

REGINA ONGSIAKO REYES, PETITIONER, VS. COMMISSION ON ELECTIONS AND JOSEPH SOCORRO B. TAN, RESPONDENTS.

G.R. No. 207264. October 22, 2013

Ponente: PEREZ, J.

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PEREZ, J.:

This is a Motion for Reconsideration of the En Banc Resolution of 25 June 2013 which stated that:

“IN VIEW OF THE FOREGOING, the instant petition is DISMISSED, finding no grave abuse of discretion on the part of the Commission on Elections. The 14 May 2013 Resolution of the COMELEC En Banc affirming the 27 March 2013 Resolution of the COMELEC First Division is upheld.”

In her Motion for Reconsideration, petitioner summarizes her submission, thus:

“81. Stated differently, the Petitioner x x x is not asking the Honorable Court to make a determination as regards her qualifications, she is merely asking the Honorable Court to affirm the jurisdiction of the HRET to solely and exclusively pass upon such qualifications and to set aside the COMELEC Resolutions for having denied Petitioner her right to due process and for unconstitutionally adding a qualification not otherwise required by the constitution.”[1] (as originally underscored)

The first part of the summary refers to the issue raised in the petition, which is:

“31. Whether or not Respondent Comelec is without jurisdiction over Petitioner who is duly proclaimed winner and who has already taken her oath of office for the position of Member of the House of Representatives for the lone congressional district of Marinduque.”[2]

Tied up and neatened the propositions on the COMELEC-or-HRET jurisdiction go thus: petitioner is a duly proclaimed winner and having taken her oath of office as member of the House of Representatives, all questions regarding her qualifications are outside the jurisdiction of the COMELEC and are within the HRET exclusive jurisdiction.

The averred proclamation is the critical pointer to the correctness of petitioner’s submission. The crucial question is whether or not petitioner could be proclaimed on 18 May 2013. Differently stated, was there basis for the proclamation of petitioner on 18 May 2013?

Dates and events indicate that there was no basis for the proclamation of petitioner on 18 May 2013. Without the proclamation, the petitioner’s oath of office is likewise baseless, and without a precedent oath of office, there can be no valid and effective assumption of office.

We have clearly stated in our Resolution of 25 June 2013 that:

“More importantly, we cannot disregard a fact basic in this controversy – that before the proclamation of petitioner on 18 May 2013, the COMELEC En Banc had already finally disposed of the issue of petitioner’s lack of Filipino citizenship and residency via its Resolution dated 14 May 2013. After 14 May 2013, there was, before the COMELEC, no longer any pending case on petitioner’s qualifications to run for the position of

Member of the House of Representatives. x x x”

As the point has obviously been missed by the petitioner who continues to argue on the basis of her “due proclamation,” the instant motion gives us the opportunity to highlight the undeniable fact we here repeat that the proclamation which petitioner secured on 18 May 2013 was WITHOUT ANY BASIS.

1. Four (4) days BEFORE the 18 May 2013 proclamation, or on 14 May 2013, the COMELEC En Banc has already denied for lack of merit the petitioner’s motion to reconsider the decision of the COMELEC First Division that CANCELLED petitioner’s certificate of candidacy.
2. On 18 May 2013, there was already a standing and unquestioned cancellation of petitioner’s certificate of candidacy which cancellation is a definite bar to her proclamation. On 18 May 2003, that bar has not been removed, there was not even any attempt to remove it.
3. The COMELEC Rules indicate the manner by which the impediment to proclamation may be removed. Rule 18, Section 13 (b) provides:

“(b) In Special Actions and Special Cases a decision or resolution of the Commission En Banc shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.”

Within that five (5) days, petitioner had the opportunity to go to the Supreme Court for a restraining order that will remove the immediate effect of the En Banc cancellation of her certificate of candidacy. Within the five (5) days the Supreme Court may remove the barrier to, and thus allow, the proclamation of petitioner. That did not happen. Petitioner did not move to have it happen.

It is error to argue that the five days should pass before the petitioner is barred from being proclaimed. Petitioner lost in the COMELEC as respondent. Her certificate of candidacy has been ordered cancelled. She could not be proclaimed because there was a final finding against her by the COMELEC.[3] She needed a restraining order from the Supreme Court to avoid the final finding. After the five days when the decision adverse to her became executory, the need for Supreme Court intervention became even more imperative. She would have to base her recourse on the position that the COMELEC committed grave abuse of discretion in cancelling her certificate of candidacy and that a restraining order, which would allow her proclamation, will have to be based on irreparable injury and demonstrated possibility of grave abuse of discretion on the part of the COMELEC. In this case, before and after the 18 May 2013 proclamation, there was not even an attempt at the legal remedy, clearly available to her, to permit her proclamation. What petitioner did was to “take the law into her hands” and secure a proclamation in complete disregard of the COMELEC En Banc decision that was final on 14 May 2013 and final and executory five days thereafter.

4. There is a reason why no mention about notice was made in Section 13(b) of Rule 18 in the provision that the COMELEC En Banc or decision “[SHALL] become [FINAL AND EXECUTORY] after five days from its promulgation unless restrained by the Supreme Court.” On its own the COMELEC En Banc decision, unrestrained, moves from promulgation into becoming final and executory. This is so because in Section 5 of Rule 18, it is stated:

Section 5. Promulgation. – The promulgation of a decision or resolutions of the Commission or a division shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys personally or by registered mail or by telegram.

5. Apart from the presumed notice of the COMELEC En Banc decision on the very date of its promulgation on 14 May 2013, petitioner admitted in her petition before us that she in fact received a copy of the decision on 16 May 2013.[4] On that date, she had absolutely no reason why she would disregard the available legal way to remove

the restraint on her proclamation, and, more than that, to in fact secure a proclamation two days thereafter. The utter disregard of a final COMELEC En Banc decision and of the Rule stating that her proclamation at that point MUST be on permission by the Supreme Court is even indicative of bad faith on the part of the petitioner.

6. The indicant is magnified by the fact that petitioner would use her tainted proclamation as the very reason to support her argument that she could no longer be reached by the jurisdiction of the COMELEC; and that it is the HRET that has exclusive jurisdiction over the issue of her qualifications for office.

7. The suggestions of bad faith aside, petitioner is in error in the conclusion at which she directs, as well as in her objective quite obvious from such conclusion. It is with her procured proclamation that petitioner nullifies the COMELEC's decision, by Division and then En Banc, and pre-empts any Supreme Court action on the COMELEC decision. In other words, petitioner repudiates by her proclamation all administrative and judicial actions thereon, past and present. And by her proclamation, she claims as acquired the congressional seat that she sought to be a candidate for. As already shown, the reasons that lead to the impermissibility of the objective are clear. She cannot sit as Member of the House of Representatives by virtue of a baseless proclamation knowingly taken, with knowledge of the existing legal impediment.

8. Petitioner, therefore, is in error when she posits that at present it is the HRET which has exclusive jurisdiction over her qualifications as a Member of the House of Representatives. That the HRET is the sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Representatives is a written constitutional provision. It is, however unavailable to petitioner because she is NOT a Member of the House at present. The COMELEC never ordered her proclamation as the rightful winner in the election for such membership.[5] Indeed, the action for cancellation of petitioner's certificate of candidacy, the decision in which is the indispensable determinant of the right of petitioner to proclamation, was correctly lodged in the COMELEC, was completely and fully litigated in the COMELEC and was finally decided by the COMELEC. On and after 14 May 2013, there was nothing left for the COMELEC to do to decide the case. The decision sealed the proceedings in the COMELEC regarding petitioner's ineligibility as a candidate for Representative of Marinduque. The decision erected the bar to petitioner's proclamation. The bar remained when no restraining order was obtained by petitioner from the Supreme Court within five days from 14 May 2013.

9. When petitioner finally went to the Supreme Court on 10 June 2013 questioning the COMELEC First Division ruling and the 14 May 2013 COMELEC En Banc decision, her baseless proclamation on 18 May 2013 did not by that fact of promulgation alone become valid and legal. A decision favorable to her by the Supreme Court regarding the decision of the COMELEC En Banc on her certificate of candidacy was indispensably needed, not to legalize her proclamation on 18 May 2013 but to authorize a proclamation with the Supreme Court decision as basis.

10. The recourse taken on 25 June 2013 in the form of an original and special civil action for a writ of Certiorari through Rule 64 of the Rules of Court is circumscribed by set rules and principles.

a) The special action before the COMELEC which was a Petition to Cancel Certificate of Candidacy was a SUMMARY PROCEEDING or one "heard summarily." The nature of the proceedings is best indicated by the COMELEC Rule on Special Actions, Rule 23, Section 4 of which states that the Commission may designate any of its officials who are members of the Philippine Bar to hear the case and to receive evidence. COMELEC Rule 17 further provides in Section 3 that when the proceedings are authorized to be summary, in lieu of oral testimonies, the parties may, after due notice, be required to submit their position paper together with affidavits, counter-affidavits and other documentary evidence; x x x and that "[t]his provision shall likewise apply to cases where the hearing and reception of evidence are delegated by the Commission or the Division to any of its

officials x x x.”

b) The special and civil action of Certiorari is defined in the Rules of Court thus:

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.

The accepted definition of grave abuse of discretion is: a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[6]

It is the category of the special action below providing the procedural leeway in the exercise of the COMELEC summary jurisdiction over the case, in conjunction with the limits of the Supreme Court’s authority over the FINAL COMELEC ruling that is brought before it, that defines the way petitioner’s submission before the Court should be adjudicated. Thus further explained, the disposition of 25 June 2013 is here repeated for affirmation:

Petitioner alleges that the COMELEC gravely abused its discretion when it took cognizance of “newly-discovered evidence” without the same having been testified on and offered and admitted in evidence. She assails the admission of the blog article of Eli Obligacion as hearsay and the photocopy of the Certification from the Bureau of Immigration. She likewise contends that there was a violation of her right to due process of law because she was not given the opportunity to question and present controverting evidence.

Her contentions are incorrect.

It must be emphasized that the COMELEC is not bound to strictly adhere to the technical rules of procedure in the presentation of evidence. Under Section 2 of Rule I, the COMELEC Rules of Procedure “shall be liberally construed in order x x x to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission.” In view of the fact that the proceedings in a petition to deny due course or to cancel certificate of candidacy are summary in nature, then the “newly discovered evidence” was properly admitted by respondent COMELEC.

Furthermore, there was no denial of due process in the case at bar as petitioner was given every opportunity to argue her case before the COMELEC. From 10 October 2012 when Tan’s petition was filed up to 27 March 2013 when the First Division rendered its resolution, petitioner had a period of five (5) months to adduce evidence. Unfortunately, she did not avail herself of the opportunity given her.

Also, in administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard. As held in the case of Sahali v. COMELEC:

The petitioners should be reminded that due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard. One may be heard, not solely by verbal presentation but also, and perhaps many times more creditably and predictable than oral argument, through pleadings. In administrative proceedings moreover, technical rules of procedure and evidence are not strictly applied; administrative process cannot be fully equated with due process in its strict judicial sense. Indeed, deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration. (Emphasis supplied)

As to the ruling that petitioner is ineligible to run for office on the ground of citizenship, the COMELEC First Division, discoursed as follows:

“x x x for respondent to reacquire her Filipino citizenship and become eligible for public office, the law requires that she must have accomplished the following acts: (1) take the oath of allegiance to the Republic of the Philippines before the Consul-General of the Philippine Consulate in the USA; and (2) make a personal and sworn renunciation of her American citizenship before any public officer authorized to administer an oath.

In the case at bar, there is no showing that respondent complied with the aforesaid requirements. Early on in the proceeding, respondent hammered on petitioner’s lack of proof regarding her American citizenship, contending that it is petitioner’s burden to present a case. She, however, specifically denied that she has become either a permanent resident or naturalized citizen of the USA.

Due to petitioner’s submission of newly-discovered evidence thru a Manifestation dated February 7, 2013, however, establishing the fact that respondent is a holder of an American passport which she continues to use until June 30, 2012, petitioner was able to substantiate his allegations. The burden now shifts to respondent to present substantial evidence to prove otherwise. This, the respondent utterly failed to do, leading to the conclusion inevitable that respondent falsely misrepresented in her COC that she is a natural-born Filipino citizen. Unless and until she can establish that she had availed of the privileges of RA 9225 by becoming a dual Filipino-American citizen, and thereafter, made a valid sworn renunciation of her American citizenship, she remains to be an American citizen and is, therefore, ineligible to run for and hold any elective public office in the Philippines.” (Emphasis in the original.)

Let us look into the events that led to this petition: In moving for the cancellation of petitioner’s COC, respondent submitted records of the Bureau of Immigration showing that petitioner is a holder of a US passport, and that her status is that of a “balikbayan.” At this point, the burden of proof shifted to petitioner, imposing upon her the duty to prove that she is a natural-born Filipino citizen and has not lost the same, or that she has re-acquired such status in accordance with the provisions of R.A. No. 9225. Aside from the bare allegation that she is a natural-born citizen, however, petitioner submitted no proof to support such contention. Neither did she submit any proof as to the inapplicability of R.A. No. 9225 to her.

Notably, in her Motion for Reconsideration before the COMELEC En Banc, petitioner admitted that she is a holder of a US passport, but she averred that she is only a dual Filipino-American citizen, thus the requirements of R.A. No. 9225 do not apply to her. Still, attached to the said motion is an Affidavit of Renunciation of Foreign Citizenship dated 24 September 2012. Petitioner explains that she attached said Affidavit “if only to show her desire and zeal to serve the people and to comply with rules, even as a superfluity.” We cannot, however, subscribe to petitioner’s explanation. If petitioner executed said Affidavit “if only to comply with the rules,” then it is an admission that R.A. No. 9225 applies to her. Petitioner cannot claim that she executed it to address the observations by the COMELEC as the assailed Resolutions were promulgated only in 2013, while the Affidavit was executed in September 2012.

Moreover, in the present petition, petitioner added a footnote to her oath of office as Provincial Administrator, to this effect: “This does not mean that Petitioner did not, prior to her taking her oath of office as Provincial Administrator, take her oath of allegiance for purposes of re-acquisition of natural-born Filipino status, which she reserves to present in the proper proceeding. The reference to the taking of oath of office is in order to make reference to what is already part of the records and evidence in the present case and to avoid injecting into the records evidence on matters of fact that was not previously passed upon by Respondent COMELEC.” This statement raises a lot of questions – Did petitioner execute an oath of allegiance for re-acquisition of natural-born Filipino status? If she did, why did she not present it at the earliest opportunity before the COMELEC? And is this an admission that she has indeed lost her natural-born Filipino status?

To cover-up her apparent lack of an oath of allegiance as required by R.A. No. 9225, petitioner contends that, since she took her oath of allegiance in connection with her appointment as Provincial Administrator of

Marinduque, she is deemed to have reacquired her status as a natural-born Filipino citizen.

This contention is misplaced. For one, this issue is being presented for the first time before this Court, as it was never raised before the COMELEC. For another, said oath of allegiance cannot be considered compliance with Sec. 3 of R.A. No. 9225 as certain requirements have to be met as prescribed by Memorandum Circular No. AFF-04-01, otherwise known as the Rules Governing Philippine Citizenship under R.A. No. 9225 and Memorandum Circular No. AFF-05-002 (Revised Rules) and Administrative Order No. 91, Series of 2004 issued by the Bureau of Immigration. Thus, petitioner's oath of office as Provincial Administrator cannot be considered as the oath of allegiance in compliance with R.A. No. 9225.

These circumstances, taken together, show that a doubt was clearly cast on petitioner's citizenship. Petitioner, however, failed to clear such doubt.[7]

11. It may need pointing out that there is no conflict between the COMELEC and the HRET insofar as the petitioner's being a Representative of Marinduque is concerned. The COMELEC covers the matter of petitioner's certificate of candidacy, and its due course or its cancellation, which are the pivotal conclusions that determines who can be legally proclaimed. The matter can go to the Supreme Court but not as a continuation of the proceedings in the COMELEC, which has in fact ended, but on an original action before the Court grounded on more than mere error of judgment but on error of jurisdiction for grave abuse of discretion. At and after the COMELEC En Banc decision, there is no longer any certificate cancellation matter than can go to the HRET. In that sense, the HRET's constitutional authority opens, over the qualification of its MEMBER, who becomes so only upon a duly and legally based proclamation, the first and unavoidable step towards such membership. The HRET jurisdiction over the qualification of the Member of the House of Representatives is original and exclusive, and as such, proceeds de novo unhampered by the proceedings in the COMELEC which, as just stated has been terminated. The HRET proceedings is a regular, not summary, proceeding. It will determine who should be the Member of the House. It must be made clear though, at the risk of repetitiveness, that no hiatus occurs in the representation of Marinduque in the House because there is such a representative who shall sit as the HRET proceedings are had till termination. Such representative is the duly proclaimed winner resulting from the terminated case of cancellation of certificate of candidacy of petitioner. The petitioner is not, cannot, be that representative. And this, all in all, is the crux of the dispute between the parties: who shall sit in the House in representation of Marinduque, while there is yet no HRET decision on the qualifications of the Member.

12. As finale, and as explained in the discussion just done, no unwarranted haste can be attributed, as the dissent does so, to the resolution of this petition promulgated on 25 June 2013. It was not done to prevent the exercise by the HRET of its constitutional duty. Quite the contrary, the speedy resolution of the petition was done to pave the way for the unimpeded performance by the HRET of its constitutional role. The petitioner can very well invoke the authority of the HRET, but not as a sitting member of the House of Representatives.[8]

The inhibition of this ponente was moved for. The reason for the denial of the motion was contained in a letter to the members of the Court on the understanding that the matter was internal to the Court. The ponente now seeks the Courts approval to have the explanation published as it is now appended to this Resolution.

The motion to withdraw petition filed AFTER the Court has acted thereon, is noted. It may well be in order to remind petitioner that jurisdiction, once acquired, is not lost upon the instance of the parties, but continues until the case is terminated.[9] When petitioner filed her Petition for Certiorari, jurisdiction vested in the Court and, in fact, the Court exercised such jurisdiction when it acted on the petition. Such jurisdiction cannot be lost by the unilateral withdrawal of the petition by petitioner.

More importantly, the Resolution dated 25 June 2013, being a valid court issuance, undoubtedly has legal

consequences. Petitioner cannot, by the mere expediency of withdrawing the petition, negative and nullify the Court's Resolution and its legal effects. At this point, we counsel petitioner against trifling with court processes. Having sought the jurisdiction of the Supreme Court, petitioner cannot withdraw her petition to erase the ruling adverse to her interests. Obviously, she cannot, as she designed below, subject to her predilections the supremacy of the law.

WHEREFORE, The Motion for Reconsideration is DENIED. The dismissal of the petition is affirmed. Entry of Judgment is ordered.

SO ORDERED.

Leonardo-De Castro, and Reyes, JJ., concur.

Sereno, C.J., see separate concurring opinion.

Carpio, and Leonen, JJ., see dissenting opinion.

Velasco, Jr., Peralta, Bersamin, Mendoza, and Perlas-Bernabe, JJ., no part.

Brion, J., see: dissent.

Del Castillo, J., on official leave.

Abad, J., see concurring opinion.

Villarama, Jr., J., joins J. Carpio in his dissent.

[1] Rollo, p. 325.

[2] Id. at 9.

[3] "The concept of 'final' judgment, as distinguished from one which has "become final" (or 'executory' as of right [final and executory]), is definite and settled. A 'final' judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of res adjudicata or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes 'final' or, to use the established and more distinctive term, 'final and executory.'" See *Investments, Inc. v. Court of Appeals*, 231 Phil. 302, 307 (1987).

Thus, when the Comelec En Banc rendered its Resolution dated 14 May 2013, such was a final judgment – the issue of petitioner's eligibility was already definitively disposed of and there was no longer any pending case on petitioner's qualifications to run for office, and the COMELEC's task of ruling on the propriety of the cancellation of petitioner's COC has ended. This final judgment, by operation of Sec. 3, Rule 37 of the COMELEC Rules of Procedure, became final and executory on 19 May 2013, or five days from its promulgation, as it was not restrained by the Supreme Court. See rollo, pp. 163-165.

[4] Rollo, p. 5.

Parenthetically, the surrounding facts of the case show that the Provincial Board of Canvassers (PBOC), as well as the parties, already had notice of the Comelec En Banc Resolution dated 14 May 2013 before petitioner was proclaimed. As alleged in the Comment on the Motion for Reconsideration, and which was not disputed by

petitioner, the Comelec En Banc found that “On May 15, 2013, the Villa PBOC was already in receipt of the May 14, 2013 Resolution denying the motion for reconsideration of [petitioner] thereby affirming the March 27, 2013 Resolution of the First Division that cancelled [petitioner’s] COC. The receipt was acknowledged by Rossini M. Ocsadin of the PBOC on May 15, 2013. On May 16, 2013, [A]tty. Nelia S. Aureus, [petitioner’s] counsel of record, received a copy of the same resolution. On May 18, 2013, the PBOC under AREDA Ignacio is already aware of the May 14, 2013 Resolution of the Commission En Banc which is already on file with the PBOC. Furthermore, PBOC members Provincial Prosecutor Bimbo Mercado and Magdalena Lim knew of the 14 May 2013 Resolution since they are the original members of the Villa PBOC. However, while counsel for [petitioner], Atty. Aureus, already received a copy of said resolution on May 16, 2013, the counsel for [petitioner], Atty. Ferdinand Rivera (who is an UNA lawyer), who appeared before the Ignacio PBOC on Ma[y] 18, 2013, misrepresented to said PBOC that [petitioner] has not received a copy of the said May 14, 2013 Resolution of this Commission. This has misled the Ignacio PBOC in deciding to proclaim [petitioner] believing that [petitioner] is not yet bound by the said resolution.” See rollo, pp. 392-393.

