

AQUILINO L. PIMENTEL III, Petitioner, vs. THE COMMISSION ON ELECTIONS EN BANC SITTING AS THE NATIONAL BOARD OF CANVASSERS, THE SPECIAL PROVINCIAL BOARD OF CANVASSERS FOR MAGUIND...

G.R. No. 178413. March 13, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

On 4 July 2007, petitioner Aquilino L. Pimentel III (Pimentel) filed the present Petition for Certiorari and Mandamus (with Urgent Prayer for Temporary Restraining Order and/or Status Quo Ante Order).[1]

The Petition stemmed from the 14 May 2007 national elections for 12 senatorial posts. At the time of filing of the Petition, around two months after the said elections, the 11 candidates with the highest number of votes had already been officially proclaimed and had taken their oaths of office as Senators. With other candidates conceding, the only remaining contenders for the twelfth and final senatorial post were Pimentel and private respondent Juan Miguel F. Zubiri (Zubiri). Public respondent Commission on Elections (COMELEC) en banc, acting as the National Board of Canvassers (NBC), continued to conduct canvass proceedings so as to determine the twelfth and last Senator-elect in the 14 May 2007 elections.

Pimentel assailed the proceedings before the NBC and its constituted Special Provincial Board of Canvassers for Maguindanao (SPBOC-Maguindanao) in which the Provincial and Municipal Certificates of Canvass (PCOC and MCOCs) from the province of Maguindanao were respectively canvassed.

The SPBOC-Maguindanao was created because the canvass proceedings held before the original Provincial Board of Canvassers for Maguindanao (PBOC-Maguindanao), chaired by Provincial Election Supervisor (PES) Lintang Bedol, were marred by irregularities, and the PCOC (Bedol PCOC) and other electoral documents submitted by the said PBOC-Maguindanao were tainted with fraud and statistical improbabilities. Hence, the Bedol PCOC was excluded from the national canvass then being conducted by the NBC.

Task Force Maguindanao, headed by COMELEC Chairman Benjamin S. Abalos, Sr. and Commissioner Nicodemo T. Ferrer, retrieved and collected 21 MCOCs from the municipalities of Maguindanao, mostly copy 2, or the copy intended to be posted on the wall. The SPBOC-Maguindanao was then tasked to re-canvass the MCOCs submitted by Task Force Maguindanao. The re-canvassing of the Maguindanao MCOCs was conducted by the SPBOC-Maguindanao from 25 to 26 June 2007 at Shariff Aguak, Maguindanao. Although PES Bedol and the Chairpersons of the Municipal Boards of Canvassers of Maguindanao (MBOCs-Maguindanao) were present during the canvass proceedings before the SPBOC-Maguindanao, the candidates' legal counsels were not allowed to ask them any questions. Due to the consistent denial by the SPBOC-Maguindanao of the repeated and persistent motions made by Pimentel's counsel to propound questions to PES Bedol and the Chairpersons of the MBOCs-Maguindanao regarding the due execution and authenticity of the Maguindanao MCOCs, Pimentel's counsel manifested her continuing objection to the canvassing of the said MCOCs. In particular, Pimentel's

counsel objected to the Maguindanao MCOCs because:

a)

the proceedings were illegal;

b)

the MCOCs were palpably manufactured;

c)

the results reflected in the MCOCs were statistically improbable;

d)

there is no basis for saying the MCOCs were authentic because there were no other available copies for comparison purposes;

e)

in most of the MCOCs[,] no watcher signed;

f)

there was no evidence or indication that the copy 2 MCOCs had been posted as intended by law;

g)

the serial numbers of the MCOCs are not clearly stamped;

h)

copy 2 of the MCOCs cannot be used for canvass;c

i)

that the MCOCs are therefore, improper, unworthy and unfit for canvass;

j)

that the manner the “re-canvassing” which was being done where the parties are not allowed to ask questions was patently illegal; and

k)

that it has not been established that the other copies of the MCOCs have been lost.[2]

All of the foregoing observations, manifestations, and objections made by Pimentel’s counsel, as well as those made by the other candidates’ counsels, were simply noted by the SPBOC-Maguindanao without specific action thereon.

On 29 June 2007, the SPBOC-Maguindanao submitted to the NBC the second PCOC for Maguindanao. In the proceedings before the NBC, Pimentel’s counsel reiterated her request to propound questions to PES Bedol and the Chairpersons of the MBOCs-Maguindanao and the SPBOC-Maguindanao. The NBC, however, refused to grant her request. Pimentel’s counsel thereafter moved for the exclusion of the second Maguindanao PCOC from the canvass, maintaining that the said PCOC did not reflect the true results of the elections because it was based on the manufactured Maguindanao MCOCs, the authenticity and due execution of which had not been duly

established. The motion to exclude made by Pimentel's counsel was once again denied by the NBC, and she was ordered to sit down or she would be forcibly evicted from the session hall. The second Maguindanao PCOC was thus included in the canvass proceedings conducted by the NBC and, resultantly, Pimentel's lead over Zubiri was significantly reduced from 133,000 votes to only 4,000 votes.

Pimentel averred that said canvass proceedings were conducted by the NBC and SPBOC-Maguindanao in violation of his constitutional rights to substantive and procedural due process and equal protection of the laws, and in obvious partiality to Zubiri. Pimentel thus filed the Petition at bar on 4 July 2007, anchored on the following grounds:

- The petitioner [Pimentel] was denied his right to due process of law when the respondent SPBOC and the respondent NBC adopted an unconstitutional procedure which disallowed the petitioner [Pimentel] the opportunity to raise questions on the COCs subject of the canvass.
- The petitioner [Pimentel] was denied his right to equal protection of the law when the respondent SPBOC and the respondent NBC unconstitutionally adopted a procedure of "no questions" in the canvass of COCs from Maguindanao, different from the procedure adopted in the canvass of COCs from other provinces/areas.
- The respondent NBC acted with manifest grave abuse of discretion when it refused to exercise its broad, plenary powers in fully or accurately ascertaining due execution, authenticity and fitness for the canvass of the MCOCs collected by the Comelec in the exercise of such broad plenary powers. It violated its own rules when it deprived petitioner [Pimentel] of the right to ventilate and prove his objections to the Maguindanao COCs.[3]

Pimentel seeks from this Court the following remedies:

- Forthwith ISSUE A TEMPORARY RESTRAINING ORDER enjoining the respondent Commission on Elections en banc sitting as the National Board of Canvassers for Senators for the May 14, 2007 elections ("NBC") from proceeding with any proclamation (of the twelfth and last winner of the May 14, 2007 Elections for Senators) based on the on-going senatorial canvass which includes the new/second Provincial Certificate of Canvass of Maguindanao, until further orders from this Court, or, in the alternative, in the event that the proclamation of Respondent Zubiri is made before the application for a TRO is acted upon, ISSUE A STATUS QUO ANTE ORDER requiring the parties to observe the status quo at the time of the filing of the Petition, in order to maintain and preserve the situation of the parties at the time of the filing of this Petition, so as not to render the issues raised in this Petition moot and academic;
- After proper proceedings, RENDER JUDGMENT: (a) ANNULING AND SETTING ASIDE for being unconstitutional and illegal the proceedings and acts of respondent Commission on Elections en banc sitting as the National Board of Canvassers for Senators for the May 14, 2007 elections ("NBC") of including, on June 29, 2007, in the national canvass of votes for Senators the results from the Province of Maguindanao as reflected in its new/second Provincial Certificate of Canvass as well as the proceedings and acts of the respondent Special Provincial Board of Canvassers for Maguindanao ("SPBOC") in canvassing or "re-canvassing" the collected MCOCs, on June 25, 26 and 27, 2007, leading to the preparation of the new/second PCOC for Maguindanao, and (b) COMPELLING or ORDERING respondent NBC and its deputy, the SPBOC, to perform their ministerial constitutional duty of fully determining the due execution and authenticity of the MCOCs, including, but not limited to, allowing petitioner [Pimentel] to substantiate his claim of manufactured results and propound questions to the officers concerned, primarily, the Chairpersons of the former PBOC and SPBOC of Maguindanao and the Chairpersons of the Municipal Boards of Canvassers of Maguindanao.

