

NATIONAL PRESS CLUB OF THE PHILIPPINES, AUTOMATED ELECTION SYSTEM WATCH, AND GUARDIANS BROTHERHOOD, INC., PETITIONERS, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 259354. June 13, 2023

Ponente: ROSARIO, J.

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ROSARIO, J.:

Our election laws mandate the Commission on Elections (COMELEC) not only to allow any person designated by any candidate, political party, civic, religious, professional, business, service, youth or similar organization collectively designated by the COMELEC to witness the printing and distribution of official ballots and returns and to guard the premises of the printer, but also to allow political parties, candidates, citizens' arms, or their representatives to examine and test the equipment or devices of the automated election system (AES), including but not limited to the vote counting machines (VCMs) and storage devices such as secure digital (SD) cards.

Petitioners National Press Club of the Philippines (NPCP), Automated Election System Watch (AES Watch) and Guardians Brotherhood, Inc. (GBI) pray that we issue a writ of mandamus commanding the COMELEC to:

a)

implement the use of digital signature for the 2022 National and Local Elections (NLE); and

b)

disclose critical information and allow access and inspection of the following to political parties, candidates, accredited media and other organizations:

i)

printing of ballots at the National Printing Office (NPO), including examination of the ballots already printed without the presence of observers, as well as the publication of deployment destination of these ballots without the presence of observers;

ii)

the reported 5.2 million defective ballots and allow public scrutiny of their disposition or destruction;

iii)

configuration and preparation of the SD cards to be used in the VCMs through COMELEC-accredited observers in the Sta. Rosa, Laguna warehouse, including access to and examination of the SD cards that have already been configured and prepared without the presence of observers, and allow the public and/or parties to observe the Pre-Logic and Accuracy Test (Pre-LAT) and other tests to be conducted;

iv)

preparation, testing, and deployment of the VCMs and their parts, attachments and tools through COMELEC-accredited observers;

v)

the National Technical Support Center, technical hubs, including data centers, provincial and regional hubs; and

vi)

transmission diagram or data/communications network architecture including all details of the transmission of the transmission router server and/or the "Meet-Me Room" and all equipment that will be used to transmit election results.

(collectively, the Election Transparency Activities).[1]

I

In seeking the above reliefs, petitioners preliminarily allege that they have the clear legal right and requisite standing to initiate the Petition for Mandamus[2] as interested political parties or groups pursuant to our ruling in *Capalla v. COMELEC*. [3] They claim that the time element justifies direct resort to this Court considering that, as of the date of the Petition, the 2022 NLE was barely 48 days away, not to mention the overseas Filipino workers (OFW) who would be exercising their right to vote in 18 days.

Going to the substantive issues, petitioners contend that the COMELEC violated its mandatory duty to implement digital signatures and allow observers in the printing of ballots, configuration, preparation and testing of the SD cards, VCMs and transmission diagrams as follows:

A.

The COMELEC's alleged
refusal to implement the use of
digital signatures

Section 22 of Republic Act (R.A.) No. 8436,[4] or the Automated Election System (AES) Law, as amended by R.A. No. 9369,[5] mandates that each copy of the election returns be signed and thumbmarked by all members of the Board of Election Inspectors (BEI) and the watchers present. To implement this, COMELEC Commissioner Marlon Casquejo informed the Joint Congressional Oversight Committee on the AES hearing (JCOC hearing) on September 15, 2021 that COMELEC Minute Resolution No. 210021 dated January 20, 2021 already approved the use of digital signatures for the 2022 NLE.

During the March 9, 2022 JCOC hearing, it was discussed that all teachers/BEI members were enrolled to use the digital signatures. However, it will not be implemented nationwide but only in the National Capital Region, Cebu City and Davao City, despite the COMELEC's commitment. Commissioner Casquejo had previously sent a Letter[6] dated March 7, 2022 to Senator Imee R. Marcos, as Chairperson of the Committee on Electoral Reforms and People's Participation, informing her "that there are equipment or materials which will be needed in order to use the digital signature" and that "no provider can supply and deliver the needed number of cable assembly to accommodate the approximate 300,000 to 350,000 teachers."

However, it was pointed out that a cable assembly or download cable is not necessary for the implementation of digital signatures because they can be directly loaded in the VCMs without using iButton, a device used to load digital signatures. Despite the fact that it can be done and despite the fact that the law mandates its implementation, the COMELEC refuses to do so.

B.

The COMELEC's alleged
refusal or failure to allow
observers in the printing of
ballots

Section 187 of the Omnibus Election Code (OEC) provides that the COMELEC should allow any candidate, political party or civic, religious, professional, business, service, youth or any similar organizations to observe and witness the printing of official ballots. Further, Section 15 of the AES Law, as amended, provides that "[a]ccredited political parties and deputized citizen's arms of the Commission shall assign watchers in the printing, storage and distribution of official ballots."

Representatives of various political parties went to the NPO to observe the printing of ballots but were denied entry. The COMELEC likewise denied all requests of political parties to observe the printing, reasoning that this will cause delay and that the number of persons in the premises ought to be limited due to COVID-19.