[5] In the case at bar, as the PBOC and the parties all had notice of the Comelec En Banc Resolution dated 14 May 2013, the PBOC should have, at the very least, suspended petitioner’s proclamation. Although Comelec Resolution No. 9648 or the General Instructions for the Board of Canvassers on the Consolidation/Canvass and Transmission of Votes in Connection with the 13 May 2013 National and Local Elections authorizes the PBOC to proclaim a winning candidate if there is a pending disqualification or petition to cancel COC and no order of suspension was issued by the Comelec, the cancellation of petitioner’s COC, as ordered in the Comelec En Banc Resolution dated 14 May 2013, is of greater significance and import than an order of suspension of proclamation. The PBOC should have taken the Comelec En Banc’s cue. To now countenance this precipitate act of the PBOC is to allow it to render nugatory a decision of its superior. Besides, on 18 May 2013, there was no longer any “pending” case as the Comelec En Banc Resolution dated 14 May 2013 is already a final judgment.

[6] *Beluso v. COMELEC*, G.R. No. 180711, 22 June 2010, 621 SCRA 450, 456.

In *De la Cruz v. COMELEC and Pacete*, the Court ruled that the COMELEC being a specialized agency tasked with the supervision of elections all over the country, its factual findings, conclusions, rulings and decisions rendered on matters falling within its competence shall not be interfered with by this Court in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law. (G.R. No. 192221, 13 November 2012, 685 SCRA 347, 359).

In *Mastura v. COMELEC*, the Court ruled that the rule that factual findings of administrative bodies will not be disturbed by the courts of justice except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the Comelec, as the framers of the Constitution intended to place the Comelec – created and explicitly made independent by the Constitution itself – on a level higher than statutory administrative organs. The Comelec has broad powers to ascertain the true results of the election by means available to it. For the attainment of that end, it is not strictly bound by the rules of evidence. (G.R. No. 124521, 29 January 1998, 285 SCRA 493, 499).

[7] Rollo, pp. 181-184.

[8] Petitioner before the HRET, can manifest what she desires in this Motion for Reconsideration concerning the existence of Identification Certificate No. 05-05424 issued by the Bureau of Immigration dated 13 October 2005, ostensibly recognizing her “as a citizen of the Philippines as per (pursuant) to the Citizenship Retention and Re-acquisition Act of 2003 (R.A. 9225) in relation to Administrative Order No. 91, S. of 2004 and Memorandum Circular No. AFF-2004-01 per order of this no. CRR No. 05-10/03-5455 AFF No. 05-4961 signed by

Commissioner ALIPIO F. FERNANDEZ dated October 6, 2005.” Petitioner belatedly submitted this manifestation in her Motion for Reconsideration for the stated reason that “her records with the Bureau of Immigration has been missing. Fortunately, her Index Card on file at the Fingerprint Section was found and it became the basis, together with Petitioner’s copy of the certificate which she just unearthed lately, for the issuance of a certified true copy of her Identification Certificate No. 05-05424.” See rollo, pp. 364 and 311.

[9] Office of the Ombudsman v. Rodriguez, G.R. No. 172700, 23 July 2010, 625 SCRA 299, 307

SEPARATE CONCURRING OPINION

SERENO, C.J.:

Certain views, distinctly different from the ponencia and from the Concurring and Dissenting Opinions, prompt me to write this Separate Opinion.

Guided by consistency in the interpretation of constitutional language, it is my view that the 1987 Constitution “intended to give [the electoral tribunals] full authority to hear and decide these cases from beginning to end and on all matters related thereto, including those arising before the proclamation of the winners.”[1]

Javier v. COMELEC[2], decided under the auspices of the 1973 Constitution, is instructive and sheds light on the extent of the constitutional grant of jurisdiction to the electoral tribunal as the sole judge of all contests relating to the elections, returns, and qualifications of their respective members.

Under the 1973 Constitution, COMELEC was given the power to “be the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials.”[3]

The Court, speaking through Justice Isagani Cruz, interpreted this constitutional grant of jurisdiction as follows:

We believe that in making the Commission on Elections the sole judge of all contests involving the election, returns and qualifications of the members of the Batasang Pambansa and elective provincial and city officials, the Constitution intended to give it full authority to hear and decide these cases from beginning to end and on all matters related thereto, including those arising before the proclamation of the winners.[4]

The 1987 Constitution transferred the jurisdiction of the COMELEC to the electoral tribunals of the Senate and the House of Representatives to “be the sole judge[s] of all contests relating to the election, returns, and qualifications of their respective Members,”[5] but the constitutional language has not changed. The jurisdiction granted was similar to that of the COMELEC under the 1973 Constitution, which the Court interpreted to mean “full authority to hear and decide these cases from beginning to end and on all matters related thereto, including those arising before the proclamation of the winners.”[6]

When the same language was adopted in the 1987 Constitution, it must be interpreted in the same way. Thus, petitions to deny due course or to cancel the certificate of candidacy of those aspiring to be members of the Senate or the House of Representatives under Section 78 of the Omnibus Election Code[7] should be under the jurisdiction of the electoral tribunals and not of the COMELEC.

Be that as it may, this view cannot be applied to petitioner’s cause, as she has never questioned the jurisdiction of the COMELEC to take cognizance of and rule on Section 78 petitions. Petitioner came to this Court to assail both the Resolution of the COMELEC First Division dated 27 March 2013 and the Resolution of the COMELEC En Banc dated 14 May 2013 based on grave abuse of discretion, and not on patent lack of jurisdiction on

constitutional grounds.

As will be discussed, there is nothing on record to show any grave abuse of discretion on the part of the COMELEC, either the First Division or En Banc, in promulgating the assailed Resolutions.

Petitioner reiterates in her Motion for Reconsideration the imputation of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC in the following manner:

1) By denying her right to due process

- when the COMELEC First Division admitted evidence without granting her opportunity to present controverting evidence;

- when the COMELEC En Banc denied her motion for a hearing;

2) By declaring her not to be a Filipino citizen and not to have met the residency requirement; and

3) By imposing additional qualifications when it enforced the provisions of Republic Act No. 9225.

The right of petitioner to due process was never violated, as she was given every opportunity to present her side during the reception of evidence at the Division level. She was furnished a copy of the Manifestation with Motion to Admit Newly Discovered Evidence and Amended List of Exhibits.[8] She had all the right to interpose her objections to the documentary evidence offered against her, but she failed to exercise that right.

The COMELEC First Division, therefore, did not commit any grave abuse of discretion when it admitted in evidence the documents offered, even if the printed Internet article showing that petitioner had used a U.S. passport might have been hearsay, and even if the copy of the Bureau of Immigration Certification was merely a photocopy and not even a certified true copy of the original.

Section 1, Rule 41 of the COMELEC Rules of Procedure[9] provides for the suppletory application of the Rules of Court. The third paragraph of Section 36, Rule 132 of the Revised Rules of Evidence provides that “an offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.”

Petitioner failed to raise any objection to the offer of evidence on time. It is now too late for her to question its admissibility. The rule is that evidence not objected to may be deemed admitted and validly considered by the court in arriving at its judgment.[10] As a corollary point, the COMELEC En Banc committed no grave abuse of discretion when it did not set petitioner’s Motion for Reconsideration for hearing. Setting a case for hearing is discretionary on its part. In fact, in summary proceedings like the special action of filing a petition to deny due course or to cancel a certificate of candidacy, oral testimony is dispensed with and, instead, parties are required to submit their position paper together with affidavits, counter affidavits and other pieces of documentary evidence.[11]

There was no grave abuse of discretion when, based on the records, the COMELEC cancelled the Certificate of Candidacy of petitioner after finding that she had committed false material misrepresentation with respect to her citizenship and residency. It thereafter declared that she should have complied with the requirements of renouncing her foreign citizenship and taking the oath of allegiance under R. A. 9225 before she could qualify to run for any elective office.

It bears stressing that when the petition to deny due course or to cancel her Certificate of Candidacy was filed alleging that she possessed American citizenship, petitioner denied the allegation, claiming that no evidence whatsoever was presented to support the claim.[12] When herein private respondent filed her Manifestation with

Motion to Admit Newly Discovered Evidence and Amended List of Exhibits, petitioner did not object to the documentary evidence offered to support the allegation that the latter possessed American citizenship.

In her Motion for Reconsideration of the COMELEC First Division Resolution dated 27 March 2013, petitioner, without providing any basis, claimed that she had not lost her Filipino citizenship. Yet, she attached an Affidavit of Renunciation of Foreign Citizenship. She claimed that even if it was a superfluity, she was attaching her duly accomplished personal and sworn renunciation of any and all foreign citizenships in compliance with the requirements under R.A. 9225, “if only to show [her] desire and zeal to serve the people and comply with rules.”[13]

In her original Petition before this Court, petitioner contends that “even granting for the sake of argument but without conceding that the ‘newly discovered evidence’ of Respondent Tan were admissible, it merely established the fact that Petitioner is an American citizen which does not translate to her not being a Filipino.”[14] Yet, in her present Motion for Reconsideration, petitioner begs the indulgence of this Court for the belated submission of her Identification Certificate recognizing her as a citizen of the Philippines pursuant to the provisions and implementing regulations of R.A. 9225.[15]

This submission of the Affidavit of Renunciation of Foreign Citizenship and the Identification Certificate issued by the Bureau of Immigration confirms the acquisition of foreign citizenship by petitioner and the applicability of R.A. 9225 to her. Thus, the COMELEC was correct in ruling that she was no longer a Filipino citizen when she filed her Certificate of Candidacy and that without complying with the requirements of R.A. 9225, she was not qualified to run for public office. Since these two documents were not submitted to the COMELEC, there can be no grave abuse of discretion either on the part of the COMELEC First Division when it cancelled her Certificate of Candidacy, or on the part of the COMELEC En Banc when it affirmed the cancellation.

Petitioner also imputes grave abuse to the COMELEC for enforcing and applying R.A. 9225 to her, claiming that by doing so, the Commission added a requirement to the qualifications set to become a member of the House of Representatives as set by the Constitution. Petitioner must be reminded that it was the legislature that added the requirement of renunciation of foreign citizenship by those who have lost their citizenship and who seek elective office. COMELEC has the constitutional duty to enforce this law.

Let me now proceed to an explanation why - despite my view that under the 1987 Constitution, the HRET is given the power to be the “sole judge of all contests relating to the [x x x] qualifications of its Members” - the present case cannot be the basis for declaring the unconstitutionality of the COMELEC’s action of exercising jurisdiction over Section 78 petitions involving candidates for Member of the House of Representatives or the Senate.

It must be pointed out that the jurisdiction of the COMELEC to entertain and rule on the Petition to Deny Due Course or to Cancel the Certificate of Candidacy in the instant case was never questioned. In fact, petitioner fully participated in the action, by filing her Answer and Memorandum before the First Division and subsequently filing a Motion for Reconsideration before the COMELEC after the First Division cancelled her Certificate of Candidacy on 27 March 2013. The COMELEC had the legal duty to decide on the matter and, in fact, the COMELEC En Banc resolved to affirm the cancellation of the Certificate of Candidacy on 14 May 2013.

This Court has held in *Tajonera v. Lamaroza*: [16]

The rule is that jurisdiction is conferred by law and the objection to the authority of the tribunal to take cognizance of a case may be raised at any stage of the proceedings. However, considering the attendant circumstances in the cases at bar, petitioners are now barred from claiming lack of jurisdiction at this stage with their active participation. [...] They never mentioned lack of jurisdiction in their memorandum of appeal,

in their motion for reconsideration or in their position paper. They are now estopped from raising such objection. It has been held that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and after failing to obtain such relief, repudiate or question that same jurisdiction. (citing the case of *Tijam v. Sibunghanoy*, 23 SCRA 35).

In the instant Petition, petitioner questioned the jurisdiction of the COMELEC after it cancelled the Certificate of Candidacy, and after the proclamation was made by the Provincial Board of Canvassers. Contending that her proclamation as winner in the congressional race in the Province of Marinduque effectively ousted COMELEC of any jurisdiction, she claimed “that its disqualification of the Petitioner should be declared to have no legal force and effect and may not be made the basis to annul petitioner’s proclamation or to unseat her from office.”[17]

It was this prayer of petitioner in her original Petition before this Court that prompted this Court to declare:

More importantly, we cannot disregard a fact basic in this controversy - that before the proclamation of petitioner on 18 May 2013, the COMELEC En Banc had already finally disposed of the issue of petitioner’s lack of Filipino citizenship and residency via its Resolution dated 14 May 2013. After 14 May 2013, there was, before the COMELEC, no longer any pending case on petitioner’s qualifications to run for the position of Member of the House of Representatives. We will inexcusably disregard this fact if we accept the argument of the petitioner that the COMELEC was ousted of jurisdiction when she was proclaimed, which was four days after the COMELEC En Banc decision. The Board of Canvassers which proclaimed petitioner cannot by such act be allowed to render nugatory a decision of the COMELEC en Banc which affirmed a decision of the COMELEC First Division.[18]

Petitioner now states in her Motion for Reconsideration that her proclamation is not and has never been an issue in her Petition. She must be reminded that she is anchoring her claim that COMELEC has been ousted of any jurisdiction, to even enforce its final decision by virtue of her proclamation.

Petitioner’s contention necessarily raises the following questions:

- Can the proclamation of a candidate by the Provincial Board of Canvassers (PBOC) negate a COMELEC En Banc Resolution cancelling the certificate of candidacy?
- Can the PBOC proclaim a candidate whose certificate of candidacy has already been cancelled?

These questions compel us to look into the set of circumstances surrounding petitioner’s proclamation.

On 14 May 2013, the COMELEC En Banc had already resolved the Amended Petition to Deny Due Course or to Cancel the Certificate of Candidacy filed against Reyes. Based on Sec. 3, Rule 37 of the COMELEC Rules of Procedure,[19] this Resolution was already final and should have become executory five days after its promulgation. But despite this unrestrained ruling of the COMELEC En Banc, the PBOC still proclaimed Reyes as the winning candidate on 18 May 2013.

On 16 May 2013, petitioner had already received the judgment cancelling her Certificate of Candidacy. As mentioned, two days thereafter, the PBOC still proclaimed her as the winner. Obviously, the proclamation took place notwithstanding that petitioner herself already knew of the COMELEC En Banc Resolution.

It must also be pointed out that even the PBOC already knew of the cancellation of the Certificate of Candidacy of petitioner when it proclaimed her. The COMELEC En Banc Resolution dated 9 July 2013 and submitted to this Court through the Manifestation of private respondent, quoted the averments in the Verified Petition of petitioner therein as follows:

xxx While the proceedings of the PBOC is suspended or in recess, the process server of this Honorable Commission, who identified himself as PEDRO P. STA. ROSA II (“Sta. Rosa,” for brevity), arrived at the

session hall of the Sangguniang Panlalawigan of Marinduque where the provincial canvassing is being held.

xxx The process server, Sta. Rosa, was in possession of certified true copies of the Resolution promulgated by the Commission on Elections En Banc on 14 May 2013 in SPA No. 13-053 (DC) entitled “Joseph Socorro B. Tan vs. Atty. Regina Ongsiako Reyes” and an Order dated 15 May 2013 to deliver the same to the Provincial Election Supervisor of Marinduque. The said Order was signed by no less than the Chairman of the Commission on Elections, the Honorable Sixto S. Brillantes, Jr.

xxx Process Server Pedro Sta. Rosa II immediately approached Atty. Edwin Villa, the Provincial Election Supervisor (PES) of Marinduque, upon his arrival to serve a copy of the aforementioned Resolution dated 14 May 2013 in SPA No. 13-053 (DC). Despite his proper identification that he is a process server from the COMELEC Main Office, the PES totally ignored Process Server Pedro Sta. Rosa II.

xxx Interestingly, the PES likewise refused to receive the copy of the Commission on Elections En Banc Resolution dated 14 May 2013 in SPA No. 13-053 (DC) despite several attempts to do so.

xxx Instead, the PES immediately declared the resumption of the proceedings of the PBOC and instructed the Board Secretary to immediately read its Order proclaiming Regina Ongsiako Reyes as winner for the position of Congressman for the Lone District of Marinduque.[20]

This narration of the events shows that the proclamation was in contravention of a COMELEC En Banc Resolution cancelling the candidate’s Certificate of Candidacy.

The PBOC, a subordinate body under the direct control and supervision of the COMELEC,[21] cannot simply disregard a COMELEC En Banc Resolution brought before its attention and hastily proceed with the proclamation by reasoning that it has not officially received the resolution or order.

The relevance of Secs. 6 and 7 of R.A. 6646 is brought to the fore. These provisions read:

Sec. 6. Effect of Disqualification Case. - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

Sec. 7. Petition to Deny Due Course To or Cancel a Certificate of Candidacy. - The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

The law provides for the suspension of a proclamation whenever there are pending disqualification cases or petitions to deny due course to or cancel a certificate of candidacy, and the evidence of guilt is strong. This provision points to the legislative intent to be cautious in proceeding with the proclamation of candidates against whom pending disqualification cases or petitions for cancellation of certificate of candidacy are filed. When the petition for cancellation of the certificate of candidacy is no longer pending as when the COMELEC En Banc had, in fact, affirmed the cancellation of the certificate of candidacy, the need for the suspension of the proclamation becomes more apparent.

In this case, the technical requirement of Secs. 6 and 7 of R.A. 6646 - to suspend the proclamation in the face of the motion of a complainant or any intervenor to suspend the proclamation was, in fact, substantially complied with. The compliance was when the other candidate, through his counsel, moved for his proclamation in view of the affirmation by the COMELEC En Banc of the cancellation of petitioner’s Certificate of Candidacy and actually provided a copy of the Resolution to the PBOC.[22] That Motion, together with a copy of the COMELEC

En Banc Resolution, should have given enough notice to the PBOC that there was an incident analogous to a prejudicial question in criminal cases,[23] an incident that called for the suspension of the proclamation of the candidate whose Certificate of Candidacy had already been cancelled.

The elements of a prejudicial question in criminal actions as set forth in Sec. 7, Rule 111 of the Rules of Criminal Procedure, as follows:

- (a) The previously instituted civil action involves an issue similar or intimately related to that issue raised in the subsequent criminal action.
- (b) The resolution of this issue determines whether or not the criminal action may proceed.

Applying the elements of a prejudicial question to Secs. 6 and 7 of R.A. 6646 on the pendency of disqualification cases or of petitions filed under Sec. 78 call for the suspension of the proclamation of a candidate when the evidence of guilt or the likelihood of the cancellation of the certificate of candidacy is strong. The main issue in the disqualification case or the Petition to cancel the Certificate of Candidacy is directly related to and, is, in fact, the crucial element that must be decided before a proclamation can be had.

The PBOC denied the motion to proclaim candidate Velasco on the ground that neither the counsel of petitioner nor the PBOC was duly furnished or served an official copy of the COMELEC En Banc Resolution[24] dated 14 May 2013 and forthwith proceeded with the proclamation of herein petitioner, whose Certificate of Candidacy has already been cancelled, bespeaks mala fide on its part.

As early as 27 March 2013, when the COMELEC First Division cancelled petitioner's Certificate of Candidacy, the people of Marinduque, including the COMELEC officials in the province, were already aware of the impending disqualification of herein petitioner upon the finality of the cancellation of her Certificate of Candidacy. When the COMELEC En Banc affirmed the cancellation of the certificate of candidacy on the day of the elections, but before the proclamation of the winner, it had the effect of declaring that herein petitioner was not a candidate.

Thus, when the PBOC proclaimed herein petitioner, it proclaimed not a winner but a non-candidate.

The proclamation of a non-candidate cannot take away the power vested in the COMELEC to enforce and execute its decisions. It is a power that enjoys precedence over that emanating from any other authority, except the Supreme Court, and that which is issued in habeas corpus proceedings as provided in Sec. 52(f) of the Omnibus Election Code.[25]

On a final note, I respectfully take exception to my distinguished colleague's statement that "the novel argument from no less than the Chief Justice" regarding petitioner Reyes' bad faith was "(o)ut of the blue and without any previous circulated written opinion" considering that, from the very beginning of the deliberations of this case I, together with another colleague, had already clearly expressed my opinion that bad faith should never be rewarded. Furthermore, the argument of bad faith is neither "novel" nor "out of the blue," as it had been repeatedly raised in several deliberations on this matter. The bad faith element was further confirmed by the records through the antecedents cited in the Resolution of the COMELEC En Banc dated 09 July 2013.[26]

Be that as it may, it is unseemly to question the participation in the deliberations by a member of this Court for lack of a previously circulated written opinion. Indeed, given the nature of our collegial discussions on the matters presented to us, every member of the Court has the right to participate in the deliberations En Banc, with or without having previously circulated his or her opinion on the cases before us.

I reiterate my view that the COMELEC Decision dated 14 May 2013 has already become final, and that the

HRET has no jurisdiction over this electoral case.

For the foregoing reasons, I vote to DENY the Motion for Reconsideration.

[1] Javier v. COMELEC, G.R. No. L-68379-81, 22 September 1986, substituting “electoral tribunals” for “it,” referring to the COMELEC.

[2] Op. cit.

[3] 1973 Constitution, Art. XII.C.2(2)

[4] Supra, Note 1.

[5] Constitution, Art. VI, Sec. 17, 1987

[6] Id.

[7] Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

[8] Rollo, p. 129, see Registry Receipt & Explanation on 3rd page of the Manifestation.

[9] Section 1. The Rules of Court. - In the absence of any applicable provisions in these Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect.

