

LORD ALLAN JAY Q. VELASCO, PETITIONER, VS. HON. SPEAKER FELICIANO R. BELMONTE, JR., SECRETARY GENERAL MARILYN B. BARUA-YAP AND REGINA ONGSIAKO REYES, RESPONDENTS.

G.R. No. 211140. January 12, 2016

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

In the same manner that this Court is cautioned to be circumspect because one party is the son of a sitting Justice of this Court, so too must we avoid abjuring what ought to be done as dictated by law and justice solely for that reason.

Before this Court is a Petition for Mandamus filed under Rule 65 of the Rules of Court, as amended, by Lord Allan Jay Q. Velasco (Velasco) against Hon. Feliciano R. Belmonte, Jr. (Speaker Belmonte, Jr.), Speaker, House of Representatives, Hon. Marilyn B. Barua-Yap (Sec. Gen. Barua-Yap), Secretary General, House of Representatives, and Hon. Regina Ongsiako Reyes (Reyes), Representative, Lone District of the Province of Marinduque.

Velasco principally alleges that he is the "legal and rightful winner during the May 13, 2013 elections in accordance with final and executory resolutions of the Commission on Elections (COMELEC) and [this] Honorable Court;"[2] thus, he seeks the following reliefs:

- that a WRIT OF MANDAMUS against the HON. SPEAKER FELICIANO BELMONTE, JR. be issued ordering said respondent to administer the proper OATH in favor of petitioner Lord Allan Jay Q. Velasco for the position of Representative for the Lone District of Marinduque; and allow petitioner to assume the position of representative for Marinduque and exercise the powers and prerogatives of said position of Marinduque representative;
- that a WRIT OF MANDAMUS against SECRETARY-GENERAL [MARILYN] BARUA-YAP be issued ordering said respondent to REMOVE the name of Regina O. Reyes in the Roll of Members of the House of Representatives and to REGISTER the name of petitioner Lord Allan Jay Q. Velasco, herein petitioner, in her stead; and
- that a TEMPORARY RESTRAINING ORDER be issued to RESTRAIN, PREVENT and PROHIBIT respondent REGINA ONGSIAKO REYES from usurping the position of Member of the House of Representatives for the Lone District of Marinduque and from further exercising the prerogatives of said position and performing the duties pertaining thereto, and DIRECTING her to IMMEDIATELY VACATE said position.[3]

The pertinent facts leading to the filing of the present petition are,:

On October 10, 2012, one Joseph Socorro Tan (Tan), a registered voter and resident of the Municipality of Torrijos, Marinduque, filed with the Commission on Elections (COMELEC) a petition[4] to deny due course or cancel the Certificate of Candidacy (COC) of Reyes as candidate for the position of Representative of the Lone

District of the Province of Marinduque. In his petition, Tan alleged that Reyes made several material misrepresentations in her COC, i.e., "(i) that she is a resident of Brgy. Lupac, Boac, Marinduque; (ii) that she is a natural-born Filipino citizen; (iii) that she is not a permanent resident of, or an immigrant to, a foreign country; (iv) that her date of birth is July 3, 1964; (v) that her civil status is single; and finally (vi) that she is eligible for the office she seeks to be elected to." [5] The case was docketed as SPA No. 13-053 (DC), entitled "Joseph Socorro B. Tan v. Atty. Regina Ongsiako Reyes."

On March 27, 2013, the COMELEC First Division resolved to grant the petition; hence, Reyes's COC was accordingly cancelled. The dispositive part of said resolution reads:

WHEREFORE, in view of the foregoing, the instant Petition is GRANTED. Accordingly, the Certificate of Candidacy of respondent REGINA ONGSIAKO REYES is hereby CANCELLED. [6]

Aggrieved, Reyes filed a motion for reconsideration thereto.

But while said motion was pending resolution, the synchronized local and national elections were held on May 13, 2013.

The day after, or on May 14, 2013, the COMELEC En Banc affirmed the resolution of the COMELEC First Division, to wit:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED for lack of merit. The March 27, 2013 Resolution of the Commission (First Division) is hereby AFFIRMED. [7]

A copy of the foregoing resolution was received by the Provincial Election Supervisor of Marinduque, through Executive Assistant Rossini M. Oscadin, on May 15, 2013.

Likewise, Reyes's counsel, Atty. Nelia S. Aureus, received a copy of the same on May 16, 2013.

On May 18, 2013, despite its receipt of the May 14, 2013 COMELEC Resolution, the Marinduque Provincial Board of Canvassers (PBOC) proclaimed Reyes as the winner of the May 13, 2013 elections for the position of Representative of the Lone District of Marinduque.

On May 31, 2013, Velasco filed an Election Protest Ad Cautelam against Reyes in the House of Representatives Electoral Tribunal (HRET) docketed as HRET Case No. 13-028, entitled "Lord Allan Jay Q. Velasco v. Regina Ongsiako Reyes."

Also on the same date, a Petition for Quo Warranto Ad Cautelam was also filed against Reyes in the HRET docketed as HRET Case No. 13-027, entitled "Christopher P. Matienzo v. Regina Ongsiako Reyes."

On June 5, 2013, the COMELEC En Banc issued a Certificate of Finality [8] in SPA No. 13-053 (DC) which provides:

NOW, THEREFORE, considering that more than twenty-one (21) days have lapsed since the date of the promulgation with no Order issued by the Supreme Court restraining its execution, the Resolution of the Commission en banc promulgated on May 14, 2013 is hereby declared FINAL and EXECUTORY. [9]

On June 7, 2013, Speaker Belmonte, Jr. administered the oath of office to Reyes.

On June 10, 2013, Reyes filed before this Court a Petition for Certiorari docketed as G.R. No. 207264, entitled "Regina Ongsiako Reyes v. Commission on Elections and Joseph Socorro Tan," assailing (i) the May 14, 2013 Resolution of the COMELEC En Banc, which denied her motion for reconsideration of the March 27, 2013 Resolution of the COMELEC First Division cancelling her Certificate of Candidacy (for material

misrepresentations made therein); and (ii) the June 5, 2013 Certificate of Finality.

In the meantime, it appears that Velasco filed a Petition for Certiorari before the COMELEC docketed as SPC No. 13-010, entitled "Rep. Lord Allan Jay Q. Velasco vs. New Members/Old Members of the Provincial Board of Canvassers (PBOC) of the Lone District of Marinduque and Regina Ongsiako Reyes," assailing the proceedings of the PBOC and the proclamation of Reyes as null and void.

On June 19, 2013, however, the COMELEC denied the aforementioned petition in SPC No. 13-010.

On June 25, 2013, in G.R. No. 207264, this Court promulgated a Resolution dismissing Reyes's petition, viz.:

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.[10]

Significantly, this Court held that Reyes cannot assert that it is the HRET which has jurisdiction over her since she is not yet considered a Member of the House of Representatives. This Court explained that to be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (i) a valid proclamation, (ii) a proper oath, and (iii) assumption of office.[11]

On June 28, 2013, Tan filed a Motion for Execution (of the March 27, 2013 Resolution of the COMELEC First Division and the May 14, 2013 Resolution of the COMELEC En Banc) in SPA No. 13-053 (DC), wherein he prayed that:

[A]n Order be issued granting the instant motion; and cause the immediate EXECUTION of this Honorable Commission's Resolutions dated March 27, 2013 and May 14, 2013; CAUSE the PROCLAMATION of LORD ALLAN JAY Q. VELASCO as the duly elected Member of the House of Representatives for the Lone District of Marinduque, during the May 2013 National and Local Elections.[12]

At noon of June 30, 2013, it would appear that Reyes assumed office and started discharging the functions of a Member of the House of Representatives.

On July 9, 2013, in SPC No. 13-010, acting on the motion for reconsideration of Velasco, the COMELEC En Banc reversed the June 19, 2013 denial of Velasco's petition and declared null and void and without legal effect the proclamation of Reyes. The dispositive part reads:

WHEREFORE, in view of the foregoing, the instant motion for reconsideration is hereby GRANTED. The assailed June 19, 2013 Resolution of the First Division is REVERSED and SET ASIDE.

Corollary thereto, the May 18, 2013 proclamation of respondent REGINA ONGSIAKO REYES is declared NULL and VOID and without any legal force and effect. Petitioner LORD ALLAN JAY Q. VELASCO is hereby proclaimed the winning candidate for the position of representative in the House of Representatives for the province of Marinduque.[13] (Emphasis supplied.)

Significantly, the aforequoted Resolution has not been challenged in this Court.

On July 10, 2013, in SPA No. 13-053 (DC), the COMELEC En Banc, issued an Order (i) granting Tan's motion for execution (of the May 14, 2013 Resolution); and (ii) directing the reconstitution of a new PBOC of Marinduque, as well as the proclamation by said new Board of Velasco as the duly elected Representative of the Lone District of Marinduque. The fallo of which states:

IN VIEW OF THE FOREGOING, the Commission hereby GRANTS the instant Motion. Accordingly, a new composition of the Provincial Board of Canvassers of Marinduque is hereby constituted to be composed of the following:

- Atty. Ma. Josefina E. Dela Cruz -Chairman
- Atty. Abigail Justine Cuaresma-Lilagan - Vice Chairman
- Dir. EsterVillaflor-Roxas -Member
- Three (3) Support Staffs

For this purpose, the Commission hereby directs, after due notice to the parties, the convening of the New Provincial Board of Canvassers of Marinduque on July 16, 2013 (Tuesday) at 2:00 p.m., at the COMELEC Session Hall, 8th Floor, PDG Intramuros, Manila and to PROCLAIM LORD ALLAN JAY Q. VELASCO as the duly elected Member of the House of Representatives for the Lone District of Marinduque in the May 13, 2013 National and Local Elections.

Further, Director Ester Villaflor-Roxas is directed to submit before the New Provincial Board of Canvassers (NPBOC) a certified true copy of the votes of congressional candidate Lord Allan Jay Q. Velasco in the 2013 National and Local Elections.

Finally, the NPBOC of the Province of Marinduque is likewise directed to furnish copy of the Certificate of Proclamation to the Department of Interior and Local Government (DILG) and the House of Representatives.[14]

On July 16, 2013, the newly constituted PBOC of Marinduque proclaimed herein petitioner Velasco as the duly elected Member of the House of Representatives for the Lone District of Marinduque with 48,396 votes obtained from 245 clustered precincts.[15]

On July 22, 2013, the 16th Congress of the Republic of the Philippines formally convened in a joint session. On the same day, Reyes, as the recognized elected Representative for the Lone District of Marinduque, along with the rest of the Members of the House of Representatives, took their oaths in open session before Speaker Belmonte, Jr.

On July 23, 2013, Reyes filed a Manifestation and Notice of Withdrawal of Petition "without waiver of her arguments, positions, defenses/causes of action as will be articulated in the HRET which is now the proper forum." [16]

On October 22, 2013, Reyes's motion for reconsideration [17] (of this Court's June 25, 2013 Resolution in G.R. No. 207264) filed on July 15, 2013, was denied by this Court, viz.:

WHEREFORE, The Motion for Reconsideration is DENIED. The dismissal of the petition is affirmed. Entry of Judgment is ordered.[18]

On November 27, 2013, Reyes filed a Motion for Leave of Court to File and Admit Motion for Reconsideration in G.R. No. 207264.

On December 3, 2013, said motion was treated as a second motion for reconsideration and was denied by this Court.

On December 5, 2013 and January 20, 2014, respectively, Velasco sent two letters to Reyes essentially demanding that she vacate the office of Representative of the Lone District of Marinduque and to relinquish the same in his favor.

On December 10, 2013, Velasco wrote a letter to Speaker Belmonte, Jr. requesting, among others, that he be allowed to assume the position of Representative of the Lone District of Marinduque.

On December 11, 2013, in SPC No. 13-010, acting on the Motion for Issuance of a Writ of Execution filed by

Velasco on November 29, 2013, praying that:

WHEREFORE, it is respectfully prayed that a writ of execution be ISSUED to implement and enforce the May 14, 2013 Resolution in SPA No. 13-053, the July 9, 2013 Resolution in SPC No. 13-010 and the July 16, 2013 Certificate of Proclamation of Petitioner Lord Allan Jay Q. Velasco as Representative of Marinduque. It is further prayed that a certified true copy of the writ of execution be personally served and delivered by the Commission's bailiff to Speaker Feliciano Belmonte for the latter's implementation and enforcement of the aforementioned May 14, 2013 Resolution and July 9, 2013 Resolution and the July 16, 2013 Certificate of Proclamation issued by the Special Board of Canvassers of the Honorable Commission.[19]

the COMELEC issued an Order[20] dated December 11, 2013 directing, inter alia, that all copies of its Resolutions in SPA No. 13-053 (DC) and SPC No. 13-010, the Certificate of Finality dated June 5, 2013, the Order dated July 10, 2013, and the Certificate of Proclamation dated July 16, 2013 be forwarded and furnished to Speaker Belmonte, Jr. for the latter's information and guidance.

On February 4, 2014, Velasco wrote another letter to Speaker Belmonte, Jr. reiterating the above-mentioned request but to no avail.

On February 6, 2014, Velasco also wrote a letter to Sec. Gen. Barua-Yap reiterating his earlier requests (July 12 and 18, 2013) to delete the name of Reyes from the Roll of Members and register his name in her place as the duly elected Representative of the Lone District of Marinduque.

However, Velasco relates that his efforts proved futile. He alleges that despite all the letters and requests to Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap, they refused to recognize him as the duly elected Representative of the Lone District of Marinduque. Likewise, in the face of numerous written demands for Reyes to vacate the position and office of the Representative of the Lone District of Marinduque, she continues to discharge the duties of said position.

Hence, the instant Petition for Mandamus with prayer for issuance of a temporary restraining order and/or injunction anchored on the following issues:

A. Whether or not Speaker Belmonte, Jr. can be COMPELLED, DIRECTED and ORDERED by a Writ of Mandamus to administer the oath in favor of petitioner as duly elected Marinduque Representative and allow him to assume said position and exercise the prerogatives of said office.

B. Whether or not respondent SG Barua-Yap can be COMPELLED, DIRECTED and ORDERED by a Writ of Mandamus to delete the name of respondent Reyes from the Roll of Members of the House and include the name of the Petitioner in the Roll of Members of the House of Representatives.

C. Whether or not a TEMPORARY RESTRAINING ORDER (TRO) and a Writ of PERMANENT INJUNCTION can be issued to prevent, restrain and prohibit respondent Reyes from exercising the prerogatives and performing the functions as Marinduque Representative, and to order her to VACATE the said office.[21]

As to the first and second issues, Velasco contends that he "has a well-defined and clear legal right and basis to warrant the grant of the writ of mandamus." [22] He insists that the final and executory decisions of the COMELEC in SPA No. 13-053 (DC), and this Court in G.R. No. 207264, as well as the nullification of respondent Reyes's proclamation and his subsequent proclamation as the duly elected Representative of the Lone District of Marinduque, collectively give him the legal right to claim the congressional seat.

Thus, he contends that it is the ministerial duty of (z) respondent Speaker Belmonte, Jr. "to administer the oath to [him] and to allow him to assume and exercise the prerogatives of the congressional seat for Marinduque

representative;"[23] and (ii) respondent Sec. Gen. Barua-Yap "to register [his] name xxxas the duly elected member of the House and delete the name of respondent Reyes from the Roll of Members." [24] Velasco anchors his position on *Codilla, Sr. v. De Venecia*, [25] citing a statement of this Court to the effect that the Speaker of the House of Representatives has the ministerial duty to recognize the petitioner therein (*Codilla*) as the duly elected Representative of the Fourth District of Leyte.

Despite the foregoing, Velasco asserts that both respondents Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap are unlawfully neglecting the performance of their alleged ministerial duties; thus, illegally excluding him (Velasco) from the enjoyment of his right as the duly elected Representative of the Lone District of Marinduque. [26]

With respect to the third issue, Velasco posits that the "continued usurpation and unlawful holding of such position by respondent Reyes has worked injustice and serious prejudice to [him] in that she has already received the salaries, allowances, bonuses and emoluments that pertain to the position of Marinduque Representative since June 30, 2013 up to the present in the amount of around several hundreds of thousands of pesos." Therefore, he prays for the issuance of a temporary restraining order and a writ of permanent injunction against respondent Reyes to "restrain, prevent and prohibit [her] from usurping the position." [27]

In her Comment, Reyes contends that the petition is actually one for quo warranto and not mandamus given that it essentially seeks a declaration that she usurped the subject office; and the installation of Velasco in her place by Speaker Belmonte, Jr. when the latter administers his oath of office and enters his name in the Roll of Members. She argues that, being a collateral attack on a title to public office, the petition must be dismissed as enunciated by the Court in several cases. [28]

As to the issues presented for resolution, Reyes questions the jurisdiction of the Court over Quo Warranto cases involving Members of the House of Representatives. She posits that "even if the Petition for Mandamus be treated as one of Quo Warranto, it is still dismissible for lack of jurisdiction and absence of a clear legal right on the part of [Velasco]" [29] She argues that numerous jurisprudence have already ruled that it is the House of Representatives Electoral Tribunal that has the sole and exclusive jurisdiction over all contests relating to the election, returns and qualifications of Members of the House of Representatives. Moreover, she insists that there is also an abundance of case law that categorically states that the COMELEC is divested of jurisdiction upon her proclamation as the winning candidate, as, in fact, the HRET had already assumed jurisdiction over quo warranto cases [30] filed against Reyes by several individuals.

Given the foregoing, Reyes concludes that this Court is "devoid of original jurisdiction to annul [her] proclamation" [31] But she hastens to point out that (i) "[e]ven granting for the sake of argument that the proclamation was validly nullified, [Velasco] as second placer cannot be declared the winner x x x" as he was not the choice of the people of the Province of Marinduque; and (ii) Velasco is estopped from asserting the jurisdiction of this Court over her (Reyes) election because he (Velasco) filed an Election Protest Ad Cautelam in the HRET on May 31, 2014.

