# EMILIANO R. “BOY” CARUNCHO III, PETITIONER, VS. THE COMMISSION ON ELECTIONS, AND THE CHAIRMAN ATTY. CASIANO ATUEL, JR. AND MEMBERS, ATTY. GRACE S. BELVIS, DR. FLORENTINA R. LIZA...

*G.R. No. 135996. September 30, 1999*

Ponente: YNARES-SANTIAGO, J.

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**YNARES-SANTIAGO, J.:**

Petitioner Emiliano R. Caruncho III was the candidate of the Liberal Party for the congressional seat in the lone district of Pasig City at the May 11, 1998 synchronized elections. The other candidates were: Arnulfo G. Acedera, Jr. (Lakas-NUCD-UMDP); Marcelino P. Arias (Nacionalista Party); Roberto C. Bassig (Independent); Esmeraldo T. Batacan (PDR-LM Coalition); Henry P. Lanot (LAMMP); Francisco C. Rivera, Jr. (PRP/PDR); Elpidio G. Tuason (Independent), and Raoul V. Victorino (Liberal Party/LAMMP).

At 9:00 o’clock in the morning of May 12, 1998, respondent Pasig City Board of Canvassers composed of Atty. Casiano Atuel, Jr. as Chairman, Atty. Grace S. Belvis as Vice-Chairman, and Dr. Florentina Lizano as Member, started to canvass the election returns. The canvass was proceeding smoothly when the Board received intelligence reports that one of the candidates for the congressional race, retired General Arnulfo Acedera, and his supporters, might disrupt and stop the canvassing.

At exactly 6:00 o’clock in the evening of May 14, 1998, General Acedera and his supporters stormed the Caruncho Stadium in San Nicolas, Pasig City, where the canvassing of election returns was being conducted. They allegedly forced themselves into the canvassing area, breaking a glass door in the process. As pandemonium broke loose, the police fired warning shots causing those present in the canvassing venue, including the members of the Board and canvassing units, to scamper for safety. The canvassing personnel exited through the backdoors bringing with them the Election Returns they were canvassing and tallying as well as the Statement of Votes that they were accomplishing. They entrusted these documents to the City Treasurer’s Office and the Pasig Employment Service Office (PESO). Election documents and paraphernalia were scattered all over the place when the intruders left.

The following day, May 15, 1998, the sub-canvassing units recovered the twenty-two (22) Election Returns and the Statement of Votes from the Treasurer’s Office and the PESO. However, page 2 of each of the 22 election returns, which contained the names of candidates for congressmen, had been detached and could not be found. An investigation was conducted to pinpoint liability for the loss but it yielded negative result. Hence, the Board secured proper authority from the Commission on Elections (COMELEC),[1] through Election Director for the National Capital Region Atty. Teresita Suarez, for the reconstitution of the missing page by making use of the other copies of the election returns, particularly the provincial copy or the copy in the ballot boxes placed therein by the Board of Election Inspectors.

At 2:40 a.m. of May 17, 1998, the Board, satisfied that it had finished canvassing the 1,491 election returns from

as many clustered precincts, proclaimed Henry P. Lanot as the winner in the congressional race for the lone district of Pasig.[2] The votes obtained by the leading three candidates were: Henry P. Lanot – 60,914 votes; Emiliano R. "Boy" Caruncho III – 42,942 votes, and Arnulfo Acedera – 36,139 votes. The winner, Lanot, led his closest rival, Caruncho, by 17,971 votes.

However, on May 21, 1998, petitioner Caruncho filed a "Motion to Nullify Proclamation on the Basis of Incomplete Returns"[3] with the COMELEC. He alleged that the Board had proceeded with the proclamation of Henry Lanot as the winning congressional candidate even though one hundred forty-seven (147) election returns involving about 30,000 votes, were still not canvassed. He prayed that the COMELEC en banc declare the proclamation null and void and that the Board of Canvassers be directed to convene and reopen the ballot boxes to recount the votes of the candidates for the House of Representatives and thereupon proclaim the winner. On June 1, 1998, petitioner filed an amended motion to correct some errors in the listing of precincts under paragraph 10, pages 2 and 3, and paragraph 12, pages 3 and 4, of the original motion.[4]

On June 8, 1998, the Second Division of the COMELEC issued an Order requiring respondent Pasig City Board of Canvassers to comment on the amended motion to nullify Lanot's proclamation. In his comment filed on June 23, 1998, respondent Atty. Casiano G. Atuel, Jr. admitted the disruption and stoppage of the canvass of election returns on May 11, 1998 but asserted that there were only twenty-two (22) election returns, not 147 as claimed by Caruncho, that were missing but these were eventually recovered. The Board stated in part:

> "x x x. Contrary to the insinuation of Atty. Irene D. Jurado, only 22 Election Returns were reported missing. On the following day, May 15, 1998, the sub-canvassing units have recovered the 22 missing Election Returns and the Statement of Votes from the Treasurer's Office and from the Pasig Employment Service Office (PESO). There are no missing election returns.
>
> That to the surprise of the Board and of the 22 canvassing units, they found out that Page 2 of the 22 Election Returns they recovered were detached and missing. We wish to inform the Commission that Page 2 of the Local Election Returns contained the name of candidates for Congressman. We conducted investigation on who did the detachment of Page 2 of the 22 Election Returns. However, nobody from the Treasurer's Office nor from the PESO admitted that they committed such election offense.
>
> It is impossible that 147 Election Returns were missing. The COMELEC Instruction is very specific that only Election Returns to be canvassed are suppose(d) to be brought out from the Ballot Boxes containing still uncanvassed Election Returns. The instruction further stated that once it was read by the Board, it will be stamped `READ' and then deliver the same (sic) to the 22 sub-canvassing units. Sub-canvassing units cannot get another Election Returns unless the same is finished, tallied, stamped as `CANVASSED', and submit the same to the Secretariat and placed inside a separate ballot boxes with stamped `READ' and `CANVASSED' (sic) sealed with metal seals, padlocked, chained and padlocked again. It was at this time where (sic) the sub-canvassing units will get another Election Returns from the Board for tally and so on. Sub-canvassing units are not allowed to canvass 2 or more Election Returns at one time. This was the very reason why only 22 Election Returns were reported missing but were recovered without Page 2.
>
> That at the very start of the proceeding, the leading candidates for Congressman were as follows:
>
> HENRY LANOT - FIRST
> EMILIANO CARUNCHO - SECOND
> ARNULFO ACEDERA - THIRD
>
> As the canvass goes on, Henry Lanot was leading Caruncho by thousands. Very few Election Returns have Caruncho leading and even if leading, the lead was only a few votes.
>
> Proper authorities from the Commission on Elections was secured through Atty. Teresita C. Suarez, Election


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> Director for National Capital Region for the purpose of making use of other copies of the Election Returns particularly the Provincial Copy or the Copy in the Ballot Boxes. Fortunately, the authorities arrived on time so that the Board of Canvassers waste(d) no time in opening the Ballot Boxes to retrieve the copies from the Board of Canvassers left inside the Ballot Boxes by the careless Board of Election Inspectors. Provincial copies were used as well in the reconstitution of the missing page 2 of the 22 recovered Election Returns.
>
> That there was no truth on the insinuation made by Atty. Irene D. Jurado that there were 147 Election Returns which were not canvassed which will affect the result of election for Emiliano Caruncho. The Board did everything to have all election returns accounted forth (sic). We let no stone unturned before we finally come to the conclusion. That we have finished canvassing the 1,491 Election Returns and proclaimed the winning candidates.
>
> That granting without admitting that there were missing Election Returns which were uncanvassed, and if ordered canvass(ed), the more Lanot will widen his lead because the trend was that Henry Lanot's lead swollen (sic) as more election returns were canvassed.
>
> That for the first time, I am revealing this shocking fact to the Commission on Elections that on two (2) occasions, an unidentified persons (sic) talked to me at the unholy hours of the night 2 days while canvassing was going on and offered me TWO MILLION (P2,000,000.00) PESOS in cold cash just to proclaim `BOY' as the elected Congressman. I declined the offer and told the man that I am a straight man, I am on the level, I have a family and I am about to retire. x x x.
>
> That at 2:40 A.M. of May 17, 1998, the Board of Canvassers proclaimed all the winning candidates for Local positions. As to the Congressman, the following results are as follows:
>
> HENRY LANOT - 60,914 votes
> EMILIANO `BOY' CARUNCHO - 42,942 votes
> ARNULFO ACEDERA - 36,139 votes

The lead of Henry Lanot from Emiliano Caruncho was 17, 971 votes.
x x x x x x x x x."[5]
On June 24, 1998, the COMELEC Second Division[6] promulgated a Resolution[7] decreeing as follows:

> "WHEREFORE, in view of the foregoing, this Commission:
>
> 1. Declares that the proclamation of the winning congressional candidate of Pasig City as NULL AND VOID;
>
> 2. Orders that the respondents-Members of the City Board of Canvassers of Pasig City to RECONVENE at the Session Hall of the Commission and use the Comelec copy of the one hundred forty-seven (147) election returns above-mentioned and CANVASS said authentic copy of the election returns and include the results thereof with the tally of all election returns previously canvassed and, thereafter, PROCLAIM the winning candidate; and
>
> 3. Orders the Law Department of this Commission to investigate candidate Arnulfo Acedera and if after the investigation, the evidence so warrant, to file the necessary charges against him.
>
> SO ORDERED."