[10] Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio, G.R. No. 186027, 27 December 2007, 541 SCRA 479; People v. Pansensoy, G.R. No. 140634, 12 September 2002, 388 SCRA 669, 689; People v. Barellano, G.R. No. 121204, 2 December 1999, 319 SCRA 567, 590.

[11] Sec. 3. Rule 17, COMELEC Rules of Procedure:

Sec. 3. Oral Testimony Dispensed with Where Proceedings are Summary. - When the proceedings are authorized to be summary, in lieu of oral testimonies, the parties may, after due notice, be required to submit their position paper together with affidavits, counter-affidavits and other documentary evidence; and when there is a need for clarification of certain matters, at the discretion of the Commission or the Division, the parties may be allowed to cross-examine the affiants.

This provision shall likewise apply to cases where the hearing and reception of evidence are delegated by the Commission or the Division to any of its officials; and when there is a need for clarification of certain matters, the hearing officer may schedule a hearing to propound clarificatory questions, observing for that purpose Section 6 of Rule 34 of these Rules.

[12] Rollo, p. 94, Answer filed by Reyes dated 9 November 2012.

[13] Id. p. 149, Motion for Reconsideration filed by Reyes on 8 April 2013.

[14] Id. p. 26.

[15] Id. p. 311.

[16] G.R. Nos. L-48907 & 49035. 19 December 1981.

[17] Rollo, p. 36.

[18] Resolution, p. 9, June 25, 2013; Rollo, p. 180.

[19] Sec. 13. Finality of Decisions or Resolutions. –

(b) In Special Actions and Special Cases a decision or resolutions of the Commission en banc shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.

[20] COMELEC En Banc Resolution dated 19 July 2013, pp. 4-5, attached to the Manifestation filed before this Court on 16 August 2013.

[21] Omnibus Election Code, Sec. 227. Supervision and control over board of canvassers. - The Commission shall have direct control and supervision over the board of canvassers.

Any member of the board of canvassers may, at any time, be relieved for cause and substituted motu proprio by the Commission.

[22] Rollo, p. 438, COMELEC En Banc Resolution dated 9 July 2013, submitted as Exhibit A of the Manifestation filed before the Court on 16 Aug. 2013.

[23] Rules on Criminal Procedure, Rule 111, Sections 6 & 7.

[24] Id. p. 3.

[25] Sec. 52. Powers and functions of the Commission on Elections. - In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall:

x x x x

(f) Enforce and execute its decisions, directives, orders and instructions which shall have precedence over those emanating from any other authority, except the Supreme Court and those issued in habeas corpus proceedings.

[26] Supra, note 22.

DISSENTING OPINION

CARPIO, J.:

I dissent. Based on existing jurisprudence, jurisdiction over any election contest involving House Members is vested by the Constitution in the House of Representatives Electoral Tribunal (HRET) upon proclamation of the winning candidate. Any allegation that the proclamation is void does not divest the HRET of its jurisdiction. It is the HRET that has jurisdiction to resolve the validity of the proclamation as the “sole judge of all contests relating to the election, returns, and qualifications”[1] of House Members. To hold otherwise will result in a clash of jurisdiction between constitutional bodies.

HRET’s jurisdiction vests upon proclamation alone

We must correct the error in the Court’s 25 June 2013 Resolution that “to be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office.”[2] The 25 June 2013 Resolution amends the 1987 Constitution, overturns

established jurisprudence, and results in absurdities.

To recall, Reyes was proclaimed on 18 May 2013. Reyes' term of office began, under the 1987 Constitution, at noon of 30 June 2013.[3] Reyes took her oath of office on 5 June 2013 before Speaker Feliciano Belmonte. Reyes again took her oath of office on 27 June 2013 before President Benigno S. Aquino III. Reyes then took her oath of office before Speaker Belmonte in open session on 22 July 2013.

Under the 25 June 2013 Resolution of the Court, Reyes could assume office only upon taking her oath before the Speaker in open session – an event that usually happens only after new House Members elect their Speaker sometime in mid-July. The 25 June 2013 Resolution effectively cuts short Reyes' constitutional term of office by a little less than one month, thereby amending the Constitution. In the meantime, new House Members, and their employees, cannot draw their salaries until the members take their oath of office before the Speaker. The Resolution of 25 June 2013 also requires that every new House Member should take his or her oath of office before the Speaker in open session – a requirement not found in the Constitution. While the Speaker is authorized to administer oaths,[4] the Constitution does not distinguish between an oath before officers authorized by law to administer oaths and an oath before the Speaker in open session. Members of this Court have been administering the oaths of Senators and House Members for the longest time.

We have consistently ruled that proclamation alone of a winning congressional candidate following the elections divests COMELEC of its jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representative in favor of the HRET.[5] Proclamation alone of a winning congressional candidate is sufficient, and is the only essential act to vest jurisdiction upon the HRET. Taking of the oath and assumption of office are merely descriptive of what necessarily comes after proclamation. In *Jalosjos v. COMELEC*,[6] the most recent decision on the matter, the ponente Justice Roberto A. Abad wrote:

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

Section 17, Article VI of the Constitution provides that the HRET is the “sole judge of all contests relating to the election, returns, and qualifications” of the House Members. 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.[7] Indeed, even if Joseph Socorro B. Tan alleged, as he did allege in his Comment[8] to Reyes' Motion for Reconsideration, that Reyes' proclamation is “null, void and without legal force and effect,”[9] such allegation does not divest the HRET of its jurisdiction.[10]

Upon proclamation of the winning candidate as House Member and despite any allegation of invalidity of his or her proclamation, the HRET alone is vested with jurisdiction to hear the election contest. The COMELEC's jurisdiction ends where the HRET's jurisdiction begins. We previously ruled in *Lazatin v. Commission on Elections*[11] that:

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. (Emphasis supplied)

We underscored the purpose for the mutually exclusive jurisdictions of the COMELEC and the HRET in *Guerrero v. Commission on Elections*,^[12] where we stated that:

(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. (Emphasis supplied)

Upon proclamation, jurisdiction over any election contest against the proclaimed candidate is vested in the HRET by operation of the Constitution. Any challenge to the validity of the proclamation falls under the HRET's jurisdiction as "sole judge of all contests relating to the election, returns, and qualifications" of House Members. To hold that the HRET does not have jurisdiction over a challenge to the validity of a proclamation is to hold that while jurisdiction vests in the HRET upon proclamation, the HRET loses such jurisdiction if a challenge is filed assailing the validity of the proclamation. If so, a party then exercises the power to terminate HRET's jurisdiction that is vested by the Constitution. This is an absurdity.

It may also happen that one losing candidate may assail the validity of the proclamation before the Supreme Court while another losing candidate will file an election protest before the HRET within 15 days from the proclamation. In such a situation, there will be a direct clash of jurisdiction between the Supreme Court and the HRET. The case in the Supreme Court can remain pending even after the House Members have assumed their office, making the anomaly even more absurd.

In the present case, the issue of the validity of Reyes' proclamation was never raised as an issue before the COMELEC. Reyes herself mentioned her proclamation as a statement of fact, and used it to support her claim that the HRET already has jurisdiction over her case. As the petitioner before this Court, Reyes will not question the validity of her own proclamation. In any event, the determination of the validity of Reyes' proclamation allegedly on the ground of bad faith on the part of the Board of Canvassers is a factual matter not within the jurisdiction of this Court.

Moreover, Rules 16 and 17 of the 2011 HRET Rules require a verified election protest or a verified petition for quo warranto to be filed within 15 days after the proclamation of the winner, thus:

RULE 16. Election Protest. – A verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within fifteen (15) days after the proclamation of the winner. The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee.

No joint election protest shall be admitted, but the Tribunal, for good and sufficient reasons, may consolidate individual protests and hear and decide them jointly. Thus, where there are two or more protests involving the same protestee and common principal causes of action, the subsequent protests shall be consolidated with the earlier case to avoid unnecessary costs or delay. In case of objection to the consolidation, the Tribunal shall resolve the same. An order resolving a motion for or objection to the consolidation shall be unappealable.

The protest is verified by an affidavit that the affiant has read it and that the allegations therein are true and correct of his knowledge and belief or based on verifiable information or authentic records. A verification based on "information and belief," or upon "knowledge, information and belief," is not a sufficient verification.

An unverified election protest shall not suspend the running of the reglementary period to file the protest.

An election protest shall state:

1. The date of proclamation of the winner and the number of votes obtained by the parties per proclamation;
2. The total number of contested individual and clustered precincts per municipality or city;
3. The individual and clustered precinct numbers and location of the contested precincts; and
4. The specific acts or omissions complained of constituting the electoral frauds, anomalies or irregularities in the contested precincts.

RULE 17. Quo Warranto. – A verified petition for quo warranto contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned within fifteen (15) days from the date of the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

The provisions of the preceding paragraph to the contrary notwithstanding, a petition for quo warranto may be filed by any registered voter of the district concerned against a member of the House of Representatives, on the ground of citizenship, at any time during his tenure.

The rule on verification and consolidation provided in Section 16 hereof shall apply to petitions for quo warranto. (Emphasis supplied)

If we follow the 25 June 2013 Resolution's strict application of the concurrence of the three requisites and use the pertinent dates in the present case, any election protest filed against Reyes within 15 days from her proclamation in accordance with the present HRET Rules will be dismissed outright by the HRET for being premature. Under the 25 June 2013 Resolution, jurisdiction vests in the HRET only when the House Members take their oath of office before the Speaker in open session, an event that happens only sometime in mid-July following the elections. Thus, the earliest that any election contest arising from the May 2013 elections can be filed with the HRET is 22 July 2013, the day the House Members took their oath of office before the Speaker in open session. This amends the HRET Rules, and changes well-established jurisprudence, without any justifiable reason whatsoever.

The Court's ruling today is a double flip-flop: (1) it reverses the well-settled doctrine that upon proclamation of a winning congressional candidate, the HRET acquires sole jurisdiction over any contest relating to the "election, returns and qualifications" of House Members; and (2) it also reverses the well-settled doctrine that any question on the validity of such proclamation falls under the sole jurisdiction of the HRET.

I vote to DENY petitioner Regina Ongsiako Reyes' Manifestation and Notice of Withdrawal. I also vote to GRANT Reyes' Motion for Reconsideration to DISMISS her petition since jurisdiction over her petition had vested in the House of Representatives Electoral Tribunal upon her proclamation.

[1] 1987 Philippine Constitution, Art. VI, Sec. 17.

[2] Resolution (G.R. No. 207264), 25 June 2013, p. 7.

[3] 1987 Philippine Constitution, Art. VI, Sec. 7.

[4] Section 41, Book I of the 1987 Administrative Code reads as follows:

Sec. 41. Officers Authorized to Administer Oath. - The following officers have general authority to administer oaths: President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; provincial governors and lieutenant-governors; city mayors; municipal

mayors; bureau directors; regional directors; clerks of courts; registrars of deeds; other civilian officers in the public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public.

[5] The latest case with this pronouncement is that of *Jalosjos v. Commission on Elections*, G.R. No. 192474, 26 June 2012. See also the cases of *Gonzalez v. Commission on Elections*, G.R. No. 192856, 8 March 2011, 644 SCRA 761; *Limkaichong v. Commission on Elections*, G.R. Nos. 178831-32, 1 April 2009, 583 SCRA 1; *Planas v. Commission on Elections*, 519 Phil. 506 (2006); *Perez v. Commission on Elections*, 375 Phil. 1106 (1999).

[6] G.R. No. 192474, 26 June 2012.

[7] *Aggabao v. COMELEC*, 490 Phil. 285, 291 (2005).

[8] *Rollo*, pp. 380-408.

[9] *Id.* at 391.

[10] *Aggabao v. COMELEC*, *supra* note 6 at 285.

[11] 241 Phil. 343, 345 (1988).

[12] 391 Phil. 344, 354 (2000).

DISSENTING OPINION

BRION, J.:

This Dissent responds to the ponencia's ruling on the following pending incidents:

- (1) the Motion for Reconsideration[1] filed by petitioner Regina Ongsiako Reyes dated July 15, 2013;
- (2) the Comment on the Motion for Reconsideration[2] filed by respondent Joseph Socorro B. Tan dated July 20, 2013; and
- (3) the Manifestation and Notice of Withdrawal of the Petition[3] filed by Reyes dated July 22, 2013.

I. PROLOGUE

A. The January 25, 2013 Resolution and the Dissent

Previous to these incidents, the majority – in its June 25, 2013 Resolution – dismissed outright Reyes' petition for certiorari, filed to nullify the Commission on Elections (COMELEC) ruling cancelling her certificate of candidacy (CoC).

In my Dissent to this Resolution, I characterized the ruling as "unusual" for several reasons, the most important of which is that it raised very substantial issues as shown by the discussions below. In this light, the outright dismissal was attended by undue haste and without even hearing Tan and allowing him to defend his case by himself. As a result, the grounds that the Court cited in its Resolution of dismissal were reasons that the Court raised on its own, on contentious issues that, in the usual course of Court processes, are resolved after hearing the respondent and after joinder of issues. In this unusual ruling, the Court, among others, held that:

1. "[T]o be considered a Member of the House of Representatives, there must be concurrence of the following requisites:

1) a valid proclamation[;]
2) a proper oath[;] and
3) assumption of office[;]”[4] and
4) that “before there is a valid or official taking of the oath it must be made [a] before the Speaker of the House of Representatives, and [b] in open session.”

2. The COMELEC committed no grave abuse of discretion when it ruled on the citizenship of Reyes as “[u]nless and until she can establish that she had availed of the privileges of Republic Act No. (RA) 9225 by becoming a dual Filipino-American citizen, and thereafter, made a valid sworn renunciation of her American citizenship, she remains to be an American citizen and is, therefore, ineligible to run for and hold any elective public office in the Philippines.”[5]

3. The petitioner was not denied due process because she was given the opportunity to be heard. To quote its ruling, “in administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard.”[6]

The Court’s handling of the case was all the more “unusual” because the son of a member (Mr. Justice Presbitero J. Velasco, Jr.) of this Court, although not a direct party, directly stood to be benefited by the Court’s ruling – a fact that was reiterated both during the deliberations of the Court and in the Dissenting Opinion filed.

As will be seen from the discussions below, the reason for the haste was apparently the desire to avoid the House of Representatives Electoral Tribunal (HRET) where Mr. Justice Velasco currently sits as Chairman and whose participation and ruling could result (if Reyes is unseated) in the declaration of the vacancy of the Marinduque congressional seat, not the seating of the second placer in the elections.

Aside from pointing out the undue haste that characterized the June 25, 2013 ruling, my previous Dissent argued that no outright dismissal should have been made because of the intervening events and “in light of the gravity of the issues raised and the potential effect on jurisprudence” of the Court’s ruling on the case.

B. Facts and Supervening Developments of the Case

For a full appreciation of the facts and supervening developments, outlined below is a brief summary of the antecedents and the supervening developments in the present case.

Reyes filed her CoC on October 1, 2012 for the position of Representative for the lone district of Marinduque.[7] Her opponent was former Congressman Lord Allan Jay Velasco, the son of a sitting Member of this Court, Associate Justice Presbitero J. Velasco, Jr.

On October 10, 2012, Tan filed with the COMELEC a petition to deny due course to or to cancel Reyes’ CoC on the ground that she committed material misrepresentations in her CoC when she declared that: (1) she is a resident of Barangay Lupac, Boac, Marinduque; (2) she is a natural born Filipino citizen; (3) she is not a permanent resident or an immigrant to a foreign country; (4) her date of birth is July 3, 1964; (5) she is single; and (6) she is eligible to the office she seeks to be elected.[8]

On March 27, 2013, the COMELEC First Division issued a resolution granting Tan’s petition and cancelling Reyes’ CoC based on its finding that Reyes committed false material representation in her citizenship and residency.[9] Reyes duly filed a motion for the reconsideration of the COMELEC First Division’s ruling on April 8, 2013.[10]

On May 14, 2013 or a day after the congressional elections, the COMELEC en banc issued a resolution denying Reyes’ motion for reconsideration, thus affirming the COMELEC First Division’s ruling.[11] This resolution

would have lapsed to finality on May 19, 2013 or five (5) days after the resolution's issuance, pursuant to Section 3, Rule 37 of the COMELEC Rules of Procedure.[12]

On May 18, 2013, the Marinduque Provincial Board of Canvassers (PBOC) – without being officially informed of the COMELEC's ruling – proclaimed Reyes as the duly elected member of the House of Representatives for Marinduque. She garnered 52,209 votes as against the 48,396 votes for former Cong. Velasco.[13]

On May 31, 2013, former Cong. Velasco filed an Election Protest Ad Cautelam against Reyes with the HRET.[14] On the same date, a certain Christopher Matienzo also filed a Petition for Quo Warranto Ad Cautelam questioning Reyes' eligibility before the HRET.[15]

On June 5, 2013, the COMELEC en banc issued a Certificate of Finality declaring its May 14, 2013 resolution final and executory.[16] Note that this came way after Reyes had been proclaimed the winner on May 18, 2013.

On June 7, 2013, Reyes – as the duly proclaimed winner – took her oath of office before House Speaker Feliciano R. Belmonte, Jr.[17]

On June 10, 2013, Reyes filed a petition for certiorari with prayer for a temporary restraining order, preliminary injunction and/or status quo ante order with the Court to annul the March 27, 2013 and the May 14, 2013 COMELEC resolutions cancelling her CoC for the position of Representative in the lone district of Marinduque, and the June 5, 2013 Certificate of Finality declaring the May 14, 2013 COMELEC resolution final and executory in SPA Case No. 13-053(DC).[18]

On June 25, 2013, the Court hastily, and without requiring the COMELEC and Tan to comment, dismissed Reyes' petition outright through a Resolution finding that the COMELEC did not commit any grave abuse of discretion in ruling on the case. The majority ruled as well that the COMELEC retained jurisdiction over the cancellation case considering that Reyes could not yet be considered a Member of the House of Representatives; thus, she could not assume office before the start of the congressional term at noon on June 30, 2013.[19]

On June 28, 2013, Reyes filed a Manifestation with the Court that on June 19, 2013, the COMELEC First Division denied former Cong. Velasco's petition to declare the proceedings of the Marinduque PBOC and her subsequent proclamation null and void.[20]

At noon of June 30, 2013, by the authority of the 1987 Constitution, the term of the outgoing (2010-2013) elective congressional officials expired and the term of the incoming (2013-2016) officials began.[21]

On July 2, 2013, Reyes filed another Manifestation with the Court stating that she had assumed office and had started performing her functions as a Member of the House of Representatives on June 30, 2013.[22] As proof of her assumption to office, Reyes attached to the Manifestation a copy of a bill and a resolution she filed in the House of Representatives.[23]

On July 9, 2013, the COMELEC en banc issued a Resolution annulling Reyes' proclamation and proclaimed the second placer, former Cong. Velasco, as the duly elected Representative of the Lone District of Marinduque. Notably, the COMELEC, at this point, was acting on the proclamation of a sitting member of the House of Representatives.[24]

On July 22, 2013, the 16[th] Congress of the Republic of the Philippines formally convened, elected its officers, and, in a joint session, received the President of the Philippines for his State of the Nation Address.[25] Reyes, together with other Members of the House of Representatives, ceremonially took their oaths in open session before Speaker Feliciano Belmonte whom they earlier elected. Thus, the House of Representatives fully and formally accorded Reyes its recognition as the duly elected Member for the lone district of Marinduque.

C. The Motion for Reconsideration

In the interim, on July 15, 2013, Reyes filed her Motion for Reconsideration with Motion for Inhibition of Justice Jose P. Perez from the Court's June 25, 2013 Resolution.[26]

Reyes repleaded in her motion for reconsideration the arguments she raised in her petition for certiorari on due process, citizenship and residency requirements, and submitted the following additional positions and arguments in response to the arguments the majority made in dismissing her petition outright.

On the Issue of Jurisdiction

(1) The COMELEC has lost jurisdiction over the cancellation of Reyes' CoC case considering that she had satisfied all the requirements stated in the Court's June 25, 2013 Resolution:

(a) She was the duly and validly proclaimed winner for the position of Representative of the lone district of Marinduque. Also there is nothing in the records showing that her proclamation on May 18, 2013 has been annulled by the COMELEC prior to her assumption to office at noon on June 30, 2013. In fact, it was only on July 9, 2013 that the COMELEC annulled her proclamation and declared second placer former Cong. Velasco the winner.

(b) She validly took her oath of office. She took her oath of office before Speaker Belmonte on June 5, 2013 and also before President Benigno Simeon Aquino III on June 27, 2013.

The Court's interpretation of Section 6, Rule II of the House Rules that requires Members to take their oath before the Speaker in open session is completely illogical. First, the Speaker is an official authorized to administer oaths under Section 41 of the Administrative Code of 1987. This provision does not require that the oath be made in open session before Congress in order to be valid. Second, it would be actually and legally impossible for Congress to convene considering that the congressmen-elect cannot be considered Members of the House of Representatives without the oath and the Speaker cannot as well be elected as such without Members of the House of Representatives qualified to vote and elect a Speaker. Third, the oath before the Speaker in open session is a mere formality for those who have already taken their oath as the very same provision itself presupposes that the "Member" has already taken his or her oath.

(c) She has assumed the duties of her office. The Court can take judicial notice that June 30, 2013 has come to pass. She legally assumed the duties of her office at noon on June 30, 2013 and in fact, she has already filed a bill and a resolution in Congress.

(2) The Court's June 25, 2013 Resolution is contrary to the prevailing jurisprudence that the proclamation of a congressional candidate, following the election, divests the COMELEC of jurisdiction over disputes relating to the election, returns and qualifications of the proclaimed representative in favor of the HRET; it also emasculates and usurps the jurisdiction of the HRET.