Petitioner [Pimentel] also prays for other reliefs, just and equitable, under the premises.[4]

Pursuant to the Resolution[5] dated 10 July 2007 issued by this Court, Zubiri filed his Comment[6] on the Petition

at bar on 12 July 2007; while the NBC and SPBOC-Maguindano, chaired by Atty. Emilio S. Santos, filed their joint Comment[7] on even date. The respondents Zubiri, NBC, and SPBOC-Maguindanao collectively sought the denial of Pimentel's application for Temporary Restraining Order (TRO) and/or Status Quo Ante Order and the dismissal of the instant Petition.

Pimentel's prayer for the issuance of a TRO and/or Status Quo Ante Order was set for oral arguments on 13 July 2007. After hearing the parties' oral arguments, the Court voted seven for the grant and seven for the denial of Pimentel's prayer for the issuance of a TRO and/or Status Quo Ante Order; thus, said prayer was deemed denied for failure to garner the required majority vote. The parties were then directed to submit their respective Memoranda, after which, the case would be deemed submitted for resolution.[8] All the parties complied, with Zubiri submitting his Memorandum[9] on 31 July 2007; Pimentel,[10] on 1 August 2007; and the NBC and SPBOC-Maguindanao,[11] on 10 August 2007.

In the meantime, without any TRO and/or Status Quo Ante Order from the Court, the canvass proceedings before the NBC continued, and by 14 July 2007, Zubiri (with 11,004,099 votes) and Pimentel (with 10,984,807 votes) were respectively ranked as the twelfth and thirteenth Senatorial candidates with the highest number of votes in the 14 May 2007 elections. Since the NBC found that the remaining uncanvassed certificates of canvass would no longer materially affect Zubiri's lead of 19,292 votes over Pimentel, it issued Resolution No. NBC 07-67,[12] dated 14 July 2007, proclaiming Zubiri as the twelfth duly elected Senator of the Philippines in the 14 May 2007 elections, to serve for a term of six years beginning 30 June 2007 in accordance with the provisions of the Constitution.

On 19 July 2007, Zubiri filed with this Court a Manifestation with Motion to Dismiss.[13] Zubiri sought the dismissal of the Petition at bar arguing that, in consideration of his proclamation pursuant to Resolution No. NBC 07-67 and his formal assumption of office on 16 July 2007, controversies involving his election and qualification as a Senator are now within the exclusive jurisdiction of the Senate Electoral Tribunal (SET).

Zubiri further informed the Court through a Manifestation,[14] dated 16 August 2007, that Pimentel filed an Election Protest (Ex Abudante Ad Cautelam) before the SET on 30 July 2007, docketed as SET Case No. 001-07, to which Zubiri filed his Answer Ad Cautelam (With Special Affirmative Defenses, Counter-Protest and Petition for a Preliminary Hearing on the Affirmative Defenses) on 13 August 2007. In his election protest, Pimentel prays, among other remedies, for the annulment of Zubiri's proclamation as the twelfth winning Senator in the 14 May 2007 elections. Zubiri called the attention of the Court to the "glaring reality" that with G.R. No. 178413 before this Court and SET Case No. 001-07 before the SET, "there are now two cases involving the same parties with practically the same issues and similar remedies sought filed before the two (2) separate courts/tribunals." Zubiri also pointed out Pimentel's ostensible failure to inform this Court of his institution of SET Case No. 001-07 and the subsequent developments therein.

On 23 August 2007, Pimentel filed before this Court his Comment/Opposition (to Private Respondent's Manifestation with Motion to Dismiss).[15] Pimentel alleged that Zubiri's Motion to Dismiss solely relied on *Aggabao v. Commission on Elections*.^[16] However, Pimentel argued that *Aggabao* cannot be applied to the instant Petition because of the difference in the factual backgrounds of the two cases. In *Aggabao*, therein petitioner *Aggabao* filed his Petition before this Court after the proclamation of therein private respondent *Miranda* as Congressman for the Fourth District of Isabela; while in the present case, Pimentel already filed his Petition before this Court prior to the proclamation of Zubiri as Senator. Moreover, Pimentel asserted that his Petition questioned not Zubiri's proclamation, but the conduct of the canvass proceedings before the NBC and SPBOC-Maguindanao. He maintained that his case was one of first impression and no existing jurisprudence could be used as precedent for its summary dismissal. Pimentel then reiterated his arguments in his Memorandum

that Sections 37 and 38 of Republic Act No. 9369,[17] amending Sections 30 and 15 of Republic Act No. 7166,[18] respectively, significantly affected and changed the nature of canvass proceedings, the nature of the duty of canvassing boards, and the extent of allowable pre-proclamation controversies in Senatorial elections. Based on the foregoing, Pimentel prayed for the denial of Zubiri's Motion to Dismiss.

After a close scrutiny of the allegations, arguments, and evidence presented by all the parties before this Court, this Court rules to dismiss the present Petition.

Pre-proclamation controversy/case

A pre-proclamation controversy has been defined by Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code of the Philippines, as follows:

SEC. 241. Definition. – A pre-proclamation controversy is any question pertaining to or affecting the proceeding 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 appearance of the election returns.

Under Republic Act No. 7166, providing for synchronized national and local elections, pre-proclamation controversies refer to matters relating to the preparation, transmission, receipt, custody and appearance of election returns and certificates of canvass.[19]

Essentially reiterating Section 243 of the Omnibus Election Code, but adding the reference to the certificates of canvass, COMELEC Resolution No. 7859, dated 17 April 2007, identified the issues that may be subject of a pre-proclamation controversy, to wit:

SEC. 37. Issues that may be raised in pre-proclamation controversy. – The following shall be proper issues that may be raised in a pre-proclamation controversy:

- 1) Illegal composition or proceedings of the Board of Canvassers;
- 2) The canvassed election returns/certificates of canvass are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns/certificates or in the other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of the Omnibus Election Code;
- 3) The election returns/certificates of canvass were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- 4) When substitute or fraudulent election return/certificates of canvass were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

Pre-proclamation cases to resolve pre-proclamation controversies are allowed in local elections. According to Section 16 of Republic Act No. 7166:

SEC. 16. Pre-proclamation Cases Involving Provincial, City and Municipal Offices. – Pre-proclamation cases involving provincial, city and municipal officer shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof.

