest. Certainly, the act of a losing candidate of recognizing the one who is proclaimed the winner should not bar the losing candidate from questioning the validity of the election of the winner in the manner provided by law.

When an election protest alleges frauds and irregularities such that the legality of the election of the protestee is placed in serious doubt, the courts should proceed to ascertain the truth of the allegations of frauds and irregularities, not necessarily to declare the protestant elected but to determine whether the protestee was legally elected, because once it is shown that frauds and irregularities had characterized the election, the court may annul the election and declare that no candidate had been elected. (De Castro vs. Ginete, 27 SCRA 623 [1969], Zaldivar, J.).

§6. Where the grievance relied upon is the commission of irregularities and violation of the Election Law as appears to be the case here, the proper remedy is the protest. In the language of Justice Sanchez, “The boundaries of the forbidden area into which Comelec may not tread are also marked by jurisprudence. That Comelec is not the proper forum to seek annulment of an election based on terrorism, frauds and other illegal practices, is a principle emphasized in decisions of this Court”. (Anni vs. Izquierdo, 57 SCRA 692 [1974], Teehankee, J.).

§7. The proper remedy for impugning the qualification of a winning candidate on grounds of election irregularities like vote-buying is an election protest. (Villegas vs. Commission on Elections, 99 SCRA 582 [1980], Fernando, C.J.).

§8. The petition must be dismissed. It is very apparent from the petition-letter that the grounds relied upon by petitioners in seeking relief from the COMELEC are proper grounds for election protest. Petitioner premised his petition, to quote from Resolution No. 9802 of the COMELEC, on seizure of ballot boxes at gunpoint; intimidation of voters and forced opening and examination of ballots; substitution of ballots; and tampering of election returns. These are the same grounds alleged in the election protest filed in the Court of First Instance of Pampanga. The cases of Villegas vs. COMELEC and Laguda vs. COMELEC find application in the disposition of this case. In the early case of Villegas v. COMELEC, where massive fraud and violations of certain provisions of the Election Code allegedly committed during the elections were denounced in this Court, the Court through Mr. Chief Justice Enrique M. Fernando dismissed the petition, it appearing therein that the grounds set forth in the complaint before the COMELEC are proper for election protest. The Court pointed out, that at any rate petitioner would not be left without remedy “for the opportunity for him to prove such a wholesale allegation of massive fraud and violations of Election Code is still there.” Indeed, herein petitioner could still avail himself of the election protest where he could ventilate his grievance and be provided the full opportunity to present all relevant

evidence in a full dress hearing in accordance with due process, unlike in the COMELEC where the proceedings are summary in nature. As was aptly said in Laguda v. COMELEC, “to pass on such a complex matter in a summary proceedings would be to run the risk that the decision arrived at would not reflect the realities of this situation.” (Pasion vs. Commission on Elections, 109 SCRA 238 [1981], De Castro, J.).

§9. The matter elevated to this Court was a pre-proclamation controversy. The decision of the respondent Commission was promulgated on August 7, 1984. The instant petition was filed with this Court on August 20, 1984, or three months after the May 14, 1984 election. Private respondent was proclaimed on June 2, 1984, as the duly-elected Assemblyman for Nueva Vizcaya. He took his oath of office in due time, discharging thereafter his duties and functions as Assemblyman. Such pre-proclamation controversy is no longer viable at this point of time and should be dismissed as held by this Court in Venezuela and other cases. Pre-proclamation proceedings are summary in nature. There was no full-dress hearing essential to the task of adjudication with respect to the serious charges of “irregularities”, etc. made by petitioner. An election contest would be the most appropriate remedy. Instead of the submission of mere affidavits, the parties would be able to present witnesses subject to the right of confrontation, etc. Recourse to such remedy would settle the matters in controversy “conclusively and once and for all.” (Padilla vs. Commission on Elections, 137 SCRA 424 [1985], De La Fuente, J.).

§10. The word “contests” should not be given a restrictive meaning; on the contrary, it should receive the widest possible scope conformably to the rule that the words used in the Constitution should be interpreted liberally. As employed in the 1973 Constitution, the term should be understood as referring to any matter involving the title or claim of title to an elective office, made before or after proclamation of the winner, whether or not the contestant is claiming the office in dispute. Needless to stress, the term should be given a consistent meaning and understood in the same sense under both Section 2(2) and Section 3 of Article XII-C of the Constitution.

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. (Javier vs. Commission on Elections, 144 SCRA 194 [1986], Cruz, J.).

§11. The petition is impressed with merit because petitioner has been proclaimed winner of the Congressional elections in this first district of Pampanga, has taken his oath of office as such, and assumed his duties as Congressman. For this Court to take cognizance of the electoral protest against him would be to usurp the functions of the House Electoral Tribunal. (Lazatin vs. Commission on Elections, 157 SCRA 337 [1988], Paras, J.).

§12. “Election contests” would refer to adversary proceedings by which matters involving the title or claim of

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title to an elective office, made before or after proclamation of the winner, is settled whether or not the contestant is claiming the office in dispute and in the case of elections of barangay officials, it is restricted to proceedings after the proclamation of the winners as no pre-proclamation controversies are allowed. (Taule vs. Santos, 200 SCRA 512 [1991], Gancayco, J.).

§13. An election protest is a contest between the defeated and winning candidates on the ground of frauds or irregularities in the casting and counting of the ballots, or in the preparation of the returns. It raises the question of who actually obtained the plurality of the legal votes and therefore is entitled to hold the office. (Samad vs. Commission on Elections, 224 SCRA 631 [1993], Cruz, J.).

§14. Questions as those involving the appreciation of the votes and the conduct of the balloting which require more deliberate and necessarily longer consideration are left for examination in the corresponding election protest. (Aruelo, Jr. vs. Court of Appeals, 227 SCRA 311 [1993], Quiason, J.)

§15. Zaldivar vs. Estenzo, 23 SCRA 533, decided by this Court on 3 May 1968, had squarely resolved the issue above posed. Speaking through then Associate Justice Enrique Fernando (who later became Chief Justice), this Court explicitly ruled that considering that the Commission on Elections is vested by the Constitution with exclusive charge of the enforcement and administration of all laws relative to the conduct of elections, the assumption of jurisdiction by the trial court over a case involving the enforcement of the Election Code “is at war with the plain constitutional command, the implementing statutory provisions, and the hospitable scope afforded such grant of authority so clear and unmistakable in recent decisions.”

Under the COMELEC Rules of Procedure, initiation of complaints for election offenses may be done motu proprio by the Commission on Elections or upon written complaint by any citizen, candidate or registered political party or organization under the party-list system or any of the accredited citizens arms of the Commission. However, such written complaints should be filed with the “Law Department of the Commission; or with the offices of the Election Registrars, Provincial Election Supervisors or Regional Election Directors, or the State Prosecutor, Provincial Fiscal or City Fiscal.” (Gallardo vs. Tabamo, 218 SCRA 253 [1993], Davide, Jr., J.).

3. Jurisdiction

§1. The jurisdiction of Courts of First Instance under Section 27 of the Election Law to try contested election cases, being special is strictly confined within the provisions of the statute. Such courts can take no additional power from their general jurisdiction in other matters.

Section 27, providing, as it does, for proceedings summary in the highest degree, must be strictly construed and must be exactly followed by those who act under or in pursuance of the powers therein conferred.

The subject matter of the jurisdiction conferred by Section 27 is confined to those matters which may be decided by an inspection of the registry list and of the ballots, and their RES GESTAE. (Castro vs. Wislizenus, 12 Phil. Rep., 468). (Topacio vs. Paredes, 23 Phil. 121 [1912], Trent, J.).

§2. Where not all of the candidates who received votes at an election for the office concerning which a protest is presented have been notified of the protest, as required by law, the court acquires no jurisdiction of the proceeding, and a judgment entered therein is void. (Navarro vs. Jimenez, 23 Phil. 557 [1912], Moreland, J.).

§3. In an election protest one of the essential facts to be alleged and proved is the election of the protestee. Where it appears that not all of the candidates who, at such election, received votes for the office concerning which the protest is filed were notified of the protest as required by law, the court acquires no jurisdiction of the proceeding. Service of the notice of protest upon all of such candidates, as required by law, is one of the steps necessary to give the court jurisdiction to proceed. (Navarro vs. Veloso, 23 Phil. 625 [1912], Moreland, J.).

§4. In an election protest verified under oath the necessary jurisdictional facts were alleged x x x. That the verified allegations in the protest established a prima facie case, sufficient to enable the court to take jurisdiction, and no evidence to the contrary having been introduced by the protestee the court never lost that jurisdiction. (Noble vs. Tuason and Penoso, 48 Phil. 387 [1915], Ostrand, J.).

§5. Section 576 of the Administrative Code confers plenary jurisdiction on Courts of First Instance with respect to election contests; and, as a necessary consequence, they have full power to decide every question within the issues which may arise during the progress of the contest. (Alvendia vs. Moir and Dinio, 35 Phil. 356 [1916], Moreland, J.).

§6. Where the jurisdiction of a court over the person or the subject matter depends upon the resolution of a question of fact and the court upon evidence presented determines the question of fact and decides in favor of its jurisdiction, such finding is conclusive on the Supreme Court in a petition for a writ of certiorari based upon the ground that the court had no jurisdiction of the subject matter or of the person. (Campos vs. Wislizenus and Aldanese, 35 Phil. 373 [1916], Moreland, J.).

§7. In election cases what confers jurisdiction upon the court is not the appearance of the protestee or other candidates voted for in an election, but the filing of the protest in the court of the proper district within two weeks after the proclamation of the result of the election, the notification of said protest to all candidates voted for within the period of twenty days from the filing of the protest and the filing of the corresponding bond within the period fixed by the court. (Ocampo vs. Mina and Arejola, 41 Phil. 308 [1920], Villamor, J.).

§8. Courts of First Instance have jurisdiction to consider an election contest under Section 479, Act. No. 3387, and also to entertain a complaint in the nature of quo warranto under Section 408 of the same law; but the two procedures are very different and are governed by different legal provisions, and the court’s jurisdiction cannot be exercised jointly and in the same proceeding.

The protestant herein could have pursued either proceeding, that of an election contest or that of a complaint of quo warranto; but once he has chosen the procedure of election contest, he cannot, after the period of fifteen days from the proclamation of the protestee, change his theory and maintain that the motion of protest was also a complaint of quo warranto. “Having chosen between inconsistent theories, a party must adhere to such choice all

through the case, and take the logical consequences upon every issue." (De la Rosa vs. Yonson, 52 Phil. 446 [1928], Villamor, J.).

§9. Since the motion of protest alleged all the essential facts for conferring jurisdiction on the court and included the names of the parties, protestant and protestee, which latter was summoned, and of the other registered candidates voted for, who appeared of their own free will, the respondent Court of First Instance acquired jurisdiction to try and decide the case. (Torres vs. Court of First Instance of Capiz and Molo, 52 Phil. 478 [1928], Villa-Real, J.).

§10. The election law provides that in order that the court may acquire jurisdiction, the contestant must allege that he is a candidate voted for at such election, and that he has duly filed his certificate of candidacy. (Anis vs. Contreras, 55 Phil. 923 [1931], Villamor, J.).

§11. Once an election contest is properly filed, the court has jurisdiction to try and pass upon all questions involved in the contest; under the new election law it has jurisdiction to proclaim the winning candidate without the need of another canvass by the board of canvassers, it being guided only by the outcome of its findings. (Corpus vs. Ibay, 84 Phil. 184 [1949], Ozaeta, J.).

§12. Where an election protest filed by a candidate for Congress is already in the hands of the House Electoral Tribunal, further court intervention in the matter would only lead to conflict of authority and create confusion. This the courts should not sanction. (Pajao vs. Provincial Board of Canvassers of Leyte, 88 Phil. 588 [1951], Reyes, J.).

§13. Where the motion of protest in an election case did not allege that the frauds, irregularities and violations complained of would in any way alter the result of the protestee's election, particularly because, in the revision of the ballots, the protestant contested only a number of ballots which, even if all counted in his favor, would still leave a plurality in favor of the protestee, - the motion of protest was properly dismissed. (De Leon vs. Cruz, 92 Phil. 403 [1952], Paras, C.J.).

§14. The question of whether or not there had been terrorism, vote-buying and other irregularities in the elections should be ventilated in a regular election protest, pursuant to Section 174 of the Election Code, and not in a petition to enjoin the city board of canvassers from canvassing the election returns and proclaiming the winning candidates for municipal offices.

The city board of canvassers may not be enjoined from assessing the returns, because it would result in a lack of incumbents in the offices concerned after the termination of the current term and while the case remains pending in court. This is not within the contemplation of the Election Code, which provides for election contests only after proclamation of the winning candidates. Furthermore, an injunction such as that issued by respondent court would prevent the city board of canvassers from certifying the results of the election even with respect of national offices. (City Board of Canvassers, Tacloban City vs. Moscoso, 118 Phil. 935 [1963]; 9 SCRA 91 [1963], Makalintal, J.).

§15. The allegation in the election protest that fraud and irregularities were committed in the counting of votes in two precincts referred to therein and that if they were recounted the protestant would appear to have received more votes than the protestee, is sufficient for jurisdictional purposes. (Gadon vs. Gadon, 118 Phil. 1502 [1963]; 9 SCRA 652 [1963], Makalintal, J.).

§16. The question of whether or not more people than registered voters were allowed to vote in precinct 7 should

be threshed out in an election contest. (Demafiles vs. Commission on Elections, 21 SCRA 1462 [1967], Castro, J.).

§17. The power to decide election contests which is vested exclusively in the courts and in the electoral tribunals of the Senate and the House of Representatives necessarily includes the power to determine the validity or nullity of the votes questioned by contestants. If that power is vested in the courts and in the electoral tribunals alone, then the incidental power to determine the validity or nullity of the votes must perforce be deemed impliedly withheld from any other body or tribunal such as the Comelec. (Nacionalista Party vs. Commission on Elections, 85 Phil. 1949). (Tagoranao vs. Commission on Elections, 22 SCRA 978 [1968), Castro, J.).

§18. The general rule is, of course, that once a Court of First Instance has acquired jurisdiction by virtue of the filing of an election protest all questions relative thereto must be decided in the case itself and not in a separate proceeding before a different forum (Reyes v. Reyes, L-28476, Jan. 31. 1968; Acain v. Board of Canvassers, L-16445, May 23, 1960). (Tuburan vs. Ballener, 24 SCRA 941 [1968], Makalintal, J.).

§19. The question of whether or not there had been terrorism, vote-buying and other irregularities should be ventilated in a regular election protest, pursuant to Section 174 of the Election Code, and not in a petition to enjoin the city board of canvassers from canvassing the election returns and proclaiming the winning candidates for municipal offices. The duty of the board in this regard is more or less ministerial; it does not pass upon the validity or invalidity of the ballots cast, and its action is necessarily without prejudice to the determination of such question in a proper court proceeding later. This proceeding, under Section 174, should be filed within two weeks after the proclamation of the result of the election and hence necessarily implies a previous canvass of the votes by the board of canvassers. (Nacionalista Party v. Commission on Elections, 85 Phil. 149). In other words, existing laws do not permit a direct action to annul an election. Said remedy may be granted only as an incident to an election contest. (Borromeo vs. Commission on Elections, 28 SCRA 775 [1969], Concepcion, C.J.).

§20. Petitioner’s allegations of fraud, terrorism and vote-buying in the elections are normally proper grounds for an election protest and not for an action to annul election returns. (Ligot vs. Commission on Election, 31 SCRA 45 [1970], Per Curiam).

§21. Where the grievance relied upon is the commission of irregularities and violation of the Election Law as appears to be the case here, the proper remedy is the protest. (Anni vs. Izquierdo, 57 SCRA 692 [1974], Teehankee, J.).

§22. Where a petition for disqualification was filed after the proclamation of the winning candidate, it cannot be characterized as a pre-proclamation controversy. What should be done is for petitioner to file an election protest or quo warranto. (Venezuela vs. Commission on Elections, 98 SCRA 790 [1980], Fernando, C.J.).

§23. The proper remedy for impugning the qualification of a winning candidate on grounds of election irregularities like vote-buying is an election protest. (Villegas vs. Commission on Elections, 99 SCRA 582 [1980],

Fernando, C.J.).

§24. The petition must be dismissed. It is very apparent from the petition-letter that the grounds relied upon by petitioners in seeking relief from the COMELEC are proper grounds for election protest. Petitioner premised his petition, to quote from Resolution No. 9802 of the COMELEC, on seizure of ballot boxes at gunpoint; intimidation of voters and forced opening and examination of ballots; substitution of ballots; and tampering of election returns. These are the same grounds alleged in the election protest filed in the Court of First Instance of Pampanga. The cases of Villegas vs. COMELEC and Laguda vs. COMELEC find application in the disposition of this case. In the early case of Villegas v. COMELEC, where massive fraud and violations of certain provisions of the Election Code allegedly committed during the elections were denounced in this Court, the Court through Mr. Chief Justice Enrique M. Fernando dismissed the petition, it appearing therein that the grounds set forth in the complaint before the COMELEC are proper for election protest. The Court pointed out, that at any rate petitioner would not be left without remedy "for the opportunity for him to prove such a wholesale allegation of massive fraud and violations of Election Code is still there." Indeed, herein petitioner could still avail himself of the election protest where he could ventilate his grievance and be provided the full opportunity to present all relevant evidence in a full dress hearing in accordance with due process, unlike in the COMELEC where the proceedings are summary in nature. As was aptly said in Laguda v. COMELEC, "to pass on such a complex matter in a summary proceedings would be to run the risk that the decision arrived at would not reflect the realities of this situation". (Pasion vs. Commission on Elections, 109 SCRA 238 [1981], De Castro, J.).

§25. Paragraph 7 of petitioner's petition of protest claims that the same "was presented within the period fixed by law". Generally, such averment is not sufficient assurance that the petition was indeed filed on time, absent a showing of the date to reckon the timeliness of the filing of the petition. x x x Where, however, even without a statement of the date of the proclamation, the timeliness of the filing of the petition of protest could be determined in some way, the court must not close its eyes to the facts and dismiss the case by mere technicality. Thus, even in the Yumul case, the court said that the protestant's compliance with the mandatory provision of law requiring that an election protest must be filed within two (2) weeks following the date of the elected candidate's proclamation must appear either expressly or by implication. In other words, where the court, on the basis of the records of the case, can infer that the case was filed on time, the court is with jurisdiction to try and decide the case. (Miro vs. Commission on Elections, 121 SCRA 466 [1983], De Castro, J.).

§26. The COMELEC not the CFI has jurisdiction under its enlarged powers to act on a petition contesting the qualification of a mayoral-candidate elect on the ground of changing party-affiliation. (Gabatan vs. Commission on Elections, 122 SCRA 1 [1983], Fernando, C.J.).

§27. It may be noted that when petitioner filed his election protest with the Regional Trial Court of Lanao del Sur, he informed the trial court of the pendency of these proceedings. Paragraph 3 of his protest states "[T]hat on August 3, 1992, your protestant filed a Petition for Certiorari with the Supreme Court x x x docketed as G.R. No. 106270 assailing the validity of the proclamation of the herein protestee x x x x." Evidently, petitioner did not intend to abandon his recourse with this Court. On the contrary, he intended to pursue it. Where only an election protest ex abundante ad cautela is filed, the Court retains jurisdiction to hear the petition seeking to annul an election. (Mitmug vs. Commission on Elections, 230 SCRA 54 [1994], Bellosillo, J.).

§28. 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.

Under Section 17 of Article VI of the 1987 Constitution, 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 a 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. Thus, petitioner's contention that "after the conduct of the election and (petitioner) has been established the winner of the electoral exercise from the moment of election, the COMELEC is automatically divested of authority to pass upon the question of qualification" finds no basis in law, because even after the elections the COMELEC is empowered by Section 6 (in relation to Section 7) of R.A. 6646 to continue to hear and decide questions relating to qualifications of candidates. (Aquino vs. Commission on Elections, 248 SCRA 400 [1995], Kapunan, J.).

§29. As can be gleaned unerringly from the antecedent facts and proceedings aforestated, the appeal interposed by the private respondent to the Commission on Elections from the decision of the Trial Court of origin in subject election case, was not referred to a division of the Commission but was, instead, submitted to the Commission En Banc, which decided against the petitioner in the Resolution of April 24, 1997. Such recourse by the private respondent transgressed Section 3, Subdivision C of Article IX of the Constitution which expressly provides: Sec. 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc. (Zarate vs. Commission on Elections, 318 SCRA 608 [1999], Purisima, J.).

§30. Further, Section 6, Rule 20 of the COMELEC Rules of Procedure reads: "When the allegations in a protest or counter-protest so warrant, or whenever in the opinion of the Commission or Division, the interest of justice so demands, it shall immediately order the ballot boxes containing the ballots and their keys, list of voters with voting records, book of voters, and other documents used in the election to be brought before the Commission, and shall order the revision of the ballots." While the abovementioned rule pertains to election protests falling within the exclusive original jurisdiction of the Commission, the same procedure is prescribed for election contests which are within the exclusive original jurisdiction of courts of general jurisdiction as well as election contests within the exclusive original jurisdiction of courts of limited jurisdiction. (Miguel vs. Commission on Elections, 335 SCRA 172 [2000], Buena, J.).

§31. An election protest is an ordinary action while a petition to declare a failure of elections is a special action under the 1993 COMELEC Rules of Procedure as amended. An election protest is governed by Rule 20 on ordinary actions, while a petition to declare failure of elections is covered by Rule 26 under special actions. In this case, petitioner filed his petition as a special action and paid the corresponding fee therefor. Thus, the petition was docketed as SPA-98-383. This conforms to petitioner's categorization of his petition as one to declare a failure of elections or annul election results. In contrast, an election protest is assigned a docket number starting with "EPC" meaning election protest case. (Banaga, Jr., vs. Commission on Elections, 336 SCRA 701 [2000], Quisumbing, J.).

4. Sufficiency of an election protest

§1. It is a well-established rule of pleading and practice, that in all pleadings filed in courts of special jurisdiction, the special jurisdictional facts must be alleged. Unless the special jurisdictional facts are alleged, the complaint is demurrable. (Gumiran vs. Gumiran, 21 Phil. 174 [1912], Johnson, J.).

§2. In an election protest one of the essential facts to be alleged and proved is the election of the protestee. Where it appears that not all of the candidates who, at such election, received votes for the office concerning which the protest is filed were notified of the protest as required by law, the court acquires no jurisdiction of the proceeding. Service of the notice of protest upon all of such candidates, as required by law, is one of the steps necessary to give the court jurisdiction to proceed. (Navarro vs. Veloso, 23 Phil. 625 [1912], Moreland, J.).

§3. A protest under oath, alleging facts sufficient to establish that illegal votes were cast and counted for the respondent, which is sufficient, if rejected, to change the election, makes a prima facie case under the Election Law for the opening of the ballot boxes and the recounting of the ballots.

While the statute seems to require all ballots to be brought before the court, the practice should be, in the first instance, to bring before the court for examination only such ballots as are questioned by the protest.

Under the Election Law, an illiterate voter, or other voter who through physical disability is unable to cast his ballot without assistance, should be required prior to voting to take oath as to his illiteracy or disability; and in case no such oath is taken he should not be permitted to vote. The oath is a condition precedent to his right to vote. (Manalo vs. Sevilla, 24 Phil. 609 [1913], Moreland, J.).

§4. The motion which institutes an election contest should be sufficiently comprehensive to apprise the contestee of the frauds and irregularities relied upon to obtain a revision of the official returns. Only when the contestee has been misled or surprised by the contents of the motion can he object to the proof of facts not alleged in such motion. (Gardiner vs. Romulo, 26 Phil. 254 [1914], Trent, J.).

§5. A motion which states in a legal, logical form the grounds of a contest and then alleges that the contestee was duly proclaimed elected by the board of inspectors instead of alleging that the contestee was duly declared elected by the municipal council, acting as municipal board of canvassers, is sufficient, in a municipality where there is only one precinct, to confer jurisdiction upon the court over the subject-matter of the proceedings. (Galang vs. Miranda and De Leon, 35 Phil. 269 [1916], Johnson, J.).

§6. Sections 44 and 45 of Act No. 3030, amending Sections 479 and 481 of the Election Law, and referring to contested elections for any office in general and the procedure for such cases in court, show the essential facts that confer jurisdiction upon the court to hear and determine such kinds of causes, to wit: (a) That the protestant has duly registered his candidacy and received votes in the election (Tengco vs. Jocson, 43 Phil., 715); (b) that the protestee has been proclaimed elected in said election (Manalo vs. Sevilla, 24 Phil., 609); (c) that the motion of protest be filed within two weeks after such proclamation (Navarro vs. Veloso, 23 Phil., 625; Manalo vs. Sevilla, supra; Hontiveros vs. Altavas, 39 Phil., 226); (d) that all the candidates registered and voted in the election were properly notified of the protest within twenty days following its filing; (e) that the notice be served by the sheriff or his deputy in the manner prescribed by the law, failing which, that the notice be published in a paper of general circulation in the locality or by notices posted in conspicuous places of the town as may have been ordered by the court.

As regards the protestant, an election protest is sufficient if the facts enumerated in clauses (a), (b) and (c) of the preceding paragraph are alleged.

[I]t is the sheriff or his deputy, and not the protestant, who is bound to serve the notice and summons to the protestee and the other registered and voted candidates. (Palisoc vs. Tamondong and Medina Cue, 43 Phil. 789). (Ferrer vs. Gutierrez David and Lucot, 43 Phil. 795 [1922], Villamor, J.).

§7. The fact that in the protest the number of votes which would result in favor of the protestant after the judicial counting is not specified, does not affect the right of the protestant, for it being known that said omission is a defect of the protest, the same may be cured by a specification of the votes mentioned in the protest, without thereby adding new grounds to those already alleged by the protestant. Hence when a demurrer to the motion of protest is sustained on account of this defect, the case must not be dismissed, but the court must allow the contestant to make the specification necessary to make clear the facts alleged in the protest. (Gallares vs. Caseñas, 48 Phil. 362 [1925], Villamor, J.).

§8. Where in an election contest in which the petition was defective and the only pleading of the protestee was an answer and a cross-complaint, in which he asked the court to have a recount of the votes in certain specified precincts, and invoked the jurisdiction of the court to have his election confirmed, and by consent of the parties, commissioners were appointed to count the ballots, and a portion of the evidence was taken upon such issues, and the case was about ready for trial before the court, the protestee is thereafter estopped to, then and for the first time, raise and question the jurisdiction of the court to try and decide the case on the merits. (Morales vs. De Leon, 48 Phil. 515 [1925], Johnson, J.).

§9. In order to confer jurisdiction on the Court of First Instance over an election protest, it is sufficient to file a motion to that effect, alleging the following facts: (a) That the protestant has duly registered his candidacy and received votes in the election (Tengco vs. Jocson, 43 Phil., 715); (b) that the protestee has been proclaimed elected in said election (Manalo vs. Sevilla, 24 Phil., 609); and (c) that the motion of protest was filed within two weeks after such proclamation (Navarro vs. Veloso, 23 Phil., 625; Manalo vs. Sevilla, supra; Hontiveros vs. Altavas, 39 Phil., 226), and it is not necessary to allege that copies of the motion were furnished the sheriff to notify and summon the protestees, inasmuch as the purpose of the summons is to give the court jurisdiction over the persons of said protestees and not over the subject matter in controversy. (Ferrer vs. Gutierrez David and Lucot, 43 Phil., 795). (Pobre vs. Quevedo, 52 Phil. 359 [1928], Villa-Real, J.).

§10. The sufficiency or the insufficiency of the facts alleged in the motion of protest to constitute a cause of action is not a jurisdictional fact and, consequently, does not affect the acquisition of jurisdiction by the court, but affects only its exercise once acquired, in the sense of permitting or forbidding the continuance of its exercise for the purpose intended. If the facts alleged in the motion of protest do not constitute a cause of action, the court cannot continue exercising its jurisdiction, inasmuch as it possesses that power when it appears that a right has been violated and an injury caused, requiring judicial intervention in order to protect the one and repair the other. (Santiago vs. Ignacio, 52 Phil. 367 [1928], Villa-Real, J.).

§11. In view of the repeated decisions of this court it is held that since the proclamation of an elected candidate is an essential fact of a jurisdictional character the same must appear in the motion of protest, otherwise the court in which the motion is filed does not acquire jurisdiction to try the case and such defect cannot be cured by a motion

of amendment filed after the lapse of the period fixed by law for the filing of an election protest.

Inasmuch as the facts which confer special jurisdiction are not presumed, but must clearly appear in the motion, the trial court could not have acquired jurisdiction. (Tengco vs. Jocson, 43 Phil., 715; Viola vs. Court of First Instance of Camarines Sur and Adolfo, 47 Phil., 849). (Saldaña vs. Consunji, 52 Phil. 433 [1928], Villa-Real, J.).

§12. Since the motion of protest alleged all the essential facts for conferring jurisdiction on the court and included the names of the parties, protestant and protestee, which latter was summoned, and of the other registered candidates voted for, who appeared of their own free will, the respondent Court of First Instance acquired jurisdiction to try and decide the case. (Torres vs. Court of First Instance of Capiz and Molo, 52 Phil. 478 [1928], Villa-Real, J.).

§13. Where the jurisdictional averments of a motion filed for the purpose of contesting an election are in other respects sufficient, it is not necessary that it should also be alleged therein that the contestant is eligible to fill the office which he is contesting. (Caesar vs. Garrido, 53 Phil. 97 [1929], Street, J.).

§14. The election law provides that in order that the court may acquire jurisdiction, the contestant must allege that he is a candidate voted for at such election, and that he has duly filed his certificate of candidacy. (Sec. 479 of the Election Law). (Anis vs. Contreras, 55 Phil. 923 [1931], Villamor, J.).

§15. “Every protest must be based upon those grounds which, according to law, would quash an election, invalidate it, or change its result. The first class refers to ineligibility of the winning candidate; the second, to the non-compliance of the mandatory provisions of the law, that is, the violation of the proceedings essential to election; and the last, to frauds committed at the polls or anomalies in the count of votes, which affect the election results.” (Villamor, Tratado de Elecciones, sec. 733, page 453). Aquino vs. Calabia and Sahagun, 55 Phil. 984 [1931], Romualdez, J.).

§16. While the election law does not say so directly, it is clearly inferred from its relevant provisions that where the grounds of contest are that legal votes were rejected and illegal votes received, the motion of protest should state in what precincts such irregularities occurred. The specification in the motion of protest of the election precinct or precincts where the alleged irregularities occurred, is required in order to apprise the contestee of the issues which he has to meet. (Fernando vs. Endencia, 66 Phil. 148 [1938], Abad Santos, J.).

§17. The motion or protest recited that the protestant “was a candidate voted for in the general election held on November 11, 1947, with a valid certificate of candidacy for the Office of Mayor of the Municipality of Capoocan, Province of Leyte, Philippines, within the jurisdiction of this Court.” This allegation unequivocally signifies that the protestant “presented a certificate of candidacy.” Couched in different forms, the two expressions convey the same idea. (Pamanian vs. Pilapil, 81 Phil. 212 [1948], Tuason, J.).

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§18. Once an election contest is properly filed, the court has jurisdiction to try and pass upon all questions involved in the contest; under the new election law it has jurisdiction to proclaim the winning candidate without the need of another canvass by the board of canvassers, it being guided only by the outcome of its findings. (Corpuz vs. Ibay, 84 Phil. 184 [1949], Ozaeta, J.).

§19. Where a motion of protest contains allegations that the protestant is a qualified elector and one of the registered candidates voted for in the general election held on November 13, 1951, these allegations substantially comply with the law and are sufficient to confer upon courts of first instance the requisite jurisdiction. (Jalandoni vs. Sarcon, 94 Phil. 266 [1954], Bautista Angelo, J.).

§20. While the petition for recount originally suffered from a defect which would have rendered respondent judge without jurisdiction to entertain the same because of the failure to include therein candidate Ginete as party respondent, the fact is that candidate Ginete appeared at the hearing of the petition, through counsel who asked for the dismissal of the petition and even cross-examined the witnesses. That procedural or jurisdictional defect had therefore been cured by the voluntary appearance of herein petitioner Ginete before the court. (Ginete vs. Arcangel, 21 SCRA 1178 [1967], Zaldivar, J.).

§21. Anent the second issue, petitioner argues that because private respondent failed to allege in his original petition that he “duly filed a certificate of candidacy,” respondent COMELEC did not acquire jurisdiction over the election protest. Petitioner’s argument is untenable. As correctly held by the COMELEC in the assailed Decision: “The Commission, First Division, notes that the above-mentioned legal provision does not require that a protest must state that it is being filed “by a candidate who has duly filed his certificate of candidacy.” Sec. 250 of the Omnibus Election Code only provides that a protest must be filed by a candidate who “has duly filed his certificate of candidacy and has been voted for the same office”, without requiring in said section that this matter must be specifically alleged in the protest. (Macias, II vs. Commission on Elections, 182 SCRA 137 [1990], Paras, J.).

§22. Petitioner again failed to implead Lanot in the instant petition for certiorari. In this connection, Section 2, Rule 3 of the Rules of Civil Procedure provides that every action must be prosecuted or defended in the name of the real party in interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest. As the winning candidate whose proclamation is sought to be nullified, Henry P. Lanot is a real party in interest in these proceedings. The COMELEC and the Board of Canvassers of Pasig City are mere nominal parties whose decision should be defended by the real party in interest. (Caruncho III vs. Commission on Elections, 315 SCRA 693 [1999], Ynares-Santiago, J.).

5. Quo warranto

§1. When, in an action of quo warranto based upon the nullity of a judgment in an election protest by reason of the failure to give notice to all of the candidates receiving votes at such election for the office concerning which the protest is filed, it appears that the question as to whether or not such notice had been given was raised before the Court of First Instance, which, after hearing the evidence relative to the service of such notice the argument of counsel in connection therewith, finds that such notice was a matter of fact duly given and such decision has become final, a collateral attack in the form of quo warranto or otherwise against the judgment rendered in such proceedings will not be permitted. (Navarro vs. Jimenez, 23 Phil. 557 [1912], Moreland, J.).

§2. In an action of quo warranto to determine the title to a public office the complaint, to be sufficient, must show that the plaintiff is entitled to the office and that the defendant is illegally in possession thereof.

An election contest under Section 27 of Act No. 1582 is exclusive of all other proceedings to determine the same question upon the same facts; and, while such a proceeding is pending, an action of quo warranto based on the facts to determine the title to the same office cannot be maintained. (Luna vs. Rodriquez, 36 Phil. 401 [1917], Moreland, J.).

§3. Quo warranto is a proper proceeding to determine disputed questions of title to public office where such questions relate exclusively to matters disassociated with those settled at the polls by the people. (Remata vs. Javier, 36 Phil. 483 [1917], Trent, J.).

§4. Courts of First Instance have jurisdiction to consider an election contest under Section 479, Act No. 3387, and also to entertain a complaint in the nature of quo warranto under Section 408 of the same law; but the two procedures are very different and are governed by different legal provisions, and the court’s jurisdiction cannot be exercised jointly and in the same proceeding.

The protestant herein could have pursued either proceeding, that of an election contest or that of a complaint of quo warranto; but once he has chosen the procedure of election contest, he cannot, after the period of fifteen days from the proclamation of the protestee, change his theory and maintain that the motion of protest was also a complaint of quo warranto. “Having chosen between inconsistent theories, a party must adhere to such choice all through the case, and take the logical consequences upon every issue.” (20 C.J., 38, 39.) (De la Rosa vs. Yonson, 52 Phil. 446 [1928], Villamor, J.).

§5. The judgment rendered in the case on the petition to cancel the respondent-appellee’s name in the election list is not conclusive and does not constitute res judicata in the present quo warranto proceeding, as in the two cases, there is no identity either of parties, or of the thing or matter litigated, or of issues or causes of action. (Nuval vs. Guray, 52 Phil. 645 [1928], Villa-Real, J.).

§6. The ineligibility of the mover of an election contest is not available as a defense in the contest proceeding. The contest raises merely a question as to the number of votes received by the different certified candidates; while the

eligibility of the candidate depends upon different considerations. The issue of eligibility of a candidate is incongruous with the issue involved in the election contest.

A proceeding in the nature of quo warranto, to try the question of eligibility of a candidate for office, can only be instituted against one who has been proclaimed to the disputed office. (Caesar vs. Garrido, 53 Phil. 97 [1929], Street, J.).

§7. An action of quo warranto for the purpose of procuring a successful candidate to be declared ineligible to the office of provincial governor was begun in the Supreme Court within the two weeks required x x x. Held, that the proceeding in the Court of First Instance was a mere continuation of the action which had been properly begun in the Supreme Court, and the trial court committed no error in entertaining the proceeding. (Tanseco vs. Arteche, 57 Phil. 227 [1932], Street, J.).

§8. One should not confuse an action of quo warranto with the complaint for violation of the Election Code even if the same may have the effect of disqualifying a candidate to hold the office to which he is elected. One partakes of the nature of a civil case wherein the petitioner is the defeated candidate, while the other is a criminal action which is prosecuted in the name of the People. Both proceedings have different objectives and are predicated on different grounds. The purpose of quo warranto is merely to prevent an elected official from assuming office on the ground of ineligibility. On the other hand, the principal purpose of the criminal action is the imprisonment of the offender, be he a candidate or not, and the grounds of the action vary depending upon the acts committed. Lastly, while an action of quo warranto should be filed within one week from proclamation, an election offense prescribes after two years from the date of its commission, and if the discovery is made on the occasion of an election contest, the period shall commence on the date the judgment becomes final (Section 188, Revised Election Code). (Gorospe vs. Peñaflorida, 101 Phil. 886 [1957], Bautista Angelo, J.).

§9. A protest to disqualify a protestee on the ground of ineligibility is different from that of a protest based on frauds and irregularities where it may be shown that protestant was the one really elected for having obtained a plurality of the legal votes. In the first case, while the protestee may be ousted the protestant will not be seated; in the second case, the protestant may assume office after protestee is unseated. The first case is brought to court by a petition of quo warranto, while the second by instituting an election protest.

A candidate who files a protest against one who has been proclaimed as having received the highest number of votes basing his protest merely on the ground of his ineligibility to hold office, cannot disguise his action so as to make his protest a justification to be seated in office. In other words, he cannot convert an action for quo warranto into an election protest. This is because these two cases are fundamentally different in nature and in purpose. (Luison vs. Garcia, 103 Phil. 453 [1958], Bautista Angelo, J.).

§10. Under the Revised Election Code, where a defeated candidate for the office of Mayor has filed quo warranto proceedings against the opposing candidate who had been declared elected and has assumed office, for the purpose of having him ousted from said office on the ground that he was not eligible or qualified because he was

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not a Filipino citizen, and said quo warranto case has been finally decided by the Court of Appeals, it is unnecessary for the Government, through the Solicitor General, and at the request or instance of the party who instituted the quo warranto to test the right of the same party respondent to occupy the office in the first quo warranto case. The reason is that a final decision in the first either by the Court of Appeals where it was pending appeal, or by the Supreme Court, should said case ever reach it would definitely and finally determine the same issue involved in the second case, and constitute res judicata. (Republic vs. Corpin, 104 Phil. 49 [1958], Montemayor, J.).

§11. x x x. In the case at bar, certain municipal officials assumed office upon the authority of the proclamation made by the board of canvassers, backed up by the Commission on Elections, hence, they have a color of title to their office. Accordingly, they enjoy, at least, the rights of a de facto officer, among which is that their title to said offices may not be contested except directly, by writ of quo warranto and/or by election protest, not indirectly by questioning the regularity of their proclamation (Tayko vs. Capistrano, 53 Phil., 866, 873; Government vs. Binañgonan, 28 Phil. 116; Mechem, Public Officers, sec. 344).

The court of first instance with which a petition for a writ of quo warranto and election protest were filed, acquires exclusive authority to inquire into and pass upon the title to public office of the person concerned and the validity of proclamation made by the municipal board. The Supreme Court cannot, upon the authority of the petition for prohibition, mandamus and certiorari subsequently filed with it, determine said questions without encroaching upon the jurisdiction of the said court. (Acain and Malimit vs. Board of Canvassers of Carmen, Agusan, 108 Phil. 165 [1960], Concepcion, J.).

§12. The right to an elective municipal office can be contested only after proclamation, and since there is no authorized proceedings upon which an eligible candidate could be barred from running for office, the mere failure to question respondent’s candidacy before election does not place petitioner in estoppel.

The fact that the petitioner is not entitled to office is no bar to the filing of a quo warranto petition under Section 173 of the Revised Election Code.

Where the previous petition filed with the Commission on Elections was general in character and referred to all candidates, and for reasons other than that of ineligibility by reason of nonage, the decision therein is no bar to the subsequent petition for quo warranto. (Sanchez vs. Del Rosario, 111 Phil. 733 [1961]; 1 SCRA 1102 [1961], Reyes, J.B.L., J.).

§13. In an ordinary quo warranto case filed under Rule 68 of the Rules of Court, where the office in question is an elective one, the complaint must show that the plaintiff was duly elected thereto. (Luna vs. Rodriguez, 38 Phil. 401; Acosta vs. Flor, 5 Phil. 18). (Campos vs. Degamo, 116 Phil. 541 [1962], Paredes, J.).

§14. While it is true that the original petition for quo warranto contesting the right to office of proclaimed

candidates was mailed, addressed to the clerk of the court of first instance, within the one week period after the proclamation provided therefor by law (Section 173, Revised Election Code), it is likewise a fact that the required docket fees were paid only after the expiration of said period, consequently, it is held that the date of such payment must be deemed to be the real date of filing of the aforesaid petition and not the date when it was mailed. (Malimit vs. Degamo, 12 SCRA 450 [1964], Dizon, J.).

§15. The election of a non-eligible person to a municipal office may be contested by any registered candidate for the same office. It matters not that said candidate has no claim or right to the office in the event respondent be ousted. The law — Section 173 of the Revised Election Code — does not require that the contestant could, if his quo warranto case prospers, himself occupy the office.

A distinction should be drawn between quo warranto referring to an office filled by election and quo warranto involving an office held by appointment. In the first case, what is to be determined is the eligibility of the candidate-elect, while in the second case, what is determined is the legality of the appointment. In quo warranto proceedings referring to offices filled by election, when the person elected is ineligible, the court cannot declare that the candidate occupying the second place has been elected, even if he were eligible, since the law only authorizes a declaration of election in favor of the person who has obtained a plurality of votes, and has presented his certificate of candidacy. In quo warranto proceedings referring to office filled by appointment, the court determines who has been legally appointed and can and ought to declare who is entitled to occupy the office. (Ruling on the Motion for Reconsideration in Nuval vs. Guray, 52 Phil. 645, 654). (Gaerlan, Jr. vs. Catubig, 123 Phil. 1229 [1966]; 17 SCRA 376 [1966], Sanchez, J.).

§16. Upon the filing of a protestant's petition for a writ of quo warranto and election protest in the proper Court of First Instance against a proclaimed candidate (protestee) who had already assumed office, said court had acquired exclusive authority to inquire into and pass upon the validity of the latter's title, as well as the validity of his proclamation. Consequently, the Comelec may refrain from exercising its authority to annul the proclamation of a candidate and leave the disposition of all questions involved in the election of said candidate with the Court of First Instance, in line with the decision in Acain v. Board of Canvassers, L-16445, May 23, 1960. It would be conducive to confusion and conflict in authority if under the circumstances the Comelec would still be considered as having the residual power to interfere with a pending election protest. (Reyes vs. Reyes, 22 SCRA 485 [1968], Fernando, J.).

§17. Remedy of losing candidate after the recount and recanvass of election returns and termination of pre-proclamation controversy is an election protest or quo warranto. (Jagunap vs. Commission on Elections, 104 SCRA 204 [1981], Concepcion, Jr., J.).

§18. After the election, a pre-proclamation controversy is no longer viable and resort should be had by the NP candidate to the remedy of an election protest or quo warranto, whichever is proper. (Disini vs. Commission on Elections, 119 SCRA 511 [1982], Fernando, C.J.).

§19. The law is equally clear. The Election Code grants the right to a voter "contesting the election of any officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines [to] file a petition for quo warranto

with the Commission within ten days after the proclamation of his election." There is no getting away from the explicit mandate of the law. A ten-day period is set forth. It must be obeyed. This Court has reiterated time and time again the principle that when the statute speaks clearly and unequivocally, there is no room for interpretation. It must be applied as worded. It is to be noted that there is a distinction between an election protest and quo warranto suit on ground of ineligibility. This Court has even gone as far as holding that an action for quo warranto cannot be converted into an election protest. It may not be amiss to state that under the former Election Code, the period granted is limited to one week or seven days, not ten days as now provided. Then as well as now, however, whatever period is prescribed must be followed to the letter. It is as simple as that. (Asuncion, Jr., vs. Segundo, 124 SCRA 729 [1983], Fernando, C.J.).

§20. We hold that the municipal trial court or the municipal circuit trial court has jurisdiction, and not the Comelec nor the Regional Trial Court, over the said quo warranto case regarding the barangay captain's ineligibility. Jurisdiction over such cases is vested in the appropriate city or municipal or metropolitan trial court pursuant to the 1982 Barangay Election Law, Batas Pambansa Blg. 222. (Regatcho vs. Cleto, 126 SCRA 342 [1983], Aquino, J.).

§21. The argument that the petition filed with the Commission on Elections should be dismissed for tardiness is not well-taken. The herein private respondents are seeking to prevent Frivaldo from continuing to discharge his office of governor because he is disqualified from doing so as a foreigner. Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged. If, say, a female legislator were to marry a foreigner during her term and by her act or omission acquires his nationality, would she have a right to remain in office simply because the challenge to her title may no longer be made within ten days from her proclamation? It has been established, and not even denied, that the evidence of Frivaldo's naturalization was discovered only eight months after his proclamation and his title was challenged shortly thereafter.