(3) The Court's June 25, 2013 Resolution violates the doctrine of stare decisis and is contrary to the HRET rules.

On the Issue of the Validity of Reyes' Proclamation

(1) The Court cannot pass upon the validity of Reyes' proclamation as it was never raised as an issue in the present case.

(2) The Court has no jurisdiction to rule on the legality of Reyes' proclamation since it is the COMELEC that has the original and exclusive jurisdiction over annulment of proclamations.

(3) The Court's June 25, 2013 Resolution is contrary to prevailing jurisprudence on the validity of the

proclamation of a winning candidate. Reyes cites the cases of *Planas v. Commission on Elections*,^[27] *Limkaichong v. Commission on Elections*^[28] and *Gonzalez v. Commission on Elections*^[29] where the Court upheld the validity of the proclamations made considering that the cancellation of their CoCs at that time had not attained finality. Even so, such questions on the validity of Reyes' proclamation are better addressed by the HRET which now has jurisdiction over the present case, citing *Lazatin v. The Commission on Elections*.^[30]

(4) At any rate, based on the pronouncement of the Court in its June 25, 2013 Resolution that "until such time (June 30, 2013) the COMELEC retains jurisdiction," since the noon of June 30, 2013 has come and gone, COMELEC is now devoid of jurisdiction to annul Reyes' proclamation on May 18, 2013.

In the same motion, Reyes also alleges that there are now two (2) pending cases filed against her in the HRET: (1) Election Protest Ad Cautelam filed on May 31, 2013, entitled *Lord Allan Velasco v. Regina Ongsiako Reyes*, docketed as Case No. 13-028;^[31] and (2) Petition for Quo Warranto Ad Cautelam filed on May 31, 2013, entitled *Christopher P. Matienzo v. Regina Ongsiako Reyes*, docketed as Case No. 13-027.^[32]

D. The Comment

On July 22, 2013, Tan filed his Comment on Reyes' Motion for Reconsideration praying for the dismissal of her petition with finality.^[33] Tan submitted the following arguments:

(1) The COMELEC did not commit grave abuse of discretion in its appreciation of the evidence and its conclusion that Reyes was a naturalized US citizen. First, the original certification issued by Acting Chief Simeon Sanchez was submitted to the COMELEC First Division and Reyes did not object to the admission of both the blog article and Sanchez's certification. Second, the COMELEC is not bound to strictly adhere to the technical rules of procedure. Third, Reyes herself admitted that she is an American citizen in her motion for reconsideration before the COMELEC en banc;

(2) The documents attached to Reyes' motion for reconsideration are prohibited evidence under Section 2, Rule 56 of the Rules of Court and should be expunged from the records;

(3) Reyes failed to comply with the requirements stated in the June 25, 2013 Resolution in order to become a Member of the House of Representatives. First, as has been held by the COMELEC, Reyes' proclamation was null and void considering that the May 14, 2013 Resolution of the COMELEC en banc cancelling her CoC became final and executory on May 19, 2013. Second, Reyes' oath was improper because it was not done before the Speaker in open session on July 22, 2013. Third, Reyes' assumption to office was invalid as she is an ineligible candidate and cannot, by law, be a Member of the House of Representatives;

(4) The COMELEC retains jurisdiction in a petition for cancellation of CoC until the candidate is deemed a member of the House of Representatives; and

(5) The Court has full discretionary authority to dismiss the present case which was prosecuted manifestly for delay and the issues raised are too insubstantial to warrant further proceedings.

On July 23, 2013, Reyes filed a Manifestation and Notice of Withdrawal of Petition in the present case, "without waiver of her arguments, positions, defenses/causes of action as will be articulated in the HRET which is now the proper forum." Reyes emphasized that she filed the Manifestation and Notice of Withdrawal of Petition "considering the absence of any comment or opposition from the respondents to the petition." In her Motion, Reyes alleged:^[34]

2. Petitioner was among the Members of the House of Representatives, representing the lone congressional district of the province of Marinduque, who attended the opening session, was officially and formally

recognized as the duly elected representative of the said congressional district and voted for the Speakership of House of Representatives of Congressman Feliciano “Sonny” Belmonte, Jr.

3. After the Speaker’s election, the Members of the House of Representatives of the 16th Congress of the Republic of the Philippines formally took their oath of office before the Speaker in open session. With the Petitioner’s admission and recognition in the House of Representatives, and the official opening and organization of the House of Representatives, all controversies regarding Petitioner’s qualifications and election to office are now within the jurisdiction of the HRET.

II. THE DISSENT

A. Reyes cannot unilaterally withdraw her pending Petition for Certiorari before this Court.

Although not a disputed issue as the ponencia simply “Notes” Reyes’ Manifestation and Notice of Withdrawal of Petition, I nevertheless address this point as a preliminary issue that the Court must rule upon on record in order to fully resolve all the outstanding issues.

I submit that Reyes can no longer and should not be allowed to unilaterally withdraw her petition.

a. The Rule on Adherence to Jurisdiction.

The rule on adherence of jurisdiction applies to the present case. This rule states that once the jurisdiction of a court attaches, the court cannot be ousted by subsequent happenings or events, although of a character that would have prevented jurisdiction from attaching in the first instance; the court retains jurisdiction until it finally disposes of the case.[35] If at all possible, the withdrawal should be for a meritorious and justifiable reason, and subject to the approval of the Court.

An illustrative case is *Aruego, Jr. v. Court of Appeals*,[36] where the Court ruled on whether the trial court, which acquired jurisdiction over the case through the filing of the complaint, lost that jurisdiction because of the passage of Executive Order No. 209 (Family Code of the Philippines). In ruling that the trial court cannot be ousted of its jurisdiction by subsequent happenings or events, the Court held:

Our ruling herein reinforces the principle that the jurisdiction of a court, whether in criminal or civil cases, once attached cannot be ousted by subsequent happenings or events, although of a character which would have prevented jurisdiction from attaching in the first instance, and it retains jurisdiction until it finally disposes of the case.[37]

In the present case, the Court had acquired jurisdiction and has in fact ruled on Reyes’ petition; thus the Court’s jurisdiction should continue until it finally disposes of the case. Reyes cannot invoke the jurisdiction of this Court and thereafter simply withdraw her petition, especially after the Court has ruled and after its ruling has generated a lot of public attention and interest, some of them adverse to the reputation of the Court.

b. Lack of Factual and Legal Bases.

Reyes’ justification for filing her Manifestation and Notice of Withdrawal of the Petition – the absence of any comment or opposition from the respondents to the Petition – is no longer supported by existing facts; Tan filed a Comment on Reyes’ motion for reconsideration dated July 22, 2013. Thus, as matters now stand, Reyes’ move is not supported by any factual justification.

Reyes’ legal justification, on the other hand, could be seen in her allegations that she had been proclaimed, had

taken her oath, and Congress itself has convened on July 22, 2013. Thus, pursuant to the Constitution, the HRET now has exclusive jurisdiction over all matters relating to her elections, returns and qualifications that the COMELEC had not finally resolved. This ground, however, is a submitted issue in the present case and is for the Court to appreciate and rule upon in this motion for reconsideration; it is not a ground that Reyes can act upon on her own independently of the ruling of this Court.

That cases - an election protest and a quo warranto petition - have been filed against Reyes before the HRET all the more render it imperative for this Court to settle, in a well reasoned manner, whether the jurisdiction exercised by the COMELEC through the cancellation of a CoC filed against Reyes, now rests with the HRET. At this point and after the attention that media have given the case, no less than a ruling by the Court is needed to clear the air as, constitutionally, the election, returns and qualifications of a member of the House of Representatives are already involved - a matter that on its face appropriately lies within the competence and jurisdiction of the HRET.

c. No Right of Withdrawal is Involved.

Reyes' unilateral withdrawal of her petition after the Court had acted on the petition, in my view, was not done in the exercise of any right of withdrawal that Reyes can demand from this Court. While no express rule exists under the Rules of Court on the withdrawal of an original petition before the Supreme Court, this is the only conclusion that can be made, consistent with the spirit that pervades the Rules of Court. Rule 17 of the Rules of Court on the dismissal of actions at the instance of the plaintiff embodies this spirit and can be applied by analogy.

Under this Rule, dismissal by notice of the plaintiff can only be before service of the defendant's answer or before service of a motion for summary judgment. On the other hand, dismissal of a complaint by motion of the plaintiff can only be upon approval by the court and upon such terms and conditions that the court shall deem to be proper.

The points comparable to the markers laid down by Rule 17 have all been reached and left behind in the present case so that Reyes can no longer be said to have full and sole control over her petition: the Court has ruled on the petition and a Dissent has in fact been filed against the ruling; the petitioner has filed a motion for reconsideration and the respondent has filed its Comment on the Motion. External developments have also taken place, among them, the proclamation of Reyes as winner; the administration of her oath of office no less than by the Speaker of the House and by the President of the Philippines; and the convening of the House of Representatives where Reyes fully participated. All these developments cannot simply be disregarded in one sweep by the simple act of withdrawal that Reyes wishes the Court to approve.

d. Implications from Court's Exercise of Jurisdiction.

Lastly, we must consider that our exercise of jurisdiction over the present petition is an original one, undertaken in the exercise of the Court's expanded jurisdiction under the second paragraph of Section 1, Article VIII of the Constitution, to determine whether the COMELEC committed grave abuse of discretion in cancelling Reyes' CoC and in declaring the COMELEC's ruling final after Reyes had been proclaimed, taken her oath, and assumed office.

The fact that developments (properly raised and pleaded) have intervened and have cut across these questioned COMELEC actions all the more render it necessary for the Court to determine whether the HRET's jurisdiction has already begun and where, in fact, the COMELEC's jurisdiction ended. This approach will clear the air so that the substantive issues on Reyes' election, returns and qualifications can be resolved by the proper body without any doubt hanging over the question of jurisdiction.

B. The grave abuse of discretion in the CoC cancellation proceedings.

To proceed now to the crux and the overriding issue of the petition and one that the intervening developments have not overtaken under the circumstances of this case – did the COMELEC sufficiently accord Reyes due process, or did a violation of her right to due process occur?

The due process issue is important as a finding of violation, because of the inherent arbitrariness it carries, necessarily amounts to grave abuse of discretion, and lays to rest all questions regarding the COMELEC's continued exercise of jurisdiction.

In *Mendoza v. Commission on Elections*,^[38] the Court elaborated on the due process standards that apply to the COMELEC's proceedings:

The appropriate due process standards that apply to the COMELEC, as an administrative or quasi-judicial tribunal, are those outlined in the seminal case of *Ang Tibay v. Court of Industrial Relations*, quoted below:

(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. x x x

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.

(3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity[.]

(4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.

These are now commonly referred to as cardinal primary rights in administrative proceedings.

The first of the enumerated rights pertain to the substantive rights of a party at hearing stage of the proceedings. The essence of this aspect of due process, we have consistently held, is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential; in the case of COMELEC, Rule 17 of its Rules of Procedure defines the requirements for a hearing and these serve as the standards in the determination of the presence or denial of due process.

The second, third, fourth, fifth, and sixth aspects of the *Ang Tibay* requirements are reinforcements of the right to a hearing and are the inviolable rights applicable at the deliberative stage, as the decision-maker decides on the evidence presented during the hearing. These standards set forth the guiding considerations in deliberating on the case and are the material and substantial components of decision-making. Briefly, the tribunal must consider the totality of the evidence presented which must all be found in the records of the case (i.e., those

presented or submitted by the parties); the conclusion, reached by the decision-maker himself and not by a subordinate, must be based on substantial evidence.

Finally, the last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based. As a component of the rule of fairness that underlies due process, this is the “duty to give reason” to enable the affected person to understand how the rule of fairness has been administered in his case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.[39] (citations omitted, italics supplied, emphasis ours)

Reyes invokes both the due process component rights at the hearing and deliberative stages and alleges that these component rights have all been violated. These allegations are discussed below.

a. The right to be heard.

In her petition, Reyes argues that the COMELEC violated her right to due process when it took cognizance of the documents submitted by Tan that were not testified to and which were offered and admitted in evidence without giving her the opportunity to question the authenticity of these documents and to present controverting evidence.

Based on the pleadings filed in the present case, no factual and legal basis is evident for Reyes to complain of the denial of her hearing stage rights.

In the first place, she does not dispute that she fully participated in the proceedings of the cancellation of her CoC until the case was deemed submitted for resolution; she had representation during the proceedings before the COMELEC First Division where she duly presented her evidence and summed up her case through a memorandum.

In addition, she even filed a motion for reconsideration from the COMELEC First Division resolution dated March 27, 2013 cancelling her CoC. Under these circumstances, the COMELEC had more than satisfied the opportunity to be heard that the Ang Tibay hearing stage rights require. Reyes had her day in court from the perspective of her hearing rights, and she cannot now complain of any denial of this right.

b. Violation of Reyes’
deliberation stage rights.

The violation of Reyes’ deliberation stage rights, however, is a different matter altogether and one that this Court cannot close its eyes to, most especially after this violation was made glaring in the rulings below.

To recall, the COMELEC First Division, in this case, found - based on Tan’s submitted evidence (Eli J. Obligacion’s blog article and the Sanchez certification) - that Reyes was a holder of a U.S. passport, which she continued to use until June 30, 2012. The COMELEC also found that she also failed to establish that she had applied for repatriation under RA 9225 by taking the required Oath of Allegiance and by executing an Affidavit of Renunciation of her American Citizenship. Based on these findings, the COMELEC First Division ruled that Reyes remains an American citizen who is ineligible to run and hold any elective office. This conclusion and the use of the hearsay evidence occasioned a strong dissent from no less than COMELEC Chairman Sixto S. Brillantes, Jr.

As likewise emphasized in my previous Dissenting Opinion, the COMELEC seemed to have recklessly thrown away the rules of evidence in concluding – to the point of grave abuse of discretion – that Reyes misrepresented that she is a natural born Filipino citizen and that she had abandoned and lost her domicile of origin when she became a naturalized American citizen. To quote and reiterate what I said:

First, Tan submitted an article published online (blog article) written by one Eli J. Obligacion (Obligacion) entitled “Seeking and Finding the Truth About Regina O. Reyes.” This printed blog article stated that the author had obtained records from the BID stating that Reyes is an American citizen; that she is a holder of a US passport and that she has been using the same since 2005.

How the law on evidence would characterize Obligacion's blog article or, for that matter, any similar newspaper article, is not hard for a law student answering the Bar exam to tackle: the article is double hearsay or hearsay evidence that is twice removed from being admissible as it was offered to prove its contents (that Reyes is an American citizen) without any other competent and credible evidence to corroborate them. Separately of course from this consideration of admissibility is the question of probative value. On top of these underlying considerations is the direct and frontal question: did the COMELEC gravely abuse its discretion when it relied on this piece of evidence to conclude that Reyes is not a Filipino citizen?

Second, Tan also submitted a photocopy of a certification issued by Simeon L. Sanchez of the BID showing the travel records of Reyes from February 15, 2000 to June 30, 2012 and that she is a holder of US Passport No. 306278853. This certification also indicates in some entries that Reyes is an American while other entries denote that she is Filipino. The same questions of admissibility and probative value of evidence arise, together with the direct query on the characterization of the COMELEC action since the COMELEC concluded on the basis of these pieces of evidence that Reyes is not a Filipino citizen because it is not only incompetent but also lacks probative value as evidence.

Contributory to the possible answer is the ruling of this Court that a “certification” is not a certified copy and is not a document that proves that a party is not a Filipino citizen.^[40] (*italics and emphases supplied*)

For reasons only known to the Commission, the COMELEC egregiously ignored the settled principle in jurisprudence that uncorroborated hearsay does not constitute substantial evidence. In *Rizal Workers Union v. Hon. Calleja*,^[41] the Court, citing *Ang Tibay*, categorically ruled:

The clear message of the law is that even in the disposition of labor cases, due process must never be subordinated to expediency or dispatch. Upon this principle, the unidentified documents relied upon by the respondent Director must be seen and taken for what they are, mere inadmissible hearsay. They cannot, by any stretch of reasoning, be deemed substantial evidence of the election frauds complained of. And as this Court held in *Ang Tibay v. CIR*:

x x x (the) assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.^[42] (*citation omitted, italics supplied, emphases ours*)

At the very least, the COMELEC should have considered whether purported evidence from a person not before the court and whose statement cannot be confirmed for the genuineness, accuracy and truth of the basic fact sought to be established in the case should be taken as the “truth.”

Even without the use of technical rules of evidence, common sense and the minimum sense of fairness, to my mind, dictate that a blog article published online or unidentified documents cannot simply be taken to be evidence of the truth of what they say, nor can photocopies of documents not shown to be genuine can be taken as proof of the “truth” on their faces. By accepting these materials as statements of the “truth,” the COMELEC clearly violated Reyes’ right to both procedural and substantive due process.

c. Tan did not submit the original immigration certification.

In his Comment to Reyes’ motion for reconsideration, Tan apparently tried to give the COMELEC a helping hand in curing the fatal evidentiary deficiency of its case by claiming that the original certification issued by Acting

Chief Simeon Sanchez was submitted to the COMELEC First Division, thus subtly belying the statement of Chairman Brillantes in his dissent that only a photocopy of the certification was before them. Chairman Brillantes pointedly stated:

The travel records submitted by Petitioner are also without bearing. The printed internet article from the blog of a certain Eli Obligacion showing that Respondent used a US Passport on June 30, 2012 is hearsay while the purported copy of the Bureau of Immigration Certification is merely a xerox copy and not even certified to be a true copy of the original, thus similarly inadmissible.[43] (emphasis supplied)

This claim does not appear to have been refuted nor rebutted in the records before us, except in Tan's claim that came out of the blue. The records (specifically, the Certified True Copy from the MACHINE COPY ON FILE WITH THE OFFICE OF THE CLERK OF THE COMMISSION of the Sanchez Certification dated January 22, 2013 – submitted by Reyes),[44] however, plainly show that the copy on file with the COMELEC of the Sanchez certification is a machine copy and not an original copy. The statement that a machine copy is on file with the COMELEC came from no less than the Clerk of the Commission, Ma. Josefina E. dela Cruz. Thus, Chairman Brillantes was correct – what was before the COMELEC, when it ruled on the Tan petition, was a mere machine copy of the Sanchez certification.

c.1. The Sanchez certification – even if admitted – is insufficient.

Even assuming for the sake solely of argument that the Sanchez certification is admissible and has probative value, the certification itself is not sufficient to establish that Reyes was a naturalized U.S. citizen.

In *Frivaldo v. Commission on Elections*,[45] the Court ruled that Juan Frivaldo was a naturalized U.S. citizen on the basis of a certification from a United States District Court that he was a naturalized U.S. citizen and was thus disqualified from serving as Governor of the Province of Sorsogon. In *Frivaldo*, the evidence clearly showed that Frivaldo was naturalized as a citizen of the United States in 1983 per the certification of the United States District Court, Northern District of California, as duly authenticated by Vice Consul Amado P. Cortez of the Philippine Consulate General in San Francisco, U.S.A.

In a similar case – *Labo, Jr. v. Commission on Elections*[46] – the Court also found Ramon Labo to be a naturalized Australian citizen on the basis of a certification from the Australian Government that he was indeed a naturalized Australian citizen and was thus disqualified from serving as Mayor of Baguio City. The Labo records showed that he had been married to an Australian citizen and was naturalized as an Australian citizen in 1976, pursuant to a certification from the Australian Government through its Consul in the Philippines which certification was later affirmed by the Department of Foreign Affairs.

In Reyes' case, the COMELEC's conclusion (based on the Sanchez certification) that Reyes was a naturalized American citizen was not grounded on the required premises and was thus not supported by substantial evidence. Unlike *Frivaldo* and *Labo*, Tan miserably failed to submit relevant evidence showing that Reyes had been a naturalized American citizen (such as a certification from the U.S. government that Reyes was a naturalized U.S. citizen) who would now require the application of RA 9225 to run for elective office. As emphasized in my previous Dissenting Opinion, Tan's submitted evidence does not adequately prove that Reyes was a naturalized American citizen. To quote my previous Dissent:

To begin with, the evidence submitted by Tan, even assuming that it is admissible, arguably does not prove that Reyes was a naturalized American citizen. At best, the submitted evidence could only show that Reyes was the holder of a US passport indicating that she is American, nothing more. In *Aznar v. Comelec*, the Court ruled that the mere fact that respondent Osmeña was a holder of a certificate stating that he is an American did

not mean that he is no longer a Filipino, and that an application for an alien certificate of registration did not amount to a renunciation of his Philippine citizenship. In the present case, the fact that Reyes is a holder of a US passport does not portend that she is no longer a natural born Filipino citizen or that she had renounced her Philippine citizenship. In addition, how the Comelec arrived at a conclusion that Reyes is naturalized American citizen can be seen as baffling as it did not appear to have provided any factual basis for this conclusion.[47]

d. Reyes' alleged admission of
American citizenship – discussed.

Tan interestingly argues that Reyes herself admitted before the COMELEC en banc (in her motion for reconsideration of the March 27, 2013 COMELEC First Division ruling cancelling her CoC) that she is an American citizen. Supposedly, this admission constitutes sufficient basis for the COMELEC en banc to cancel her CoC.

I must reject this argument for several reasons.

First, the COMELEC, both division and en banc, did not find the supposed admission material in resolving Reyes' motion for reconsideration. The COMELEC en banc itself, in its May 14, 2013 resolution, merely considered Reyes' motion for reconsideration[48] – the source of the supposed admission - “a mere rehash and a recycling of claims.”[49] Thus, the alleged admission is not an issue at all in the present petition. Based on the COMELEC rulings, what stands out before the Court is the utter lack of basis supporting the COMELEC's cancellation of Reyes' CoC.