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.

SEC. 17. Pre-proclamation Controversies: How Commenced. – Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission. However, matters raised under Sections 233, 234, 235 and 236 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody and appreciation of the election returns, and the certificates of canvass shall be brought in the first instance before the board of canvassers only.

However, as to elections for President, Vice-President, Senators, and Members of the House of Representatives, pre-proclamation cases are prohibited. Section 15 of Republic Act No. 7166, prior to its amendment, read:

SEC. 15. Pre-proclamation Cases Not Allowed in Elections for President, Vice-President, Senator, and Member of the House of Representatives. – For purposes of the elections for President, Vice-President, Senator, and Member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns or the certificates of canvass, as the case may be. However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it.

Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission in accordance with Section 19 hereof.

Any objection on the election returns before the city or municipal board of canvassers, or on the municipal certificates of canvass before the provincial board of canvassers or district boards of canvassers in Metro Manila Area, shall be specifically noted in the minutes of their respective proceedings.

As Section 15 of Republic Act No. 7166 was then worded, it would appear that any pre-proclamation case relating to the preparation, transmission, receipt, custody and appreciation of election returns or certificates of canvass, was prohibited in elections for President, Vice-President, Senators and Members of the House of Representatives. 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. Proceedings which may delay the proclamation of the winning candidate beyond the date^[20] set for the beginning of his term of office must be avoided, considering that 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.^[21]

The law, nonetheless, recognizes an exception and allows the canvassing body *motu proprio* or an interested person to file a written complaint for the correction of manifest errors in the election returns or certificates of canvass even in elections for President, Vice-President, Senators 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.^[22] 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.^[23] The law likewise permits pre-proclamation cases in elections for President, Vice-President, Senators and Members of the House of Representatives, when these cases question the composition or proceedings of the board of canvassers before the board itself or the COMELEC, since such cases do not directly relate to the certificate of canvass or election returns.

Section 15 of Republic Act No. 7166, after the amendment introduced by Republic Act No. 9369, now reads:

SEC. 15. Pre-proclamation Cases in Elections for President, Vice-President, Senator, and Member of the House of Representatives. – For purposes of the elections for president, vice-president, senator, and member of

the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of election returns or the certificates of canvass, as the case may be, except as provided for in Section 30 hereof. However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it.

Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission in accordance with Section 19 hereof.

Any objection on the election returns before the city or municipal board of canvassers, or on the municipal certificates of canvass before the provincial board of canvassers or district board of canvassers in Metro Manila Area, shall be specifically noticed in the minutes of their respective proceedings. (Emphasis supplied.)

Republic Act No. 9369 significantly amended Section 15 of Republic Act No. 7166 by adding an excepting phrase to the general prohibition against pre-proclamation controversies in elections for President, Vice-President, Senators and Members of the House of Representatives. According to the amended Section 15, no pre-proclamation cases on matters relating to the preparation, transmission, receipt, custody and appreciation of election returns or the certificates of canvass shall be allowed in elections for President, Vice-President, Senators and Members of the House of Representatives, except as provided by Section 30 of the same statute.

Section 30 of Republic Act No. 7166, which was likewise amended by Republic Act No. 9369, provides:

SEC. 30. Congress as the National Board of Canvassers for the Election of President and Vice President: The Commission en banc as the National Board of Canvassers for the election of senators: Determination of Authenticity and Due Execution of Certificates of Canvass. – Congress and the Commission en banc shall determine the authenticity and due execution of the certificate of canvass for president and vice-president and senators, respectively, as accomplished and transmitted to it by the local board of canvassers, on a showing that: (1) each certificate of canvass was executed, signed and thumbmarked by the chairman and members of the board of canvassers and transmitted or caused to be transmitted to Congress by them; (2) each certificate of canvass contains the names of all of the candidates for president and vice-president or senator, as the case may be, and their corresponding votes in words and figures; (3) there exists no discrepancy in other authentic copies of the certificates of canvass or in any of its supporting documents such as statement of votes by city/municipality/by precinct or discrepancy in the votes of any candidate in words and figures in the certificate; and (4) there exists no discrepancy in the votes of any candidate in words and figures in the certificate of canvass against the aggregate number of votes appearing in the election returns of precincts covered by the certificate of canvass: Provided, That certified print copies of election returns or certificates of canvass may be used for the purpose of verifying the existence of the discrepancy.

When the certificate of canvass, duly certified by the board of canvassers of each province, city or district, appears to be incomplete the Senate President or the Chairman of the Commission, as the case may be shall require the board of canvassers concerned to transmit by personal delivery the election returns from polling places that were not included in the certificate of canvass and supporting statements. Said election returns shall be submitted by personal delivery within two (2) days from receipt of notice.

When it appears that any certificate of canvass or supporting statement of votes by city/municipality or by precinct bears erasures or alterations which may cast doubt as to the veracity of the number of votes stated herein and may affect the result of the election, upon request of the presidential, vice-presidential or senatorial candidate concerned or his party, Congress or the Commission en banc, as the case may be, shall, for the sole purpose of verifying the actual number of votes cast for President and Vice-President or senator, count the votes as they appear in the copies of the election returns submitted to it.

In case of any discrepancy, incompleteness, erasure or alteration as mentioned above, the procedure on pre-

proclamation controversies shall be adopted and applied as provided in Sections 17, 18, 19 and 20.

Any person who presents in evidence a simulated copy of an election return, certificate of canvass or statement of votes, or a printed copy of an election return, certificate of canvass or statement of votes bearing a simulated certification or a simulated image, shall be guilty of an election offense and shall be penalized in accordance with Batas Pambansa Blg. 881. (Emphasis supplied.)

The highlighted portions in the afore-quoted section identify the amendments introduced by Republic Act No. 9369, specifically: (1) the duty to determine the authenticity and due execution of certificates of canvass is now imposed, not only on Congress acting as the NBC for the election for President and Vice-President, but also on COMELEC en banc acting as the NBC for the election for Senators; (2) the third criterion for the determination of the authenticity and due execution of the certificates of canvass requires the absence of discrepancy in comparison not only with other authentic copies of the said certificates, but also with the supporting documents, such as the statements of votes; (3) a fourth criterion for the determination of the authenticity and due execution of the certificates of canvass was added, mandating the absence of discrepancy between the number of votes of a candidate in a certificate when compared with the aggregate number of votes appearing in the election returns of the precincts covered by the same certificate; (4) pursuant to the exception now provided in Section 15 of Republic Act No. 7166, as amended by Republic Act No. 9369, permissible pre-proclamation cases shall adopt and apply the procedure provided in Sections 17 to 20 of the same statute; and (5) the use of a simulated copy of an election return, certificate of canvass, or statement of vote, or a printed copy of said election documents bearing a simulated certification or image shall be penalized as an election offense.

Indeed, this Court recognizes that by virtue of the amendments introduced by Republic Act No. 9369 to Sections 15 and 30 of Republic Act No. 7166, pre-proclamation cases involving the authenticity and due execution of certificates of canvass are now allowed in elections for President, Vice-President, and Senators. The intention of Congress to treat a case falling under Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369, as a pre-proclamation case is apparent in the fourth paragraph of the said provision which adopts and applies to such a case the same procedure provided under Sections 17,[24] 18,[25] 19[26] and 20[27] of Republic Act No. 7166 on pre-proclamation controversies.