The Office of the Solicitor General (OSG), arguing for Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap, opposed Velasco's petition on the following grounds:

I.

UPON RESPONDENT REYES' PROCLAMATION ON MAY 18, 2013, EXCLUSIVE JURISDICTION TO RESOLVE ELECTION CONTESTS INVOLVING RESPONDENT REYES, INCLUDING THE VALIDITY OF HER PROCLAMATION AND HER ELIGIBILITY FOR OFFICE, VESTED IN THE HRET.

Hence, until and unless the HRET grants any quo warranto petition or election protest filed against respondent Reyes, and such HRET resolution or resolutions become final and executory, respondent Reyes may not be

restrained from exercising the prerogatives of Marinduque Representative, and respondent Sec. Gen. Barua-Yap may not be compelled by mandamus to remove respondent Reyes's name from the Roll of Members of the House.

II.

CODILLA v. COMELEC IS NOT APPLICABLE TO THIS CASE, GIVEN THAT PETITIONER, BEING MERELY THE SECOND PLACER IN THE MAY 13, 2013 ELECTIONS, CANNOT VALIDLY ASSUME THE POST OF MARINDUQUE REPRESENTATIVE.

Hence, respondents Speaker Belmonte and Sec. Gen. Barua-Yap may not be compelled by mandamus to, respectively, administer the proper oath to petitioner and register the latter's name in the Roll of Members of the House.

III.

PETITIONER IS NOT ENTITLED TO THE INJUNCTIVE RELIEFS PRAYED FOR.[32]

The OSG presents the foregoing arguments on the premise that there is a need for this Court to revisit its twin Resolutions dated June 25, 2013 and October 22, 2013 both in G.R. No. 207264, given that (i) this Court was "divided" when it issued the same; and (ii) there were strong dissents to the majority opinion. It argues that this Court has in the past revisited decisions already final and executory; there is no hindrance for this Court to do the same in G.R. No. 207264.

Moreover, the OSG contends that:

Despite the finality of the June 25, 2013 Resolution and the October 22, 2013 Resolution, upholding the cancellation of respondent Reyes's CoC, there has been no compelling reason for the House to withdraw its recognition of respondent Reyes as Marinduque Representative, in the absence of any specific order or directive to the House. To be sure, there was nothing in the Honorable Court's disposition in Reyes v. COMELEC that required any action from the House. Again, it bears emphasis that neither petitioner nor respondents Speaker Belmonte and Sec. Gen. Barua-Yap were parties in Reyes v. COMELEC.

Further, records with the HRET show that the following cases have been filed against respondent Reyes:

- (i) Case No. 13-036 (Quo Warranto), entitled Noeme Mayores Tan & Jeasseca L. Mapacpac v. Regina Ongsiako Reyes;
- (ii) Case No. 13-037 (Quo Warranto), entitled Eric D. Junio v. Regina Ongsiako Reyes;
- (iii) Case No. 13-027 (Quo Warranto), entitled Christopher Matienzo v. Regina Ongsiako Reyes; and
- (iv) Case No. 13-028 (Election Protest), entitled Lord Allan Jay Velasco v. Regina Ongsiako Reyes.[33]

And in view of the cases filed in the HRET, the OSG insists that:

If the jurisdiction of the COMELEC were to be retained until the assumption of office of the winner, at noon on the thirtieth day of June next following the election, then there would obviously be a clash of jurisdiction between the HRET and the COMELEC, given that the 2011 HRET Rules provide that the appropriate cases should be filed before it within 15 days from the date of proclamation of the winner. If, as the June 25, 2013 Resolution provides, the HRET's jurisdiction begins only after assumption of office, at noon of June 30 following the election, then quo warranto petitions and election protests filed on or after said date would be dismissed outright by the HRET under its own rules for having been filed out of time, where the winners have already been proclaimed within the period after the May elections and up to June 14.[34]

In recent development, however, the HRET promulgated a Resolution on December 14, 2015 dismissing HRET Case Nos. 13-036 and 13-037,[35] the twin petitions for quo warranto filed against Reyes, to wit:

WHEREFORE, in view of the foregoing, the September 23, 2014 Motion for Reconsideration of Victor Vela Sioco is hereby GRANTED. The September 11, 2014 Resolution of [the] Tribunal is hereby REVERSED and SET ASIDE. Accordingly, the present Petitions for Quo Warranto are hereby DISMISSED for lack of jurisdiction.[36]

In the said Resolution, the HRET held that "the final Supreme Court ruling in G.R. No. 207264 is the COGENT REASON to set aside the September 11, 2014 Resolution"[37]

To make clear, the September 11, 2014 Resolution of the HRET ordered the dismissal of a Petition-In-Intervention filed by one Victor Vela Sioco (Sioco) in the twin petitions for quo warranto, for "lack of merit." Further, the HRET directed "the hearing and reception of evidence of the two Petitions for Quo Warranto against x x x Respondent [Reyes] to proceed"[38] Sioco, however, moved for the reconsideration of the said September 11, 2014 HRET Resolution based on the argument that the latter was contrary to law and jurisprudence given the Supreme Court ruling in G.R. No. 207264.

Subsequently, the December 14, 2015 Resolution of the HRET held that-

The Tribunal's Jurisdiction

It is necessary to clarify the Tribunal's jurisdiction over the present petitions for quo warranto, considering the parties' divergent postures on how the Tribunal should resolve the same vis-a-vis the Supreme Court ruling in G.R. No. 207264.

The petitioners believe that the Tribunal has jurisdiction over their petitions. They pray that "after due proceedings," the Tribunal "declare Respondent REGINA ONGSIAKO REYES DISQUALIFIED/INELIGIBLE to sit as Member of the House of Representatives, representing the Province of Marinduque." In addition, the petitioner Eric Del Mundo Junio urges the Tribunal to follow the Supreme Court pronouncement in G.R. No. 207264.

On the other hand, Victor Vela Sioco, in his Petition-In-Intervention, pleads for the outright dismissal of the present petitions considering the Supreme Court final ruling in G.R. No. 207264. For her part, respondent Regina Reyes prays too for the dismissal of the present petitions, albeit after reception of evidence by the contending parties.

The constitutional mandate of the Tribunal is clear: It is "the sole judge of all contests relating to the election, returns, and qualifications of [House] Members." Such power or authority of the Tribunal is echoed in its 2011 Rules of the House of Representatives Electoral Tribunal: "The Tribunal is the sole judge of all contests relating to the elections, returns, and qualifications of the Members of the House of Representatives."

x x x x

In the present cases, before respondent Regina Reyes was proclaimed on May 18, 2013, the COMELEC En Banc, in its Resolution of May 14, 2013 in SPA No. 13-053 (DC), had already resolved that the COMELEC First Division correctly cancelled her COC on the ground that she lacked the Filipino citizenship and residency requirements. Thus, the COMELEC nullified her proclamation. When Regina Reyes challenged the COMELEC actions, the Supreme Court En Banc, in its Resolution of June 25, 2013 in G.R. No. 207246, upheld the same.

With the COMELEC's cancellation of respondent Regina Reyes' COC, resulting in the nullification of her proclamation, the Tribunal, much as we would want to, cannot assume jurisdiction over the present petitions. The jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives. And 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, so the

Supreme Court pronounced in its Resolution of June 25, 2013 in G.R. No. 207264, thus:

x x x, the jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives, as stated in Section 17, Article VI of the 1987 Constitution:

x x x x

As held in *Marcos v. COMELEC*, the HRET does not have jurisdiction over a candidate who is not a member of the House of Representatives x x x.

x x x x

The next inquiry, then, is when is a candidate considered a Member of the House of Representatives?

In *Vinzons-Chato v. COMELEC*, citing *Aggabao v. COMELEC* and *Guerrero v. COMELEC*, the Court ruled that:

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, x x x

From the foregoing, it is then clear 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 xxx.

Based on the above-quoted ruling of the Supreme Court, a valid proclamation is the first essential element before a candidate can be considered a Member of the House of Representatives over which the Tribunal could assume jurisdiction. Such element is obviously absent in the present cases as Regina Reyes' proclamation was nullified by the COMELEC, which nullification was upheld by the Supreme Court. On this ground alone, the Tribunal is without power to assume jurisdiction over the present petitions since Regina Reyes "cannot be considered a Member of the House of Representatives," as declared by the Supreme Court En Banc in G.R. No. 207264. It further stresses:

"x x x there was no basis for the proclamation of petitioner [Regina Reyes] 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."

The Supreme Court has spoken. Its pronouncements must be respected. Being the ultimate guardian of the Constitution, and by constitutional design, the Supreme Court is "supreme in its task of adjudication; x x x. As a rule, all decisions and determinations in the exercise of judicial power ultimately go to and stop at the Supreme Court whose judgment is final." This Tribunal, as all other courts, must take their bearings from the decisions and rulings of the Supreme Court.[39]

Incidentally, it appears that an Information against Reyes for violation of Article 177 (Usurpation of Official Functions) of the Revised Penal Code, dated August 3, 2015, has been filed in court,[40] entitled "People of the Philippines v. Regina Ongsiako Reyes." [41]

The Issue

The issue for this Court's resolution boils down to the propriety of issuing a writ of mandamus to compel Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap to perform the specific acts sought by Velasco in this petition.

The Ruling

The petition has merit.

At the outset, this Court observes that the respondents have taken advantage of this petition to re-litigate what has

been settled in G.R. No. 207264. Respondents are reminded to respect the Entry of Judgment that has been issued therein on October 22, 2013.

After a painstaking evaluation of the allegations in this petition, it is readily apparent that this special civil action is really one for mandamus and not a quo warranto case, contrary to the asseverations of the respondents.

A petition for quo warranto is a proceeding to determine the right of a person to the use or exercise of a franchise or office and to oust the holder from its enjoyment, if his claim is not well-founded, or if he has forfeited his right to enjoy the privilege. Where the action is filed by a private person, he must prove that he is entitled to the controverted position; otherwise, respondent has a right to the undisturbed possession of the office.[42] In this case, given the present factual milieu, i.e., (i) the final and executory resolutions of this Court in G.R. No. 207264; (ii) the final and executory resolutions of the COMELEC in SPA No. 13-053 (DC) cancelling Reyes's Certificate of Candidacy; and (iii) the final and executory resolution of the COMELEC in SPC No. 13-010 declaring null and void the proclamation of Reyes and proclaiming Velasco as the winning candidate for the position of Representative for the Lone District of the Province of Marinduque - it cannot be claimed that the present petition is one for the determination of the right of Velasco to the claimed office.

To be sure, what is prayed for herein is merely the enforcement of clear legal duties and not to try disputed title. That the respondents make it appear so will not convert this petition to one for quo warranto.

Section 3, Rule 65 of the Rules of Court, as amended, provides that any person may file a verified petition for mandamus "when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law." A petition for mandamus will prosper if it is shown that the subject thereof is a ministerial act or duty, and not purely discretionary on the part of the board, officer or person, and that the petitioner has a well-defined, clear and certain right to warrant the grant thereof.[43]

The difference between a ministerial and discretionary act has long been established. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[44]

As the facts stand in this case, Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap have no discretion whether or not to administer the oath of office to Velasco and to register the latter's name in the Roll of Members of the House of Representatives, respectively. It is beyond cavil that there is in existence final and executory resolutions of this Court in G.R. No. 207264 affirming the final and executory resolutions of the COMELEC in SPA No. 13-053 (DC) cancelling Reyes's Certificate of Candidacy. There is likewise a final and executory resolution of the COMELEC in SPC No. 13-010 declaring null and void the proclamation of Reyes, and proclaiming Velasco as the winning candidate for the position of Representative for the Lone District of the Province of Marinduque.

The foregoing state of affairs collectively lead this Court to consider the facts as settled and beyond dispute - Velasco is the proclaimed winning candidate for the Representative of the Lone District of the Province of Marinduque.

Reyes argues in essence that this Court is devoid of original jurisdiction to annul her proclamation. Instead, it is the HRET that is constitutionally mandated to resolve any questions regarding her election, the returns of such

election, and her qualifications as a Member of the House of Representatives especially so that she has already been proclaimed, taken her oath, and started to discharge her duties as a Member of the House of Representatives representing the Lone District of the Province of Marinduque. But the confluence of the three acts in this case - her proclamation, oath and assumption of office - has not altered the legal situation between Velasco and Reyes.

The important point of reference should be the date the COMELEC finally decided to cancel the Certificate of Candidacy (COC) of Reyes which was on May 14, 2013. The most crucial time is when Reyes's COC was cancelled due to her non-eligibility to run as Representative of the Lone District of the Province of Marinduque - for without a valid COC, Reyes could not be treated as a candidate in the election and much less as a duly proclaimed winner. That particular decision of the COMELEC was promulgated even before Reyes's proclamation, and which was affirmed by this Court's final and executory Resolutions dated June 25, 2013 and October 22, 2013.

This Court will not give premium to the illegal actions of a subordinate entity of the COMELEC, the PBOC who, despite knowledge of the May 14, 2013 resolution of the COMELEC En Banc cancelling Reyes's COC, still proclaimed her as the winning candidate on May 18, 2013. Note must also be made that as early as May 16, 2013, a couple of days before she was proclaimed, Reyes had already received the said decision cancelling her COC. These points clearly show that the much argued proclamation was made in clear defiance of the said COMELEC En Banc Resolution.

That Velasco now has a well-defined, clear and certain right to warrant the grant of the present petition for mandamus is supported by the following undisputed facts that should be taken into consideration:

First. At the time of Reyes's proclamation, her COC was already cancelled by the COMELEC En Banc in its final finding in its resolution dated May 14, 2013, the effectivity of which was not enjoined by this Court, as Reyes did not avail of the prescribed remedy which is to seek a restraining order within a period of five (5) days as required by Section 13(b), Rule 18 of COMELEC Rules. Since no restraining order was forthcoming, the PBOC should have refrained from proclaiming Reyes.

Second. This Court upheld the COMELEC decision cancelling respondent Reyes's COC in its Resolutions of June 25, 2013 and October 22, 2013 and these Resolutions are already final and executory.

Third. As a consequence of the above events, the COMELEC in SPC No. 13-010 cancelled respondent Reyes's proclamation and, in turn, proclaimed Velasco as the duly elected Member of the House of Representatives in representation of the Lone District of the Province of Marinduque. The said proclamation has not been challenged or questioned by Reyes in any proceeding.

Fourth. When Reyes took her oath of office before respondent Speaker Belmonte, Jr. in open session, Reyes had NO valid COC NOR a valid proclamation.

Thus, to consider Reyes's proclamation and treating it as a material fact in deciding this case will paradoxically alter the well-established legal milieu between her and Velasco.

Fifth. In view of the foregoing, Reyes HAS ABSOLUTELY NO LEGAL BASIS to serve as a Member of the House of Representatives for the Lone District of the Province of Marinduque, and therefore, she HAS NO LEGAL PERSONALITY to be recognized as a party-respondent at a quo warranto proceeding before the HRET.

And this is precisely the basis for the HRET's December 14, 2015 Resolution acknowledging and ruling that it has no jurisdiction over the twin petitions for quo warranto filed against Reyes. Its finding was based on the existence of a final and executory ruling of this Court in G.R. No. 207264 that Reyes is not a bona fide member of the

House of Representatives for lack of a valid proclamation. To reiterate this Court's pronouncement in its Resolution, entitled *Reyes v. Commission on Elections* [45]-

The averred proclamation is the critical pointer to the correctness of petitioner's submission. The crucial question is whether or not petitioner [Reyes] 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.

x x x x

"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 [Reyes] 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 [Reyes] 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." (Emphasis supplied.)

Put in another way, contrary to the view that the resort to the jurisdiction of the HRET is a plain, speedy and adequate remedy, such recourse is not a legally available remedy to any party, specially to Velasco, who should be the sitting Member of the House of Representatives if it were not for the disregard by the leadership of the latter of the binding decisions of a constitutional body, the COMELEC, and the Supreme Court

Though the earlier existence of the twin quo warranto petitions filed against Reyes before the HRET had actually no bearing on the status of finality of the decision of the COMELEC in SPC No. 13-010. Nonetheless, their dismissal pursuant to the HRET's December 14, 2015 Resolution sustained Velasco's well-defined, clear and certain right to the subject office.

The present Petition for Mandamus seeks the issuance of a writ of mandamus to compel respondents Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap to acknowledge and recognize the final and executory Decisions and Resolution of this Court and of the COMELEC by administering the oath of office to Velasco and entering the latter's name in the Roll of Members of the House of Representatives. In other words, the Court is called upon to determine whether or not the prayed for acts, i.e., (i) the administration of the oath of office to Velasco; and (if) the inclusion of his name in the Roll of Members, are ministerial in character vis-a-vis the factual and legal milieu of this case. As we have previously stated, the administration of oath and the registration of Velasco in the Roll of Members of the House of Representatives for the Lone District of the Province of Marinduque are no longer a matter of discretion or judgment on the part of Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap. They are legally duty-bound to recognize Velasco as the duly elected Member of the House of Representatives for the Lone District of Marinduque in view of the ruling rendered by this Court and the COMELEC'S compliance with the said ruling, now both final and executory.

It will not be the first time that the Court will grant Mandamus to compel the Speaker of the House of Representatives to administer the oath to the rightful Representative of a legislative district and the Secretary-General to enter said Representative's name in the Roll of Members of the House of Representatives. In *Codilla, Sr. v. De Venecia*, [46] the Court decreed:

Under Rule 65, Section 3 of the 1997 Rules of Civil Procedure, any person may file a verified petition for

mandamus "when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law." For a petition for mandamus to prosper, it must be shown that the subject of the petition for mandamus is a ministerial act or duty, and not purely discretionary on the part of the board, officer or person, and that the petitioner has a well-defined, clear and certain right to warrant the grant thereof.