Second, from the perspective of the present petition for certiorari, Tan apparently overlooks the legal issues presented before the Court as these issues determine the scope of the Court's certiorari jurisdiction. The core issues before the Court are: (i) whether the COMELEC committed grave abuse of discretion in cancelling Reyes' CoC; and (ii) whether the subsequent proclamation of Reyes (before the COMELEC en banc's May 14, 2013 resolution, cancelling her CoC, became final) divested the COMELEC of jurisdiction to rule on her qualifications and transferred the matter to the HRET.

In this light, the alleged admission is not an issue that can be submitted and appreciated by this Court in the present proceedings. If the Court appreciates at all the evidence that the COMELEC cited, appreciated and evaluated, it is for the purpose of determining if the appreciation and evaluation are so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error.[50] Note that – as pointed out above – the COMELEC never even considered the alleged admission in its rulings. Thus, there is no basis for this Court to consider or appreciate this admission in the present proceedings.

Third, an admission of dual citizenship, without more, is not a sufficient basis for a CoC cancellation, as this Court has already held in its settled rulings.

While Reyes might have admitted in her motion for reconsideration before the COMELEC that she had been married to an American citizen, the admission did not mean that she had already lost her Philippine citizenship in the absence of any showing that, by her act or omission, she is deemed under the law to have renounced it. Section 4, Article 4 of the Constitution is very clear on this point – “Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it.”

As applied to Reyes, her possession and use of a U.S. passport, by themselves, did not signify that she is no longer

a natural born Filipino citizen or that she had renounced her Philippine citizenship.

The latest related jurisprudence on this matter is *Cordora v. Commission on Elections*,^[51] where the Court held that the twin requirements of RA 9225 do not apply to a candidate who is a natural born Filipino citizen who did not become a naturalized citizen of another country, thus:

We have to consider the present case in consonance with our rulings in *Mercado v. Manzano*, *Valles v. COMELEC*, and *AASJS v. Datumanong*. *Mercado* and *Valles* involve similar operative facts as the present case. *Manzano* and *Valles*, like *Tambunting*, possessed dual citizenship by the circumstances of their birth. *Manzano* was born to Filipino parents in the United States which follows the doctrine of *jus soli*. *Valles* was born to an Australian mother and a Filipino father in Australia. Our rulings in *Manzano* and *Valles* stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process. *AASJS* states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain his Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.

R.A. No. 9225, or the Citizenship Retention and Reacquisition Act of 2003, was enacted years after the promulgation of *Manzano* and *Valles*. The oath found in Section 3 of R.A. No. 9225 reads as follows:

I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.

In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship per se, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent rulings in *Jacot v. Dal* and *COMELEC, Velasco v. COMELEC*, and *Japzon v. COMELEC*, all of which involve natural-born Filipinos who later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. In the present case, *Tambunting*, a natural-born Filipino, did not subsequently become a naturalized citizen of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.^[52]

e. Conclusion and consequences of the COMELEC's violation of Reyes' due process rights.

Based on these considerations, I submit that the violation of Reyes' right to due process raises a serious jurisdictional issue that cannot be glossed over or disregarded at will, and cannot be saved by the claim that she had been accorded her hearing rights. The latter relates purely to the actual hearing process and is rendered

meaningless where there is failure at the more substantive deliberation stage.

Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right should be declared void for lack of jurisdiction. The rule is equally true for quasi-judicial bodies (such as the COMELEC), for the constitutional guarantee that no man shall be deprived of life, liberty or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where the violation occurs.[53] Consequently, the assailed March 27, 2013 and May 14, 2013 COMELEC resolutions cancelling Reyes' CoC should be declared void for having been rendered in violation of her right to due process.

As a relevant side observation, the nullity of the cancellation proceedings before the COMELEC fully validates the PBOC's action in proclaiming Reyes as the winner in the congressional elections. The proclamation of Reyes, of course, is not a material issue in the present case as I discuss at length below. I will dwell on it nevertheless in order to clear the air, to place matters in their proper perspective, and if only to clarify and rectify what has been erroneously and recklessly claimed by the ponencia, particularly on the effect of a proclamation on the jurisdictional boundary separating the COMELEC and the HRET.

C. Proclamation is not a disputed and submitted issue.

a. The present petition is for the nullification of the COMELEC CoC proceedings and rulings.

A very critical point to appreciate in considering the present petition for certiorari is that it was filed by Reyes who is pointedly questioning the cancellation of her CoC. She never asked this Court in her petition to act on her proclamation.

The party who has the interest and the personality to seek the annulment of Reyes' proclamation is the losing candidate – former Cong. Velasco – who is not even a party to the present petition and who never raised the issue of the validity of Reyes' proclamation before this Court.

Thus, the fact of proclamation is an undisputed matter before this Court and cannot be attacked directly or collaterally until after the issue of Reyes' qualifications (which would necessarily include the merits of the validity or invalidity of her CoC) is resolved before the proper tribunal. The entity, too, that can annul or set aside the proclamation – at this stage of the case – should be the HRET, not this Court. Any other manner or forum for the resolution of the Marinduque election dispute would result in a clash of jurisdiction that the law and the decided cases have sought to avoid.

In this light, I note with concern the majority's attempt in the Court's June 25, 2013 Resolution to indirectly question the validity of Reyes' proclamation by holding that:

More importantly, we cannot disregard a fact basic in this controversy- that before the proclamation of petitioner on 18 May 2013, the COMELEC En Banc already finally disposed of the issue of petitioner's lack of Filipino citizenship and residency via its Resolution dated 14 May 2013. After 14 May 2013, there was, before the COMELEC, no longer any pending cases on petitioner's qualifications to run for the position of Member of the House of Representative. We will inexcusably disregard this fact if we accept the argument of the petitioner that the COMELEC was ousted of jurisdiction when she was proclaimed, which was four days after the COMELEC En Banc decision. The Board of Canvassers which proclaimed petitioner cannot by such act be allowed to render nugatory a decision of the COMELEC En Banc which affirmed a decision of the COMELEC First Division. [emphasis ours][54]

In the present ponencia that this Dissent disputes, the attack on the proclamation again surfaces, this time, directly and unabashedly. To quote the present ponencia:

The averred proclamation is the critical pointer to the correctness of petitioner's submission. The crucial question is whether or not the petitioner could be proclaimed on 18 May 2013. Differently stated, was there basis for the proclamation of petitioner on 18 May 2013?

Dates and events indicate that there was no basis for the proclamation of petition on May 18, 2013. Without the proclamation, the petitioner's oath of office is likewise baseless, and without a precedent oath of office, there can be no valid and effective assumption of office.[55]

I submit that the Court cannot rule on the issue of the validity or invalidity of Reyes' proclamation as this is NOT an issue raised in the present petition before this Court, nor an issue in the COMELEC proceedings that is now under review. Proclamation is a separate COMELEC action that came after and separately from the CoC cancellation ruling.

As a cautionary note, any ruling by the Court on the validity or invalidity of Reyes' proclamation is beyond the Court's jurisdiction at the present time since the Court does not have original jurisdiction over annulment of proclamations and no petition is before this Court seeking to impugn or sustain Reyes' proclamation. By law, it is the COMELEC that has the original and exclusive jurisdiction over pre-proclamation controversies, including the annulment of proclamations[56] for positions other than the President, the Vice President, and the Members of the two Houses of Congress which all have their specific constitutional rules on the resolution of their elections, returns and qualifications.[57]

As matters now stand, from the perspective of the petition for certiorari now before this Court, the proclamation is simply an event (albeit, an important one) that transpired in the course of the election process and in Reyes' assumption to office as Member of the House of Representatives. If it can be an issue at all, the issue is whether it did or did not transpire; its legal standing or legality is not in issue and cannot be questioned before this Court simply because no such issue is before us.

Once proclamation is established as a fact, the COMELEC's jurisdiction ends and the HRET's jurisdiction begins. As Mr. Justice Antonio T. Carpio very ably argued in his own Dissenting Opinion, any legal issue on the validity or invalidity of the proclamation then passes on to the HRET; to hold otherwise would lead to conflicts of jurisdiction that the law could not have intended.

To reiterate what I have stated above, the party who may have the standing to raise this issue is not before us. In her motion for reconsideration, Reyes – the party who presented the petition before this Court – pointedly stated that she never raised the issue of her proclamation before this Court.

Tan, in his Comment (i.e., the first time he was ever heard by this Court), mentioned "proclamation" but only to assert that Reyes had not complied with the requirements of the June 25, 2013 Resolution of this Court to become a Member of the House of Representatives – a legal issue extraneous to the CoC cancellation that he initiated. Tan's claim that the May 14, 2013 COMELEC en banc ruling became final on May 19, 2013, on the other hand, clearly forgets that the proclamation took place a day before, or on May 18, 2013.

In sum, it is only the ponencia that raises, argues about, and seeks to impugn the validity of Reyes' proclamation. This, by itself, is another unusual feature of this case – self-raised arguments from the Court on an issue that had not been raised in the petition or in any significant manner, in the Comment.

b. Mere mention of the word "proclamation" in the petition is not sufficient basis to argue

that the validity of such proclamation has already been raised before this Court.

In its bid to make an issue of the validity of Reyes' proclamation, the ponencia now argues that it was Reyes herself who raised the matter of her proclamation in her petition.

This is a very misleading and careless claim if indeed the ponencia would insist on this position. As has been repeatedly mentioned, Reyes' petition addresses the COMELEC's cancellation of her CoC, not her proclamation which she does not complain about and which she has not brought before this Court as an issue. This is the context in which any mention of the word "proclamation" should be read and understood, and such mention should not be unduly stretched to bring before this Court an issue that is not before it.

For the Court's ready and easy understanding of the context of Reyes' mention of the word "proclamation," her argument in her petition runs this way:

- the COMELEC's cancellation of her CoC should be nullified as it was attended by grave abuse of discretion amounting to lack or excess of jurisdiction; and
- in any case, with the fact of proclamation by the PBOC, the COMELEC has now lost jurisdiction over the cancellation proceedings as jurisdiction now rests with the HRET.[58]

Understood in this manner, Reyes' main cause of action is the nullity of the COMELEC's action on her CoC – the COMELEC ruling she wants the Court to nullify. This cause of action has nothing to do with her proclamation – a separate COMELEC action (through its PBOC) that came after the COMELEC en banc's ruling. The mention of proclamation in Reyes' petition, examined closely, was an assertion of fact leading to a legal conclusion that was apparently made to support her position that the assailed COMELEC CoC cancellation never lapsed to finality and did not become executory. It was nothing more and nothing less than this, yet this merited the June 25, 2013 Resolution's own conclusion that to be a member of the House of Representatives, there must be a proclamation, an assumption to office and an oath taken before the Speaker of the House while the House is assembled in session.

All these, of course, do not affect the main question raised before this Court – whether the COMELEC gravely abused its discretion in ruling on the cancellation of Reyes' CoC. If indeed it did, then there is no valid and standing COMELEC en banc ruling that would prevent the proclamation of Reyes as the duly-elected congresswoman of the lone district of Marinduque. If the COMELEC did not commit any grave abuse of discretion, then the Court should so rule. What happens then to the proclamation – a legal question that is not before this Court – is a matter that should be taken up before the proper tribunal. Viewed in this manner, everything goes back to the allegation of grave abuse of discretion that Reyes brought before this Court.

c. Upon proclamation, the HRET alone has jurisdiction over Reyes' qualifications, including the validity of her proclamation.

With the fact of Reyes' proclamation established or undisputed, the HRET alone – to the exclusion of any other tribunal – has jurisdiction over Reyes' qualifications, including the matter of the validity or invalidity of her proclamation.

Prevailing jurisprudence dictates that upon proclamation of the winning candidate and despite the allegation of the invalidity of the proclamation, the HRET acquires jurisdiction to hear the election contest involving the election,

returns and qualifications of a member of the House of Representatives.

As early as 1988, in *Lazatin v. The Commission on Elections*,^[59] the Court held that upon proclamation, oath and assumption to office of the winning candidate as Member of the House of Representatives, any question relating to the invalidity of the winning candidate's proclamation should be addressed to the sound judgment of the HRET.

In this cited case, Carmelo Lazatin assailed the jurisdiction of the COMELEC to annul his proclamation after he had taken his oath and assumed his office as Congressman of the First District of Pampanga. In reversing the COMELEC's annulment of Lazatin's proclamation, the Court held:

The petition is impressed with merit because petitioner has been proclaimed winner of the Congressional elections in the first district of Pampanga, has taken his oath of office as such, and assumed his duties as Congressman. For this Court to take cognizance of the electoral protest against him would be to usurp the functions of the House Electoral Tribunal. The alleged invalidity of the proclamation (which had 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.^[60]

Guerrero v. Commission on Elections^[61] explained the rationale behind the ruling in *Lazatin*, as follows:

But as we already held, in an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as Congressman is raised, that issue is best addressed to the HRET. The reason for this ruling is self-evident, for it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate.^[62]

The Court reiterated the ruling in the subsequent cases of *Aggabao v. Commission on Elections*^[63] and *Vinzons-Chato v. Commission on Elections*.^[64] The latest jurisprudence on the matter is *Limkaichong v. Commission on Election*.^[65] In *Limkaichong*, the petitioners therein argued that the irregularity that tainted Jocelyn Sy Limkaichong's proclamation should prevent the HRET from acquiring jurisdiction. In ruling against the petitioners, the Court held:

The fact that the proclamation of the winning candidate, as in this case, was alleged to have been tainted with irregularity does not divest the HRET of its jurisdiction. The Court has shed light on this in the case of *Vinzons-Chato*, to the effect that:

x x x. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction:

x x x x

In fine, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.^[66]

In the case now before us, Tan argues in his Comment on Reyes' Motion for Reconsideration that Reyes' proclamation on May 18, 2013 was null and void, citing the July 9, 2013 COMELEC en banc resolution annulling Reyes' proclamation. He emphasizes that the finality of the May 14, 2013 resolution on May 19, 2013 automatically voided Reyes' May 18, 2013 proclamation, rendering it a ministerial duty for the COMELEC to annul Reyes' proclamation and proclaim Velasco as the sole eligible candidate and winner for the position of Representative of Marinduque.

In his Concurring Opinion, Justice Abad argues that Reyes' case, which the COMELEC has already decided with finality, can no longer be taken over by the HRET even if Reyes had already assumed office, if such decision has been elevated to the Supreme Court on certiorari. He argues that the HRET cannot oust the Supreme Court of its jurisdiction under the Constitution.

These allegations fall within the type of situation that the above-cited cases cover so that the COMELEC (and even this Court) is now barred from ruling on the validity of Reyes' proclamation. The issue should now be left to the sound discretion of the HRET. Even this Court is covered by this ruling as the grant of jurisdiction to the HRET is exclusive; the Court's turn will come in a duly filed petition for certiorari under Rule 65 of the Rules of Court.

c.1. Codilla is not applicable and cannot be used to support the view that the COMELEC, not the HRET, has jurisdiction over the validity of Reyes' proclamation.

In his Comment, Tan cited the case of *Codilla, Sr. v. Hon. de Venecia*[67] to support his argument that it is the COMELEC, not the HRET, that has jurisdiction over the present case.

Eufrocino Codilla, Sr. and Ma. Victoria Locsin were candidates for the position of Representative of the 4th Legislative District of Leyte during the May 14, 2001 elections. Codilla garnered the highest number of votes (71,350 versus Locsin's 53,447 votes) but his proclamation was suspended because he was facing charges of indirect solicitation of votes. Codilla filed a motion to lift the suspension order. The COMELEC Second Division, without resolving Codilla's pending motion, issued a resolution declaring his disqualification and directing the immediate proclamation of Locsin. Despite Codilla's timely Motion for Reconsideration where he squarely raised the invalidity of Locsin's proclamation, the votes cast for Codilla were declared stray and Locsin was proclaimed winner.

Codilla duly filed with the COMELEC en banc a petition to annul Locsin's proclamation. The COMELEC en banc granted Codilla's petition and declared Locsin's proclamation as null and void. Locsin did not appeal from this decision and Codilla was proclaimed the duly-elected Representative of the 4th District of Leyte. In the meantime, Locsin took her oath of office on June 18, 2001 and assumed office on June 30, 2001.

In the petition for mandamus and quo warranto Codilla filed with this Court to question Locsin's proclamation, the latter argued in defense that the COMELEC en banc had no jurisdiction to annul her proclamation. She maintained that the COMELEC en banc had been divested of jurisdiction to review the validity of her proclamation because she had become a member of the House of Representatives and the proper forum to question her membership was the HRET.

The Court disregarded Locsin's arguments and held that the HRET could not assume jurisdiction as Locsin's proclamation was invalid.

Even a cursory reading of Codilla would reveal that its factual antecedents and legal issues are far different from those of the present case; thus, Codilla cannot be used as basis to hold that the COMELEC, not the HRET, has jurisdiction over the issue of the validity of Reyes' proclamation.

First, the Codilla ruling was made in a petition brought before this Court to question Locsin's proclamation.

The Court found that Locsin's proclamation was patently invalid because: (1) Codilla's right to due process was denied during the entire proceedings leading to the proclamation of Locsin; (2) the order of disqualification was

not yet final, hence the votes cast in favor of Codilla could not be considered stray; and (3) Locsin, as a mere second placer, could not be proclaimed. Specifically, the Court in Codilla characterized the hurried and premature proclamation of Locsin who obtained the second highest number of votes as “brazen” because the petition to disqualify the winning candidate had not yet been determined with finality.

Unlike Codilla and as I have repeatedly harped on, the present Reyes petition relates to the COMELEC’s cancellation of her CoC and is not about her proclamation. In fact, her proclamation was never an issue before the COMELEC. Specifically, proclamation was not an issue in the Motion for Reconsideration Reyes filed on April 8, 2013 and which the COMELEC First Division ruled upon on March 27, 2013. It was this First Division ruling that the COMELEC en banc ruled upon on May 14, 2013. These facts alone show that Reyes’ proclamation was a separate COMELEC action that came after and separately from the CoC cancellation ruling.

Second, as will be discussed at length below, the records before the Court do not support the patent invalidity of Reyes’ proclamation. Without a final and executory ruling cancelling Reyes’ CoC, and in the absence of any order from the COMELEC to suspend Reyes’ proclamation, the PBOC acted well within its authority to proclaim Reyes who garnered the highest number of votes, unlike Locsin who was a mere second placer.

Third, the core issue in Codilla was whether the candidate who garnered the second highest number of votes could be validly proclaimed as the winner in the election contest in the event that the winner is disqualified. The Court took note in this case of the settled jurisprudence that a candidate who obtained the second highest number of votes is not entitled to assume the position in case the winner is disqualified.

In the present case, the core issues before the Court are: (i) whether the COMELEC committed grave abuse of discretion in cancelling Reyes’ CoC; and (ii) as an obiter side issue, whether the subsequent proclamation of Reyes divested the COMELEC of jurisdiction to rule on her qualifications. Thus, the facts and issue raised are far different from Codilla. If this cited case is applicable at all, it is under the ruling that the Court has jurisdiction because grave abuse of discretion on the part of the COMELEC is involved.

Fourth, from the perspective of this Court, the jurisprudential rule that Codilla establishes is that the jurisdiction of this Court prevails when there is grave abuse of discretion rendering a ruling void. Thus, the Court assumed jurisdiction despite the previous proclamation of Locsin as the proclamation was void. Parenthetically, in Codilla, what was brought squarely before the Court was a petition questioning the proclamation of Locsin itself.

d. Nothing in the records support the view that Reyes’ proclamation is invalid, even assuming that this issue is presently before this Court.

Assuming arguendo that the Court can rule on the validity of Reyes’ proclamation, the records before this Court suggest that the PBOC correctly proclaimed Reyes.

The antecedents outlined above show that it was only on March 27, 2013 that the COMELEC First Division ruled on Tan’s cancellation petition. It was also only May 14, 2013 that the COMELEC en banc denied Reyes’ motion for reconsideration. By the COMELEC’s own Rules, this en banc ruling does not become final and executory until after five (5) days from its promulgation.^[68] Thus, it was only on May 19, 2013 that the en banc ruling should have lapsed to finality, but before then, on May 18, 2013, the PBOC had proclaimed Reyes.

In this regard, I find Justice Abad’s position that the May 14, 2013 COMELEC en banc Resolution became final and executory on May 27, 2013 to be without factual and legal basis. As stated elsewhere in this Opinion, the assailed resolution could not have attained finality because Reyes’ proclamation on May 18, 2013 divested the

COMELEC of jurisdiction over matters pending before it with respect to Reyes' eligibility.

First, I note that Justice Abad failed to cite any legal basis for his proposition that the May 14, 2013 COMELEC en banc resolution became final and executory on May 27, 2013 after Reyes failed to file a petition within ten (10) days from receipt of the COMELEC's May 14, 2013 resolution. On the contrary, Section 3, Rule 37 of the COMELEC Rules of Procedure expressly states that "decisions in x x x petitions to deny due course to or cancel certificates of candidacy, x x x shall become final and executory after the lapse of five (5) days from their promulgation unless restrained by the Supreme Court." Thus, in the present case, Reyes' proclamation on May 18, 2013 came one (1) day ahead of the May 19, 2013 deadline for the finality of the May 14, 2013 resolution, pursuant to the afore-cited rule.

Second, even if we reckon the date of finality of the May 14, 2013 COMELEC en banc resolution from the date of receipt (May 16, 2013) of the said resolution, Reyes' proclamation would still be three (3) days ahead of the deadline for finality. COMELEC Resolution No. 9648 dated February 22, 2013 provides that the ruling of the Commission En Banc shall become final and executory if no restraining order is issued by the Supreme Court within five (5) days from receipt of the decision or resolution. Applied in this case, Reyes' proclamation on May 18, 2013 came three (3) days ahead of the May 21, 2013 deadline for the finality of the May 14, 2013 COMELEC en banc resolution, pursuant to Section 28(1) of COMELEC Resolution No. 9648.