In sum, in elections for President, Vice-President, Senators and Members of the House of Representatives, the general rule still is that pre-proclamation cases on matters relating to the preparation, transmission, receipt, custody and appreciation of election returns or certificates of canvass are still prohibited. As with other general rules, there are recognized exceptions to the prohibition, namely: (1) correction of manifest errors; (2) questions affecting the composition or proceedings of the board of canvassers; and (3) determination of the authenticity and due execution of certificates of canvass as provided in Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369.

The Petition at bar

Pimentel's objections to the Maguindanao MCOCs delve into "matters relating to the preparation, transmission, receipt, custody and appreciation" of the said MCOCs by the SPBOC-Maguindanao. He suspects the authenticity and due execution of the Maguindanao MCOCs used by the SPBOC-Maguindanao in its canvass, which were mostly copy 2 or the copy for the wall,[28] because of the supposed mysterious circumstances surrounding the loss or unavailability of any other copy of the said MCOCs. He decries the denial by the SPBOC-Maguindanao and the NBC of the opportunity to question PES Bedol and the Chairpersons of the MBOCs- Maguindanao on "where did that copy 2 come from, what was the basis, when was it accomplished, how was it posted x x x";[29] and to substantiate his claim that the Maguindanao MCOCs are palpably manufactured and are not fit for canvass.[30] He is raising issues related to the tampering with, falsification of, or discrepancies in the

Maguindanao MCOCs, which are properly the subject of a pre-proclamation controversy.[31]

Pimentel insists that the SPBOC-Maguindanao and the NBC should hear his observations, accept his evidence, and rule on his objections to the Maguindanao MCOCs in what would undeniably be a pre-proclamation case. Ultimately, what Pimentel seeks is that his pre-proclamation case be given due course by the boards of canvassers.

Respondents contend that Pimentel cannot initiate and pursue a pre-proclamation case before the SPBOC-Maguindanao or the NBC, since such a case is prohibited in elections for Senators. Pimentel, however, argues that his pre-proclamation case is an exception to the prohibition pursuant to Section 30, in relation to Section 15, of Republic Act No. 7166, as amended by Republic Act No. 9369.

This Court rules for the respondents.

Proceedings before the SPBOC-Maguindanao

The SPBOC-Maguindanao, in the conduct of its canvass proceedings, properly refused to allow Pimentel to contest the Maguindanao MCOCs at that stage by questioning PES Bedol and the Chairpersons of the MBOCs-Maguindanao and presenting evidence to prove the alleged manufactured nature of the said MCOCs, for such would be tantamount to a pre-proclamation case still prohibited by Section 15 of Republic Act No. 7166, even after its amendment by Republic Act No. 9369.

The SPBOC-Maguindanao, as its name suggests, was constituted to be of the same stature and to perform the same function as the PBOC-Maguindano: to canvass the Maguindanao MCOCs and prepare the Maguindanao PCOC to be submitted to the NBC. Undeniably, the SPBOC-Maguindanao is not Congress nor COMELEC en banc acting as the NBC, specifically charged by Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369, with the duty to determine the authenticity and due execution of the certificates of canvass submitted to it in accordance with the four given criteria. There is no ambiguity in the said provision, at least, as to whom it imposes the duty, namely: (1) Congress as the NBC for the election for President and Vice-President; and (2) COMELEC en banc as the NBC for the election for Senators. This is a case where the law is clear. It speaks in a language that is categorical. It is quite explicit; it is too plain to be misread. No interpretation is needed. All that is called for is to apply the statutory command.[32]

Even if there is still a need for this Court to construe Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369, it still cannot extend the scope of said provision to local boards of canvassers. A pre-proclamation case under Section 30 is allowed only as an exception to the prohibition under Section 15 of Republic Act No. 7166, as amended by Republic Act No. 9369. According to the rules of statutory construction, exceptions, as a general rule, are strictly, but reasonably construed; they extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provisions rather than the exception. Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication.[33] A maxim of recognized practicality is the rule that the expressed exception or exemption excludes others. *Exceptio firmat regulam in casibus non exceptis*. The express mention of exceptions operates to exclude other exceptions; conversely, those which are not within the enumerated exceptions are deemed included in the general rule.[34] And, in this case, the exception applies only to Congress or the COMELEC en banc acting as the NBC, and not to local boards of canvassers who must still be deemed covered by the prohibition on pre-proclamation controversies.

It is also significant to note that Section 15 of Republic Act No. 7166, as amended by Republic Act No. 9369,

prohibits pre-proclamation cases in elections for President, Vice-President, Senators, and Members of the House of Representatives; while Section 30 of the same statute, as amended, refers only to elections for President, Vice-President and Senators. The intent of the Legislature to confine the application of Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369, only to Congress or the COMELEC en banc acting as the NBC thus becomes even more evident, considering that the said provision does not apply to elections for Members of the House of Representatives. It must be borne in mind that only the votes for national elective positions such as the President, Vice-President, and Senators are canvassed by the NBC. The canvassing of votes for local elective positions, including those for Members of the House of Representatives, end with the local boards of canvassers. Therefore, it would be contrary to the legislative intent to extend Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369, even to the canvass proceedings before local boards of canvassers.

This Court can only conclude that the canvass proceedings before local boards of canvassers in elections for Senators are unaffected by the amendment of Republic Act No. 7166 by Republic Act No. 9369. They still remain administrative and summary in nature, so as to guard against the paralyzation of canvassing and proclamation proceedings that would lead to a vacuum in so important and sensitive office as that of Senator of the Republic.[35]

For the same reasons stated in the preceding paragraphs, the four criteria enumerated by Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369, are not mandatory on local boards of canvassers in their determination of authenticity and due execution of the certificates of canvass submitted to them. It is already well-settled that the local boards of canvassers, as well as the SPBOC-Maguindanao in this case, may proceed with the canvassing of the election returns or certificates of canvass for as long as they appear to be authentic and duly accomplished on their face.[36]

Boards of canvassers are ad hoc bodies that exist only for the interim task of canvassing election returns. They do not have the facilities, the time and even the competence to hear, examine and decide on alleged election irregularities, unlike regular courts or the COMELEC itself or the electoral tribunals (Presidential, Senate, and House), which are regular agencies of government tasked and equipped for the purpose. While this Court has time and again expressed its abhorrence of the nefarious "grab the proclamation and prolong the protest" strategy of some candidates, nonetheless, it recognizes the very limited jurisdiction of MBOCs and PBOCs. Unless Pimentel is able to show cogently and clearly his entitlement to the summary exclusion of clearly unacceptable certificates of canvass, this Court must uphold the constitutional and legal presumption of regularity in the performance of official functions and authenticity of official documents.[37]

The burden is upon Pimentel to establish that the Maguindanao MCOCs are manufactured, and that it is evident on the face thereof. Pimentel's insistence on being allowed to propound questions to PES Bedol and the Chairpersons of the MBOCs-Maguindanao and SPBOC-Maguindanao reveals that, although he has his suspicions, he has yet no actual evidence that the Maguindanao MCOCs were indeed manufactured.