This Court will not permit the anomaly of a person sitting as provincial governor in this country while owing exclusive allegiance to another country. That fact that he was elected by the people of Sorsogon does not excuse this patent violation of the salutary rule limiting public office and employment only to the citizens of this country. The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified. Obviously, this rule requires strict application when the deficiency is lack of citizenship. If a person seeks to serve in the Republic of the Philippines, he must owe his total loyalty to this country only, abjuring and renouncing all fealty and fidelity to any other state. (Frivaldo vs. Commission on Elections, 174 SCRA 245 [1989], Cruz, J.).

§22. The Court has considered the arguments of the parties and holds that the petition for quo warranto was filed on time. We agree with the respondents that the fee was paid during the ten-day period as extended by the pendency of the petition when it was treated by the COMELEC as a pre-proclamation proceeding which did not require the payment of a filing fee. At that, we reach this conclusion only on the assumption that the requirement

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for the payment of the fees in quo warranto proceedings was already effective. x x x In any event, what is important is that the filing fee was paid, and whatever delay there may have been is not imputable to the private respondent's fault or neglect. It is true that in the Manchester Case, we required the timely payment of the filing fee as a precondition for the timeliness of the filing of the case itself. In Sun Insurance Office, Ltd. v. Asuncion, however, this Court, taking into account the special circumstances of that case, declared: This Court reiterates the rule that the trial court acquires jurisdiction over a case only upon the payment of the prescribed filing fee. However, the court may allow the payment of said fee within a reasonable time. In the event of non-compliance therewith, the case shall be dismissed. (Labo, Jr. vs. Commission on Elections, 176 SCRA 1 [1989], Cruz, J.).

§23. As a general rule, the filing of an election protest or a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy, or amounts to the abandonment of one earlier filed, thus depriving the COMELEC of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation. The reason is that once the competent tribunal has acquired jurisdiction of an election protest or a petition for quo warranto, all questions relative thereto will have to be decided in the case itself and not in another proceeding. This procedure will prevent confusion and conflict of authority. Conformably, we have ruled in a number of cases that after a proclamation has been made, a pre-proclamation case before the COMELEC is no longer viable. The rule admits of exceptions, however, as where: 1) the board of canvassers was improperly constituted; 2) quo warranto was not the proper remedy; 3) what was filed was not really a petition for quo warranto or an election protest but a petition to annul a proclamation; 4) the filing of a quo warranto petition or an election protest was expressly made without prejudice to the pre-proclamation controversy or was made ad cautelam; and 5) the proclamation was null and void.

Moreover, quo warranto was not the proper remedy because both the petitioner and the private respondent claimed to have assumed the office of the mayor of Kabuntalan. In a quo warranto proceeding, the petitioner is not occupying the position in dispute. Moreover, under the Omnibus Election Code, quo warranto is proper only for the purpose of questioning the election of a candidate on the ground of disloyalty or ineligibility.

A petition for quo warranto under the Omnibus Election Code raises in issue the disloyalty or ineligibility of the winning candidate. It is a proceeding to unseat the respondent from office but not necessarily to install the petitioner in his place.

An election protest is a contest between the defeated and winning candidates on the ground of frauds or irregularities in the casting and counting of the ballots, or in the preparation of the returns. It raises the question of who actually obtained the plurality of the legal votes and therefore is entitled to hold the office.

It is settled that an incomplete canvass of votes is illegal and cannot be the basis of a valid proclamation. All the votes cast in the election must be counted and all the returns presented to the board must be considered as the disregard of some returns would in effect disenfranchise the voters affected. A canvass cannot be reflective of the true vote of the electorate unless all the returns are considered. (Samad vs. Commission on Elections, 224 SCRA 631 [1993], Cruz, J.).

§24. The COMELEC dismissed the petition on the grounds that it was filed outside the three-day period for questioning the proceedings and composition of the Provincial Board of Canvassers under Section 19 of R.A. No. 7166. The COMELEC failed to resolve the more serious issue¾the disqualification of private respondent to be proclaimed Governor on grounds of lack of Filipino citizenship. In this aspect, the petition is one for quo warranto. In Frivaldo v. Commission on Elections, 174 SCRA 245 (1989), we held that a petition for quo warranto, questioning the respondent's title and seeking to prevent him from holding office as Governor for alienage, is not covered by the ten-day period for appeal prescribed in Section 253 of the Omnibus Election Code. Furthermore, we explained that "qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure; once any of the required qualification is lost, his title may be seasonably challenged."

Petitioner's argument, that to unseat him will frustrate the will of the electorate, is untenable. Both the Local Government Code and the Constitution require that only Filipino citizens can run and be elected to public office. We can only surmise that the electorate, at the time they voted for private respondent, was of the mistaken belief that he had legally reacquired Filipino citizenship.

Petitioner in G.R. No. 105715, prays that the votes cast in favor of private respondent be considered stray and that he, being the candidate obtaining the second highest number of votes, be declared winner. In Labo, Jr. vs. COMELEC, 176 SCRA 1 (1989), we ruled that where the candidate who obtained the highest number of votes is later declared to be disqualified to hold the office to which he was elected, the candidate who garnered the second highest number of votes is not entitled to be declared winner (See also Geronimo v. Ramos, 136 SCRA 435 [1985]; Topacio v. Paredes, 23 Phil. 238 [1912]). (Republic vs. Dela Rosa, 232 SCRA 785 [1994], Quiason, J.).

§25. Considering that Concepcion continuously occupies the disputed position and exercises the corresponding functions therefore, the proper remedy should have been quo warranto and not mandamus. Quo warranto tests the title to one's office claimed by another and has as its object the ouster of the holder from its enjoyment, while mandamus avails to enforce clear legal duties and not to try disputed titles.

This provision is inapplicable as there was no case or matter filed before the COMELEC. On the contrary, it was the COMELEC's resolution that triggered this controversy. The "case" or "matter" referred to by the Constitution must be something within the jurisdiction of the COMELEC, i.e., it must pertain to an election dispute. The settled rule is that "decision, rulings, order" of the COMELEC that may be brought to the Supreme Court on certiorari under Sec. 7, Art. IX-A are those that relate to the COMELEC's exercise of its adjudicatory or quasi-judicial powers involving "elective regional, provincial, and city officials." In this case, what is being assailed is the COMELEC's choice of an appointee to occupy the Gutalac Post which is an administrative duty done for the operational set-up of an agency. (Garces vs. Court of Appeals, 259 SCRA 99 [1996], Francisco, J.).

§26. Under the Rules of Court, a quo warranto may be brought only by (1) the solicitor general or (2) a public prosecutor or (3) a person claiming to be entitled to the public office or position usurped or unlawfully held or exercised by another. A reading of the Rules shows that petitioners, none of whom qualify under any of the above

three categories, are without legal standing to bring this suit.

The present Petition finds its root in two separate cases filed before the Comelec: (1) SPC 98-298 for disqualification and (2) EPC 98-62 for quo warranto. Under our election laws and the Comelec Rules of Procedure, any voter may file a petition to disqualify a candidate on grounds provided by law, or to contest the election of a city officer on the ground of ineligibility or disloyalty to the Republic. The petitioners herein, being "duly-registered voters" of Cagayan de Oro City, therefore satisfy the requirement of said laws and rules. (Torayno, Sr., vs. Commission on Elections, 337 SCRA 574 [2000], Panganiban, J.).

6. Injunction

§1. An injunction may be availed of only to restrain an act that is about to be done, but which has not materialized as yet, not to undo what has already been consummated (Municipal Council of Santa Rosa vs. Provincial Board of Laguna, 3 Phil., 206; Matilde vs. Cajucom, 19 Phil., 563; Reyes vs. Harty, 21 Phil., 422). In the case at bar, certain municipal officials assumed office upon the authority of the proclamation made by the board of canvassers, backed up by the Commission on Elections, hence, they have a color of title to their offices. Accordingly, they enjoy, at least, the rights of a de facto officer, among which is that their title to said offices may not be contested except directly, by writ of quo warranto and/or by election protest, not indirectly by questioning the regularity of their proclamation (Tayko vs. Capistrano, 53 Phil., 866, 873; Government vs. Binañgonan, 28 Phil. 116; Mechem, Public Officers, sec. 344). (Acain and Malimit vs. Board of Canvassers of Carmen, Agusan, 108 Phil. 165 [1960], Concepcion, J.).

§2. The city board of canvassers may not be enjoined from assessing the returns, because it would result in a lack of incumbents in the offices concerned after the termination of the current term and while the case remains pending in court. This is not within the contemplation of the Election Code, which provides for election contests only after proclamation of the winning candidates. Furthermore, an injunction such as that issued by respondent court would prevent the city board of canvassers from certifying the results of the election even with respect of national offices. (City Board of Canvassers, Tacloban City, vs. Moscoso, 118 Phil. 935 [1963]; 9 SCRA 91 [1963], Makalintal, J.).

7. Mandamus

§1. After the municipal board of canvassers, in a municipal election, has completed its canvass of the votes cast, the making of the certificate required by law becomes a purely ministerial duty. If that certificate does not conform with the result of the canvass of the votes cast, the writ of mandamus will issue to compel said board to correct its certificate in accordance with the canvass. If the certificate is not in accordance with the facts as they appear from the "acta electoral [election returns], " the writ of mandamus will issue for the purpose of compelling

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the board to correct its certificate. Mandamus is the proper remedy to require a municipal board of canvassers to correct its certificate in accordance with its own return or canvass. (Municipal Council of Las Pinas vs. Judge of Court of First Instance of Rizal, 40 Phil. 279 [1919], Johnson, J.).

§2. There being no law enjoining a municipal treasurer to furnish a certified copy of the election results to any inhabitant or candidate in that municipality, petitioner is not, as a matter of right entitled to a copy thereof, and mandamus will not lie to compel the municipal treasurer to issue said election results.

In order that mandamus will lie, the duties sought to be enforced must be such as are clearly and peremptorily enjoined by law or by reason of official station (Tabique vs. Duvall, 16 Phil. 324). (Alido vs. Alar, 3 SCRA 561 [1961], Paredes, J.).

§3. Pending appeal from an order of the Court of First Instance dismissing a petition for mandamus or recounting of votes filed against the provincial and municipal boards of canvassers, there being no writ of preliminary injunction issued, the canvass of election returns proceeded and eventually the elected candidates were proclaimed. Held: The remedy left to petitioners is only to contest said elections, the appeal having become moot and academic. (Castillo vs. Provincial Board of Canvassers of Surigao del Sur, 121 Phil. 175 [1965]; 13 SCRA 162 [1965], Barrera, J.).

§4. It is not the ministerial duty of the trial judge to allow the inspection of the registry list of voters, voting records and other election documents. (Abaya vs. Concepcion, 111 SCRA 590 [1982], Abad Santos, J.).

§5. It is thus clear that no question arises as to the supervisory authority of this Court extending to an inquiry into an alleged failure of respondent Commission to act. If such indeed be the case, then mandamus may issue for the Commission on Elections to decide the issue raised. That is the body called upon to act, not this Court, except in those rare instances where the imminence of the elections calls for a prompt determination lest the exercise of the constitutional right of suffrage is rendered futile. This is not one of such cases. The election of May 14, 1984 was duly held. Petitioners apparently were satisfied with the manner respondent Commission discharged its functions as they were not heard from thereafter. (Lazatin vs. Commission on Elections, 134 SCRA 1 [1985], Fernando, C.J.).

8. Certiorari

§1. Certiorari is not a proceeding to correct errors, but was created for the purpose of relieving persons from the arbitrary acts of courts and judges, that is, acts which they have no authority or power in law to perform. Errors may be corrected by appeal in cases where an appeal lies. In other cases the errors must be submitted to and borne because the legislative so decrees. (Bustos vs. Moir and Fajardo, 35 Phil. 415 [1916], Moreland, J.).

§2. The remedy of certiorari lies when the lower court has exceeded its jurisdiction or the exercise of its powers, but not when it has committed an error. And the fact that the lower court adjudicated certain ballots, with detachable coupon numbers, to the protestant or the protestee in an election contest, does not constitute an excess of jurisdiction in the exercise of its powers and does not justify the issuance of a writ of certiorari. (Ello vs. Judge of First Instance of Antique and Valdevin, 49 Phil. 152 [1926], Villamor, J.).

§3. It is contrary to the legal nature of a writ of certiorari to use it for correcting errors committed by the court in the exercise of its functions within its jurisdiction. (Santos vs. Court of First Instance of Cavite, 49 Phil. 398 [1926], Villamor, J.).

§4. An appeal by certiorari from a decision of the Court of Appeals to the Supreme Court in an election case does not have the effect of authorizing the review and revision of all the ballots contained in the contested precincts without specific allegations of the supposed errors committed by the Court of Appeals. The Supreme Court is limited to examining those supposed errors in the decision of the Court of Appeals that are expressly and specifically pointed out. (Roldan vs. Monsanto, 118 Phil. 1328 [1963]; 9 SCRA 489 [1963], Labrador, J.).

§5. Decisions, orders and rulings of the Commission on Elections on administrative questions affecting elections are reviewable only by the Supreme Court. Since the power of the Commission are limited to matters connected with the conduct of elections, necessarily its adjudicatory or quasi-judicial powers are likewise limited to controversies connected with the conduct of elections. This phrase covers all the administrative process of preparing and operating the election machinery so that the people could exercise their right to vote at the given time. All questions and controversies that may arise therefrom are to be resolved exclusively by the Commission, subject to review only by the Supreme Court. (Monroy vs. Court of Appeals, 20 SCRA 620 [1967], Bengzon, J.P., J.).

§6. A special civil action of certiorari does not lie where a plain and speedy remedy lies in the ordinary course of law. In filing the protest subsequent to the filing of this suit, petitioner has resorted to an ordinary remedy in the course of law. Since a litigant cannot avail of both a special civil action and an ordinary remedy, the present action (certiorari) cannot prosper. (Lidasan vs. Commission on Elections, 22 SCRA 975 [1968], Bengzon, J.P., J.).

§7. While under the Constitution of 1935, “the decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court” (Sec. 2, first paragraph, Article X) and pursuant to the Rules of Court, the petition for “certiorari or review” shall be on the ground that the Commission “has decided a question of substance not theretofore determined by the Supreme Court, or has decided it in a way not in accord with law or the applicable decisions of the Supreme Court” (Sec. 3, Rule 43), and such provisions refer not only to election contests but even to pre-proclamation proceedings, the 1973 Constitution provides somewhat differently thus: “Any decision, order or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof” (Section 11, Article XII c), even as it ordains that the Commission shall “be the sole judge of all contests relating to the elections, returns and qualifications of all members of the

National Assembly and elective provincial and city officials" (Section 2 (2)). (Aratuc vs. Commission on Elections, 88 SCRA 251 [1979], Barredo, J.).

§8. The principal relief sought by petitioner is predicated on the certiorari jurisdiction of this Court as provided in Section 11, Article XII-C, 1973 Constitution. It is, as explained in Aratuc vs. Commission on Elections, "not as broad as it used to be" under the old Constitution and it "should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process." Moreover, the legislative construction of the constitutional provision has narrowed down "the scope and extent of the inquiry the Court is supposed to undertake to what is strictly the office of certiorari as distinguished from review." And in Lucman vs. Dimaporo, a case decided under the Constitution of 1935, this Court, speaking through then Chief Justice Concepcion, ruled that "this Court can not x x x review rulings or findings of fact of the Commission on Elections," as there is "no reason to believe that the framers of our Constitution intended to place the [said] Commission—created and explicitly made 'independent' by the Constitution itself—on a lower level" than statutory administrative organs (whose factual findings are not "disturbed by courts of justice, except when there is absolutely no evidence or no substantial evidence in support of such findings"). Factual matters were deemed not proper for consideration in proceedings brought either "as an original action for certiorari or as an appeal by certiorari. . . [for] the main issue in . . . certiorari is one of jurisdiction—lack of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction" while "petitions for review on certiorari are limited to the consideration of questions of law."

The matter elevated to this Court was a pre-proclamation controversy. The decision of the respondent Commission was promulgated on August 7, 1984. The instant petition was filed with this Court on August 20, 1984, or three months after the May 14, 1984 election. Private respondent was proclaimed on June 2, 1984, as the duly-elected Assemblyman for Nueva Vizcaya. He took his oath of office in due time, discharging thereafter his duties and functions as Assemblyman. Such pre-proclamation controversy is no longer viable at this point of time and should be dismissed as held by this Court in Venezuela and other cases. Pre-proclamation proceedings are summary in nature. There was no full-dress hearing essential to the task of adjudication with respect to the serious charges of "irregularities", etc. made by petitioner. An election contest would be the most appropriate remedy. Instead of the submission of mere affidavits, the parties would be able to present witnesses subject to the right of confrontation, etc. Recourse to such remedy would settle the matters in controversy "conclusively and once and for all". (Padilla vs. Commission on Elections, 137 SCRA 424 [1985], De La Fuente, J.).

§9. The COMELEC, x x x, is bereft of authority to deprive Regional Trial Courts of the competence to order execution pending appeal. For one, it is essentially a judicial prerogative. For another, it is a pronouncement of the COMELEC alone in its procedural rules, without benefit of the statute, unlike in the past where it was specifically provided for in Section 177 of the Revised Election Code (Rep. Act No. 180, as amended) and Section 224 of the Election Code of 1971 (Rep. Act No. 6388) from whence the rule was lifted verbatim. Significantly, however, when the Election Code of 1971 (Rep. Act No. 6388) was superseded by the 1978 Election Code (Pres. Decree No. 1296), said clause was deleted therefrom. It is likewise absent in the Electoral Reforms Law of 1987 (Rep. Act No. 6646) and in the Omnibus Election Code (B.P. Blg. 881), which were the election laws in effect during the 18 January 1988 local elections. There is no express provision of law, therefore, disauthorizing executions pending appeal, and the COMELEC, in its procedural rules alone, should not be allowed to divest Regional Trial Courts of that authority. It deprives the prevailing party of a substantive right to move for such relief contrary to the constitutional mandate that those Rules can not diminish nor modify substantive rights (Section 6, Article IX-A, 1987 Constitution). (Garcia vs. De Jesus, 206 SCRA 779 [1992], Melencio-Herrera, J.).

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§10. The Constitution did not intend to place the COMELEC—explicitly made independent by the Constitution itself—on a lower level than that of statutory administrative agencies, whose factual findings are generally not disturbed by the courts except when there is no substantial evidence to support such findings. Factual matters are not proper for consideration in proceedings brought either as an original action for certiorari or as an appeal by certiorari. The main issue in the former case is one of jurisdiction, lack of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction; while in the latter case, the issues are limited to the consideration of question of law. (Navarro vs. Commission on Elections, 228 SCRA 596 [1993], Quiason, J.).

§11. We hold that certiorari is the proper remedy of the petitioner. Section 7, Article IX(A) of the 1987 Constitution states that "unless provided by this Constitution or by law, any decision, order or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof." We have interpreted this provision to mean final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers. Contrariwise, administrative orders of the COMELEC are not, as a general rule, fit subjects of a petition for certiorari. The main issue in the case at bar is whether the COMELEC gravely abused its discretion when it ordered a manual count of the 1998 Sulu local elections. A resolution of the issue will involve an interpretation of R.A. No. 8436 on automated election in relation to the broad power of the COMELEC under Section 2(1), Article IX(C) of the Constitution "to enforce and administer all laws and regulations relative to the conduct of an election x x x." The issue is not only legal but one of first impression and undoubtedly suffused with significance to the entire nation. It is adjudicatory of the right of the petitioner, the private respondent and the intervenor to the position of governor of Sulu. These are enough considerations to call for an exercise of the certiorari jurisdiction of this Court. (Loong vs. Commission on Elections, 305 SCRA 832 [1999], Puno, J.).

§12. We take note that when petitioners filed the instant petition on June 25, 1999, they had before the COMELEC en banc a pending motion for reconsideration of the June 4, 1998 resolution of the First Division. The Court does not look with favor the practice of seeking remedy from this Court without waiting for the resolution of the pending action before the tribunal below, absent extraordinary circumstances warranting appropriate action by this Court. This makes a short shrift of established rules of procedure intended for orderly administration of justice. (Bagatsing vs. Commission on Elections, 320 SCRA 817 [1999], Kapunan, J.).

§13. Petitioner's remedy was to seek its annulment by way of a special civil action of certiorari under Rule 65 of the Rules of Court. Rule 64, Sec. 2 provides: "SEC. 2 Mode of Review.¾A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided." Sec. 3 of said Rule provides that such petition shall be filed within 30 days from notice of the resolution sought to be reviewed. No such petition was ever filed. The present petition to set aside the orders of the trial court denying its motion to quash and motion for reconsideration was filed only on November 12, 1999, more than a year after Resolution No. 98-2194 was promulgated on October 29, 1998. Consequently, the resolution is now final and binding upon the parties.

There is no question that what is involved is a resolution of the COMELEC en banc in an election offense. Hence, a motion for reconsideration of such resolution is allowed under the Rules of Procedure of the COMELEC.

(Faelnar vs. People of the Philippines, 331 SCRA 429 [2000], Mendoza, J.).

§14. A special civil action for certiorari may be availed of when the tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law for the purpose of annulling the proceeding. It is the proper remedy to question any final order, ruling and decision of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers. But for an action for certiorari to prosper, there must be a showing that the COMELEC acted with grave abuse of discretion. This means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or excess thereof, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by law. (Guerrero vs. Commission on Elections, 336 SCRA 458 [2000], Quisumbing, J.).

§15. An en banc decision of the COMELEC in an ordinary action becomes final and executory after thirty (30) days from its promulgation, while an en banc decision in a special action becomes final and executory after five (5) days from promulgation, unless restrained by the Supreme Court. For that reason, a petition cannot be treated as both an election protest and a petition to declare failure of elections. (Banaga, Jr., vs. Commission on Elections, 336 SCRA 701 [2000], Quisumbing, J.).

§16. As can be gleaned from the proceedings aforestated, petitioner's petition with the COMELEC was not referred to a division of that Commission but was, instead, submitted directly to the Commission en banc. The petition for certiorari assails the trial court's order denying the motion to dismiss private respondent's election protest. The questioned order of the trial court is interlocutory because it does not end the trial court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other. In our view, the authority to resolve petition for certiorari involving incidental issues of election protest, like the questioned order of the trial court, falls within the division of the COMELEC and not on the COMELEC en banc. Note that the order denying the motion to dismiss is but an incident of the election protest. If the principal case, once decided on the merits, is cognizable on appeal by a division of the COMELEC, then, there is no reason why petitions for certiorari relating to incidents of election protest should not be referred first to a division of the COMELEC for resolution. Clearly, the COMELEC en banc acted without jurisdiction in taking cognizance of petitioner's petition in the first instance. (Soller vs. Commission on Elections, 339 SCRA 685 [2000], Quisumbing, J.).

9. Right to assume office

§1. This provision of the law clearly states that the duly elected local officials shall assume office on February 2, 1988. Petitioner was proclaimed as the duly elected mayor of Vinzons, Camarines Norte on January 20, 1988 and took his oath of office on January 22, 1988 before the filing of the election protest on January 25, 1988 by private respondent Ramon B. Asis. As he appears to be the duly elected mayor of the aforesaid town, the law mandates

that he assume office on February 2, 1988. The respondent judge committed a grave abuse of discretion, and acted in excess of his jurisdiction in ordering petitioner to desist and refrain from assuming office on the said date against the clear provisions of Section 5 of Rep. Act No. 6636.

The pendency of the election protest filed by respondent Asis is not sufficient basis to enjoin petitioner from assuming office as required of him by law. The efficiency of public administration should not be impaired. Until and unless the election protest is decided against the petitioner, he has a lawful right to assume and perform the duties of Mayor of Vinzons, Camarines Norte. (Cereno vs. Dictado, 160 SCRA 759 [1988], Gancayco, J.).

10. Filing of election protest before proclamation

§1. The two weeks within which, under the Election Law, the protest in a protested election case must be filed should be counted from the issuance of the proclamation of the provincial board of canvassers and not from the election day.

A protest filed prior to the proclamation of the provincial board of canvassers is premature and must be dismissed if an objection thereto is made opportunely.

The fundamental basis of an election protest is the election of one of the adversaries of the protestant. There is no such election, however, until the proclamation of the provincial board of canvassers, as, prior to that time, it is impossible, legally speaking, to know or to prove who is elected. (Manalo vs. Sevilla, 24 Phil. 609 [1913], Moreland, J.).

§2. The right to an elective or municipal office can be contested, under existing legislation, only after proclamation. There is no authorized proceeding by which an ineligible candidate could be estopped from running for office. (Sec. 173, Revised Election Code; Caeser vs. Garrido, 53 Phil., 97). (Castañeda vs. Yap, 91 Phil. 819 [1952], Tuason, J.).

§3. The right to an elective municipal office can be contested only after proclamation, and since there is no authorized proceedings upon which an eligible candidate could be barred from running for office, the mere failure to question respondent’s candidacy before election does not place petitioner in estoppel. (Sanchez vs. Del Rosario, 111 Phil. 733 [1961]; 1 SCRA 1102 [1961], Reyes, J.B.L., J.).

§4. 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.

Under Section 17 of Article VI of the 1987 Constitution, 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

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Representatives subject to Section 17 of Article VI of the Constitution.

While the proclamation of a 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. Thus, petitioner's contention that "after the conduct of the election and (petitioner) has been established the winner of the electoral exercise from the moment of election, the COMELEC is automatically divested of authority to pass upon the question of qualification" finds no basis in law, because even after the elections the COMELEC is empowered by Section 6 (in relation to Section 7) of R.A. 6646 to continue to hear and decide questions relating to qualifications of candidates. (Aquino vs. Commission on Elections, 248 SCRA 400 [1995], Kapunan, J.).

11. Effect of petition to annul or suspend proclamation

§1. This argument must fall. While Section 251 provides that all election contests involving municipal offices prescribe 10 days after proclamation of the results is made, under Section 248 of the same Code, the filing with COMELEC of a petition to annul or to suspend the proclamation of any candidate suspends the running of the 10-day period within which to file an election protest.

Clearly, the grounds thus invoked require the opening of ballot boxes to effect the careful perusal, examination and/or recounting of ballots in order to resolve the election contest. Such recourse is explicitly provided in Section 255 of the Omnibus Election Code: SEC. 255. Judicial counting of votes in election contest.¾ Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted. The above-quoted provision does not require that there be further proof than the allegations of the protest before the court may allow the examination of the ballots and the recounting of votes. The rationale for the doctrine was elucidated in Astorga v. Fernandez, to wit: x x x. Obviously the simplest, the most expeditious and the best means to determine the truth or falsity of this allegation is to open the ballot box and examine its contents. To require parol or other evidence on said alleged irregularity before opening said box, would have merely given the protestee ample opportunity to delay the settlement of the controversy, through lengthy cross-examination of the witnesses for the protestant and the presentation of testimonial evidence for the protestee to the contrary. As held in Cecilio vs. Belmonte (supra), this "would be to sanction an easy way to defeat a protest."

In Crispino v. Panganiban, penned by Justice Hilario G. Davide, Jr., citing Pareja v. Narvasa, this Court categorically declared that: Time and again, this Supreme Court has declared in numerous cases that, 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 trial court to order the opening of the ballot boxes and the examination and counting of the ballots deposited therein. (Manahan vs. Bernardo, 283 SCRA 505 [1997], Kapunan, J.).

§2. Section 248 of the same Election Code is clear and provides thusly: Sec. 248. Effect of filing petition to annul or to suspend the proclamation.¾The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings. Applying the above provision to the instant case, the ten (10) day reglementary period was suspended during the pendency of the pre-proclamation case in the COMELEC and in this Court, until private respondent Villano received a copy of this Court's Resolution dated April 16, 1996 denying his motion for reconsideration on May 7, 1996. Verily, on May 7, 1996, the five-day remainder of the reglementary period to file an election protest resumed to run again and expired on May 12, 1996. Private respondent Villano therefore belatedly filed his election protest on May 17, 1996, five (5) days after the deadline for filing the same.

The rule prescribing the ten-day period is mandatory and jurisdictional, and the filing of an election protest beyond the period deprives the court of jurisdiction over the protest. Violation of this rule should not be taken lightly nor should it be brushed aside as a mere procedural lapse that can be overlooked. The rule is not a mere technicality but an essential requirement, the non-compliance of which would oust the court of jurisdiction over the case.

The running of the reglementary period to file an election protest is tolled by a party's elevation to the Supreme Court of a COMELEC decision or resolution of a pre-proclamation case. The appeal by certiorari to this Court is part of an entire proceeding. The case is not terminated until this Court has rendered judgment. Consequently, the computation of the ten-day period, or the remainder of said period for filing an election contest, as in this case, does not commence to run until this Court hands down its verdict. (Roquero vs. Commission on Elections, 289 SCRA 150 [1998], Kapunan, J.).

12. Effect of the filing of a pre-proclamation controversy

§1. Upon the filing of a protestant's petition for a writ of quo warranto and election protest in the proper Court of First Instance against a proclaimed candidate (protestee) who had already assumed office, said court had acquired exclusive authority to inquire into and pass upon the validity of the latter's title, as well as the validity of his proclamation. Consequently, the Comelec may refrain from exercising its authority to annul the proclamation of a candidate and leave the disposition of all questions involved in the election of said candidate with the Court of First Instance, in line with the decision in Acain v. Board of Canvassers, L-16445, May 23, 1960. It would be conducive to confusion and conflict in authority if under the circumstance the Comelec would still be considered as having the residual power to interfere with a pending election protest. (Reyes vs. Reyes, 22 SCRA 485 [1968], Fernando, J.).

§2. Where the election returns are tampered, it is within the power of the Comelec to issue such order as would ascertain the existence of the genuine, authentic and untampered election returns. It should inquire into the copies of the returns for the provincial treasurer. And if these copies are not authentic it should look into the copies of the returns in the ballot boxes. Here every effort should be strained to ascertain the existence of serviceable returns

from Precincts 18, 19, 21 and resort to the copies of the returns in the hands of the provincial treasurer and, if necessary, those in the ballot boxes, is justified. The returns from these precincts not canvassed are vital to the political fortunes of the contending candidates, and ascertainment of the results thereof should not be so easily be done away with.

The broad sweep of the Comelec's duty to administer and enforce the election law gives it ample authority to direct the board of canvassers to include in the canvass returns from the questioned precincts. It should summon the members of the board of inspectors, take evidence and ascertain which are the genuine returns; then it should direct the board to use these returns in the canvass of the votes.

It is true that respondent Negre filed in the CFI an "election protest" after he had petitioned the Comelec to suspend or annul the canvass of the votes and/or annul the election returns. But said petition filed in Court sought to impugn not necessarily the election of his opponent but "the election returns and ballots cast" in the questioned precincts and the proclamation of Pacis; he also sought to enjoin Pacis from assuming office. These allegations are mere repetitions of his petition before the Comelec where he also assailed the illegality of the canvass and the proclamation of his opponent. His petition in court was to have a new board of canvassers, the exclusion from the canvass of the alleged tampered returns and his own proclamation as mayor-elect of Sanchez Mira. In this case there was no valid canvass and proclamation.

The Acain doctrine, L-16445, May 23, 1960, where this Court ruled that the CFI of Agusan acquired exclusive jurisdiction to inquire into and pass upon the title of Degamo and the validity of the proclamation made by the Board of Canvassers, does not govern in this case. First, in the Acain case, there was an actual protest; here, what was desired in court was merely a valid proclamation where the Board was made a party respondent. Second, unlike in Acain, where petitioners did not pursue their remedy of recount, Negre here persisted in pursuing his petition to annul the wrongful proclamation of his adversary. Third, in Acain, private respondents assumed office becoming at least de facto officers, here, both candidates aver that they assumed office so quo warranto cannot be the remedy of either. Fourth, in Acain, the board of canvassers was found to be lawfully constituted; here, the board was found to have been unlawfully constituted. Here, both proclamations are declared null and void as if no proclamation was at all made. (Pacis vs. Commission on Elections, 22 SCRA 539 [1968], Sanchez, J.).

§3. It is now a settled doctrine that an incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation. Indeed, it is the ministerial duty of a municipal canvassing body to count the votes cast "in the same manner as hereinbefore provided for the provincial board (of canvassers)," which means to say to count all the votes cast. Thus, Section 160 of the Election Code enjoins provincial boards of canvassers as follows: "As soon as all the statements are before it but not later than fifteen days next following the date of election, the provincial board of canvassers shall proceed to make a canvass of all the votes in the province for national, provincial, and city candidates and upon the completion of the canvass, shall make, as the case may be, separate statements of all the votes received by each candidate x x x." A municipal board of canvassers must therefore count all the votes cast in the election and, for this purpose, must consider all returns presented to it by the municipal treasurer. If material defects there are in the form of the returns, it must send them back to the corresponding boards of inspectors for correction. If certain precincts have not sent in their returns, the board

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must send for them, and the fiscal should forthwith institute criminal proceedings against those who may be criminally responsible for the delay. If there is a discrepancy between two authentic copies of an election return and the difference affects the result of the election, the board may ask the proper court of first instance to order a recount of the ballots.

Where it appears that election returns in the municipality of Makati are incomplete in the sense that the election return in precinct No. 124 of the said municipality did not contain at all the entry of votes cast for each candidate as mayor, hence the municipal board of canvassers cannot proceed with the canvassing of votes, the Comelec is bereft of power to order the board of canvassers of Makati to disregard the return from precinct 124, even if it noted from its copy (which was likewise blank or incomplete) that the number of votes cast in the precinct (263) was too small to be of any significance to any candidate. This, because the Comelec has no power to decide questions involving the right to vote, as to disregard a return is in effect to deny the voters their votes.

What the Comelec should have done is to take the logically obvious and simple step of ordering the opening of the ballot box to find if the copy of the return deposited therein was properly accomplished and, if it was, to order that it be used in the canvassing of votes. This it had the power to do in the fulfillment of its constitutional duty of insuring “free, orderly, and honest elections.” And this it was unimpeded and had ample time to do, considering that from November 24 when it ordered the proclamation, there were still 37 days to go to the statutory date of assumption of office by the elected candidates (January 1). This is the reason why in two other cases, we upheld the power of the Comelec to direct canvassing boards to use returns other than those specified by law if the latter are found to have been falsified.

The Comelec should direct the opening of the ballot box corresponding to precinct 124 for the purpose of retrieving the copy of the election return deposited therein so that it may be used in canvassing anew the votes cast for the local official of Makati, and, should it be found that the ballot box copy is likewise blank or incomplete, the Commission should order a count of the ballots, giving notice, for this purpose, to all the candidates. This is the procedure that best recommends itself, what with the lack of specific procedure for dealing with the situation such as this. Judicial recount of the ballots under Section 163 of the Code cannot be the remedy because there is no discrepancy between one authentic copy and another authentic copy of the same return. As we have earlier stated, the copies of the election return in this case contain no entries as to the number of votes received by each candidate. So there really is no discrepancy, but only a failure to accomplish the form of the return properly. Indeed what has been submitted is no return at all. (Mutuc vs. Commission on Elections, 22 SCRA 662 [1968], Castro, J.).

§4. Time and again, the Supreme Court has given its imprimatur on the principle that Comelec is with authority to annul any canvass and proclamation which was illegally made. The fact that a candidate proclaimed has assumed office is no bar to the exercise of such power. Therefore, a petition before the Comelec which is directed at the annulment of the canvass and proclamation is within the area allocated by the Constitution and the law to the Comelec to inquire.

The election law does not provide for a time limit within which a candidate may challenge the validity of a proclamation before the Comelec. But inaction for an unreasonable period may block such remedy to challenge the validity of the proclamation. Considering the steps taken by respondent in the case at bar, first, in the Court of

First Instance, and second, in the Comelec, the time gap between the alleged illegal proclamation of November 20, 1967 and the petition before the Comelec of January 6, 1968 does not authorize this Court to say that respondent Alim Balindong is guilty of laches. (Aguam vs. Commission on Elections, 23 SCRA 883 [1968], Sanchez, J.).

§5. The general rule is, of course, that once a Court of First Instance has acquired jurisdiction by virtue of the filing of an election protest all questions relative thereto must be decided in the case itself and not in a separate proceeding before a different forum (Reyes v. Reyes, L-28476, Jan. 31, 1968; Acain vs. Board of Canvassers, L-16445, May 23, 1960).

An election protest may be lodged only against a proclaimed candidate and within fourteen days thereafter (Sec. 174, Election Code). (Tuburan vs. Bellener, 24 SCRA 941 [1968], Makalintal, J.).

§6. Petitioner went to the Comelec for the annulment of the respondent's proclamation. He also filed an election protest in the Court of First Instance. Comelec rejected him. He asked Comelec to reconsider. That reconsideration was pending when, meanwhile, the court protest came up for hearing. Petitioner, instead of awaiting the results of his motion for reconsideration in Comelec, insisted upon the hearing in court of his election protest. He opposed the petition of respondent, his opponent, to hold in abeyance the hearing of said election protest pending the result of his (petitioner's) motion for reconsideration before Comelec. To lend support to his opposition to the postponement of the hearing of the election case, he told the court that he was "withdrawing" his "motion for reconsideration in COMELEC" and sued for time "to get the withdrawal" of that motion for reconsideration. The election protest was concluded in the Court of First Instance. But, petitioner lost. (Ondona vs. Commission on Elections, 27 SCRA 554 [1969], Sanchez, J.).

§7. It may also be added that having availed of an election protest before the Court of First Instance of Masbate, instead of properly raising a pre-proclamation controversy before the Commission on Elections, private respondent Bisnar is deemed estopped from filing a petition with the Commission on Elections. His actuation is not only a recognition of petitioner's proclamation as the duly elected municipal mayor but also that the case is not proper as a pre-proclamation controversy.

Moreover, private respondent's petition was filed only on February 11, 1980 with the Commission on Elections, after the January 30, 1980 local elections and after the proclamation of petitioner Mogueis on January 31, 1980 and after respondent Bisnar filed an electoral protest on February 7, 1970. Under such circumstances, We must adhere to the doctrine that "after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable."

It is, to Our mind, the appropriate remedy. For, "it would save the time and energy of the litigants as well as respondent Commission, and eventually this Court in view of its appellate jurisdiction, if the matter were passed upon in an election protest or quo warranto petition in the lower court, the office involved being that of municipal mayor". (Mogueis, Jr., vs. Commission on Elections, 104 SCRA 576 [1981], Makasiar, J.).

§8. All pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing, and its decisions shall be executory after the lapse of five days from receipt by the losing party of the decision of the Commission, unless restrained by the Supreme Court. And the reason for this rule is obvious. As we stressed in Alonto v. COMELEC, "the policy of the election law is that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible." That is why such questions as those involving the appreciation of the votes and the conduct of the campaign and the balloting, which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest.

The contention that the dismissal of the pre-proclamation controversy would render the disqualification case moot and academic is also untenable. The two cases are independent of each other and one may be resolved separately without affecting the other. The purpose of a pre-proclamation controversy is to ascertain the winner or winners in the elections on the basis of the election returns duly authenticated by the boards of inspectors and admitted by the board of canvassers. The purpose of a disqualification proceeding is to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. Obviously, the mere fact that a candidate has been proclaimed elected does not signify that his disqualification is deemed condoned and may no longer be the subject of a separate investigation. (Abella vs. Larrazabal, 180 SCRA 509 [1989], Cruz, J.).

§9. Assuming however that the date of proclamation was January 24, 1988, the filing of the protest on February 4, 1988 was still within the period since private respondent filed a "Pre-Proclamation Protest Appeal" on January 24, 1988 effectively suspending the running of the period for filing an election protest as provided for in Section 248, Article XX of BP 881: "Sec. 248. Effect of filing petition to annul or to suspend the proclamation.¾The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings." (Macias II vs. Commission on Elections, 182 SCRA 137 [1990], Paras, J.).

§10. The Court does not agree. We find that the petitioner's real intention in filing the election protest ad cautelam was merely to insure the preservation of all the ballot boxes used in the January 18, 1988 local elections in the province of Pangasinan. Under COMELEC Res. No. 2035 dated September 7, 1988, all such ballot boxes would be made available for the then forthcoming barangay elections as long as they were not involved in any pre-proclamation controversy, election protest, or official investigation. As the above-mentioned cases involved only nine precincts, it was only prudent for the petitioner to file his protest ad cautelam in case the pre-proclamation controversy was ultimately dismissed and it became necessary for him to activate his protest. The protest would involve all the precincts in the province. If he had not taken this precaution, all the other ballot boxes would have been emptied and their contents would have been burned and forever lost.

Considering the summary nature of the pre-proclamation controversy, we see no reason why the above-mentioned cases cannot be speedily resolved on the basis of the evidence and the arguments already submitted by the parties. These must have been thoroughly examined by now by the COMELEC. And if more evidence is to be adduced, this should not take too much more time; at least the COMELEC should see to it that it does not. The COMELEC must be especially wary of dilatory tactics that may further postpone the final resolution of this contest. The Court cannot stress too strongly the need for an early resolution of the pending cases to ultimately determine the winner in the gubernatorial election or, if an election protest is inevitable, to pave the way for it as soon as possible.

The petitioner has correctly pointed out that the Order of the First Division of the COMELEC dismissing the pre-proclamation controversy and the Resolution of the COMELEC en banc denying the motion for reconsideration were both penned by Commissioner Abueg, in violation of its rule that¾x x x No member shall be the "ponente" of an en banc decision, resolution or a motion to reconsider a decision/resolution written by him in a Division. This is still another reason why the challenged acts must be reversed. The Commission on Elections should be the first to respect and obey its own rules, if only to provide the proper example to those appearing

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before it and to avoid all suspicion of bias or arbitrariness in its proceedings. (Agbayani vs. Commission on Elections, 186 SCRA 484 [1990], Cruz, J.).

§11. Under the above-cited section, Aruelo had ten days from May 13, 1992 to file an election protest. Instead of filing an election protest, Aruelo filed with the COMELEC a pre-proclamation case against Gatchalian on May 22, 1992, or nine days after May 13, 1992. The filing of the pre-proclamation case suspended the running of the period within which to file an election protest or quo warranto proceedings (B.P. Blg. 881, Sec. 248). Aruelo received the COMELEC resolution denying his pre-proclamation petition on June 22, 1992. Hence, Aruelo had only one day left after June 22, 1992 within which to file an election protest. However, it will be noted that Aruelo filed on June 2, 1992 with the trial court an election protest ex abundante cautela. (Gatchalian vs. Court of Appeals, 245 SCRA 208 [1995], Quiason, J.).

§12. Petitioner argues next that the election protest was filed ad cautelam or as a precautionary measure to preserve his rights which did not thereby oust respondent COMELEC of jurisdiction. He invokes Samad v. COMELEC where it was held that, as a general rule, the filing of an election protest or a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy or amounts to the abandonment of one earlier filed, thus depriving the COMELEC of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation. The reason is that once the competent tribunal has acquired jurisdiction of an election protest or a petition for quo warranto all questions relative thereto will have to be decided in the case itself and not in another proceeding, otherwise, there will be confusion and conflict of authority. Conformably therewith, we have ruled in a number of cases that after a proclamation has been made a pre-proclamation case before the COMELEC is, logically, no longer viable. The rule admits of exceptions, however, as where: (a) the board of canvassers was improperly constituted; (b) quo warranto was not the proper remedy; (c) what was filed was not really a petition for quo warranto or an election protest but a petition to annul a proclamation; (d) the filing of a quo warranto petition or an election protest was expressly made without prejudice to the pre-proclamation controversy or was made ad cautelam; and, (e) the proclamation was null and void. (Laodenio vs. Commission on Elections, 276 SCRA 705 [1997], Bellosillo, J.).

§13. So too must fall petitioner’s procedural objection that private respondent should be faulted for forum-shopping vis-à-vis this Court’s pronouncement in Samad v. COMELEC which states in no uncertain terms that¾As a general rule, the filing of an election protest or a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy, or amounts to the abandonment of one earlier filed, thus depriving the COMELEC of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation. The reason is that once the competent tribunal has acquired jurisdiction of an election protest or a petition for quo warranto, all questions relative thereto will have to be decided in the case itself and not in another proceeding. This procedure will prevent confusion and conflict of authority. Conformably, we have ruled in a number of cases that after a proclamation has been made, a pre-proclamation case before the COMELEC is no longer viable. The rule admits of exceptions, however, as where: (1) the board of canvassers was improperly constituted; (2) quo warranto was not the proper remedy; (3) what was filed was not really a petition for quo warranto or an election protest but a petition to annul a proclamation; (4) the filing of a quo warranto petition or an election protest was expressly made without prejudice to the pre-proclamation controversy or was made ad cautelam; and (5) the proclamation was null and void. (Maruhom vs. Commission on Elections, 331 SCRA 473

[2000], Ynares-Santiago, J.).

§14. Petitioner likewise claims that private respondent engaged in forum-shopping because, after filing a petition for quo warranto with the Regional Trial Court, Abuyog, Leyte, private respondent filed the present petition for annulment of proclamation with the COMELEC. This contention is bereft of merit. First, private respondent withdrew the quo warranto case before filing the petition for annulment of proclamation. Second, while the filing of a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy, this principle admits of several exceptions, such as when such petition is not the proper remedy. Under Sec. 253 of the Omnibus Election Code, the grounds for a petition for quo warranto are ineligibility or disloyalty to the Republic of the Philippines of the respondent. Since in the present case, private respondent alleged the existence of manifest errors in the preparation of election returns, clearly, the proper remedy is not a petition for quo warranto but a petition for annulment of proclamation. (Angelia vs. Commission on Elections, 332 SCRA 757 [2000], Mendoza, J.).