Significantly, the PBOC was legally in the position to make a proclamation as the canvass had been completed, with Reyes as the winner; at that point, the PBOC had no official notice of any final and executory COMELEC en banc ruling.

COMELEC Resolution No. 9648 which the ponencia conveniently ignores clearly provides that the Board is authorized to proclaim a candidate who obtained the highest number of votes except in case the CoC of the candidate who obtains the highest number of votes has been cancelled or denied due course by a final and executory decision or resolution. In such cases, the Board is authorized to proceed to proclaim the candidate who obtained the second highest number of votes, provided the latter's CoC has not likewise been cancelled by a final and executory decision or resolution.[69]

Thus, without a final and executory ruling cancelling Reyes' CoC, and in the absence of any order from the COMELEC to suspend Reyes' proclamation, the PBOC acted well within its authority to proclaim Reyes as the winner in the Marinduque congressional elections.

d.1 The Allegations of Bad Faith

In its arguments, the ponencia harps on the COMELEC ruling of May 14, 2013 and claims that "What the petitioner did was to 'take the law into her hands' and secure a proclamation in complete disregard of the COMELEC en banc decision that was final on May 14, 2013 and final and executory five days thereafter." [70] The ponencia thereafter proceeds to pointedly allege "bad faith" and claims that "[s]he cannot sit as Member of the House of Representatives by virtue of a baseless proclamation knowingly taken, with knowledge of the existing legal impediment." [71]

These arguments forget the existing legal realities pointed out above. It forgets, too, that it cannot single out and isolate a set of circumstances in a given case and, based on these, impute bad faith against a party to the case in the absence of a clear showing of such bad faith based on the totality of all the attendant circumstances.

Elementary fairness demands that if bad faith would be imputed, the ponencia should have viewed the Marinduque election dispute in its entirety, starting from the fact that Reyes handily won over her opponent and that the only claim to negate this victory is the cancellation of her CoC through extremely questionable

proceedings before the COMELEC. Notably, in these proceedings, no less than COMELEC Chairman Brillantes spoke out to comment on the grave abuse of discretion that transpired. If only the ponencia had been mindful of this reality and the further reality that the democratic choice of a whole province should be respected, then perhaps it would not have carelessly imputed bad faith on Reyes.

Everything considered, Reyes was well within her rights to move for her proclamation as the winning candidate who garnered the highest number of votes. Stated in the context of the ponencia, it cannot attribute bad faith to Reyes since she was merely exercising her legal right as the winning candidate, following the legal truism that the proper exercise of a lawful right cannot constitute a legal wrong for which an action will lie, although the act may result in damage to another, for no legal right has been invaded.[72]

e. The COMELEC en banc's cancellation of Reyes' CoC on May 14, 2013 did not render her proclamation void.

The ponencia's position that the COMELEC en banc already cancelled with finality Reyes' CoC on May 14, 2013 prior to her proclamation on May 18, 2013 is simply incorrect.

The COMELEC en banc's May 14, 2013 Resolution (cancelling Reyes' CoC) could not have attained finality as Reyes' valid proclamation on May 18, 2013 had the effect of divesting the COMELEC of jurisdiction over matters pending before it relating to Reyes' eligibility.

Two material records are critical in considering this point.

The first is the proclamation on May 18, 2013 which came one (1) day ahead of the May 19, 2013 deadline for the finality of the May 14, 2013 resolution, pursuant to Section 3, Rule 37 of the COMELEC Rules of Procedure. Under this COMELEC Rule, "decisions in x x x petitions to deny due course to or cancel certificates of candidacy, x x x shall become final and executory after the lapse of five (5) days from their promulgation unless restrained by the Supreme Court." [73]

As has been mentioned earlier, this proclamation was based on the results of the voting on the May 13, 2013 elections and the PBOC canvass that Reyes secured 52,209 votes, as against former Cong. Velasco's 48,396 votes. This election result is the silent argument in this case that can hardly be contested, or, if at all, must be addressed before the proper tribunal. Before this proper tribunal rules, the Marinduque electorate – who had voted for Reyes on May 13, 2013 despite the COMELEC First Division ruling cancelling her CoC – should not be disenfranchised, particularly not by this Court through its flawed June 25, 2013 ruling.

The second material record is the COMELEC Order of June 5, 2013 which declared its resolution of May 14, 2013 final and executory. When the COMELEC made this declaration, Reyes had long been proclaimed by the PBOC as the candidate who had garnered the highest number of votes. This material record further strengthens the conclusion that no legal impediment existed for the PBOC on May 18, 2013 when it proclaimed Reyes.

Given this conclusion, an interesting question that still arises is: has Reyes now fully and successfully blocked the objections to her candidacy?

The short answer is NO, far from it, as already impliedly suggested above. If former Cong. Velasco and the quo warranto petitioner before the HRET are determined to pursue their petitions, then they are free to do so without any hindrance from this Court; what simply transpires is the transfer of the forum of their disputes from the COMELEC to the HRET.

Hard though this conclusion may seem for the HRET petitioners, it is the command of no less than the

Constitution and, as such, must be strictly obeyed. The upside, of course, of this observation is that they are not denied their legal remedies; these are simply relocated to another forum out of respect for their separation of powers and independence that the Constitution ordains.

D. Reyes' proclamation divested the COMELEC of jurisdiction over her qualifications in favor of the HRET.

a. The latest applicable jurisprudential rulings.

I reiterate my previous Dissenting Opinion position that the proclamation of the winning candidate is the operative fact that triggers the jurisdiction of the HRET over election contests relating to the winning candidate's election, returns, and qualifications.

In other words, the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation; the party questioning the election, returns and the qualifications of the winning candidate should now present his or her case in a proper proceeding (i.e., an election protest or a quo warranto petition) before the HRET that, by constitutional mandate, has the sole jurisdiction to hear and decide cases involving the election, returns and qualifications of members of the House of Representatives.

I take firm exception to the majority's conclusion that the COMELEC retains jurisdiction over disputes relating to the election, returns and qualifications of the representative who has been proclaimed but who has not yet assumed office. This ruling is contrary to the Court's prevailing jurisprudence on the matter.

Prevailing jurisprudence dictates that the proclamation alone of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representatives in favor of the HRET, although some of these decided cases mention that the COMELEC's jurisdiction ends and the HRET's own jurisdiction begins once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives.

The latest relevant ruling on COMELEC/HRET jurisdictional boundary came via *Jalosjos, Jr. v. Commission on Elections*[74] where the Court, through Mr. Justice Roberto Abad no less, categorically ruled that "[t]he Court has already settled the question of when the jurisdiction of the COMELEC ends and when that of the HRET begins." [75] In *Jalosjos*, the Court held that the proclamation of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representative in favor of the HRET. I note, at this point, that by arguing in his Concurring Opinion that the COMELEC's jurisdiction ends and the HRET begins only upon the assumption to the office on June 30 by the winning candidate, Justice Abad conveniently eschews the prevailing jurisprudence of the Court on the matter and makes an extraordinary volte face from his categorical declaration in *Jalosjos, Jr.*

In that case, the Court ruled that the COMELEC acted without jurisdiction when it issued its June 3, 2010 order granting the motion for reconsideration and declaring *Jalosjos* ineligible after he had already been proclaimed the winner for the position of Representative of the Second District of Zamboanga Sibugay. Significantly, at the time the COMELEC issued the order, *Jalosjos* had yet to take his oath of office and assume the duties of his office, viz.:

Here, when the COMELEC En Banc issued its order dated June 3, 2010, *Jalosjos* had already been proclaimed on May 13, 2010 as winner in the election. Thus, the COMELEC acted without jurisdiction when it still passed upon the issue of his qualification and declared him ineligible for the office of Representative of the Second

District of Zamboanga Sibugay.

x x x x

Here, however, the fact is that on election day of 2010 the COMELEC En Banc had as yet to resolve Erasmo's appeal from the Second Division's dismissal of the disqualification case against Jalosjos. Thus, there then existed no final judgment deleting Jalosjos' name from the list of candidates for the congressional seat he sought. The last standing official action in his case before election day was the ruling of the COMELEC's Second Division that allowed his name to stay on that list. Meantime, the COMELEC En Banc did not issue any order suspending his proclamation pending its final resolution of his case. With the fact of his proclamation and assumption of office, any issue regarding his qualification for the same, like his alleged lack of the required residence, was solely for the HRET to consider and decide.

Consequently, the Court holds in G.R. 192474 that the COMELEC En Banc exceeded its jurisdiction in declaring Jalosjos ineligible for the position of representative for the Second District of Zamboanga Sibugay, which he won in the elections, since it had ceased to have jurisdiction over his case. Necessarily, Erasmo's petitions (G.R. 192704 and G.R. 193566) questioning the validity of the registration of Jalosjos as a voter and the COMELEC's failure to annul his proclamation also fail. The Court cannot usurp the power vested by the Constitution solely on the HRET.[76] (citations omitted, emphases ours, italics supplied)

Similarly, in the earlier *Perez v. Commission on Elections*,^[77] the Court ruled that the COMELEC did not have jurisdiction to rule on a motion for reconsideration dated May 22, 1998 and could not have passed upon the eligibility of Marcita Mamba Perez who was already a Member of the House of Representatives. In this case, the Court considered Perez a Member of the House of Representatives on the sole basis of her proclamation. The Court also held that upon filing of the petition on June 16, 1998, the Court no longer had jurisdiction over the same:

As already stated, the petition for disqualification against private respondent was decided by the First Division of the COMELEC on May 10, 1998. The following day, May 11, 1998, the elections were held. Notwithstanding the fact that private respondent had already been proclaimed on May 16, 1998 and had taken his oath of office on May 17, 1998, petitioner still filed a motion for reconsideration on May 22, 1998, which the COMELEC en banc denied on June 11, 1998. Clearly, this could not be done. Sec. 6 of R.A. No. 6646 authorizes the continuation of proceedings for disqualification even after the elections if the respondent has not been proclaimed. The COMELEC en banc had no jurisdiction to entertain the motion because the proclamation of private respondent barred further consideration of petitioner's action. In the same vein, considering that at the time of the filing of this petition on June 16, 1998, private respondent was already a member of the House of Representatives, this Court has no jurisdiction over the same. Pursuant to Art. VI, §17 of the Constitution, the House of Representatives Electoral Tribunal has the exclusive original jurisdiction over the petition for the declaration of private respondent's ineligibility.[78] (italics supplied; emphases and underscore ours)

In *Planas v. Commission on Elections*,^[79] a 2006 case, the Court held that the general rule is that the proclamation of a congressional candidate divests the COMELEC of jurisdiction in favor of the HRET, viz.:

The general rule is that the proclamation of a congressional candidate divests COMELEC of jurisdiction in favor of the HRET. This rule, however, is not without exception. As held in *Mutuc, et al. v. COMELEC, et al.*,

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

In the case at bar, at the time of the proclamation of Defensor who garnered the highest number of votes, the Division Resolution invalidating his certificate of candidacy was not yet final, hence, he had at that point in

time remained qualified. Therefore, his proclamation was valid or legal.

Following Mutuc then, as at the time of Defensor's proclamation the denial of his CoC due course was not yet final, his proclamation was valid or legal and as he in fact had taken his oath of office and assumed his duties as representative, the COMELEC had been effectively divested of jurisdiction over the case.[80] (citation omitted, italics supplied, emphases and underscores ours)

b. Refutation of the ponencia's
jurisprudential claims.

To support its erroneous conclusion that the COMELEC still retained jurisdiction over the present case, the majority, in the Court's June 25, 2013 Resolution, disingenuously cites the cases of *Vinzons-Chato v. Commission on Elections*,[81] *Limkaichong v. Commission on Elections*[82] and *Gonzalez v. Commission on Elections*,[83] where the Court invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns and qualifications ends, and the HRET own jurisdiction begins.

What the majority conveniently failed to cite in these cases, however, was the Court's definitive qualification that where the candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an election protest with the HRET. In *Vinzons-Chato v. Commission on Elections*,[84] the Court pertinently held:

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

In the present case, it is not disputed that respondent Unico has already been proclaimed and taken his oath of office as a Member of the House of Representatives (Thirteenth Congress); hence, the COMELEC correctly ruled that it had already lost jurisdiction over petitioner Chato's petition. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction[.] [emphases and underscore ours]

The majority also conveniently failed to note the Court's explicit qualification in *Limkaichong* that the proclamation of a winning candidate divests the COMELEC of jurisdiction over matters pending before it at the time of the proclamation. The Court pointedly stated in this case that -

We do not agree. The Court has invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications. The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members.

x x x x

Accordingly, after the proclamation of the winning candidate in the congressional elections, the remedy of those who may assail one's eligibility/ineligibility/qualification/disqualification is to file before the HRET a petition for an election protest, or a petition for quo warranto, within the period provided by the HRET Rules. In *Pangilinan v. Commission on Elections*, we ruled that where the candidate has already been proclaimed winner in the congressional elections, the remedy of petitioner is to file an electoral protest with the Electoral Tribunal of the House of Representatives.[85] (citations omitted, italics supplied, emphases and underscore ours)

c. Analysis and Observations.

This survey of jurisprudence delineating the jurisdiction of the COMELEC, vis-à-vis the HRET, indubitably shows that the operative fact that clearly divests the COMELEC of its jurisdiction is the proclamation of the winning candidate and not the assumption to the office as the majority erroneously concluded in the Court's June 25, 2013 Resolution. As I previously noted in my previous Dissent, the majority's conclusion on the issue of jurisdiction between the COMELEC and the HRET is a major retrogressive jurisprudential development; is a complete turnaround from the Court's prevailing jurisprudence; and is a ruling that can effectively emasculate the HRET.

As my previous Dissent discussed, under the HRET Rules of Procedure, no election protest or quo warranto petition can successfully be filed if the HRET's jurisdiction would be viewed in the manner the majority posits (i.e., after proclamation, oath and assumption when Congress convenes) as the HRET Rules require that the election protest or quo warranto petition be filed fifteen (15) days after the winning candidate's proclamation.[86]

In this regard, I take exception to Justice Abad's view that the period for the filing of an election protest or a petition for quo warranto is merely a deadline. The HRET Rules clearly state that filing periods are jurisdictional. Rule 19 of the 2011 HRET Rules provides that the period for the filing of the appropriate petition, as prescribed in Rules 16[87] and Rule 17,[88] is jurisdictional and cannot be extended. Significantly, the filing of an election protest or petition for quo warranto beyond the periods provided in Rule 16 and Rule 17 of the HRET Rules is a ground for summary dismissal of the petition.

Thus, using the facts of the present case, if indeed no election protest or quo warranto petition can be filed until after July 22, 2013 (the day that Congress convened), then the HRET would simply dismiss any petition filed after that date for having filed out of time since Reyes was proclaimed on May 18, 2013 or more than 2 months before Congress formally convened. We cannot simply close our eyes to this resulting absurdity proposed by the majority, considering that the presumption is always against absurdity, and it is the duty of the courts to interpret the law in such a way as to avoid absurd results.[89]

Interestingly, even the losing candidate, former Cong. Velasco, and the quo warranto petitioner do not appear to agree with the majority's position as they made sure they filed their petitions within fifteen (15) days from the time Reyes was proclaimed. They filed their petitions on May 31, 2013, or well within 15 days from May 18, 2013.

To reconcile the "apparent" conflicts in jurisprudence, I wish to point out the following observations to the Court:[90]

(1) "The proclamation of a congressional candidate following the election divests the COMELEC of its jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representatives in favor of the HRET." [91] This is the prevailing doctrine that has been consistently espoused by the Court and is, in fact, consistent with the HRET rules; thus, it should be upheld.

(2) “The statement that – ‘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 the candidate’s election, returns, and qualifications ends and the HRET’s own jurisdiction begins’ - must be read in relation to the time the Supreme Court rendered its decision on the case it ruled upon, since at this juncture, the three aforementioned conditions (proclamation, oath and assumption) are already existing as a matter of fact.” [92] In other words, this iteration of the rule only recognizes the simple fact that the three conditions are already existing at the time that the Court decides the case. To my mind, it does not and should not overcome the prevailing rule that the proclamation of the congressional candidate divests the COMELEC of its jurisdiction over the candidate’s election, returns and qualifications in favor of the HRET.

d. Conclusion: Only the HRET can now rule on the pending election disputes; the Court only comes in under Rule 65 if the HRET gravely abuses the exercise of its discretion.

Despite the recourse to this Court and the original jurisdiction we now exercise over the petition, our action on the present petition should understandably be limited. We can only rule on the existence of the grave abuse of discretion we found and on the consequent invalidity of the COMELEC action in the cancellation case before it; we cannot rule on the issue of Reyes’ qualifications (i.e., on the issue of citizenship and residency). We have so held in *Perez v. Commission on Elections*[93] and *Bello v. Commission on Elections*[94] and we have no reason to change tack now. The HRET, as the constitutionally designated tribunal to rule at the first instance, should resolve the issues presented before it, including the task of appreciating the supposed admission of Reyes that she married an American citizen.

III. EPILOGUE

In the Court’s final deliberation on the case, the ponente – as expected – dwelt on the “proclamation” aspect of the case. The ponente essentially maintained that Reyes should not be allowed to evade the “final” COMELEC decision that cancelled her CoC, by having herself illegally proclaimed by the PBOC and subsequently claiming that the COMELEC cancellation ruling never became final because it was overtaken by the proclamation that divested the COMELEC of jurisdiction over the election dispute.

I likewise harped on the “grave abuse of discretion” argument that I have outlined above. I pointed out that the proclamation is not an issue before the Court as the petition is for the nullification of the COMELEC ruling cancelling Reyes’ CoC – an event that stands by itself and that came way before the proclamation. I pointed, too, to the terms of Reyes’ petition that, under the established rules of procedure, define the issues brought by her before the Court: Reyes never questioned her own proclamation, and the losing candidate – former Cong. Velasco – never questioned the proclamation before the Court. Justice Marvic Mario Victor F. Leonen and Justice Carpio raised their own arguments, too. Justice Leonen counseled caution and joined Justice Carpio in pointing out that the venue now to question the proclamation is the HRET.

All these arguments, of course, came to naught and this outcome – while patently objectionable for its own grave abuse of discretion – came after full argument, for and against, and could be charged to the usual vagaries of decision-making in the Court. What came as a surprise, however, was not the argument that hewed to the ponencia’s “proclamation” line, but the novel argument from no less than the Chief Justice.

Out of the blue and without any previous circulated written opinion, the Chief Justice argued that in the COMELEC’s resolution of July 9, 2013, annulling Reyes’ proclamation (a resolution rendered by the COMELEC long after the disputed cancellation of CoC ruling on May 14, 2013, and likewise long after the

proclamation of May 18, 2013 that the ponencia capitalized on), she saw how Reyes acted in bad faith and the Court should not allow this kind of action to pass. She thus declared that she was voting based on this consideration.

To be sure, I tried to point out that the COMELEC July 9, 2013 resolution is not covered by the petition; that the COMELEC's statements in its resolution had never been placed in issue before the parties; that Reyes herself was never heard on this matter; and that bad faith cannot and should not be deduced from the cited incident but from the totality of the attendant circumstances: Reyes won the elections by a wide margin and is now being dispossessed of that victory through the grave abuse of discretion that the COMELEC committed in cancelling her CoC. But all these proved unavailing as the ensuing 5 to 4 vote showed.

It was in this manner – through layer upon layer of grave abuse of discretion – that the democratic choice of the people of the Province of Marinduque was subverted.

[1] Rollo, pp. 308-376.

[2] Id. at 378-408.

[3] Id. at 409-412.

[4] Majority Resolution dated June 25, 2013, p. 7.

[5] Id. at 11, quoting the ruling of the COMELEC First Division.

[6] Id. at 11, quoting *Sahali v. Commission on Elections*, G.R. No. 201796, January 15, 2013.

[7] Rollo, p. 68.

[8] Id. at 40-41.

[9] Id. at 40-51.

[10] Id. at 140-157.

[11] Id. at 52-60.

[12] Section 3, Rule 37 of the COMELEC Rules of Procedure states:

Section 3. Decisions Final After Five Days. - Decisions in pre-proclamation cases and petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate or to disqualify a candidate, and to postpone or suspend elections shall become final and executory after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court. [emphasis ours, italics supplied]

[13] Rollo, p. 161.

[14] Id. at 374.

[15] Id. at 375.

[16] Id. at 163-165.

[17] Id. at 162.

[18] Id. at 3-39.

[19] Id. at 172-188.

[20] The records of the case do not show whether former Cong. Velasco filed a motion for reconsideration before the COMELEC en banc from the June 19, 2013 First Division ruling denying his petition to declare the proceedings of the Marinduque PBOC and Reyes' proclamation void; *id.* at 212-215.

[21] CONSTITUTION, Article VI, Section 7.

[22] Rollo, pp. 263-265.

[23] *Id.* at 266-299.

[24] *Id.* at 391-393.

[25] *Id.* at 409.

[26] *Supra* note 1. In his Comment on the Motion for Reconsideration, Tan likewise asked for the inhibition of Associate Justice Arturo D. Brion who manifested before the Court his denial of the request as the matter that had been settled before in the 2010 HRET case between former Cong. Velasco and Edmund Reyes, the brother of Reyes. The matter was brought to the Court on certiorari, only to be withdrawn by former Cong. Velasco later on. See *Velasco v. Associate Justice Arturo D. Brion*, G.R. No. 195380.

[27] G.R. No. 167594, March 10, 2006, 484 SCRA 529.