Moreover, Pimentel's main objection to the Maguindanao MCOCs used in the canvass by the SPBOC-Maguindanao is that they are mostly copy 2 or the copy intended to be posted on the wall. According to Section 43 of COMELEC Resolution No. 7859, dated 17 April 2007, the MBOCs must transmit copy 1 of the MCOCs to the PBOC for use in the provincial canvassing of votes. The SPBOC-Maguindanao was compelled to use copy 2 of the Maguindanao MCOCs in the absence of copy 1 thereof. The fact that copy 2 of the Maguindanao MCOCs was not the copy meant for the PBOC-Maguindanao does not necessarily mean that copy 2 of the said MCOCs was manufactured, falsified or tampered with. All the seven copies of the MCOCs required to be prepared by the MBOCs should be considered duplicate originals.[38] Just like copy 1 of the MCOCs, copy 2 should be afforded the presumption of authenticity as an official document prepared by the MBOCs-Maguindanao

in the regular performance of their official functions. Copy 2 is no less authentic than all the other copies of the MCOCs although it may be more susceptible to manufacture, falsification, or tampering. If the manufacture, falsification, or tampering of copy 2 of the MCOCs is not apparent on its face, the burden to prove the same falls on the candidate making the allegation in a regular election protest. At least as far as the proceedings before the local boards of canvassers are concerned, this Court's ruling in *Pangarungan v. Commission on Elections*[39] still holds true: it is not required that all the other copies of the election returns or certificates of canvass be taken into account and compared with one another before one of them, determined to be authentic, may be used or included in the canvass.

The SPBOC-Maguindanao determined that copy 2 of the Maguindanao MCOCs is authentic and duly executed on its face, while Pimentel insists otherwise. This issue involves the appreciation of copy 2 of the Maguindanao MCOCs by the SPBOC-Maguindanao, the proper subject of a pre-proclamation controversy, which, as this Court already declared, is still prohibited in proceedings before local boards of canvassers for elections for Senators.

The resolution of the issues raised by Pimentel as to the irregularities and suspicious circumstances surrounding the Maguindanao MCOCs, which appear *prima facie* regular on their face, compels or necessitates the piercing of the veil of the said MCOCs. These issues, however, are more appropriate in 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.[40]

Proceedings before the COMELEC en banc acting as the NBC for elections for Senators

Similarly, the COMELEC en banc acting as the NBC for the election for Senators, did not violate Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369, when it denied Pimentel's request to question PES Bedol and the Chairpersons of the MBOCs-Maguindanao and SPBOC-Maguindanao, and his subsequent motion to exclude the second Maguindanao PCOC.

As already declared by this Court, the NBC has the duty to determine the authenticity and due execution of the certificates of canvass submitted to it in accordance with the four criteria enumerated in Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369. It has not been established to the satisfaction of this Court that the NBC failed to comply with its duty under said provision.

Pimentel asserts that in the absence of all the other copies of the Maguindanao MCOCs, except copy 2, there is no way to apply the third criterion under Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369. According to this criterion for authenticity and due execution of a certificate of canvass, there must exist no discrepancy in other authentic copies of the certificate or in any of its supporting documents such as the statement of votes by city/municipality/precinct and no discrepancy in the votes of any candidate in words and figures in the certificate. Pimentel posits that without any other copies available for comparison, then copy 2 of the Maguindanao MCOCs cannot be deemed authentic and duly executed.

While it is true that having only one copy of the certificate of canvass may raise problems as to the determination by the NBC of its authenticity and due execution since there are no other copies to compare it with, such is not the situation in the Petition at bar.

According to Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369, Congress and the COMELEC en banc, acting as the NBC, shall determine the authenticity and due execution of the certificates of canvass for President, Vice-President and Senators, respectively, as accomplished and transmitted to them by the local boards of canvassers. For the province of Maguindanao, it is the PBOC which transmits the PCOC to the NBC. For the 14 May 2007 senatorial elections, the NBC excluded from the national canvass the Bedol PCOC

submitted by the PBOC- Maguindanao after it found the same to be tainted by irregularities and statistical improbabilities. Thereafter, the SPBOC-Maguindanao was created, which re-canvassed the Maguindanao MCOCs and prepared and submitted to the NBC the second Maguindanao PCOC.

Hence, the four criteria enumerated in Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369, must be applied by the NBC to the second Maguindanao PCOC. The authenticity and due execution of the Maguindanao MCOCs, which had already been determined by the SPBOC-Maguindanao, are no longer in issue before the NBC. To allow Pimentel to revive again before the NBC the issue of authenticity and due execution of the Maguindanao MCOCs after a determination thereof by the SPBOC-Maguindanao is like granting him an appeal, a remedy which is without any statutory or regulatory basis.

The SPBOC-Maguindanao prepared all seven copies of the second Maguindanao PCOC. It properly submitted the first copy to the NBC for national canvassing of the votes for Senators. All the six other copies are in existence and have been distributed to the intended recipients. There is no allegation or proof that there is a discrepancy among the seven authentic copies of the second Maguindanao PCOC. Neither is it shown that the second Maguindanao PCOC contains any discrepancy when compared with its supporting documents. It would thus appear to this Court that the second Maguindanao PCOC passed the third criterion for its authenticity and due execution as provided in Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369. As for the three other criteria, there is no sufficient allegation, much less proof, that the NBC did not apply them to the second Maguindanao PCOC or that the second Maguindanao PCOC actually failed to meet any of them.

Given the foregoing, there is indeed no merit in Pimentel's request before the NBC to still question PES Bedol and the Chairpersons of the MBOCs-Maguindanao and SPBOC-Maguindanao regarding the Maguindanao MCOCs. There is also no reason to exclude the second Maguindanao PCOC from the national canvass of votes for Senators after its authenticity and due execution had been determined by the NBC in accordance with the criteria provided by the law.

Due process and equal protection of the law

Pimentel alleges that the proceedings before the NBC and the SPBOC-Maguindanao disallowing him from asking certain election officials, such as PES Bedol and the Chairpersons of the MBOCs-Maguindanao and SPBOC-Maguindanao, questions regarding the Maguindanao PCOC and MCOCs, deprived him of his right to due process.

In *City of Manila v. Hon. Laguio, Jr.*,^[41] this Court already provided a discourse on due process, to wit:

The constitutional safeguard of due process is embodied in the fiat "(N)o person shall be deprived of life, liberty or property without due process of law x x x."

There is no controlling and precise definition of due process. It furnishes though a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. This standard is aptly described as a responsiveness to the supremacy of reason, obedience to the dictates of justice, and as such it is a limitation upon the exercise of the police power.

The purpose of the guaranty is to prevent governmental encroachment against the life, liberty and property of individuals; to secure the individual from the arbitrary exercise of the powers of the government, unrestrained by the established principles of private rights and distributive justice; to protect property from confiscation by legislative enactments, from seizure, forfeiture, and destruction without a trial and conviction by the ordinary mode of judicial procedure; and to secure to all persons equal and impartial justice and the benefit of the general law.

The guaranty serves as a protection against arbitrary regulation, and private corporations and partnerships are “persons” within the scope of the guaranty insofar as their property is concerned.

This clause has been interpreted as imposing two separate limits on government, usually called “procedural due process” and “substantive due process.”

Procedural due process, as the phrase implies, refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Classic procedural due process issues are concerned with what kind of notice and what form of hearing the government must provide when it takes a particular action.

Substantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person’s life, liberty, or property. In other words, substantive due process looks to whether there is a sufficient justification for the government’s action. Case law in the United States (U.S.) tells us that whether there is such a justification depends very much on the level of scrutiny used. For example, if a law is in an area where only rational basis review is applied, substantive due process is met so long as the law is rationally related to a legitimate government purpose. But if it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a compelling government purpose.

This Court finds Pimentel’s argument of deprivation of due process problematic since he has not established what he is being deprived of: life, liberty, or property. He was a candidate in the senatorial elections. At the time he filed the instant Petition, he might have been leading in the canvassing of votes, yet the canvass proceedings were still ongoing, and no winner for the twelfth and last senatorial post had been proclaimed. May he already claim a right to the elective post prior to the termination of the canvass proceedings and his proclamation as winner, and may such a right be considered a property right which he cannot be deprived of without due process? These were clearly substantial and weighty issues which Pimentel did not address. Unfortunately, this Court cannot argue and settle them for him.

Pimentel only made a sweeping claim that in the canvass proceedings of the Maguindanao votes before the NBC and the SPBOC-Maguindanao, he was deprived of his constitutional right to due process, both procedural and substantive. After going over his allegations, however, and the definition of substantive due process, this Court finds that Pimentel cannot invoke denial of substantive due process because he is not assailing any law, which, arbitrarily or without sufficient justification, supposedly deprived him of life, liberty, or property.

At most, Pimentel can claim that he was denied procedural due process when he was not allowed by the NBC and the SPBOC-Maguindanao to propound questions to certain election officials. But even on this point, Pimentel fails to convince this Court. Asking election officials questions and confronting them with evidence are not part of the canvass proceedings. There is no statute or regulation expressly providing for such a procedure.

Any objection or manifestation concerning a certificate of canvass before the NBC, as well as any contest involving the inclusion or exclusion of an election return or certificate of canvass before a local board of canvassers, must be orally submitted to the Chairperson of the NBC or the local board of canvassers, as the case may be. Simultaneous with the oral submission, the party concerned must submit his written objection, manifestation, or contest in the form required. The objection, manifestation, or contest shall also be recorded in the minutes of the canvass. In the event that the NBC or local board of canvassers shall determine that there is a proper case for the objection, manifestation, or contest submitted, it shall automatically defer the canvass of the assailed election return or certificate of canvass. Within 24 hours from the submission of the objection, manifestation, or contest, the party concerned shall submit his evidence which shall be attached to his written objection, manifestation, or contest. Within the same 24-hour period, any party may file a written and verified opposition to the objection, manifestation, or contest. Upon receipt of the evidence, the NBC or the local board of

canvassers shall take up the assailed election return or certificate of canvass, and after considering the objection, manifestation or contest, together with the opposition thereto and the evidences submitted, shall summarily and immediately rule thereon.[42]

The afore-described procedure does not provide any party the opportunity to question and confront election officials and other witnesses. It may have been allowed on occasion by the boards of canvassers, but it does not necessarily ripen into a legally demandable right. Again, canvass proceedings are administrative and summary in nature. As for local boards of canvassers, in elections for Senators, they only need to determine the authenticity and due execution of the election returns or certificates of canvass on the face thereof. As for the COMELEC en banc, acting as the NBC, the determination of the authenticity and due execution of the certificates of canvass shall be limited only to those submitted before it by the local boards of canvassers and in accordance with the criteria provided in Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369. The limitations on the powers and duties of the boards of canvassers are meant to avoid any delay in the proclamation of the elected official. Issues whose resolution would require the presentation and examination of witnesses are more properly raised in a regular election protest.

And as a final observation on the matter of due process, this Court notes that although Pimentel was not able to propound questions to the election officials involved in the preparation and canvassing of the Maguindanao MCOCs and PCOC, he was still able, through his counsel, to state his observations, manifestations, and objections regarding the said certificates, which were duly noted.[43] He may not have received the response or action that he wanted with respect to his observations, manifestations, and objections, but Pimentel cannot deny that these were heard and presented in the canvass proceedings. Pimentel further admitted that he did not submit his written observations, manifestations, and objections as the rules of procedure before the NBC and the local boards of canvassers require.[44] He cannot now decry that his observations, manifestations, and objections were not given due course when he himself failed to comply with the procedure governing the same.

Equally baseless is Pimentel's averment that his right to equal protection of the laws was violated when the NBC and the SPBOC-Maguindanao adopted a procedure of "no questions" in the canvass of the Maguindanao MCOCs, different from the procedure adopted in the canvass of the certificates of canvass from other provinces/areas. Article III, Section 1 of the 1987 Constitution guarantees that no person shall be denied equal protection of the laws. According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others.[45] According to Pimentel, he was deprived of equal protection of the laws when he was not allowed to question the election officials involved in the canvass proceedings for Maguindanao, although he was allowed to do so for other provinces or districts. In support of his claim, Pimentel compared his own experiences in the canvass proceedings for different provinces or districts. This Court, however, finds Pimentel's assessment misplaced. What would have been essential for Pimentel to allege and prove was that other senatorial candidates were allowed during the canvass proceedings to question the election officials involved in the preparation and canvassing of the Maguindanao MCOCs and PCOC, while he was not; and that the other senatorial candidates were given undue favor, while he was the only one unjustly discriminated against. It seems apparent to this Court that the position of the SPBOC-Maguindanao and the NBC not to allow, during the canvass proceedings, the questioning of election officials involved in the preparation and canvassing of the Maguindanao MCOCs and PCOC, was consistent for all senatorial candidates. Hence, petitioner was similarly situated with all the other senatorial candidates and they were all treated alike insofar as the canvass proceedings for Maguindanao were concerned.

Electoral protest before the Senate Electoral Tribunal (SET)

Pimentel's Petition is for Certiorari and Mandamus, both governed by Rule 65 of the Rules of Court.

A special civil action for certiorari may be filed under the following circumstances:

SECTION 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

In a special civil action for certiorari, the burden is on the part of petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Grave abuse of discretion means a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough, it must be so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[46]

The extraordinary remedy of mandamus, on the other hand, may be availed of under the conditions provided below:

RULE 65, SECTION 3. Petition for mandamus. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The writ of mandamus shall be issued only if the legal right to be enforced is well defined, clear and certain. It lies only to compel an officer to perform a ministerial duty, not a discretionary one. The duty is ministerial only when its discharge requires neither the exercise of official discretion nor judgment.[47]

To avail of both special civil actions, there must be no other plain, speedy and adequate remedy in the ordinary course of law available to the petitioner, and in this, Pimentel's Petition falters.

It must be kept in mind that Zubiri was proclaimed the twelfth Senator-elect in the 14 May 2007 elections on 14 July 2007, and that he formally assumed office on 16 July 2007. In accordance with this Court's ruling in Aggabao, Pimentel's Petition must be dismissed, for his recourse lies, not with this Court, but with the SET.

This Court elucidated in Aggabao[48] that:

Article VI, Section 17 of the 1987 Constitution provides:

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. 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 organization registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

In *Pangilinan v. Commission on Elections* we ruled that:

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 of the Senate.

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.