13. Real Party in Interest

§1. By virtue of Section 7 of the Local Autonomy Act, Republic Act 2264, the vice-mayor stands next in line of succession to the mayor in case of permanent vacancy in the latter's position. Thus, upon the death of the protestee-mayor, Loresca as then incumbent vice-mayor succeeded by operation of law to the vacated office for the unexpired term thereof. His status as real party in interest in the continuation of the proceedings cannot be questioned. (Vda. De Mesa vs. Mencias, 124 Phil. 1187 [1966]; 18 SCRA 533 [1966], Castro, J.).

§2. The asseveration of petitioner that private respondent is not a real party in interest entitled to be substituted in the election protest in place of the late Jamilla, is utterly without legal basis. Categorical was our ruling in Vda. de De Mesa and Lomugdang that: "x x x the Vice Mayor elect has the status of a real party in interest in the continuation of the proceedings and is entitled to intervene therein. For if the protest succeeds and the protestee is unseated, the Vice-Mayor succeeds to the office of Mayor that becomes vacant if the one duly elected can not assume the post." (De Castro vs. Commission on Elections, 267 SCRA 806 [1997], Hermosisima, Jr., J.).

14. Effect of the death of a party

§1. The determination of what candidate has been in fact elected is a matter clothed with public interest; wherefore, public policy demands that an election contest, duly commenced, be not abated by the death of the contestant. The ineligibility of the protestant is not a defense and the protestee's cessation in office is not a ground for the dismissal of the contest, neither does it detract the Court's jurisdiction to decide the case. (Lomugdang vs. Javier, 21 SCRA 402 [1967], Reyes, J.B.L., J.).

§2. It is true that a public office is personal to the public officer and is not a property transmissible to his heirs upon death. Thus, applying the doctrine of actio personalis moritur cum persona, upon the death of the incumbent,

no heir of his may be allowed to continue holding his office in his place.

But while the right to a public office is personal and exclusive to the public officer, an election protest is not purely personal and exclusive to the protestant or to the protestee such that the death of either would oust the court of all authority to continue the protest proceedings.

The death of the protestant, as in this case, neither constitutes a ground for the dismissal of the contest nor ousts the trial court of its jurisdiction to decide the election contest. Apropos is the following pronouncement of this court in the case of Lomugdang vs. Javier: “Determination of what candidate has been in fact elected is a matter clothed with public interest, wherefore, public policy demands that an election contest, duly commenced, be not abated by the death of the contestant. We have squarely so ruled in Sibulo Vda. de De Mesa vs. Judge Mencias, G.R. No. L-24583, October 29, 1966, in the same spirit that led this Court to hold that the ineligibility of the protestant is not a defense (Caesar vs. Garrido, 53 Phil. 97), and that the protestee’s cessation in office is not a ground for the dismissal of the contest nor detract the Court’s jurisdiction to decide the case (Angeles vs. Rodriguez, 46 Phil. 595; Salcedo vs. Hernandez, 62 Phil. 584).” (De Castro vs. Commission on Elections, 267 SCRA 806 [1997], Hermosisima, Jr., J.).

15. Right to intervene in an election protest

§1. Every candidate served with the notice of protest as required by law immediately becomes a party to the proceeding. An application on the part of a candidate so served to be allowed to intervene is unnecessary. (Manalo vs. Sevilla, 24 Phil. 609 [1913], More-land, J.).

§2. The court must decide an election protest presented to it, in which the other candidates voted for in the contested election are parties, in view of the votes obtained by the parties, according to the canvass of the court, and the fact that a candidate, the petitioner herein, did not file an intervention nor take an active part in the trial of the protest, is no ground for not doing so, because as he was an interested party, being candidate who had received votes in that election and who was notified of the filing of the protest, there was no necessity for filing a separate protest. (Ibid.).

According to law, when the candidates voted for in an election are interested parties in an election protest, he who, according to the judicial adjudication, has received the highest number of votes, must be proclaimed by the board of canvassers, acting in pursuance to the order of the court, elected to said office. (Santos vs. Court of First Instance of Cavite, 49 Phil. 398 [1926], Villamor, J.).

§3. Where the protestee, who had been proclaimed as mayor, died during the pendency of the protest and the vice-mayor succeeded to the office of mayor and the trial court found that the protestant was the winner in the election for mayor, the vice-mayor may appeal from the judgment of the trial court. (Silverio vs. Castro, 125 Phil. 917 [1967]; 19 SCRA 520 [1967], Bengzon, J.P., J.).

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§4. The vice-mayor-elect has the status of a real party in interest in the continuation of the proceedings and is entitled to intervene therein. For if the protest succeeds and the protestee is unseated, the vice-mayor succeeds to the office of mayor that becomes vacant if the one duly elected cannot assume the post. (Lomugdang vs. Javier, 21 SCRA 402 [1967], Reyes, J.B.L., J.).

§5. An interest common with the community in general is manifestly inadequate to entitle petitioner to seek annulment of an election. Any other view would justify the institution of proceedings for the annulment of an election by any member of our population or citizenry, and hence, by any member of the losing political party. It is obvious that this is not sanctioned by our laws. One of the tests to determine whether or not a cause of action exists is whether the petition shows that the petitioner has suffered an injury. (Borromeo vs. Commission on Elections, 28 SCRA 775 [1969], Concepcion, C.J.).

§6. The late Genoveva Mesina's claim to the contested office was not in any sense a transmissible right that devolved upon her surviving spouse and her children (herein private respondents) after her death. "Public office is personal to the incumbent and is not a property which passes to his heirs" (Santos vs. Secretary of Labor, 22 SCRA 848). Private respondents' only interest in the outcome of the case is limited to no more than their interest in defending her against the protestant's claim for damages and costs (which the protestant, herein petitioner, has already waived). They may no longer prosecute her own counter-claim for damages against the protestant for that was extinguished when death terminated her right to occupy the contested office of mayor of Albuera, Leyte.

Thus did this Court hold in Lomugdang vs. Javier, 21 SCRA 403: "The vice-mayor elect has the status of a real party-in-interest in the continuation of the proceedings and is entitled to intervene therein. For if the protest succeeds and the protestee is unseated, the vice-mayor succeeds to the office of mayor that becomes vacant if the one duly elected cannot assume the post. (De la Victoria vs. Commission on Elections, 199 SCRA 561 [1991], Griño-Aquino, J.).

§7. Private respondent argues that petitioner has neither legal interest in the matter in litigation nor an interest to protect because he is "a defeated candidate for the vice-mayoralty post of Makati City [who] cannot be proclaimed as the Vice-Mayor of Makati City even if the private respondent be ultimately disqualified by final and executory judgment." The flaw in this argument is it assumes that, at the time petitioner sought to intervene in the proceedings before the COMELEC, there had already been a proclamation of the results of the election for the vice mayoralty contest for Makati City, on the basis of which petitioner came out only second to private respondent. The fact, however, is that there had been no proclamation at that time. Certainly, petitioner had, and still has, an interest in ousting private respondent from the race at the time he sought to intervene. The rule in Labo v. COMELEC, reiterated in several cases, only applies to cases in which the election of the respondent is contested, and the question is whether one who placed second to the disqualified candidate may be declared the winner. In the present case, at the time petitioner filed a "Motion for Leave to File Intervention" on May 20, 1998, there had been no proclamation of the winner, and petitioner's purpose was precisely to have private respondent disqualified "from running for [an] elective local position" under Sec. 40(d) of R.A. No. 7160. If Ernesto Mamaril (who originally instituted the disqualification proceedings), a registered voter of Makati City, was competent to bring the action, so was petitioner since the latter was a rival candidate for vice mayor of

Makati City.

Nor is petitioner's interest in the matter in litigation any less because he filed a motion for intervention only on May 20, 1998, after private respondent had been shown to have garnered the highest number of votes among the candidates for vice mayor. That petitioner had a right to intervene at that stage of the proceedings for the disqualification against private respondent is clear from Sec. 6 of R.A. No. 6646, otherwise known as the Electoral Reforms Law of 1987.

Intervention may be allowed in proceedings for disqualification even after election if there has yet been no final judgment rendered.

The failure of the COMELEC en banc to resolve petitioner's motion for intervention was tantamount to a denial of the motion, justifying petitioner in filing the instant petition for certiorari. As the COMELEC en banc instead decided the merits of the case, the present petition properly deals not only with the denial of petitioner's motion for intervention but also with the substantive issues respecting private respondent's alleged disqualification on the ground of dual citizenship. (Mercado vs. Manzano, 307 SCRA 630 [1999], Mendoza J.).

16. Protest rendered moot and academic

§1. Where the disputed position is no longer vacant because of the assumption of office of the duly elected Mayor of Barotac Nuevo, Iloilo on January 1, 1964, the question as to who should succeed the then Municipal Mayor, after he had filed his certificate of candidacy to another office, has become moot and academic. (Paranpan vs. Querubin, 18 SCRA 787 [1966], Zaldivar, J.).

§2. Where, as in the case at bar, the respondent-protestant is already dead and the term of the contested office has already expired, the present appeal is ordered dismissed despite petitioner-protestee's pleading, the election protest involving them having become moot. (Lofranco vs. Jimenez, Sr., 22 SCRA 330 [1968], Dizon, J.).

§3. It is significant to note that the term of office of the local officials elected in the May 1992 elections expired on June 30, 1995. This petition, thus, has become moot and academic insofar as it concerns petitioner's right to the mayoralty seat in his municipality because expiration of the term of office contested in the election protest has the effect of rendering the same moot and academic. When the appeal from a decision in an election case has already become moot, the case being an election protest involving the office of mayor the term of which had expired, the appeal is dismissible on that ground, unless the rendering of a decision on the merits would be of practical value. (Malaluan vs. Commission on Elections, 254 SCRA 397 [1996], Hermosisima, Jr., J.).

17. Abandonment of protest

§1. Indeed, it would be entirely different where the protestant pursued the new position through a popular election, as in the case of Protestant Santiago who filed a certificate of candidacy for Senator in the 8 May 1995 election, campaigned for such office, and submitted herself to be voted upon. She knew that the term of office of the Senators who would then be elected would be six years, to commence at noon on the thirtieth day of June next following their election and to end at noon of 30 June 2001. Knowing her high sense of integrity and candor, it is

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most unlikely that during her campaign, she promised to serve the electorate as Senator, subject to the outcome of this protest. In short, she filed her certificate of candidacy for the Senate without any qualification, condition, or reservation. In so doing, she entered into a political contract with the electorate that if elected, she would assume the office of Senator, discharge its functions and serve her constituency as such for the term for which she was elected. These are givens which are in full accord with the principle enshrined in the Constitution that public office is a public trust, and public officers and employees must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty and efficiency.

The term of office of the Senators elected in the 8 May 1995 election is six years, the first three of which coincides with the last three years of the term of the President elected in the 11 May 1992 synchronized elections. The latter would be Protestant Santiago's term if she would succeed in proving in the instant protest that she was the true winner in the 1992 elections. In assuming the office of Senator then, the Protestant has effectively abandoned or withdrawn this protest, or at the very least, in the language of Moraleja, abandoned her "determination to protect and pursue the public interest involved in the matter of who is the real choice of the electorate." Such abandonment or withdrawal operates to render moot the instant protest. Moreover, the dismissal of this protest would serve public interest as it would dissipate the aura of uncertainty as to the results of the 1992 presidential election, thereby enhancing the all¾too crucial political stability of the nation during this period of national recovery.

The dispositive portion of this resolution leaves no room for any doubt or miscomprehension that the dismissal is based on the ground that the protest "has been rendered moot and academic by its abandonment or withdrawal by the Protestant as a consequence of her election and assumption of office as Senator and her discharge of the duties and functions thereof." There is, therefore, ONLY ONE reason or ground why the protest has been rendered moot and academic, i.e., it has been abandoned or withdrawn. This was the very issue upon which the parties were required, in the resolution of 26 September 1995, to submit their respective memoranda. (Defensor-Santiago vs. Ramos, 253 SCRA 559 [1996], Resolution).

§2. Where the position in controversy is that of a municipal councilor, the decision of the Court of First Instance, under the Revised Election Code, is final and unappealable except on questions of law.

In an election contest, a candidate's eligibility must be judged as of the date of the election. Hence, the argument that if the protestant, who run for the position of municipal councilor, after the election accepted an appointment as technical assistant of the Vice-Governor should be deemed disqualified from office under the provisions of Section 2175 of the Revised Administrative Code, is unavailing. In any event, this Court held more than a decade ago that ineligibility of the protestant is not a defense in an election contest not only because it is incongruous with the only issue therein, which is who obtained the higher number of votes, but is also premature, inasmuch as such issue may be raised only after the candidate has been proclaimed and the protestant is not proclaimed until after he has been declared winner by the court, apart from the fact that if a protest is dismissed only because the protestant is ineligible, the result would be that protestee would be in office though in fact he received fewer votes than the former.

Neither will the acceptance of such appointment, which is more or less temporary in nature, constitute an abandonment of an election protest. Once the court has acquired jurisdiction over an election protest, the public interest involved demands that the true winner be known without regard to the wishes or acts of the parties, so much so that there can be no default, compromise nor stipulation of facts in this kind of cases. The case of a protestant who accepts a permanent appointment to a regular office could, however, be different. (Moraleja vs.

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Relova, 42 SCRA 10 [1971], Barredo, J.).

§3. Right of elected official to indefinite term of office under the New Constitution is also based on his having been properly elected in the previous election. (Nuñez vs. Averia, 57 SCRA 726 [1974], Teehankee, J.).

§4. As is quite obvious from the Answer, an inquiry on the grounds relied upon to enjoining the canvassing of election returns would necessarily entail the presentation of conflicting testimony. To pass on such a complex matter in a summary proceeding would be to run the risk that the decision arrived at would not reflect the realities of the situation. It could even be susceptible to the charge that the whole truth did not come to light. Under the circumstances, an election protest clearly is the more appropriate remedy. (Laguda vs. Commission on Elections, 102 SCRA 857 [1981], Fernando, C.J.).

§5. The petition must be dismissed. It is very apparent from the petition-letter that the grounds relied upon by petitioners in seeking relief from the COMELEC are proper grounds for election protest. Petitioner premised his petition, to quote from Resolution No. 9802 of the COMELEC, on seizure of ballot boxes at gunpoint; intimidation of voters and forced opening and examination of ballots; substitution of ballots; and tampering of election returns. These are the same grounds alleged in the election protest filed in the Court of First Instance of Pampanga. The case of Villegas vs. COMELEC and Laguda vs. COMELEC find application in the disposition of this case. In the early case of Villegas v. COMELEC, where massive fraud and violations of certain provisions of the Election Code allegedly committed during the elections were denounced in this Court, the Court through Mr. Chief Justice Enrique M. Fernando dismissed the petition, it appearing therein that the grounds set forth in the complaint before the COMELEC are proper for election protest. The Court pointed out, that at any rate petitioner would not be left without remedy “for the opportunity for him to prove such a wholesale allegation of massive fraud and violations of Election Code is still there.” Indeed, herein petitioner could still avail himself of the election protest where he could ventilate his grievance and be provided the full opportunity to present all relevant evidence in a full dress hearing in accordance with due process, unlike in the COMELEC where the proceedings are summary in nature. As was aptly said in Laguda v. COMELEC, “to pass on such a complex matter in a summary proceedings would be to run the risk that the decision arrived at would not reflect the realities of this situation”.

Moreover, such course of action would be in keeping with the ruling first enunciated in Valenzeula v. COMELEC (G.R. No. 53532, July 21, 1980) and lately in Arcenas v. COMELEC (G.R. No. 54039, Nov. 28, 1980; see also Potencion vs. COMELEC, G.R. No. 52527, September 4, 1980). (Pasion vs. Commission on Elections, 109 SCRA 238 [1981], De Castro, J.).

18. Pleadings and Procedure

§1. The trial of an election case by legislative fiat shall be conducted in a summary manner without the cumbersome procedure prescribed for ordinary litigations in order that its result may be determined in the shortest time possible. The reason is obvious: an election case, unlike an ordinary action, involves public interest, time

element being of the essence in its disposition so that the uncertainty as to who is the real choice of the people may at once be dispelled.

In enunciating that the trial in an election case should be devoid of technicalities of procedure or conducted in a summary manner we do not mean that there should not be any reception of evidence as required in an ordinary trial. Cases there are when this may be needed as when it may be necessary to present evidence aliunde, or such evidence other than those documents which the law requires to be introduced in court for its examination. (Reforma vs. De Luna, 104 Phil. 278 [1958], Bautista Angelo, J.).

§2. Petitioner filed the election protest (Civil Case No. 343-M-92) with the Regional Trial Court, whose proceedings are governed by the Revised Rules of Court. Section 1, Rule 13, Part III of the COMELEC Rules of Procedure is not applicable to proceedings before the regular courts. As expressly mandated by Section 2, Rule 1, Part I of the COMELEC Rules of Procedure, the filing of motions to dismiss and bill of particulars, shall apply only to proceedings brought before the COMELEC. (Aruelo, Jr. vs. Court of Appeals, 227 SCRA 311 [1993], Quiason, J.)

§3. Considering that this petition involves an election protest heard by a regional trial court, the Comelec Rules of Procedure are controlling. In view of the fact that the subject election contest was filed on May 26, 1992, Section 2, Rule 17 and Section 11, Rule 35 of the aforementioned Comelec rules are applicable. Rule 17 treats of Hearings whereas Rule 35 treats of Election Contests Before Courts of General Jurisdiction.

The record shows that the revision of ballots in the 22 protested precincts was completed sometime in September 1992. Judge Lopez issued a ruling on the said revision almost a year later, or on August 18, 1993. In the interim, private respondent failed to commence the revision of the ballots in the counter-protested precincts, stubbornly maintaining the position that said precincts should be revised only if it is shown after the revision that petitioner leads private respondent by at least one (1) vote. No law or rule authorizes such a procedure. Consequently, private respondent must be deemed to have waived or abandoned his counter-protest. The applicable Comelec rules provide for the presentation of evidence by the parties in succession in the order or the sequence provided under Sec. 2, Rule 17 (Comelec Rules) which must be submitted within a reasonable time, if not immediately after the revision of the precincts covered by the protest proper. By insisting that the counter-protested precincts should be revised only if it is shown after the revision of the protested precincts that petitioner, his opponent, leads by at least one (1) vote, private respondent is adopting a self-serving rule without legal sanction calculated to unduly prolong the litigation.

There is likewise merit to petitioner’s claim that private respondent is guilty of laches, which, in a general sense, is a failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence could or should have done earlier; it is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that a party entitled to assert it either has abandoned it or declined to assert it (Republic v. Caballero, 79 SCRA 177 [1977]). In the case at bar, private respondent unreasonably failed to cause the revision of the counter-protested precincts despite being afforded ample time to do so and must be deemed to have abandoned it.

Under the circumstances and for reasons discussed above, the order of Judge Lopez dated August 18, 1993 which resolved the party litigants’ objections to the revised ballots may very well be the subject of a valid decision to

resolve the instant electoral protest based on the revised ballots of the 22 protested precincts. In the event petitioner is declared the winning candidate, she should, upon proper motion, be allowed to immediately assume the contested office. We say this because in their pleadings, petitioner and private respondent have amply discussed their respective arguments in the applicability of Garcia v. De Jesus and the accompanying case of Tobon Uy v. Comelec (206 SCRA 779 [1992]) and the possibility is not remote that private respondent may once again resort to dilatory tactics. Section 2, Rule 39 of the Rules of Court allows execution pending appeal in election cases upon good reasons (Garcia v. De Jesus, supra; in relation to Rule 43, Sec. 1, COMELEC Rules of Procedure) which we find obtaining in the case before us. (Abeja vs. Tañada, 236 SCRA 60 [1994], Bidin, J.).

§4. The Solicitor General, in behalf of the COMELEC, raises a fundamental question. He contends that the filing of the present petition, without petitioner first filing a motion for reconsideration before the COMELEC en banc, violates Art. IX, A, Section 7 of the Constitution because under this provision only decisions of the COMELEC en banc may be brought to the Supreme Court on certiorari. This is correct. It is now settled that in providing that the decisions, orders and rulings of COMELEC "may be brought to the Supreme Court on certiorari" the Constitution in its Art. IX, A, Sec. 7 means the special civil action of certiorari under Rule 65, Sec. 1.

Since a basic condition for bringing such action is that the petitioner first files a motion for reconsideration, it follows that petitioner's failure to file a motion for reconsideration of the decision of the First Division of the COMELEC is fatal to his present action. Petitioner argues that this requirement may be dispensed with because the only question raised in his petition is a question of law. This is not correct. The questions raised by petitioner involve the interpretation of constitutional and statutory provisions in light of the facts of this case. The questions tendered are, therefore, not pure questions of law.

Conformably to these provisions of the Constitution all election cases, including pre-proclamation controversies, must be decided by the COMELEC in division. Should a party be dissatisfied with the decision he may file a motion for reconsideration before the COMELEC en banc. It is, therefore, the decision, order or ruling of the COMELEC en banc that, in accordance with Art. IX, A, Sec. 7, "may be brought to the Supreme Court on certiorari." (Reyes vs. Regional Trial Court of Oriental Mindoro, Branch XXIX, 244 SCRA 41 [1995], Mendoza, J.).

§5. The procedure for perfecting an appeal from the decision of the Municipal Trial Court in a barangay election protest case is set forth in the COMELEC Rules of Procedure.

The mere filing of the notice of appeal was not enough. It should be accompanied by the payment of the correct amount of appeal fee. (Rodillas vs. Commission on Elections, 245 SCRA 702 [1995], Quiason, J.).

§6. In Sarmiento v. Commission on Elections, we ruled that the COMELEC, sitting en banc, does not have the requisite authority to hear and decide election cases in the first instance. This power pertains to the divisions of the Commission. Any decision by the Commission en banc as regards election cases decided by it in the first instance is null and void. (Abad, Jr., vs. Commission on Elections, 320 SCRA 507 [1999], Quisumbing, J.).

§7. We uphold the foregoing factual findings, as well as the conclusions reached by the COMELEC. Factual findings of the COMELEC based on its own assessments and duly supported by gathered evidence, are conclusive upon the court, more so, in the absence of a substantiated attack on the validity of the same, as is the case in the instant petition. (Diangka vs. Commission on Elections, 323 SCRA 887 [2000], Gonzaga-Reyes, J.).

§8. Clearly, the COMELEC, motu proprio, reconsidered its earlier Minute Resolution No. 98-1959, as it was within its power to do, before it became final and executory. As argued by the COMELEC, it has the inherent

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power to amend and control its process and order. Within the thirty-day period from its promulgation, therefore, the questioned Minute Resolution No. 98-1959 was still under the control of the COMELEC and may thus be recalled or set aside. Necessarily, the subsequent passage by the COMELEC of Minute Resolution No. 98-2145 on July 14, 1998, wherein it corrected its earlier Minute Resolution No. 98-1959, rendered the instant petition moot and academic. (Sahali vs. Commission on Elections, 324 SCRA 510 [2000], Ynares-Santiago, J.).

§9. It is clear, given the foregoing facts of this case, that the roundabout manner within which petitioner virtually substituted his answer by belatedly filing a motion to dismiss three (3) months later is a frivolous resort to procedure calculated to frustrate the will of the electorate. As pointedly observed by the COMELEC in its challenged Resolution dated July 6, 1999, petitioner only filed his motion to dismiss "when the results of the trial appear[ed] to be adverse to him" or right after the creation of the Revision Committee had been ordered by the trial court. If petitioner truly intended to move for the preliminary hearing of his special and affirmative defenses as he claims, then he should have simultaneously moved for the preliminary hearing of his special and affirmative defenses at the time he filed his answer. Otherwise, he should have filed his motion to dismiss "within the time for but before filing the answer . . ." pursuant to Section 1, Rule 16 of the 1997 Rules of Civil Procedure. Suffice it to state in this regard that such a whimsical change of mind by petitioner can not be countenanced much more so in election cases where time is of the essence in the resolution thereof. (Maruhom vs. Commission on Elections, 331 SCRA 473 [2000], Ynares-Santiago, J.).

19. Suppletory application of the Rules of Court

§1. The Rules of Court apply to election cases in a suppletory character whenever practicable and convenient. As there is no provision in the Election Law regarding the manner in which parties should be notified of the proceedings, pleadings or decisions in election cases, Section 2, Rule 27 of the Rules of Court, under which service of decisions should be made to the lawyers on record, and not to parties, should be applied. (Cabili vs. Badelles, 116 Phil. 493 [1962]; 6 SCRA 190 [1962], Labrador, J.).

§2. Nevertheless, the hiatus in the special law posed no impediment to the course of the proceedings because, precisely by express mandate of Rule 143 of the New Rules of Court, said rules, though not generally applicable to election cases, may however be applied "by analogy or in a suppletory character and whenever practicable and convenient." Thus, Section 17, Rule 3 of the Rules of Court applies to election cases to the same extent and with the same force and effect as it does in ordinary civil actions. And we declare that unless and until the procedure therein detailed is strictly adhered to (and in this case this procedure was totally ignored) proceedings taken by a court in the absence of a legal representative of the deceased protestee must be stricken down as null and void. (Vda. De Mesa vs. Mencias, 124 Phil. 1187 [1966]; 18 SCRA 533 [1966], Castro, J.).

§3. As already noted, petitioner received summons and copies of the election protest on June 2, 1995. In accordance with Art. XXI, Sec. 254 (b) of the Omnibus Election Code and Rule 35, Sec. 7 (a) of the COMELEC Rules of Procedure, his answer should have been filed within five (5) days, i.e., on or before June 7, 1995. But petitioner did not file his answer on or before that date. On June 15, 1995, eight (8) days after the expiration of the period for filing his answer, his counsel filed a motion for an extension of fifteen (15) days within which to file an answer or any responsive pleading to the election protest. His motion was thus filed late. In Maliwanag v. Herrera,

the Court held that the provisions of the Rules of Court are suppletory to the provisions of the Election Law. Hence a motion for extension of time to file answer to the election protest should be filed before the expiration of the five-day reglementary period to answer, otherwise a general denial shall be deemed to have been entered against the protestee. Petitioner's answer with counterprotest, which was filed on November 13, 1995, was therefore filed more than five months late. (Lim vs. Commission on Elections, 282 SCRA 53 [1997], Mendoza, J.).

§4. The Rules of Civil Procedure generally do not apply to election cases. They apply only by analogy or in suppletory character and whenever practicable and convenient. Election contests are subject to the Comelec Rules of Procedure. Rule 35 thereof governs election contests involving elective municipal officials before the Regional Trial Courts. Rule 35 does not require that the petition contesting the election of any municipal official be accompanied by a certification or any statement against forum shopping. (Barroso vs. Ampig, Jr., 328 SCRA 530 [2000], Puno, J.).

20. Verification and certification of non-forum shopping

§1. Since the petitioner's election protest in the Court of First Instance of Isabela did not bear the character of an ex abundanti cautela, there would be no cogent reason to depart from the well-settled rule that once a court of first instance has acquired jurisdiction by virtue of the filing of an election protest, all questions relative thereto will be decided in the case itself and not in another proceeding before a different forum. (Filart vs. Commission on Elections, 53 SCRA 457 [1973], Antonio, J.).

§2. We do not agree with the MCTC that Administrative Circular No. 04-94 is not applicable to election cases because it is merely amendatory of the Rules of Court and the latter, pursuant to Rule 143 thereof, is not applicable to election cases. There is nothing in the Circular that indicates that it does not apply to election cases. On the contrary, it expressly provides that the requirements therein, which are in addition to those in pertinent provisions of the Rules of Court and existing circulars, "shall be strictly complied with in the filing of complaints, petitions, applications or other initiatory pleadings in all courts and agencies other than the Supreme Court and the Court of Appeals." Ubi lex non distinguit, nec nos distinguere debemus. (Loyola vs. Court of Appeals, 245 SCRA 477 [1995], Davide, Jr., J.).

§3. We do not agree with petitioners. In Loyola vs. Court of Appeals, which involves substantially a similar set of facts and issue, this Court held¾We do not agree x x x that Administrative Circular No. 04-94 is not applicable to election cases x x x x There is nothing in the Circular that indicates that it does not apply to election cases. On the contrary, it expressly provides that the requirements therein, which are in addition to those in pertinent provisions of the Rules of Court and existing circulars, "shall be strictly complied with in the filing of complaints, petitions, applications or other initiatory pleadings in all courts and agencies other than Supreme Court and the Court of Appeals." Ubi lex non distinguit nec nos distinguere debemus.

It should be emphasized that the mere submission of a certification under Administrative Circular No. 04-94 after the filing of a motion to dismiss on the ground of non-compliance thereof does not necessarily operate as a

substantial compliance; otherwise, the Circular would lose its value or efficacy. (Tomarong vs. Lubguban, 269 SCRA 624 [1997], Bellosillo, J.).

§4. Where the petitioner failed to state in his verification that the contents of the election protest are true and correct of his own personal knowledge, said petition lacks proper verification and should be treated as an unsigned pleading and must be dismissed.

The requirement to file a certificate of non-forum shopping is mandatory, and failure to comply with this requirement cannot be excused by the fact that a party is not guilty of forum shopping. (Soller vs. Commission on Elections, 339 SCRA 685 [2000], Quisumbing, J.).

§5. Forum-shopping exists when the petitioner files multiple petitions or complaints involving the same issues in two or more tribunals or agencies. The issues in the two cases are different. The complaint for election offense is a criminal case which involves the ascertainment of the guilt or innocence of the accused candidate and, like any other criminal case, requires a conviction on proof beyond reasonable doubt. A petition for disqualification, meanwhile, requires merely the determination of whether the respondent committed acts as to merit his disqualification from office, and is done through an administrative proceeding which is summary in character and requires only a clear preponderance of evidence. (Domingo, Jr. vs. Commission on Elections, 313 SCRA 311 [1999), Gonzaga-Reyes, J.).

§6. The strict application of the non-forum shopping rule in the case at bar would not work to the best interest of the parties and the electorate. An election contest, unlike an ordinary civil action, is clothed with a public interest. The purpose of election protest is to ascertain whether the candidate proclaimed by the board of canvassers is the lawful choice of the people. What is sought is the correction of the canvass of votes, which was the basis of proclamation of the winning candidate. An election contest therefore involves not only the adjudication of private and pecuniary interests of rival candidates but paramount to their claims is the deep public concern involved and the need of dispelling the uncertainty over the real choice of the electorate. And the court has the corresponding duty to ascertain by all means within its command who is the real candidate elected by the people.

Similarly, the Rules of Civil Procedure on forum shopping should be applied with liberality. In the instant case, the revision of ballots has already started in ten (10) precincts. The right of the people of Tampakan to freely express their choice of representative through a free and honest election should not be smothered by a strict adherence to technical rules of procedure. (Barroso vs. Ampig, Jr., 328 SCRA 530 [2000], Puno, J.).

§7. There is another reason to dismiss private respondent’s election protest. We note that the verification of aforesaid protest is defective. In the verification, private respondent merely stated that he caused the preparation of his petition and he has read and understood all the allegations therein. Certainly, this is insufficient as private respondent failed to state that the contents of his election protest are true and correct of his personal knowledge. Since the petition lacks proper verification, it should be treated as an unsigned pleading and must be dismissed.

Private respondent's belief that he no longer had a pending case before the COMELEC because he deemed it abandoned upon filing of his protest is not a valid reason for non-disclosure of the pendency of said pre-proclamation case. Note that the COMELEC dismissed private respondent's pre-proclamation case only on July 3, 1998. Before the dismissal, said case was legally still pending resolution. Similarly, the fact that private respondent's protest was not based on the same cause of action as his pre-proclamation case is not a valid excuse for not complying with the required disclosure in the certification against forum shopping. The requirement to file a certificate of non-forum shopping is mandatory. Failure to comply with this requirement cannot be excused by the fact that a party is not guilty of forum shopping. The rule applies to any complaint, petition, application or other initiatory pleading, regardless of whether the party filing it has actually committed forum shopping. Every party filing any initiatory pleading is required to swear under oath that he has not and will not commit forum shopping. Otherwise we would have an absurd situation, as in this case, where the parties themselves would be the judge of whether their actions constitute a violation of the rule, and compliance therewith would depend on their belief that they might or might not have violated the requirement. Such interpretation of the requirement would defeat the very purpose of the rule. (Soller vs. Commission on Elections, 339 SCRA 685 [2000], Quisumbing, J.).

21. Mandatory and jurisdictional period to file protest/quo warranto

§1. The two weeks within which, under the Election Law, the protest in a protested election case must be filed should be counted from the issuance of the proclamation of the provincial board of canvassers and not from the election day.

A protest filed prior to the proclamation of the provincial board of canvassers is premature and must be dismissed if an objection thereto is made opportunely.

Where, however, a protest is filed prior to such proclamation and no objection is made thereto on that ground and the protest is continued and heard after the proclamation of said provincial board of canvassers, the protest will be deemed to have been filed after such proclamation and therefore to have been presented at the proper time.

The fundamental basis of an election protest is the election of one of the adversaries of the protestant. There is no such election, however, until the proclamation of the provincial board of canvassers, as, prior to that time, it is impossible, legally speaking, to know or to prove who is elected.

In contemplation of law there is no election until such election can be proved in the manner required by law. Under the law, an election is proved by the action of the provincial board of canvassers. Until that evidence can be presented no election can be proved as the basis of a protest.

An election is not an election and the popular will is not deemed to have been expressed until the last act necessary to complete the election under the law has been performed. Under the law of the Philippine Islands the act which completes the election is the proclamation of the provincial board of canvassers. (Manalo vs. Sevilla, 24 Phil. 609 [1913], Moreland, J.).

§2. The intent of the Legislature was to fix a certain and definite time within which petitions and protests against the result of an election should be filed and to provide summary proceedings for the settlement of such contests. (Municipal Council of Masantol vs. Guevara, etc., 44 Phil. 580 [1923], Johnson, J.).

§3. Where there had been two proclamations made by the city board of canvassers, the first, made on December 29, 1959, being merely partial leaving aside that which refers to the eighth councilor whose election was contested and was the subject of a recount; and the second, made on June 2, 1960, after a new canvass resulting in the proclamation of protestee-appellant as the eighth duly elected councilor upon the authority of the Commission on Elections, it is held that the two weeks period to file election protest should be counted not from the first but from the second proclamation; otherwise it would make the protest illusory, for the protestant-appellee could not have filed any protest before the proclamation of her opponent, which took place on June 2, 1960. (Conui-Omega vs. Samson, 118 Phil. 1333 [1963]; 9 SCRA 493 [1963], Bautista Angelo J.).

§4. The filing of an election protest not in strict compliance with paragraph (g) of Section 176 of the Revised Election Code is a circumstance not sufficient to dismiss said protest, provided it has been filed in due time.

An election protest involves public interest, and technicalities should not be sanctioned when it will be an obstacle in the determination of the true will of the electorate in the choice of its public officials. It is a recognized principle that laws governing election protests must be liberally interpreted to the end that the popular will expressed in the election of public officers will not, by reason of purely technical objections, be defeated. (Macasundig vs. Macalangan, 121 Phil. 554 [1965]; 13 SCRA 577 [1965], Zaldivar, J.).

§5. The argument overlooks the events which supervened after his proclamation on March 27, 1980. As heretofore stated, Esquivel filed his petition in G.R. No. 53475 on March 28, 1980, i.e., the day following Cucio's proclamation. On the very same day, this Court issued an order restraining the latter from taking his oath of office and/or assuming the position of mayor. Thus, from March 27 until October 14, 1980, when said restraining order was lifted, Esquivel had assumed and discharged the office of mayor of Palayan City. Under this factual setting, it would have been illogical and absurd for Esquivel to have filed an election protest over an office which he himself was occupying at the time. Indeed, he had neither cause nor reason to have sought such recourse.

We therefore sustain Esquivel's submission that the 10-day period under Section 189 of the Election Code should be considered as having been suspended during the pendency of G.R. No. 53475, and that said statutory period be computed from October 15, 1980, the day Esquivel received notice of the dismissal of his petition in G.R. No. 53475.

In fine, to deny Esquivel recourse to an election protest because of an evident oversight in Our resolution of October 14, 1980 in G.R. No. 53475 to specifically grant him a period of 10 days within which to file such protest, would be to effectively deprive him of the fundamental right of due process. (Esquivel vs. Commission on

Elections, 121 SCRA 786 [1983], Escolin, J.).

§6. At this point, it bears reiterating the pronouncement We have already made in several cases that "after an election duly held and a proclamation thereafter made of the winning candidate, a pre-proclamation controversy should no longer be viable" (Pasion vs. Comelec, 109 SCRA 238, 244; Mogueis, Jr. vs. Comelec, 104 SCRA 578; Arcenas vs. Comelec, 101 SCRA 437; Villegas vs. Comelec, 99 SCRA 582; Venezuela vs. Comelec, 98 SCRA 790).

But unlike in Pasion vs. Comelec, supra, Mogueis Jr. vs. Comelec, supra, and Villegas vs. Comelec, supra, where the petitioners therein were not left without a remedy for the opportunity for them to prove such a wholesale allegation of massive fraud and violations of the Election Code—through the filing or continuation of their respective election protest before the appropriate body or tribunal—herein private respondent's recourse to an electoral protest in the proper court is deemed foreclosed or extinguished when they chose instead to file before the COMELEC the questioned petition (PP Case No. 499) twenty-two [22] days after the proclamation of herein petitioners.

On the other hand, the present case cannot with precision be called a pre-proclamation controversy. As earlier shown, the petition against the petitioners herein was filed with COMELEC after the lapse of 22 days after they had been proclaimed duly elected municipal officials of San Jose del Monte and after they had assumed office. This case is more of a post-proclamation dispute. (Robes vs. Commission on Elections, 123 SCRA 193 [1983], Makasiar, J.).

§7. The law is equally clear. The Election Code grants the right to a voter "contesting the election of any officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines [to] file a petition for quo warranto with the Commission within ten days after the proclamation of his election." There is no getting away from the explicit mandate of the law. A ten-day period is set forth. It must be obeyed. This Court has reiterated time and time again the principle that when the statute speaks clearly and unequivocally, there is no room for interpretation. It must be applied as worded. It is to be noted that there is a distinction between an election protest and quo warranto suit on ground of ineligibility. This Court has even gone as far as holding that an action for quo warranto cannot be converted into an election protest. It may not be amiss to state that under the former Election Code, the period granted is limited to one week or seven days, not ten days as now provided. Then as well as now, however, whatever period is prescribed must be followed to the letter. It is as simple as that. (Asuncion, Jr. vs. Segundo, 124 SCRA 729 [1983], Fernando, C.J.).

§8. The reglementary period for filing an election protest was suspended during the pendency of the pre-proclamation case.

In the light of Section 248, the lower court's statement that "the running of the ten-day period to file an election protest is not stopped by protestant's elevation to the Supreme Court of the COMELEC's decision" in the pre-proclamation case, is not correct. The appeal by certiorari to the Supreme Court, which is a right secured to the defeated party under Section 7, Title A, Article IX of the 1987 Constitution, is part of the annulment proceeding. The case is not over until the Supreme Court has given its verdict, hence, the computation of the ten-day-period for filing an election contest does not begin until that verdict has been handed down by the Supreme Court.

The right of the prevailing party in a pre-proclamation case to the execution of the COMELEC's decision (i.e., to be proclaimed and to assume office) after the lapse of five (5) days from receipt of said decision by the losing

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party, unless restrained by the Supreme Court, does not bar the losing party from filing an election contest within the ten-day period fixed in Section 251. The absence of a restraining order from the Supreme Court simply allows the prevailing party to be proclaimed and assume office.

In Gallardo vs. COMELEC, G.R. No. 85974, May 30, 1989, the appellant did not ask this Court to restrain the execution of the COMELEC decision for the simple reason that his opponent, Rimando, had already been proclaimed even before the pre-proclamation case was filed by him (Gallardo) in the COMELEC. That circumstance, was precisely the reason why the COMELEC dismissed the pre-proclamation case, for the rule is that after the winning candidate has been proclaimed and assumed office, a pre-proclamation petition does not lie against him.

But, although already proclaimed and installed in office, he may still be unseated: (1) when his opponent is adjudged the true winner of the election by a final judgment of the courts in the election contest (Sec. 251, Omnibus Election Code); (2) when the prevailing party is declared ineligible or disqualified by final judgment in a quo warranto case (Sec. 253, Omnibus Election Code); and (3) when the incumbent is removed from office for cause. (Gallardo vs. Rimando, 187 SCRA 463 [1990], Griño-Aquino, J.).

§9. It will thus be seen that Rule 35 of the COMELEC Rules of Procedure merely reproduced the provisions of Art. XXI, Sec. 254 of the Omnibus Election Code. There is no basis for petitioner’s contention that the COMELEC has no power to prescribe the procedure for election contests filed in the Regional Trial Courts and those filed in the Municipal Trial Courts. The timeliness of petitioner’s protest must therefore be determined in accordance with the rules of the COMELEC. (Lim vs. Commission on Elections, 282 SCRA 53 [1997], Mendoza, J.).

§10. At the outset, we notice that petitioner exhibits an ambivalent stand as to what exactly is the nature of the remedy he availed of at the time he initiated proceedings before the COMELEC in SPC No. 98-134. At the start, he anchors his initiatory petition under Section 6 of the Omnibus Election Code regarding failure of elections but he later builds his case as a pre-proclamation controversy which is covered by Sections 241-248 of the Omnibus Election Code, as amended by R.A. No. 7166. In this respect, the rule is, what conjointly determine the nature of a pleading are the allegations therein made in good faith, the stage of the proceeding at which it is filed, and the primary objective of the party filing the same. In any case, petitioner nonetheless cannot succeed in either of the remedies he opted to pursue. Recently, in Matalam v. Commission on Elections, we have already declared that a pre-proclamation controversy is not the same as an action for annulment of election results or declaration of failure of elections, founded as they are on different grounds. (Sison vs. Commission on Elections, 304 SCRA 170 [1999], Romero, J.).

§11. The reason for this is that unless the proclamation of a winning candidate is suspended or, if it has been held, set aside, the policy behind the allowance of pre-proclamation controversies, i.e., to prevent losing candidates from grabbing the proclamation and delaying the resolution of the electoral contest, will be defeated. Thus, in Esquivel v. Commission on Elections, it was held that the 10-day period for filing an election protest under Section 289 of the former Election Code was suspended by the filing of a petition for annulment of proclamation.

The filing of pre-proclamation controversies under Sec. 248 of the Omnibus Election Code, however, is not the only ground for the suspension of proclamation. Two other instances are provided in R.A. No. 6646, known as the “The Electoral Reforms Law of 1987,” viz: (1) Under Sec. 6 of the statute, the COMELEC may, upon motion of the complainant in an action for disqualification, suspend the proclamation of the winning candidate if the evidence of his guilt is strong, and (2) under Sec. 7 thereof, the COMELEC may likewise suspend the

proclamation of the winning candidate if there is ground for denying or canceling his certificate of candidacy. x x x These actions are in the nature of pre-proclamation controversies and, therefore, like pre-proclamation contests, their filing is a ground for the suspension of proclamation and, consequently, of the period for filing either an election protest or a petition for quo warranto.

Petitioner is correct that SPA No. 98-356 is not a pre-proclamation controversy. Much less is it a petition for disqualification or for the denial or cancellation of a certificate of candidacy. Indeed, private respondent does not claim that her petition raises pre-proclamation issues. She frankly admits that SPA No. 98-356 is a petition filed under Sec. 6 of the Omnibus Election Code for a declaration of failure of election. In fact, her petition clearly states its nature, as it is denominated PETITION TO DECLARE A FAILURE OF ELECTION AND/OR TO ANNUL THE ELECTION RESULTS IN THE MUNICIPALITY OF KABUNTALAN, FIRST DISTRICT OF MAGUINDANAO.

Private respondent, on the other hand, contends that as long as there is a prayer for the annulment of a proclamation, the filing of such petition effectively suspends the running of the period for filing an election protest. This contention has no merit. Not all actions seeking the annulment of proclamation suspend the running of the period for filing an election protest or a petition for quo warranto. For it is not the relief prayed for which distinguishes actions under Sec. 248 from an election protest or quo warranto proceedings, but the grounds on which they are based.

As this Court pointed out in Dimaporo v. Commission on Elections: It may well be true that public policy may occasionally permit the occurrence of “grab the proclamation and prolong the protest” situations; that public policy, however, balances the possibility of such situations against the shortening of the period during which no winners are proclaimed, a period commonly fraught with tension and danger for the public at large. (Dagloc vs. Commission on Elections, 321 SCRA 273 [1999], Mendoza, J.).

22. Payment of the required filing fees/cash deposit

§1. While the law prohibits the court from entertaining a motion of protest in election cases, until the protestant gives a bond in an amount to be fixed by it, the bond need not be given within the time fixed for filing the motion of protest. The bond may be given within a reasonable time after the amount is fixed by the court.

After the court has acquired jurisdiction of an election protest by the presentation of the motion of protest within time and proper notice is given and the bond has been filed, it deprives the protestant of his right to be heard upon the merits of his cause by dismissing the protest and mandamus will issue to compel a reinstatement of the same and a hearing upon the merits. (Ancheta and Aguilar vs. Judge, Court of First Instance of La Union, 40 Phil. 73 [1919], Per Curiam).

§2. While it is true that the original petition for quo warranto contesting the right to office of proclaimed candidates was mailed, addressed to the clerk of the court of first instance, within the one week period after the proclamation provided therefor by law (Section 173, Revised Election Code), it is likewise a fact that the required docket fees were paid only after the expiration of said period, consequently, it is held that the date of such payment must be deemed to be the real date of filing of the aforesaid petition and not the date when it was mailed. (Malimit vs. Degamo, 12 SCRA 450 [1964], Dizon, J.).

§3. Court acquired jurisdiction by the seasonable filing of an original protest and prompt payment of the required fees then prevailing and protestants should not be deprived of their right to be heard on the merits of their case.