[28] G.R. Nos. 178831-32, 179120, 179132-33, 179240-41, April 1, 2009, 583 SCRA 1.

[29] G.R. No. 192856, March 8, 2011, 644 SCRA 761.

[30] 241 Phil. 343 (1988).

[31] *Supra* note 14.

[32] *Supra* note 15.

[33] *Supra* note 2.

[34] *Supra* note 3.

[35] *Aruego, Jr. v. Court of Appeals*, G.R. No. 112193, March 13, 1996, 254 SCRA 711, 719-720.

[36] *Id.*

[37] *Id.* at 719-720.

[38] G.R. No. 188308, October 15, 2009, 603 SCRA 692.

[39] *Id.* at 712-714.

[40] Dissenting Opinion of Justice Arturo D. Brion dated June 25, 2013, p. 17.

[41] 264 Phil. 805 (1990).

[42] *Id.* at 811.

[43] Rollo, p. 166.

[44] *Id.* at 135-137.

[45] 255 Phil. 934 (1989).

[46] 257 Phil. 1 (1989).

[47] Dissenting Opinion of Justice Arturo D. Brion dated June 25, 2013, pp. 20-21.

[48] Before the COMELEC en banc.

[49] Rollo, p. 53.

[50] *Sabili v. Commission on Elections*, G.R. No. 193261, April 24, 2012, 670 SCRA 664, 681.

[51] G.R. No. 176947, February 19, 2009, 580 SCRA 12.

[52] *Id.* at 23-25; citations omitted, italics supplied, emphases ours.

[53] *Montoya v. Varilla*, G.R. No. 180146, December 18, 2008, 574 SCRA 831, 843.

[54] Resolution dated June 25, 2013, p. 9.

[55] Ponencia, p. 2.

[56] Section 242 of the Omnibus Election Code states:

Section 242. Commission's exclusive jurisdiction of all pre-proclamation controversies. -The Commission shall have exclusive jurisdiction of all pre-proclamation controversies. It may motu proprio or upon written petition, and after due notice and hearing, order the partial or total suspension of the proclamation of any candidate-elect or annual partially or totally any proclamation, if one has been made, as the evidence shall warrant in accordance with the succeeding sections.

[57] RA 7166, Section 15.

[58] Rollo, p. 22.

[59] 241 Phil. 343 (1988).

[60] *Id.* at 345; emphasis ours.

[61] 391 Phil. 344 (2000).

[62] *Id.* at 354; emphasis ours.

[63] 490 Phil. 285 (2005).

[64] 548 Phil. 712 (2007).

[65] *Supra* note 28.

[66] *Id.* at 35-36; italics supplied, emphases ours, citations omitted.

[67] 442 Phil. 139 (2002).

[68] COMELEC Rules of Procedure, Rule 37, Section 3. *Supra* note 12.

[69] It must be mentioned, however, that a recent COMELEC issuance, Resolution No. 9648 dated February 22, 2013, otherwise known as the "GENERAL INSTRUCTIONS FOR THE BOARD OF CANVASSERS ON THE CONSOLIDATION/CANVASS AND TRANSMISSION OF VOTES CONNECTION WITH THE MAY 13, 2013 NATIONAL AND LOCAL ELECTIONS," provides that a ruling of the Commission En Banc shall become final and executory if no restraining order is issued by the Supreme Court within five (5) days from RECEIPT of the Decision or Resolution. It pertinently states:

Section 28. x x x

PROCLAMATION OF THE WINNING CANDIDATES

x x x x

A candidate who obtained the highest number of votes shall be proclaimed by the Board, except for the following:

1. In case the certificate of candidacy of the candidate who obtains the highest number of votes has been cancelled or denied due course by a final and executory Decision or Resolution, the votes cast for such candidate shall be considered stray, hence, the Board shall proceed to proclaim the candidate who obtains the second highest of number votes, provided, the latter's certificate of candidacy has not likewise been cancelled by a final and executory Decision or Resolution;

x x x x

In all cases, a Decision or Resolution is deemed final and executory if, in case of a Division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of the ruling of the Commission En Banc, no restraining order was issued by the Supreme Court within five (5) days from receipt of the Decision or Resolution.

In cases where a Petition to Deny Due Course or cancel a Certificate of Candidacy, Declare a Nuisance Candidate, or for Disqualification remains pending with the Commission on the day of canvassing and no order of suspension of proclamation is issued by the Commission En Banc or Division where said Petition is pending, the Board shall proceed to proclaim the winner. [emphases ours]

[70] Ponencia, p. 4.

[71] Id. at 5-6.

[72] See *Sps. Custodio v. Court of Appeals*, 323 Phil. 575, 588-589 (1996), where the Court held:

The proper exercise of a lawful right cannot constitute a legal wrong for which an action will lie, although the act may result in damage to another, for no legal right has been invaded. One may use any lawful means to accomplish a lawful purpose and though the means adopted may cause damage to another, no cause of action arises in the latter's favor. Any injury or damage occasioned thereby is *damnum absque injuria*. The courts can give no redress for hardship to an individual resulting from action reasonably calculated to achieve a lawful end by lawful means. [citations omitted, italics supplied]

[73] *Supra* note 12.

[74] G.R. Nos. 192474, 192704 and 193566, June 26, 2012, 674 SCRA 530.

[75] Id. at 534-535.

[76] Id. at 535-536.

[77] G.R. No. 133944, October 28, 1999, 317 SCRA 641.

[78] Id. at 646-647.

[79] *Supra* note 27.

[80] Id. at 536.

[81] *Supra* note 64.

[82] *Supra* note 28.

[83] Supra note 29.

[84] Supra note 64, at 179-180.

[85] Supra note 28, at 33-37.

[86] See Dissenting Opinion of Justice Arturo D. Brion dated June 25, 2013, pp. 15-16.

[87] RULE 16. Election Protest. – A verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within fifteen (15) days after the proclamation of the winner.

[88] RULE 17. Quo Warranto. – A verified petition for quo warranto contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned within fifteen (15) days from the date of the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

[89] *People of the Philippines v. Villanueva*, No. L-15014, April 29, 1961.

[90] See Dissenting Opinion of COMELEC Commissioner Christian Robert S. Lim in SPC No. 13-010; rollo, p. 256.

[91] *Ibid.*

[92] *Ibid.*

[93] Supra note 77.

[94] G.R. Nos. 191998, 192769 and 192832, December 7, 2010, 637 SCRA 59.

CONCURRING OPINION

ABAD, J.:

I would like to explain why I vote to deny petitioner Regina Ongsiako Reyes' motion for reconsideration of the Court's Resolution of June 25, 2013.

When Congress enacted the Omnibus Election Code, among its concerns were persons who, although not qualified, seek public office and mar the orderly conduct of the elections. To address this problem and for the public good, Congress empowered the Commission on Elections (COMELEC) to hear and decide petitions for the cancellation of their certificates of candidacies on the ground of false material representations that such certificates contain.

Section 78 of the Code reads:

Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

The validity of Section 78 has never been challenged since it simply addresses a reprehensible mischief

committed during elections. Anticipating this need, Section 2 of Article IX-C of the Constitution gives the COMELEC the duty and the power to enforce this and other laws relative to the conduct of the elections, thus:

Article IX, Title C, Sec. 2. The Commission on Elections shall exercise the following powers and functions:

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

x x x x

Clearly then, actions to cancel certificates of candidacies of members of the House of Representatives (the House), allegedly containing material misrepresentation, are within the constitutional and statutory power of the COMELEC to hear and adjudicate.

But related to this is the exclusive power of the House of Representatives Electoral Tribunal (HRET) to hear and decide all contests also relating to the qualifications of the members of the House. The pertinent portion of Section 17, Article VI, of the 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. x x x

The problem is that a contest over the qualifications of a candidate for the House often begins in the form of a petition filed with the COMELEC for the cancellation of his certificate of candidacy on ground of false representation regarding his qualifications. At times, the COMELEC case is overtaken by the elections and the subsequent proclamation of the challenged candidate as winner. It is inevitable that, after taking his oath and assuming membership in the House, he would insist that any pending question relating to his qualifications before the COMELEC should now be heard and decided by the HRET.

To avoid a conflict of jurisdiction, the Court recognized and established the rule that the jurisdiction of the COMELEC over the case ceases where the jurisdiction of the HRET begins. Ultimately, this brings about the issue of when this turnover of jurisdiction takes place.

Past precedents appear to be divided into two views: the first is that the proclamation of the winning candidate for the House divests the COMELEC of its jurisdiction over pending disputes relating to his qualifications in favor of the HRET.[1] The second is that the turnover of jurisdiction over a pending action from the COMELEC to the HRET takes place only after the winning candidate has been proclaimed, taken his oath, and assumed office.[2]

These conflicting views should now be settled with finality. And the solution lies in the provision of the Constitution that defines the jurisdiction of the HRET. It says:

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 above categorically states that the HRET's jurisdiction covers only contests relating, among other things, to "the qualifications of their respective Members." This power is inherent in all organizations as a means of preserving their integrity. For the HRET to have jurisdiction, the case must involve a "member" of the House. The fact alone that one won the elections and has been proclaimed does not, to be sure, make him a "member" of the House. To become a member, the candidate to the position must win the election,[3] take an oath,[4] and assume office when his term begins. The term of a "member" of the House begins on the 30th of June next following his election.

Section 7, Article VI of the Constitution, provides:

Sec. 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

Clearly, a proclaimed winner will be a “member” of the House only at noon of June 30 following his election and not earlier when he was merely proclaimed as a winning candidate. The reason is simple. There is no vacancy in that office before noon of June 30. It is implicit that the term of the member whom he would succeed would continue until noon of that day when the term of the new member begins. Consequently, the proclaimed winner in the elections remains an outsider before June 30. Only on June 30 will his term begin. And only then will the COMELEC be divested of its jurisdiction over any unresolved petition for the cancellation of his certificate of candidacy.

Here, on March 27, 2013 the COMELEC’s Second Division rendered a decision cancelling petitioner Reyes’ certificate of candidacy. She filed a motion for reconsideration but on May 14, 2013 the COMELEC En Banc issued a Resolution denying it. Since her counsel received a copy of the En Banc Resolution on May 16, 2013, she had until May 21, 2013 within which to file a petition before the Court assailing the COMELEC’s action. But she did not, thus rendering its decision against her final and executory as of May 22, 2013. This prompted the COMELEC to issue a certificate of finality on June 5, 2013.

Consequently, since the COMELEC Decision in petitioner Reyes’ case already became final and executory on May 22, 2013, it cannot be said that the HRET can still take over some unfinished COMELEC action in her case. The COMELEC’s final decision, rendered pursuant to its constitutional and statutory powers, binds her, the HRET, and the Court. Further, given the cancellation of her certificate of candidacy, she in effect was not validly voted upon as a candidate for the position of Representative of the lone District of Marinduque on May 13, 2010.

Parenthetically, a reading of the COMELEC En Banc’s Resolution of July 19, 2013[5] shows that its process server, Pedro P. Sta. Rosa arrived at the session hall of the Sangguniang Panlalawigan of Marinduque where the provincial canvassing was being held prior to petitioner Reyes’ proclamation to serve a copy of the COMELEC En Banc’s Resolution of May 14, 2013 and Order of May 18, 2013 but the Provincial Election Supervisor (PES) refused to accept them. Thus, said the COMELEC:

x x x While the proceedings of the PBOC is suspended or in recess, the process server of this Honorable Commission, who identified himself as PEDRO P. STA. ROSA II (“Sta. Rosa,” for brevity), arrived at the session hall of the Sangguniang Panlalawigan of Marinduque where the provincial canvassing is being held.

x x x The process server, Sta. Rosa, was in possession of certified true copies of the Resolution promulgated by the Commission on Elections En Banc on 14 May 2013 in SPA No. 13-053 (DC) entitled “Joseph Socorro B. Tan vs. Atty. Regina Ongsiako Reyes” and an Order dated 15 May 2013 to deliver the same to the Provincial Election Supervisor of Marinduque. The said Order was signed by no less than the Chairman of the Commission on Elections, the Honorable Sixto S. Brillantes, Jr.

x x x Process Server Pedro Sta. Rosa II immediately approached Atty. Edwin Villa, the Provincial Election Supervisor (PES) of Marinduque, upon his arrival to serve a copy of the aforementioned Resolution dated 14 May 2013 in SPA No. 13-053 (DC). Despite his proper identification that he is a process server from the COMELEC Main Office, the PES totally ignored Process Server Pedro Sta. Rosa II.

x x x Interestingly, the PES likewise refused to receive a copy of the Commission on Elections En Banc Resolution dated 14 May 2013 in SPA No. 13-053 (DC) despite several attempts to do so.

x x x Instead, the PES immediately declared the resumption of the proceedings of the PBOC and instructed the Board Secretary to immediately read its Order proclaiming Regina Ongsiako Reyes as winner for the position of Congressman for the Lone District of Marinduque.

The above shows bad faith on the part of the Provincial Election Supervisor and Provincial Board of Canvassers in proclaiming petitioner Reyes despite COMELEC En Banc's resolution denying her motion for reconsideration of the decision cancelling her certificate of candidacy. Such lawless conduct cannot be countenanced by the Court.

In his dissent, Justice Antonio T. Carpio claims that the Court's June 25, 2013 Resolution states that petitioner Reyes could assume office only upon taking her oath before the Speaker in open session when the new Congress convenes in late July. Thus, this would effectively cut her term short by a month since the Constitution provides that the term of office of newly elected members of the House begins "at noon on the thirtieth day of June next following their election."

But the Court's June 25 Resolution did not state that petitioner Reyes can only assume office after taking her oath pursuant to Section 6, Rule II of the Rules of the House. Such statement would have been clearly incorrect. That resolution merely said that she did not yet take the proper oath in accordance with that Section 6. Actually, the Court's June 25 Resolution said that the term of office of a Member of the House begins at noon on the 30th day of June next following their election, thus:

Here the petitioner cannot be considered a Member of the House of Representatives because, primarily, she has not yet assumed office. To repeat what has earlier been said, the term of office of a Member of the House of Representatives begins only "at noon on the thirtieth day of June next following their election." Thus, until such time, the COMELEC retains jurisdiction.

The Court said that petitioner Reyes did not yet take the proper oath as required by the rules of the House of Representatives merely to emphasize the fact that she filed her action with the Court even before Congress had buckled down to work and reorganize the HRET.

Justice Carpio also claims that it could happen that a losing candidate would assail the validity of the proclamation before the Supreme Court while another losing candidate could file an election protest before the HRET within 15 days of the proclamation. When this happens, he says, the jurisdiction of the Supreme Court and the HRET would be in direct clash.

But such supposed clash of jurisdiction between the HRET and the Court is illusory and cannot happen. Any clash of jurisdiction would essentially be between the COMELEC, asserting its power to hear and decide petitions for cancellation of certificates of candidacies of those who seek to be elected to the House, and the HRET, asserting its power to decide all contests relating to the qualifications of its members. The Supreme Court is the final arbiter of the jurisdictional boundaries of all constitutional bodies. The HRET has never claimed this role.

What is more, it is understood that the HRET can take over only those cancellation cases that have remained unresolved by the COMELEC by the time the House member assumes office. Cases that the COMELEC has already decided cannot be taken over by the HRET, even when the challenged winner has already assumed office, if such decision has been elevated to the Supreme Court on certiorari as provided under the pertinent portion of Section 7, Article IX of the Constitution.

Section 7. x x x Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

The HRET cannot oust the Supreme Court of its jurisdiction under the Constitution. As the Court held in *Codilla, Sr. v. Hon. De Venecia*,^[6] the HRET cannot assume jurisdiction over a cancellation case involving members of the House that had already been decided by the COMELEC and is under review by the Supreme Court.

It can be said that it is for the above reasons that the Court heard and decided a number of petitions filed by losing party-list organizations that sought membership in the House. The Court did not inhibit itself from deciding their cases even if the winners had already been proclaimed since it was merely exercising its sole power to review the decisions of the COMELEC in their cases. The Court took cognizance of and decided their petitions in *Senior Citizens Party-List v. COMELEC*.^[7]

Justice Carpio also claims that if the HRET jurisdiction begins only upon assumption of office of the winning candidate, then any petition filed with it within 15 days from his proclamation can be dismissed on the ground that the respondent is not yet a member of the House.

But, firstly, the HRET of the new Congress can be organized and can discharge its functions only after June 30 following the elections. Consequently, it cannot dismiss any petition filed with it before that date. When that date arrives, the respondent would have already assumed office, enabling the HRET to act on his case.

Secondly, the 15-day period after proclamation is merely the deadline set for the filing of the election contest before the HRET. It enables the parties to immediately take steps to preserve the integrity of the ballots and other election records. It is of course to be assumed that the HRET is admitting the petition filed with it within 15 days from proclamation, conditioned on its having jurisdiction over the subject matter of the action.

For the above reasons, I vote to DENY petitioner Regina Ongsiako Reyes' motion for reconsideration.

[1] Justice Antonio T. Carpio cites in his dissent the cases of *Jalosjos v. Commission on Elections*, G.R. Nos. 192474, 192704, 193566, June 26, 2012, 674 SCRA 530; *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761; *Limkaichong v. Commission on Elections*, G.R. Nos. 178831-32, April 1, 2009, 583 SCRA 1; *Planas v. Commission on Elections*, 519 Phil. 506 (2006); and *Perez v. Commission on Elections*, 375 Phil. 1106 (1999).

[2] Exemplified by the rulings in *Marcos v. Commission on Elections*, 318 Phil. 329, 397 (1995) and *Vinzons-Chato v. Commission on Elections*, 548 Phil. 712, 726 (2007), citing *Aggabao v. Commission on Elections*, 490 Phil. 285, 290 (2005); *Guerrero v. Commission on Elections*, 391 Phil. 344, 352 (2000).

[3] Section 7, Article VI of the Constitution.

[4] Section 4, Article IX-B (Civil Service Commission), Constitution of the Philippines: All public officers and employees shall take an oath or affirmation to uphold and defend this Constitution.

[5] COMELEC En Banc Resolution dated July 19, 2013, pp. 4-5, attached to the Manifestation filed before this Court on August 16, 2013.

[6] 442 Phil. 139 (2002).

[7] G.R. No. 207026, August 13, 2013.

DISSENTING OPINION

LEONEN, J.:

I join Justices Carpio and Brion in their Dissent, but I wish to clarify my reasons further.

I

In case of doubt, there are fundamental reasons for this Court to be cautious in exercising its jurisdiction to determine who the members are of the House of Representatives. We should maintain our consistent doctrine that proclamation is the operative act that removes jurisdiction from this Court or the Commission on Elections and vests it on the House of Representatives Electoral Tribunal (HRET).

The first reason is that the Constitution unequivocally grants this discretion to another constitutional body called the House of Representatives Electoral Tribunal. This is a separate organ from the Judiciary.

As early as the Act of Congress of August 29, 1916 known as the Jones Law, the Senate and the House of Representatives were granted the power to “be the sole judges of the elections, returns, and qualifications of their [respective] elective members.”[1] Section 18 of this organic act provides:

Section 18 – That the Senate and House of Representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their elective members, and each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel an elective member. x x x.

The 1935 Constitution transferred the same power to an Electoral Commission which altered the composition of the electoral tribunal but still continued a membership that predominantly originated from the Legislature.

Thus, Section 4 of Article VI of the 1935 Constitution provided:

Section 4 – There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six Members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The senior Justice in the Commission shall be its Chairman. The Electoral Commission shall be the sole judge of all contests relating to the election, returns, and qualifications of the Members of the National Assembly.

In *Angara v. Electoral Commission*,[2] this Court noted the change in the composition of the electoral tribunal in the 1935 Constitution.[3] Nevertheless, the authority of the electoral tribunal remained the same as the sole judge of all contests relating to the election, returns, and qualifications of their members. The electoral tribunal in the 1935 Constitution was characterized as an independent tribunal, separate from the Legislative Department. However, “the grant of power to the Electoral Commission to judge all contests relating to the election, returns and qualifications of members of the National Assembly, is intended to be as complete and unimpaired as if it had remained originally in the legislature.”[4]

The 1973 Constitution briefly transferred the authority of an electoral tribunal to the Commission on Elections.[5] The 1987 Constitution reverted this authority back to electoral tribunals. The present Section 17 of Article VI provides:

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

The authority of electoral tribunals as the sole judge of all contests relating to the election, returns, and

qualifications of their members was described in *Roces v. House of Representatives Electoral Tribunal*:^[6]

The HRET is the sole judge of all contests relating to the election, returns, and qualifications of the members of the House of Representatives and has the power to promulgate procedural rules to govern proceedings brought before it. This exclusive jurisdiction includes the power to determine whether it has the authority to hear and determine the controversy presented, and the right to decide whether that state of facts exists which confers jurisdiction, as well as all other matters which arise in the case legitimately before it. Accordingly, it has the power to hear and determine, or inquire into, the question of its own jurisdiction, both as to parties and as to subject matter, and to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction. One of the three essential elements of jurisdiction is that proper parties must be present. Consequently, the HRET merely exercised its exclusive jurisdiction when it ruled that Mrs. Ang Ping was a proper party to contest the election of Roces.^[7] (Citations omitted)

Initially, our organic act envisioned both the House of Representatives and the Senate to determine their members by creating tribunals that would decide on contests relating to the election, returns and qualifications of its members. This was to maintain the integrity of the Legislature as a separate branch of government. The House of Representatives and the Senate act collectively, and the numbers that determine the outcome of their respective actions are sensitive to the composition of their memberships.

The 1935 Constitution enhanced this ability by altering the composition of the electoral tribunals. Introducing members from the Judiciary to participate in the tribunal provided the necessary objectivity from the partisan politics of each chamber. Both the 1935 and the 1987 Constitution, however, did not intend the Judiciary to take over the function of deciding contests of the election, returns, and qualification of a member of either the House of Representatives or the Senate.