It is undisputed that Miranda has already been proclaimed, taken his oath and assumed office on June 14, 2004. As such, petitioner’s recourse would have been to file an electoral protest before the HRET. His remedy is not this petition for certiorari. Thus:

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.

The allegation that Miranda’s proclamation is null and void ab initio does not divest the HRET of its jurisdiction. Thus:

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

In *Lazatin v. Commission on Elections* we ruled that, upon proclamation of the winning candidate and despite its alleged invalidity, the COMELEC is divested of its jurisdiction to hear the protest. Thus:

The petition is impressed with merit because the 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 proclamation (which has been previously ordered by the COMELEC itself) 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.

In this case, certiorari will not lie considering that there is an available and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceedings before the COMELEC. After the proclamation, petitioner’s remedy was an electoral protest before the HRET. The resolution of the issues presented in this petition is best addressed to the sound judgment and discretion of the electoral tribunal.

The afore-quoted pronouncements are likewise applicable to the Petition at bar, with the references therein to the jurisdiction of the House of Representatives Electoral Tribunal over election protests involving members of the House of Representatives also being true for the SET as regards election protests involving Senators.

In *Chavez v. Commission on Elections*,^[49] this Court similarly ruled that the word "sole" in Article VI, Section 17 of the 1987 Constitution underscores the exclusivity of the electoral tribunals' jurisdiction over election contests relating to their respective members. It is therefore crystal clear that this Court has no jurisdiction to entertain a petition for certiorari and mandamus on matters which may be threshed out in an election contest. It is the SET which has exclusive jurisdiction to act on the complaint of Pimentel involving, as it does, a contest relating to the election of Zubiri, now a member of the Senate.

Pimentel attempts to bring his case outside the jurisprudential precedent set by *Aggabao*, but to no avail.

That Pimentel filed the present Petition prior to Zubiri's proclamation is insignificant. Since Pimentel's prayer for a TRO and/or Status Quo Ante Order had been denied, Zubiri was proclaimed the twelfth winning Senator in the 2007 Senatorial Elections.

Pimentel further claims that he is not challenging Zubiri's proclamation, but rather the conduct of the proceedings before the NBC and the SPBOC-Maguindanao. This is just a roundabout argument. Pimentel cannot deny that he assails the canvass proceedings because he believes that the annulment and setting aside thereof would result in his winning as the twelfth Senator in the 14 May 2007 elections; and if he is the rightful winner, then logically and necessarily, Zubiri's proclamation must also be annulled and set aside.

Finally, while Section 15, in relation to Section 30, of Republic Act No. 7166, as amended by Republic Act No. 9369, did introduce an additional exception to the prohibition against pre-proclamation controversies in elections for President, Vice-President, and Senators, this Court has already established in the preceding discussion that Pimentel cannot invoke the same in his Petition. The provisions in question did not materially change the nature of canvass proceedings before the boards of canvassers, which still remain summary and administrative in nature for the purpose of canvassing the votes and determining the elected official with as little delay as possible and in time for the commencement of the new term of office.

This Court deems it necessary to stress that attempts to delay the canvass proceedings, except for the permissible pre-proclamation controversies, must be shunned. Grounds which are proper for electoral protests should not be allowed to delay the proclamation of the winners.^[50] 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. 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.^[51]

IN VIEW OF THE FOREGOING, the present Petition for Certiorari and Mandamus is hereby DISMISSED. No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Velasco, Jr., Nachura, Reyes, and De Castro, JJ., concur.

[1] Rollo, pp. 6-47.

[2] Id. at 20-21.

[3] Id. at 24-25.

[4] Id. at 43-44.

[5] Id. at 252-255.

[6] Id. at 256-282.

[7] Id. at 283-324

[8] Resolution of the Court En Banc dated 13 July 2007; id. at 370-371.

[9] Id. at 386-425.

[10] Id. at 426-466.

[11] Id. at 474-521.

[12] Id. at 381-382.

[13] Id. at 372-380.

[14] Id. at 518-522.

[15] Id. at 607-615.

[16] G.R. No. 163756, 26 January 2005, 449 SCRA 400.

[17] Republic Act No. 9369 bears the title “An Act Amending Republic Act No. 8436, entitled ‘An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, as Amended, Republic Act No. 7166 and Other Related Election Laws, Providing Funds Therefor and for Other Purposes.’” It was published in *Malaya* (26 January 2007) and *Business Mirror* on 26-27 January 2007. It took effect 15 days after publication or on 10 February 2007.

[18] Republic Act No. 7166, entitled “An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes,” was signed into law on 26 November 1991.

[19] See the following provisions of Republic Act No. 7166:

SEC. 15. Pre-proclamation Cases Not Allowed in Elections for President, Vice President, Senator, and Member of the House of Representatives. – x x x

x x x x

Any objection on the election returns before the city or municipal board of canvassers, or on the municipal certificates of canvass before the provincial board of canvassers or district boards of canvassers in Metro Manila Area, shall be specifically noted in the minutes of their respective proceedings.

SEC. 17. Pre-proclamation Controversies: How commenced. – Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission. However, matters raised under Sections 233, 234, 235 and 236 of the Omnibus Election Code in relation to the preparation,

transmission, receipt, custody and appreciation of the election returns, and the certificates of canvass shall be brought in the first instance before the board of canvassers only.

SEC. 18. Summary Disposition of Pre-Proclamation Controversies. – All pre-proclamation controversies on election returns or certificates of canvass shall, on the basis of the records and evidence elevated to it by the board of canvassers, be disposed of summarily by the Commission within seven (7) days from receipt thereof. Its decisions shall be executory after the lapse of seven (7) days from receipt by the losing party of the decision of the Commission.

[20] The President and Vice President shall begin their six-year term at noon on the 30th of June next following the day of the election and shall end at noon of the same date six years thereafter (Article VII, Section 4 of the 1987 Constitution).

The term of office of the Senators shall be six years and shall commence, unless otherwise provided by law, at noon on the 30th of June next following their election. (Article VI, Section 4 of the 1987 Constitution.)

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 30th day of June next following their election. (Article VI, Section 7 of the 1987 Constitution)

[21] *Acuña v. Hon. Golez*, 122 Phil. 1129, 1136 (1966).

[22] *Sandoval v. Commission on Elections*, 380 Phil. 375, 389 (2000).

[23] *Chavez v. Commission on Elections*, G.R. No. 105323, 3 July 1992, 211 SCRA 315, 322.

[24] SEC. 17. Pre-proclamation Controversies: How Commenced. – Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission. However, matters raised under Section 233, 234, 235 and 236 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody and appreciation of the election returns, and the certificates of canvass shall be brought in the first instance before the board of canvassers only.

[25] SEC. 18. Summary Disposition of Pre-proclamation Controversies. – All pre-proclamation controversies on election returns or certificates of canvass shall, on the basis of the records and evidence elevated to it by the board of canvassers, be disposed of summarily by the Commission within seven (7) days from receipt thereof. Its decisions shall be executory after the lapse of seven (7) days from receipt by the losing party of the decision of the Commission.

[26] SEC. 19. Contested Composition of Proceedings of the Board: Period to Appeal: Decision by the Commission. – 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. The Commission shall summarily decide the case within five (5) days from the filing thereof.