It is true that under Section 7 of Resolution No. 1451, failure to make the cash deposits within the prescribed time limit shall result in the automatic dismissal of the protest. That provision, however, finds no application herein. Petitioners were not remiss in complying with the rules nor with the Order of respondent Court dated February 28, 1980. This is so because they had seasonably filed their motions for extension of time within which to comply, based on meritorious grounds, the last of which was unacted upon by the Court x x x. There should be no question but that the filing of an election protest and with it the payment of the docket fees should be done within the statutory period, and that no extensions of said period are legally permissible. The factual environment in the instant case, as above explained, however, removes this case from the rigid application of that mandatory rule. (De Leon vs. Guadiz, Jr., 104 SCRA 591 [1981], Melencio-Herrera, J.).

§4. We now proceed to resolve the issue anent the dismissal of petitioner's election protest by the Regional Trial Court for non-payment, or more accurately the incomplete payment, of docket fees. Ordinarily, with the reversal of the respondent Commission's questioned order, this case should be remanded to said court for adjudication on the merits. Considering, however, the exigencies of time appurtenant to the disposition of election cases, and considering further that the issue has at any rate been squarely raised in this petition, it is now incumbent upon this Court to act on the propriety of the trial court's order dismissing the election protest for failure of petitioner to pay the correct amount of docket fees. In dismissing petitioner's action, the trial court relied on the rulings enunciated in the cases of Malimit v. Degamo (an action for quo warranto), Magaspi, et al. vs. Ramolete, et al. (a suit for recovery of possession and ownership of land), Lee vs. Republic (a petition for declaration of intention to become a Filipino citizen), Manchester Development Corporation vs. Court of Appeals, et al. (an action for a sum of money and damages), Sun Insurance Office, Ltd. (SIOL) et al. vs. Asuncion. (a suit for a sum of money and damages), and Tacay, et al. vs. Regional Trial Court of Tagum, Davao del Norte, etc. et al. (an action for damages). It bears emphasis that the foregoing cases, except for Malimit v. Degamo, are ordinary civil actions. This fact alone would have sufficed for a declaration that there was no basis for the dismissal of petitioner's protest for the simple reason that an election contest is not an ordinary civil action. Consequently the rules governing ordinary civil actions are not necessarily binding on special actions like an election contest wherein public interest will be adversely affected.

Furthermore, there are strong and compelling reasons to rule that the doctrine we have established in Manchester and cases subsequent hereto cannot be made to apply to election cases. As we have earlier stated, the cases cited are ordinary civil actions whereas election cases are not. The rules which apply to ordinary civil actions may not

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necessarily serve the purpose of election cases, especially if we consider the fact that election laws are to be accorded utmost liberality in their interpretation and application, bearing in mind always that the will of the people must be upheld. Ordinary civil actions would generally involve private interests while all election cases are, at all times, invested with public interest which cannot be defeated by mere procedural or technical infirmities.

In the case now before us, and in election cases in general, it is not the amount of damages, if any, that is sought to be recovered which vests in the courts the jurisdiction to try the same. Rather, it is the nature of the action which is determinative of jurisdiction. Thus, regardless of the amount of damages claimed, the action will still have to be filed with the Regional Trial Court. In such a case, the evil sought to be avoided in Manchester and like cases will never arise. Peremptorily, there will be no occasion to apply the rulings in the cases mentioned. In addition, the filing fee to be paid in an election case is a fixed amount of P300.00. There will consequently be no opportunity for a situation to arise wherein an election contest will have to be dismissed for failure to state the exact amount of damages and thus evince an intent to deprive the Government of the docket fees due.

To summarize, the evil sought to be avoided in Manchester and similar cases can never obtain in election cases since (1) the filing fee in an election case is fixed and not dependent on the amount of damages sought to be recovered, if any; and (2) a claim for damages in an election case is merely ancillary to the main cause of action and is not even determinative of the court's jurisdiction which is governed by the nature of the action filed. (Pahilan vs. Tabalba, 230 SCRA 205 [1994], Regalado, J.).

§5. Section 10, Rule 35 of the Comelec Rules and Procedure is clear that cash deposit should be made by the counter-protestant which shall be applied to the payment of all expenses incidental to the counter-protest. Under Section 7 (b), Rule 35 of the Comelec Rules of Procedure, a counter-protest is that filed by the protestee who desires to impugn the votes received by the protestant in other precincts. (Roa, Sr. vs. Imbing, 231 SCRA 57 [1994], Nocon, J.).

§6. Even on the merits, we think the First Division of the COMELEC properly dismissed petitioner's appeal from the decision of the trial court because of his failure to pay the appeal fee within the time for perfecting an appeal. In accordance with Section 2 (b) of COMELEC Resolution No. 2108-A, the appeal fee must be paid within the period to perfect the appeal. This resolution, which was promulgated on July 14, 1989, superseded COMELEC Resolution No. 1456 on which petitioner relies for his contention that the fee is to be paid only upon the filing of the appeal brief. (Reyes vs. Regional Trial Court Oriental Mindoro, Branch XXXIX, 244 SCRA 41 [1995], Mendoza, J.).

§7. It is the payment of the filing fee that vests jurisdiction of the court over the election protest, not the payment of the docket fees for the claim of damages and attorney's fees. For failure to pay the filing fee prescribed under Section 9, Rule 35 of the COMELEC Rules of Procedure, the election protest must be dismissed. Under Section 9, Rule 35 of the COMELEC Rules of Procedure, "[n]o protest x x x shall be given due course without the payment of a filing fee in the amount of three hundred pesos (P300.00) for each interest." (Gatchalian vs. Court of Appeals, 245 SCRA 208 [1995], Quiason, J.).

§8. The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal (Dorego vs. Perez, 22 SCRA 8 [1968]; Bello vs. Fernandez, 4 SCRA 135 [1962]). In both original and appellate

cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees as held in Acda vs. Minister of Labor, 119 SCRA 306 (1982). The requirement of an appeal fee is by no means a mere technicality of law or procedure. It is an essential requirement without which the decisions appealed from would become final and executory as if no appeal was filed at all. The right to appeal is merely a statutory privilege and may be exercised only in the manner prescribed by, and in accordance with the provision of law. (Rodillas vs. Commission on Elections, 245 SCRA 702 [1995], Quiason, J.).

§9. In support of his arguments petitioner cites the case of Roleto Pahilan v. Rudy Tabalba, wherein the Court proceeded to rule on the election protest brought to it which was dismissed in the trial court due to incomplete payment of docket fees. The Court stated that the trial court had "no basis for the dismissal of petitioner's protest for the simple reason that an election contest is not an ordinary civil action. Consequently, the rules governing ordinary civil actions are not necessarily binding on special actions like an election contest wherein public interest will be adversely affected. x x x. The rules which apply to ordinary civil actions may not necessarily serve the purpose of election cases, especially if we consider the fact that election laws are to be accorded utmost liberality in their interpretation and application bearing in mind always that the will of the people must be upheld. Ordinary civil actions would generally involve private interests while all election cases are, at all times, invested with public interest which cannot be defeated by mere procedural and technical infirmities." The Court, however, in Rodillas v. COMELEC categorically made a pronouncement that "the requirement of an appeal fee is by no means a mere technicality of law or procedure. It is an essential requirement without which the decision to be appealed from would become final and executory as if no appeal was filed at all. The right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provision of the law". (Calucag vs. Commission on Elections, 274 SCRA 405 [1997], Romero, J.).

§10. Thus, there was an incomplete payment of the filing fees by private respondents in the amount of P32.00. We note that a number of cases involving payment of the incorrect filing fees have been brought before this Court. In fact, the case at bar is similar to the recent case of Loyola v. COMELEC where the Clerk of Court likewise assessed the incorrect filing fee of P32.00 and the trial court remedied the situation by requiring the parties to pay the balance of P268.00. In said case, we traced the confusion as to the assessment of the correct fees, thus: "The key issue is whether the RTC acquired jurisdiction over private respondent's election protest despite the payment, upon the filing thereof, of only a part of the filing fee fixed in Section 9 of Rule 35 of the COMELEC Rules of Procedure which fixes the filing fee at P300. Yet, the Clerk of Court assessed and collected only the sum of P32. Evidently, the Clerk of Court had in mind the former Section 5(a)(11), Rule 141 of the Rules of Court on filing fees. The error of the Clerk of Court could be due to ignorance of Section 9 of Rule 35 of the COMELEC Rules of Procedure and this Court's 4 September 1990 resolution amending Rule 141 of the Rules of Court on filing fees. Or it could be due to sheer confusion as to which rule would apply in assessing the filing fee considering that the election protest falls within the exclusive original jurisdiction of the Regional Trial Court, in which case the Rules of Court may govern, and that the COMELEC Rules of Procedure was primarily intended to govern election cases before the COMELEC. This ignorance or confusion, however, was not fatal to private respondent's cause. The application by the Clerk of Court of Section 5 of Rule 141 of the Rules of Court substantially vested the RTC with jurisdiction over the election protest. Although this Court had given its imprimatur to said Section 9 of Rule 35 of the COMELEC Rules of Procedure, the failure of the Clerk of Court to take said section into account is a technicality which cannot be allowed to defeat the viability of the election protest." (Emphasis supplied.) Thus, in the case at bar, it was the amount of P32.00 which was incorrectly assessed by the clerk of court as filing fee. This constitutes an incomplete payment of the P300.00 filing fee required under the COMELEC Rules and correctible by payment of the deficiency in the amount of P268.00.

Nonetheless, we reiterate the caveat in Loyola v. COMELEC that in view of said case and those of Pahilan and Gatchalian, the Court would no longer tolerate any mistake in the payment of the full amount of filing fees for election cases filed after the promulgation of the Loyola decision on March 25, 1997. (Miranda vs. Castillo, 274 SCRA 503 [1997], Puno, J.).

§11. It may be argued that unlike in the case of election protests, no period is provided for to make the cash deposit in the case of petitions for quo warranto. However, the cash deposit required in quo warranto cases is fixed, i.e., P5,000.00. It does not vary nor can it be varied; it is required to be paid together with the filing fee at the time the petition is filed. It is different from a protest and/or counter-protest where the amount of the required cash deposit is yet to be determined since it has to be based on the number of ballot boxes and other election documents and paraphernalia to be collected and brought to the Tribunal. Therefore, depending on the amount that may be required for the collection of the ballot boxes and other election documents and paraphernalia, the parties are given specified periods within which to pay. Thus, when the required amount of cash deposits does not exceed P75,000.00, the party concerned must make the deposit within ten (10) days after the filing of the protest or counter-protest; otherwise, when it exceeds P75,000.00 he is required to make a partial deposit of at least P75,000.00 likewise within ten (10) days and the balance payable in installments as may be determined by the Tribunal.

Petitioners herein, Perla Garcia, Paz Cruz and Geraldine Padernal, filed their petition for quo warranto on May 29, 1998. However, the required cash deposit of P5,000.00 was paid only on June 26, 1998, which was after the dismissal of the petition and only after an unreasonable delay of twenty-eight (28) days. Indeed, in dismissing the petition the HRET acted judiciously, correctly and certainly within its jurisdiction. It was a judgment call of the HRET which is clearly authorized under its Rules. As long as the exercise of discretion is based on well-founded factual and legal basis, as in this case, no abuse of discretion can be imputed to the Tribunal. (Garcia vs. House of Representatives Electoral Tribunal, 312 SCRA 353 [1999], Ynarez-Santiago, J.).

§12. This ruling of the trial court directly contravenes this Court's explicit pronouncement in Gatchalian v. Court of Appeals declaring in no uncertain terms that¾It is the payment of the filing fee that vests jurisdiction of the court over the election protest, not the payment of the docket fees for the claim of damages and attorney's fees. For failure to pay the filing fee prescribed under Section 9, Rule 35 of the COMELEC Rules of Procedure, "[n]o protest x x x shall be given due course without the payment of a filing fee in the amount of Three Hundred Pesos (P300.00) for each interest."

The subsequent payment of the filing fee on June 6, 1997 will not extricate petitioner from his predicament considering that before the payment of the filing fee, a case is not deemed duly registered and docketed. In other words, the date of the payment of the filing fee is deemed the actual date of the filing of the election protest and, viewed vis-á-vis Section 3, Rule 35 of the COMELEC Rules of Procedure which provides that¾"SEC. 3. Period to file petition.¾The petition shall be filed within ten (10) days following the date of proclamation of the results of the election." The subsequent payment of the filing fee on June 6, 1997 did not cure the jurisdictional defect because the said date which is deemed the actual date of filing the election protest is twenty-five (25) days after the proclamation of the results of the election on May 12, 1997 and, needless to state, way beyond the ten-day

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reglementary period to file the same. (Melendres, Jr. vs. Commission on Elections, 319 SCRA 262 [1999], Ynares-Santiago, J.).

§13. Petitioner did not comply with the requirements for filing an election protest. He failed to pay the required filing fee and cash deposits for an election protest. Failure to pay filing fees will not vest the election tribunal jurisdiction over the case. Such procedural lapse on the part of a petitioner would clearly warrant the outright dismissal of his action. (Banaga, Jr., vs. Commission on Elections, 336 SCRA 701 [2000], Quisumbing, J.).

§14. Close scrutiny of the receipts will show that private respondent failed to pay the filing fee of P300.00 for his protest as prescribed by the COMELEC rules. The amount of P368.00 for which OR 7023752 was issued was for the Judiciary Development Fund as shown by the entries in the cash book of the clerk of court. Thus, only P32.00 with OR 7022478 credited to the general fund could be considered as filing fee paid by private respondent for his protest. A court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. Patently, the trial court did not acquire jurisdiction over private respondent's election protest. Therefore, COMELEC gravely erred in not ordering the dismissal of private respondent's protest case.

Errors in the payment of filing fees in election cases is no longer excusable. And the dismissal of the present case for that reason is, in our view, called for. (Soller vs. Commission on Elections, 339 SCRA 685 [2000], Quisumbing, J.).

23. Mistake committed by a receiving clerk of court

§1. Where in an election contest, due to a mistake by the Clerk of Court, the ordinary form of summons used in civil cases giving 15 days within which to answer was served upon the protestee, it is held that such error cannot prevail over a specific provision of the election law requiring answer within five days. (Conui-Omega vs. Samson, 118 Phil. 1333 [1963]; 9 SCRA 493 [1963], Bautista Angelo J.).

§2. Prescinding from the fact that the verified petitions each carried in paragraph 5 thereof the equivalent of proof of notice and therefore the separate individual affidavits of service of notice required by respondent clerk of court might be deemed a surplusage, respondent clerk could not likewise officiously arrogate unto himself the prerogative of passing upon the sufficiency and validity of the proof of notice incorporated in the petition. His was the ministerial function, particularly in election cases, of receiving the petitions and docketing the same, instead of raising the alleged defects in form or substance which delayed and prevented the docketing during office hours of the petitions, to the prejudice of the public interest involved. (Batioco vs. Bautista, 42 SCRA 192 [1971], Teehankee, J.).

§3. The key issue is whether the RTC acquired jurisdiction over private respondent's election protest despite the

payment, upon the filing thereof, of only a part of the filing fee fixed in Section 9 of Rule 35 of the COMELEC Rules of Procedure which fixes the filing fee of P300. Yet, the Clerk of Court assessed and collected only the sum of P32. Evidently, the Clerk of Court had in mind the former Section 5(a)(11), Rule 141 of the Rules of Court on filing fees. The error of the Clerk of Court could be due to ignorance of Section 9 of Rule 35 of the COMELEC Rules of Procedure and this Court's 4 September 1990 resolution amending Rule 141 of the Rules of Court on legal fees. Or it could be due to sheer confusion as to which rule would apply in assessing the filing fee considering that the election protest falls within the exclusive original jurisdiction of the Regional Trial Court, in which case the Rules of Court may govern, and that the COMELEC Rules of Procedure was primarily intended to govern election cases before the COMELEC. This ignorance or confusion, however, was not fatal to private respondent's cause. The application by the Clerk of Court of Section 5 of Rule 141 of the Rules of Court substantially vested the RTC with jurisdiction over the election protest. Although this Court had given its imprimatur to said Section 9 of Rule 35 of the COMELEC Rules of Procedure, the failure of the Clerk of Court to take said section into account is a technicality which cannot be allowed to defeat the viability of the election protest.

Indisputably, there was only incomplete payment of the filing fee under Section 9 of Rule 35 of the COMELEC Rules of Procedure, which was not at all attributable to private respondent, who forthwith paid the deficiency upon a subsequent order by the RTC. In short, there was substantial compliance with the filing fee requirement in election cases. (Loyola vs. Commission on Elections, 270 SCRA 404 [1997], Davide, Jr., J.).

24. Amendments to the Protest

§1. In accordance with said section, when a court dismisses a complaint, when the petitioner stands ready to amend the same, upon a mere technicality and thereby deprives the parties of their day in court, mandamus will issue for the purpose of acquiring a reinstatement of said cause, for the purpose of giving the party a hearing, and if necessary, to permit him to amend his pleadings. (Galang vs. Miranda and De Leon, 35 Phil. 269 [1916], Johnson, J.).

§2. In election contests, the motion of protest can only be amended within a reasonable time before the commencement of the trial, unless special reasons exist for permitting it after such period (Arnedo vs. Llorente and Liongson, 18 Phil., 257; Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil., 428). (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921]. Villamor, J.).

§3. Amendments to a "motion of protest" in election contest cases, to enable the proceedings to be considered, may be made, provided such amendments do not essentially change the grounds of the contest, or set forth grounds where none were originally stated; but where the amendments are so radical as to virtually initiate a contest where really no grounds at all had been alleged in the original motion of protest, they will not be permitted after the time allowed by law for the presentation of the original motion of protest. A dissatisfied candidate must be diligent. A motion of protest in election contest which fails to allege protestant's qualifications to maintain the

proceedings, cannot be amended to supply the omission after the lapse of the time which the statute allows for the commencement of the proceedings. The requirements of Section 44 of Act No. 3030 are jurisdictional. (Tengco vs. Jocson, 43 Phil. 715 [1922], Johnson, J.).

§4. When a revision of the ballots is thus undertaken it becomes unimportant whether the litigants have been correct in formulating their charges in motion or counter-motion; and it is not necessary that as the count proceeds they should make amendments in motion or counter-motion to conform exactly with the facts revealed upon the inspection of the ballots. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§5. The rule established by the jurisprudence of this court as to amendments to motion of protest is that amendments may be allowed when they do not essentially change the grounds of the protest, and may be made within a reasonable period before the commencement of the trial, unless there are special reasons for allowing the amendments after said period. But when the amendments are of such a nature as virtually to introduce new grounds not alleged in the original protest, said amendments must be filed within the period fixed by the law for filing protests (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil., 428; Cailles vs. Gomez and Barbaza, 42 Phil., 496; Tengco vs. Jocson, 43 Phil., 715). (Orencia vs. Araneta Diaz, 47 Phil. 830 [1925], Villamor, J.).

§6. Amendments to the protest are allowed, which, if they do not change the cause of action, may be presented within a reasonable time before the commencement of the trial, and even afterwards if there are special reasons therefor; and if they do change the grounds of the protest, they must be made within the period fixed by the law for the filing of protests (Orencia vs. Araneta Diaz, 47 Phil. 830; Valenzuela vs. Revilla and Carlos, 41 Phil. 4; Cailles vs. Gomez and Barbaza, 42 Phil. 496; Tengco vs. Jocson, 43 Phil. 715). (Gallares vs. Caseñas, 48 Phil. 362 [1925], Villamor, J.).

§7. The proposed amendments to the motions being not merely an elaboration of the grounds alleged in the original protest, but introducing additional grounds not previously alleged which essentially change the grounds of the protest, the trial court committed no error in denying said motions for having been presented out of time, that is, beyond the time provided by law for the presentation of protests, notwithstanding the fact that the alleged irregularities were not discovered until after the ballot boxes had been opened, because they are not mere defects of form or unessential omissions. (Orencia vs. Araneta Diaz, 47 Phil., 830; Tengco vs. Jocson, 43 Phil., 715; Cailles vs. Gomez and Barbaza, 42 Phil. 496; Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428; 20 C.J., 234-235). (Demeterio vs. Lopez, 50 Phil. 45 [1927], Villa-Real, J.).

§8. Section 481 of the Election Law, as subsequently amended by Act No. 3387, provides that the contestant shall reply to the allegations of the counter contest within ten days after notification. It is true that appellee’s reply, in the form of an amendment to the contest, was filed after the expiration of ten days, but as the trial was still pending and as the same precincts have been counter-contested, we rule that the court did not exceed its discretion in accepting the reply in the form of an amendment to the contest. We have held in several cases that election contests submitted to the courts affect the public interest, and that when the ballot boxes are opened by order of the court taking cognizance thereof, it is the latter’s duty to examine all their contents and to adjudicate the valid

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votes found therein to either one of the candidates. And the reason for this rule is, that in such cases the primary aim must be to carry out the will of the electorate as expressed in the ballots. (Lucero vs. De Guzman, 45 Phil., 552; Yalung vs. Atienza, 52 Phil., 781; Quesada vs. Bagabaldo, G.R. No. 30262, February 13, 1929, not reported; Olano vs. Tibayan, 53 Phil., 168).

That the counter-protest relative to said precincts had been later withdrawn by the appellant does not alter the legal aspect of the case, nor did it warrant the striking out of the reply, especially in view of the fact that the ballot boxes were already opened and the ballots had been examined. (Cecilio vs. Tomacruz, 62 Phil. 689 [1935], Imperial, J.).

§9. To allow an amendment to the motion of protest by inserting new precincts after the time prescribed by the statute for filing the original motion, would be productive of surprise to the contestee and of disadvantage to him, unless the trial be postponed to enable him to meet the issues thus newly raised. (Fernando vs. Endencia, 66 Phil. 148 [1938], Abad Santos, J.).

§10. The protestant may not be allowed to amend his motion of protest so as to introduce new matters or new precincts beyond the period fixed for the filing of the election protest. (Velez vs. Varela, 93 Phil. 282 [1953], Reyes, J.).

§11. Amendments to petitions of election protests may be allowed when they do not essentially change the grounds of the protest, and may be made within a reasonable period before the commencement of the trial, unless there are special reasons for allowing amendments after said period. But when the amendments are of such nature that virtually introduce new grounds not alleged in the original protest, said amendments must be filed within the period fixed by the law for filing protest.

The specification in the motion of protest of the election precinct or precincts where the irregularities occurred, is required in order to apprise the contestee of the issues which he has to meet. To allow an amendment to the motion of protest by inserting new precincts after the time prescribed by the statute for filing the original motion, would be productive of surprise to the contestee and of disadvantage to him, unless the trial be postponed to enable him to meet the issues thus newly raised. (Almeda vs. Silvosa, 100 Phil. 844 [1957], Felix, J.).

§12. A substantial amendment, introducing new grounds of protest (new matter or new precincts), is only allowed within the time granted by law for the filing of a protest or counter-protest (Orencia vs. Araneta, 47 Phil. 830; Fernando vs. Endencia, 66 Phil. 148; Velez vs. Varela, 93 Phil., 283; Almeda vs. Silvosa, supra, p. 844.) The rule not only aims at protecting the other party from unfair surprise, but primarily tends to implement the speedy determination of election contests, in consonance with the legislative policy that such contests be decided within one year. (Robles vs. Del Rosario, et al., 100 Phil. 886 [1957], Reyes, J.B.L., J.).

§13. The rule in an election protest is that the protestant or counter protestant must stand or fall upon the issues he had raised in his original or amended pleading filed prior to the expiration of the statutory period for the filing of protest or counter protest.

Where the Protest filed clearly impugned or assailed the election held in all the precincts of the city or municipality, as not free, orderly or honest, and characterized by gross and rampant frauds, terrorism, coercion, corrupt practices, and other election irregularities, resulting in the electors having been prevented from expressing their free choice, and the protestee joined issue with the adverse party alleging in their answer that the election in question was held in the cleanest, most peaceful and honest manner, its result reflecting the true and clear will of the electorate; that the election in all of the precincts was free and orderly; and was not farcical, the regularity of

the election held in all the precincts of that city or municipality was squarely in issue, and the mere addition of several precincts to those enumerated in the original Protest did not constitute a substantial amendment or change the ground of protest alleged by the protestants in their original pleading. The opposing parties were not thereby forced to face new issues, such addition being merely in the nature of a bill of particulars in relation to the issue properly raised in the original Protest. (Ticao vs. Nañawa, 5 SCRA 946 [1962], Dizon, J.).

§14. The admission by the trial court of the amended petition of protest after the statutory period for filing a protest had expired, although the amendment consisted of the inclusion of a precinct not included in the original petition, is held not to be incorrect where the said precinct was then already within the jurisdiction and cognizance of the court, being one of those made by the protestee the subject of his counter-protest.

The allegation in the election protest that fraud and irregularities were committed in the counting of votes in two precincts referred to therein and that if they were recounted the protestant would appear to have received more votes than the protestee, is sufficient for jurisdictional purposes. (Gadon vs. Gadon, 118 Phil. 1502 [1963]; 9 SCRA 652 [1963], Makalintal, J.).

§15. On the procedural aspect, it is established that amendments to pleadings may be permitted by this Court even for the first time on appeal in order to substitute the name of the real party in interest provided that such an amendment would not involve a change in the cause of action or result in undue prejudice to the adverse party. For, as long as there is justice done upon the merits, all the imperfections of form and technicalities of procedure ought to be brushed aside as wholly trivial and indecisive.

It follows, therefore, that the election protest filed by private respondent can and ought to be amended by striking out the name of Hadji Minandang Guiling, as the protestee, and substituting, in his place, petitioner Baquit S. Unda. Besides, we do not find that such a course of procedure will be productive of any undue substantial prejudice to herein private respondent. For that matter, said procedure should have been inceptively adopted by the trial court under the circumstances of the election case before it. (Unda vs. Commission on Elections, 190 SCRA 827 [1990], Regalado, J.).

§16. Granting that private respondent’s change in theory (being a substantial amendment) is merely disallowed and not a valid ground for the outright dismissal of his election protest, nonetheless it has been consistently held that substantial amendments to the protest maybe allowed only within the same period for the filing of the election protest which, under Rule 16 of the HRET Rules, is ten (10) days after the proclamation of the winner. Private respondent’s “precinct-level document-based anomalies/evidence” theory having been introduced only at the homestretch of the proceedings, he is bound by the issue which he essentially raised in his election protest and that is, a revision of the ballots will confirm his victory and the irregularities/anomalies and massive fraud foisted upon him during the 1992 synchronized elections.

For the rule in an election protest is that the protestant or counterprotestant must stand or fall upon the issues he had raised in his original or amended pleading filed prior to the lapse of the statutory period for the filing of protest or counter protest (italics supplied) Private respondent is therefore bound by the final results of the revision confirming petitioner’s victory over him by a plurality of 13,092 votes. Petitioner’s inevitable victory in the revision was even conceded to by private respondent himself when he stated in his memorandum cum addendum that: “x x x in disputing the sham victory of protestee, the anticipated/expected results of the regular, traditional and normal process of REVISION of ballots, would, by itself, be unavailing and insufficient to

overturn protestee's supposed victory" (quoted on p. 6 of this decision). This statement is clearly an admission against private respondent's own interest equally binding and conclusive upon him, there being no showing that he made it through palpable mistake. (Section 4, Rule 129, Rules of Court). (Arroyo vs. House of Representatives Electoral Tribunal, 246 SCRA 384 [1995], Francisco, J.).

§17. An amendment which merely supplements and amplifies facts originally alleged in the complaint relates back to the date of the commencement of the action and is not barred by the statute of limitations which expired after the service of the original complaint.

The fact that Trinidad was already proclaimed and had assumed the position of mayor did not divest the COMELEC of authority and jurisdiction to continue the hearing and eventually decide the disqualification case. (Sunga vs. Commission on Elections, 288 SCRA 76 [1998], Bellosillo, J.).

25. Motion to dismiss

§1. A motion to dismiss a municipal election protest on the ground that the facts stated therein do not constitute a cause of action is really a demurrer; if it is sustained, the petitioner can amend his complaint or motion of protest, otherwise the decision of the court is final and not appealable, nor can it be reviewed on application for a writ of mandamus. (Ad. C., sec. 479). (De la Cruz vs. Revilla and Bustos, 40 Phil. 234 [1919]).

§2. In an election contest proceeding, if the protestee presents a motion to dismiss or a demurrer to the evidence introduced by the protestant after the latter has rested, he thereby impliedly waives his right to present his own evidence; and if the ruling on his motion or demurrer is adverse, he shall not be permitted to present such evidence as he may have, and the trial court shall finally decide the contest. (Demeterio vs. Lopez, 50 Phil. 45 [1927], Villa-Real, J.).

§3. The motion for dismissal filed by the contestee, which originated the judgment appealed from does not constitute an implied admission of the alleged facts in the protest. The purpose of such a motion was merely to raise before the court the question of jurisdiction over the subject matter, in view of the contestee's opinion that the protest did not allege a good jurisdictional cause of action. (Aquino vs. Calabia and Sahagun, 55 Phil. 984 [1931], Romualdez, J.).

§4. The constitutional right of due process requires that the adverse party, should be notified of such a motion to dismiss and be given the opportunity to file an objection to the same and be heard thereon. No matter how baseless an action may appear to be to the judge, his impression on the matter of its merit cannot justify a denial of the right of the adverse party to be notified and to be heard thereon. (Valencia, Jr., vs. Mabilangan, 105 Phil. 162 [1959], Labrador, J.).

§5. In election protests, therefore, the protestee should not be permitted to present a motion for dismissal or a demurrer to the evidence of the protestant, unless he waives the introduction of his own evidence in case the ruling on his motion or demurrer is adverse to him, in which case the court that tries the case must definitely decide it.

Neither is there merit in petitioner's contention that since he has already been proclaimed, the present complaint

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is no longer viable. The case filed by private respondent is not in reality a pre-proclamation case but one for annulment of election. Petitioner's having been proclaimed, his having taken his oath of office, and his having assumed the duties thereof, present no impediment to the prosecution of this case to its conclusion. (Jardiel vs. Commission on Elections, 124 SCRA 650 [1983], Melencio-Herrera, J.).

§6. In an election protest proceeding, however, which is a summary one, and in which the periods are short and fatal, and trials rapid and preferential as the peremptory nature of the litigation so requires, the motion for dismissal at that stage of the proceeding must be considered as a demurrer to the evidence presented by the protestant, with implied waiver by the protestee to present his evidence, whatever may be the ruling, whether adverse or favorable, either in the first instance or on appeal, the court of origin or appellate court having the power to definitely decide the protest. If, in the prosecution of election protests the ordinary practice were to be followed in regard to the presentation of motions for dismissal or of demurrers to the evidence, in the majority of cases, if not always, the law would be frustrated and the will of the electorate defeated, to the great detriment of the underlying principles of representative government, because, in case of revocation of a ruling sustaining the motion of dismissal or the demurrer on appeal, the case would have to be remanded to the court below for the continuation of the trial and the introduction of evidence by the protestee, thus causing the proceeding to continue during the term of the office in question, with the possible result that the defeated, and not the elected, candidate would be discharging the office (Calabig vs. Villanueva, 135 SCRA 300 [1985], Cuevas, J.).

§7. It must be noted that nowhere in Part VI of the COMELEC Rules of Procedure is it provided that motions to dismiss and bill of particulars are not allowed in election protests or quo warranto cases pending before the regular courts.

Constitutionally speaking, the COMELEC can not adopt a rule prohibiting the filing of certain pleadings in the regular courts. The power to promulgate rules concerning pleadings, practice and procedure in all courts is vested on the Supreme Court. (Aruelo, Jr. vs. Court of Appeals, 227 SCRA 311 [1993], Quiason, J.)

§8. Petitioner's argument that the filing of a motion to dismiss in an election contest filed with a regular court is not a prohibited pleading is well taken. As we pointed out in Melendres, Jr. v. COMELEC: Neither can petitioner seek refuge behind his argument that the motion to dismiss filed by private respondent is a prohibited pleading under Section 1, Rule 13 of the COMELEC Rules of Procedure because the said provision refers to proceedings filed before the COMELEC. The applicable provisions on the matter are found in Part VI of the Rules of Procedure titled "PROVISIONS GOVERNING ELECTION CONTESTS BEFORE TRIAL COURT" and as this Court pointedly stated in Aruelo v. Court of Appeals: It must be noted that nowhere in Part VI of the COMELEC Rules of Procedure is it provided that motions to dismiss and bill of particulars are not allowed in election protests or quo warranto cases pending before regular courts. Constitutionally speaking, the COMELEC cannot adopt a rule prohibiting the filing of a certain pleading in the regular courts. The power to promulgate rules concerning pleadings, practice and procedure in all courts is vested in the Supreme Court. (Maruhom vs. Commission on Elections, 331 SCRA 473 [2000], Ynares-Santiago, J.).

26. Answer

§1. In the Comment of the Solicitor General, reference was made to Arcenas v. Commission on Elections, specifically this excerpt: “It is now the prevailing doctrine that after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable. As was pointed out in the Venezuela opinion: ‘It would save the time and energy of the litigants as well as respondent Commission, and eventually this Court in review of its appellate jurisdiction, if the matter were passed upon in an election protest or quo warranto petition in the proper court or agency, the office involved being that of municipal mayor.’” The Arcenas decision was promulgated on November 28, 1980. An earlier case, Villegas v. Commission on Elections, is apropos. For in that case as in this petition, the grounds alleged are more appropriate for an election protest. An election contest is therefore the appropriate remedy. A pre-proclamation controversy is no longer viable. Considering the time that has elapsed, the possibility that after the pre-proclamation controversy an election protest may still be filed, and the imminence of the coming elections for local government officials, it is more in keeping with the letter and spirit of the constitutional provision on suffrage, the intent of which is to ascertain the true expression of the people’s will—a voter being a particle of a popular sovereignty—that this petition be dismissed. (Perez vs. Commission on Elections, 134 SCRA 533 [1985], Fernando, C.J.).

§2. The petition is devoid of merit. Consequently, its dismissal is in order. It cannot be denied and petitioner does not controvert, that nothing new is sought to be introduced in his Amended Answer. He admits that the amendments incorporated consist merely of allegations of ultimate facts in amplification or elaboration of the ground already previously alleged in his original Answer, not new grounds; that some of the amendments merely consist of a change in phraseology; and insofar as the counter-protest is concerned, the amendment consists merely in the introduction of a new statement of facts which do not change essentially the grounds of the protest but merely an elaboration of those already alleged.

Considering the subject, scope and text of the amendment in dispute, We perceive no harm nor any prejudice petitioner may sustain by the denial of his motion to amend, either procedurally or from the evidentiary point of view. On the basis of the allegations of the original and the amended answer, there is nothing that petitioner could accomplish by way of proof under his amended Answer which he is precluded from so doing under his original Answer. And this is because no new material matters which may come within the purview of substantial amendment appeared alleged in petitioner’s amended answer. We therefore fully subscribe to the observation aptly made by the Honorable respondent Judge that to allow and entertain petitioner’s amended answer will only delay disposition of the pending election protest filed by petitioner against private respondent and vice versa it appearing that the issue of private respondent’s disqualification and those allegations in relation to petitioner’s counter-protest are essentially mere elaboration of the previous grounds already set forth in the original Answer.

The only limitations to this liberal policy of allowing amendments are: that the cause of action, defense or theory of the case is substantially changed although this is not an inflexible rule; that the amendment will result in the alteration of a final judgment on a substantial matter; that the amendment is for the purpose of making the complaint confer jurisdiction upon the court when none existed before; that the amendment is for the purpose of curing a premature or non-existing cause of action; and finally, that the amendment is for purposes of delay.

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(Calabig vs. Villanueva, 135 SCRA 300 [1985], Cuevas, J.).

§3. Private respondent received a copy of the order of the Regional Trial Court denying his motion for bill of particulars on August 6, 1992. Under Section 1 (b), Rule 12 of the Revised Rules of Court, a party has at least five days to file his answer after receipt of the order denying his motion for a bill of particulars. Private respondent, therefore, had until August 11, 1992 within which to file his answer. The Answer with Counter-Protest and Counterclaim filed by him on August 11, 1992 was filed timely. (Aruelo, Jr. vs. Court of Appeals, 227 SCRA 311 [1993], Quiason, J.)

§4. Moreover, the fact that the HRET did not summarily dismiss the Petition Ad Cautelam, and instead, required the private respondent Abueg to file an Answer, the HRET has thus made a prior determination that the petition is sufficient in form and substance. We do not agree. In the first place, in requiring the private respondent to answer the petition, the HRET was not ruling on the formal and substantive sufficiency of the petition. The order to require an answer is but a matter of course, as under the Revised Rules of Procedure of the HRET, it is provided that: “Rule 22. Summons.¾Upon the filing of the petition, the Clerk of the Tribunal shall forthwith issue the corresponding summons to the protestee or respondent together with a copy of the petition, requiring him within ten (10) days from receipt thereof to file his answer.”

A perusal of the Petition Ad Cautelam, reveals that Petitioner makes no specific mention of the precincts where widespread election, fraud and irregularities occurred. This is a fatal omission, as it goes into the very substance of the protest. Under Section 21 of the Revised Rules of Procedure of HRET, insufficiency in form and substance of the petition constitutes a ground for the immediate dismissal of the Petition. The prescription that the petition must be sufficient in form and substance means that the petition must be more than merely rhetorical. If the allegations contained therein are unsupported by even the faintest whisper of authority in fact and law, then there is no other course than to dismiss the petition, otherwise, the assumption of an elected public official may, and will always be held up by petitions of this sort by the losing candidate. (Peña vs. House of Representatives Electoral Tribunal, 270 SCRA 340 [1997], Torres, Jr., J.).

27. General denial

§1. No rule is better settled in pleading and practice than that neither party can prove facts which he has not alleged, if objection is properly made. Under a general denial, the defendant is permitted to present any evidence which disproves or tends to disprove any of the allegations in the complaint. The reason why “prescription” cannot be interposed under a demurrer, or a general denial, is the fact that the defendant thereby admits the allegations in the complaint, but seeks to avoid their effect by other proof. Evidence which amounts to a confession or an avoidance is not generally admissible under a general denial.

It frequently happens that defects in pleadings are cured by evidence admitted without objection. If the defective

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pleadings are cured by proof adduced during the trial of the cause, the court is justified in rendering his decision upon a preponderance of the proof, even though some of the important facts would not have been admitted had proper objection been made. (Karagdag vs. Barado, 33 Phil. 529 [1916], Johnson, J.).

§2. A general denial puts in issue the material allegations of the complaint, and, consequently, under such denial the protestee may present evidence which may disprove said allegations. But he cannot present evidence to any affirmative defense (Francisco, How To Try Election Cases, p. 136). It is in this sense that the terms "general denial" should be understood in election cases, for, to give it a different meaning would render the provisions of Section 176 (e) nugatory and meaningless, and that phrase would be purposeless if we were to hold that by "general denial" protestee would be deemed to have admitted all the material allegations of the protest. (Ibasco vs. Ilao, 110 Phil. 553 [1960], Bautista Angelo, J.).

§3. In an election contest, where summons was duly served upon protestee and yet he failed to file an answer within the period of five days but instead he filed a motion to dismiss on the 8th day, it is held that the court a quo was correct in declaring that protestee shall be deemed to have entered a general denial. (Conui-Omega vs. Samson, 118 Phil. 1333 [1963]; 9 SCRA 493 [1963], Bautista Angelo, J.).

§4. The interpretation of a general denial as entered against private respondent by public respondent HRET for failure of the former to file an answer on time as required by the Revised Rules of HRET is well-settled. A general denial is one which puts in issue all the material averments of the complaint or petition, and permits the defendant to prove any and all facts which tend to negative those averments or some one or all of them. As early as the case of Karagdag v. Barado, this Court held that under a general denial, the defendant is permitted to present any evidence which disproves, or tends to disprove, any of the allegations in the complaint. He cannot, however, present evidence to prove any affirmative defense as no rule is better settled in pleading and practice than that neither party can prove facts which he has not alleged, if objection is properly made.

No doubt, the cited rules reveal a prevailing intent to ensure that election cases be expeditiously settled. But nothing in the said rules shows the legislative intent to decide cases without hearing and on the basis merely of pleadings. Election cases, though summary in nature, must follow the prescribed Rules of the Tribunal. The rules clearly provide that general denial shall be deemed to have been entered. Were it the intent of the framers of the said Rules to do away with a hearing when protestee fails to file an answer within the time prescribed, it should have stated so in clear and unequivocal terms.

Petitioner cites noted author and former Senator Jovito R. Salonga in his book, Philippine Law of Evidence, 1958 Ed., page 127 that: "As a general proposition, therefore, where a material averment is not specifically denied, it is admitted to be true for purposes of the action and the plaintiff need not prove the truth of such allegations." Petitioner forgets that the Rules of Court do not recognize the general denial. Section 10, Rule 8 requires specific denial, i.e., defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters which he will rely upon to support his denial. Since specific denial is required, there is no question that any material averment not specifically denied is admitted to be true and need not be proved.

However, the issue at hand is the interpretation of the HRET Revised Rules where general denial is undoubtedly recognized and allowed. As a rule, except where specific denials are required, a general denial is sufficient, and denies all the material allegations of the pleading to which it is addressed. In other words, a general denial traverses all material averments of the pleading. It gives to the defendant the same right to require the plaintiff to establish by proof all the material facts necessary to his cause of action. It does not amount to an admission of the material allegations in the protest. Consequently, trial must follow. (Loyola vs. House of Representatives Electoral Tribunal, 229 SCRA 90 [1994], Nocon, J.).

28. Counter Protest

§1. While the Election Law provides when and how an election protest shall be commenced and the method by which the court obtains jurisdiction, it is silent upon the question when the protestees must appear and answer as well as upon the question of what defenses the protestees may present.

While the law does not specify what defenses the protestees may make, it is certainly contemplated by the law that any defense which they have which denies, or tends to deny, or has the effect of defeating, the purpose of the contest, is open to them. They may demur or answer. If they answer by special defense it may be by any fact or facts which defeat or tend to defeat the purpose of the contest.

A counter-protest is tantamount to a counter-claim in a civil action. The protestee may, by a counter-protest, show that by reason of fraud and irregularities the protestant cannot be declared elected, and that notwithstanding the frauds and irregularities alleged by the protestant, the protestee is still entitled to be proclaimed elected to the particular office.

While it is clear that the law contemplates the presentation of counter-protests on the part of the protestees, the law is silent upon the question when such counter-protests should be presented. The counter-protest being a part of the answer, it is clear that it need not be presented until the answer is presented. To require the counter-protest to be filed within the time the protest itself is filed would perchance defeat a counter-protest at all. There is no occasion for the presentation of the counter-protest until after the protest is presented. The counter-protest may be presented as a part of the answer and within the time the protestee is required to answer. (Valenzuela vs. Judge of Court of First Instance of Bulacan, 40 Phil. 163 [1919], Johnson, J.).

§2. A Court of First Instance will not be reversed for having permitted the contestee to amend his counter-protest three months after the contest had been begun, it appearing that no proof had at that time been taken by either party and that the taking of proof thereafter extended over a period of more than a year. (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428 [1921], Street, J.).

§3. The counterprotest in the instant case having been presented after the fifteen days' period fixed by law, and the protestee not having demurred to the protest, the lower court had no jurisdiction to pass upon and decide the question raised in the counterprotest. The admissibility or inadmissibility of the ballots involved in the counterprotest cannot, therefore, be examined and the election returns for the municipalities countercontested must stand. (Arrieta vs. Rodriquez, 57 Phil. 717 [1932], Villamor, J.).

§4. A counter-protest is tantamount to a counterclaim in a civil action and may be presented as a part of the answer within the time the protestee is required to answer the protest, so that, where, the protestee was granted an extension of time to answer the election protest of protestor until January 6, 1968, the filing by the protestee of a counter-protest together with the answer, before the expiration of the extended time, is filed within the statutory time limit. (Maliwanag vs. Herrera, 25 SCRA 175 [1968], Angeles, J.).

§5. It should be stressed that under the COMELEC Rules of Procedure, the protestee may incorporate in his answer a counterprotest. It has been said that a counterprotest is tantamount to a counterclaim in a civil action and may be presented as a part of the answer within the time he is required to answer the protest, unless a motion for extension is granted, in which case it must be filed before the expiration of the extended time. Apparently, the counterprotest of Espinosa was incorporated in his answer. And as what was revealed, this answer with counterprotest was filed only on June 15, 1995, which was obviously late for four (4) days. It appears that Espinosa did not file a motion for extension of time within which to file his answer with counterprotest. In the absence thereof, there is no basis then for the COMELEC First Division to admit the belatedly filed answer with counterprotest.

It is worthy to note that as early as in the case of Arrieta vs. Rodriguez, this Court had firmly settled the rule that the counterprotest must be filed within the period provided by law, otherwise, the forum loses its jurisdiction to entertain the belatedly filed counterprotest. In the case at bar, there is no question that the answer with counterprotest of Espinosa was filed outside the reglementary period provided for by law. As such, the COMELEC First Division has no jurisdictional authority to entertain the belated answer with counterprotest much less pass upon and decide the issues raised therein. It follows therefore that the order of July 26, 1995 which pertains to the admission of the answer with counterprotest of Espinosa as well as the other consequent orders implementing the order of admission issued by the COMELEC First Division are void for having been issued without jurisdiction. Even if petitioner Kho did not file a motion for reconsideration of the order dated July 26, 1995 admitting the answer with counterprotest, the jurisdictional infirmity, brought about by the late filing of the answer to the protest, persists and can not be cured by the omission on the part of the protestee-petitioner to seek a reconsideration of the order dated July 26, 1995. (Kho vs. Commission on Elections, 279 SCRA 463 [1997], Torres, Jr., J.).