Subsequently, on June 26, 1998, respondent Board filed a "Supplemental Comment" raising the following matters: (a) the COMELEC had no jurisdiction over the case under Section 242 of the Omnibus Election Code; (b) petitioner failed to record his objections to the elections returns and the certificate of canvass in the minutes of the proceedings of the Board, and (c) the winning candidate, Henry Lanot, was not impleaded in the motion to nullify his proclamation.[8]


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On July 8, 1998, proclaimed winning candidate Henry Lanot filed a motion for leave to intervene in the case.[9] He also prayed for the reconsideration of the June 24, 1998 Resolution of the COMELEC Second Division and for referral of the case to the COMELEC en banc. In his motion for reconsideration[10] that was attached to said motion to intervene, movant Lanot argued that failure to notify him of the case was fatal as he was a real party in interest who must be impleaded therein. He also alleged that under the Constitution and Republic Act No. 7166, the COMELEC had no jurisdiction over the case and that the Resolution of June 24, 1998 was "not based on facts."

That same day, petitioner, represented by new counsel,[11] filed a motion praying for the "formation" of a new Board of Canvassers on account of the June 24, 1998 Resolution of the COMELEC Second Division.[12] The following day, the COMELEC Second Division issued an order setting the case for hearing and postponing the "reconvening of the City Board of Canvassers of Pasig City."[13] On July 15, 1998, movant Lanot filed an opposition to the motion for the formation of a new Board of Canvassers on the ground that the Resolution of June 24, 1998 is null and void for the following reasons: (a) he was not notified of the proceedings and therefore his right to due process was violated; (b) said resolution had not become final and executory by his filing of a motion for reconsideration, and (c) the case was no longer a pre-proclamation controversy but an electoral protest under the jurisdiction of the House of Representatives Electoral Tribunal, not the COMELEC.[14]

At the hearing on July 21, 1998, the COMELEC Second Division ordered the filing of memorandum. Movant Lanot, however, manifested that he was no longer filing a memorandum. Thus, the COMELEC, ruled that "with or without said memorandum," the case would be deemed submitted for resolution.[15] Meanwhile, on July 27, 1998, petitioner filed an opposition to Lanot's motion for reconsideration[16] after which Lanot filed his comment on the opposition.[17]

On September 28, 1998, the COMELEC Second Division granted Lanot's motion for intervention and elevated his motion for reconsideration to the COMELEC en banc.[18]

Thereafter, the COMELEC en banc[19] promulgated a Resolution dated October 1, 1998 reconsidering the Resolution of the COMELEC Second Division and dismissing petitioner's amended motion (petition) to nullify the proclamation on the basis of incomplete returns for lack of merit.[20] Relying on facts narrated by the Pasig City Board of Canvassers in its comment on the motion to nullify the proclamation, the COMELEC en banc found:

> "Thus, the board of canvassers did everything to have all election returns accounted for, and finished canvassing all the election returns of 1,491 clustered precincts of Pasig City. On the basis of the canvass, the board proclaimed the winning candidates for local positions. As to the winning candidate for congressman, the results were as follows:
> Henry P. Lanot - 60,914 votes
> Emiliano `Boy' Caruncho - 42,942 votes
> Arnulfo Acedera - 36,139 votes

However, granting arguendo that there were missing twenty-two (22) election returns involving about 4,400 votes, the same no longer affect the results of the election as candidate Henry P. Lanot obtained the highest number of votes, with a lead of 17,971 votes over his closest rival, Emiliano `Boy' Caruncho. The board of canvassers duly proclaimed candidate Henry P. Lanot as the winning representative of the lone district of Pasig City.

Consequently, we find without basis petitioner's allegation that the proclamation of Henry P. Lanot was based on an incomplete canvass. We carefully examined the Comelec copies of the Statement of Votes and found no truth

to the assertion that there were one hundred forty seven (147) election returns not canvassed."

Hence, this petition for certiorari.