The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.

In the case at bar, the administration of oath and the registration of the petitioner in the Roll of Members of the House of Representatives representing the 4th legislative district of Leyte is no longer a matter of discretion on the part of the public respondents. The facts are settled and beyond dispute: petitioner garnered 71,350 votes as against respondent Locsin who only got 53,447 votes in the May 14, 2001 elections. The COMELEC Second Division initially ordered the proclamation of respondent Locsin; on Motion for Reconsideration the COMELEC en banc set aside the order of its Second Division and ordered the proclamation of the petitioner. The Decision of the COMELEC en banc has not been challenged before this Court by respondent Locsin and said Decision has become final and executory.

In sum, the issue of who is the rightful Representative of the 4th legislative district of Leyte has been finally settled by the COMELEC en banc, the constitutional body with jurisdiction on the matter. The rule of law demands that its Decision be obeyed by all officials of the land. There is no alternative to the rule of law except the reign of chaos and confusion.

IN VIEW WHEREOF, the Petition for Mandamus is granted. Public Speaker of the House of Representatives shall administer the oath of petitioner EUFROCINO M. CODILLA, SR., as the duly-elected Representative of the 4th legislative district of Leyte. Public respondent Secretary-General shall likewise register the name of the petitioner in the Roll of Members of the House of Representatives after he has taken his oath of office. This decision shall be immediately executory. (Citations omitted.)

Similarly, in this case, by virtue of (i) COMELEC en banc Resolution dated May 14, 2013 in SPA No. 13-053 (DC); (ii) Certificate of Finality dated June 5, 2013 in SPA No. 13-053 (DC); (iii) COMELEC en banc Resolution dated June 19, 2013 in SPC No. 13-010; (iv) COMELEC en banc Resolution dated July 10, 2013 in SPA No. 13-053 (DC); and (v) Velasco's Certificate of Proclamation dated July 16, 2013, Velasco is the rightful Representative of the Lone District of the Province of Marinduque; hence, entitled to a writ of Mandamus.

As to the view of Reyes and the OSG that since Velasco, Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap are not parties to G.R. No. 207264, Velasco can neither ask for the enforcement of the Decision rendered therein nor argue that the doctrine of res judicata by conclusiveness of judgment applies to him and the public respondents, this Court maintains that such contention is incorrect. Velasco, along with public respondents Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap, are all legally bound by this Court's judgment in G.R. No. 207264, i.e., essentially, that the COMELEC correctly cancelled Reyes's COC for Member of the House of Representatives for the Lone District of the Province of Marinduque on the ground that the latter was ineligible for the subject position due to her failure to prove her Filipino citizenship and the requisite one-year residency in the Province of Marinduque. A contrary view would have our dockets unnecessarily clogged with petitions to be filed in every direction by any and all registered voters not a party to a case to question the final decision of this Court. Such restricted

interpretation of res judicata is intolerable for it will defeat this Court's ruling in G.R. No. 207264. To be sure, Velasco who was duly proclaimed by COMELEC is a proper party to invoke the Court's final judgment that Reyes was ineligible for the subject position.[47]

It is well past the time for everyone concerned to accept what has been adjudicated and take judicial notice of the fact that Reyes's ineligibility to run for and be elected to the subject position had already been long affirmed by this Court. Any ruling deviating from such established ruling will be contrary to the Rule of Law and should not be countenanced.

In view of finality of the rulings in G.R. No. 207264, SPA No. 13-053 (DC) and SPC No. 13-010, there is no longer any issue as to who is the rightful Representative of the Lone District of the Province of Marinduque; therefore, to borrow the pronouncement of this Court, speaking through then Associate Justice Reynato S. Puno, in *Codilla, Sr. v. De Venecia*,^[48] "[t]he rule of law demands that its Decision be obeyed by all officials of the land. There is no alternative to the rule of law except the reign of chaos and confusion."

WHEREFORE, the Petition for Mandamus is GRANTED. Public respondent Hon. Feliciano R. Belmonte, Jr., Speaker, House of Representatives, shall administer the oath of office of petitioner Lord Allan Jay Q. Velasco as the duly-elected Representative of the Lone District of the Province of Marinduque. And public respondent Hon. Marilyn B. Barua-Yap, Secretary General, House of Representatives, shall register the name of petitioner Lord Allan Jay Q. Velasco in the Roll of Members of the House of Representatives after he has taken his oath of office. This Decision shall be IMMEDIATELY EXECUTORY.

SO ORDERED.

Sereno, CJ., Bersamin, Villarama, Jr., and Reyes, JJ., concur.

Carpio, J., join the concurring opinion of J. Leonen.

Velasco, Jr., Peralta, Del Castillo, Mendoza, Perlas-Bernabe, and Jardeleza, JJ., no part

Brion, J., see dissenting opinion.

Perez, J., I concur and submit a concurring opinion.

Leonen, J., see separate concurring opinion.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on January 12, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on January 18, 2016 at 11:10 a.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] Originally cited as "Emilia."

[2] Rollo (G.R. No. 201140), pp. 3-4.

[3] Id. at 25-26.

[4] Docketed as SPA No. 13-053 (DC).

[5] Rollo (G.R. No. 201140), pp. 31-32.

[6] Id. at 42.

[7] Id. at 47.

[8] Id. at 65-67.

[9] Id. at 67. Section 13, Rule 18 of the 1993 COMELEC Rules of Procedure in relation to Paragraph 2, Section 8 of Resolution No. 9523, provides that a decision or resolution of the COMELEC En Banc in special actions and special cases shall become final and executory five (5) days after its promulgation unless a restraining order is issued by the Supreme Court. Section 3, Rule 37, Part VII also provides that decisions in petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate or to disqualify a candidate, shall become final and executory after the lapse of five (5) days from promulgation, unless restrained by the Supreme Court.

[10] Id. at 82.

[11] Id. at 74.

[12] Id. at 106.

[13] Id. at 267.

[14] Id. at 107.

[15] Id. at 109. Certificate of Canvass of Votes and Proclamation of Winning Candidate for the Position of Member of House of Representatives for the Lone District of Marinduque.

[16] Rollo (G.R. No. 207264), pp. 409-412.

[17] Id. at 308-376.

[19] Rollo (G.R. No. 201140), p. 122. Id. at 269.

[20] Id. at 269.

[21] Id. at 269-272.

[21] Id. at 12-13.

[22] Id. at 14.

[23] Id. at 16-17.

[24] Id. at 20.

[25] 442 Phil. 135, 189-190 (2002).

[26] Rollo (G.R. No. 201140), p. 21.

[27] Id. at 24-25.

[28] Nacionalista Party v. De Vera, 85 Phil. 126 (1949); Pilar v. Secretary of the Department of Public Works and Communications, 125 Phil. 766 (1967); Gonzales v. Commission on Elections, 129 Phil. 7 (1967); Topacio v. Ong, 595 Phil. 491 (2008); Seheres v. Commission on Elections, 603 Phil. 552 (2009).

- [29] Rollo (G.R. No. 201140), p. 314.
- [30] HRET Case Nos. 13-036 to 37, entitled "Noeme Mayores Tan and Jeasseca L. Mapacpac v. Regina Ongsiako Reyes" and "Eric Del Mundo Junio v. Regina Ongsiako Reyes," respectively
- [31] Rollo (G.K. No. 201140), p. 344.
- [32] Id. at 385-386.
- [33] Id. at 398-399.
- [34] Id. at 397.
- [35] Petitioner Velasco's Manifestation dated January 6, 2016, with attachments.
- [36] Id. Annex "D," p. 5.
- [37] Id. at 2.
- [38] Id. at 1.
- [39] Id. at 3-5.
- [40] Metropolitan Trial Court, Branch 41, Quezon City.
- [41] Petitioner Velasco's Manifestation dated January 6, 2016, with attachments, Annex "B."
- [42] *Austria v. Amante*, 79 Phil. 780, 783 (1948); *Caraan-Medina v. Quizon*, 124 Phil. 1171, 1178 (1966); *Castro v. Del Rosario*, 125 Phil. 611, 615-616 (1967).
- [43] *Codilla, Sr. v. De Venecia*, supra note 25 at 189.
- [44] *Nazareno v. City of Dumaguete*, 607 Phil. 768, 801 (2009), citing *Codilla, Sr. v. De Venecia*, supra note 25 at 189.
- [45] G.R. No. 207264, October 22, 2013, 708 SCRA 197, 219.
- [46] Supra note 25 at 188-190.
- [47] *Canero v. University of the Philippines*, 481 Phil. 249, 270 (2004).
- [48] Supra note 25 at 190.

DISSENTING OPINION

BRION, J.:

Before the Court is the petition for mandamus^[1] filed by Lord Allan Jay Q. Velasco^[2] (Velasco) against Hon. Feliciano R. Belmonte, Jr., (as Speaker of the House of Representatives, Speaker Belmonte), Secretary General Marilyn B. Barua-Yap (Sec. Gen. Barua-Yap), and Representative Regina Ongsiako-Reyes (Reyes).

I. THE PETITION

The petition seeks to compel: Speaker Belmonte to administer the proper oath in favor of Velasco and allow him to assume office as Representative for Marinduque and exercise the powers and prerogatives attached to the office; and Sec. Gen Barua-Yap to remove the name of Reyes, and register his name in her place, in the Roll of Members of the House of Representatives (HOR). It also seeks to restrain Reyes from further exercising the

powers and prerogatives attached to the position and to direct her to immediately vacate it.

Velasco asserts that "he has a well-defined and clear legal right and basis to warrant the grant of the writ of mandamus." He argues that the final and executory resolutions of the Commission on Elections ("Comelec") in SPA No. 13-053 and SPC No. 13-010 and of the Court in GR No. 207264, with his proclamation as Representative of Marinduque, grant him this clear legal right to claim and assume the congressional seat.

Because of this clear legal right, Velasco reasons out that Speaker Belmonte has the ministerial duty to "administer the oath to [him] and allow him to assume and exercise the prerogatives of the congressional seat x x. " Sec. Gen. Barua-Yap, on the hand, has the ministerial duty to "register [his] name xxx as the duly elected member of the [HOR] and delete the name of respondent Reyes from the Roll of Members." Velasco cites *Codilla v. De Venecia*[3] to support his claim.

He claims that Speaker Belmonte and Sec. Gen. Barua-Yap are unlawfully neglecting the performance of these ministerial duties, thus, illegally excluding him from the enjoyment of his right as the duly elected Marinduque Representative.

As regards Reyes, Velasco asserts that the "continued usurpation and unlawful holding of such position by respondent Reyes has worked injustice and serious prejudice to [him] in that she has already received the salaries, allowances, bonuses and emoluments that pertain to the [office] since June 30, 2013 up to the present xxx."

For these reasons, he argues that a writ of mandamus should be issued to compel Speaker Belmonte and Sec. Gen. Barua-Yap to perform their ministerial duties; and that a TRO and a writ of permanent injunction should also be issued to restrain, prevent, and prohibit Reyes from usurping the position that rightfully belongs to him.

II. THE PONENCIA'S RULING

The ponencia grants the petition; it views the petition merely as a plea to the Court for the enforcement of what it perceives as clear legal duties on the part of the respondents.

To the ponencia, any issue on who is the rightful Representative of the Lone District of Marinduque has been settled with the finality of the rulings in GR No. 207264, SPA No. 13-035, and SPC No. 13-010.

Recognizing it settled that Velasco is the proclaimed winning candidate for the Marinduque Representative position, the ponencia concludes that the administration of oath and the registration of Velasco in the Roll of Members of the HOR are no longer matters of discretion on the part of Speaker Belmonte and Sec. Gen. Barua-Yap. Hence, the writ of mandamus must issue.

III. MY DISSENT

I submit this Dissenting Opinion to object to the ponencia's GRANT of the petition, as I disagree with the ponencia's premises and conclusion that Velasco is entitled to the issuance of a writ of mandamus. I likewise believe that Velasco's petition should be dismissed because:

(1) he failed to satisfy the requirements for the issuance of the writ of mandamus; and

(2) the grant of the writ is a patent violation of the principle of the separation of powers that will disturb, not only the Court's relations with the HOR, a co-equal branch of government. As well, it will result in upsetting the established lines of jurisdiction among the Comelec, the House of Representatives Electoral Tribunal (HRET), and the Court.

Needless to state, the HOR may very well have its own views about the admission of its Members and can conceivably prefer its own views to those of the Court on matters that it believes are within its competence and jurisdiction to decide as an equal and separate branch of government.

Additionally, as I reminded the Court in my writings on the cases affecting Velasco, the Court should be keenly aware of the sensitivity involved in handling the case. Velasco is the son of a colleague, Associate Justice Presbitero Velasco, who is also the Chair of the HRET. Thus, we should be very clear and certain if we are to issue the writ in order to avoid any charge that the Court favors its own.

IV. DISCUSSION

IV.A. Mandamus: Nature and Concept

Mandamus is a command issuing from a court of law of competent jurisdiction, in the name of the state or sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law.[4]

The writ of mandamus is an extraordinary remedy issued only in cases of extreme necessity where the ordinary course of procedure is powerless to afford an adequate and speedy relief to one who has a clear legal right to the performance of the act to be compelled.[5]

As a peremptory writ, mandamus must be issued with utmost circumspection, and should always take into consideration existing laws, rules and jurisprudence on the matter, particularly the principles underlying our Constitution.

Moreover, the remedy of mandamus is employed to compel the performance of a ministerial duty after performance of the duty has been refused. As a rule, it cannot be used to direct the exercise of judgment or discretion; if at all, the obligated official carrying the duty can only be directed by mandamus to act, but not to act in a particular way. The courts can only interfere when the refusal to act already constitutes inaction amounting to grave abuse of discretion, manifest injustice, palpable excess of authority, or other causes affecting jurisdiction.[6]

IV.A.I. Mandamus as a remedy under Rule 65 of the Rules of Court

In this jurisdiction, the remedy of mandamus is governed by Section 3, Rule 65 of the Rules of Court. Under Section 3, mandamus is the remedy available when "a tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, [and], there is no other plain, speedy, and adequate remedy in the ordinary course of law."

The person aggrieved by the unlawful neglect or unlawful exclusion of the tribunal, corporation, board, officer, or person may file the petition for mandamus with the proper court.

IV.A.L Ministerial v. discretionary acts

"Discretion," when applied to public functionaries, means the power or right conferred upon them by law of acting officially, under certain circumstances, uncontrolled by the judgment or sense of propriety of others. If the law imposes a duty upon a public officer and gives him the right to decide how and when the duty shall be performed, such duty is discretionary and not ministerial.[7]

In contrast, a purely ministerial act or duty is one which an officer or tribunal performs under a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment on the propriety or impropriety of the act done.[8] The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[9]

A ministerial act is one as to which nothing is left to the discretion of the person who must perform. It is a simple, definite duty arising under conditions admitted or proved to exist and imposed by law. It is a precise act accurately marked out, enjoined upon particular officers for a particular purpose.[10]

IV.B. Requirements for the issuance of the writ of mandamus

In the light of its nature, the writ of mandamus will issue only if the following requirements are complied with:

First, the petitioner has a clear and unmistakable legal right to the act demanded.

The clear and unmistakable right that the writ of mandamus requires pertains to those rights that are well-defined, clear and certain. The writ contemplates only those rights which are founded in law, are specific, certain, clear, established, complete, undisputed or unquestioned, and are without any semblance or color of doubt.[11]

In situations where the right claimed, or the petitioner's entitlement to it, is unclear, the writ of mandamus will not lie. The writ of mandamus will not issue to establish a right or to compel an official to give to the applicant anything to which he is not clearly entitled. Mandamus never issues in doubtful cases, or to enforce a right which is in substantial dispute or to which substantial doubt exists.[12]

Second, it must be the duty of the respondent to perform the act because it is mandated by law.

The act must be clearly and peremptorily enjoined by law or by reason of the respondent's official station. It must be the imperative duty of the respondent to perform the act required.[13]

Third, the respondent unlawfully neglects the performance of the duty enjoined by law or unlawfully excludes the petitioner from the use or enjoyment of the right or office.

Fourth, the act to be performed is ministerial, not discretionary.

Fifth and last, there is no other plain, speedy, and adequate remedy in the ordinary course of law.

IV.C. Velasco's petition and the requirements for the issuance of the writ of mandamus

Velasco failed to comply with all five requirements for the issuance of a writ of mandamus.

IV.C.1. No showing of any clear and unmistakable right

Velasco failed to show that he has a clear, established, and unmistakable right to the position of Representative of Marinduque. Any right that Velasco may claim to hold is, at most, substantially doubtful or is in substantial dispute; in either case, the existence of doubt renders the Court unjustified in issuing a writ in Velasco's favor.

Velasco's cited legal grounds for the issuance of the writ of mandamus in his favor are the final rulings in the following cases: SPA No. 13-053 and Reyes v. Comelec, and SPC No. 13-010. Thus, a look into what these cases really are and what they say is in order.

IV.C.1.a. SPA No. 13-053 (Socorro B. Tan v. Regina Ongsiako-Reyes) and Reyes v. Comelec, GR No. 207264

SPA No. 13-053 involved the petition filed by Socorro B. Tan before the Comelec to deny due course to or cancel

Reyes' CoC on the ground of the alleged material misrepresentations Reyes made. Velasco was not a party to this case.

The Comelec cancelled Reyes' CoC in its May 14, 2013 resolution (in SPA No. 13-053). Note should be taken of the fact that this May 14, 2013 Comelec ruling became final and executory only on May 19, 2013 or "five (5) days after its promulgation" per Section 13, Rule 18 of the 1993 Comelec Rules of Procedure, in relation with Paragraph 2, Section 8 of Resolution No. 9523; and that the Comelec itself did not enjoin Reyes' proclamation. As a result, the Comelec, itself, proclaimed Reyes on May 18, 2013.