§6. In the case of Maliwanag v. Herrera, the Court ruled that a counterprotest is equivalent to a counterclaim in a civil action and, therefore, must be presented as part of the answer within the time the protestee is required to answer the protest. In Kho v. COMELEC, this Court reiterated the long-standing rule that the counterprotest must be filed within the period provided by law, otherwise, the court acquires no jurisdiction to entertain it. Conformably to these cases, we hold that the COMELEC did not commit a grave abuse of discretion in upholding

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the trial court's refusal to conduct a revision of the ballots subject of petitioner's counterprotest since the answer with counterprotest was clearly filed out of time. The trial court had no jurisdiction to entertain the counterprotest. (Lim vs. Commission on Elections, 282 SCRA 53 [1997], Mendoza, J.).

§7. In Lim vs. COMELEC, citing Kho vs. COMELEC, this Court reiterated the long standing rule that a counterprotest must be filed within the period provided by law, otherwise, the court acquires no jurisdiction to entertain it. (Roquero vs. Commission on Elections, 289 SCRA 150 [1998], Kapunan, J.).

§8. A counterprotest is not a prohibited pleading under Rule 13 of the 1993 COMELEC Rules of Procedure. Such pleading is provided for under Ordinary Actions (Section 3, Rule 20, 1993 COMELEC Rules of Procedure) and is equivalent to an answer with a counterclaim under the 1997 Rules of Civil Procedure, which applies suppletorily to the COMELEC Rules of Procedure. (Trinidad vs. Commission on Elections, 320 SCRA 836 [1999], Buena, J.).

29. Summary dismissal

§1. Since the motion of protest does not show either expressly or by implication that it was filed within the two weeks following the date of the proclamation of the elected candidate, the lower court did not acquire jurisdiction over said motion of protest by its mere presentation, and said court did not err in dismissing it for lack of jurisdiction. (Yumul vs. Palma, 52 Phil. 412 [1928], Villa-Real, J.).

§2. The failure of the protestant to appear at the hearing and adduce evidence to substantiate the allegations of his protest, is ground for the dismissal of said protest. (Estella vs. Edaño, 115 Phil. 44 [1962]; 5 SCRA 65 [1962], Barrera, J.).

§3. A court may dismiss an action at the behest of the defendant when the plaintiff fails to prosecute his action for an unreasonable length of time. The dismissal of an action on this ground rests on the sound discretion of the court which must duly consider the facts and circumstances surrounding each particular case (Smith, Bell & Co. vs. American President Lines, Ltd. and Manila Terminal Co., 94 Phil. 879; Adorable vs. Bonifacio, L-10698, April 22, 1959; Flores vs. Philippine Alien Property Administrator, L-12741, April 27, 1960). Where the protestant has failed for an unreasonable length of time to prosecute his protest against the election of the respondent for governor and it appears that he ran for Congressman and filed two election protests against the candidate, who defeated him in the Congressional race, thus relegating to the background his bid for the gubernatorial position, the lower court did not abuse its discretion in dismissing his protest. (Ortega vs. De Guzman, 19 SCRA 391 [1967], Castro, J.).

§4. It is true that under Section 7 of Resolution No. 1451, failure to make the cash deposits within the prescribed time limit shall result in the automatic dismissal of the protest. That provision, however, finds no application herein. Petitioners were not remiss in complying with the rules nor with the Order of respondent Court dated February 28, 1980. This is so because they had seasonably filed their motions for extension of time within which

to comply, based on meritorious grounds, the last of which was unacted upon by the Court. x x x. There should be no question but that the filing of an election protest and with it the payment of the docket fees should be done within the statutory period, and that no extensions of said period are legally permissible. The factual environment in the instant case, as above explained, however, removes this case from the rigid application of that mandatory rule. (De Leon vs. Guadiz, Jr., 104 SCRA 591 [1981], Melencio-Herrera, Jr.).

30. Preservation and safekeeping of ballots

and election documents and paraphernalia

§1. Upon an issue properly presented by the motion of protest, it is the mandatory duty of the Court of First Instance not only to permit but to order all of the ballots used at the election to be examined, and to hear proof with reference to the legality of the questioned ballots.

The law orders the court to have brought before it all ballots used at the election in the precincts which are questioned. It is a right, under an issue properly framed, on the part of the protestant, and the court has no right to deny it. The law is mandatory. (De la Merced vs. Revilla and Camacho, 40 Phil. 190 [1919], Johnson, J.).

§2. This means that the legislature has foreseen that circumstances may supervene during the substantiation of an election protest which may warrant the delivery of the keys to other officials in order that the purpose of the protest may not be defeated. There are times when the three officials charged with the keys are not in a position to attend to the recanvassing due to pressure of their duties thereby giving to the protestee a convenient excuse to ask for postponement, or to delay the proceeding. (Dimaporo vs. Estipona, 112 Phil. 220 [1961]; 2 SCRA 282 [1961], Bautista Angelo, J.).

§3. Moreover, it is clearly provided under the Comelec Rules and Procedure that election documents and paraphernalia involved in election contests before courts of general jurisdiction shall be kept and held secure in a place to be designated by the Court in the care and custody of the Clerk of Court.

We are not unaware of the common practice in the courts with respect to the photocopying or xeroxing of portions of case records as long as the same are not confidential or disallowed by the rules to be reproduced. The judge need not be bothered as long as the permission of the Clerk of Court has been sought and as long as a duly authorized representative of the court takes charge of the reproduction within the court premises if warranted or if not, the said court representative must bring along the case records where reproduction takes place and return the same intact to the Clerk of Court.

We are in accord with the Investigating Judge in absolving both the accused in the absence of any prejudice on the part of the complainant caused by the respondents' acts of effecting the photocopying of the questioned ballots. It is this Court's observation that the presiding judge before whom the election contest was assigned found nothing

highly irregular in the photocopying of the questioned ballots inasmuch as no drastic measures were taken against the respondents after the said judge learned about the said xeroxing. This reinforces our earlier discussion on the matter of procedure in most courts with respect to the reproduction of court records when so allowed by the rules. Thus, as long as no tampering or alteration was manifest in the xeroxing/photocopying of court records, no liability attaches to anyone. (Beegan vs. Borja, 261 SCRA 474 [1996], Hermosisima, Jr., J.).

31. Withdrawal of contested/

identified pilot areas/precincts

§1. The contention that the Court of First Instance erred in refusing to examine the ballots in a certain precinct upon the ground that the protestant had withdrawn from his complaint the allegations respecting that precinct does not raise a question of jurisdiction; and a refusal of the court to hear evidence in relation to such precinct is not an act in excess of jurisdiction. The court has a right to determine what precincts are sufficiently involved in the charges of misconduct to warrant the opening of the ballot boxes used therein. (Gala vs. Cui and Rodriguez, 25 Phil. 522 [1913], Moreland, J.).

§2. Although the motion for withdrawal of precincts protested was filed by protestant when the period for filing the pleadings had already expired and the recanvass of the ballots covered by the protest already started, still the trial court was justified in taking cognizance of the motion since such step is not to amend the protest but to inform the court that protestant is desisting from it which is his exclusive prerogative.

This is a matter that wholly depends upon protestant. Even if the withdrawal of the protest is not effected, if the protestant desists from acting thereon or from presenting evidence to substantiate it, that will be the end of the case. The most that can happen is that the protest should be dismissed for lack of action or proof and to such eventuality protestee can not object nor complain because the precincts concerned are not involved in his counter-protest. In other words he can not alleged prejudice if the withdrawal is allowed. This is the exclusive prerogative of protestant. (Dimaporo vs. Estipona, 112 Phil. 220 [1961]; 2 SCRA 282 [1961], Bautista Angelo, J.).

§3. There are reasons why a protestant should have the right to withdraw from his protest some precincts included in his original protest, even without the consent of the protestee. The protestant is required by the election law to file a protest within two weeks after the proclamation of the results of the election (in case of provincial or municipal officials). The protestant or protestee is not permitted to demand revision of the ballots in precincts which one or the other has not protested in the petition of protest or counter-protest. Consequently, the protestant has a very limited time to investigate where the frauds or irregularities, have taken place, so that the precincts wherein the same occurred may be included in his petition of protest. Naturally, he should be allowed a leeway to include in his petition of protest as many precincts in which he believes irregularities have been committed; at the same time he should be given the choice of the precincts in which he desires revision, after he has had the opportunity to determine what evidence of such irregularities he may be able to muster in support of his petition

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of protest. There is no reason why he should not be permitted to withdraw his petition as to precincts where he has subsequently found no evidence or irregularities or frauds. This is conducive to the simplification and limitation of the issues and will ultimately result in a prompt dispatch or termination of the election contest. While the rule that the court may, in the interest of justice, order the revision in other precincts is justified by the fact that the question of election is a public question, the need of prompt termination of the contest demands limitation of revision to those precincts which the protestant deems sufficient to establish the allegations of his petition of protest. The practice of admitting evidence of facts not alleged is not allowed in ordinary cases; neither should it be permitted in election contests. (Matas vs. Romero, 114 Phil. 253 [1962]; 4 SCRA 313 [1962], Labrador, J.).

§4. The mere filing of the motion to withdraw protest on the remaining uncontested precincts, without any action on the part of respondent tribunal, does not by itself divest the tribunal of its jurisdiction over the case. Jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated (Jimenez v. Nazareno, G.R. No. L-37933, April 15, 1988, 160 SCRA 1). We agree with respondent House of Representatives Electoral Tribunal when it held: "We cannot agree with Protestee's contention that Protestant's 'Motion to Withdraw Protest on Unrevised Precincts' effectively withdrew the precincts referred to therein from the protest even before the Tribunal has acted thereon. Certainly, the Tribunal retains the authority to grant or deny the Motion, and the withdrawal becomes effective only when the Motion is granted. To hold otherwise would permit a party to deprive the Tribunal of jurisdiction already acquired. We hold therefore that this Tribunal retains the power and the authority to grant or deny Protestant's Motion to Withdraw, if only to insure that the Tribunal retains sufficient authority to see to it that the will of the electorate is ascertained. Since Protestant's 'Motion to Withdraw Protest on the Unrevised Precincts' had not been acted upon by this Tribunal before it was recalled by the Protestant, it did not have the effect of removing the precincts covered thereby from the protest. If these precincts were not withdrawn from the protest, then the granting of Protestant's 'Urgent Motion to Recall and Disregard Withdrawal of Protest' did not amount to allowing the refiling of protest beyond the reglementary period." Where the court has jurisdiction over the subject matter, its orders upon all questions pertaining to the cause are orders within its jurisdiction, and however erroneous they may be, they cannot be corrected by certiorari (Santos v. Court of Appeals, G.R. No. 56614, July 28, 1987, 152 SCRA 378; Paramount Insurance Corp. v. Luna, G.R. No. 61404, March 16, 1987, 148 SCRA 564). This rule more appropriately applies to respondent HRET whose independence as a constitutional body has time and again been upheld by Us in many cases. (Robles vs. House of Representatives Electoral Tribunal, 181 SCRA 780 [1990], Medialdea, J.).

32. Opening and examination of the ballot box

§1. Where allegations are made by one of the respondents charging fraud and misconduct in a particular precinct not mentioned in the protest and in which the ballots had not been ordered recounted, and showing that illegal ballots had been voted and counted for the protestant, and praying that the ballot boxes of that precinct be opened and the ballots recounted, the judge hears evidence presented by the parties relative to said allegations and finds such evidence insufficient to sustain the allegations and enters judgment denying the application to open the ballot boxes and recount the ballots of said precinct, such judgment will not be disturbed by this court unless it is shown to be against the fair preponderance of the evidence.

While the statute seems to require all ballots to be brought before the court, the practice should be, in the first instance, to bring before the court for examination only such ballots as are questioned by the protest. (Manalo vs. Sevilla 24 Phil. 609 [1913], More-land, J.).

§2. The contention that the Court of First Instance erred in refusing to examine the ballots in a certain precinct upon the ground that the protestant had withdrawn from his complaint the allegations respecting that precinct does not raise a question of jurisdiction; and a refusal of the court to hear evidence in relation to such precinct is not an act in excess of jurisdiction. The court has a right to determine what precincts are sufficiently involved in the charges of misconduct to warrant the opening of the ballot boxes used therein. (Gala vs. Cui and Rodriquez, 25 Phil. 522 [1913], Moreland, J.).

§3. Where in the motion of protest certain irregularities committed by the election inspectors in the count of the votes are alleged, this constitutes sufficient ground for the opening of the ballot boxes and the examination of the questioned ballots.

The law does not require any more prima facie evidence than the sworn allegation in the protest of the commission of frauds or irregularities in the count of a sufficient number of ballots to change the result of the election. (Cecilio vs. Belmonte, 48 Phil. 243 [1925], Villamor, J.).

§4. It is within the discretion of a judge presiding at the trial of a contested election to refuse to order the opening of the ballot boxes of a precinct as to which the returns have not been impugned; and where one of the parties to the contest, after having attacked the returns from a particular precinct in his original protest, withdraws his protest, for acceptable reasons, as to such precinct, such procedure leaves the case with respect to this precinct in the same position as if the returns had never been questioned at all. (Salvani vs. Garduño, 52 Phil. 673 [1929], Street, J.).

§5. The point raised in this mandamus proceeding regarding the opening of the ballot boxes has repeatedly been decided by this court. In Cecilio vs. Belmonte and Court of First Instance of Nueva Ecija (48 Phil., 243), where the court reviewed the earlier cases dealing with this question, it was held that where irregularity in the conduct of the election inspectors in recounting the ballots is alleged in the motion of protest, it constitutes a sufficient ground for opening the ballot boxes and examining the questioned ballots.

The law does not require a prima facie evidence other than the allegations in the protest, of fraud and irregularities in order to authorize the opening of the ballot boxes. Upon the proper filing of a motion of protest duly raising the question of the legality or illegality of ballots cast and the counting thereof, the law requires the court to have brought before it all ballots used at the election in the precincts which are questioned (De la Merced vs. Revilla and Camacho, 40 Phil., 190). (Cuevas vs. Lesaca and Violago, 56 Phil. 25 [1931], Villamor, J.).

§6. In this jurisdiction the rule had invariably been to deny revision in precincts that are not contested either in the

petition of protest or in a counter-protest. To permit revision in precincts not subject of petition of protest or counter-protest would mean allowing any party to conduct a fishing expedition and unduly prolong the contest resulting in cutting down the term of the winner. Since the protestant is not permitted to demand revision in precincts not included in his petition of protest, neither should the protestee be allowed to do so. To permit otherwise would encourage unscrupulous litigants to frustrate prompt termination of protests, delay proceedings and even frustrate the will of the electorate and would give protestee more rights than the protestant. They should be treated equally. (Matas vs. Romero, 114 Phil. 253 [1962]; 4 SCRA 313 [1962], Labrador, J.).

§7. When the motion of protest contains sufficient allegations that frauds, errors and irregularities in the count were committed, and as long as they refer to the ballots involved in the contested precincts, the trial court is justified in requiring the production of said ballots even if the parties did not deem it necessary to present them in evidence. (Conui-Omega vs. Samson, 9 SCRA 493 [1963], Bautista Angelo, J.)

§8. Where the protestant alleged that, in a certain precinct, the board of inspectors illegally read and credited in favor of the protestee around eighty ballots wherein the protestant was voted for mayor, the simplest, most expeditious and best means to determine the truth or falsity of such allegation is to open the ballot box and examine its contents. The trial judge committed a grave abuse of discretion in holding that the ballot box would be opened only when the court was convinced that the said irregularity was committed, and not before the presentation of proof to that effect. To require parol or other evidence on said alleged irregularity before opening said box would have merely given the protestee ample opportunity to delay the settlement of the controversy, through lengthy cross-examination of the witnesses for the protestant and the presentation of testimonial evidence for the protestee to the contrary. That would be to sanction an easy way to defeat an electoral protest. (Astorga vs. Fernandez, et al., 19 SCRA 331 [1967), Concepcion, C.J.).

§9. Where the three copies of the election returns outside the ballot box do not constitute a reliable basis for a canvass, then the Commission on Elections, in the exercise of its power to administer and enforce the laws relative to the conduct of elections, may order the opening of the ballot boxes to ascertain whether the copy inside each ballot box, corresponding to each precinct, is also tampered like the three copies outside the ballot box. The Commission may do this on its own initiative, or upon petition by the proper party. That order does not affect the right to vote or the validity of the votes cast.

Once it is found that the copy of the election return inside the ballot box is tampered, the Commission on Elections would then have accomplished two things, namely: (1) secured a basis for the prosecution for the violation of the laws relative to elections and (2) afforded the party aggrieved by the alteration of the election returns outside the ballot box a basis for a judicial recount of the votes.

The ballot boxes may be opened in case there is an election contest. They may also be opened, even if there is no election contest, when their contents have to be used as evidence in the prosecution of election frauds. Moreover, they may be opened when they are the subject of any official investigation which may be ordered by a competent court or other competent authority. The competent authority must include the Commission on Elections which is

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charged with the administration and enforcement of the laws relative to the conduct of elections. (Cauton vs. Commission on Elections, 126 Phil. 291 [1967]; 19 SCRA 911 [1967], Zaldivar, J.).

§10. The decisive circumstance that makes it mandatory for the Appellate Court to consider, and rule on a ballot is that, the ballot is before the court and it is claimed or impugned by a party in the election contest — be it in the trial court or in the appellate court. The court cannot, and it must not, close its eyes to the realities as presented by the ballots before it. The contention, that to allow a party to claim or impugn ballots for the first time in a motion for reconsideration of a decision in the appellate court, is to sanction confusion and delay in the disposal of election cases is of no moment as long as the claim regarding the ballots is presented before the decision has become final and the ballots thus claimed would be decisive in determining the real winner in the elections. (Juliano vs. Court of Appeals, 20 SCRA 808 [1967], Zaldivar, J.).

§11. The election law never intended that where, in a given precinct, some of the returns are authentic and others are falsified, both the COMELEC and the Court of First Instance will have concurrent jurisdiction — prior to proclamation. To avoid confusion under such a situation, the remedies are drawn and delineated as follows: (1) Where before or during canvassing or before proclamation representations are made that returns are falsified, it becomes the primary duty, first of the board of canvassers, and then of the COMELEC, to ascertain this fact. (2) If finally the COMELEC summarily finds that there was falsification of the copies to be used for canvassing purposes, then canvassing must be made upon the basis of authentic copies. Because a falsified return or spurious return amounts to no return at all. (3) If, on the other hand, the discrepancy in the returns was the result of honest mistakes of the board of inspectors, two courses of action are open in the court of first instance: first, a petition for correction of returns with the consent of all the members of the board of inspectors under Section 154 of the Revised Election Code; and second, a petition by the said board or any candidate affected for summary judicial recount under Sections 163 and 168 of the same Code. A summary judicial recount is merely for the purpose of counting the number of votes received by each candidate as they appear on the face of the ballots" (Cawa vs. Del Rosario, L-16837-40, May 30, 1960). After all, ballot appreciation is proper in an election contest after proclamation.

The remedies thus delineated are explicit. They serve as guidelines. The right course to pursue given the fact of discrepancy — by reason of mistake or otherwise — is there. (Ong vs. Commission on Elections, 22 SCRA 241 [1968], Sanchez, J.).

§12. There are weighty reasons that support the application of such theory in election cases. One is the cardinal principle that an election case involves public interest, and, hence, it imposes upon the court the imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate. That is why the law gives to the court the power, in the interest of justice, to order motu proprio that ballot boxes and other election documents be produced before it so that they may be examined and recounted regardless of whether the party raises any issue in its pleading concerning the validity of the ballots (Section 175, Revised Election Code). On the other hand, it has been postulated as a fundamental principle underlying the trial of election cases that technicalities or procedural barriers should not be allowed to stand if the same would tend to defeat rather than promote the interest of justice. Rather, it is enjoined that the Election Law should be liberally construed to the end

that the will of the people may not be defeated. (Tagoranao vs. Court of Appeals, 37 SCRA 490 [1971], Barredo, J.).

§13. Under Comelec's Rules of Procedure, the venue of the revision process shall be the office of the Comelec's Clerk of Court at its Main Office in Manila, thus "Sec. 9. Venue of the revision.¾The revision of the ballots shall be made in the office of the clerk of court concerned or at such places as the Commission or Division shall designate and shall be completed within three (3) months from the date of the order, unless otherwise directed by the Commission." (Cabagnot vs. Commission on Elections, 260 SCRA 503 [1996], Panganiban, J.).

§14. The task of the Revision Committee does not end after actual revision of the ballots concerned — the term shall end only after its Revision Report shall have been duly submitted for the court's approval simultaneous with the submission of the padlocked ballot boxes to the Presiding Judge.

As long as no tampering or alteration was manifest in the xeroxing/photocopying of court records, no liability attaches to anyone. (Beegan vs. Borja, 261 SCRA 474 [1996], Hermosisima, Jr., J.).

§15. To recapitulate, petitioner Danilo B. Ferrer garnered a total of twenty-nine (29) valid votes and no stray vote while respondent Rafael M. Grospe obtained eight (8) valid votes and three (3) stray votes.

Since the main issue at hand is the contested ballots claimed by the parties, the computation shall be based on the number of uncontested ballots after revision at the lower court. Thus, petitioner who garnered 251 uncontested ballots would be credited with 29 valid votes per findings above. He therefore has a total of 280 votes.

On the other hand, private respondent with 268 uncontested ballots shall be credited with 8 valid votes out of the 11 votes claimed, or a total of 276 votes. (Ferrer vs. Commission on Elections, 330 SCRA 229 [2000], Pardo, J.).

§16. As aptly observed by the COMELEC in the challenged Resolution, these grounds are "evidentiary in nature and can be best ventilated during the trial of the case." It needs be stressed in this regard that the purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is really the lawful choice of the electorate. In an election contest where the correctness of the number of votes is involved, the best and most conclusive evidence are the ballots themselves; where the ballots can not be produced or are not available, the election returns would be the best evidence. In this case, the counted official ballots are available and there is no evidence, other than the bare allegation of petitioner, that the sanctity of the ballot boxes subject matter of the protest have been violated or the official ballots contained therein impaired. The best way, therefore, to test the truthfulness of petitioner's claim is to open the ballot boxes in the protested precincts followed by the examination, revision, recounting and re-appreciation of the official ballots therein contained in accordance with law and pertinent rules on the matter. Needless to state this can only be done through a full-blown trial on the merits, not a peremptory resolution of the motion to dismiss on the basis of the bare and one-sided averments made therein. (Maruhom vs. Commission on Elections, 331 SCRA 473 [2000], Ynares-Santiago, J.).

§17. The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, we have consistently ruled that 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 trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein.

In Astorga vs. Fernandez, this Court inked the rationale behind the principle through the pen of Chief Justice

Roberto Concepcion: “x x x Obviously, the simplest, the most expeditious and the best means to determine the truth or falsity of this allegation is to open the ballot box and examine its contents. To require parol or other evidence on said alleged irregularity before opening said box, would have merely given the protestee ample opportunity to delay the settlement of the controversy, through lengthy cross-examination of the witnesses for the protestant and the presentation of testimonial evidence for the protestee to the contrary. As held in Cecilio vs. Belmonte, this ‘would be to sanction an easy way to defeat a protest.’ ”

In the case before us, the serious allegations embodied in the election protest mandates and necessitates the opening of the subject ballot boxes to the end of resolving the issue of fraud and irregularities in the election. Precisely, the purpose of ordering the opening of the ballot boxes is to ascertain, with the least amount of protracted delay, the veracity of the allegations of fraud and anomalies in the conduct of the electoral exercise. Thus, a preliminary hearing set for the same purpose is a mere superfluity that negates the essence of affording premium to the prompt resolution of election cases and incidents relating thereto. Stated differently, the lower court clearly committed grave abuse of discretion in ordering the conduct of a preliminary hearing to achieve the abovementioned purpose; the court a quo acted outside its province and overshot the limits of its jurisdiction. Evidently, the twin orders of the lower court, dated 07 July 1998 and 11 August 1998, were issued in clear violation of the Rules and existing case law on the matter. (Miguel vs. Commission on Elections, 335 SCRA 172 [2000], Buena, J.).

33. Examination of Documents

§1. The special remedies of mandamus and prohibition are not available in the instant case. Firstly, it is not ministerial on the part of the respondent judge to allow the examination of the registry lists of voters, voting records and other election documents in the 62 voting centers as he is clothed with the discretion to allow or disallow such examination. And secondly, the respondent judge did not abuse his discretion in disallowing such examination. (Abaya vs. Concepcion, 111 SCRA 590 [1982], Abad Santos, J.).

§2. Petitioner’s contention assumes the very fact in dispute. Whether the ballots in this case were indeed tampered with, is a question which the petitioner has to prove. That there is a “huge discrepancy” between the result of the canvass and that of the revision is no proof that the Commission committed a grave abuse of discretion in denying his request for additional time to conduct a technical examination of election documents and to have his witnesses examine the ballots before requiring them to make their affidavits. For as already stated, he was given sufficient time to present proof of tampering or substitution of ballots but he failed to do so. Petitioner thus begs the question when he claims that because the ballots have been tampered with, the election returns constitute the best evidence of the result of the election.

Anyway the question whether there has been substitution of ballots and what the actual result of the election is, will still be determined by the Commission when it undertakes its own independent evaluation and appreciation of the contested ballots and election documents. As we have held, handwriting experts, while probably useful, are

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not indispensable in examining or comparing handwriting; this can be done by the COMELEC itself. As for the allegedly fake ballots, no better authority than the COMELEC can determine their authenticity, having itself ordered and supervised the printing of all the official ballots. (Bulaong vs. Commission on Elections, 241 SCRA 180 [1995], Mendoza, J.).

§3. With respect to the contention that a technical examination of the ballots should have been ordered to determine whether they had been written by two or more persons, or in groups written by only one hand, we hold that the Commission en banc did not commit an abuse of its discretion in denying petitioner-protestee's request. The rule is settled that the Commission itself can make the determination without the need of calling handwriting experts. (Erni vs. Comelec, 243 SCRA 706 [1995], Mendoza, J.).

34. Tampered ballot box

§1. Where the returns from a certain precinct are impugned as fraudulent, and it is found upon opening the boxes that they have been violated, the candidate in whose interest the act of violation is alleged to have been committed may introduce as witnesses voters who, waiving their privilege of secrecy, will swear that they voted for him. Such evidence is admissible for the purpose of rehabilitating the returns.

Where the correctness of the official returns is thus established as to the vote of one of the candidates, said returns should be adhered to as to both, it being manifest that the boxes were not violated in the interest of either. Where the spoliation is the work of a stranger, neither candidate should be penalized therefor.

Where the proof shows that the official returns in a certain precinct with regard to particular office are false, secondary evidence is admissible to show what the true vote was. In this case the testimony of three witnesses who had been present when the votes were counted and one of whom had kept accurate tally upon the votes as called out is accepted as sufficient to show the true result.

Where the evidence shows that the ballot boxes have been violated and their contents changed, the original count must prevail. Before the ballots found in a box can be used to set aside the returns the court must be sure that it has before it the ballots deposited by the voters. (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428 [1921], Street, J.).

§2. Where the ballots lose their probative value, because the ballot boxes have been tampered with and the ballots altered, the count made by the board of election inspectors is the best evidence of the result of the election. The oral testimony of the voters who voluntarily waive the secrecy of the vote (Dayrit vs. San Agustin and Valdez, 40 Phil., 782; Valenzuela vs. Carlos and Lopez de Jesus, supra), is admissible for the purpose of verifying the returns; but said testimony cannot be given more weight than the returns of the board of election inspectors,

unless it is shown that the returns are false.

Where the legal votes cannot be separated from the illegal votes, it is improper to deduct a certain number of votes from those obtained by one candidate and award them to another and the election in that precinct must be annulled. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§3. Where ballot boxes are opened before the court and in the opinion of any of the parties the contents show that they have been tampered with, said party may, in the discretion of the court, present evidence of said tampering, even though no allegation to this effect has been made in his protest.

When the fraudulent are so mixed up with the legal ballots that the legal cannot be separated from the illegal ballots, and the election returns are not reliable by reason of certain marks thereon, including that they have been falsified, the election must be anulled. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§4. Where ballot boxes are tampered with or violated after the original canvass of votes, the original count must ordinarily prevail in a subsequent election contest. (Guekeko vs. Pascual, 50 Phil. 221 [1927], Ostrand, J.).

§5. When it appears that a ballot box has been unlawfully opened and its contents disturbed to the extent that it is uncertain whether the ballots found therein were actually cast by the voters, such ballots cannot be accepted for purposes of revision, and the official returns, if not otherwise impeached, must be accepted as stating the true number of votes cast.

The particular fraud accomplished in this case consisted in the fact that, after the official count had been made, the box of a certain precinct was opened and a large number of ballots removed, bearing the name of the successful candidate for municipal president. In place of these ballots an equal number of counterfeit ballots bearing the name of the same candidate for municipal president were introduced into the box. Held, upon contest instituted by the unsuccessful candidate, that these ballots should not be subtracted from the contestee's vote and that the official returns must prevail. (San Juan vs. Cornejo, 53 Phil. 230 [1929], Street, J.).

§6. In the absence of evidence showing with sufficient certainty that the substituted ballots had been cast for the contestant, there is no ground for holding that they were indeed cast for him. No matter how strong the presumption may be that the substituted ballots were made out in his favor, it is not sufficient to sustain a finding to that effect. (Kiamzon vs. Pugeda, 54 Phil. 755 [1930], Villamor, J.).

§7. The omission to lock some metal seals attached to a few ballot boxes and the minor lapses in the preparation of and in the entries of some data in several copies of said election returns could be ascribed to the fact that the preparation of the election returns was done close to midnight subsequent to the conclusion of the canvass in the voting centers when the members of the Citizen Election Committee were already tired and hungry, aggravated by lack of adequate lighting. (Pimentel, Jr. vs. Commission on Elections, 140 SCRA 126 [1985], Makasiar, C.J.).

35. Due process

§1. By agreeing to have the matter heard and decided on affidavits, counter-affidavits and rebuttal affidavits, the petitioner in effect waived his right to examine the affiants, with the result that his subsequent demand that the Comelec "summon all the election inspectors and poll clerks, interrogate them and let the parties cross-examine them" is unavailing. (Ligot vs. Commission on Elections, 31 SCRA 45 [1970], Per Curiam.).

§2. Proclamation of a winning candidate can be set aside only after due notice and hearing; Grave abuse of discretion of Comelec in setting aside proclamation. – Upon the facts of the case, We find that the COMELEC had, indeed, gravely abused its discretion, amounting to lack of jurisdiction, in annulling the proclamation of JAEN as the elected Municipal Mayor of Leganes, Iloilo. JAEN was not furnished with a copy of any petition or motion to set aside his proclamation; nor was he notified of the hearing of such petition or motion. As a matter of fact, the records of the case do not indicate that a hearing was ever conducted by the COMELEC before it ordered the annulment of the proclamation of JAEN. This to Us is an irregularity. JAEN , who has already been proclaimed by the Municipal Board of Canvassers of Leganes, Iloilo, has the right to be notified of any proceeding to set aside his proclamation, and a hearing is necessary before COMELEC can order the annulment of his proclamation. Section 175 of the 1978 Election Code explicitly provides that the COMELEC can order the annulment of a proclamation of a candidate-elect on any of the grounds mentioned in Sections 172, 173 and 174 thereof (defective, tampered and falsified election returns, and discrepancies in the election returns) only after due notice and hearing. (Jagunap vs. Commission on Elections, 104 SCRA 204 [1981], Concepcion, Jr., J.).

§3. Moreover, petitioner had controverted by means of sworn statements the allegations of private respondent of massive terrorism and rampant irregularities in the counting of votes. The COMELEC had weighed the conflicting pleadings, certifications and affidavits before it and concluded that the case was ripe for resolution on the merits. It found that “a painstaking examination—demanded by the gravity of the issues raised—of the records in this case resulted in the inescapable finding that serious and widespread election venalities did occur in the hapless community of Penaranda.” (Jardiel vs. Commission on Elections, 124 SCRA 650 [1983], Melencio-Herrera, J.).

§4. Nor can COMELEC be faulted for merely requiring the parties to submit their respective Memoranda in support of their respective positions. The requirement under Section 246 of the Omnibus Election Code is that the parties be notified and heard. Petitioners were so notified. They were also given an opportunity to submit evidence in support of their allegations. They were required to submit a Memorandum in amplification of their position. Such procedure is fair, valid and acceptable and is consistent with the summary character of proceedings in election cases. As held in Alonto vs. COMELEC (22 SCRA 878), the policy of election laws is that pre-proclamation cases should be summarily decided, consistent with the law’s desire that the canvass and proclamation be delayed as little as possible. (Casimiro vs. Commission on Elections, 171 SCRA 468 [1989], Melencio-Herrera, J.).

§5. Promulgation is the process by which a decision is published, officially announced, made known to the public or delivered to the clerk of court for filing, coupled with notice to the parties or their counsel (Neria v. Commissioner of Immigration, L-24800, May 27, 1968, 23 SCRA 812). It is the delivery of a court decision to the clerk of court for filing and publication (Araneta v. Dinglasan, 84 Phil. 433). It is the filing of the signed decision with the clerk of court (Sumbing v. Davide, G.R. Nos. 86850-51, July 20, 1989, En Banc Minute Resolution). The additional requirement imposed by the COMELEC rules of notice in advance of promulgation is not part of the process of promulgation. Hence, We do not agree with petitioner’s contention that there was no promulgation of the trial court’s decision.

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A procedural lapse or error should be distinguished from lack of jurisdiction. In the former, the proceedings are null and void if and when the error is shown to have caused harm while in the latter, the proceedings are null and void unconditionally (In the matter of the petition of Joson and Joson v. Nable, et al., G.R. No. L-3450, September, 1950, XVILJ No. 1, p. 35, cited in Francisco, Vicente, J., Revised Rules of Courts in the Philippines, 2nd edition, p. 112). There is a great difference in the results which follows the failure to give the necessary notice to confer on the court jurisdiction over the person and the subject matter of the action, and that which follows a failure to give notice of a step taken after the court has obtained such jurisdiction and is proceeding with the action. Failure to give notice of the action by the service of a summons for example, is a jurisdictional defect and the court acquires no jurisdiction over the person of the defendant. x x x. When, however, the court, by the service of proper notice has obtained jurisdiction of the person and the subject matter, then the failure to give notice of a subsequent step in the action or proceeding is not jurisdictional and does not render an order made without notice void.

The fact that petitioners were not served notice in advance of the promulgation of the decision in the election protest cases, in Our view, does not constitute reversible error or a reason sufficient enough to compel and warrant the setting aside of the judgment rendered by the Comelec. Petitioners anchor their argument on an alleged denial to them (of) due process to the deviation by the Comelec from its own made rules. However, the essence of due process is that, the parties in the case were afforded an opportunity to be heard. As long as the parties were given the opportunity to be heard, before judgment was rendered, the demands of due process were sufficiently met.

Petitoner’s protestations of denial of due process when his notice of appeal was denied for having been filed out of time must also fail. The records show that petitioner’s counsel of record, Atty. Amador Montajo, received a copy of the decision on February 12, 1990. The five-day period for petitioner to file his appeal from the decision of the trial court commenced to run from such date. Petitioner’s notice of appeal was filed with the trial court only on February 26, 1990, fourteen (14) days after his counsel was served a copy of the decision. Clearly, his notice was filed out of time. (Lindo vs. Commission on Elections, 194 SCRA 25 [1991], Medialdea, J.).

§6. We have recently reiterated the Dianalan and Dimaporo rulings in the case of Alfonso vs. Commission on Elections, promulgated in June, 1994. The prevailing doctrine in this jurisdiction, therefore, is that as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting or the counting of the votes. Corollarily, technical examination of voting paraphernalia involving analysis and comparison of voters’ signatures and thumbprints thereon is prohibited in pre-proclamation cases which are mandated by law to be expeditiously resolved without involving evidence aliunde and examination of voluminous documents which take up much time and cause delay in defeat of the public policy underlying the summary nature of pre-proclamation controversies.

While, however, the COMELEC acted within its jurisdiction in taking cognizance of the private respondents’ petition to annul the election results of or to declare failure of elections in Parang, Sulu, it committed grave abuse of discretion when confronted with essentially the same situation in petitioners’ own petition to annul the elections of or to declare failure of elections in the municipalities of Tapul, Panglima Estino, Pata, Siasi and Kalinggalang Caluang. The COMELEC arbitrarily and without valid ground dismissed the said petition respecting

the aforementioned five municipalities. The untimeliness of the petition is an untenable argument for such dismissal, because as Commissioner Regalado Maambong pointed out in his own dissenting opinion, no law provides for reglementary period within which to file annulment of elections when there is as yet no proclamation.

For in the instant case, petitioners admitted in their pleadings that they were fully aware of the issuance by COMELEC of an order directing the Provincial Election Supervisor of Sulu to bring to the COMELEC office in Manila the election documents to be used in the technical examination. In fact, petitioners anticipated such technical examination and filed a pleading before the COMELEC in which they prayed that they be informed of any subsequent proceedings in the same case. In fine, it is undeniable that petitioners had the opportunity to participate in the proceedings respecting the technical examination, aware as they were of the intent of the COMELEC to conduct the same. Militating against them is the fact they did not do so when they had the opportunity to, especially as public interest in the speedy disposition of this case will only be further derailed by the re-opening of the case for the benefit of petitioners who, if they could after all be this assertive of their due process rights now, should have asserted the same as early as when the issues were ripe for debate. (Loong vs. Commission on Elections, 257 SCRA 1 [1996], Hermosisima, Jr., J.).

36. Evidence

§1. The right to examine the voters after they have declared a willingness to testify, when ballot boxes have been tampered with after the election, is an affirmance and vindication of the essential principle of the election system – that the will of the majority of the qualified electors shall determine the right to an elective office. (Dayrit vs. San Agustin and Valdez, 40 Phil. 782 [1920], Johnson, J.).

§2. Where the returns from a certain precinct are impugned as fraudulent, and it is found upon opening the boxes that they have been violated, the candidate in whose interest the act of violation is alleged to have been committed may introduce as witnesses voters who, waiving their privilege of secrecy, will swear that they voted for him. Such evidence is admissible for the purpose of rehabilitating the returns.

Where the correctness of the official returns is thus established as to the vote of one of the candidates, said returns should be adhered to as to both, it being manifest that the boxes were not violated in the interest of either. Where the spoliation is the work of a stranger, neither candidate should be penalized therefor.

Where the proof shows that the official returns in a certain precinct with regard to particular office are false, secondary evidence is admissible to show what the true vote was.

Where the evidence shows that the ballot boxes have been violated and their contents changed, the original count must prevail. Before the ballots found in a box can be used to set aside the returns the court must be sure that it

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has before it the ballots deposited by the voters. (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428 [1921], Street, J.).

§3. Where the ballots lose their probative value, because the ballot boxes have been tampered with and the ballots altered, the count made by the board of election inspectors is the best evidence of the result of the election. The oral testimony of the voters who voluntarily waive the secrecy of the vote (Dayrit vs. San Agustin and Valdez, 40 Phil., 782; Valenzuela vs. Carlos and Lopez de Jesus, supra), is admissible for the purpose of verifying the returns; but said testimony cannot be given more weight than the returns of the board of election inspectors, unless it is shown that the returns are false. (Cailles vs. Gomez and Barbaza, 42 Phil. 496 [1921], Villamor, J.).

§4. Where the conservation of the boxes is prima facie shown and their contents are found intact upon being opened according to law, the ballots themselves become the best evidence of the votes cast; and it is the duty of the court to determine the contest, so far as dependent upon the count, by the proof afforded by the ballots. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§5. Although the law directs that the judge in charge of an election contest shall make a finding as to who was elected, or whether any person was elected to the contested office, it is nevertheless the duty of the contending parties to place before the court the evidence upon which such finding can be made; and if a contestant fails to supply necessary proof as to the result in uncontested precincts, the judge in charge of the proceeding is necessarily bound to dismiss the contest without making any finding as to the person actually elected. (Ayo vs. Flordeliza, 48 Phil. 199 [1925], Street, J.).

§6. Where ballot boxes are opened before the court and in the opinion of any of the parties the contents show that they have been tampered with, said party may, in the discretion of the court, present evidence of said tampering, even though no allegation to this effect has been made in his protest.

It is a well settled rule in election contests that when the protest alleges that the election officers have improperly judged the ballots, the latter constitute the best proof and the court must examine them in order to determine the claim of the protestant, unless the same shall have been substituted after the election or altered in any manner, for then they lose their probatory value and election returns must prevail. (Mandac vs. Samonte, 49 Phil. 284 [1926], Villamor, J.).

§7. Where ballot boxes are tampered with or violated after the original canvass of the votes, the original count must ordinarily prevail in a subsequent election contest. (Guekeko vs. Pascual, 50 Phil. 221 [1927], Ostrand, J.).

§8. Where the returns from a certain precinct are impugned and, upon opening a ballot box, the contents are found to have been destroyed by anay and corrosive acid, the party attacking the returns from that precinct is entitled to prove by the testimony of individual voters that they voted for him in numbers in excess of the number returned by the inspectors as having been voted for him, there being nothing to show that the contents of the box had been

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destroyed by the party attempting to introduce such proof. When the ballots, which constitute the best evidence of how the votes were cast have been destroyed, the testimony of voters is admissible as competent evidence tending to show that the returns were falsely made out. (Salvani vs. Garduño, 52 Phil. 673 [1929], Street, J.).

§9. There is no violation of the general rule that the evidence must be confined to the allegations of the motion of protest, when the contestant, without objection of the contestee, adduces evidence as to incidental maters not alleged in said motion.

The testimony of witnesses with regard to alleged schemes on the part of the opposing party to influence the popular will by means of bribery and the purchase of votes, must be viewed with caution, and unless strongly corroborated by other legally admissible evidence, is not sufficient to determine the result of a popular election.

In the cases of Cailles vs. Gomez and Barbaza (42 Phil. 496); Valenzuela vs. Carlos and Lopez de Jesus (42 Phil., 428); Mandac vs. Samonte (49 Phil., 284); Penson vs. Parungao (52 Phil., 718); and Geirosa vs. Taningco (G.R. No. 30609, promulgated March 22, 1929, not reported), this court, construing Section 452 of the Election Law, enunciated certain rules respecting marked ballots. In Penson vs. Parungao, the court said that marks on ballots must appear on the ballots themselves, and cannot be proved by evidence aliunde, but with data contained in the ballots themselves. In the instant case, several ballots for the appellee and also for the appellant were found with the names written on the right, or on the left, or in the middle, but with a space between the names and surnames, although they were in the proper places. Held, That said ballots, being perfectly clean upon their face, are not marked ballots within the meaning of the law. (Cruz vs. De Guzman, 54 Phil. 32 [1929], Villamor, J.).

§10. It was found that 21 votes for the contestant were tainted with fraud, as well as 8 votes for the contestee. The contestant’s counsel arose and asked that 8 of contestee’s ballots should be rejected because they had been prepared by one and the same person. Under the circumstances, it might, perhaps, be said that the contestant is not in position to demand that his 21 ballots be admitted when he had demanded that the contestee’s 8 ballots of the same kind should be rejected. (Valbuena vs. Tapales and Orayani, 56 Phil. 469 [1932], Ostrand, J.).

§11. It is held that such circumstantial evidence is insufficient to warrant the definite conclusion that those thirty-two electors excluded voted for the contestee-appellant.

The necessary and sufficient circumstantial evidence in this case must be such as to lead to no other reasonable and convincing conclusion than that such votes were cast in favor of the appellant.

The rule uniformly established in cases of this nature is that the party alleging that illegal votes have been cast must adduce the best evidence to prove it, and it is clear that the best evidence would have been the identification of the illegal ballots and the testimony of the voters who prepared them, which the contestant-appellee has not done in this case. (9 R. C. L., pp. 1149-1150).

The burden of proving that illegal votes have been cast rests on the contestant and not on the contestee who has been proclaimed elected. (Borja vs. Roxas, 56 Phil. 488 [1932], Imperial, J.).

§12. It is a well known fact that there are persons in a municipality bearing the same names and surnames, hence the mother’s surname is added to that of the father’s to distinguish the one from the other. The alleged minor

voters not having been called to testify in order to ascertain if they were really not of age at the time they voted, the mere presentation of a certified list issued by the municipal treasurer of some minors whose names coincide with those of some electors who voted, is not conclusive evidence that those who voted were those whose names appear in the said list.

The fact that living persons bearing the names of some of the dead have not been found does not conclusively establish that said persons did not exist, considering the rapid means of communication nowadays which readily permit persons to travel from one place to another. (Villavert vs. Lim, 62 Phil. 178 [1935], Villa-Real, J.).

§13. Ballots counted or recounted and revised by commissioners appointed by a Court of First Instance are among the documentary evidence in an election contest. They can be examined by the parties, their attorneys and handwriting experts at any time during the trial or proceedings before the decision, subject to the supervision of the court so as to avoid loss, destruction, or tampering. (Raymundo vs. Gonzalez, 80 Phil. 719 [1948], Perfecto, J.).

§14. Section 175 of the Revised Election Code orders the Court to cause to be brought before it all ballots used at the election in the precincts which are questioned, it does not confer upon the court unconfined discretion to disregard the issues and examine any ballot boxes and recount any ballots that it may see fit, in total disregard of the rules of orderly procedure. The rule of allegata et probata applies to election contests as well as to ordinary actions, otherwise election contests could easily become interminable. (Robles vs. Del Rosario, et al., 100 Phil. 886 [1957], Reyes, J.B.L., J.).

§15. Section 175 of the Revised Election Code provides that the court, motu proprio in the interest of justice may require “that the copies of the registry lists, the ballot boxes, the election statements, the voters’ affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted” when judicial counting of the votes may be found necessary in a contested election. This provision is significant. It postulates that the court, motu proprio, may require, among other things, the production of the ballots in order that it may examine them if such is necessary to do justice to the parties, even if said ballots were not formally presented as evidence. (Reforma vs. De Luna, 104 Phil. 278 [1958], Bautista Angelo, J.).