Petitioner seeks to nullify respondent COMELEC en banc's Resolution of October 1, 1998, contending that said body acted in excess of jurisdiction and with grave abuse of discretion in overruling his claim that 147 election returns involving about thirty thousand (30,000) votes were not canvassed. Petitioner argued that it was enough reason for contesting the proclamation of Lanot as winner under an incomplete canvass. However, as in the proceedings before the COMELEC, petitioner failed to implead in the instant petition the proclaimed winning candidate, Lanot.

The petition must be dismissed.

Petitioner initiated this case through a motion to nullify the proclamation of Lanot as the winner in the congressional race in Pasig City. Named respondents in the motion were the individual members of the Board of Canvassers in that city. The proclaimed winner was not included among the respondents. For that reason alone, the COMELEC should have been forewarned of a procedural lapse in the motion that would affect the substantive rights of the winning candidate, if not the electorate. Due process in quasi-judicial proceedings before the COMELEC requires due notice and hearing.[21] The proclamation of a winning candidate cannot be annulled if he has not been notified of the motion to set aside his proclamation.[22] It was only the intervention of Lanot in SPC 98-123, which the Second Division of the COMELEC allowed, which cured the procedural lapse that could have affected the popular will of the electorate.

However, petitioner again failed to implead Lanot in the instant petition for certiorari. In this connection, Section 2, Rule 3 of the 1997 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.[23] 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, pursuant to Rule 65 of the said Rules:

> "SEC. 5. Respondents and costs in certain cases. – When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.
>
> Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein." (Underscoring supplied.)

Hence, quasi-judicial agencies should be joined as public respondents but it is the duty of the private respondent to appear and defend such agency.[24] That duty cannot be fulfilled by the real party in interest such as the proclaimed winning candidate in a proceeding to annul his proclamation if he is not even named as private respondent in the petition. Ordinarily, the nonjoinder of an indispensable party or the real party in interest is not


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by itself a ground for the dismissal of the petition. The court before which the petition is filed must first require the joinder of such party. It is the noncompliance with said order that would be a ground for the dismissal of the petition.[25] However, this being an election case which should be resolved with dispatch considering the public interest involved, the Court has not deemed it necessary to require that Henry P. Lanot be impleaded as a respondent in this case.

A crucial issue in this petition is what body has jurisdiction over a proclamation controversy involving a member of the House of Representatives. The 1987 Constitution cannot be more explicit in this regard. Article VI thereof states:

> "Sec. 17. 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. x x x."

The foregoing constitutional provision is reiterated in Rule 14 of the 1991 Revised Rules of the Electoral Tribunal of the House of Representatives, to wit:

> "RULE 14. Jurisdiction. – The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives."

In the recent case of Rasul v. COMELEC and Aquino-Oreta,[26] the Court, in interpreting the aforesaid constitutional provision, stressed the exclusivity of the Electoral Tribunal's jurisdiction over its members, thus:

> "Section 17, Article VI of the 1987 Constitution as well as Section 250 of the Omnibus Election Code provide that '(t)he 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. x x x." In Javier v. Comelec (144 SCRA 194), this Court interpreted the phrase 'election, returns and qualifications' as follows:
> '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.'

The word 'sole' in Section 17, Article VI of the 1987 Constitution and Section 250 of the Omnibus Election Code underscore the exclusivity of the Tribunal's jurisdiction over election contests relating to its members. 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. x x x."

In the same vein, considering that petitioner questions the proclamation of Henry Lanot as the winner in the congressional race for the sole district of Pasig City, his remedy should have been to file an electoral protest with the House of Representatives Electoral Tribunal (HRET).[27]

Even granting arguendo that the thrust of petitioner's case is to question the integrity of the election returns or the validity of the "incomplete canvass" as the basis for Henry Lanot's proclamation, and not the proclamation itself, still, the instant petition is devoid of merit.

The factual question of how many election returns were missing as a consequence of the disruption of the canvassing of election returns has been definitely resolved by the COMELEC en banc. Thus, raising the same

issue before this Court is pointless because this Court is not a trier of facts.[28] The facts established below show that all the legal steps necessary to carry out the reconstitution of the missing page 2 of the twenty-two (22) election returns have been followed. Proper authorization for the reconstitution of that page was secured from the COMELEC. The reconstitution was based on the provincial copy of the election returns that was retrieved from the sealed ballot boxes. For his part, petitioner failed to have the anomaly recorded in the minutes of proceedings of respondent Board as required by Section 15 of Republic Act No. 7166. Respondent Board, therefore, observed the following provisions of the Omnibus Election Code:

> "SEC. 233. When the election returns are delayed, lost or destroyed. – In case its copy of the election returns is missing, the board of canvassers shall, by messenger or otherwise, obtain such missing election returns from the board of election inspectors concerned, or if said returns have been lost or destroyed, the board of canvassers, upon prior authority of the Commission, may use any of the authentic copies of said election returns or a certified copy of said election returns issued by the Commission, and forthwith direct its representative to investigate the case and immediately report the matter to the Commission.
>
> The board of canvassers, notwithstanding the fact that not all the election returns have been received by it, may terminate the canvass and proclaim the candidates elected on the basis of the available election returns if the missing election returns will not affect the results of the election."