I point out that in the June 25, 2013 resolution in *Reyes v. Comelec*, this Court expressly characterized SPA No. 13-053 to be summary in nature.[14]

Reyes assailed the Comelec rulings in SPA No. 13-053 before this Court via a petition for certiorari, docketed as GR No. 207264 (*Reyes v. Comelec* or "*Reyes*"). The Court's majority, in this June 25, 2013 resolution, dismissed respondent Reyes' petition outright based solely on the face of the petition and its annexes.

Reyes carries several features that the Court should be aware of:

First. Reyes was a petition that respondent Reyes filed to question the Comelec's cancellation of her CoC in SPA No. 13-053. Respondent Reyes cited the violation of her right to due process and the Comelec's grave abuse of discretion as grounds for her petition.

Second. Only Tan (the petitioner before the Comelec) was the party respondent before the Court in *Reyes*; Velasco was not a party to the case as he was not a party to the challenged Comelec ruling.

Third. The Court did not see it fit to hear the respondent Tan (let alone Velasco who was not a party) before issuing its outright dismissal, although the Court subsequently heard Tan's arguments in her comment to herein respondent Reyes' motion for reconsideration (compelled perhaps by the vigorous dissent issued against the outright dismissal).[15]

Under the circumstances of the outright dismissal of the petition, the belated attempt at hearing Tan on the motion for reconsideration, however, does not change the character of the Court's rulings and proceedings as summary.

Fourth. In dismissing the petition outright the Court only considered the Reyes petition itself, the assailed Comelec rulings (SPA No. 13-053), and the petition's other annexes. The outright dismissal was made despite the plea from the Dissent that the case be fully heard because it would benefit the son of a sitting Justice of the Court.

Fifth. The Court's majority also chose not to hear anymore the HRET, the Comelec, or the Office of the Solicitor General on petitioner Reyes' positions and arguments, particularly on the issue of the delineation of jurisdiction between the HRET and the Comelec.

Sixth. The Court's rulings - both in the June 25, 2013 outright dismissal of the Reyes petition and the October 22, 2013 resolution on the motion for reconsideration — never declared nor recognized Velasco as the duly elected Representative of Marinduque.

Seventh. The rulings in SPA No. 13-053 and *Reyes v. Comelec* did not consider and rule on any matter other than the material misrepresentation she allegedly committed.

Thus, any legal effect that these rulings carry should not be extended to matters outside of the issues and matters specifically addressed by these rulings, as these extraneous rulings are obiter dicta.

Specifically, these rulings and their legal effects cannot extend to Reyes' election, returns, and qualification as Marinduque Representative. Nor should these rulings vest in Velasco the title to hold the position, even assuming

that petitioner Reyes' CoC was properly cancelled.

In resolving the present mandamus petition, the Court must appreciate that Velasco's cited rulings are simply summary determinations of the alleged material misrepresentation committed by Reyes in her CoC, and cannot be used as basis for the requested issuance of the writ.

Eight. In the outright dismissal of Reyes' certiorari petition, the Court's majority declared that the Comelec retained its jurisdiction over respondent Reyes and the CoC cancellation proceeding against her because respondent Reyes was not a member of the HOR over whom the HRET can exercise its jurisdiction.

The majority reasoned out that a candidate is considered a Member of the HOR only after the candidate has been proclaimed, has taken the proper oath, and has assumed office.

This declaration is noteworthy because of the intervening factual developments that significantly altered the consequent legal effects of: (1) the Comelec's rulings in SPC No. 13-053 and of the Court's rulings in *Reyes v. Comelec*; and (2) the subsequent Comelec actions and rulings affecting respondent Reyes' right to hold her congressional seat.

These intervening factual developments, more fully discussed below, is another reason why the Court cannot issue the writ of mandamus for the reason alone that the rulings in SPC No. 13-053 and in *Reyes v. Comelec* had become final and executory.

Lastly, the Court should sit up and take notice because of the Reyes' pronouncement on the jurisdictional divide between the HRET and the Comelec, a matter more extensively discussed below.

IV.C.1.b. SPC No. 13-010 (Rep. Lord Allan Jay Q. Velasco vs. New Members/Old Members of the Provincial Board of Canvassers [PBOCJ of the Lone District of Marinduque and Regina Ongsiako-Reyes])

SPC No. 13-010 was the petition that Velasco filed before the Comelec on May 20, 2013, to declare respondent Reyes' May 18, 2013 proclamation void.

The Comelec dismissed SPC No. 13-010 on June 19, 2013.

On July 9, 2013, however, the Comelec issued a resolution reversing its June 19, 2013 resolution; this reversal declared void and without legal effect respondent Reyes' proclamation.

In between these dates - i.e., from May 20, 2013, when Velasco initiated SPC No. 13-010 before the Comelec, and the Comelec's July 9, 2013 resolution - respondent Reyes had already taken her oath (on June 7, 2013) and had assumed office on June 30, 2013. Significantly, as of June 30, 2013, when respondent Reyes assumed office, the challenge to respondent Reyes' proclamation stood dismissed by the Comelec and was entered in its records.

Thus, as of June 30, 2013, respondent Reyes was the candidate the Comelec recognized as the duly proclaimed winner of the Marinduque congressional seat. She was proclaimed pursuant to the electorate's mandate through the majority of the votes cast in Marinduque. More importantly, at the time Reyes assumed the office on June 30, 2013 - after she had been proclaimed and had taken her oath - there was no standing challenge against her proclamation.

Significantly, the records of Reyes show that soon after assumption to office on June 30, 2013, she started discharging the functions of her office by filing bills with the HOR.

These developments and dates are pointed out because of their critical significance. In resolving the present petition, the Court cannot simply undertake a mechanistic reading of the cited rulings and on this basis rely on the finality doctrine. The Court must appreciate that at the time respondent Reyes assumed office on June 30, 2013,

the Comelec had cast aside the challenge to her proclamation and her oath was properly taken.

To be sure, the Comelec eventually declared respondent Reyes' proclamation void, but this reversal happened only on July 9, 2013, and only after Reyes had taken her oath and assumed office based on a standing proclamation. The proclamation, oath, and assumption effectively altered the legal situation as respondent Reyes - instead of being a mere candidate waiting for proclamation - had already become a Member of the HOR whose election, returns, and qualification are subject to the jurisdiction of the HRET.

This altered legal situation cannot but affect how the petition for mandamus should be resolved.

IV.C.l.c. The intervening factual developments; Reyes v. Comelec versus the present petition

Another critical point the Court should not fail to consider in determining whether Velasco has a clear legal right to a writ of mandamus are the various factual developments that intervened (from the Comelec's rulings in SPA No. 13-053 and the Court's ruling in Reyes v. Comelec, to the filing of the present petition) that substantially and substantively differentiate the present mandamus case from Reyes v. Comelec.

These factual developments are:

First, while respondent Reyes took her oath and assumed the office of Representative of Marinduque after the Comelec cancelled her CoC in SPA No. 13-053, she did not simply accept the cancellation and forthwith proceeded to question it before this Court through a petition for certiorari entitled Reyes v. Comelec. This petition was still pending at the time respondent Reyes took her oath and assumed office (on June 30, 2013); by then the case was pending based on the motion for reconsideration that respondent Reyes filed against the Court's June 25, 2013 Resolution. As a result, Reyes had already assumed office even before Reyes v. Comelec became final and executory.

It must be noted, too, that respondent Reyes' oath and assumption to office also occurred before the Comelec (in SPC No. 13-010 filed by Velasco) declared void respondent Reyes' proclamation as Marinduque Representative. The Comelec ruling only came on July 9, 2013. As discussed above, respondent Reyes took her oath and assumed office (on June 30, 2013) when the standing Comelec ruling in SPC No. 13-010 (to cancel respondent Reyes' proclamation) was the June 19, 2013 dismissal of the Velasco petition.

Thus, as of June 30, 2013, Reyes had taken her oath and had assumed office based on a subsisting proclamation. The Comelec declared her proclamation void only on July 9, 2013; prior to this declaration, there was no pending legal challenge that could have impeded her oath and assumption of office.

Second, the Comelec granted Tan's motion for execution, in SPA No. 13-053, and directed the proclamation of Velasco as the duly elected Representative of Marinduque, only on July 10, 2013. Velasco was proclaimed by the new PBOC much later — on July 16, 2013.

These dates are stressed because when the Comelec took actions to enforce SPA No. 13-053 and to proclaim Velasco as the duly elected Representative of Marinduque, Reyes was already a member of the HOR -she had by then been proclaimed, taken her oath, and assumed office.

Significantly, these developments were not considered in Reyes v. Comelec; neither were they considered in SPC No. 13-010. In these lights, I submit that this mandamus petition is not-a continuation of Reyes v. Comelec and should not be resolved on the basis of the bare finality of SPA No. 13-053 and Reyes v. Comelec, and of SPC No. 13-010.

Since the present case substantially and substantively differs from Reyes v. Comelec, the latter's finality (as well

as the finality of the Comelec rulings in SPA No. 13-053 that Reyes v. Comelec passed upon) should not control the resolution of the present petition and must not be determinative of Velasco's right to the issuance of a writ of mandamus.

Moreover, as I stated above, these intervening factual developments significantly altered the consequent legal effects of the Comelec's rulings in SPC No. 13-053 and of this Court's rulings in Reyes v. Comelec, the Comelec's ruling in SPC No. 13-010, and the subsequent Comelec actions and rulings affecting respondent Reyes' right to hold her congressional seat.

IV.C.l.d. The proper appreciation of
SPA No. 13-053, Reyes v. Comelec
and SPC No. 13-010 vis-a-vis the
intervening factual developments
in the context of the present petition

If only for emphasis, I call attention again to the fact that as of June 30, 2013, Reyes had been proclaimed, had taken her oath, and assumed office as the elected and proclaimed Representative of Marinduque.

Section 17, Article VI of the Constitution provides that the Electoral Tribunal of the HOR shall be the "sole judge of all contests relating to the election, returns, and qualifications of [its] Members." [16]

I highlight, too, that in Reyes v. Comelec, the majority declared that a winning candidate becomes subject to the jurisdiction of the HRET only after he or she becomes a member of the HOR. The majority stressed that a candidate becomes a member of the HOR only after he or she has been proclaimed, taken his or her oath, and assumed the office.

In other words, the majority in Reyes v. Comelec required the concurrence of all three events - proclamation, oath, and assumption to office - to trigger the jurisdiction of the HRET over election contests relating to the winning candidate's election, returns, and qualifications. All three events duly took place in the case of respondent Reyes, such that the HRET at this point should have jurisdiction over questions relating to respondent Reyes' election, even on the basis of the majority's own standards.

(Note in this regard that in my Dissent in Reyes v. Comelec, I considered this majority action a "major retrogressive jurisprudent development that can emasculate the HRET."

I still maintain that the proclamation of the winning candidate - the last operative act in the election process that is subject to Comelec jurisdiction - triggers and opens the way for the HRET's own jurisdiction.

This was the position I took, backed up by jurisprudence,[17] in my Dissent in Reyes v. Comelec. I said;

[T]he 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 x x x the proclamation of the winning candidate divests the Comelec of its jurisdiction over matters pending before it at the time of the proclamation and the party questioning the qualifications of the winning candidate should now present his or her case in a proper proceeding (i.e., quo warranto) before the HRET, who, by constitutional mandate, has the sole jurisdiction to hear and decide cases involving the election, returns and qualifications of members of the [HOR].

Thus, even by the Court majority's own standard[18] as defined in Reyes v. Comelec, respondent Reyes became a member of the HOR as of June 30, 2013. To reiterate, respondent Reyes was proclaimed on May 16, 2013. She then took her oath on June 7, 2013, and assumed office on June 30, 2013, pursuant to a subsisting proclamation. The Comelec ruling that declared respondent Reyes' proclamation void came only after she had already fully

complied with Reyes v. Comelec's defined standard.

In these lights, the Comelec had already been divested of jurisdiction over any issue that may have affected respondent Reyes' proclamation (including all consequent legal effects her proclamation carries) at the time the Comelec declared her proclamation void on July 9, 2013. As well, the Comelec was already without jurisdiction when it granted Tan's motion for execution on July 10, 2013, and proclaimed Velasco (through the new PBOC) as the duly elected Marinduque Representative on July 16, 2013.[19]

Under Section 2(2), Article IX-C of the Constitution, the Comelec has the "exclusive jurisdiction over all contests relating to the election, returns, and qualifications of all elective regional, provincial, and city officials x x x." In other words, the Constitution vests the Comelec this exclusive jurisdiction only with respect to elective regional, provincial, and city officials. The Comelec, by express constitutional mandate, has no jurisdiction over the election, returns, and qualifications of members of the HOR (or of the Senate) as Article VI vests this jurisdiction with the HRET (or the SET).

The validity of the proclamation of respondent Reyes who became a member of the HOR on June 30, 2013, and the right of either respondent Reyes or Velasco to hold the contested congressional seat are election contests relating to a Member's election, returns, and qualifications. By Reyes v. Comelec's, own defined standard, the jurisdiction over these election contests affecting respondent Reyes already rested with the HRET beginning June 30, 2013.

To be sure, the validity of this Comelec resolution in SPC No. 13-010 was never challenged before this Court such that the ruling lapsed to finality. Under existing legal principles, the Court cannot pass upon the validity of this Comelec ruling without violating the doctrine of finality of judgments and the principle of separation of powers with the principle of judicial non-interference that it carries.

Nonetheless, the Court also cannot and should not simply rely on this Comelec ruling to grant Velasco's present mandamus petition and compel the HOR to admit him as its member. The fact that these Comelec rulings and actions all occurred after Reyes had fully complied with the restrictive Reyes v. Comelec standard creates substantial doubt on their validity and efficacy. In view of these substantial doubts, the Court should consider them with utmost caution.

In this respect, I submit that any legal significance the Court may accord to the Comelec's ruling in SPC No. 13-010 (as well as its July 10, 2013 execution order) in considering Velasco's present move to compel, via mandamus, the HOR to admit him as its member must be limited to:

one, the fact of their issuance;

two, the fact that the Comelec declared void Reyes' proclamation on July 9, 2013; and

three, the fact that Velasco was proclaimed on July 16, 2013,

without prejudice to whatever ruling that the HRET and this Court may render in the future on the validity or invalidity of the Comelec rulings that were made after HOR jurisdiction had vested.

Any other legal significance which these rulings may have on the right of either Reyes or Velasco to the congressional seat must now be left to the judgment and discretion of the HRET which must appreciate them in a properly filed action.

Additionally and finally on this point, the HRET now has jurisdiction to rule upon all questions relating to respondent Reyes' election, returns, and qualifications that may still be fit and proper for its resolution in accordance with existing laws and its own rules of procedure. This Court itself cannot assume jurisdiction over

any aspect of HRET jurisdiction unless it relates to a matter filed or pending with us on a properly filed petition, taking into account the clear conferment and delineation of the Court's jurisdiction and those of the HRET under the Constitution.

In sum, the Comelec's rulings in SPA No. 13-053 and SPC No. 13-010, and the Court's rulings in *Reyes v. Comelec* did not establish a clear and unmistakable right in Velasco's favor to the position of the Representative of Marinduque.

At most, Velasco's right to hold the congressional seat based on these rulings is substantially doubtful. Unless this substantial doubt is settled, Velasco cannot claim as of right any entitlement, and cannot also compel the respondents to admit him, to HOR membership through the Court's issuance of a writ of mandamus.

In the absence of any other clear and unmistakable legal source for his claimed right to the contested congressional seat, Velasco's petition must necessarily fail.

IV.C.I.e. *Reyes'* holding of the office could not have worked injustice and seriously prejudiced Velasco with her receipt of the salaries, allowances, bonuses, and emoluments that pertain to the office.

Finally, I find tenuous Velasco's claim that *Reyes'* continued holding of the contested Congressional seat has "worked injustice and serious prejudice to [him] in that she has already received the salaries, allowances, bonuses and emoluments that pertain to the [office] since June 30, 2013 up to the present xxx."

This argument clearly forgets that public office is a public trust.[20] Public service and public duty are and must be the primary and utmost consideration in entering the public service. Any remuneration, salaries, and benefits that a public officer or employee receives in return must be a consideration merely secondary to public service.

Accordingly, any salary, allowance, bonus, and emoluments pertaining to an office must be received by one who is not only qualified for the office, but by one whose right to the office is clearly and unmistakably without doubt and beyond dispute. In the case of an elective public office, this right is, at the very least, established by the mandate of the majority of the electorate. More importantly, of course, the right to receive the salaries, allowances, bonuses, and emoluments that pertain to an office must be received by one who actually perform the duties called for by the office.

Here, Velasco may be qualified for the office. His right to hold the congressional seat, however, is at most substantially doubtful or in substantial dispute; worse, he has not performed the duties of the office. In short, *Reyes'* receipt of the salaries, etc. that pertain to the congressional seat obviously could not have worked injustice to and seriously prejudiced him.

IV. C.2. Clear, established, and specific legal duty and unlawful neglect in the performance of ministerial acts

For the same factual and legal reasons discussed above, I submit that Velasco likewise failed to show that Speaker Belmonte and Sec. Gen. Barua-Yap have the clear and specific duty, founded in law, to administer the required oath, to allow Velasco to assume the duties of the office, and to register his name in the Roll of Members as the duly elected Representative of Marinduque. He also failed to show that the respondents unlawfully refused or neglected to admit him as member.

At the very least, he failed to show that the respondents have the clear and specific legal duty to allow a second-placer candidate like him whose right to the contested congressional seat is substantially doubtful, to assume the office until such time that all doubts are resolved in his favor.