§16. Evidence in an election case are generally of two kinds: (1) the documents which Section 175 of the Revised Election Code requires to be produced in court for its examination, and (2) the evidence aliunde, if any, which the parties may deem necessary to present. In the production of the first, consisting of election paraphernalia, their examination may be conducted in a summary manner. In the presentation of the second, it may be done as in an ordinary trial, in view of the fact that no particular procedure is outlined in the Code, and Rule 132 of the Rules of Court provides that the Judicial Rules shall not apply to election cases except by analogy or in a suppletory character and whenever practicable and convenient. (Asis vs. Ilao, 114 Phil. 291 [1962]; 4 SCRA 349 [1962], De Leon, J.).

§17. The failure of the protestant to appear at the hearing and adduce evidence to substantiate the allegations of his protest, is ground for the dismissal of said protest. (Estella vs. Edaño, 115 Phil. 44 [1962]; 5 SCRA 65 [1962], Barrera, J.).

§18. The circumstance that several voters belonging to the same precinct have written the names of particular

candidates in an identical manner may indicate a preconceived plan on their part to enable them to identify the voters, but the showing of such circumstance based on what is written on the ballots alone cannot justify such inference in the absence of evidence aliunde clearly showing that such was the plan or intention. (Villarosa vs. Guanzon, 116 Phil. 365 [1962]; 6 SCRA 40 [1962], Bautista Angelo, J.).

§19. Ballots not considered as marked in the absence of evidence "aliunde" showing intention to mark. (Arzaga vs. Bobis, Sr., 116 Phil. 702 [1962]; 6 SCRA 386 [1962], Reyes, J.B.L., J.).

§20. The court may not be made to swallow opinions of experts "as is" especially when its attention is called to an error in the expert's conclusions, which the court was able to confirm. (Protacio vs. De Leon, 118 Phil. 1310 [1963]; 9 SCRA 472 [1963], Paredes, J.).

§21. Testimonial evidence introduced in this case after the ballots were examined by the commissioners of the court and the parties, was held unreliable and not valid evidence because it was apparent that the same was a mere after-thought, to suit what appeared on the ballots.

Although it is true that in an election protest, like in a criminal case, the appeal throws the entire case open before the appellate court, and any of the parties may discuss any matter without need of any specific assignment of error, yet it is the duty of the party interested to call the attention of the Court of Appeals to such matter, in order to give said Court opportunity to pass upon the same. The inaction of the Court of Appeals on a point not raised therein, cannot be assailed for the first time in a petition for certiorari to the Supreme Court. (Felisilda vs. Achacoso, 9 SCRA 523 [1963], Barrera J.).

§22. Frauds in the holding of an election should be settled by the corresponding courts or Electoral Tribunals where testimonial or documentary evidence is necessary; but where the fraud is so palpable from the return itself, there is no reason to give it prima facie value.

Where the returns were obviously false or fabricated, the Commission on Elections has the power and duty to reject them. (Lagumbay vs. Commission on Elections, et al. 122 Phil. 1274 [1966]; 16 SCRA 175 [1966], Bengzon, C.J.).

§23. Where protestee-appellant offered evidence aliunde (consisting of the testimony of the voters themselves) to support the counter-protest against the official returns in some 22 precincts, because the ballots cast therein were burned after 3 months, the trial court correctly rejected the offer, for the reason that to allow the voters in said precincts (some 4,000 in all) to reveal the names of the candidates for whom they voted, would amount to holding practically a new election without the secrecy that public policy considers as essential to the elector's freedom of choice. (Lomugdang vs. Javier, 21 SCRA 402 [1967], Reyes, J.B.L., J.).

§24. The question of whether or not there had been terrorism, vote-buying and other irregularities should be ventilated in a regular election protest, pursuant to Section 174 of the Election Code, and not in a petition to enjoin the city board of canvassers from canvassing the election returns and proclaiming the winning candidates

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for municipal offices. (Borromeo vs. Commission on Elections, 28 SCRA 775 [1969], Concepcion, C.J.).

§25. By agreeing to have the matter heard and decided on affidavits, counter-affidavits and rebuttal affidavits, the petitioner in effect waived his right to examine the affiants, with the result that this subsequent demand that the Comelec "summon all the election inspectors and poll clerks, interrogate them and let the parties cross-examine them" is unavailing. (Ligot vs. Commission on Elections, 31 SCRA 45 [1970], Per Curiam).

§26. Erasures, alterations and superimpositions, uninitialed by those who made them, are in the natural course of things prima facie unauthorized, since they do not coincide with the originals of which they are supposed to be exact carbon copies, and to impose upon the Comelec the duty to make further inquiry and to receive evidence aliunde, it is the better rule that the party claiming legitimacy thereof should present proof of circumstances which can reasonably lead to such conclusion and not merely make bare allegations to such effect, as is the case here. In cases of this character, it is not enough that the party concerned alleges that the alterations, erasures and super-impositions are bona fide and legitimate, it is necessary that sufficient specific reasonable proof of such legitimacy must, at least, be alleged to exist to warrant further inquiry by the Comelec beyond the ocular comparison of the different copies of the election returns concerned. (Lingad vs. Aguilar, 31 SCRA 82 [1970], Per Curiam).

§27. Where the canvassing board has found the provincial treasurer's copies to be authentic, clean and regular on their face, and the Comelec copies were tampered, the canvass should be based on the provincial treasurer's untampered copies without need of requiring Comelec to make a comparison between the different copies if the purpose is to ascertain whether said copies were prepared by different hands.

Failure of the board of inspectors of the precinct to write the name of the candidate on the returns makes the same incomplete. Because of the incompleteness of the returns, no complete canvass of votes can be had and cannot be the basis of a subsequent proclamation. In such a case, the Comelec should order the board of inspectors concerned to open the ballot boxes, count the votes and make new returns for the candidates whose name and votes were not reflected in the returns. (Tiglao vs. Commission on Elections, 31 SCRA 719 [1970], Sanchez, J.).

§28. Questions relating to the alleged failure of the trial court to count ballots where the name of the protestee appears; and error of the trial court in not rejecting ballots where only the surname is written in spaces for councilor, notwithstanding there are two candidates with the same surname and for the same position involves the presentation of evidence aliunde and is not within the scope of a petition for review of the trial court's decision in an election protest. (Moraleja vs. Relova, 42 SCRA 10 [1971], Barredo, J.),

§29. The COMELEC does not commit any grave abuse of discretion in relying upon the opinion of its handwriting experts regarding the election returns and not affording the party adversely affected the opportunity to refute said experts' findings where the parties waived the submission of evidence and relied merely on their memorandum for COMELEC's resolution. (Garcia vs. Commission on Elections, 105 SCRA 250 [1981], Makasiar, J.).

§30. The respondent judge's refusal to allow the presentation of the newly discovered evidence concerning the

alleged unregistered voters, as well as the undue haste with which he rendered the decision in the electoral protest manifested his arbitrariness and are indicative of grave abuse of discretion amounting to lack of jurisdiction.

The respondent judge erred when he held as an absolute rule that the presentation of additional evidence could not be allowed after the party had finished presenting his direct evidence. For a trial judge has the discretion to allow, in the furtherance of justice, the presentation of additional evidence after the parties have produced their respective direct proofs (Sec. 1 [f], Rule 30, Rules of Court).

The 30-day requirement has to be subordinated to a more substantial requirement, namely: to ascertain in a more accurate way the will of the voters each of which is a particle of sovereignty. Thus, We hold as arbitrary the act of the respondent judge invoking the 30-day requirement (which he had already long violated) without regard for a substantive necessity. For plainly the presentation of evidence concerning the alleged 200-300 unregistered voters (constituting almost 20% of the total number of voters who actually voted in the municipality of Lagayan) could result in a more accurate determination of the will of the people. (Seares vs. Hernando, 110 SCRA 343 [1981], Abad Santos, J.)

§31. It is presumed that the Clerk of Court forwarded all exhibits of a case to the COMELEC in the absence of evidence to the contrary.

In an election protest tried in court, the best evidence of election result is not the election return but the results of revision of ballots ordered by the trial court.

COMELEC has broad powers to ascertain results of election by means available to it, such as relying on the certificate issued by its registrar which confirms that issued by the board of canvassers.

Nor was petitioner denied due process for not having been given the chance “to question the truth or veracity” of the COMELEC records. Those are public records and if he had wanted to, he could have done so and the COMELEC would surely not have denied him the opportunity. It is to be noted also that Exhibit “B” was marked and presented in the lower Court and could have been verified even then. Furthermore, the complete document contained the official results of the voting for every barangay and voting center irrespective of whether they were contested or not. In fact, the totals showed the original returns of 4,993 votes for petitioner and 4,886 votes for private respondent, the figures on the basis of which petitioner was proclaimed elected. Surely, segregating the data from the unprotested voting centers for purposes of resolving the election protest can hardly be objected to.

The act of respondent Court in disregarding the opinion of the handwriting experts presented in Court by the parties and in conducting its own examination and making its own findings does not constitute grave abuse of discretion.

Loss of unused official ballots will not be sufficient to nullify the election return in a precinct if such loss would not affect the result of the entire voting in the municipality. (Geromo vs. Commission on Elections, 118 SCRA 165 [1982], Melencio- Herrera, J.).

§32. That the parties were required to submit affidavits of the witnesses which would then constitute and be considered as the direct testimonies of said persons, is not improper. It is a fair, valid and acceptable procedure. It is consistent with the summary character of election protest proceedings.

Thus, in the case of Lucman vs. Dimaporo, 33 SCRA 104 (1970), this Court upheld the admissibility of the affidavits of the witnesses despite the claim of the petitioner therein that such affidavits are hearsay evidence. There, as in the case at bar, the Commission had indicated its intention to determine the case on the basis of the affidavits and the documentary evidence introduced by the parties and it was on such understanding that the parties filed affidavits in their favor and did not object to those submitted by the other.

COMELEC committed no grave abuse of discretion in not anchoring its decision upon a revision of ballots as this was not requested by the parties.

Of course, there may be election protests which may be disposed of without a recount of the ballots cast. There may be cases where, by reason of the fraudulent manner on which the entire election was conducted, the Court would be justified in annulling and setting the election aside without an examination of the ballots. There may be cases also where all the ballots used at the election need not be examined.

Where due to the stated serious irregularities, there has been, as in this instance, a consequent declaration of nullity of the election itself and the election returns in the voting centers mentioned, no fault whatsoever may be attributed to the action of the Comelec in declining to order a revision of the ballots cast in those election centers. A recount or revision of the ballots in those election centers can no longer possess any significance due to the nullity of the election itself in said places. (Pimping vs. Commission on Elections, 140 SCRA 192 [1985], Alampay, J.).

§33. In an election contest where what is involved is the correctness of the number of votes of each candidate, the best and most conclusive evidence are the ballots themselves. But where the ballots cannot be produced or are not available, the election returns would be the best evidence. Where it has been duly determined that actual voting and election by the registered voter had taken place in the questioned precincts or voting centers, the election returns cannot be disregarded and excluded with the resulting disenfranchisement of the voters, but must be accorded prima facie status as bona fide reports of the results of the voting. Canvassing boards, the Comelec and the HRET must exercise extreme caution in rejecting returns and may do so only upon the most convincing proof that the returns are obviously manufactured or fake. And, conformably to established rules, it is the party alleging that the election returns had been tampered with, who should submit proof of this allegation.

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Under the best evidence rule, “there can be no evidence of a writing, the contents of which are the subject of inquiry, other than the original writing itself” except only in the cases enumerated in Rule 130, Sec. 2 of the Rules of Court. The exceptions are not present here. Moreover, the xerox copy of the certificate of canvass is inadmissible as secondary evidence because the requirements of Sec. 4 of the same Rule have not been met (Dissent of J. Cruz, p. 254). Besides this certificate of canvass had been disowned by the chairman and members of the municipal board of canvassers, claiming that the same was falsified since their signatures and thumbmarks appearing thereon are not theirs and the number of votes credited to Lerias in the municipality of Libagon had been reduced from 1,811 to 1,411 (TSN, Sept. 13, 1988 AM, pp. 74-78; TSN, Sept. 13, 1988 PM, pp. 41-46; Dissenting Opinion, Rep. A.H. Cerilles, p. 2).

The finding of the Comelec in the pre-proclamation proceedings that its copy of the certificate of canvass is “genuine and authentic” and which finding was sustained by this Court (G.R. No. 78833; 79882-83) is not binding and conclusive. The HRET must be referring to the following portion of the decision of this Court¾ “Public interest demands that pre-proclamation contests should be terminated with dispatch so as not to unduly deprive the people of representation, as in this case, in the halls of Congress. As the Court has stressed in Enrile v. Comelec, and other cases, the policy of the election law is that pre-proclamation controversies should be summarily decided, consistent with the law’s desire that the canvass and proclamation should be delayed as little as possible. The powers of the COMELEC are essentially executive and administrative in nature and the question of fraud, terrorism and other irregularities in the conduct of the election should be ventilated in a regular election protest and the Commission on Elections is not the proper forum for deciding such matters; neither the Constitution nor statute has granted the COMELEC or the board of canvassers the power, in the canvass of elections returns to look beyond the face thereof ’once satisfied of their authenticity’. We believe that the matters brought up by petitioner should be ventilated before the House Electoral Tribunal. Unlike in the past, it is no longer the COMELEC but the House Electoral Tribunal which is ‘the sole judge of all contests relating to the election, returns and qualifications’ of the members of the House of Representatives. “In opting to go by the COMELEC copy of which on its face did not show any alteration, the COMELEC did not commit any grave abuse of discretion, specially since both parties agreed to the COMELEC using its own copy (Copy No. 3). “Accordingly, the Court resolved to DISMISS the petition for lack of merit. The temporary restraining order issued on July 23, 1987 is hereby LIFTED effective immediately.” (Rollo, pp. 264-265). (Lerias vs. House of Representatives Electoral Tribunal, 202 SCRA 808 [1991], Paras, J.).

§34. Time and again, this Supreme Court has declared in numerous cases that, 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 trial court to order the opening of the ballot boxes and the examination and counting of the ballots deposited therein.

The rationale for the doctrine was further elucidated on in Astorga vs. Fernandez wherein this Court stated: “x x x Obviously the simplest, the most expeditious and best means to determine the truth or falsity of this allegation is to open the ballot box and examine its contents. To require parol or other evidence on said alleged irregularity before opening said box, would have merely given the protestee ample opportunity to delay the settlement of the controversy, through lengthy cross-examination of the witnesses for the protestant and the presentation of testimonial evidence for the protestee to the contrary. As held in Cecilio vs. Belmonte, (supra,), this ‘would be to

sanction an easy way to defeat a protest.' "

While the abovementioned rule pertains to election protests falling within the exclusive original jurisdiction of the Commission, the same procedure is prescribed for election contests which are within the exclusive original jurisdiction of courts of general jurisdiction as well as election contests within the exclusive original jurisdiction of courts of limited jurisdiction. (Crispino vs. Panganiban, 219 SCRA 621 [1993], Davide, Jr., J.).

§35. Petitioner's contention assumes the very fact in dispute. Whether the ballots in this case were indeed tampered with, is a question which the petitioner has to prove. That there is a "huge discrepancy" between the result of the canvass and that of the revision is no proof that the Commission committed a grave abuse of discretion in denying his request for additional time to conduct a technical examination of election documents and to have his witnesses examine the ballots before requiring them to make their affidavits. For as already stated, he was given sufficient time to present proof of tampering or substitution of ballots but he failed to do so. Petitioner thus begs the question when he claims that because the ballots have been tampered with, the election returns constitute the best evidence of the result of the election.

Anyway the question whether there has been substitution of ballots and what the actual result of the election is, will still be determined by the Commission when it undertakes its own independent evaluation and appreciation of the contested ballots and election documents. As we have held, handwriting experts, while probably useful, are not indispensable in examining or comparing handwriting; this can be done by the COMELEC itself. As for the allegedly fake ballots, no better authority than the COMELEC can determine their authenticity, having itself ordered and supervised the printing of all the official ballots. (Bulaong vs. Commission on Elections, 241 SCRA 180 [1995], Mendoza, J.).

§36. With respect to the contention that a technical examination of the ballots should have been ordered to determine whether they had been written by two or more persons, or in groups written by only one hand, we hold that the Commission en banc did not commit an abuse of its discretion in denying petitioner-protestee's request. The rule is settled that the Commission itself can make the determination without the need of calling handwriting experts.

Nor was evidence aliunde necessary to enable the Commission to determine the genuineness of the handwriting on the ballots, an examination of the ballots themselves being sufficient, although as already stated, the Commission en banc asked the chairpersons of twelve Board of Election Inspectors (BEIs) to examine the ballots and see if the signatures, initials and markings thereon were theirs. The twelve did as required and later affirmed that the signatures, initials and markings were theirs.

Anyway, as a result of petitioner-protestee's charge that there was a syndicate substituting ballots with spurious ones in the Commission, the Commission en banc asked the NBI to investigate the charge. The NBI, however, found the charge to be without any basis. In addition, as previously noted, the Commission en banc asked its document examiners to examine the ballots but the examiners likewise found the charge to be without any basis. It is equally settled that the Commission is the best judge of the authenticity of ballots. Having ordered and supervised their printing, there is no better authority for determining the authenticity of ballots than the Commission itself. (Erni vs. Commission on Elections, 243 SCRA 706 [1995], Mendoza, J.).

§37. The majority members of public respondent HRET undisputedly admitted and appreciated as evidence mere photocopies of election-related documents when there is not even the slightest showing that the original or even certified true copies thereof cannot be reasonably produced before the Tribunal. These photocopies violate the

best evidence rule which is simply meant that no evidence shall be received which is merely substitutionary in its nature so long as the original evidence can be had. They should have been rejected altogether unworthy of any probative value at all, being incompetent pieces of evidence.

Certain vital election documents (such as certified xerox copy of the number of registered voters per precinct and photocopies of statements of votes) were procured at the sole instance of the ponente of the majority decision which, as the Tribunal readily admitted, were never offered in evidence by either of the parties. Aside from that, acting upon the self-serving allegation of private respondent Syjuco supported by mere photocopied election documents that around 12,075 signatures of voters scattered in 777 precincts were forged or falsified, the majority congressmen-members of the Tribunal by themselves without the participation of any of the three (3) remaining Justices-members, declared that 10,484 of the contested signatures are fake. This course of action grossly violates not only Rule 68 of the Tribunal's own rules which requires that all questions shall be submitted to the Tribunal as a body, but also Rule 5 thereof which further requires the presence of at least one (1) Justice-member to constitute a valid quorum. In order, therefore, that any and all matters presented before it can be properly addressed and considered, the Tribunal is mandated to act as a collegial body. And without collective effort as enjoined by Rule 68 but qualified by Rule 5 in this particular and most crucial stage of the proceedings, any resulting action purporting to be the official act of the Tribunal should be, as it is hereby, struck down as highly irregular. (Arroyo vs. House of Representatives Electoral Tribunal, 246 SCRA 384 [1995], Francisco, J.).

§38. Moreover, it is clearly provided under the Comelec Rules and Procedure that election documents and paraphernalia involved in election contests before courts of general jurisdiction shall be kept and held secure in a place to be designated by the Court in the care and custody of the Clerk of Court. (Beegan vs. Borja, 261 SCRA 474 [1996], Hermosisima, Jr., J.).

§39. In the course of the hearing, the COMELEC likewise found that the invalidation of ballots by Judge Agcaoili was based on two grounds: (1) the ballots were written by one hand; and (2) the ballots were marked. Since Judge Agcaoili did not view, examine and appreciate the original ballots involved, the COMELEC acted correctly and judiciously in declaring that "(v)iewed in the light of the rules on appreciation of ballots under Section 211 of the Omnibus Election Code. . . the lower court's decision [is] seriously impaired." Indeed, it would have been impossible for Judge Agcaoili to determine if the ballots were written by one person or that they were marked solely on the basis of the photocopies thereof as the latter were not the best evidence of the impugned ballots. These findings of the COMELEC can thus hardly be characterized as having been attended by grave abuse of discretion. (Nazareno vs. Commission on Elections, 279 SCRA 89 [1997], Davide, Jr., J.).

§40. [I]t is axiomatic that the COMELEC need not conduct an adversarial proceeding or a hearing to determine the authenticity of ballots or the handwriting found thereon. Neither does it need to solicit help of handwriting experts in examining or comparing the handwriting.

The opinion of one claiming to be a handwriting expert is not binding upon the COMELEC especially so where the question involves the mere similarity or dissimilarity of handwritings which could be determined by a comparison of existing signatures or handwriting.

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In Lorenzo v. Diaz, this Court enumerated the tools to aid one in the examination of handwriting, thus: The authenticity of a questioned signature cannot be determined solely upon its general characteristics, similarities or dissimilarities with the genuine signature. Dissimilarities as regards spontaneity, rhythm, presence of the pen, loops in the strokes, signs of stops, shades, etc., that may be found between the questioned signature and the genuine one are not decisive on the question of the former's authenticity. The result of examination of questioned handwriting, even with the benefit of aid of experts and scientific instruments, is, at best, inconclusive. There are other factors that must be taken into consideration. The position of the writer, the condition of the surface on which the paper where the questioned signature is written is placed, his state of mind, feelings and nerves, and the kind of pen and/or paper used, played an important role on the general appearance of the signature. Unless, therefore, there is, in a given case, absolute absence, or manifest dearth, or direct or circumstantial competent evidence of the character of a questioned handwriting, much weight should not be given to characteristic similarities, or dissimilarities, between the questioned handwriting and an authentic one. Indeed, the haste and pressure, the rush and excitement permeating the surroundings of polling places could certainly affect the handwriting of both the voters and the election officers manning the said precincts. The volume of work to be done and the numerous documents to be filled up and signed must likewise be considered. Verily, minor and insignificant variations in handwriting must be perceived as indicia of genuineness rather than of falsity.

In Go Fay v. Bank of the Philippine Islands, this Court held that carelessness, spontaneity, unpremeditation, and speed in signing are evidence of genuineness. In U.S. v. Kosel, it was ruled that dissimilarity in certain letters in a handwriting may be attributed to the mental and physical condition of the signer and his position when he signed. Grief, anger, vexation, stimulant, pressure and weather have some influence in one's writing. Because of these, it is an accepted fact that it is very rare that two (2) specimens of a person's signature are exactly alike.

Expert opinions are not ordinarily conclusive in the sense that they must be accepted as true on the subject of their testimony, but are generally regarded as purely advisory in character; the courts may place whatever weight they choose upon such testimony and may reject it, if they find that it is inconsistent with the facts in the case or otherwise unreasonable. (Punzalan vs. Commission on Elections, 289 SCRA 702 [1998], Kapunan, J.).

§41. Petitioner is not really contesting the method of the COMELEC in conducting a technical examination, but only the correctness thereof, petitioner theorizing double deductions in the appreciation of the results. But petitioner is estopped from adopting inconsistent positions. He cannot contest the method of dispute resolution, while at the same time affirm the validity thereof. It is worthy to note that the petitioner is contesting only the correctness of the report and not the method of dispute resolution. Then too, the Court has already sanctioned the method of technical examination of the thumbprints of voters, over revision of ballots, where a recount or revision of the ballots will not be reflective of the sovereign will due to the irregularities committed during the elections.

Since a revision and recount of the votes cast will unearth nothing except the fraudulent and spurious result of the elections, the COMELEC was justified in ordering a technical examination of the thumbprints of the voters based on the voters affidavits and the Computerized Voters List. The COMELEC was well within its authority to order such approach considering the circumstances obtaining in the election dispute.

It is possible that double deduction may occur, but absent any specific showing by petitioner of double deduction, the Court cannot grant the relief prayed for. Findings of fact of the COMELEC supported by substantial evidence shall be final and non-reviewable. Factual findings of the COMELEC based on its own assessments and duly supported by evidence, are conclusive upon the Court, more so, in the absence of a substantiated attack on the validity of the same. The COMELEC, as the government agency tasked with the enforcement and administration

of election laws, is entitled to the presumption of regularity of official acts with respect to the elections. Having the expertise and skill of enforcing and implementing election laws, the COMELEC could not have erred as to allow double deductions, thereby frustrating the will of the people. (Mohammad vs. Commission on Elections, 320 SCRA 258 [1999], Purisima, J.).

§42. The issue on incomplete canvassing was raised for the first time in Manifestation and Comments filed by petitioner. We take pains to emphasize that the same was filed only on July 18, 1998, thirty-four (34) days after the case had been submitted for resolution on June 14, 1998. When a case is already deemed submitted for decision or resolution, the court can only consider the evidence presented prior to this period. It can not and must not take into account evidence presented thereafter without obtaining prior leave of court. For as held in the case of Arroyo vs. House of Representatives Electoral Tribunal, "(t)he rule in an election protest is that the protestant or counter protestant must stand or fall upon the issues he had raised in his original or amended pleading filed prior to the lapse of the statutory period for filing a protest or counter protest". (Trinidad vs. Commission on Elections, 320 SCRA 836 [1999], Buena, J.).

§43. The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, we have consistently ruled that 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 trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein.

In Astorga vs. Fernandez, this Court inked the rationale behind the principle through the pen of Chief Justice Roberto Concepcion: "x x x Obviously, the simplest, the most expeditious and the best means to determine the truth or falsity of this allegation is to open the ballot box and examine its contents. To require parol or other evidence on said alleged irregularity before opening said box, would have merely given the protestee ample opportunity to delay the settlement of the controversy, through lengthy cross-examination of the witnesses for the protestant and the presentation of testimonial evidence for the protestee to the contrary. As held in Cecilio vs. Belmonte, this 'would be to sanction an easy way to defeat a protest.' "

In the case before us, the serious allegations embodied in the election protest mandates and necessitates the opening of the subject ballot boxes to the end of resolving the issue of fraud and irregularities in the election. Precisely, the purpose of ordering the opening of the ballot boxes is to ascertain, with the least amount of protracted delay, the veracity of the allegations of fraud and anomalies in the conduct of the electoral exercise. Thus, a preliminary hearing set for the same purpose is a mere superfluity that negates the essence of affording premium to the prompt resolution of election cases and incidents relating thereto. Stated differently, the lower court clearly committed grave abuse of discretion in ordering the conduct of a preliminary hearing to achieve the abovementioned purpose; the court a quo acted outside its province and overshot the limits of its jurisdiction. Evidently, the twin orders of the lower court, dated 07 July 1998 and 11 August 1998, were issued in clear violation of the Rules and existing case law on the matter. (Miguel vs. Commission on Elections, 335 SCRA 172 [2000], Buena, J.).

37. Demurrer to Evidence

§1. When a party litigant demurs to the pleading and then presents or files an answer to the same pleading, he thereby waives his demurrer and the courts will only consider the questions presented and raised by the answer. (Santos vs. Miranda and Clemente, 35 Phil. 643 [1916], Johnson, J.).

§2. A complaint in an action of quo warranto to determine the title to the office of provincial governor which shows that there is pending an election contest to determine the rights of the parties to the action of quo warranto with respect to the same office is demurrable on the ground that there is another action or proceeding pending for the determination of the same question, it appearing from the complaint that the two proceedings are based upon the same facts. (Luna vs. Rodriquez, 36 Phil. 401 [1917], Moreland, J.).

§3. While the law does not specify what defenses the protestees may make, it is certainly contemplated by the law that any defense which they have which denies, or tends to deny, or has the effect of defeating, the purpose of the contest, is open to them. They may demur or answer. If they answer by special defense it may be by any fact or facts which defeat or tend to defeat the purpose of the contest. (Valenzuela vs. Judge of Court of First Instance of Bulacan, 40 Phil. 163 [1919], Johnson, J.).

§4. In an election contest, the contestee may demur to the protest, provided he does so within the period fixed for filing an answer.

The fact that in the protest the number of votes which would result in favor of the protestant after the judicial counting is not specified, does not affect the right of the protestant, for it being known that said omission is a defect of the protest, the same may be cured by a specification of the votes mentioned in the protest, without thereby adding new grounds to those already alleged by the protestant. Hence when a demurrer to the motion of protest is sustained on account of this defect, the case must not be dismissed, but the court must allow the contestant to make the specification necessary to make clear the facts alleged in the protest. (Gallares vs. Caseñas, 48 Phil. 362 [1925], Villamor, J.).

§5. In an election contest proceeding, if the protestee presents a motion for dismissal or a demurrer to the evidence introduced by the protestant after the latter has rested, he thereby impliedly waives his right to present his own evidence; and if the ruling on his motion or demurrer is adverse, he shall not be permitted to present such evidence as he may have, and the trial court shall finally decide the contest. (Demeterio vs. Lopez, 50 Phil. 45 [1927], Villa-Real, J.).

§6. It was held that the protestee could validly file a demurrer to the protest of the petitioner; that the respondent court, in overruling said demurrer, had the power to fix a reasonable period within which the protestee should file his answer, and in any case before the commencement of the trial before the court, and that the respondent judge also had jurisdiction to entertain the answer with the counter-protest filed by the respondent. (Morente vs. Filamor and Arce Ignacio, 52 Phil. 289 [1928], Villamor, J.).

§7. The motion for dismissal filed by the contestee, which originated the judgment appealed from does not constitute an implied admission of the alleged facts in the protest. The purpose of such a motion was merely to raise before the court the question of jurisdiction over the subject matter, in view of the contestee’s opinion that the protest did not allege a good jurisdictional cause of action. (Aquino vs. Calabia and Sahagun, 55 Phil. 984 [1931], Romualdez, J.).

§8. When a demurrer is filed to an election contest, the answer and counter-protest may be filed within the period fixed by the court or by the rules of court but before the hearing begins, and not necessarily within fifteen days of the service of summons upon the contestee. (Morente vs. Filamor and Arce Ignacio, supra.). (Ignacio vs. Sison and Navarro, 56 Phil. 451 [1931], Villamor, J.).

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§9. The counterprotest in the instant case having been presented after the fifteen days' period fixed by law, and the protestee not having demurred to the protest, the lower court had no jurisdiction to pass upon and decide the question raised in the counterprotest. The admissibility or inadmissibility of the ballots involved in the counterprotest cannot, therefore, be examined and the election returns for the municipalities counter-contested must stand. (Arrieta vs. Rodriguez, 57 Phil. 717 [1932], Villamor, J.).

§10. An election protest being summary in nature, the COMELEC acted correctly in disposing the writs of the protest based on the sworn statements of the parties without first specifically resolving the motion to dismiss filed by protestee.

A motion to dismiss is to be considered a demurrer to evidence in election protest cases. (Jardiel vs. Commission on Elections, 124 SCRA 650 [1983], Melencio-Herrera, J.).

§11. Petitioners are obviously misled by the title of Rule 35 of the Rules of Court, "Judgment on Demurrer to Evidence." Said Rule, consisting of only one section, allows the defendant to move for dismissal of the case after plaintiff has presented his evidence on the ground of insufficiency of evidence, and provides for the effects of the dismissal or non-dismissal, as the case may be, on the right of the defendant to present his cause. Otherwise stated, it authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part as he would ordinarily have to do, if it is shown by plaintiff's evidence that the latter is not entitled to the relief sought. The demurrer, therefore, is an aid or instrument for the expeditious termination of an action, similar to a motion to dismiss, which the court or tribunal may either grant or deny.

It is thus apparent that the requirement of Section 1 of Rule 36 would only apply if the demurrer is granted, for in this event, there would in fact be an adjudication on the merits of the case, leaving nothing more to be done, except perhaps to interpose an appeal. However, a denial of the demurrer is not a final judgment, but merely interlocutory in character as it does finally dispose of the case, the defendant having yet the right to present his evidence, as provided for under Section 1 of Rule 35.

It is plain that this provision refers to a decision on the merits of the case, where the contending causes of the parties are decided with finality, one way or the other. The fallacy of petitioners' contention is obvious. Their argument proceeds from the erroneous premise that the April 16, 1982 resolution is a decision on the merits. Clearly, the said resolution is merely interlocutory, and being such, the Presiding Commissioner of the Division is competent to sign said resolution alone (Resolution No. 9805 dated June 18, 1980 of the Comelec). (Nepomuceno vs. Commission on Elections, 126 SCRA 472 [1983], Escolin, J.).

§12. In an election protest proceeding, however, which is a summary one, and in which the periods are short and fatal, and trials rapid and preferential as the peremptory nature of the litigation so requires, the motion for dismissal at that stage of the proceeding must be considered as a demurrer to the evidence presented by the protestant, with implied waiver by the protestee to present his evidence, whatever may be the ruling, whether adverse or favorable, either in the first instance or on appeal, the court of origin or appellate court having the power to definitely decide the protest. If, in the prosecution of election protests the ordinary practice were to be followed in regard to the presentation of motions for dismissal or of demurrers to the evidence, in the majority of

cases, if not always, the law would be frustrated and the will of the electorate defeated, to the great detriment of the underlying principles of representative government, because, in case of revocation of a ruling sustaining the motion of dismissal or the demurrer on appeal, the case would have to be remanded to the court below for the continuation of the trial and the introduction of evidence by the protestee, thus causing the proceeding to continue during the term of the office in question, with the possible result that the defeated, and not the elected, candidate would be discharging the office. (Calabig vs. Villanueva, 135 SCRA 300 [1985], Cuevas, J.).

§13. The present controversy does not involve a novel issue. As early as the case of Demetrio vs. Lopez, wherein after the protestant had introduced his evidence, the protestee, before presenting his own, filed a motion to dismiss the protest upon the ground that the evidence presented by the protestant did not show that he had obtained a greater number of votes than the protestee, and reserving the right to present his evidence if his motion was decided adversely, this Court held that: “In regard to the first assignment of error, the practice followed in the courts of these Islands is to permit the defendant to present a motion for dismissal in ordinary cases after the plaintiff has rested, reserving the right to present his evidence if the ruling on his motion is adverse to him either in the first instance or on appeal. In an election protest proceeding, however, which is a summary one, and in which the periods are short and fatal, and trials rapid and preferential as the peremptory nature of the litigation so requires, the motion for dismissal at that stage of the proceeding must be considered as a demurrer to the evidence presented by the protestant, with implied waiver by the protestee to present his evidence, whatever may be the ruling, whether adverse or favorable, either in the first instance or on appeal, the court of origin or appellate court having the power to definitely decide the protest. In election protests, therefore, the protestee should not be permitted to present a motion for dismissal or a demurrer to the evidence of the protestant, unless he waives the introduction of his own evidence in case the ruling on his motion or demurrer is adverse to him, in which case the court that tries the case must definitely decide it.

The ground for dismissal based on the fact that the pleading asserting the claims states no cause of action is different from the ground that the case of the claimant should be dismissed for lack of cause of action. The first is raised in a motion to dismiss under Rule 16 before a responsive pleading is filed and can be determined only from the allegations in the initiatory pleading and not from evidentiary or other matters aliunde. The second is raised in a demurrer to evidence under Rule 33 after the plaintiff has rested his case and can be resolved only on the basis of the evidence he has presented in support of his claim.

It likewise bears stressing that a demurrer to evidence under Rule 33 is in the nature of a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests its case. It thus differs from a motion to dismiss under Rule 16 which is grounded on preliminary objections and is presented at the outset of the case, that is, before a responsive pleading is filed by the movant and within the period for the filing thereof.

It is thus obvious that the motion to dismiss filed by respondent Rodriguez before the trial court in Special Election Case No. 891 was, in point of time, actually a demurrer to evidence. It was filed after petitioner Enojas, Jr. had offered his evidence and rested his case, and before respondent Rodriguez was supposed to present his own. Although the motion contained other grounds, specifically alleged therein was the contention that petitioner Enojas had no cause of action. The ground necessarily connotes that despite the evidence offered by petitioner, it

was respondent's submission that such evidence was insufficient to establish his cause of action. Ineluctably, therefore, such a motion presented at that stage of the action and on that ground cannot be anything else other than a demurrer to evidence.

What conjointly determine the nature of a pleading are the allegations therein made in good faith, the stage of the proceeding at which it is filed, and the primary objective of the party filing the same. The ground chosen or the rationale adopted by the court in resolving the motion does not determine or change the real nature thereof. It is also significant that respondent Rodriguez did obviously rely primarily on what he believed was the lack of the requisite quantum of evidence to prove the election protest, so much so that he did not even bother to file a counter-protest. All the foregoing considerations convince us that the supposed motion to dismiss is actually a demurrer, hence the trial court correctly held that respondent Rodriguez had waived his right to present evidence. (Enojas, Jr., vs. Commission on Elections, 283 SCRA 229 [1997], Regalado, J.).

38. Summary judgment

§1. That an election protest may not be disposed of by summary judgment, is inferable from the following provision of the Election Code. "Where the allegations in a protest x x x so warrant, or whenever in the opinion of the court the interest of justice so requires, it shall immediately order x x x that the ballots be examined and the votes counted."

Summary judgment applies only to ordinary civil actions for the recovery of money claims (Remedial Law Compendium by Regalado, Vol. I, 1986 Edition, p. 209, citing the case of Roque vs. Encarnacion, et al., 50 O.G. 4193). The rules on summary judgment have no application to election protests for "beyond the narrow personal stakes of the opposing candidates, the rights of the electorate, or the people, are involved." (Dayo vs. Commission on Elections, 199 SCRA 449 [1991], Griño-Aquino, J.).

39. Drawing of lots

§1. If upon hearing of the protest a recount of the ballots results in a tie between protestor and protestee, the court may, under Section 479 of the Administrative Code as amended by Section 25 of Act No. 3210, order that the tied candidates draw lots in its presence and may render judgment in accordance with the result of the drawing. (Noble vs. Tuason and Penoso, 48 Phil. 387 [1925], Ostrand, J.).

§2. A candidate who lost in the drawing of lots is estopped from contesting the election of the one who won in the draw, because by submitting himself to the draw the defeated candidate is considered to have admitted that the announcement made by the board of canvassers regarding the tie was the result of a valid and lawful canvass. The

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candidate who submitted himself to the draw is considered as having deliberately induced his opponent to believe that that canvass which resulted in a tie was legal and he had thereby led his opponent to act upon such belief in the validity of the canvass and the tie, so that he can not be permitted to repudiate his own acts.

A candidate who had tied with another and who submits himself to the drawing of lots, stating that if the result of said drawing of lots should be adverse to him, he would file a protest before a competent court, is not estopped from doing so. The view adopted by the Supreme Court in this latter case is in keeping with the doctrine that an election protest involves public interest, so that the court should allow all opportunity possible for the ascertainment of the true result of the elections. (De Castro vs. Ginete, 27 SCRA 623 [1969], Zaldivar, J.).

§3. Under Section 70 of the Revised Election Code, where the election results in a tie, a drawing of lots between the tied candidates shall be held. (Moraleja vs. Relova, 42 SCRA 10 [1971], Barredo, J.).

40. Motion for Reconsideration

§1. As a matter of court practice, the courts have the power to reexamine the evidence they have before them, when one of the parties asks for a reconsideration of the original decision, in order to decide the question raised, and there is no reason why this rule cannot be applied to election contests. (Santos vs. Court First Instance of Cavite, 49 Phil. 398 [1926], Villamor, J.).

§2. The respondent judge, in the exercise of his jurisdiction, could also, motu proprio, reexamine all the ballots of both candidates and set aside the decision previously promulgated, before the same became final and was executed, for the purpose of making its decision conformable to the true weight of the evidence. (Santos vs. Court of First Instance of Cavite, 49 Phil., 398). (Montiague vs. Buyson Lampa and Legaspi, 61 Phil. 58 [1934], Imperial, J.).

§3. Where the motion for reconsideration of a decision in an electoral protest was in reality based on the ground that the decision was not justified by the evidence, the trial court did not err in not dismissing the appeal. While the epigraph of said motion seems to indicate that it was pro forma, the epigraph should yield to the contents of the motion, as substance should prevail over form. (Morales vs. Tuguinay, 19 SCRA 338 [1967], Reyes, J.B.L., J.).

§4. A party may claim, in a motion for reconsideration, that certain ballots should be counted for him. The circumstance that the claim was made in a motion for reconsideration should not deter the court from examining, and ruling on, those ballots.

The decisive circumstance that makes it mandatory for the Appellate Court to consider, and rule on a ballot is that, the ballot is before the court and it is claimed or impugned by a party in the election contest — be it in the trial court or in the appellate court. The court can not, and it must not, close its eyes to the realities as presented by the ballots before it. The contention, that to allow a party to claim or impugn ballots for the first time in a motion for reconsideration of a decision in the appellate court, is to sanction confusion and delay in the disposal of election cases is of no moment as long as the claim regarding the ballots is presented before the decision has become final and the ballots thus claimed would be decisive in determining the real winner in the elections. (Juliano vs. Court of Appeals, 20 SCRA 808 [1967], Zaldivar, J.).

§5. Petitioner went to the Comelec for the annulment of the respondent's proclamation. He also filed an election protest in the Court of First Instance. Comelec rejected him. He asked Comelec to reconsider. That reconsideration was pending when, meanwhile, the court protest came up for hearing. Petitioner, instead of awaiting the results of his motion for reconsideration in Comelec, insisted upon the hearing in court of his election protest. He opposed the petition of respondent, his opponent, to hold in abeyance the hearing of said election protest pending the result of his (petitioner's) motion for reconsideration before Comelec. To lend support to his opposition to the postponement of the hearing of the election case, he told the court that he was "withdrawing" his "motion for reconsideration in COMELEC" and sued for time "to get the withdrawal" of that motion for reconsideration. The election protest was concluded in the Court of First Instance. But, petitioner lost. (Ondona vs. Commission on Elections, 27 SCRA 554 [1969], Sanchez, J.).

§6. The burden of the motion for reconsideration is that the Court's ratio decidendi that questions concerning alleged falsification or tampering of returns and asking for the exclusion in the canvass should first be raised before the canvassing board, subject to appeal from its decision in the Comelec (as specifically ordered by Comelec in its Resolution No. 78 of November 26, 1971 directing that all such questions should "be initially raised before the board during the canvass") should equally apply to the 164 election returns sought to be questioned in pending Case C-339 of the Comelec. The Court believes that this question is best raised and resolved in Case L-35918 entitled "Julasiri M. Anni vs. Muss Izquierdo, et al. x x x. (Anni vs. Rasul, 57 SCRA 686 [1974], Teehankee, J.).

§7. Anent the propriety of the issuance of the resolution denying petitioner's motion for reconsideration, suffice it to say that the requirement of notice in the promulgation of resolutions and decisions of the COMELEC embodied in Section 5 of Rule 18 of the Rules does not apply in the case at bar for the simple reason that a motion for reconsideration of an en banc ruling, resolution, order or decision is not allowed under Section 1, Rule 13 thereof. (Lozano vs. Yorac, 203 SCRA 256 [1991], Regalado, J.).

§8. There is no merit in this petition for review for the COMELEC correctly found that the petitioners' appeal from the court's order dismissing their election protest was indeed tardy. It was tardy because their motion for reconsideration did not suspend their period to appeal.

Petitioners admitted receipt of the resolution of the trial court dated March 7, 1990 on March 15, 1990 but they

filed a notice of appeal on April 3, 1990 only, instead of on or before March 20, 1990 (five days from receipt of the trial court's decision), because they filed a motion for reconsideration which, as previously stated, is prohibited by Section 256 of the Omnibus Election Code and Section 20, Rule 35 of the COMELEC RULES OF PROCEDURE. The COMELEC, therefore, correctly ruled that the motion for reconsideration filed by the petitioners in the trial court on March 20, 1990 did not suspend the period to appeal since a "motion for reconsideration" is prohibited under Section 256 of the Omnibus Election Code. (Veloria vs. Commission on Elections, 211 SCRA 907 [1992], Griño- Aquino, J.).

§9. Admittedly, the order regarding the revision of ballots is an interlocutory order because it still requires a party to perform certain acts leading to the final adjudication of a case. The order in the case at bar is for the Provincial Election Supervisor of Camarines Sur to transfer the ballot boxes from Camarines Sur to Manila for a recount and revision of ballots, for the purpose of determining who won the gubernatorial race in Camarines Sur. Being an interlocutory matter, the question now before us is whether or not the First Division of the COMELEC committed grave abuse of discretion in refusing to refer petitioner's motion for reconsideration to the COMELEC en banc. It is our opinion that the COMELEC did not commit grave abuse of discretion. For said motion to be considered en banc, it requires the unanimous vote of the members of the division as mandated by Section 2 of Rule 3 of the COMELEC Rules. In the case at bar, there was an absence of such vote.

Even if we are to consider the case at bar as falling within the jurisdiction of the COMELEC en banc by virtue of Section 3 of Rule 5(c) of the COMELEC Rules, it goes without saying that only motions for reconsideration filed within the five (5) day reglementary period as prescribed by Section 2 of Rule 19 of said Rules can be referred to the COMELEC en banc. Petitioner should have filed his motion for reconsideration on or before September 21, 1992 considering that he received the COMELEC's order dated September 9, 1992 on September 16, 1992. Petitioner may have been overly optimistic in expecting that his "urgent motion for one-day extension" would be granted forthwith by the First Division, which it did not. Hence, upon the lapse of five (5) days, the order of the COMELEC dated September 9, 1992 can no longer be questioned; much less can it be referred to the COMELEC en banc. (Bulaong vs. Commission on Elections, First Division, 220 SCRA 745 [1993], Romero, J.).

§10. It is beyond doubt that SPC No. 92-341 and SPC No. 92-358 are in the guise of a motion for reconsideration of the COMELEC's Resolution No. 92-180, which allowed the reconvening of the Board of Election Inspectors of Precinct No. 40-A-1 only if the seven questioned ballots would materially affect the results of the election. Both actions seek the canvassing of the election return of Precinct No. 40-A-1. Under Section 1 of Rule 13 of the COMELEC Rules of Procedure, a motion for reconsideration of an en banc ruling is among the prohibited pleadings. (Papandayan vs. Commission on Elections, 230 SCRA 469 [1994], Quiason, Jr.).