The earliest moment when there can be members of the House of Representatives or the Senate is upon their proclamation as winners of an election. Necessarily, this proclamation happens even before they can actually assume their office as the elections happen in May, and their terms start “at noon on the thirtieth day of June next following their election.”^[8] Contests of elected representatives or senators can happen as soon as they are proclaimed. We should remain faithful to the intention of the Constitution. It is at the time of their proclamation that we should declare ourselves as without jurisdiction.

This is clear doctrine, and there are no reasons to modify it in the present case.

II

The jurisdiction of electoral tribunals as against other constitutional bodies has been put in issue in many cases.

In *Angara v. Electoral Commission*,^[9] this Court held that the authority of the Electoral Commission as the “sole judge of all contests relating to the election, returns, and qualifications of the members of the National Assembly” begins from the certification by the proper provincial board of canvassers of the member-elect:^[10]

From another angle, Resolution No. 8 of the National Assembly confirming the election of members against whom no protests had been filed at the time of its passage on December 3, 1935, cannot be construed as a limitation upon the time for the initiation of election contests. While there might have been good reason for the legislative practice of confirmation of the election of members of the legislature at the time when the power to decide election contests was still lodged in the legislature, confirmation alone by the legislature cannot be construed as depriving the Electoral Commission of the authority incidental to its constitutional power to be “the sole judge of all contest relating to the election, returns, and qualifications of the members of the National Assembly”, to fix the time for the filing of said election protests. Confirmation by the National Assembly of the returns of its members against whose election no protests have been filed is, to all legal purposes,

unnecessary. As contended by the Electoral Commission in its resolution of January 23, 1936, overruling the motion of the herein petitioner to dismiss the protest filed by the respondent Pedro Ynsua, confirmation of the election of any member is not required by the Constitution before he can discharge his duties as such member. As a matter of fact, certification by the proper provincial board of canvassers is sufficient to entitle a member-elect to a seat in the national Assembly and to render him eligible to any office in said body (No. 1, par. 1, Rules of the National Assembly, adopted December 6, 1935).[11] (Emphasis supplied)

Since then, more Petitions, including this one, have been filed in this Court invoking the jurisdiction of the electoral tribunals against the Commission on Elections. Time and again, this Court has been asked to resolve the issue when jurisdiction over election contests vests on electoral tribunals. In all these cases, this Court has consistently held that it is the proclamation of a candidate in the congressional elections that vests jurisdiction on the electoral tribunals of any election contest, even though the candidate has not yet assumed his or her office or the protest was filed before June 30.[12] Once the winning candidate vying for a position in Congress is proclaimed, election contests must be lodged with the electoral tribunals and not with the Commission on Elections. To repeat, “certification by the proper x x x board of canvassers is sufficient to entitle a member-elect to a seat in [Congress] and to render him eligible to any office in the said body.”[13]

Conversely, if a candidate for Congress was elected but was not proclaimed due to a suspension order issued by the Commission on Elections, the latter retains jurisdiction over protests concerning the candidate’s qualifications.[14] Thus, we stated:

The rule then is that candidates who are disqualified by final judgment before the election shall not be voted for and the votes cast for them shall not be counted. But those against whom no final judgment of disqualification had been rendered may be voted for and proclaimed, unless, on motion of the complainant, the COMELEC suspends their proclamation because the grounds for their disqualification or cancellation of their certificates of candidacy are strong. Meanwhile, the proceedings for disqualification of candidates or for the cancellation or denial of certificates of candidacy, which have been begun before the elections, should continue even after such elections and proclamation of the winners.[15]

In this case, the Commission on Elections En Banc Resolution ordering the cancellation of the petitioner’s Certificate of Candidacy was issued only after the elections. The Resolution did not yet attain finality when the petitioner was proclaimed, and no Order was issued by the Commission on Elections to suspend the proclamation of the petitioner after the votes had been counted. Thus, the Provincial Board of Canvassers was well within its right and duty to proclaim the petitioner as the winning candidate.[16]

III

It is my opinion that this Court did not, in any of the cases cited in the main ponencia, change the time-honored rule that “where a candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an electoral protest [or a petition for quo warranto] with the [House of Representatives Electoral Tribunal].”[17] The main ponencia cites several cases to support its ratio decidendi that three requisites must concur before a winning candidate is considered a “member” of the House of Representatives to vest jurisdiction on the electoral tribunal. These cases appear to have originated from *Guerrero v. Commission on Elections*. [18]

In *Guerrero*, this Court held that “x x x once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives, [the] COMELEC’s jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET’s own jurisdiction begins.”[19] The case cited *Aquino v. Commission on Elections*[20] and *Romualdez-Marcos v. Commission on Elections*[21] to support the statement.

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

Petitioner conveniently confuses the distinction between an unproclaimed candidate to the House of Representatives and a member of the same. Obtaining the highest number of votes in an election does not automatically vest the position in the winning candidate.

x x x x

Under the above-stated provision, the electoral tribunal clearly assumes jurisdiction over all contests relative to the election, returns and qualifications of candidates for either the Senate or the House only when the latter become members of either the Senate or the House of Representatives. A candidate who has not been proclaimed and who has not taken his oath of office cannot be said to be a member of the House of Representatives subject to Section 17 of Article VI of the Constitution. While the proclamation of the winning candidate in an election is ministerial, B.P. 881 in conjunction with Sec. 6 of R.A. 6646 allows suspension of proclamation under circumstances mentioned therein. x x x.[22] (Citations omitted)

In Romualdez-Marcos, this Court held that:

As to the House of Representatives Electoral Tribunal’s supposed assumption of jurisdiction over the issue of petitioner’s qualifications after the May 8, 1995 elections, suffice it to say that HRET’s jurisdiction as the sole judge of all contests relating to the elections, returns, and qualifications of members of Congress begins only after a candidate has become a member of the House of Representatives. Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.[23] (Citations omitted)

To be sure, the petitioners who were the winning candidates in Aquino and Romualdez-Marcos invoked the jurisdiction of the House of Representatives Electoral Tribunal though they had not yet been proclaimed. Thus, this Court held that the Commission on Elections still had jurisdiction over the disqualification cases.[24]

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

The operative acts necessary for an electoral candidate’s rightful assumption of the office for which he ran are his proclamation and his taking an oath of office. Petitioner cannot in anyway be considered as a member of the House of Representatives for the purpose of divesting the Commission on Elections of jurisdiction to declare his disqualification and invoking instead HRET’s jurisdiction, it indubitably appearing that he has yet to be proclaimed, much less has he taken an oath of office. Clearly, petitioner’s reliance on the aforecited cases which when perused involved Congressional members, is totally misplaced, if not wholly inapplicable. That the jurisdiction conferred upon HRET extends only to Congressional members is further established by judicial notice of HRET Rules of Procedure, and HRET decisions consistently holding that the proclamation of a winner in the contested election is the essential requisite vesting jurisdiction on the HRET.[25]

In fact, the Separate Opinion of Justice Mendoza in Romualdez-Marcos will tell us that he espoused a more radical approach to the jurisdiction of the electoral tribunals. Justice Mendoza is of the opinion that “the eligibility of a [candidate] for the office [in the House of Representatives] may only be inquired into by the [House of Representatives Electoral Tribunal],”[26] even if the candidate in Romualdez-Marcos was not yet proclaimed. Justice Mendoza explained, thus:

Three reasons may be cited to explain the absence of an authorized proceeding for determining before election the qualifications of a candidate.

x x x x

Third is the policy underlying the prohibition against pre-proclamation cases in elections for President, Vice President, Senators and members of the House of Representatives. (R.A. No. 7166, Section 15) The purpose is to preserve the prerogatives of the House of Representatives Electoral Tribunal and the other Tribunals as “sole judges” under the Constitution of the election, returns, and qualifications of members of Congress of the President and Vice President, as the case may be.[27]

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

The other rulings cited in the main ponencia support our view.

In *Vinzons-Chato v. Commission on Elections*,[28] this Court ruled that:

x x x once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC’s jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET’s own jurisdiction begins. Stated in another manner, where the candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an electoral protest with the HRET.[29] (Emphasis supplied)

In *Limkaichong v. Commission on Elections*,[30] this Court held that:

x x x once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC’s jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET’s own jurisdiction begins. It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation.[31] (Emphasis supplied)

In *Gonzalez v. Commission on Elections*[32] the paragraph that contains the statement cited in the main ponencia is as follows:

In any case, the point raised by the COMELEC is irrelevant in resolving the present controversy. It has long been settled that pursuant to Section 6 of R.A. No. 6646, a final judgment before the election is required for the votes of a disqualified candidate to be considered “stray.” In the absence of any final judgment of disqualification against Gonzalez, the votes cast in his favor cannot be considered stray. After proclamation, taking of oath and assumption of office by Gonzalez, jurisdiction over the matter of his qualifications, as well as questions regarding the conduct of election and contested returns – were transferred to the HRET as the constitutional body created to pass upon the same. The Court thus does not concur with the COMELEC’s flawed assertion of jurisdiction premised on its power to suspend the effects of proclamation in cases involving disqualification of candidates based on commission of prohibited acts and election offenses. As we held in *Limkaichong*, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member’s qualification to sit in the House of Representatives.[33] (Emphasis supplied)

The above discussion, including the statement cited in the main ponencia, is obiter because this Court already found that “the petition for disqualification and cancellation of the [Certificate of Candidacy] x x x was filed out of time. The [Commission on Elections] therefore erred in giving due course to the petition.”[34] Further, the context of the statement cited in the main ponencia emphasized the doctrine that the votes for a candidate who is

not yet disqualified by final judgement cannot be considered stray votes. In *Gonzalez*, this Court did not require the assumption of office of the candidate-elect before the electoral tribunal was vested with jurisdiction over electoral protests.

To reiterate, there is only one rule that this Court has consistently applied: It is the proclamation of the winning candidate vying for a seat in Congress that divests the Commission on Elections of jurisdiction over any electoral protest. This rule is consistent with the Constitution, the 2011 Rules of the House of Representatives Electoral Tribunal, the Omnibus Election Code, and jurisprudence.

An electoral protest that also assails the validity of the proclamation will not cause the Commission on Elections to regain jurisdiction over the protest.[35] Issues regarding the validity or invalidity of the proclamation may be threshed out before the electoral tribunals. As held in *Caruncho III v. Commission on Elections*,[36] the electoral tribunal has jurisdiction over a proclamation controversy involving a member of the House of Representatives:

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.

x 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).[37] (Citations omitted)

This Court may obtain jurisdiction over questions regarding the validity of the proclamation of a candidate vying for a seat in Congress without encroaching upon the jurisdiction of a constitutional body, the electoral tribunal. “[The remedies of] certiorari and prohibition will not lie in this case [to annul the proclamation of a candidate] considering that there is an available and adequate remedy in the ordinary course of law; [that is, the filing of an electoral protest before the electoral tribunals].”[38] These remedies, however, may lie only after a ruling by the House of Representatives Electoral Tribunal or the Senate Electoral Tribunal.

We have said that “the proclamation of the petitioners enjoys the presumption of regularity and validity.”[39] Unless it is annulled by the House of Representatives Electoral Tribunal after giving petitioner Reyes’ due notice and hearing,[40] her proclamation as a member-elect in the House of Representatives must stand.

IV

The second fundamental reason for us to exercise caution in determining the composition of the House of Representatives is that this is required for a better administration of justice. Matters relating to factual findings on election, returns, and qualifications must first be vetted in the appropriate electoral tribunal before these are raised in the Supreme Court.

V

I express some discomfort in terms of our procedural actions in this case.

Giving due course to a Petition for Certiorari is indeed discretionary before this Court. We do have the option to dismiss outright on the basis of the allegations in the Petition. In many cases, we have done so through Minute Resolutions. In other cases, this Court released Resolutions to state more fully its reasons why it dismissed the Petitions.

We have varied reasons for dismissing Petitions even without requiring a Comment from the respondent. We may find that the recital of facts and the procedure that was followed do not warrant a review of the interpretation and application of the relevant law. In other words, we may find that the allegations are insufficient to find grave abuse of discretion on the part of the respondents.

In appropriate cases, we dismiss without the need for a Comment from the respondent when we find that the Petition shows that a procedural prerequisite was not followed. We may also dismiss, without Comment, when we find that we do not have jurisdiction over the subject matter of the Petition or the remedy invoked.

The relief we grant for outright dismissals of Petitions without Comment ends with the dismissal of the Petition. It leaves the parties to where they were prior to the filing of the Petition. We grant no affirmative relief to the respondent simply because the basis for doing so has neither been pleaded nor argued with due process.

This case seems to have received a different treatment.

The main ponencia went beyond dismissal of the Petition. The initial resolution of this case supported by the majority attempted to declare new doctrine. It should just have simply dismissed the Petition and allowed the parties to litigate at the House of Representatives Electoral Tribunal. The better part of prudence should have been to require the respondent to file a Comment^[41] assuming, without agreeing, that there may have been a need to revisit doctrine because of the unique facts of this case. In my view, the personalities in this case may have been different. However, the facts and circumstances were not unique to unsettle existing rational doctrine.

A Comment is required so that there may be a fuller exposition of the issues from the point of view of the respondent. It is also required to prevent any suspicion that judges and justices litigate, not decide. This Court has expressed its disfavor of some judges, thus:

We cannot close this opinion without expressing our disapproval of the action taken by Judge Tomas V. Tadeo in filing his own motion for reconsideration of the decision of the respondent court. He should be admonished for his disregard of a well-known doctrine imposing upon the judge the duty of detachment in case where his decision is elevated to a higher court for its review. The judge is not an active combatant in such proceeding and must leave it to the parties themselves to argue their respective positions and for the appellate court to rule on the matter without his participation. The more circumspect policy is to recognize one's role in the scheme of things, remembering always that the task of a judge is to decide and not to litigate.^[42] (Emphasis supplied)

The majority persisted in declaring that the petitioner's proclamation was "without any basis" despite the absence of a responsive pleading. This may not be cured by the Comment on the Motion for Reconsideration. In my view, the validity of the proclamation of petitioner Reyes was never raised as an issue. No responsive pleading exists to have sufficiently tendered it as an issue.

VI

Good faith must be presumed in the conduct of the petitioner unless evidence to the contrary is submitted to this Court. We have already ruled that:

When a litigant exhausts all the remedies which the rules allow, in order to seek an impartial adjudication of his case, the dignity of the judge is not thereby assailed or affected in the least; otherwise, all remedies allowed

litigants, such as appeals from judgments, petitions for reconsideration thereof or for the disqualification of judges, or motions questioning the jurisdiction of courts, would be deemed derogatory to the respect due a judge. These remedies may be availed of by any litigant freely, without being considered guilty of an act of disrespect to the court or the judge.[43]

Similarly, the same presumption of good faith must be accorded to all Members of this Court. We may not be on all fours in our opinions, but we must believe in the courage of each Member of the Court to vote with the objectivity his or her office demands, guided only by his or her conscience, and our collective hope for a better future.

Our disagreement with the course taken by the majority neither endows us with the competence nor the entitlement to impute ill motives. However, motives notwithstanding, our people do have to live with the practical consequences of our words. That, definitely, is a formidable measure of what it is that we have done.

For these reasons, I vote to GRANT the petitioner's Motion for Reconsideration. The Petition should be dismissed. The House of Representatives Electoral Tribunal has jurisdiction after petitioner's proclamation.

[1] Veloso v. Provincial Board of Canvassers of the Province of Leyte, 39 Phil. 886, 886-887 (1919).

[2] 63 Phil. 139 (1936).

[3] Id. at 175.

[4] Id.

[5] Section 2 (2) of Article XII-C of the 1973 Constitution provides: "The Commission on Elections shall have the following powers and functions:

1. x x x

2. Be the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials.

x x x"

[6] 506 Phil. 654 (2005).

[7] Id. at 667.

[8] 1987 Constitution, Art. VI, Sec. 7.

[9] Angara v. Electoral Commission, supra note 2.

[10] Id. at 179-180.

[11] Id.

[12] See Jalosjos, Jr. v. Commission on Elections, G.R. No. 192474, June 26, 2012, 674 SCRA 530, 535; Vinzons-Chato v. Commission on Elections, 548 Phil. 712, 726 (2007); Barbers v. Commission on Elections, 499 Phil. 570, 585 (2005); Aggabao v. Commission on Elections, 490 Phil. 285, 291 (2005).

[13] Angara v. Electoral Commission, supra note 2, at 180.

[14] Domino v. Commission on Elections, 369 Phil. 798, 823 (1999).

[15] Coquilla v. Commission on Elections, 434 Phil. 861, 870-871 (2002).

[16] See *Ibrahim v. Commission on Elections*, G.R. No. 192289, January 8, 2013, 688 SCRA 129, 146-147. This Court held that:

The MBOC has no authority to suspend Ibrahim's proclamation especially since the herein assailed resolutions, upon which the suspension was anchored, were issued by the COMELEC en banc outside the ambit of its jurisdiction.

Mastura v. COMELEC is emphatic that:

(T)he board of canvassers is a ministerial body. It is enjoined by law to canvass all votes on election returns submitted to it in due form. It has been said, and properly, that its powers are limited generally to the mechanical or mathematical function of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained. x x x.

The simple purpose and duty of the canvassing board is to ascertain and declare the apparent result of the voting while all other questions are to be tried before the court or other tribunal for contesting elections or in quo warranto proceedings.

In the case at bar, the MBOC *motu proprio* suspended Ibrahim's proclamation when the issue of the latter's eligibility is a matter which the board has no authority to resolve. Further, under Section 6 of R.A. 6646, the COMELEC and not the MBOC has the authority to order the suspension of a winning candidate's proclamation. Such suspension can only be ordered upon the motion of a complainant or intervenor relative to a case for disqualification, or a petition to deny due course or cancel a certificate of candidacy pending before the COMELEC, and only when the evidence of the winning candidate's guilt is strong. Besides, the COMELEC en banc itself could not have properly ordered Ibrahim's disqualification because in taking cognizance of the matter, it had already exceeded its jurisdiction.

[17] *Vinzons-Chato v. Commission on Elections, et al.*, 548 Phil. 712, 726 (2007).

[18] 391 Phil. 344 (2000).

[19] *Id.* at 352.

[20] G.R. No. 120265, September 18, 1995, 248 SCRA 400, 417-418.

[21] G.R. No. 119976, September 18, 1995, 248 SCRA 300, 340-341.

[22] *Aquino v. Commission on Elections*, *supra* at 417-418.

[23] *Romualdez-Marcos v. Commission on Elections*, *supra* at 340-341.

[24] *Romualdez-Marcos v. Commission on Elections*, *supra* at 340, *Aquino v. Commission on Elections*, *supra* at 418.

[25] *Aquino v. Commission on Elections*, *supra* at 434.

[26] *Romualdez-Marcos v. Commission on Elections*, *supra* at 399.

[27] *Id.* at 396-397.

[28] *Vinzons-Chato v. Commission on Elections*, 548 Phil. 712 (2007).

[29] *Id.* at 725-726. The last statement was inadvertently excluded in the main ponencia.

[30] G.R. Nos. 178831-32, 179120, 179132-33, and 179240-41, July 30, 2009, 594 SCRA 434.

[31] Id. at 444-445. The last statement was inadvertently excluded in the main ponencia.

[32] G.R. No. 192856, March 8, 2011, 644 SCRA 761.

[33] Id. at 798-799. The statement emphasized was the one cited in the main ponencia.

[34] Id. at 786.

[35] *Aggabao v. Commission on Elections*, 490 Phil. 285, 291 (2005).

[36] 374 Phil. 308 (1999).

[37] Id. at 321-322.

[38] *Barbers v. Commission on Elections*, 499 Phil. 570, 585 (2005).

[39] *Tan. v. Commission on Elections*, 463 Phil. 212, 235 (2003).

[40] See *Bince, Jr., v. The Commission on Elections*, G.R. No. 106291, February 9, 1993, 218 SCRA 782, 792-793 where this Court held:

Petitioner cannot be deprived of his office without due process of law. Although public office is not property under Section 1 of the Bill of Rights of the Constitution, and one cannot acquire a vested right to public office, it is, nevertheless, a protected right. Due process in proceedings before the respondent COMELEC, exercising its quasi-judicial functions, requires due notice and hearing, among others. Thus, although the COMELEC possesses, in appropriate cases, the power to annul or suspend the proclamation of any candidate, we had ruled in *Fariñas vs. Commission on Elections*, *Reyes vs. Commission on Elections* and *Gallardo vs. Commission on Elections* that the COMELEC is without power to partially or totally annul a proclamation or suspend the effects of a proclamation without notice and hearing.

In *Fariñas vs. COMELEC*, this Court further stated that:

As aptly pointed out by the Solicitor General, "to sanction the immediate annulment or even the suspension of the effects of a proclamation before the petition seeking such annulment or suspension of its effects shall have been heard would open the floodgates of [sic] unsubstantiated petitions after the results are known, considering the propensity of the losing candidate to put up all sorts of obstacles in an open display of unwillingness to accept defeat (*Guiao v. Comelec*, *supra*), or would encourage the filing of baseless petitions not only to the damage and prejudice of winning candidates but also to the frustration of the sovereign will of the electorate (*Singko v. Comelec*, 101 SCRA 420)."

[41] Rules of Court, Rule 65, Sec. 6.

[42] *La Campana Food Products, Inc. v. Court of Appeals*, G.R. No. 88246, June 4, 1993, 223 SCRA 151, 158.

[43] *The People of the Philippines v. Rivera*, 91 Phil 354, 358 (1952).

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