Thus, in the absence of any law specifically requiring Speaker Belmonte and Sec. Gen. Barua-Yap to act, and to act in a particularly clear manner, the Court cannot compel these respondents to undertake the action that Velasco

prays for via a writ of mandamus.

Additionally, the HOR in this case simply acted pursuant to law and jurisprudence when it admitted respondent Reyes as the duly elected Representative of Marinduque. After this admission, the HOR and its officers cannot be compelled to remove her without an order from the tribunal having the exclusive jurisdiction to resolve all contests affecting HOR members, of which Reyes has become one. This tribunal, of course, is the HOR's own HRET.

IV.C.3. Absence of any other plain, speedy and adequate remedy

Lastly, I submit that Velasco failed to show that there is no other plain, speedy, and adequate remedy available in the ordinary course of law to secure to him the congressional seat.

I reiterate and emphasize once more that respondent Reyes became a Member of the HOR on June 30, 2013, after her proclamation, oath, and assumption to office. Whether the Court views these circumstances under the restrictive standard of *Reyes v. Comelec* to be the legally correct standard or simply the applicable one^[21] under the circumstances of the petition, respondent Reyes undoubtedly has complied with the conditions for HOR membership that *Reyes v. Comelec* laid down.

Since Reyes is a member of the HOR, any challenge against her right to hold the congressional seat or which may have the effect of removing her from the office - whether pertaining to her election, returns or qualifications - now rests with the HRET. ⁱ

Viewed by itself and in relation to the surrounding cited cases and circumstances, Velasco's present petition cannot but be a challenge against respondent Reyes' election, returns, and qualifications, hiding behind the cloak of a petition for mandamus. In other words, although presented as a petition that simply seeks to enforce a final Court ruling, the petition is an original one that ultimately seeks to oust Reyes from the congressional seat. The relationships between and among the cited cases and the present case, read in relation with the relevant developments, all point to this conclusion.

Thus, rather than recognize this roundabout manner of contesting respondent Reyes' seat, the Court should recognize this kind of challenge for what it really is - a challenge that properly belongs to the domain of the HRET and one that should be raised before that tribunal through the proper action. The Court, in other words, should acknowledge that it has no jurisdiction to act on the present petition.

Under the 2011 Rules of the HRET,^[22] the proper actions in coming before the HRET are: (1) a Verified petition of protest (election protest) to contest the election or returns of the member; or (2) a verified petition for quo warranto to contest the election of a member on the ground of ineligibility or disloyalty to the Republic of the Philippines.^[23] Both petitions should be filed within fifteen (15) days after the proclamation of the winner,^[24] save in the case of a petition for quo warranto on the ground of citizenship which may be filed at any time during the member's tenure.^[25] The failure to file the appropriate petition before the HRET within the prescribed periods will bar the contest.^[26] These are the rules that must guide Velasco in his quest for a remedy.

To be sure, though, this remedy has been within Velasco's knowledge and contemplation as on May 31, 2013,^[27] he filed an election protest before the HRET, docketed as HRET Case No. 13-028.^[28] Very obviously, he recognized that, as early as May 31, 2013, any challenge against respondent Reyes's election, returns, or qualifications should be raised before the HRET - the sole judge of all contests relating to the election, returns, and qualifications of HOR members.

Why he now appears to have glossed over this legal reality in the present petition (especially since Reyes is now a

clearly recognized member of the HOR after satisfying the restrictive *Reyes v. Comelec* standard) is a question I would not dare speculate on; only the attendant facts and the legal realities can perhaps sufficiently provide the answer.[29]

In reality, two other cases - both of them quo warranto petitions -were subsequently filed against Reyes. The first is HRET Case No. 13-036 entitled "Noeme Mayores Tan and Jeasseca L. Mapacpac v. Regina Ongsiako Reyes." The second is HRET No. 13-037 entitled "Eric Del Mundo v. Regina Ongsiako Reyes."

On March 14, 2014, the HRET issued a resolution in HRET Case No. 13-036 and HRET No. 13-037 stating that "the proclamation of Representative Reyes as the winning candidate for the position of Representative of the Lone District of Marinduque is and remains valid and subsisting until annulled by HRET."

In a modified ponencia circulated on January 11, 2016 (for deliberation on January 12, 2016), it was alleged that the HRET promulgated a Resolution on December 14, 2015, dismissing HRET Case Nos. 13-036 and 13-037 - the twin petitions for quo warranto filed against Reyes.

Allegedly, the HRET held that "the final Supreme Court ruling in G.R. No. 207264 is the COGENT REASON to set aside the September 11, 2014 Resolution." The HRET ruling allegedly reversed its own ruling of September 11, 2014 that ordered the dismissal of the petition of Victor Vela Sioco in the twin petitions for quo warranto for "lack of merit," and for the hearings in the petitions against Reyes to proceed.

Under these attendant facts, the circumstances surrounding the Reyes-Velasco dispute becomes more confused and all the more should this Court refrain from acting on the present petition.

If indeed there is already a HRET ruling as alleged, then the proper remedy now is for the HRET to present this ruling, certified as a final and executory one, to the HOR for that body's action in light of its own Tribunal's decision.

To state the obvious, the admission of a member and his or her exclusion is primarily an internal affair that the HOR should first resolve before this Court should step in through the coercive power of a writ of mandamus. The principles of separation of powers and judicial non-interference demand that the Court respect and give due recognition to the HOR in its internal affairs.

By granting the petition and issuing a writ of mandamus, the Court, not only disrespects the HOR, but sows confusion as well into the HRET's jurisdiction - a jurisprudential minefield in the coming elections.

IV.D. The Separation of Powers

Principle Demands the Dismissal of the Present Petition.

IV.D.I. The principle of separation of powers.

An issue that the Court cannot but recognize in the present case is whether it can, under the circumstances of this case, compel a House of Congress - a co-equal branch - to act. The resolution of this issue calls for the consideration of several principles, foremost of which is the principle of separation of powers that underlie our governmental structure.

The Constitution does not specifically provide for the principle of separation of powers. Instead of a distinct express provision, the Constitution divides the governmental powers among the three branches -the legislative, the executive, and the judiciary. Under this framework, the Constitution confers on the Legislature the duty to make the law, on the Executive the duty to execute the law, and on the Judiciary the duty to construe and apply the law.[30]

Underlying the principle of separation of powers is the general scheme that each department is supreme within their respective spheres of influence, and the exercise of their powers to the full extent cannot be questioned by another department. Outside of these spheres, neither of the great governmental departments has any power; and neither may any of them validly exercise any of the powers conferred upon the others.[31]

Thus, as a fundamental principle, the separation of powers provides that each of the three departments of our government is distinct and not directly subject to the control of another department. The power to control is the power to abrogate; and the power to abrogate is the power to usurp.[32] In short, for one branch to control the other is to usurp its power. In this situation, the exercise of control by one department over another would clearly violate the principle of separation of powers.

In this light, the question that we ask next is: whether the Court can compel Speaker Belmonte and Sec. Gen. Barua-Yap - who are admittedly officers of the HOR - to perform the acts specifically prayed for by Velasco via mandamus. To properly answer this question, we must hark back to our earlier discussion of mandamus, and consider it in the context of the principle of separation of powers.

IV.D.2. Mandamus against a co-equal branch

Over and above the usual requirements of mandamus earlier discussed, it must be appreciated that the remedy of mandamus is essentially a discretionary remedy that is contingent upon compelling equitable grounds for its grant. As a peremptory writ, a presumption exists strongly against its grant; it will and must issue only in the most extraordinary of circumstances and always with great caution.

In the context of the separation of powers principle, I submit that the Court must proceed with greater caution before issuing the writ against a co-equal branch, notwithstanding the concurrence of the requirements.

As a general rule, mandamus will not lie against a coordinate branch.[33] The rule proceeds from the obvious reason that none of the three departments is inferior to the others; by its very nature, the writ of mandamus is available against an inferior court, tribunal, body, corporation, or person. With respect to a coordinate and co-equal branch, the issuance can be justified only under the Court's expanded jurisdiction under Article VIII Section 1 of the Constitution[34] and under the most compelling circumstances and equitable reasons.[35]

I submit that no grave abuse of discretion intervened in the present case to justify resort to the Court's expanded jurisdiction. Neither are there compelling and equitable reasons to justify a grant as there is a remedy in law that was available to petitioner Velasco (for reasons of his own, he has failed to pursue the remedy before the HRET to its full fruition) and that is available now - to present the final rulings in the cited HRET cases to the HOR for its own action on an internal matter it zealously guards.

The Comelec petition to contest respondent Reyes' proclamation was filed by Velasco, but this was a case solely addressing respondent Reyes' proclamation and voiding it. Beyond this, the ruling made no other directive. But even given all these, there is indisputably the live question of whether the Comelec still had jurisdiction when it issued its rulings as Reyes had by then become a member of the HOR. At the very least, this complication leaves the continued validity of the Comelec ruling in doubt.

Another point to consider is the filing and withdrawal by Velasco of an election protest case with the HRET against respondent Reyes. By doing this and despite the withdrawal of his petition, Velasco recognized the jurisdiction of the HRET. Can he now turn around and simply say that the Comelec and the Court are, after all, correct in its rulings and that he would now avail of these rulings although he was never a party to them? I provide no answers but again this development effectively brings the propriety of Velasco's use of mandamus within the realm of doubt.

A further point to consider is that Speaker Belmonte and Sec. Gen. Barua-Yap are officers of the HOR chosen by its members.[36] As HOR officers, their acts made in the performance of their duties and functions are acts of the HOR. The acts Velasco wants this Court to compel Speaker Belmonte and Sec. Gen. Barua-Yap to perform pertain to their official positions. Hence, any mandamus that will be issued against them is a mandamus issued against the HOR. As I have stated before, mandamus does not and will not lie against a coordinate branch.

Notably, under the attendant facts, significantly altered by the intervening factual developments and the consequent legal considerations, the acts sought to be performed - the exclusion of sitting members and the admission of replacement members - are not ministerial acts for which mandamus will lie. That much is implied, if not directly held, as early as *Angara v. Electoral Commission*,[37] and many other cases relating to this situation followed.[38] Their common thread is that Congress takes the admission (or exclusion) of its members as a very serious concern that is reserved for itself to decide, save only when a superior law or ruling with undoubted validity intervenes. Such freedom from doubt, however, is not apparent in the present petition.

Appeal to "compelling and equitable circumstances" that call for the application of the equitable remedy of mandamus is, at best, a murky proposition in light of the circumstances surrounding the May 2013 Marinduque election situation as a whole.

It should not be forgotten that Reyes won by a convincing margin over Velasco, but the latter chose to fight his electoral battle in the Comelec, bypassing thereby the verdict against him of the people of Marinduque. The merits of the Comelec ruling is likewise not beyond doubt from the point of view of the imputed due process violations, as the Dissent in Reyes and the close vote in Court showed.

In any case, mandamus is, by its nature, a discretionary remedy that can be denied when no compelling equitable grounds exist. In particular, in situations where the constitutional separation-of-powers principle is involved, mandamus, as a rule, will not lie against a co-equal branch notwithstanding the petitioner's compliance with the requirements necessary for its grant, as discussed above. To justify the issuance of the writ, the petitioner must not only comply with the requirements; the petitioner must, more importantly, show that mandamus is demanded by the most compelling reasons or circumstances and by the demands of equity. These exception-inducing factors, as discussed above, are simply not present in this case.

Thus, the Court cannot dictate action under the present petition without committing gross usurpation of power. The risk for the Court in ruling under these circumstances is to be accused of ruling under a situation of doubt and uncertainty in favor of the son of a colleague. In a worse scenario, Congress - even if it does not frontally rebuff the Court - may raise issues that would effectively disregard the writ issued by the Court. While no constitutional crisis may result, the Court would have tested the limits of its constitutional powers and failed. The situation does not bode well for the Court's integrity, reputation, and credibility — the essential attributes that allow it to occupy the moral high ground in undertaking its functions within the Constitution's tripartite system.

The better view, under the circumstances and as posited above, is to allow internal matters within the HOR to take their natural course. This position best addresses the confused situation that is the Marinduque May 2013 elections, while respecting the interests of all concerned parties, including those of the Court's.

V. CONCLUSION

In sum, the present petition for mandamus must be dismissed as petitioner Velasco failed to comply with all five requirements for the issuance of the writ of mandamus. Most importantly, the petitioner's speedy remedy to address his situation lies with the HRET and the HOR, not with the Court. In any case, the remedy of mandamus does not lie against the HOR, a co-equal branch, under the circumstances of the case and would be an unwarranted intrusion and impermissible usurpation by this Court of the authority and functions of the HOR and

of the HRET.

For these reasons, I vote to dismiss the petition.

[1] Rollo, pp. 3-26.

[2] Petitioner Velasco is the son of incumbent Supreme Court Justice Presbiterio J. Velasco, Jr.

[3] 442 Phil. 139(2002).

[4] Feria-Noche, Civil Procedure Annotated, (2001), p. 486, citing 34 Am. Jur. Mandamus, S. 2.

[5] See Spouses Dacudao v. Secretary of Justice Raul M. Gonzales, GR No. 188056, January 8, 2013.

[6] Feria-Noche, Civil Procedure Annotated, (2001), p. 486.

[7] See Feria-Noche, Civil Procedure Annotated (2001), p. 487 (citation omitted).

[8] See Nazareno v. City of Dumaguete, 607 Phil. 768 (2009).

[9] Id.

[10] See Feria-Noche, Civil Procedure Annotated (2001), p. 488 (citation omitted).

[11] See Nazareno v. City of Dumaguete, 607 Phil. 768 (2009); Asia's Emerging Dragon Corporation v. Republic, 602 Phil. 722 (2009). See also Feria-Noche, Civil Procedure Annotated (2001), p. 488 (citation omitted).

[12] See Metropolitan Bank and Trust Company v. S.F. Naguiat Enterprises Inc., GR No. 178407, March 18, 2015; and Nazareno v. City of Dumaguete, 607 Phil. 768 (2009).

[13] See Nazareno v. City of Dumaguete, supra note 11.

[14] See Reyes v. Comelec, GR No. 207264, June 25, 2013, 699 SCRA 522, 538-539.

[15] See Dissenting Opinion of J. Brion, joined in by Senior Associate Justice Antonio T. Carpio, and Associate Justices Martin S. Villarama, Jr. and Marvic Mario Victor F. Leonen.

[16] See also Rule 14 of the 2011 Rules of the House of Representatives Electoral Tribunal.

[17] See Limkaichong v. Commission on Elections, 601 Phil. 751 (2009); Jalosjos v. Commission on Elections, G.R. Nos. 192474, 192704, 193566, June 26, 2012; and Perez v. Comelec, 548 Phil. 712 (2007). See also Guerrero v. Commission on Elections, 391 Phil. 344 (2000); Vinzons-Chato v. Commission on Elections, 548 Phil. 712 (2007); and Aggabao v. Commission on Elections, 391 Phil. 344 (2000).

[18] See J. Brion's Dissenting Opinion in Reyes v. Comelec, June 25, 2013 Resolution.

[19] See J. Brion's Dissenting Opinion in Reyes v. Comelec, June 25, 2013 Resolution. Pertinent are the following discussions:

The ponencia's holding on the
COMELEC's jurisdiction vis-a-vis
the HRET is inconsistent with the
HRET Rules

The view that the proclamation of the winning candidate is the operative fact that triggers the jurisdiction of the HRET is also supported by the HRET Rules. They state:

RULE 14. Jurisdiction. - The Tribunal is the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives.

RULE 15. How Initiated. — An election contest is initiated by the filing of a verified petition of protest or a verified petition for quo warranto against a Member of the House of Representatives. An election protest shall not include a petition for quo warranto. Neither shall a petition for quo warranto include an election protest.

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. x x x

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[.]

Based on the above Rules, it appears clear that as far as the HRET is concerned, the proclamation of the winner in the congressional elections serves as the reckoning point as well as the trigger that brings any contests relating to his or her election, return and qualifications within its sole and exclusive jurisdiction.

In the context of the present case, by holding that the COMELEC retained jurisdiction (because Reyes, although a proclaimed winner, has not yet assumed office), the majority effectively emasculates the HRET of its jurisdiction as it allows the filing of an election protest or a petition for quo warranto only after the assumption to office by the candidate (i.e., on June 30 in the usual case). To illustrate using the dates of the present case, any election protest or a petition for quo warranto filed after June 30 or more than fifteen (15) days from Reyes' proclamation on May 18, 2013, shall certainly be dismissed outright by the HRET for having been filed out of time under the HRET rules.

[20] See Article XI, Section 1 of the Constitution.

[21] As I discussed in my Dissenting Opinion to the June 25, 2013 Resolution in *Reyes v. Comelec*, this reasonable standard is the proclamation of the winning candidate. There, I said that: "[t]he 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."

[22] Issued pursuant to the HRET's rule-making that necessarily flows from the general power granted to it by the Constitution as the sole judge of all contests relating to the election, returns, and qualifications of its members (see *Angara v. Electoral Commission*, 63 Phil. 139 [1936]).

[23] See Rules 16 and 17 of the 2011 Rules of the House of Representatives Electoral Tribunal.

[24] See Rule 16, paragraph 1, and Rule 17, paragraph 1 of the 2011 Rules of the House of Representatives Electoral Tribunal.

[25] See Rule 17, paragraph 2 of the 2011 Rules of the House of Representatives Electoral Tribunal.

[26] See Rule 19 of the 2011 Rules of the House of Representatives Electoral Tribunal. It reads: RULE 19. Periods Non-Extendible. - The period for the filing of the appropriate petition, as prescribed in Rules 16 and 17, is jurisdictional and cannot be extended

[27] In fact, also on May 31, 2013, a quo warranto petition was filed by a certain Matienzo before the HRET

against Reyes; this was docketed as HRET Case No. 13-027.