§11. The Solicitor General, in behalf of the COMELEC, raises a fundamental question. He contends that the filing of the present petition, without petitioner first filing a motion for reconsideration before the COMELEC en banc, violates Art. IX, A, Section 7 of the Constitution because under this provision only decisions of the COMELEC en banc may be brought to the Supreme Court on certiorari. This is correct. It is now settled that in providing that the decisions, orders and rulings of COMELEC "may be brought to the Supreme Court on certiorari" the Constitution in its Art. IX, A, Section 7 means the special civil action of certiorari under Rule 65, Section 1.

Conformably to these provisions of the Constitution all election cases, including pre-proclamation controversies, must be decided by the COMELEC in division. Should a party be dissatisfied with the decision he may file a motion for reconsideration before the COMELEC en banc. It is, therefore, the decision, order or ruling of the COMELEC en banc that, in accordance with Art. IX, A, Section 7, "may be brought to the Supreme Court on

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certiorari." (Reyes vs. Regional Trial Court of Oriental Mindoro, Branch XXIX, 244 SCRA 41 [1995], Mendoza, J.).

§12. Private respondent maintains that the filing of his Motion for Reconsideration on June 25, 1998 was within the 5-day reglementary period as he received a copy of the June 9, 1998 Order of the COMELEC only on June 22, 1998. We do not agree with the private respondent for he cannot count the 5-day reglementary period from the date he received the June 9, 1998 Order of the COMELEC. Section 2, Rule 19 of the COMELEC Rules of Procedure clearly provides that private respondent's Motion for Reconsideration should be "x x x filed within five (5) days from the promulgation thereof," thus: "Sec. 2. Period for Filing Motions for Reconsideration.¾A motion to reconsider a decision, resolution, order or ruling of a Division shall be filed within five (5) days from promulgation thereof. Such motion, if not pro-forma, suspends the execution or implementation of the decision, resolution, order or ruling." A party cannot feign ignorance of the date of promulgation of a decision or resolution because it is previously fixed and notice is served upon him in advance. (Velayo vs. Commission on Elections, 327 SCRA 713 [2000], Puno, J.).

§13. The Supreme Court has no power to review via certiorari an interlocutory order or even a final resolution of a Division of the Commission on Elections.

A motion for reconsideration is a plain and adequate remedy provided by law. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition.

A decision, order or resolution of a division of the Comelec must be reviewed by the Comelec en banc via a motion for reconsideration before the final en banc decision may be brought to the Supreme Court on certiorari.

The exceptions to the rule in certiorari cases, dispensing with a motion for reconsideration prior to the filing of the petition, do not apply to election cases where a motion for reconsideration is mandatory by Constitutional fiat to elevate the case to the Comelec en banc.

A motion for reconsideration then is a pre-requisite to the viability of a special civil action for certiorari, unless the party who avails of the latter can convincingly show that his case falls under any of the following exceptions to the rule: (1) when the question is purely legal, (2) where judicial intervention is urgent, (3) where its application may cause great and irreparable damage, (4) where the controverted acts violate due process, (5) failure of a high government official from whom relief is sought to act on the matter, and (6) when the issue for non-exhaustion of administrative remedies has been rendered moot. (Ambil, Jr. v s. Commission on Elections, 344 SCRA 358 [2000], Pardo, J.]).

§14. Respondents contend that the instant petition should be dismissed for being premature, because petitioner has a pending motion for reconsideration of the resolution, dated August 18, 1998, of the COMELEC. We hold that petitioner acted correctly in filing the present petition because the resolution of the COMELEC in question is not subject to reconsideration and, therefore, any party who disagreed with it had only one recourse, and that was to

file a petition for certiorari under Rule 65 of the Rules of Civil Procedure. Rule 13, Sec. 1 of the COMELEC Rules of Procedure provides: What Pleadings are Not Allowed.¾The following pleadings are not allowed: . . . d) motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases.

As the case before the COMELEC did not involve an election offense, reconsideration of the COMELEC resolution was not possible and petitioner had no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. For him to wait until the COMELEC denied his motion would be to allow the reglementary period for filing a petition for certiorari with this Court to run and expire.

The COMELEC contends that petitioner should not be allowed to speculate on the outcome of his motion for reconsideration, which he has not formally withdrawn. Indeed, it would have been more appropriate for petitioner to first withdraw his motion for reconsideration in the COMELEC before filing the present petition. Nevertheless, the filing by petitioner of the instant petition and his reply to the comments of respondents¾where he admitted that, except in cases involving election offenses, a motion for reconsideration of a decision of the COMELEC en banc is a prohibited pleading¾sufficiently indicated his intention to abandon his motion for reconsideration. (Angelia vs. Commission on Elections, 332 SCRA 757 [2000], Mendoza, J.).

41. Motion for New Trial

§1. The provisions of Section 145 of the Code of Civil Procedure authorizing the vacation of judgments and the granting of new trials, in certain cases, are not applicable to proceedings had in election contests under the provisions of Section 27 of Act No. 1582. (Arnedo vs. Llorente and Liongson, 18 Phil. 257 [1911], Carson, J.).

§2. Under the provisions of Section 145 of Act No. 190, and within the time prescribed by said section, the judge was fully authorized to set aside his first judgment and to grant a new trial when he was convinced that his judgment was against the law. (Palomata vs. Villareal, 40 Phil. 641 [1920], Johnson, J.).

§3. The consideration of a motion for new trial lies entirely within the discretion of the judges, who may grant or deny them as the facts may justify. The summary character of election protest proceedings is no bar to the introduction of additional evidence necessary for the proper resolution of the questions raised by the parties. (Calangi vs. Jocson, G.R. No. 16108 [not reported]; Palomata vs. Villareal, 40 Phil. 641). (Cecilio vs. Belmonte, 51 Phil. 540 [1928], Villamor, J.).

42. Execution of judgment pending appeal

§1. The right of the prevailing party in a pre-proclamation case to the execution of the COMELEC’s decision (i.e., to be proclaimed and to assume office) after the lapse of five (5) days from receipt of said decision by the losing party, unless restrained by the Supreme Court, does not bar the losing party from filing an election contest within the ten-day period fixed in Section 251. The absence of a restraining order from the Supreme Court simply

allows the prevailing party to be proclaimed and assume office.

In Gallardo vs. COMELEC, G.R. No. 85974, May 30, 1989, the appellant did not ask this Court to restrain the execution of the COMELEC decision for the simple reason that his opponent, Rimando, had already been proclaimed even before the pre-proclamation case was filed by him (Gallardo) in the COMELEC. That circumstance, was precisely the reason why the COMELEC dismissed the pre-proclamation case, for the rule is that after the winning candidate has been proclaimed and assumed office, a pre-proclamation petition does not lie against him.

But, although already proclaimed and installed in office, he may still be unseated: (1) when his opponent is adjudged the true winner of the election by a final judgment of the courts in the election contest (Sec. 251, Omnibus Election Code); (2) when the prevailing party is declared ineligible or disqualified by final judgment in a quo warranto case (Sec. 253, Omnibus Election Code); and (3) when the incumbent is removed from office for cause. (Gallardo vs. Rimando, 187 SCRA 463 [1990], Griño-Aquino, J.).

§2. Any motion for execution pending appeal must be filed before the period for the perfection of the appeal. Pursuant to Section 23 of the Interim Rules Implementing B.P. Blg. 129, which is deemed to have supplementary effect to the COMELEC Rules of Procedures pursuant to Rule 43 of the latter, an appeal would be deemed perfected on the last day for any of the parties to appeal, or on 6 July 1994. On 4 July 1994, the private respondent filed her notice of appeal and paid the appeal fee. On 8 July 1994, the trial court gave due course to the appeal and ordered the elevation of the records of the case to the COMELEC. Upon the perfection of the appeal, the trial court was divested of its jurisdiction over the case. Since the motion for execution pending appeal was filed on 12 July 1994, or after the perfection of the appeal, the trial court could no longer validly act thereon. It could have been otherwise if the motion was filed before the perfection of the appeal. Accordingly, since the respondent COMELEC has the jurisdiction to issue the extraordinary writs of certiorari, prohibition, and mandamus, then it correctly set aside the challenged order granting the motion for execution pending appeal and writ of execution issued by the trial court. (Relampagos vs. Cumba, 243 SCRA 690 [1995], Davide, Jr., J.).

§3. The settled rule is that the mere filing of a notice of appeal does not divest the trial court of its jurisdiction over a case and resolve pending incidents. Where the motion for execution pending appeal was filed within the reglementary period for perfecting an appeal, as in the case at bench, the filing of a notice of appeal by the opposing party is of no moment and does not divest the trial court of its jurisdiction to resolve the motion for immediate execution of the judgment pending appeal because the court must hear and resolve it for it would become part of the records to be elevated on appeal. Since the court has jurisdiction to act on the motion at the time it was filed, that jurisdiction continued until the matter was resolved and was not lost by the subsequent action of the opposing party. (Edding vs. Commission on Elections, 246 SCRA 502 [1995], Francisco, J.).

§4. The rule is now settled that Section 2, Rule 39, of the Rules of Court, which allows Regional Trial Courts to order executions pending appeal upon good reasons stated in a special order, can be applied, pursuant to Rule 41 of the COMELEC Rules of Procedure, to election contests decided by the courts.

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A motion for execution pending appeal may be filed at any time before the period for the perfection of the appeal. Such an appeal, when made, is deemed perfected on the last day for any of the parties to appeal or, in this particular case, on 16 July 1996. Petitioner and private respondent both received their respective copies of the decision on 11 July 1996. An appeal therefrom may thus be filed within five (5) days from 11 July 1996 or until 16 July 1996. On 12 July 1996, the same date that petitioner filed her motion for execution pending appeal, private respondent filed his notice of appeal and furnished the COMELEC, through its Electoral Contest Adjudication Department, with a copy thereof on 15 July 1996. The corresponding fee was paid, and the appeal was docketed EAC No. 30-96

The wisdom of immediate execution has been upheld in the past by this Court in similar cases; thus, in Gahol vs. Riodique, we have said: "x x x [T]he board of canvassers is composed of persons who are less technically prepared to make an accurate appreciation of the ballots, apart from their being more apt to yield to extraneous considerations, and that board must act summarily, practically racing against time, while, on the other hand, the judge has the benefit of all the evidence the parties can offer and of admittedly better technical preparation and background, apart from his being allowed ample time for conscientious study and mature deliberation before rendering judgment, one cannot perceive the wisdom of allowing the immediate execution of decisions in election cases adverse to the protestees, notwithstanding the perfection and pendency of appeals therefrom, as long as there are, in the sound discretion of the court, good reasons therefor." (Gutierrez vs. Commission on Elections, 270 SCRA 413 [1997], Vitug, J.).

§5. Pursuant to Section 1, Rule 41 of the COMELEC Rules of Procedure, Section 2, Rule 39 of the Rules of Court, which allows Regional Trial Courts to order execution pending appeal upon good reasons stated in a special order, may be made to apply suppletorily or by analogy to election cases decided by them. While execution pending appeal may be allowed under the foregoing rule, the said provision must be strictly construed against the movant as it is an exception to the general rule on execution of judgments. Following civil law jurisprudence, the reason allowing for immediate execution must be of such urgency as to outweigh the injury or damages of the losing party should it secure a reversal of the judgment on appeal. Absent any such justification, the order of execution must be struck down as flawed with grave abuse of discretion.

We agree. Not every invocation of public interest with particular reference to the will of the electorate can be appreciated as a good reason especially so if the same appears to be self-serving and has not been clearly established. Public interest will be best served when the candidate voted for the position is finally proclaimed and adjudged winner in the elections. Urgency and expediency can never be substitutes for truth and credibility. The appeal interposed by private respondent to the COMELEC does not seem to be merely dilatory as it aims to resolve decisively the question as to who is the true winner in the last elections. Moreover, apart from petitioner's sweeping and self-serving allegation that the appeal is dilatory, no supporting argument or explanation whatsoever is offered why he considers it so. The omission militates against the pretended urgency of the motion for execution pending appeal. We are sure that both petitioner and private respondent would want to see the light at the end of the tunnel. Finally, the issue of "illegally manufactured votes" is best ventilated, and must accordingly be threshed out, in the election case before the COMELEC. (Camlian vs. Commission on Elections, 271 SCRA 757 [1997], Kapunan, J.).

§6. It also bears emphasis that Rule 143 of the Rules of Court allows execution pending appeal in election cases upon good reasons stated in the special order. In its Order of execution, respondent RTC Judge Dilag cited two

reasons to justify execution of his decision pending appeal, viz: (1) the grant of execution would give substance and meaning to the people's mandate, especially since the RTC has established private respondent's right to office; and (2) barely 18 months is left on the tenure of the Ternate mayor and the people have the right to be governed by their chosen official. In the recent case of Gutierrez v. COMELEC, the same grounds for execution pending appeal of the decision in the protest case were relied upon by the trial court and we found them to be valid reasons for execution.

In a long line of cases, we have consistently held that Section 2, Rule 39 of the Rules of Court applies suppletorily to election cases. It is also settled that as long as the motion for execution pending appeal is filed before the perfection of appeal, the writ of execution may issue after the period of appeal. In Universal Far East Corporation v. Court of Appeals, where the motion for execution was resolved more than four (4) months after the expiration of the period to appeal, we recognized that even in civil cases where the period to appeal (15 days) is longer, the ruling on the motion for execution cannot always be made within 15 days. (Lindo vs. Commission on Elections, 274 SCRA 511 [1997], Puno, J.).

§7. The Omnibus Election Code of the Philippines (B.P. Blg. 881) and the other election laws do not specifically provide for execution pending appeal of judgment in election cases, unlike the Election Code of 1971 whose Section 218 made express reference to the Rules of Court on execution pending appeal; thus: SEC. 218. Assumption of office notwithstanding an election contest.¾Every candidate for a provincial, city, municipal or municipal district office duly proclaimed elected by the corresponding board of canvassers shall assume office, notwithstanding the pendency in the courts of any contest against his election, without prejudice to the final decision thereon and applicable provisions of the Rules of Court regarding execution of judgment pending appeal. In Gahol v. Riodique, we explicitly ruled that the assumption of office provided for in the aforementioned section "is that of the protestant, which is made possible by the provisions of the Rules of Court regarding execution pending appeal, which is none other than Section 2 of Rule 39."

The failure of the extant election laws to reproduce Section 218 of the Election Code of 1971 does not mean that execution of judgment pending appeal is no longer available in election cases. In election contests involving elective municipal officials, which are cognizable by courts of general jurisdiction; and those involving elective barangay officials, which are cognizable by courts of limited jurisdiction, execution of judgment pending appeal under Section 2 of Rule 39 of the Rules of Court are permissible pursuant to Rule 143 of the Rules of Court, which is now Section 4, Rule 1 of the 1997 Rules of Civil Procedure.

As to election cases involving regional, provincial, and city officials, which fall within the exclusive original jurisdiction of the COMELEC, Section 3 of Article IX-C of the Constitution vests the COMELEC with the authority to promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. Additionally, Section 52(c), Article VII of the Omnibus Election Code empowers the COMELEC to promulgate rules and regulations implementing the provisions of the Code or other laws which it is required to enforce and administer. Accordingly, the COMELEC promulgated the COMELEC Rules of Procedure. Section 1 of Rule 41 thereof expressly provides that "[i]n the absence of any applicable provision in [said] Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in

a suppletory character and effect." This Court has explicitly recognized and given approval to execution of judgments pending appeal in election cases filed under existing election laws. In those cases, the immediate execution was made in accordance with Section 2 of Rule 39 of the Rules of Court.

All that was required for a valid exercise of the discretion to allow execution pending appeal was that the immediate execution should be based "upon good reasons to be stated in a special order." The rationale why such execution pending appeal is allowed in election cases is, as stated in Gahol v. Riodique, "to give as much recognition to the worth of a trial judge's decision as that which is initially ascribed by the law to the proclamation by the board of canvassers." Thus: Why should the proclamation by the board of canvassers suffice as basis of the right to assume office, subject to future contingencies attendant to a protest, and not the decision of a court of justice? Indeed, when it is considered that the board of canvassers is composed of persons who are less technically prepared to make an accurate appreciation of the ballots, apart from their being more apt to yield to extraneous considerations, and that the board must act summarily, practically raising [sic] against time, while, on the other hand, the judge has the benefit of all the evidence the parties can offer and of admittedly better technical preparation and background, apart from his being allowed ample time for conscientious study and mature deliberation before rendering judgment, one cannot but perceive the wisdom of allowing the immediate execution of decisions in election cases adverse to the protestees, notwithstanding the perfection and pendency of appeals therefrom, as long as there are, in the sound discretion of the court, good reasons therefor.

In a nutshell, the following constitute "good reasons" and a combination of two or more of them will suffice to grant execution pending appeal: (1) the public interest involved or the will of the electorate; (2) the shortness of the remaining portion of the term of the contested office; and (3) the length of time that the election contest has been pending. The filing of a bond, which was mentioned in Tobon Uy, does not constitute a good reason. Nevertheless, the trial court may require the filing of a bond as a condition for the issuance of a corresponding writ of execution to answer for the payment of damages which the aggrieved party may suffer by reason of the execution pending appeal.

Because of COMELEC's inaction on the first motion, the temporary restraining order issued on 6 June 1996 was taken full advantage of by the petitioners, who then refused to surrender to the prevailing private respondents their offices. This created an unwholesome spectacle: two sets of officials exercising the functions of the elective local positions of Guipos, Zamboanga del Sur. Such a situation was inimical to public interest and was a potential source of trouble and even bloodshed between the contending partisan forces. The COMELEC should have taken a more drastic and positive action to prevent such a situation by complying strictly with the rule on restraining orders. Under Section 5, Rule 30 of the COMELEC Rules of Procedure and Section 5, Rule 58 of the Rules of Court, the lifetime of a restraining order is only twenty days. This period is nonextendible. If the COMELEC wanted to restrain further the implementation of the trial court's order granting execution pending appeal and the writ of execution, it should have, if warranted, issued a writ of preliminary injunction; but it did not. (Ramas vs. Commission on Elections, 286 SCRA 189 [1998], Davide, Jr., J.).

§8. Since ABALLE has appealed to the COMELEC from the decision in Election Protest Case No. 130 of the MTCC, by filing a Notice of Appeal on 22 January 1998, and submitting at the same time the postal money orders

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for the appeal fees, it follows that the COMELEC has primary jurisdiction on the petition for certiorari to annul the execution pending appeal granted by the MTCC. This is an issue which we resolved in Relampagos v. Cumba, et al.(243 SCRA 690 [1995]).

We ruled in Relampagos that the last paragraph of Section 50 of B.P. Blg. 697 remains in full force and effect in such cases where, under paragraph (2), Section 1 (should be Section 2) Article IX-C of the Constitution, the COMELEC has exclusive appellate jurisdiction over the election contest in question. In such cases the COMELEC has the authority to issue the extraordinary writs of certiorari, prohibition and mandamus in aid of its appellate jurisdiction. The last paragraph of Section 50 reads: The Commission is hereby vested with exclusive authority to hear and decide petitions for certiorari, prohibition and mandamus involving election cases.

Under the second paragraph of Section 2, Article IX-C of the Constitution, the Commission on Elections has exclusive appellate jurisdiction over, inter alia, contests involving elective barangay officials decided by trial courts of limited jurisdiction. (Beso vs. Aballe, 326 SCRA 100 [2000], Davide, Jr., C.J.).

§9. A valid exercise of the discretion to allow execution pending appeal requires that it should be based “upon good reasons to be stated in a special order.” The following constitute “good reasons” and a combination of two or more of them will suffice to grant execution pending appeal: (1.) public interest involved or will of the electorate; (2.) the shortness of the remaining portion of the term of the contested office; and (3.) the length of time that the election contest has been pending (emphasis supplied). In Lauban vs. COMELEC, this Court ruled that “shortness of the remaining term of office and posting a bond are not good reasons for execution of a judgment pending appeal”. (Fermo vs. Commission on Elections, 328 SCRA 52 [2000], Gonzaga-Reyes, J.).

43. Effect of an appeal

§1. A mere submission of a particular ballot to the judgment of this court, without any attempt on the part of the appellant to show wherein the trial court erred in admitting or rejecting such ballot, is not a sufficient assignment of error with reference to such ballot and will be ignored. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§2. As a rule of court practice, the appellant must point out in his written brief or in his oral argument, which ballots should be adjudicated to the protestant and which should be deducted from the protestee, so that there will be sufficient assignment of error to justify the consideration of the court on appeal.

The assignments of error made by the appellant as to the canvass of votes, when they do not affect the result of the election, do not require the special determination of the court. (Cecilio vs. Belmonte, 51 Phil. 540 [1928], Villamor, J.).

§3. Under the doctrine of Mendoza vs. Mendiola (53 Phil., 267), and Rule 20 of the Revised Rules of this court, appellees in election cases have a right to assign errors in a decision rendered therein although they have not appealed therefrom. (Villavert vs. Lim, 62 Phil. 178 [1935], Villa-Real, J.).

§4. The ruling that the appellate court may refuse to examine ballots not assigned as errors, cannot be so interpreted as to deprive an appellate court of the right given to it by law to examine any ballot even motu proprio

if that is necessary to arrive at a correct decision.

An apeal in an election case is likened to appeal in a criminal case, where the case is deemed tried de novo (Section 178, Revised Election Code), thus throwing wide open the appeal before the court (Cabasada vs. Valmoria, 83 Phil. 112). (Borja vs. De Leon, 118 Phil. 1050 [1963]; 9 SCRA 216 [1963], Bautista Angelo J.).

§5. The Revised Election Code considers an election protest similar to a criminal case, wherein on appeal the case is tried de novo, and the Court of Appeals may review a ruling of the court of first instance on any ballot motu proprio whether the ballot had been the object of appeal or not.

An appeal by certiorari from a decision of the Court of Appeals to the Supreme Court in an election case does not have the effect of authorizing the review and revision of all the ballots contained in the contested precincts without specific allegations of the supposed errors committed by the Court of Appeals. The Supreme Court is limited to examining those supposed errors in the decision of the Court of Appeals that are expressly and specifically pointed out. (Roldan vs. Monsato, 118 Phil. 1328 [1963]; 9 SCRA 489 [1963], Labrador, J.).

§6. Section 178 of the Revised Election Code, in providing for an appeal to the Supreme Court or Court of Appeals, as the case may be, from any decision of the Court of First Instance in protests against the eligibility or the election of governors, board members, city councilors and mayors, impliedly denies the right to appeal from said decision in election protests involving the office of vice-mayor and municipal councilors. However, whenever legal questions are raised, a review may be sought from the Supreme Court. (Nalog vs. De Guzman, 20 SCRA 338 [1967], Concepcion, C. J.).

§7. The action of the Court of Appeals in crediting motu proprio for additional votes for respondent, although the board of canvassers failed to count those votes and the trial court did not consider them and no issue was raised on appeal as to those votes, is correct. The Appellate Court, in election contests, may consider ballots not taken up in an assignment of error in order that substantial justice, the will of the electorate and public interest should be served and protected. (Monteza vs. Court of Appeals, 20 SCRA 773 [1967], Reyes, J.B.L., J.).

§8. An appeal in an election contest proceeds as in a criminal case. The appellate court may take notice of every error in fact or in law committed by the trial court. It may examine any ballot motu proprio if that is necessary to arrive at a correct decision. To ascertain the will of the people or who is the one duly elected, the case is thrown wide open for review by the appellate court. (Juliano vs. Court of Appeals, 20 SCRA 808 [1967], Zaldivar, J.).

§9. It should be borne in the mind that under the law, appeals in election cases “shall proceed as in a criminal case” (Sec. 178, Revised Election Code, as amended). While it is true that under the Revised Rules of Court of 1964, it is not required of appellants in criminal cases to make assignment of errors, unlike in the old rules which expressly provided that in criminal cases “appellants are not required to make assignment of errors although it is advisable for them to do so,” and, accordingly, the new rule should equally apply to present appeals in election cases, the amendment of the rule was not intended to completely change the nature of appeals in criminal and election cases from that of a total review or a trial de novo to that of an appeal by writ of error as in civil cases. The only purpose of the amendment is to compel appellants to make such assignments and thereby lighten the

burden of the court in reviewing the whole case without the necessity of having to comb the entire record and mass of evidence blindly and without proper guide as to where and how the trial court might have erred, aside, of course, from the advantage that when there are assignments of errors, the discussions of the alleged errors are bound to be more orderly, systematic and more easily comprehensible. The time consequently saved may well be spent by the courts in deeper study of the merits of the appeal and, of course, in the consideration of many other cases which may be more urgent or may demand equal, if not more, attention due to their nature and character and the more paramount interests that might be involved. Of course, the basic nature of the appeal remains to be a trial de novo and to the appellate court is reserved the power to review the whole record and take into account any error it may perceive in the consideration of the whole record, regardless of the appellant's assignment of errors. In criminal cases, the fundamental reason for this method of review is the high regard that the law has for the presumption of innocence which it accords all persons accused of an offense which must be given full effect in spite of procedural and technical errors such accused or counsel may themselves commit against their interest, either thru honest mistake or inadequate knowledge. In election cases, "the philosophy behind this ruling is that the real purpose of an election case is to ascertain what is the true will of the people or who is the one duly elected and this can only be achieved by throwing wide open the appeal before the court." (Tagoranao vs. Court of Appeals, 37 SCRA 490 [1971], Barredo, J.).

§10. The COMELEC should not dismiss the appeal on the basis of a technicality which was partly, if not primarily, of its own making. There is no reason why the rule that a reasonable extension of time should be allowed for good and sufficient cause, followed not only by the Court of Appeals but this Court as well, should not also apply whenever the Commission on Elections acts in an appellate judicial capacity. (Rodriguez vs. Commission on Elections, 119 SCRA 465 [1982], Gutierrez, Jr., J.).

§11. The propriety of Millare's filing a separate election contest in lieu of appealing the order of disqualification in Election Case No. 48 could have been induced also by the need to raise issues in the election contest other than the sole question of the alleged non-residence of Millare in Barangay Budac; such as, the denial of due process consisting in the lack of opportunity to present evidence in his behalf, the propriety of declaring the votes cast in his favor as stray, and the refusal of Judge Bernardino to allow the reopening of the ballot boxes for a recanvassing of the votes. At any rate, if appeal is indeed the proper remedy, the filing of Election Protest No. 49 on May 20, 1982, or well within the period of appeal, may be considered as in the nature of that remedy. Whatever procedural misstep may have been committed in this regard may not override the paramount consideration of upholding the sovereign will of the people expressed through the democratic process of suffrage. Millare may not be faulted for sleeping on his rights. He had insisted on his qualification for the position he ran for, and took determined and seasonable steps to assert the same. (Millare vs. Gironella, 122 SCRA 623 [1983], Vasquez, J.).

§12. Even on the merits, we think the First Division of the COMELEC properly dismissed petitioner's appeal from the decision of the trial court because of his failure to pay the appeal fee within the time for perfecting an appeal. In accordance with Sec. 2(b) of COMELEC Resolution No. 2108-A, the appeal fee must be paid within the period to perfect the appeal. This resolution, which was promulgated on July 14, 1989, superseded COMELEC Resolution No. 1456 on which petitioner relies for his contention that the fee is to be paid only upon the filing of the appeal brief. (Reyes vs. Regional Trial Court of Oriental Mindoro, Branch XXIX, 244 SCRA 41 [1995], Mendoza, J.).

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44. Promulgation of decision

§1. Sec. 9, Art. X of the Constitution requiring that no decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based, applies only to courts of justice, not to Comelec; Comelec is not a court of justice. (Mangca vs. Commission on Elections, 112 SCRA 273 [1982], Abad Santos, J.).

45. Expenses

§1. The word “expenses,” as used in Section 27 of the Election Law, has the same signification as the word ““disbursements;” it does not include attorney’s fees. The costs to which a party is entitled in the Courts of First Instance are regulated by Section 492 of the Code of Civil Procedure, by which section attorney’s fees are not allowed, and they can not, therefore, be included in the “costs.” (Mendiola vs. Villa, 15 Phil. 131 [1910], Moreland, J.).

46. Costs

§1. An “election protest” is an action in the court of first instance and said article (492) is applicable in the taxation of costs in such cases. Costs not permitted by the statute cannot be taxed. Costs are statutory allowances to a party to an action for his expenses incurred in the action, and have reference only to the parties and the amounts paid by them. (Hontiveros vs. Altavas, 39 Phil. 226 [1918], Johnson, J.).

§2. The award as costs to the protestee-appellee of the fees paid to the revision commissioners and the premium paid on the bond posted by protestee in connection with his counter protest is held to be in accordance with Section 180 of the Revised Election Code. (Tiongco vs. Porras, 9 SCRA 378 [1963], Dizon, J.).

§3. No allowance can be made to the prevailing party in the Appellate Court for the brief or written or printed arguments of his attorney, or copies thereof, aside from the sum of thirty or fifty pesos as the case may be. This rule applies to election cases in a suppletory character since the Election Code is silent on the point. The payment for a copy of the transcript of the stenographic notes taken at the trial and the cost of printing the brief cannot be recovered as costs. While the contestant in an election case undertakes to pay for all expenses and costs incidental to the protest, such obligation is subject to regulation by the Court. The said items should not be allowed as costs in the absence of a finding that the original contest was without justification or that it was filed in bad faith.

(Conui-Omega vs. Samson, 20 SCRA 1020 [1967], Reyes, J.B.L., Acting C.J.).

47. Damages

§1. There is merit in the petition. Respondent judge found no basis for actual or compensatory damages and exemplary damages when it said that “to slap a heavy damage upon the defendant would be tantamount to imposing a prohibitive premium upon the filing of complaints against public officials for misconduct in office, a policy that is neither sound nor conducive to a healthy development of civic courage and public interest so necessary and indispensable in the conduct of the affairs of the government (pp. 53-54, Rollo).” (Perfecto vs. Gonzales, 128 SCRA 635 [1984], Relova, J.).

§2. Given this setting, it would appear virtually impossible for a party in an election protest case to recover actual or compensatory damages in the absence of the conditions specified under Articles 2201 and 2202 of the Civil Code, or in the absence of a law expressly providing for situations allowing for the recovery of the same. It follows, naturally, that in most election protest cases where the monetary claim does not hinge on either a contract or quasi-contract or a tortious act or omission, the claimant must be able to point out to a specific provisions of law authorizing a money claim for election protest expenses against the losing party. This, petitioner has been unable to do.

The country’s early election laws contained provisions requiring the furnishing of a bond or cash deposit for purpose of payment of expenses and costs incidental to election contests and appeals. The Election Law of 1938 (Commonwealth Act No. 357) contained the same provision with a minor modification providing for increasing or decreasing the bond or cash deposit “as the course of the contest may require.” This provision was repeated in toto in the Revised Election Code of 1947. Republic Act No. 6388, and Election Code of 1971, P.D. No. 1296, and the 1978 Election Code contained provisions allowing awards for moral and exemplary damages “as the Commission may deem just if the aggrieved party has included (such) in his pleadings,” but left out the provision for bond and cash deposits found in the earlier election codes. The provisions for moral and exemplary damages as well as the early provisions requiring the furnishing of a bond to cover expenses related to election contests have all but disappeared in the current Omnibus Election Code.

An examination of the above quoted provision, however, reveals that the bonds or cash deposits required by the COMELEC Rules of Procedure are in the nature of filing fees, not damages. These filing fees obviously refer to the expenses incurred by the COMELEC in the course of administering election cases and are species different from the bond or cash deposit required by previous election laws which are clearly in the nature of actual and compensatory damages.

Plainly then, the deposit requirements under previous election laws which were obviously compensatory damages, were repealed or abrogated as a result of their non-inclusion both in the Election Code of 1978 and the Omnibus Election Code of 1981. If their non-inclusion in the 1978 statute was a mere legislative lapse, then the previous provisions on bonds or cash deposits would have been included in the Omnibus Election Code. Their non-inclusion, and the omission of provisions allowing for moral and exemplary damages in the Omnibus Election Code, furthermore clearly underscores the legislative intent to do away with provisions for damages other those specified in Section 259 of the Omnibus Election Code. In fact, the COMELEC, in justifying its deletion of actual damages in its assailed en banc resolution, ignored the fees provision of its Comelec Rules of Procedure and explained that the bond or cash deposit provisions of previous election laws were abrogated by their non-inclusion in the current law.

In fine, Section 259 of the Omnibus Election Code merely provides for the granting of actual and compensatory damages in accordance with law. That it was the intent of the legislature to do away with provisions indemnifying the victorious party for expenses incurred in an election contest in the absence of a wrongful act or omission

clearly attributable to the losing party cannot be gainsaid. The intent, moreover, to do away with such provisions merely recognizes the maxim, settled in law that a wrong without damage or damage without wrong neither constitutes a cause of action nor creates a civil obligation. (Atienza vs. Commission on Elections, 239 SCRA 298 [1994], Kapunan, J.).

§3. The Omnibus Election Code provides that "actual or compensatory damages may be granted in all election contests or in quo warranto proceedings in accordance with law." COMELEC Rules of Procedure provide that "in all election contests the Court may adjudicate damages and attorney's fees as it may deem just and as established by the evidence if the aggrieved party has included such claims in his pleadings." This appears to require only that the judicial award of damages be just and that the same be borne out by the pleadings and evidence. The overriding requirement for a valid and proper award of damages, it must be remembered, is that the same is in accordance with law, specifically, the provisions of the Civil Code pertinent to damages.

Considering that actual or compensatory damages are appropriate only in breaches of obligations in cases of contracts and quasi-contracts and on the occasion of crimes and quasi-delicts where the defendant may be held liable for all damages the proximate cause of which is the act or omission complained of, the monetary claim of a party in an election case must necessarily be hinged on either a contract or a quasi-contract or a tortious act or omission or a crime, in order to effectively recover actual or compensatory damages. In the absence of any or all of these, "the claimant must be able to point out a specific provision of law authorizing a money claim for election protest expenses against the losing party."

Respondent COMELEC also found the order granting execution of judgment pending appeal to be defective because of alleged non-compliance with the requirement that there be a good and special reason to justify execution pending appeal. We, however, find that the trial court acted judiciously in the exercise of its prerogatives under the law in issuing the order granting execution pending appeal. First, it should be noted that the applicability of the provisions of the Rules of Court, relating to execution pending appeal, has ceased to be debatable after we definitively ruled in Garcia vs. de Jesus that "Section 2, Rule 39 of the Rules of Court, which allows Regional Trial Courts to order executions pending appeal upon good reasons stated in a special order, may be made to apply by analogy or suppletorily to election contests decided by them." It is not disputed that petitioner filed a bond in the amount of P500,000.00 as required under the Rules of Court.

To recapitulate, Section 259 of the Omnibus Election Code only provides for the granting in election cases of actual and compensatory damages in accordance with law. The victorious party in an election case cannot be indemnified for expenses which he has incurred in an electoral contest in the absence of a wrongful act or omission or breach of obligation clearly attributable to the losing party. Evidently, if any damage had been suffered by private respondent due to the execution of judgment pending appeal, that damage may be said to be equivalent to damnum absque injuria, which is, damage without injury, or damage or injury inflicted without injustice, or loss or damage without violation of a legal right, or a wrong done to a man for which the law provides no remedy. (Malaluan vs. Commission on Elections, 254 SCRA 397 [1996], Hermosisima, Jr., J.).

48. Vacation of Judgment

§1. The provisions of Section 145 of the Code of Civil Procedure authorizing the vacation of judgments and the granting of new trials in certain cases are not applicable to proceedings had in election contests under the

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provisions of Section 27 of Act 1582.

Courts of First Instance have no jurisdiction to vacate final judgments entered by them "determining" election contests had under the provisions of Section 27 of Act No. 1582. (Arnedo vs. Llorente and Liongson, 18 Phil. 257 [1911], Carson, J.).

49. Right of a second placer

§1. The disqualification of petitioner Labo does not necessarily entitle petitioner Ortega as the candidate with the next highest number of votes to proclamation as the Mayor of Baguio City.

While Ortega may have garnered the highest number of votes for the office of city mayor, the fact remains that he was not the choice of the sovereign will. Petitioner Labo was overwhelmingly voted by the electorate for the office of mayor in the belief that he was then qualified to serve the people of Baguio City and his subsequent disqualification does not make respondent Ortega the mayor-elect.

The rule, therefore, is: the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office. (Labo, Jr. vs. Commission on Elections, 211 SCRA 297 [1992], Bidin, J.)

§2. Where the candidate who obtained the highest number of votes is later declared to be disqualified, the candidate who garnered the second highest number of votes is not entitled to be declared winner. (Republic vs. De la Rosa, 232 SCRA 785 [1994], Quaison, J.)

§3. The question raised in the instant petition is not new. As early as Geronimo vs. Ramos, this Court has held that: "The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. The votes cast for a dead, disqualified or non-eligible person may not be valid to vote the winner into office or maintain him there. However, in the absence of a statute which clearly asserts a contrary political and legislative policies on the matter, if the votes were cast in the sincere belief that the candidate was alive, qualified, or eligible, they should not be treated as stray, void or meaningless."

The rationale for the rule was explained in Benito vs. COMELEC as follows: "For to allow the defeated and repudiated candidate to take over the mayoralty despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the

people's right to elect officials of their choice." (Loreto vs. Brion, 311 SCRA 694 [1999], Gonzaga-Reyes, J.).

CHAPTER XXI
Election Offenses

1. Mala prohibita

§1. Malice is not an element of a violation of Election Code. (People vs. Quebral, 58 O.G. 7399).

§2. In the light of the statutory purpose, the seriousness of respondent's failure to comply with the requirements of Section 136 of the electoral law (to furnish the notice of hearing for inclusion of voters upon a member of the board of inspectors) becomes evident. His good faith or lack of malice is of no avail, considering that in crimes which are mala prohibita, the act alone irrespective of its motives, constitutes the offense.

There is no question that as a consequence of the general amnesty all persons who violated the election law on the dates and occasions therein mentioned are relieved of their criminal liability. In the case at bar, respondent is relieved of any criminal liability for his aforecited infraction; however, in the public interest he should be admonished. (Lacson, Jr. vs. Posadas, 72 SCRA 168 [1976], Antonio, J.).

2. Illegal registration

§1. It is alleged in the information that the accused, knowing that he had no qualifications to be a voter, inscribed and caused his name to be registered in the election list. (United States vs. Adyuba, 42 Phil. 17 [1921], Villamor, J.).

§2. The appellant knew the law which prohibited him from voting without the necessary qualifications. He knew that fact better than any one else. When he voted, he voted knowingly that he was without the necessary qualifications, and will not be heard to plead his ignorance. (United States vs. De la Torre, 42 Phil. 62 [1921], Johnson, J.).

3. Failure to register or failure to vote

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§1. Petitioners were charged with violating Section 261 (o) of the Omnibus Election Code. Under Section 268 of the said Code, regional trial courts have exclusive jurisdiction to try and decide any criminal action or proceeding for violation of the Code, "except those relating to the offense of failure to register or failure to vote." x x x Clearly then, regional trial courts have jurisdiction to hear and decide cases for violation of the Omnibus Election Code, such as those filed against petitioners. (Juan vs. People of the Philippines, 322 SCRA 125 [2000], Panganiban, J.).

4. Not entitled to vote

§1. A Court of First Instance has no authority to declare whether the election of a person who has received a majority of the votes at an election for municipal president, but who has been sentenced to four years of prision correccional, should be confirmed or not. This question is not submitted to the jurisdiction of the court by the Election Law. (Castro vs. Wislizenus, 12 Phil. 468 [1909], Arellano, C.J.).

§2. Whoever at any election votes knowing that he is not entitled to do so incurs in criminal responsibility.

The right of the State to deprive persons of the right of suffrage by reason of their having been convicted of crime, is beyond question. The manifest purpose of such restriction is to preserve the purity of election.

The exclusion from the exercise of suffrage must be adjudged a mere disqualification imposed for protection and not for punishment, the withholding of a privilege and not the denial of a personal right. (People vs. Corral, 62 Phil. 945 [1936], Abad Santos, J.).

5. Thwarting the will of the people

§1. x x x The right to participate directly in the form of government, by secret ballot, is among the most important and sacred of the rights of the people in self government and one which must be most vigilantly guarded if a people desire to maintain for themselves and their posterity a republic form of government in which the individual may, in accordance with law, have a voice in the form of his government. x x x When election inspectors confess that they have attempted to defeat the will of the people at the polls, the maximum penalty of the law should be imposed. (United States vs. Iturrius, 37 Phil. 762 [1918], Johnson, J.).

§2. They have not, it seems, the slightest compunction in thwarting the will of the people by unduly influencing the voters tampering with the ballots, or falsifying election returns, in order to attain their selfish personal ambitions.

Needless to say, such persons deserve the severest penalty allowed by law. And it is equally regrettable, in our

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opinion, that the penalty prescribed by the present Election Law for such nefarious crimes is comparatively too light. (United States vs. Magno, 42 Phil. 239 [1921], Johnson, J.).

§3. Under Section 27(b) of R.A. 6646, two acts, not one, are penalized - first, the tampering, increasing or decreasing of votes received by a candidate in any election; and second, the refusal, after proper verification and hearing, to credit the correct votes or deduct such tampered votes.

To take the view that a member of the board of election inspectors or board of canvassers cannot be charged with the offense under Section 27 (b) of R.A. 6646 unless his attention is first called to the tampering, increasing or decreasing of the votes of a candidate and unless he is first given the opportunity to rectify, correct or undo his illegal act, is to tolerate, if not abet, a massive tampering of votes by allowing the wrongdoer a built-in and sure-fire defense for his exoneration. (Pimentel, Jr., vs. Commission on Elections, 289 SCRA 586 [1998], Kapunan, J.).

6. Flying voters

§1. Considering that an examination of the record yields no evidentiary proof that the questioned flying voters, had, in fact, cast their votes for ALEMAN, which votes should be deducted from the total votes obtained by the latter, the Court has RESOLVED, in order to determine with certainty in whose favor those votes were cast, and to be able to better determine the true will of the electorate, that the ballots be recounted in the presence of the parties. (Aleman vs. Genato, 133 SCRA 797 [1984], Melencio-Herrera, J.).

7. Corruption of voters

§1. The circumstance that a candidate for the office of provincial governor made a small contribution for the repair of a dangerous road leading to one of the precincts and that a few electors testified that they voted for him because of his liberality, does not justify the subtraction of their votes from the votes of said candidate in a contest subsequently instituted over the office. (Lucero vs. De Guzman, 45 Phil. 852 [1924], Street, J.).

§2. Causing cigarettes or things of value to be distributed by the defendant to the people who attended a political meeting is a violation distinct from that of electioneering committed by a classified civil service officer or employee. (People vs. Ferrer, 101 Phil. 234 [1957], Padilla, J.).

8. Vote buying

§1. Blanco also urges that COMELEC erred in using summary proceedings to resolve his disqualification case. Again, the COMELEC action is safely anchored on Section 4 of its Rules of Procedure which expressly provides that petitions for disqualification “shall be heard summarily after due notice.” Vote-buying has its criminal and electoral aspects. Its criminal aspect to determine the guilt or innocence of the accused cannot be the subject of summary hearing. However, its electoral aspect to ascertain whether the offender should be disqualified from office can be determined in an administrative proceeding that is summary in character. (Nolasco vs. Commission on Elections, 275 SCRA 762 [1997], Puno, J.).

9. Use of carbon paper

§1. To begin with, there is here no showing that the specific incident involving petitioner Estela Isip is involved in the protest before the Electoral Tribunal of the House of Representatives referred to by petitioners. It is true that in said electoral protest, the Electoral Tribunal must necessarily resolve the question of whether or not protestee therein and his leaders or followers used carbon paper for the purpose of identifying certain votes cast in the elections concerned, but as pointed out by private respondent — and this is not denied by petitioners — the carbon paper allegedly used by petitioner Estela Isip, which is the basis of the criminal complaint against petitioners, is not among the hundreds of such white carbon paper devices already marked as exhibits in said electoral protest, and according to private respondent, the carbon paper allegedly used by petitioner Estela Isip is still in his possession; it follows then, that even if the Electoral Tribunal should find that there really had been extensive use of such carbon paper devise by other voters, such finding would not necessarily be determinative of the guilt or innocence of petitioners under the criminal complaint filed against them. (Isip vs. Gonzales, 39 SCRA 255 [1971], Barredo, J.).

10. Vote padding

§1. It can be clearly seen from the list above that the discrepancies are too substantial and rounded off to be categorized as a mere ‘computation error’ or a result of fatigue. There is a limit to what can be construed as an honest mistake or oversight in the performance of official duty. Suffice it to state that the magnitude of the error as reflected in the discrepancies itemized above renders unacceptable the defense of ‘computer error’ or honest mistake.

It was indeed highly unlikely that the padded vote totals were entered in the SoV per Municipality/City without the knowledge of petitioners, if they were faithfully and regularly performing their assigned tasks. A reasonably prudent man on the other hand would readily come to the conclusion that there exists a probable cause to believe that the petitioners are culpable together with the other members of the support staff as well as the PBC members in the padding of the vote totals of the said senatorial candidates. It can not be denied that the members of the PBC and their support staff, including herein petitioners, were the only ones in control and in possession of said documents during its preparation. It need not be overemphasized, given this fact, that the padding of the vote totals could only have been done by all of them acting in concert with one another. (Domalanta vs. Commission on Elections, 334 SCRA 555 [2000], Ynares-Santiago, J.).

11. Fraud

§1. An inspector who fails to write upon the ballot the name or names expressly indicated by the voter is guilty of a fraud practiced against the voter and thus of a violation of the penal provisions of the Election Code. (U.S. vs. De La Serna and Callet, 12 Phil. 672; U.S. vs. Cueto, 38 Phil. 935; U.S. vs. Magno, 42 Phil. 239).