[27] SEC. 20. Procedure in the Disposition of Contested Election Returns. – (a) Any candidate, political party or coalition of parties contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under Article XX or Sections 234, 235 and 236 of Article XIX of the Omnibus Election Code shall submit their oral objection to the chairman of the board of canvassers at the time the questioned return is presented for inclusion in the canvass. Such objection shall be recorded in the minutes of the canvass.

(b) Upon receipt of any such objection, the board of canvassers shall automatically defer the canvass of the contested returns and shall proceed to canvass the returns which are not contested by any party.

(c) Simultaneous with the oral objection, the objecting party shall also enter his objection in the form for written objections to be prescribed by the Commission. Within twenty-four (24) hours from and after the presentation of such an objection, the objecting party shall submit the evidence in support of the objection, which shall be attached to the form for written objections. Within the same period of twenty-four (24) hours after presentation of the objection, any party may file a written and verified opposition to the objection in the form also to be prescribed by the Commission, attaching thereto supporting evidence, if any. The board shall not entertain any objection or opposition unless reduced to writing in the prescribed forms.

The evidence attached to the objection or opposition, submitted by the parties, shall be immediately and formally admitted into the records of the board by the chairman affixing his signature at the back of each and every page thereof.

(d) Upon receipt of the evidence, the board shall take up the contested returns, consider the written objections thereto and opposition, if any, and summarily and immediately rule thereon. The board shall enter its ruling on the prescribed form and authenticate the same by the signatures of its members.

(e) Any party adversely affected by the ruling of the board shall immediately inform the board if he intends to appeal said ruling. The board shall enter said information in the minutes of the canvass, set aside the returns and proceed to consider the other returns.

(f) After all the uncontested returns have been canvassed and the contested returns ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter, an appeal may be taken to the Commission.

(g) Immediately upon receipt of the notice of appeal, the board shall make an appropriate report to the Commission, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report.

(h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of said records and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto shall be summarily dismissed.

The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party.

(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.

[28] Section 43 of Commission on Elections (COMELEC) Resolution No. 7859, dated 17 April 2007 (general instructions for the municipal, city, provincial and district boards of canvassers in connection with the 14 May 2007 elections), provides:

Sec. 43. Distribution of City/Municipal Certificate of Canvass. – The Board of Canvassers shall distribute the Certificate of Canvass of Votes for Senator, Member of the House of Representatives, Party-List and Elective Provincial Officials (CEF No. 20) as follows:

1) The first copy to the Provincial Board of Canvassers for use in the canvass for Senators, Member of the House

of Representatives, Party-List and other elective provincial officials;

2) The second copy to be posted on a wall within the premises of the canvassing center;

3) The third copy to the Commission;

4) The fourth copy to be kept by the Chairman of the Board;

5) The fifth copy to the citizen's arm designated by the Commission to conduct a media-based unofficial count; and

6) The sixth and seventh copies, to the representatives of two (2) of the six (6) major political parties in accordance with the voluntary agreement of the parties. If no such agreement is reached, the Commission shall decide which parties shall receive the copies of the Certificates of Canvass on the basis of the criteria provided in Sec. 26 of RA 7166. The parties receiving the certificates shall have the obligation to furnish the other parties with authentic copies thereof with the least possible delay.

The copy of the certificate of canvass posted on the wall shall be open for public viewing at any time of the day for forty-eight (48) hours following its posting. Any person may view or capture an image of the certificate of canvass. After the prescribed period for posting, the Chairman of the Board of Canvassers shall collect the posted certificate of canvass and keep the same in his custody to be produced for image or data capturing as may be requested by any voter or for any lawful purpose as may be ordered by competent authority.

Except for those copies that are required to be delivered, copies of certificate of canvass may be claimed at the canvassing center. Any unclaimed copy shall be deemed placed in the custody of the Chairman of the Board of Canvassers, who shall produce them when requested by the recipient or when ordered by a competent authority.

The first four (4) copies of the Certificates of Canvass of Votes prepared by the City or Municipal Board of Canvassers shall each be supported by a Statement of Votes by Precinct, signed and thumbmarked by the Chairman and members of the Board, and the watchers of the accredited major political parties, if available. Thereafter, they shall each be sealed and placed inside their corresponding security envelopes which shall likewise be sealed.

Any violation of this Section, or its pertinent portion, shall constitute an election offense and shall be penalized in accordance with BP Blg. 881.

[29] TSN, 13 July 2007, p. 23.

[30] Id. at 26-30.

[31] Section 243(b) of the Omnibus Election Code and Section 37(2) of COMELEC Resolution No. 7859, dated 17 April 2007.

[32] Ablan, Sr. v. Hon. Madarang, 148-B Phil. 690, 697 (1971).

[33] Samson v. Court of Appeals, G.R. No. L-43182, 25 November 1986, 145 SCRA 654, 659.

[34] Tibay v. Court of Appeals, G.R. No. 119655, 24 May 1996, 257 SCRA 126, 139.

[35] Ilarde v. Commission on Elections, G.R. No. L-31446, 23 January 1970, 31 SCRA 72, 80-81.

[36] Loong v. Commission on Elections, G.R. No. 107814, 16 May 1996, 257 SCRA 1, 23.

[37] Matalam v. Commission on Elections, G.R. No. 123230, 18 April 1997, 271 SCRA 733, 756.

[38] Under Rule 130, Section 4(b) of the Rules of Court, when a document is in two or more copies executed at or about the same time with identical contents, all such copies are equally regarded as originals. See also *Alfaro v. Court of Appeals*, G.R. No. 162864, 28 March 2007, 519 SCRA 270, 280-281.

[39] G.R. Nos. 107435-36, 11 December 1992, 216 SCRA 522, 539-540.

[40] *Matalam v. Commission on Elections*, supra note 37 at 746-747.

[41] G.R. No. 118127, 12 April 2005, 455 SCRA 308, 329-331.

[42] See Section 7 of COMELEC Resolution No. 7967, dated 16 May 2007; and Section 39 of COMELEC Resolution No. 7859, dated 17 April 2007. See also *Jainal v. Commission on Elections*, G.R. No. 174551, 7 March 2007, 517 SCRA 799, 810 and 812.

[43] Rollo, pp. 20-21; Minutes of the canvass proceedings before the COMELEC en banc acting as the NBC for the Senatorial and Party-List Elections on 14 May 2007, Annex "A" to the Petition, rollo, pp. 51-63, 66-72.

[44] TSN, 13 July 2007, pp. 146-147.

[45] *Philippine Judges Association v. Prado*, G.R. No. 105371, 11 November 1993, 227 SCRA 703, 711-712.

[46] *Suluguin v. Commission on Elections*, G.R. No. 166046, 23 March 2006, 485 SCRA 219, 233.

[47] *Olama v. Philippine National Bank*, G.R. No. 169213, 22 June 2006, 492 SCRA 343, 350-351.

[48] Supra note 16 at 404-406.

[49] *Chavez v. Commission on Elections*, supra note 23 at 322-323.

[50] *Dagloc v. Commission on Elections*, G.R. No. 138969, 17 December 1999, 321 SCRA 273, 282.

[51] *Dimaporo v. Commission on Elections*, G.R. No. 93201, 26 June 1990, 186 SCRA 769, 786-787.

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