[28] See rollo, p. 399. As of April 1, 2014, the HRET records show that Matienzo v. Reyes and Velasco v. Reyes have been withdrawn.

[29] A possible answer may be drawn from these facts: first, the two quo warranto petitions - HRET Case No. 13-036 entitled "Noeme Mayores Tan and Jeasseca L. Mapacpac v. Regina Ongsiako Reyes" (filed on July 13, 2013) and HRET No. 13-037 entitled "Eric Del Mundo v. Regina Ongsiako Reyes" (filed on December 13, 2013) - filed against Reyes have been pending before the HRET, of which a Member of this Court, Associate Justice Presbiterio Velasco, is petitioner Velasco's father, for more or less two years without any action by the HRET. The only action the HRET has taken so far in these cases was in relation with the petition-for-intervention filed by Victor Vela Sioco seeking the dismissal of the quo warranto petitions for lack of jurisdiction where it required (via Resolution No. 14-081) Reyes to comment thereon.

Second, the HRET has recently revised its Rules of Procedure incorporating the restrictive Reyes v. Comelec standards that requires the concurrence of proclamation, oath, and assumption of office before the elected candidate is considered a member of the HOR over whom the HRET can exercise jurisdiction. The 2015 HRET Rules of Procedure was published in the Philippine Star on November 1, 2015, and took effect fifteen days thereafter. Rule 80 of the 2015 HRET Rules provides for its application to all pending actions save "when substantive rights are affected as may be determined by the Tribunal."

Third, per the November 5, 2015 letter-petition - Urgent Follow-Up on the Petition for Recall of the Designation of Justice Presbiterio J. Velasco, Jr. to the HRET - to the Court En Banc by Reyes' counsel Roque and Butuyan Law Offices (letter signed by H. Harry L. Roque, Jr., Joel Ruiz Butuyan, and Roger R. Rayel), the HRET has deferred action on its February 3, 2015 manifestation/motion that from thereon it shall act as Reyes' lead counsel and been refusing to furnish it copies, at their expense, of all documents, pleadings etc. pertaining to the two quo warranto cases.

[30] See Defensor-Santiago, Constitutional Law, citing U.S. v. Ang Tang Ho, 43 Phil. 1(1922).

[31] See Defensor-Santiago, Constitutional Law.

[32] See Alejandrino v. Quezon, et. al, 46 Phil. 83 (1924),

[33] Id.

[34] Section 1, Article VIII of the Constitution reads in full:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any "branch or instrumentality of the Government.

[35] Supra note 32.

[36] See Section 16 (1), Article VI of the Constitution. It reads:

SECTION 16. (1) The Senate shall elect its President and the House of Representatives its Speaker, by a majority vote of all its respective Members. Each House shall choose such other officers as it may deem necessary, [emphases supplied]

[37] 63 Phil. 139(1936).

[38] See *Suanes v. The Chief Accountant, Accounting Division, Senate, et. al*, 81 Phil. 818 (1948); *Co v. Electoral Tribunal*, 276 Phil. 758 (1991); *Lazatin v. House of Representatives Electoral Tribunal*, 250 Phil. 390 (1988); *Vilando v. House of Representatives Electoral Tribunal*, 671 Phil. 524 (2011); *Duenas v. House of Representatives Electoral Tribunal*, 619 Phil. 730 (2009), to name a few.

CONCURRING OPINION

PEREZ, J.;

The ponencia, upon which this concurrence hinges, postulates that the administration of oath and the registration of petitioner Lord Allan Jay Velasco (Velasco) in the Roll of Members of the House of Representatives for the Lone District of the Province of Marinduque is no longer a matter of discretion on the part of respondents House Speaker Feliciano R. Belmonte, Jr. (Belmonte) and Secretary General Marilyn B. Barua-Yap (Barua-Yap).[1] Hence, the petition for mandamus must be granted.

I join the ponencia in the vote to grant the instant petition.

I

Preliminarily, the theory of respondent Regina Ongsiako Reyes (Reyes) -that the instant petition is in" actuality an election contest, a veiled action for quo warranto - is rejected.

While quo warranto and mandamus are often concurrent remedies, there exists a clear distinction between the two. The authorities are agreed that quo warranto is the remedy to try the right to an office or franchise and to oust the holder from its enjoyment, while mandamus only lies to enforce clear legal duties.[2] In the case at bench, I concur with the ponencia that the present petition seeks the "enforcement of clear legal duties" as it does not seek to try disputed title.[3] It no longer puts in issue the validity of Reyes's claim to office - a question that has long been resolved by the Court in its twin Resolutions in the antecedent case of *Reyes v. COMELEC* (Reyes),[4] docketed as G.R. No. 207264, wherein the Court sustained the polling commission's cancellation of respondent Reyes' Certificate of Candidacy (CoC) on the ground that she does not possess the necessary eligibility to hold elective office as a member of Congress. In Reyes, the Court pronounced in no less than categorical terms that:[5]

As to the issue of whether the petitioner failed to prove her Filipino citizenship, as well as her one-year residency in Marinduque, suffice it to say that the COMELEC committed no grave abuse of discretion in finding her ineligible for the position of Member of the House of Representatives.

Our edict became final and executory, as a matter of course, upon denial of Reyes' motion for reconsideration on October 22, 2013. There is, consequently, no "disputed title" to speak of which ought to be resolved through a quo warranto proceeding.

Instead, the primordial issue, in this case for mandamus, is whether or not respondents Belmonte and Barua-Yap can and should be compelled (1) to swear in petitioner as the duly elected Representative of the lone legislative district of Marinduque, and (2) to include petitioner's name and delete that of Reyes' in the Roll of Members of the House of Representatives, respectively. Petitioner asserts that in the aftermath of Reyes, his clear and enforceable legal right to assume office must be recognized.

The claim is meritorious.

It is a fundamental precept in remedial law that for the extraordinary writ of mandamus to be issued, it is essential

that the petitioner has a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required.[6] As will be demonstrated, it is beyond cavil that the dual elements for the mandamus petition to prosper evidently obtain in the case at bar.

a. Petitioner's clear legal right

Well-settled is that the legal right of the petitioner to the performance of the particular act which is sought to be compelled by mandamus must be clear and complete. A clear legal right within the meaning of this rule means a right clearly founded in, or granted by law; a right which is inferable as a matter of law.[7]

Here, petitioner indubitably established his right to be acknowledged as a member of the House of Representatives. To elucidate, there were only two (2) candidates in the 2013 congressional race for the Lone District of Marinduque: petitioner Velasco and respondent Reyes. In the initial canvassing results, Reyes garnered more votes than Velasco.[8] Before she could be proclaimed the winner, however, the COMELEC First Division, acting on the Petition to Deny Due Course or Cancel the Certificate of Candidacy[9] filed by one Joseph Socorro Tan and docketed as SPA No. 13-053,[10] by Resolution dated March 27, 2013, cancelled Reyes' CoC.[11] Borrowing the words of the Court in Reyes:

The COMELEC First Division found that, contrary to the declarations that she made in her COC, [Reyes] is not a citizen of the Philippines because of her failure to comply with the requirements of Republic Act (R.A.) No. 9225 or the Citizenship Retention and Re-acquisition Act of 2003, namely: (1) to take an oath of allegiance to the Republic of the Philippines; and (2) to make a personal and sworn renunciation of her American citizenship before any public officer authorized to administer an oath. In addition, the COMELEC First Division ruled that she did not have the one-year residency requirement under Section 6, Article VI of the 1987 Constitution. Thus, she is ineligible to run for the position of Representative for the lone district of Marinduque. (Emphasis and words in brackets added)

The division ruling, in no time, was elevated to the COMELEC en banc, only to be affirmed on May 14, 2013.[12] Reyes would receive a copy of the en banc Resolution two (2) days later on May 16, 2013. Nevertheless, she would only assail the ruling via petition for certiorari with the Court on June 7, 2013. Needless to say, no injunctive writ was issued by the Court in the interim. There was, effectively, no restraint against the enforcement of Reyes' disqualification, a legal bar to a valid proclamation. As held in Reyes:[13]

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. 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.

SPA No. 13-053 eventually made its way to this Court (the Reyes case), docketed as G.R. No. 207264, but We dismissed Reyes' petition and subsequent motion for reconsideration questioning the findings of the COMELEC for lack of merit on June 25, 2013 and October 22, 2013, respectively.[14] Undeterred, Reyes, on November 27, 2013, filed a Motion for Leave of Court to File and Admit Motion for Reconsideration, which was treated as a second motion for reconsideration, a prohibited pleading. Unavoidably, the motion was denied on December 3,

2013, serving as the final nail in the coffin, laying the highly-contested issue regarding Reyes' eligibility to rest.[15]

Upon resolving with finality that Reyes is ineligible to run for Congress and that her CoC is a nullity, the only logical consequence is to declare Velasco, Reyes' only political rival in the congressional race, as the victor in the polling exercise. This finds basis in the seminal case of *Aratea v. COMELEC* (Aratea),[16] wherein it was held that a void CoC cannot give rise to a valid candidacy, and much less to valid votes.[17] Hence, as concluded in *Aratea*: [18]

Lonzanida's certificate of candidacy was cancelled, because he was ineligible or not qualified to run for Mayor. Whether his certificate of candidacy is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a candidate from the very beginning, his certificate of candidacy being void ab initio. There was only one qualified candidate for Mayor in the May 2010 elections - Antipolo, who therefore received the highest number of votes.

Thus, notwithstanding the margin of votes Reyes garnered over Velasco, the votes cast in her favor are considered strays since she is not eligible for the congressional post, a non-candidate in the bid for the coveted seat of Representative for the Lone District of Marinduque. Following the doctrinal teaching in *Aratea*, Velasco, as the only remaining qualified candidate in the congressional race, is, for all intents and purposes, the rightful member of the lower house.

Associate Justice Marvic M.V.F. Leonen (Justice Leonen), however, echoing the position of the OSG and that of the respondents, asserts in his Dissent that Velasco is a second-placer during the elections who is not entitled to hold the subject position. The honorable Justice suggests that petitioner cannot seek refuge under the Court's pronouncements in *Aratea* and the subsequent cases of *Jalosjos v. COMELEC*[19] and *Maquiling v. COMELEC*[20] because the positions involved in the said cases were not for members of Congress.[21]

What the Dissent failed to take into account though is the most significant similarity of the present petition to the above-mentioned cases - that there exists a final and executory decision of the COMELEC ordering the cancellation of the CoC of the candidate who committed false material representations therein and declaring them ineligible to hold public office. In all these cases, and as it should likewise be in this case, the Court ruled that the CoC was deemed void ab initio and as such:

"If the certificate of candidacy is void ab initio, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void ab initio is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void ab initio is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning, x x x"[22]

In *Maquiling*, this Court also said:

Thus, the votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election.

Even when the votes for the ineligible candidate are disregarded, the will of the electorate is still respected, and even more so. The votes cast in favor of an ineligible candidate do not constitute the sole and total expression of the sovereign voice. The votes cast in favor of eligible and legitimate candidates form part of that voice and must also be respected.

As in any contest, elections are governed by rules that determine the qualifications and disqualifications of

those who are allowed to participate as players. When there are participants who turn out to be ineligible, their victory is voided and the laurel is awarded to the next in rank who does not possess any of the disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates.

x x x

The electorate's awareness of the candidate's disqualification is not a prerequisite for the disqualification to attach to the candidate. The very existence of a disqualifying circumstance makes the candidate ineligible. Knowledge by the electorate of a candidate's disqualification is not necessary before a qualified candidate who placed second to a disqualified one can be proclaimed as the winner. The second-placer in the vote count is actually the first-placer among the qualified candidates.

That the disqualified candidate has already been proclaimed and has assumed office is of no moment. The subsequent disqualification based on a substantive ground that existed prior to the filing of the certificate of candidacy voids not only the COC but also the proclamation.[23]

In *Velasco v. COMELEC*, this Court further expounded:

x x x. Section 78 may likewise be emasculated as mere delay in the resolution of the petition to cancel or deny due course to a COC can render a Section 78 petition useless if a candidate with false COC data wins. To state the obvious, candidates may risk falsifying their COC qualifications if they know that an election victory will cure any defect that their COCs may have. Election victory then becomes a magic formula to bypass election eligibility requirements.

In the process, the rule of law suffers; the clear and unequivocal legal command, framed by a Congress representing the national will, is rendered inutile because the people of a given locality has decided to vote a candidate into office despite his or her lack of the qualifications Congress has determined to be necessary.

In the present case, Velasco is not only going around the law by his claim that he is registered voter when he is not, as has been determined by a court in a final judgment. Equally important is that he has made a material misrepresentation under oath in his COC regarding his qualification. For these violations, he must pay the ultimate price - the nullification of his election victory. He may also have to account in a criminal court for making a false statement under oath, but this is a matter for the proper authorities to decide upon.

We distinguish our ruling in this case from others that we have made in the past by the clarification that COC defects beyond matters of form and that involve material misrepresentations cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken. A mandatory and material election law requirement involves more than the will of the people in any given locality. Where a material COC misrepresentation under oath is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will. The balance must always tilt in favor of upholding and enforcing the law. To rule otherwise is to slowly gnaw at the rule of law.[24]

Therefore, considering that Reyes' CoC was cancelled and was deemed void ab initio by virtue of the final and executory decisions rendered by the COMELEC and this Court, Velasco is a not second-placer as claimed by the Dissent; rather, Velasco is the only placer and the winner during the May elections and thus, for all intents and purposes, Velasco has a clear legal right to office as Representative of the Lone District of Marinduque.

Unconvinced, Justice Leonen would protest in his Dissent that petitioner Velasco, a non-party to SPC No. 13-053 and G.R. No. 207264, is a stranger to the case and cannot be bound by Our factual findings and rulings therein.[25]

The proposition is devoid of merit.

Sec. 1, Rule 23 of the COMELEC Rules of Procedure, as amended, pertinently reads:

Section 1. Ground for Denial or Cancellation of Certificate of Candidacy. —

A verified Petition to Deny Due Course to or Cancel a Certificate of Candidacy for any elective office may be filed by any registered voter or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false, xxx (emphasis added)

By lodging a petition for denial or cancellation of CoC, a voter seeks to ensure that the candidate who purports to be qualified to represent his or her constituents is indeed eligible to do so. Such petition, therefore, is for and in benefit of the electorate, and not for one's personal advantage. This is in clear consonance with the afore-quoted rule, which never required the petition to be filed by a candidate's political rival. Otherwise stated, it is not required for petitioner Tan in SPA No. 13-053 to have a claim to the contested electoral post to be permitted by law to challenge the validity of Reyes' CoC. At the same time, petitioner Velasco herein is not under any legal obligation to intervene in SPA No. 13-053 and G.R. No. 207264 before he could benefit directly or indirectly from the ruling. Unlike civil cases which only involve private rights, petitions to deny or cancel certificates of candidacy are so imbued with public interest that they cannot be deemed binding only to the parties thereto. Indeed, it would be an absurd situation, after all, to declare Reyes ineligible only insofar as Tan is concerned, and presumed eligible as to the rest of the Marinduquenos, including Velasco.

Furthermore, for a petition for mandamus to prosper, Sec. 3, Rule 65 of the Rules of Court provides:

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

Apparently, there is nothing in foregoing provision which requires that the person applying for a writ of mandamus should establish that he or she was the prevailing party litigant to a prior case (i.e. a petitioner, respondent or an intervenor) to be entitled to the writ's issuance. Contrary to the opinion espoused in the Dissent, Sec. 3, Rule 65 merely requires the applicant to establish a clear legal right to the ministerial function to be performed, without distinction on whether this right emanates from a final judgment in a prior case or not. Thus, there is no basis to the opinion that Velasco should have been a party in Reyes in order for this Court to grant a writ of mandamus in his favor.

b. Respondent Belmonte and Barua-Yap's ministerial duties

Anent the second element for mandamus to lie, it is critical that the duty the performance of which is to be compelled be ministerial in nature, rather than discretionary. A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done.^[26] The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.^[27]

Without a doubt, petitioner herein seeks the performance of a ministerial act, without which he is unjustly

deprived of the enjoyment of an office that he is clearly entitled to, as earlier discussed. It must be borne in mind that this petition was brought to fore because, despite repeated demands from petitioner and their receipt of the "Certificate of Canvass of Votes and Proclamation of Winning Candidate for the position of Member of House of Representatives for the Lone District of Marinduque," respondents Belmonte and Barua-Yap refused to allow Velasco to sit in the Lower House as Marinduque Representative

The non-discretionary function of respondents Belmonte and Barua-Yap is underscored in *Codilla, Sr. v. De Venecia (Codilla)*,^[28] wherein the Court held that the House Speaker and the Secretary General of the Lower House are duty-bound to recognize the legally elected district representatives as members of the House of Representatives. In the concluding statements of *Codilla*, the Court, speaking through retired Chief Justice Reynato Puno, instructs that:

In the case at bar, the administration of oath and the registration of the petitioner in the Roll of Members of the House of Representatives representing the 4th legislative district of Leyte is no longer a matter of discretion on the part of the public respondents. The facts are settled and beyond dispute: petitioner garnered 71,350 votes as against respondent Locsin who only got 53, 447 votes in the May 14, 2001 elections. The COMELEC Second Division initially ordered the proclamation of respondent Locsin; on Motion for Reconsideration the COMELEC en banc set aside the order of its Second Division and ordered the proclamation of the petitioner. The Decision of the COMELEC en banc has not been challenged before this Court by respondent Locsin and said Decision has become final and executory.