12. Terrorism

§1. The COMELEC has the power to annul an entire municipal election on the basis of post-election terrorism.

The COMELEC has the authority to call for the holding of a special election whether widespread terrorism resulting in a failure to elect occurred before or after the election, as in the case where terrorism was employed in the preparation of election returns. (Sanchez vs. Commission on Elections, 114 SCRA 454 [1982], Melencio-Herrera, J.).

13. Possession of deadly weapon

§1. To support a conviction under Section 261(p) of the Omnibus Election Code, it is not necessary that the deadly weapon should have been seized from the accused while he was in the precinct or within a radius of 100 meters therefrom. It is enough that the accused carried the deadly weapon "in the polling place and within a radius of one hundred meters thereof" during any of the specified days and hours. After respondent himself had found that the prosecution had established these facts, it is difficult to understand why he acquitted Alejandro of the charge of violation of Section 261(p) of the Omnibus Election Code. (Mappala vs. Nuñez, 240 SCRA 600 [1995], Quiason, J.).

14. Violation of Gun Ban

§1. The checkpoint herein conducted was in pursuance of the gun ban enforced by the COMELEC. The COMELEC would be hard put to implement the ban if its deputized agents were limited to a visual search of pedestrians. It would also defeat the purpose for which such ban was instituted. Those who intend to bring a gun during said period would know that they only need a car to be able to easily perpetrate their malicious designs. (People of the Philippines vs. Escaño, 323 SCRA 754 [2000], Davide, Jr., C.J.).

15. Obstacle to free entry to the polling place

§1. As numerous as they are insidious are long-standing techniques of terror and intimidation that have been conceived by man—in derogation of the right of suffrage—which we have repeatedly and unqualifiedly condemned. Section 133 of the Revised Election Code, an explicit and unequivocal guarantee of a voter's free access to enter the polling place, has no other purpose than to maintain inviolate the right to vote by safeguarding the voter against all manner of unauthorized interference and travesty that purveyors of fear can devise. Every unlawful obstacle, by whatever means or method, interposed to the free entry of a voter into the polling place to cast his vote, strikes at the very heart of the right of suffrage. (People of the Philippines vs. San Juan, 22 SCRA 498 [1968], Castro J.).

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16. Violation on the Ban on Appointment/Detail/Transfer

§1. The aforequoted provision does not apply to both assailed appointments because of the following reason: The permanent vacancy for councilor exists and its filling up is governed by the Local Government Code while the appointment referred to in the election ban provision is covered by the Civil Service Law. For having satisfied the formal requisites and procedure for appointment as Councilor, which is an official position outside the contemplation of the election ban, respondent's appointment is declared valid. The issue on the alleged discrepancy between the dates of petitioner's oath and his residence certificate need not be tackled now because it will not anymore affect the recalled appointment of petitioner. If ever, the matter casts a doubt on petitioner's credibility and honesty. (Ong vs. Herrera-Martinez, 188 SCRA 830 [1990], Paras, J.).

§2. Zaldivar vs. Estenzo, 23 SCRA 533, decided by this Court on 3 May 1968, had squarely resolved the issue above posed. Speaking through then Associate Enrique Fernando (who later became Chief Justice), this Court explicitly ruled that considering that the Commission on Elections is vested by the Constitution with exclusive charge of the enforcement and administration of all laws relative to the conduct of elections, the assumption of jurisdiction by the trial court over a case involving the enforcement of the Election Code "is at war with the plain constitutional command, the implementing statutory provisions, and the hospitable scope afforded such grant of authority so clear and unmistakable in recent decisions."

Under the present law, however, except in case of urgent need, the appointment or hiring of new employees or the creation or filling up of new positions in any government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, is banned during the period of forty-five (45) days before a regular election and thirty (30) days before a special election if made without the prior authority of the Commission on Elections. A violation thereof constitutes an election offense. Then too, no less than the present Constitution, and not just the Election Law as was the case at the time of Zaldivar, expressly provides that the Commission may "[R]ecommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision." Moreover, the present Constitution also invests the Commission with power to "investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices." (Gallardo vs. Tabamo, Jr., 218 SCRA 253 [1993], Davide, Jr., J.).

§3. The two elements of the offense prescribed under Sec. 261(h) of the Omnibus Election Code, as amended, are: (1) a public officer or employee is transferred or detailed within the election period as fixed by the COMELEC, and (2) the transfer or detail was effected without prior approval of the COMELEC in accordance with its implementing rules and regulations.

Thus, contrary to petitioner's claim, a transfer under Section 24(c) of P.D. No. 807 in fact includes personnel movement from one organizational unit to another in the same department or agency.

It may well be that Barangay Sto. Niño in January 1988 was in need of health service personnel. Nonetheless, this fact will not excuse the failure of petitioner to obtain prior approval from the COMELEC for the movement of personnel in his office. Indeed, appointing authorities can transfer or detail personnel as the exigencies of public service require. However, during election period, as such personnel movement could be used for electioneering or even to harass subordinates who are of different political persuasion, Sec. 261(h) of the Omnibus Election Code, as amended, prohibits the same unless approved by the COMELEC. (Regalado, Jr., vs. Court of Appeals, 325 SCRA 516 [2000], Mendoza, J.).

17. Electioneering

§1. The Constitution has fixed the election period for all elections to commence ninety (90) days before the day of election and end thirty (30) days thereafter, unless otherwise fixed in special cases by the COMELEC. For the May 11, 1992 synchronized national and local elections, the COMELEC fixed a longer election period of one hundred twenty (120) days before the scheduled elections and thirty (30) days thereafter. It issued Resolution No. 2314 on September 23, 1991 primarily adopting therein a calendar of activities. In the process, it designated January 12, 1992 to June 10, 1992 as the election period.

We start with the constitutional injunction that no officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political campaign. This prohibition is reiterated in the Administrative Code of 1987. Section 261 (h) of B.P. Blg. 881 implements this constitutional prohibition.

It ought to be immediately obvious that Section 261 (h) of B.P. Blg. 881 does not per se outlaw the transfer of a government officer or employee during the election period. To be sure, the transfer or detail of a public officer or employee is a prerogative of the appointing authority. It is necessary to meet the exigencies of public service sometimes too difficult to perceive and predict. Without this inherent prerogative, the appointing authority may not be able to cope with emergencies to the detriment of public service. Clearly then, the transfer or detail of a government officer or employee will not be penalized by Section 261 (h) of B.P. Blg. 881 if done to promote efficiency in the government service. Hence, Section 2 of Resolution No. 2333 provides that the COMELEC has to pass upon the reason for the proposed transfer or detail.

Prescinding from this predicate, two (2) elements must be established to prove a violation of Section 261(h) of B.P. Blg. 881, viz: (1) The fact of transfer or detail of a public officer or employee within the election period as fixed by the COMELEC, and (2) the transfer or detail was effected without prior approval of the COMELEC in accordance with its implementing rules and regulations.

In the case at bench, respondent Maniego transferred Ebio, then the Customs Operation Chief, MICP to the Office of the Deputy Collector of Customs for Operations as Special Assistant on January 14, 1992. On this date, January 14, 1992, the election period for the May 11, 1992 synchronized elections had already been fixed to commence January 12, 1992 until June 10, 1992. As aforestated, this election period had been determined by the COMELEC in its Resolution No. 2314 dated November 20, 1991 and Resolution No. 2328 dated January 2, 1992. Nonetheless, it was only in Resolution No. 2333 which took effect on January 15, 1992 that COMELEC promulgated the necessary rules on how to get its approval on the transfer or detail of public officers or employees during the election period. Before the effectivity of these rules, it cannot be said that Section 261 (h) of B.P. Blg. 881, a penal provision, was already enforceable. Needless to state, respondent Maniego could not be charged with failing to secure the approval of the COMELEC when he transferred Ebio on January 14, 1992 as on that day, the rules of the COMELEC on the subject were yet inexistent. (People of the Philippines vs. Reyes, 247 SCRA 328 [1995], Puno, J.).

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18. Determination of probable cause

§1. Insofar as the prosecution of election offenses is concerned, therefore, the Comelec is the "public prosecutor with the exclusive authority to conduct the preliminary investigation and the prosecution of election offenses punishable under the [Omnibus Election] Code before the competent court." This constitutional and statutory mandate for the Comelec to investigate and prosecute cases of violation of election laws translates, in effect, to the exclusive power to conduct preliminary investigations in cases involving election offenses for the twin purpose of filing an information in court and helping the Judge determine, in the course of preliminary inquiry, whether or not a warrant of arrest should be issued.

The determination of probable cause in any criminal prosecution, is made indispensable by the Bill of Rights which enshrines every citizen's right to due process, the presumption that he is presumed innocent, and the inadmissibility against him of any damaging evidence obtained in violation of his right against self-incrimination. As Justice Reynato S. Puno has pointed out, probable cause is neither an "opaque concept in our jurisdiction" or a "high level legal abstraction to the subject of warring thoughts." It constitutes those "facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed" by a person sought to be judicially indicted. In determining probable cause, however, the public prosecutor must have been apprised by the complainant of his evidence in support of his accusatory allegations. In other words, determining probable cause is an intellectual activity premised on the prior physical presentation or submission of documentary or testimonial proofs either confirming, negating or qualifying the allegations in the complaint. (Kilosbayan, Inc., vs. Commission on Elections, 280 SCRA 892 [1997], Hermosisima, Jr., J.).

§2. A preliminary investigation is essentially inquisitorial and is only the means to discover who may be charged with a crime, its function being merely to determine probable cause.

The finding of the existence or non-existence of probable cause in the prosecution of criminal cases brought before it, rests in the discretion of the COMELEC in the exercise of its Constitutional authority to investigate and, where appropriate, prosecute cases of violation of election laws, including acts or omissions constituting election frauds, offenses and malpractices. (Pimentel, Jr., vs. Commission on Elections, 289 SCRA 586 [1998], Kapunan, J.).

§3. On the other hand, if the preliminary investigation of a complaint for election offense is conducted by the COMELEC itself, its investigating officer prepares a report upon which the Commission's Law Department makes its recommendation to the COMELEC en banc on whether there is probable cause to prosecute. It is thus the COMELEC en banc which determines the existence of probable cause. Consequently, an appeal to the Commission is unavailing. Under the present Rules of Procedure of the COMELEC, however, a motion for reconsideration of such resolution is allowed. This effectively allows for a review of the original resolution, in the same manner that the COMELEC, on appeal or motu proprio, may review the resolution of the State Prosecutor, or Provincial or City Fiscal. (Faelnar vs. People of the Philippines, 331 SCRA 429 [2000], Mendoza, J.).

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§4. It bears stressing in this regard that all that is required in the preliminary investigation is the determination of probable cause so as to justify the holding of petitioners for trial. Probable cause is defined . . . as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. This definition is still relevant today as we continue to cite it in recent cases. x x x Pilapil v. Sandiganbayan sets the standard for determining probable cause. x x x There we said: Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge. (Domalanta vs. Commission on Elections, 334 SCRA 555 [2000], Ynares-Santiago, J.).

19. Conduct of preliminary investigation

a.) Under the Revised Election Code (RA 180)

§1. The provisions of Section 187 of the Revised Election Code vesting exclusive jurisdiction on the Court of First Instance to conduct preliminary investigations of election offenses is explicit. While Provincial Fiscals are authorized to conduct preliminary investigations under the general law (Rep. Act No. 732), Section 187 of the Revised Election Code, which gives Courts of First Instance exclusive original jurisdiction to make preliminary investigations for violation of said Code, must be construed as a limitation upon the powers of the fiscal to conduct the preliminary investigations of criminal offenses.

The filing of the complaint before the Court of First Instance for purposes of preliminary investigation tolled the period of prescription provided in Section 188 of the Revised Election Code. The filing of a complaint for alleged violation of the Revised Election Code with the Court of First Instance which is vested with the exclusive jurisdiction to conduct the preliminary investigation thereof properly interrupts the period of prescription. Article 91 of the Revised Penal Code, which provides that the period of prescription of offenses shall be interrupted by the filing of the complaint or information, should be applied as suppletory to the Revised Election Code.

It appearing that the Court of First Instance has not yet conducted, much less terminated the requisite preliminary investigation, the issue of pre-judicial question is, therefore, prematurely raised. It is only after a preliminary investigation that the Court could determine the existence of a probable cause which would warrant the holding of the accused for trial, as absent a finding of probable cause, the complaint would be automatically dismissed. The time or moment to ask for the suspension of the criminal proceedings is not during the period of preliminary investigation but after such investigation and after the information has been filed. (Astorga vs. Puno, 67 SCRA 182 [1975], Antonio, J.).

b.) Under the 1978 Election Code (PD 1296)

§1. However, Section 182 of Presidential Decree No. 1296, otherwise known as “THE 1978 ELECTION CODE” provides that:

“Section 182. Prosecution. – The Commission shall, through its duly authorized legal officers, have the power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the Government.”

Thus, it is no longer the Courts of First Instance which shall conduct the preliminary investigation of election offenses. The power has been transferred to the Commission on Elections. (People of the Philippines vs. Golez, 116 SCRA 165 [1982], Relova, J.).

c.) Under the Omnibus Election Code (BP Blg. 881)

§1. From the foregoing provisions of the Constitution and the Omnibus Election Code, it is clear that aside from the adjudicatory or quasi-judicial power of the COMELEC to decide election contests and administrative questions, it is also vested the power of a public prosecutor with the exclusive authority to conduct the preliminary investigation and the prosecution of election offenses punishable under the Code before the competent court.

Thus, when COMELEC, through its duly authorized law officer, conducts the preliminary investigation of an election offense and upon a prima facie finding of a probable cause, files the information in the proper court, said court thereby acquires jurisdiction over the case. Consequently, all the subsequent disposition of said case must be subject to the approval of the court. The COMELEC cannot conduct a reinvestigation of the case without the authority of the court or unless so ordered by the court. The records of the preliminary investigation required to be produced by the court must be submitted by the COMELEC. The trial court may rely on the resolution of the COMELEC to file the information, by the same token that it may rely on the certification made by the prosecutor who conducted the preliminary investigation, in the issuance of the warrant of arrest. Nevertheless the court may require that the record of the preliminary investigation be submitted to it to satisfy itself that there is probable cause which will warrant the issuance of a warrant of arrest. The refusal of the COMELEC or its agents to comply with the order of the trial court requiring them to conduct a reinvestigation in this case and to submit to the court the record of the preliminary investigation on the ground that only this Court may review its actions is certainly untenable. (People of the Philippines vs. Delgado, 189 SCRA 715 [1990], Gancayco, J.).

20. Disqualification Case

§1. A complaint for disqualification filed before the election must be inquired into by the COMELEC for the purpose of determining whether the acts complained of have in fact been committed. Where the inquiry results in a finding before the election, the COMELEC shall order the candidate's disqualification. In case the complaint was not resolved before the election, the COMELEC may motu proprio or on motion of any of the parties, refer the said complaint to the Law Department of the COMELEC for preliminary investigation.

COMELEC did not err in not ordering the suspension of respondent's proclamation. The second paragraph of paragraph 2 of Resolution No. 2050 provides that where a complaint is filed after the elections but before proclamation, as in this case, the complaint must be dismissed as a disqualification case but shall be referred to the Law Department for preliminary investigation. If before the proclamation, the Law Department makes a prima facie finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of respondent with the court before which the criminal case is pending and that court may order the suspension of the proclamation if the evidence of guilt is strong. It appearing that none of the foregoing circumstances obtain herein as there is no prima facie finding of guilt yet, a suspension of respondent's proclamation is not warranted. (Bagatsing vs. Commission on Elections, 320 SCRA 220 [1999], Kapunan, J.).

§2. Notably, there is nothing in paragraph 1 of Resolution No. 2050 which directs the dismissal of the disqualification case not resolved before the election. It says the COMELEC "may motu proprio or on motion of any of the parties, refer the complaint to the Law Department of the Commission as an instrument of the latter in the exercise of its exclusive power to conduct a preliminary investigation of all cases involving criminal infractions of the elections laws." The referral to the Law Department is discretionary on the part of the COMELEC and in no way may it be interpreted that the COMELEC will dismiss the disqualification case or will no longer continue with the hearing of the same. The reason for this is that a disqualification case may have two (2) aspects, the administrative, which requires only a preponderance of evidence to prove disqualification, and the criminal, which necessitates proof beyond reasonable doubt to convict. Where in the opinion of the COMELEC, the acts which are grounds for disqualification also constitute a criminal offense or offenses, referral of the case to the Law Department is proper.

Section 6 (RA 6646) explicitly applies only to any candidate who has been declared by final judgment to be disqualified before an election. The section provides further that "if for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest x x x." There is no provision in R.A 6646 that treats of a situation where the complaint for disqualification is filed after the election. If the intention of the law is for the COMELEC to hear and decide disqualification cases filed after the election, it would not have made a distinction between cases filed before and after the election. Section 6 would not have used the word "before" preceding "an election." Thus, the need for implementing rules as embodied in Comelec Resolution No. 2050 which provide that any complaint for disqualification based on Section 6 of R.A. 6646 is filed after the election against a candidate who has already been proclaimed as winner shall be dismissed as a disqualification case, but the complaint shall be referred for preliminary investigation to the Law Department of COMELEC.

It bears stressing that the Court in Sunga recognized the difference between a disqualification case filed before and after an election when, as earlier mentioned, it stated that the referral of the complaint for disqualification

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where the case is filed before election "is totally different from the other two situations contemplated by Resolution No. 2050, i.e., a disqualification case filed after the election but before the proclamation of winners and that filed after the election and the proclamation of winners, wherein it was specifically directed by the same Resolution to be dismissed as a disqualification case." Why there is a difference between a petition for disqualification filed before and after the election proceeds from the fact that before the election, the question of disqualification is raised as an issue before the electorate and those who vote for the candidate assume the risk that should said candidate be disqualified after the election, their votes would be declared stray or invalid votes. Such would not be true in the case of one filed after the electorate has already voted. (Bagatsing vs. Commission on Elections, 320 SCRA 817 [1999], Kapunan, J.).

21. Initiation of Complaint

§1. In election cases, the criminal prosecution may be initiated by filing either a criminal complaint subscribed and sworn to by the offended party, any peace officer or any duly authorized representative of the Comelec (Sec. 2, Rule 110) or an information signed by the fiscal, who need not necessarily conduct the preliminary investigation since pursuant to Sec. 14 of the Rule 112, a fiscal may file an information even without conducting a preliminary investigation when such investigation is required by law to be undertaken by a judge or another officer. (People of the Philippines vs. Golez, 39 SCRA 248 [1971], Barredo, J.).

§2. Under the COMELEC Rules of Procedure, initiation of complaints for election offenses may be done motu proprio by the Commission on Elections or upon written complaint by any citizen, candidate or registered political party or organization under the party-list system or any of the accredited citizens arms of the Commission. However, such written complaints should be filed with the "Law Department of the Commission; or with the offices of the Election Registrars, Provincial Election Supervisors or Regional Election Directors, or the State Prosecutor, Provincial Fiscal or City Fiscal." (Gallardo vs. Tabamo, Jr., 218 SCRA 253 [1993], Davide, Jr., J.).

§3. We emphasize that we do so take cognizance of the case exceptionally under Rule 65 of the Revised Rules of Court pursuant to Section 1, Article VIII of the 1987 Constitution, as we recognize that the COMELEC must be accorded full discretion whether or not to initiate a criminal case, pursuant to its power to investigate and prosecute election offenses. We note that when investigating and prosecuting election offenses, the COMELEC is acting analogous to the Ombudsman with its investigatory and prosecutory powers. (Pimentel, Jr., vs. Commission on Elections, 289 SCRA 586 [1998], Kapunan, J.).

§4. The Constitution gives the COMELEC the power to investigate and, where appropriate, to prosecute cases of violations of election laws. This power is an exclusive prerogative of the COMELEC. There are two ways through which a complaint for election offenses may be initiated. It may be filed by the COMELEC motu proprio, or it may be filed via written complaint by any citizen of the Philippines, candidate, registered political party, coalition of political parties or organizations under the party-list system or any accredited citizens arms of the Commission.

Motu proprio complaints may be signed by the Chairman of the COMELEC and need not be verified.

On the other hand, complaints filed by parties other than the COMELEC must be verified and supported by affidavits and other evidence. The complaint shall be filed with the COMELEC Law Department or with the offices of election registrars, provincial election supervisors or regional election directors, or of the state prosecutor, provincial or city fiscal. Whether initiated motu proprio or filed with the COMELEC by any other party, the complaint shall be referred to the COMELEC Law Department for investigation. Upon direction of the Chairman, the preliminary investigation may be delegated to any lawyer of the Department, any Regional Election Director or Provincial Election Supervisor, or any COMELEC lawyer.

But petitioner insists, and this is the crux of his arguments, that absent an en banc resolution directing the Law Department to conduct a preliminary investigation, there could be no valid investigation. Without a valid preliminary investigation, no valid information could be filed against him. He cites Rule 34, Section 5 of the COMELEC Rules of Procedure in support of his claim. x x x However, we fail to see from Section 5 the requirement that only the COMELEC en banc may refer a complaint to the Law Department for investigation. What Section 5 states only is that it is the Law Department, not another office, of the COMELEC which may conduct an investigation into the allegations in the complaint. There is no specific requirement as to how referral to the department shall be made. We cannot read into the rules what simply is not there.

Section 5 refers to two situations, one of which is where a complaint filed by a party other than the COMELEC is addressed to the Commission itself. Since it is not the entire Commission that conducts the preliminary investigation, the complaint must necessarily be referred to its Law Department. Under the rules, this department is tasked with conducting preliminary investigations of complaints filed before the COMELEC. Where, as in this case, the complaint was directly filed with the Law Department under Section 4 of Rule 34, obviously there is no need to refer such complaint to the same Law Department.

There is likewise no rule against the COMELEC chairman directing the conduct of preliminary investigation, even if he himself were the complainant in his private capacity. In fact, under Section 5, the preliminary investigation may be delegated to any of those officials specified in the rule, upon the direction of the COMELEC chairman.

The entire COMELEC cannot possibly be restrained from investigating the complaint filed against petitioner, as the latter would like the courts to do. The COMELEC is mandated by no less than the Constitution to investigate and prosecute, when necessary, violations of election laws. This power is lodged exclusively with the COMELEC. For the entire Commission to inhibit itself from investigating the complaint against petitioner would be nothing short of an abandonment of its mandate under the Constitution and the Omnibus Election Code. This we cannot allow. (Laurel vs. Judge of Regional Trial Court of Manila, Branch 10, 323 SCRA 778 [2000], Quisumbing, J.).

22. Jurisdiction of Regional Trial Court

§1. We have explicitly ruled in Morales v. Court of Appeals that by virtue of the exception provided for in the opening sentence of Section 32, the exclusive original jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts does not cover those criminal cases which by specific provisions of law fall within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, regardless of the penalty prescribed therefor. Otherwise stated, even if those excepted cases are punishable by imprisonment of not exceeding six (6) years (i.e., prision correccional, arresto mayor, or arresto menor), jurisdiction thereon is retained by the Regional Trial Courts or the Sandiganbayan, as the case may be. (Commission on Elections vs. Noynay, 292 SCRA 254 [1998], Davide, Jr., J.).

§2. Petitioners insist that the RTC did not have the jurisdiction to hear and decide cases filed against them, because the penalty for the offenses charged did not exceed six years. Thus, they claim that the authority to hear the cases is vested by R.A. 7691 in the first-level courts. The argument does not persuade. It is evident from Section 32, BP 129, as amended by Section 2 of R.A. 7691, that the jurisdiction of first level courts – the metropolitan trial courts, municipal trial courts and municipal circuit trial courts – does not cover those criminal cases which by specific provisions of law are cognizable by regional trial courts.

Petitioners were charged with violating Section 261 (o) of the Omnibus Election Code. Under Section 268 of the said Code, regional trial courts have exclusive jurisdiction to try and decide any criminal action or proceeding for violation of the Code, “except those relating to the offense of failure to register or failure to vote.” x x x Clearly then, regional trial courts have jurisdiction to hear and decide cases for violation of the Omnibus Election Code, such as those filed against petitioners. (Juan vs. People, 322 SCRA 125 [2000], Panganiban, J.).

23. Authority to appeal

§1. The authority to decide whether or not to appeal the dismissal of a criminal prosecution for an election offense belongs to the COMELEC, not the designated prosecutor.

Prosecutors designated by the COMELEC to prosecute the cases act as its deputies. They derive their authority from it and not from their offices.

The COMELEC has the right to appeal, in its own name, from a decision dismissing a criminal case filed by it.

Considering the authority of the COMELEC over the prosecution of election offenses, its decision to bring a petition for certiorari and mandamus is conclusive on the Solicitor General. (Commission on Elections vs. Silva, Jr., 286 SCRA 177 [1998], Mendoza, J.).

§2. In cases where the State Prosecutor, or Provincial or City Fiscal exercises the delegated power to conduct preliminary investigation of election offense cases, after the investigating officer submits his recommendation, said officers already resolve the issue of probable cause. From such resolution, appeal to the COMELEC lies. As the exercise by the Commission of its review powers would, at this point, already constitute a second look on the issue of probable cause, the COMELEC’s ruling on the appeal would be immediately final and executory. (Faelnar vs. People of the Philippines, 331 SCRA 429 [2000], Mendoza, J.).

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24. Effects of re-election

§1. [a]s early as 18 December 1967 in Ingco v. Sanchez, this Court explicitly ruled that the re-election of a public official extinguishes only the administrative, but not the criminal, liability incurred by him during his previous term of office, thus: The ruling, therefore, that , “when the people have elected a man to his office it must be assumed that they did this with knowledge of his life and character and that they disregarded or forgave his faults or misconduct if he had been guilty of any”, refers only to an action for removal from office and does not apply to a criminal case, because a crime is a public wrong more atrocious in character than mere misfeasance or malfeasance committed by a public officer in the discharge of his duties, and is injurious not only to a person or group of persons but to the State as a whole. This must be the reason why Article 89 of the Revised Penal Code, which enumerates the grounds for extinction of criminal liability, does not include reelection to office as one of them, at least insofar as a public officer is concerned. Also, under the Constitution, it is only the President who may grant the pardon of a criminal offense. (Conducto vs. Monzon, 291 SCRA 619 [1998], Davide, Jr., J.).

25. Condonation

§1. It must be emphasized that the purpose of a disqualification proceeding is to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. Obviously, the fact that a candidate has been proclaimed elected does not signify that his disqualification is deemed condoned and may no longer be the subject of a separate investigation.

It is worth to note that an election offense has criminal as well as electoral aspects. Its criminal aspect involves the ascertainment of the guilt or innocence of the accused candidate. Like in any other criminal case, it usually entails a full-blown hearing and the quantum of proof required to secure a conviction is beyond reasonable doubt. Its electoral aspect, on the other hand, is a determination of whether the offender should be disqualified from office. This is done through an administrative proceeding which is summary in character and requires only a clear preponderance of evidence. Thus, under Sec. 4 of the COMELEC Rules of Procedure, petitions for disqualification “shall be heard summarily after due notice.” It is the electoral aspect that we are more concerned with, under which an erring candidate may be disqualified even without prior criminal conviction. (Sunga vs. Commission on Elections, 288 SCRA 76 [1998], Bellosillo, J.).

26. Amnesty

§1. At any rate, it is undoubted that it is the Commission on Elections which is the appropriate agency designated by the President to pass upon the application for amnesty. While this petition is not thus the appropriate vehicle for granting the plea to be released from detention, it nonetheless served a useful purpose. It is a confirmation of the “latitudinarian scope” of this protean writ to assure judicial inquiry into the legality of a detention or restraint. (De Vera vs. Animas, 84 SCRA 594 [1978], Fernando, J.).

27. Misconduct

§1. Failure of petitioner to disclose the fact that he was charged with an election offense in his personal data sheet constitutes mental dishonesty amounting to misconduct. Defense of dismissal of criminal complaint for violation of election offense by the court because the fiscal was not authorized under the Rules of Court to file the complaint is, not a valid defense, as dismissal is not considered dismissal on the merits. (Bautista vs. Navarro, 114 SCRA 794 [1982], Relova, J.).

28. Damages

§1. The award of P500,000.00 as moral damages to Barba must be deleted. Under Sec. 264, par. 1 of the Omnibus Election Code, as amended, the only imposable penalties for the commission of any of the election offenses thereunder by an individual are¾imprisonment of less than one year but not more than six years [which] shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. (Regalado, Jr., vs. Court of Appeals, 325 SCRA 516 [2000], Mendoza, J.).

29. Prescription of election offenses

§1. Section 188 of the Revised Election Code fixes a very short period of prescription. The specific provision in said Section 188 to the effect that “if the discovery of such (electoral) offenses be made in election contest proceedings, the period of prescription shall commence on the date in which the judgment in such proceedings becomes final” strongly indicates that as a rule, electoral offenses the commission of which is already known before an election contest is filed should be prosecuted without regard to such contest. (Isip vs. Gonzales, 39 SCRA 255 [1971], Barredo, J.).

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THE SENATE ELECTORAL TRIBUNAL
by Irene R. Guevarra

Secretary of the Tribunal

The authority to judge the election, returns and qualifications of members of the legislature was first vested in the National Assembly itself, as provided in Section 7, paragraph 5 of the Act of the United States Congress of 01 July 1902. This was modified by Section 18, paragraph 1 of the Act of the United States Congress of 29 August 1916, thus: “the Senate and House of Representatives, respectively, shall be the sole judges of the elections, returns and qualifications of their elective members x x x.” The jurisdiction granted to each house was exclusive. One house could not interfere with the judgment of the other house, nor could the subject matter be taken cognizance of by the courts.

A significant change was introduced by the 1935 Constitution. Section 4, Article VI thereof provided that there shall be an “Electoral Commission composed of three (3) justices of the Supreme Court designated by the Chief Justice and six (6) members chosen by the National Assembly, three (3) of whom shall be nominated by the party having the largest number of votes, and three (3) by the party having the second largest number of votes therein. x x x The Electoral Commission shall be the sole judge of all contests relating to the election, returns, and qualifications of all members of the National Assembly.” Through this provision, the power traditionally lodged in the legislative body itself was transferred to an independent, impartial and non-partisan tribunal.1

On 11 April 1940, the second National Assembly adopted Resolution No. 73, amending the 1935 Constitution. Among the amendments introduced thereto was the creation of a bicameral legislature and an electoral tribunal for the Senate of the Philippines. Section 11, Article VI of the 1935 Constitution provided as follows: “The Senate x x x shall x x x have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns and qualifications of (its) members.”

Although created in 1940, the constitution of the Senate Electoral Tribunal was delayed by war. Elections under the 1940 constitutional amendment were held only on 23 April 1946. The elected Senators assumed office on 25 May 1946, on which date then Supreme Court Chief Justice Manuel Moran transmitted to the Senate of the Philippines the designation of the following as Justice-Members of the Senate Electoral Tribunal:

Justice-Members: Ricardo Paras

Emilio Y. Hilado

Gregorio Perfecto

The composition of the Tribunal was completed on 27 May 1946 with the nomination of the following senator-members:

Majority : Vicente J. Francisco

Domingo Imperial

Proceso E. Sebastian

Minority: Nicolas Buendia

Pedro Hernaez

Eulogio Rodriguez

On 07 June 1946, the Tribunal approved the Rules of the Tribunal. It promulgated its first decision on 19 April 1947 in Case No. 1, entitled “Prospero Sanidad, Vicente dela Cruz and Servillano de la Cruz, Protestants vs. Ramon Diokno, Jose O. Vera, and Jose A. Romero, Protestees”, declaring Protestant Sanidad and Protestees Vera and Diokno as duly elected senators. By this time, the Tribunal composition had changed thus:

Hon. Justice Ricardo Paras - Chairman

Hon. Justice Emilio Hilado - Member

Hon. Justice Gregorio Perfecto - Member

Hon. Senator Mariano Cuenco - Member

Hon. Senator Vicente J. Francisco - Member

Hon. Senator Salipada Pendatun - Member

Hon. Senator Eulogio Rodriguez - Member

Hon. Senator Alejo Mabanag - Member

Hon. Senator Carlos P. Garcia - Member

Then, as now, three (3) factors usually engender a change in the composition of the Tribunal: 1) retirement of a justice-member; 2) expiration of the term of office of the senators-members and the results of the ensuing senatorial elections; and, 3) change in political affiliation/committee membership of the senator-members.

The Senate Electoral Tribunal did not exist under the 1973 Constitution, which provided for a parliamentary government. Jurisdiction over electoral protests against Members of the Batasan Pambansa was lodged with the Commission on Elections. The 1987 Constitution returned the power to the Electoral Tribunal from the Commission on Elections.

Thus, the present Senate Electoral Tribunal (SET) is a creation of the 1987 Constitution, which provides in its Section 17, Article VI that “the Senate x x x shall x x x have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns and qualifications of (its) members.” As further provided therein, the SET is composed of nine (9) members, three (3) of whom are Justices of the Supreme Court designated by the Chief Justice and the remaining six (6) are Members of the Senate of the Philippines, who are chosen on the basis of proportional representation from the political parties represented therein. The senior Justice in the Tribunal is its Chairman.

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At the beginning of Year 2004, the Tribunal was composed of the following:

Hon. Justice Reynato S. Puno Chairman

Hon. Justice Artemio V. Panganiban Member

Hon. Justice Consuelo Ynares-Santiago Member

Hon. Senator Juan M. Flavier Member

Hon. Senator Francis N. Pangilinan Member

Hon. Senator Ramon B. Revilla Member

Hon. Senator Aquilino Q. Pimentel, Jr. Member

Hon. Senator Vicente C. Sotto III Member

Hon. Senator Rodolfo G. Biazon Member

As first organized in 1987, the Tribunal was chaired by then Senior Associate Justice Pedro Yap with Justices Andres R. Narvasa and Hugo E. Gutierrez and Senators Neptali A. Gonzales, Joseph E. Estrada, Teofisto Guingona, Jr., Jose D. Lina, Jr., Mamintal A. J. Tamano and Victor S. Ziga as members. Senator Estrada was subsequently replaced by Senator Juan Ponce Enrile.

Chairmanship of the Tribunal has since then passed on to Justices Andres R. Narvasa, Hugo E. Gutierrez, Isagani A. Cruz, Teodoro Padilla, Florentino P. Feliciano, Florenz D. Regalado, Flerida Ruth P. Romero, Josue N. Bellosillo and Reynato S. Puno. Justices of the Supreme Court who became members of the Tribunal were Justices Edgardo L. Paras, Carolina Griño-Aquino, Hilario G. Davide, Jr., Jose A. R. Melo, Jose C. Vitug, Santiago M. Kapunan and Leonardo A. Quisumbing.

Other senators who served as members of the Tribunal at one time or another during the period 1987 to 2004 were Senators Nikki M. L. Coseteng, Freddie N. Webb, Leticia R. Shahani, Alberto G. Romulo, Francisco S. Tatad, Gloria Macapagal Arroyo, Miriam Defensor Santiago, Blas F. Ople, Raul S. Roco, Robert S. Jaworski, John H. Osmeña, Franklin M. Drilon, Sergio R. Osmeña III, and Manuel B. Villar, Jr.

The Tribunal is assisted by a Secretariat, composed of the Office of the Secretary and eight (8) service groups, namely: Canvass Board Service, Legal Service, Information Systems and Judicial Records Management Service, Human Resources Management Service, General Service, Finance and Budget Service, Accounting Service and Cash Management Service. As of this writing, the Secretary of the Tribunal is Atty. Irene R. Guevarra and Deputy Secretary is Atty. Jose Midas P. Marquez. Since 1987, the Tribunal has been holding office at the Electoral Tribunals Building, COA Compound, Commonwealth Avenue corner Batasan Road, Quezon City, together with its counterpart, the House of Representatives Electoral Tribunal.

In Resolution No. 10, Series of 2002, dated 08 August 2002, the Senate Electoral Tribunal declared the 11th day of April as its Foundation Day. The declaration was made to accord due recognition to this significant event in the history of the Tribunal and to establish a tradition of commemorating its creation.

On 11 April 2003, the SET commemorated its 48th Foundation Day with a Dinner-Party at the Committee Hearing Rooms of the Senate of the Philippines. Guest of Honor was Her Excellency, President Gloria Macapagal-Arroyo, who was presented a Plaque of Recognition as the first woman member of the Tribunal to occupy the highest position of the land. A Plaque of Loyalty was presented to Senator Juan M. Flavier for setting a record as the longest serving member of the Tribunal, and Plaques of Appreciation were presented to the former

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Chairmen of the SET, namely: Chief Justice Pedro L. Yap, Chief Justice Andres R. Narvasa, Justice Hugo E. Gutierrez, Jr., Justice Isagani A. Cruz, Justice Teodoro R. Padilla (Posthumous), Justice Florentino P. Feliciano, Justice Florenz D. Regalado and Justice Flerida Ruth P. Romero.

The celebration was proceeded by a Sportsfest held at the Tribunal Offices in Quezon City. Awarding of the winners of the different sports/games played was done during the Celebration. A photo exhibit was also held at the lobby of the Senate Committee Rooms. Expenses were kept to a minimum as the venue was lent free to the Tribunal. Music was provided by the Philippine Air Force Band and additional food (roasted calf) was donated by Sen. Ramon Revilla.

Since 1987, ten (10) electoral protests had been filed with the Senate Electoral Tribunal, as follows:

1987 Elections (2):

SET Case No. 001-87 (Augusto Sanches vs. Juan Ponce Enrile and/or Santanina Rasul)

SET Case No. 002-87 (Firdausi Abbas, et al. vs. Heherson Alvarez, et al.)

SET Case No. 001-87 (Sanches vs. Ponce Enrile, et al.) did not prosper because of the inability of the protestant to make a sufficient showing of his readiness to shoulder and defray the expenses for collection of the ballot boxes pertaining to his pilot precincts.

Instituted by all the candidates of the Grand Alliance for Democracy (GAD) against all the winning candidates of the administration party, SET Case No. 002-87 (Abbas, et al. vs. Alvarez, et al.) was likewise subsequently dismissed, the protestants having failed to even identify their pilot precincts.

1992 Elections (4):

SET Case No. 001-92 (John Osmena vs. Freddie Webb)

SET Case No. 002-92 (Santanina Rasul vs. Freddie Webb and Blas Ople)

SET Case No. 003-92 (Alfredo Bengzon vs. Wigberto Tanada, Francisco Tatad, John Osmena and Agapito Aquino)

Undocketed (Gloria Macapagal vs. Freddie Webb)

Four (4) electoral protests were filed in connection with the 1992 senatorial elections. The first was initiated by Sen. John Osmeña against Sen. Freddie Webb. Osmeña, who received the 23rd highest number of votes among the senatorial candidates and elected to a three-year term, filed the protest against Freddie Webb, who received the 12th highest number of votes and thus elected to a six-year term. Osmeña wanted the votes for “Osmeña” counted in his favor, instead of being treated as stray votes, although there was another candidate named “Steve Osmeña.” The protest was dismissed in June 1993 upon Osmeña’s motion to withdraw.

In the second electoral case filed in 1992, Senator Santanina Rasul, who won in the said elections, wanted a recount of the votes cast for senators, using as basis the copy of the election returns. She contended that she was credited with less than the actual number of votes cast in her favor. This case was dismissed in September 1993 for insufficiency in form and substance. Named protestees were Senators Freddie Webb and Blas Ople.

Alleging that the certificates of canvass and the statements of votes did not reflect the true and actual votes cast for senators, Alfredo Bengzon, who received the 25th highest number of votes in the senatorial elections, filed a protest against Wigberto Tanada, Francisco Tatad, John Osmeña and Agapito Aquino, who respectively placed 21st, 22nd , 23rd and 24th. He later filed a motion withdrawing the protest on the ground that the rules governing

the protest allow “interminable delays and open-ended imposition of fees and deposits.” The case was dismissed on 03 December 1992.

The incumbent President, Gloria Macapagal filed a motion for extension of time to file a protest after the 1992 elections. She decided to withdraw, however, without filing the said protest.

1995 Elections (1)

SET Case No. 001-95 (Aquilino Q. Pimentel, Jr. vs. Gregorio Honasan, Marcelo B. Fernan, Juan Ponce Enrile, Anna Dominique Coseteng, Ramon V. Mitra and Rodolfo G. Biazon.)

Although already formally organized and fully operational since 1987, it can be said that the SET came to public awareness only in 1995 with the filing of the so-called “DAGDAG-BAWAS” electoral protest by then senatorial candidate, now Senator Aquilino Q. Pimentel, Jr. This electoral protest was the first case lodged before the Tribunal that required the collection and examination of the contested ballots and other election documents and paraphernalia. The Tribunal collected, revised and examined the ballots and other election documents from the designated pilot areas of Protestant Pimentel, consisting of 7,659 electoral precincts in twenty (20) provinces, mostly in Mindanao.

In August 1997, the Tribunal announced its preliminary findings that based on the results of the revision and appreciation of the ballots pertaining to the designated pilot areas of Protestant Pimentel, Dagdag-Bawas indeed marred the 1995 senatorial elections. In a resolution subsequently issued on 23 June 1998, the Tribunal cited the areas where Dagdag-Bawas was committed as well as the type of Dagdag-Bawas perpetrated. Protestant Pimentel alleged five (5) types of Dagdag Bawas allegedly committed in the 1995 senatorial elections.

The Tribunal reported that in Pasig City, Tarlac, Tarlac and Binan, Laguna, the precinct vote totals were altered by placing the digit “1” at the left side of the genuine figures when the precinct vote totals were being transferred from the election returns to the Statement of Votes (SOV) by Precinct during the municipal or city canvassing, making it appear that the candidate got 100 votes more than he actually did. In some instances, such method resulted in the candidate obtaining more votes than there were actual voters in the precinct.

In Lanao del Norte, Taguig and some municipalities of Sultan Kudarat, the Tribunal discovered that the total votes of some candidates were simply increased in the SOV by Precinct by writing a figure higher than the real vote total in the SOV’s column for “Total”. It was these altered totals that were transferred to the Municipal or City Certificates of Canvass. In Bataan, Isabela, Pangasinan and Sultan Kudarat, the votes of some candidates as indicated in the Municipal Certificates of Canvass were simply discarded and higher but manufactured figures were transferred to the Statements of Votes by Municipality during the provincial canvass, giving the favored candidates additional votes by the thousands per municipality. The other electoral fraud uncovered in Sultan Kudarat and Tawi-Tawi was the wholesale preparation of ballots by one person only.

Notwithstanding these initial findings, the protest was subsequently dismissed after Protestant Pimentel filed his candidacy, actively campaigned for, won and eventually assumed the office of a Senator in the 11th Congress of the Philippines with a term of six (6) years beginning 30 June 1998. Such term of office overlapped with that pertaining to the office being contested in his electoral protest. Through these acts, the Tribunal considered Protestant Pimentel to have abandoned his protest as well as “his determination to protect and pursue the public interest involved in the matter of who is the real choice of the electorate.” The certiorari proceedings questioning the dismissal of the case filed by Protestant Pimentel before the Supreme Court was rendered moot by the expiration of the term of the office being contested on 30 June 2001.

1998 Elections (2):

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SET Case No. 001-98 (Roberto M. Pagdanganan vs. Teresa Aquino-Oreta)

SET Case No. 002-98 (Edcel C. Lagman vs. Teofisto Guingona, Jr., Teresa Aquino- Oreta, Roberto Pagdanganan and Ruben Torres)

Alleging that massive electoral fraud was perpetrated through “Operation Dagdag-Lipat-Bawas” and “Operation Bawas” in the senatorial elections of 11 May 1998, Roberto M. Pagdanganan, who obtained the 13th highest number of votes in the senatorial elections, filed a protest against Teresa Aquino-Oreta, the last among the proclaimed winning candidates.

On his part, Edcel C. Lagman, who obtained the 15th highest number of votes questioned the votes obtained by the candidates who ranked 11th to 14th in the senatorial race; namely: Teofisto T. Guingona, Jr., Teresa Aquino Oreta, Roberto Pagdanganan and Ruben Torres. He contested the results in 44 cities and provinces, alleging that massive fraud was perpetrated in these areas through “Operation Dagdag-Bawas” and “Operation Palit Forma”, either singly or jointly.

Pending preparation of the resolutions setting forth the results of revision and appreciation proceedings in their respective pilot areas, protestants Pagdanganan and Lagman withdrew their protests to enable the Commission on Elections to use the ballot boxes involved in their protests for the barangay elections. The Tribunal granted their motions for withdrawal of protests on 02 May 2001.

2001 Elections (1):

SET Case No. 001-01 (Juan Ponce Enrile vs. Ralph Recto and Gregorio Honasan)

Juan Ponce Enrile, who obtained the 14th highest number of votes in the 2001 elections filed a protest against Ralph Recto who obtained the 12th highest number of votes. Gregorio Honasan who obtained the 13th highest number of votes was impleaded as a necessary protestee.

Protestant Enrile withdrew the protest after being informed of the estimated amount of money needed for the collection, revision and return of the ballots and other election documents and paraphernalia.

The high cost of maintaining and prosecuting a senatorial electoral protest had been a concern of the Tribunal. Unlike in other electoral protests, such as those involving the positions of Congressman, Governor or Mayor, which cover only the electoral precincts in a certain congressional district, city or municipality, a senatorial election protest involves electoral precincts nationwide. The cost of collection, revision and return of a ballot box is conservatively estimated in the Revised Rules of the Tribunal at Five Hundred Pesos (P500.00) for each precinct involved.

On 12 November 2003, the Tribunal issued Resolution No. 03-03, recommending in the strongest terms possible the early enactment of a legislation providing for the assumption by government of the expenses for the maintenance and prosecution of prima facie electoral protests pending in the Senate Electoral Tribunal and providing therefor a Special Fund in an amount of not less then Five Hundred Million Pesos (P500,000,000.00).

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