Granting that the proclamation was made without taking into account the twenty-two (22) election returns, still, the COMELEC did not abuse its discretion. The election returns represented only 4,400 votes. That number cannot affect the result of the election because Henry Lanot's lead over his closest rival, herein petitioner, was 17,971 votes. As the second paragraph of Section 233 of the Omnibus Election Code aforequoted states, the Board of Canvassers could have totally disregarded the twenty-two (22) election returns and legally proclaimed Lanot as the winner in the election in Pasig City for Member of the House of Representatives.

An incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation.[29] A canvass cannot be reflective of the true vote of the electorate unless all returns are considered and none is omitted.[30] 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.

On the whole, this Court finds that respondent COMELEC did not commit grave abuse of discretion when it issued the assailed Resolution of October 1, 1998 dismissing petitioner's motion to nullify the proclamation of Henry P. Lanot as Member of the House of Representatives for the lone district of Pasig City.

WHEREFORE, the instant petition for certiorari is DISMISSED.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, and Gonzaga-Reyes, JJ., concur. Pardo, J., no part.

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[1] Footnote 1 of COMELEC en banc Resolution dated October 1, 1998 in SCC 98-123 states: "Acting on the Memordandum of NCR Director Atty. Teresita C. Suarez dated May 12, 1998, Chairman Pardo as Commissioner-In-Charge of NCR, approved opening of ballot boxes and retrieval of election returns in cases where all copies of the election returns were all placed inside the ballot boxes."

[2] Record of SPC 98-123, p. 72.

[3] Rollo, p. 32.

[4] Ibid., p. 52.

[5] Rollo, pp. 89-91; Record, pp. 34-37.

[6] Composed of Commissioners Julio F. Desamito and Japal M. Guiani.

[7] Rollo, p. 59.

[8] Record, p. 55.

[9] Ibid., p. 58.

[10] Ibid., p. 61.

[11] Froilan M. Bacungan and Associates.

[12] Record, p. 85.

[13] Ibid., p. 97.

[14] Ibid., p. 103.

[15] Ibid., p. 112.

[16] Ibid., p. 113.

[17] Ibid., p. 122.

[18] Ibid., p. 131.

[19]19 Per COMELEC Chairman Bernardo P. Pardo, with Commissioners Julio F. Desamito, Teresita Dy-Liacco Flores, Japal M. Guiani, Luzviminda G. Tancangco and Abdul Gani M. Marohombsar, Al Hadj concurring. Commissioner Manolo B. Gorospe took no part.

[20] Rollo, p. 73.

[21] Bince, Jr. v. COMELEC, G.R. No. 106271, February 9, 1993, 218 SCRA 782, 792-793.

[22] Jagunap v. COMELEC, G.R. Nos. 53062 & 53345, April 24, 1981, 104 SCRA 204, 213.

[23] De Leon v. Court of Appeals, 343 Phil. 254, 265 (1997).

[24] FERIA, 1997 RULES OF CIVIL PROCEDURE (Annotated), 1997 ed., p. 267.

[25] Ibid., pp. 10-11.

[26] G.R. No. 134142, August 24, 1999.

[27] Pangilinan v. COMELEC, G. R. No. 105278, November 18, 1993, 228 SCRA 36.

[28] David-Chan v. Court of Appeals, 335 Phil. 1140, 1148 (1997).

[29] Datu Sukarno Samad v. Commission on Elections, 224 SCRA 631, 642 (1993); Tiglao v. Commission on Elections, 31 SCRA 719, 729 (1970); Mutuc v. Commission on Elections, 22 SCRA 662, 666 (1968); Demafiles v. Commission on Elections, 21 SCRA 1462, 1468 (1967).

[30] Duremdes v. Commission on Elections, 178 SCRA 746, 758 (1989); citing Datu Sinsuat v. Pendatun,


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L-31501, June 30, 1970, 33 SCRA 630.

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