In sum, the issue of who is the rightful Representative of the 4th legislative district of Leyte has been finally settled by the COMELEC en banc, the constitutional body with jurisdiction on the matter. The rule of law demands that its Decision be obeyed by all officials of the land. There is no alternative to the rule of law except the reign of chaos and confusion.^[29] (Emphasis in the original)

As in *Codilla*, the fact of Reyes' disqualification can no longer be disputed herein, in view of the consecutive rulings of the COMELEC and the Court in SPA No. 13-053, G.R. No. 207624, and SPA No. 13-010. Reyes' ineligibility and Velasco's consequent membership in the Lower House is then beyond the discretion of respondents Belmonte and Barua-Yap, and the rulings upholding the same must therefore be recognized and respected. To hold otherwise - that the Court is not precluded from entertaining questions on Reyes' eligibility to occupy Marinduque's congressional seat - would mean substantially altering, if not effectively vacating, Our ruling in Reyes that has long attained finality, a blatant violation of the immutability of judgments. Under the doctrine, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.^[30] Justice Leonen, however, urges this Court to revisit, nay re-litigate, Reyes two (2) years after the date of its finality and abandon the same, in clear contravention of the doctrine of immutability and finality of Supreme Court decisions.

It matters not that respondents Belmonte and Barua-Yap are non-parties to Reyes. It is erroneous to claim that Our final ruling therein is not binding against Belmonte and Barua-Yap on ground that that they were neither petitioners nor respondents in the said case,^[31] and that they were not given the opportunity to be heard on the issues raised therein.^[32] Again, SPA No. 13-053, G.R. No. 207264, and SPA No. 13-010 are not civil cases and do not involve purely private rights which requires notice and full participation of respondents Belmonte and Barua-Yap. It must also be noted that the said case originated as petition to deny or cancel Reyes' COC, which does not require the participation of the Speaker and Secretary General of the House of Representatives. In fact, there is nothing in BP 881, the COMELEC Rules of Procedure, nor in Rule 64, in relation to Rule 65 of the Rules of Court, which requires that the Speaker and Secretary General to be included either in the original petition for

cancellation of CoC or when the case is elevated to this Court via petition for certiorari. In any event, the fact that they were not made parties in Reyes does not mean that the public respondents are not bound by the said decision considering that the same already form part of the legal system of the Philippines.[33]

The Dissent endeavors to divert our attention to the peculiarities of Codilla that allegedly preclude the Court from applying its doctrine in the case at bar. It was noted that (i) the petitioner in Codilla acquired the plurality of votes, which according to the dissent is the primary reason for the grant of the petition;[34] (ii) that respondent Reyes' proclamation was never nullified in SPA 13-053;[35] and (iii) that the second placer rule was not yet abandoned when Codilla was promulgated.[36]

With all due respect, the arguments are bereft of merit. Their rehashed version fails to persuade now as they did before in Reyes.

First, the ruling on Codilla was not primarily hinged on the plurality of votes acquired by petitioner therein, but on the certainty as to who the lawfully elected candidate was. To reiterate the holding in Codilla: "the issue of who is the rightful Representative xxx has been finally settled by the COMELEC en banc, the constitutional body with jurisdiction on the matter." (Emphasis added) Hence, it became ministerial on the part of then House Speaker Jose de Venecia and then Secretary General Roberto P. Nazareno of the House of Representatives to swear in and include the name of petitioner Eufrocino Codilla (Codilla) in the Roll of Members.

Acquiring the plurality of votes may be one way of asserting one's claim to office, but the cancellation of the CoC of the candidate who garnered the highest number of votes is likewise a viable alternative in light of Aratea. Thus, in spite of the initial determination that Velasco failed to obtain the plurality of votes, he could still validly claim that his right to be seated as Marinduque's Representative in Congress has been settled by virtue of Reyes' disqualification.

Second, the ruling in Reyes may have been silent as to the validity of her proclamation, but the Dissent failed to take into account the developments in SPC No. 13-010, wherein Velasco assailed the proceedings of the Provincial Board of Canvassers (PBOC) and prayed before the COMELEC that the May 18, 2013 proclamation of Reyes be declared null and void.[37]

On June 19, 2013, the COMELEC would deny Velasco's petition. But on reconsideration, the COMELEC en banc, on July 9, 2013, made a reversal and declared null and void and without legal effect the proclamation of Reyes, and, in the very issuance, declared petitioner Velasco as the winning candidate.[38] And so it was that on July 16, 2013, Velasco would be proclaimed by a newly constituted PBOC as the duly elected member of the House of Representatives for the Lone District of Marinduque, in congruence with the COMELEC's rulings in SPA No. 13-053 and SPC No. 13-010.[39] This proclamation was never questioned by Reyes before any judicial or quasi-judicial forum.

This sequence of events bears striking resemblance with the factual milieu of Codilla wherein Codilla, on June 20, 2001, seasonably moved for reconsideration of the June 14, 2001 order for his disqualification and additionally questioned therein the validity of the proclamation of Ma Victoria Locsin (Locsin). On the next day, he would lodge a separate petition challenging the validity of Locsin's proclamation anew. The petition, however, would suffer the same fate of being initially decided against his favor. It will not be until August 29, 2001 when the COMELEC en banc, by a 4-3 vote, would reverse the rulings that disqualified Codilla and upheld the validity of Locsin's proclamation. Notably, Locsin did not appeal from this Resolution annulling her proclamation and so the COMELEC en banc's ruling then became final and executory.

Thereafter, on September 6, 2001, the COMELEC en banc reconstituted the PBOC of Leyte to implement its

August 29, 2001 Resolution, and to proclaim the candidate who obtained the highest number of votes in the district as the duly elected Representative of the 4th Legislative District of Leyte. So it was that on September 12, 2001, petitioner Codilla was proclaimed winner of the congressional race.

With the finality of the COMELEC ruling disqualifying Locsin and nullifying her proclamation, and the consequent proclamation of Codilla as the lawfully elected Representative of the 4th District of Leyte, the Court saw no legal obstacle in directing then House Speaker Jose de Venecia and then Secretary General Roberto Nazareno of the House of Representatives to swear in and include petitioner Codilla's name in the Roll of Members of the House of Representatives. This very same outcome in Codilla should be observed in the present case.

Third, that the second placer rule was not yet abandoned when Codilla was decided is inconsequential in this case. As earlier discussed, what is of significance in Codilla is the certainty on who the rightful holder of the elective post is. It may be that when Codilla was decided, plurality of votes and successional rights, in disqualifications cases, may have been the key considerations, but as jurisprudence has been enriched by *Aratea* and by the subsequent cases that followed,^[40] the qualified second placer rule was added to the enumeration. Synthesizing *Aratea* with *Codilla*, petitioner Velasco may now successfully invoke the qualified second placer rule to prove the certainty of his claim to office, and compel the respondent Speaker and Secretary General to administer his oath and include his name in the Roll of Members of the House of Representatives.

With the presence of the twin requirements, the extraordinary writ of mandamus must be issued in the case at bar.

II

We now discuss the collateral issues raised.

The Dissent cites the cases of *Tañada v. COMELEC* (*Tanada*), *Limkaichong v. COMELEC* (*Limkaichong*), and *Vinzons-Chato v. COMELEC* (*Vinzons-Chato*), to persuade Us to revisit the ruling in *Reyes v. COMELEC*, and divest the COMELEC of its jurisdiction over the issue of Reyes' qualification in favor of the House of Representatives Electoral Tribunal (HRET). Similarly, respondents raised the issue of jurisdiction arguing that the proclamation alone of the winning candidate is the operative act "that triggers the commencement of HRET's exclusive jurisdiction,"^[41] and insisted that to rule otherwise would result in the clash of jurisdiction between the HRET and the COMELEC.^[42]

On the outset, I express my strong reservations on revisiting herein the issue on the HRET's jurisdiction, which has already been settled with finality in *Reyes*, for it is not at issue in this petition for mandamus. I SHARE THE OBSERVATION BY THE PONENCIA THAT RESPONDENTS ARE TAKING ADVANTAGE OF THIS PETITION TO RE-LITIGATE WHAT HAS BEEN SETTLED IN REYES AND DOES NOT SEEM TO RESPECT THE ENTRY OF JUDGMENT THAT HAS BEEN ISSUED THEREIN ON OCTOBER 22, 2013. Nevertheless, assuming in *arguendo* that there is no impropriety in taking a second look at the issue in this case, I see no irreconcilability between *Reyes*, on the one hand, and the cases cited in the Dissent, on the other.

As a review, the doctrine in *Reyes* is that the HRET only has jurisdiction over Members of the House of Representatives. To be considered a Member of the House of Representatives, the following requisites must concur: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office.^[43]

Our ruling in *Reyes* does not run in conflict with *Tañada*, which was decided by the Court en banc by a unanimous vote, as our esteemed colleague pointed out. As held in *Tañada*:

In the foregoing light, considering that Angelina had already been proclaimed as Member of the House of

Representatives for the 4th District of Quezon Province on May 16, 2013, as she has in fact taken her oath and assumed office past noon time of June 30, 2013, the Court is now without jurisdiction to resolve the case at bar. As they stand, the issues concerning the conduct of the canvass and the resulting proclamation of Angelina as herein discussed are matters which fall under the scope of the terms "election" and "returns" as above-stated and hence, properly fall under the HRET's sole jurisdiction. (Emphasis added)

Hence, the Court's ruling in Tañada, disclaiming jurisdiction in favor of the HRET, is premised on the concurrence of the three (3) requirements laid down in Reyes. In any case, Tanada is a Minute Resolution not intended to amend or abandon Reyes, as was made evident by the subsequent case *Bandara v. COMELEC*,^[44] to wit:

It is a well-settled rule that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of representatives, the jurisdiction of the Commission on Elections (COMELEC) over election contests relating to his/her election, returns, and qualification ends, and the HRET's own jurisdiction begins. Consequently, the instant petitions for certiorari are not the proper remedies for the petitioners in both cases to question the propriety of the National Board of Canvassers' proclamation, and the events leading thereto.

Limkaichong is even more blunt as the Court decided the case with the following opening statement:^[45]

Once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the jurisdiction of the House of Representatives Electoral Tribunal begins. x x x . (Emphasis in the original)

And in *Vinzons-Chato v. COMELEC*:^[46]

x x x [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 added)

Verily, Reyes delineated the blurred lines between the jurisdictions of the COMELEC and the HRET, explicitly ruling where one ends and the other begins. Our ruling therein was not wanting in jurisprudential basis and is in fact supported by cases cited by in the Dissent no less.

Certainly, the principle in Reyes does not offend Art. VI, Sec. 17 of the Constitution nor does it undermine the adjudicatory powers of the HRET. On the contrary, it strictly adheres to the textual tenor of the constitutional provision, to wit:

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. (Emphasis added)

It has to be emphasized that the Court, in deciding Reyes, did not divest the Senate and House of Representative Electoral Tribunals of their jurisdiction over their respective members, but merely set the parameters on who these "Members" are. The jurisprudence earlier reviewed are in unison in holding that to be considered a "Member" within the purview of the constitutional provision, the three indispensable elements must concur.

As to the alleged clash of jurisdiction, the Court, in its October 22, 2013 Resolution in Reyes, explained:

"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 [Reyes] 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.[47] (Emphasis and words in brackets added)

It thus appears that there is no conflict of jurisdiction, and that if a quo warranto case should be filed before HRET as espoused by the respondents and in the Dissent, it cannot be one against Reyes who never became a member of the House of Representatives over whom the HRET could exercise jurisdiction.

III

The Dissent also claims that when respondent Reyes was proclaimed by the PBOC as the duly elected Representative of the Lone District of Marinduque of May 18, 2013, petitioner Velasco should have continued his election protest via a quo warranto petition before the HRET.[48]

This suggestion is legally flawed considering that the HRET is without authority to review, modify, more so annul, the illegal acts of PBOC. On the contrary, this authority is lodged with the COMELEC and is incidental to its power of "direct control and supervision over the Board of Canvassers." [49] Therefore, the COMELEC is the proper entity that can legally and validly nullify the acts of the PBOC. As held by this Court held in *Mastura v. COMELEC*;[50]

"Pursuant to its administrative functions, the COMELEC exercises direct supervision and control over the proceedings before the Board of Canvassers. In *Aratuc v. Commission on Elections*[51] we held —

"While nominally, the procedure of bringing to the Commission objections to the actuations of boards of canvassers has been quite loosely referred to in certain quarters, even by the Commission and by this Court ... as an appeal, the fact of the matter is that the authority of the Commission in reviewing such actuations does not spring from any appellate jurisdiction conferred by any specific provision of law, for there is none such provision anywhere in the Election Code, but from the plenary prerogative of direct control and supervision endowed to it by the above-quoted provisions of Section 168. And in administrative law, it is a too well settled postulate to need any supporting citation here, that a superior body or office having supervision and control over another may do directly what the latter is supposed to do or ought to have done, xxxx"

Furthermore, the illegal proclamation of the PBOC cannot operate to automatically oust the COMELEC of its supervisory authority over the PBOC. As clearly explained in Reyes:

"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 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 Canvasser 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." [52] (Emphasis supplied.)

It must likewise be noted that the COMELEC en banc's May 14, 2013 Decision in SPA No. 13-053 was already final as "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 Representative," and in the absence of a restraining order from this Court, it became executory. Thus, as held in *Reyes*, it was an error for the PBOC to proclaim *Reyes*, a non-candidate, on May 18, 2013. As aptly observed by Chief Justice Sereno in her Concurring Opinion in the said case: [53]

"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, 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. 13-05 3 (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.

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, 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.

x x x x x

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 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, x x x." (Emphasis supplied.)

Hence, at that moment, the COMELEC is not only bestowed with the authority, but more so, duty-bound to rectify the PBOC's mistake. Consequently, the COMELEC En Banc, in its July 9, 2013 Resolution in SPC No. 13-010, nullified the proclamation of Reyes, proceeded to constitute a special PBOC and on July 9, 2013, proclaimed Velasco as the winning Representative for the Lone District of Marinduque for the 2013-2016 term. As emphasized in the ponencia, this proclamation of Velasco was never questioned before this Court and likewise became final and executory.[54]

The Dissent makes much of the cases questioning Reyes' eligibility that are pending before the HRET, and argues that the Court should deny the instant petition and defer to the action of the electoral tribunal.[55]

The argument is specious.

It is of no moment that there are two quo warranto cases currently pending before the HRET that seek to disqualify Reyes from holding the congressional office.[56] These cases cannot oust the COMELEC and the Court of their jurisdiction over the issue on Reyes' eligibility, which they have already validly acquired and exercised in SPA No. 13-053 and Reyes. The petitioners in the quo warranto cases themselves recognize the enforceability of the COMELEC and the Court's ruling in SPA No. 13-053 and Reyes, and even invoked the rulings therein to support their respective petitions. They seek not a trial de novo for the determination of whether or not Reyes is eligible to hold office as Representative, but seek the implementation of the final and executory decisions of the COMELEC and of the High Court. Interestingly, Reyes merely prayed for the dismissal of these cases, but never asked the HRET for any affirmative relief to counter the executory rulings in SPA No. 13-053, G.R. No. 207264, and SPA No. 13-010.

IV

All told, We cannot turn a blind eye to the undisputed fact that the Court's pronouncements in Reyes and the pertinent resolutions of the COMELEC have established that the title and clear right to the contested office belongs to petitioner. In reinforcing this conclusion, the ponencia aptly observed that:[57]

xxx In this case, given the present factual milieu, i.e. the final and executory resolutions of this Court in G.R. No. 207264, the final and executory resolutions of the COMELEC in SPA No. 13-053 (DC) cancelling Reyes' Certificate of Candidacy, and the final and executory resolution of the COMELEC in SPA No. 13-010 declaring null and void the proclamation of Reyes and proclaiming Velasco as the winning candidate for the position of Representative for the Lone District of the Province of Marinduque, it cannot be claimed that the present petition is one for the determination of the right of Velasco to the claimed office.

It has thus been conclusively proven that Velasco is the winning candidate for the position of Representative for the Lone District of Marinduque during the May 2013 Elections. As a consequence, when respondents Belmonte and Barua-Yap received the "Certificate of Canvass of Votes and Proclamation of Winning Candidate for the position of Member of House of Representatives for the Lone District of Marinduque" issued by the COMELEC in favor of the herein petitioner, they should have, without delay, abide by their respective ministerial duties to administer the oath in favor of the petitioner and to register his name in Roll of Members of the House of Representatives for the 2013-2016 term. Upon their unlawful refusal to do so despite repeated demands from petitioner, the extraordinary writ of mandamus ought to lie.

In the end, Reyes has no legal basis whatsoever to continue exercising the rights and prerogatives as the Lone District Representative of Marinduque as there is at present no pending action or petition which was instituted by her either before the HRET or the Court challenging petitioner Velasco's proclamation. Respondents Belmonte and Barua-Yap must thus honor the rights of petitioner and execute the final COMELEC and Supreme Court Resolutions in accordance with and furtherance of the rule of law.

May I just be permitted one last word.

In what was in all ill designed as a master stroke, Reyes, after all have been said and done by this Court in the petition, she herself filed, submitted a motion to withdraw that petition, G.R. No. 207264, Regina Ongsiako Reyes v. COMELEC and Tan.[58] I had the opportunity to say, in the Court's denial of her motion to reconsider the dismissal of her petition, that:

xxx

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. 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.

I cannot be moved one bit away from the conclusion, then as now, that parties to cases cannot trifle with our Court processes. If we deny the petition at hand, we will ourselves do for Reyes what we said in judgment cannot

be done by her.

WHEREFORE, premises considered, I register my vote to GRANT the petition.

[1] Ponencia, p. 13.

[2] Lota v. Court of Appeals, G.R. No. L-14803, June 30, 1961, 2 SCRA 715, 718.

[3] Ponencia, p. 12.

[4] G.R. No. 207264, June 25, 2013, 699 SCRA 522, 538, and G.R. No. 207264, October 22, 2013, 708 SCRA 197.

[5] Id.

[6] Philippine Coconut Authority v. Primex Coco Products, Inc., G.R. No. 163088, July 20, 2006, 495 SCRA 763, 777.

[7] Palileo v. Ruiz Castro, No. L-3261, December 29, 1949, 85 Phil 272, 275.

[8] J. Leonen, Dissenting Opinion, p. 11.

[9] Filed on October 10, 2012.

[10] Petition for Cancellation of Certificate of Candidacy, entitled Joseph Socorro Tan v. Regina Ongsiako Reyes.

[11] See Reyes v. COMELEC, supra note 4 at 529.

[12] Id. at 530.

[13] Footnote No. 3 of the October 22, 2013 Resolution distinguished between a final judgment and one that is final and executory in the following wise: "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)."

[14] Supra note 4.

[15] Ponencia, p. 6.

[16] G.R. No. 195229, October 9, 2012, 683 SCRA 105.

[17] See also Hayudini v. COMELEC, G.R. No. 207900, April 22, 2014, 723 SCRA 223.

[18] Supra note 16.

[19] Jalosjos, Jr. v. COMELEC, G.R. No. 193237, October 9, 2012, 683 SCRA 1.

- [20] G.R. No. 195649, April 16, 2013, 696 SCRA 420.
- [21] J. Leonen, Dissenting Opinion, p. 13.
- [22] Jalosjos, Jr. v. COMELEC, supra note 19 at 32.
- [23] Maquiling v. COMELEC, supra note 20 at 462-463.
- [24] Velasco v. COMELEC, G.R. No. 180051, December 24, 2008, 575 SCRA 590, 614-615.
- [25] J. Leonen, Dissenting Opinion, p. 8.
- [26] Special People, Inc. Foundation v. Canda, G.R. No. 160932, January 14, 2013, 688 SCRA 403, 424.
- [27] Philippine Coconut Authority v. Primex Coco Products, Inc., supra note 6.
- [28] G.R. No. 150605, December 10, 2002, 393 SCRA 639, 681.
- [29] Id.
- [30] FGU Insurance Corporation v. Regional Trial Court of Makati City, Br. 66, G.R. No. 161282 February 23 2011, 644 SCRA 50, 56.
- [31] Memorandum for the OSG in behalf of public respondents p. 9.
- [32] Ibid, p. 12.
- [33] Article 8, Civil Code of the Philippines.
- [34] J. Leonen, Dissenting Opinion, p. 10.
- [35] Id. at 11.
- [36] Id. at 12.
- [37] Ponencia, p. 4.
- [38] Id. at 4-5.
- [39] Id. at 6.
- [40] Jalosjos Jr., v. COMELEC, supra note 19; Maquiling v. COMELEC, supra note 20.
- [41] Memorandum of the OSG, p. 16.
- [42] Id. at 24.
- [43] Reyes v. COMELEC, supra note 4 at 535.
- [44] G.R. Nos. 207144 and 208141, February 3, 2015.
- [45] Limkaichong v. COMELEC, G.R. Nos. 178831-32 and 179120, 179132-33, 179240-41, April 1, 2009 583 SCRA 1, 8-9.
- [46] G.R. No. 172131, April 2, 2007, 520 SCRA 166, 180, citing Guerrero v. COMELEC, G.R. No 105278 November 18, 1993, 228 SCRA 36, 43.
- [47] G.R. No. 207264, October 22, 2013, 708 SCRA 197, 231-232.
- [48] J. Leonen, Dissenting Opinion, p. 6.

[49] Section 227, Omnibus Election Code:

Section 227. Supervision and control over board of canvassers. - The Commission shall have direct control and supervision over the board of canvassers.

[50] G.R. No. 124521, January 29, 1998, 285 SCRA 493,499-500.

[51] G.R. Nos. L-49705-09 and L-49717-21, February 8, 1979, 88 SCRA 251.

[52] Supra note 4, at 537.

[53] Chief Justice Sereno, Concurring Opinion, supra note 4 at 243-248, dated October 22, 2013.

[54] Ponencia, p. 12.

[55] J. Leonen, Dissenting Opinion, p. 7.

[56] HRET Case No. 13-036, entitled "Noeme Mayores him and Jeasseca L. Mapacpac v. Regina Ongsiako Reyes," and HRET Case No. 13-037, entitled "Eric D. Junio v. Regina Ongsiako Reyes".

[57] Ponencia, p. 12.

[58] October 22, 2013, 708 SCRA 197,233.

CONCURRING OPINION

LEONEN, J.:

I concur in the result.

The quo warranto cases^[1] filed before the House of Representatives Electoral Tribunal have been dismissed in the Resolution^[2] dated December 14, 2015. The proper constitutional body, the House of Representatives Electoral Tribunal, has already ruled on the basis of Lord Allan Jay Velasco's (Velasco) claim to a seat in Congress. There is thus no pending proceeding nor matter that bars this court from issuing the writ of mandamus in favor of Velasco.

Under the situation attendant in this case, I therefore concur in the grant of the Petition for Mandamus.

I

Election contests assailing Regina Ongsiako Reyes' (Reyes) title as a member of the House of Representatives were filed. Velasco filed an electoral protest before the House of Representatives Electoral Tribunal.^[3] For reasons only he understood, he opted to withdraw his case against Reyes before the House of Representatives Electoral Tribunal and, instead, after Reyes had taken her oath and proceeded to represent the Lone District of Marinduque, filed the present Petition for Mandamus.

However, three quo warranto cases were also filed against Reyes before the House of Representatives Electoral Tribunal.^[4]

When Velasco filed this Petition for Mandamus, the House of Representatives Electoral Tribunal had yet to rule on Velasco's title to a seat in Congress. The quo warranto cases were still pending before the House of Representatives Electoral Tribunal.

While election contests were pending before the House of Representatives Electoral Tribunal, this Petition for

Mandamus was, in effect, an election contest.[5] It was a procedural vehicle to raise "contests relating to the election, returns, and qualifications"[6] of a Member of the House of Representatives. This action set up the title of Velasco to a public office. Velasco claims a clear and better legal right as against the occupant. An election contest is a suit that can be filed by a candidate to question the title of an incumbent to a public office.[7]

The power to be the "sole judge"[8] of all these contests is vested by our Constitution itself in the House of Representatives Electoral Tribunal to the exclusion of all others.[9]

The Constitution clearly 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.[10]

An election contest, whether an election protest[11] or petition for quo warranto,[12] is a remedy "to dislodge the winning candidate from office"[13] and "to establish who is the actual winner in the election." [14] The action puts in issue the validity of the incumbent's claim to the office.

A contest contemplated by the Constitution settles disputes as to who is rightfully entitled to a position.[15] It is not this court but the House of Representatives Electoral Tribunal that has sole jurisdiction of contests involving Members of the House of Representatives. This can be filed through (a) an election protest under Rule 16 of the 2011 Rules of the House of Representatives Electoral Tribunal; and (b) quo warranto under Rule 17 of the 2011 Rules of the House of Representatives Electoral Tribunal.

Thus, while the petitions for quo warranto were pending before the House of Representatives Electoral Tribunal, this court did not have the jurisdiction to rule on this Petition for Mandamus. A grant of the writ of mandamus would have openly defied the Constitution and, in all likelihood, would muddle the administration of justice as it would have rendered the quo warranto cases properly pending before the House of Representatives Electoral Tribunal moot and academic. We would have arrogated upon ourselves the resolution of then pending House of Representatives Electoral Tribunal cases.

II

Notwithstanding the pendency of the quo warranto cases before the House of Representatives Electoral Tribunal, Velasco relies on the Decision in *Reyes v. Commission on Elections*[16] upholding the jurisdiction of the Commission on Elections and affirming the Resolution of the Commission on Elections cancelling Reyes' Certificate of Candidacy for the grant of the writ of mandamus.

The Resolution on the Motion for Reconsideration in *Reyes v. Commission on Elections*[11] was denied by a divided court.[18] Five justices voted to deny the Motion for Reconsideration filed by Reyes, and four justices[20] voted to grant the Motion for Reconsideration.

On the same day that the Resolution was promulgated, this court En Banc decided *Tañada, Jr. v. Commission on Elections*[21] by a unanimous vote.[22] In *Tanada*, this court once again upheld the jurisdiction of the House of Representatives Electoral Tribunal "over disputes relating to the election, returns, and qualifications of the proclaimed representative[.]"[23] The issue on the validity of the proclamation of a Member of Congress is included in the term "returns." We said:

Case law states 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. The phrase "election, returns, and qualifications" refers to all matters affecting the validity of the contestee's title. In particular, the term "election" refers to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; "returns" refers to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and "qualifications" refers to matters that could be raised in a quo warranto proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his CoC.[24] (Citation omitted)

In *Limkaichong v. Commission on Elections, et al.*:[25]

Petitioners (in G.R. Nos. 179120, 179132-33, and 179240-41) steadfastly maintained that Limkaichong's proclamation was tainted with irregularity, which will effectively prevent the HRET from acquiring jurisdiction.

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:

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:

xxx [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.

Further, for the Court to take cognizance of petitioner Chato's election protest against respondent Unico would be to usurp the constitutionally mandated functions of the HRET.

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.

....

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.[26] (Emphasis in the original, citations omitted)

In *Vinzons-Chato v. Commission on Elections*,[27] this court ruled 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.[28] (Emphasis supplied, citations omitted)

When Reyes was proclaimed by the Provincial Board of Canvassers as the duly elected Representative of the Lone District of Marinduque on May 18, 2013, Velasco should have continued his election protest or filed a quo warranto Petition before the House of Representatives Electoral Tribunal.[29] Instead, Velasco filed a Petition to annul the proceedings of the Provincial Board of Canvassers and the proclamation of Reyes on May 20, 2013 before the Commission on Elections.[30] At that time, the Commission on Elections no longer had jurisdiction over the Petition that was filed after Reyes' proclamation.

Any alleged invalidity of the proclamation of a Member of the House of Representatives does not divest the House of Representatives Electoral Tribunal of jurisdiction.[31]

Should there have been pending cases at the House of Representatives Electoral Tribunal, we should have deferred to the action of the constitutional body given the competence to act initially on the matter. Thus, in the Dissenting Opinion in Reyes v. Commission on Elections:

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 Representative Electoral Tribunal (HRET). This is a separate organ from the Judiciary.

. . . .

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.[32]

The House of Representatives Electoral Tribunal is the sole judge of contests involving Members of the House of Representatives.[33] This is a power conferred by the sovereign through our Constitution.

Again, as in my dissent in Reyes v. Commission on Elections:[34]

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]." These remedies, however, may lie only after a ruling by the House of Representatives Electoral Tribunal or the Senate Electoral Tribunal.[35] (Emphasis supplied)

However, the House of Representatives Electoral Tribunal already ruled on the two quo warranto cases against Reyes that were consolidated.[36] The House of Representatives Electoral Tribunal held that it had no jurisdiction to resolve the petitions for quo warranto relying on this court's Decision in Reyes v. Commission on Elections.[37] In their Resolution, the House of Representatives pronounced:

Such element is obviously absent in the present cases as Regina Reyes' proclamation was nullified by the COMELEC, which nullification was upheld by the Supreme Court. On this ground alone, the Tribunal is without power to assume jurisdiction over the present petitions since Regina Reyes "cannot be considered a Member of the House of Representatives," as declared by the Supreme Court En Banc in G.R. No. 207264.[38] (Emphasis in the original, citation omitted)

The tribunal dismissed the quo warranto cases holding that the Commission on Elections' cancellation of Reyes'

certificate of candidacy resulted in the nullification of her proclamation.[39] Thus:

WHEREFORE, in view of the foregoing, the September 23, 2014 Motion for Reconsideration of Victor Vela Sioco is hereby GRANTED. The September 11, 2014 Resolution of Tribunal is hereby REVERSED and SET ASIDE. Accordingly, the present Petitions for Quo Warranto are hereby DISMISSED for lack of jurisdiction.[40] (Emphasis in the original)

In effect, the decision by the sole judge of all electoral contests acknowledges Reyes' lack of qualifications. While maintaining my dissent in *Reyes v. Commission on Elections*, I now acknowledge that there is no other remedy in law or equity to enforce a final decision of this court except through mandamus.

Applying *Codilla, Sr. v. Hon. de Venecia*,[41] this Petition for Mandamus should be granted.

III

Aratea v. Commission on Elections[71] qualified the second-placer rule. The candidate receiving the next highest number of votes would be entitled to the position if the Certificate of Candidacy of the candidate receiving the highest number of votes had been initially declared valid at the time of filing but had to be subsequently cancelled.[72] Additionally, if the Certificate of Candidacy of the candidate receiving the highest number of votes was void ab initio, the votes of the candidate should be considered stray and not counted.[73] This would entitle the candidate receiving the next highest number of votes to the position. Thus:

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void ab initio, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void ab initio is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void ab initio is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void ab initio. Otherwise, a certificate of candidacy void ab initio can operate to defeat one or more valid certificates of candidacy for the same position.[75] (Emphasis in the original, citations omitted)

The Decision in *Aratea* was subsequently reiterated in *Jalosjos, Jr. v. Commission on Elections*[76] and *Maquiling v. Commission on Elections*.^[77]

ACCORDINGLY, I vote to GRANT the Petition for Mandamus.

[1] Rollo, p. 788, *Regina Ongsiako Reyes'* Memorandum. These cases were docketed as HRET Case Nos. 13-036 and 13-037.

[2] Petitioner's Manifestation dated January 6, 2016, annex D.

[3] Rollo, p. 630, Hon. Speaker Feliciano R. Belmonte and Secretary General Marilyn B. Barua-Yap's Memorandum. The case was docketed as HRET Case No. 13-028.

[4] *Id.* at 629-630.

[5] HRET Rules, rule 15. The action filed may be an election protest or quo warranto under the HRET Rules.

[6] CONST., art. VI, sec. 17.

[7] HRET Rules, rules 15-17.

[8] CONST., art. VI, sec. 17.

[9] CONST., art. VI, sec. 17. See also *Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

[10] Const., art. VI, sec. 17.

[11] HRET Rules, rule 16 provides:

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.

[12] HRET Rules, rule 17 provides:

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.

- [13] *Tecson v. Commission on Elections*, 468 Phil. 421, 461 (2004) [Per J. Vitug, En Banc].
- [14] *Lerias v. House of Representatives Electoral Tribunal*, 279 Phil. 877, 898 (1991) [Per J. Paras, En Banc].
- [15] CONST., art. VI, sec. 17.
- [16] G.R. No. 207264, June 25, 2013, 699 SCRA 522 [Per J. Perez, En Banc].
- [17] G.R. No. 207264, October 22, 2013, 708 SCRA 197 [Per J. Perez, En Banc].
- [18] *Id.* at 234.
- [19] The five justices were Chief Justice Maria Lourdes P. A. Sereno and Associate Justices Teresita J. Leonardo-de Castro, Roberto A. Abad, Jose P. Perez, and Bienvenido L. Reyes.
- [20] The four justices were Associate Justices Antonio T. Carpio, Arturo D. Brion, Martin S. Villarama, Jr., and Marvic Mario Victor F. Leonen.
- [21] G.R. Nos. 207199-200, October 22, 2013, 708 SCRA 188 [Per J. Perlas-Bernabe, En Banc].
- [22] *Id.* at 196.
- [23] *Id.* at 195.
- [24] *Id.* at 195-196.
- [25] 601 Phil. 751 (2009) [Per J. Peralta, En Banc].
- [26] *Id.* at 782-783.
- [27] 548 Phil. 712 (2007) [Per J. Callejo, St., En Banc].
- [28] *Id.* at 725-726.
- [29] HRET Rules, rules 16-17.
- [30] Rollo, p. 574, Lord Allan Jay Q. Velasco's Consolidated Reply. The Petition was docketed as SPC No 13-010.
- [31] *Gonzalez v. Commission on Elections, et al*, 660 Phil. 225, 267 (2011) [Per J. Villarama, Jr., En Banc].
- [32] J. Leonen, Dissenting Opinion in *Reyes v. Commission on Elections*, G.R. No. 207264, October 22, 2013, 708 SCRA 197, 327-344 [Per J. Perez, En Banc].
- [33] CONST., art. VI, sec. 17.
- [34] G.R. No. 207264, October 22, 2013, 708 SCRA 197 [Per J. Perez, En Banc].
- [35] J. Leonen, Dissenting Opinion in *Reyes v. Commission on Elections*, G.R. No. 207264, October 22, 2013, 708 SCRA 197, 342 [Per J. Perez, En Banc], quoting *Barbers v. Commission on Elections*, 499 Phil. 570, 585 (2005) [Per J. Carpio, En Banc].
- [36] Rollo, p. 788, Regina Ongsiako Reyes' Memorandum. HRET Case No. 13-036 was entitled *Noeme Mayores Tan & Jeaseca L. Mapacpac v. Regina Ongsiako Reyes*. HRET Case No. 13-037 was entitled *Eric D. Junio v. Regina Ongsiako Reyes*.
- [37] G.R. No. 207264, June 25, 2013, 699 SCRA 522 [Per J. Perez, En Banc].

[38] Petitioner's Manifestation dated January 6, 2016, annex D, p. 4. Annex D refers to HRET Resolution in HRET Case Nos. 13-036 and 13-037.

[39] Id. at 3.

[40] Id. at 5.

[41] 442 Phil. 139 (2002) [Per J. Puno, En Banc].

[71] G.R. No. 195229, October 9, 2012, 683 SCRA 105 [Per J. Carpio, En Banc]

[72] Id. at 146.

[73] Id.

[74] Id.

[75] *Jalosjos, Jr. v. Commission on Elections*, G.R. No. 193237, October 9, 2012, 683 SCRA 1, 31-32 [Per J. Carpio, En Banc].

[76] G.R. No. 193237, October 9, 2012, 683 SCRA 1 [Per J. Carpio, En Banc].

[77] G.R. No. 195649, April 16, 2013, 696 SCRA 420 [Per C.J. Sereno, En Banc].

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