It was confirmed during the March 9, 2022 JCOC hearing that 66.4% of the ballots had already been printed without any witnesses from the political parties and other organizations. In addition, approximately 5.2 million ballots that were printed were defective. Unfortunately, since there were no observers during the printing of ballots, petitioners argue that there was no way to verify if said ballots were truly defective. Worse, they were not properly accounted for and, thus, could allegedly be used to cheat in the NLE.

C.

The COMELEC's alleged
refusal or failure to be
transparent in relation to the
SD cards, VCMs, technical
hubs, and transmission
diagrams

During the March 9, 2022 JCOC hearing, it was discovered that the COMELEC had not been transparent with respect to the SD cards, VCMs, technical hubs, and transmission or data/communications network diagram, and that it was almost done with the configuration of SD cards and VCMs, supposedly in violation of its duty to promote transparent and credible elections.

In praying for the dismissal of the Petition, respondent COMELEC, in its Comment[7] dated July 14, 2022, argues that the Petition has been rendered moot with the successful conduct of the 2022 NLE; that mandamus does not lie since the COMELEC did neither neglect the performance of its duties nor exclude another from enjoyment of a right, in particular, that it has consistently complied with its duty to use digital signatures in transmitting election returns; that it has been transparent in the printing of official ballots and did not continuously refuse to allow observers during the printing thereof; that it is not enjoined by law to allow access and inspection of the configuration of SD cards and preparation of VCMs nor to critical information regarding its hubs, servers and data centers including details of transmission of election results; and that, at any rate, the Petition involves political questions within the exclusive jurisdiction of Congress.

II

At the outset, the Petition is dismissible for having been rendered moot and academic by the conclusion of the 2022 NLE. A case becomes moot when it ceases to present a justiciable controversy by supervening events so that a declaration thereon would be of no practical use or value. Since, the essence of the Petition is to compel the COMELEC to ensure the transparency and credibility of the 2022 NLE by implementing "Election Transparency Activities," this Court can no longer accord any of the reliefs prayed for by petitioners. Nonetheless, mootness of a case will not, in all instances, prevent the Court from rendering a decision thereon. Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.[8] Here, the last three exceptions to mootness are present. In particular, this case presents an opportunity for this Court to rule on novel issues, particularly on whether the law enjoins the COMELEC to allow access and inspection of the configuration of SD cards and preparation of VCMs, as well as to critical information regarding its hubs, servers, and data centers, including details of transmission of election results.

III

Mandamus is an extraordinary writ commanding a person, tribunal, corporation, board, or officer to do an act required to be done, as when they/it unlawfully neglects the performance of an act which the law specifically enjoins as a duty, and there is no other plain, speedy, and adequate remedy in the ordinary course of law.[9] The duty is ministerial only when its discharge requires neither the exercise of official discretion nor judgment.[10] Mandamus can be awarded only when the petitioner's legal right to the performance of the particular act, which is sought to be compelled, is clear and complete.[11]

Thus, for mandamus to lie, the following requisites must exist:

(a)

the petitioner has a clear legal right to the act demanded;

(b)

it must be the duty of the respondent to perform the act because it is mandated by law;

(c)

the respondent unlawfully neglects the performance of the duty enjoined by law;

(d)

the act to be performed is ministerial, not discretionary; and

(e)

there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[12]

Petitioners possess locus standi

In *Guingona v. COMELEC*,^[13] we held that if the petition for mandamus is anchored on the people's right to information on matters of public concern, any citizen can be the real party-in-interest. The requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and thus, part of the general public which possesses the right. There is no need to show any special interest in the result. It is sufficient that they be citizens and, as such, are interested in the faithful execution of the laws.

Hence, petitioners, whose members are registered Filipino voters, journalists, media personnel, and concerned citizens, are clothed with personality to institute this special civil action for mandamus. While Dr. Nelson Celis lacks proof of authority to cause the preparation of the Petition and sign the verification and certification of non-forum shopping for and on behalf of petitioner AES Watch, the representatives of petitioners NPCP and GBI were properly authorized.

Petitioners are not entitled to a Writ of Mandamus to compel the COMELEC to implement the use of digital signatures since it is not a ministerial duty of the COMELEC

In his Letter^[14] dated March 7, 2022, Commissioner Casquejo informed Senator Imee Marcos that "there are equipment or materials which will be needed in order to use the digital signature" and that "[d]uring the conduct of the market survey, it was found that no provider can supply and deliver the needed number of cable assembly to accommodate the approximate 300,000 to 350,000 teachers." He emphasized that the COMELEC had exerted all efforts to make sure that the digital signature will be implemented on a nationwide level, but due to the pandemic and time constraints, it will be impossible for the then-upcoming NLE. Thus, the COMELEC En Banc decided to limit the use of digital signatures to highly urbanized cities (HUCs).

Petitioners rely on the first paragraph of Section 22 of the AES Law, as amended, in arguing that it is the mandatory and ministerial duty of the COMELEC to fully implement the use of digital signatures. It states:

SEC. 22. Electronic Returns. - Each copy of the printed election returns shall bear appropriate control marks to determine the time and place of printing. Each copy shall be signed and thumbmarked by all the members of the board of election inspectors and the watchers present. If any member of the board of election inspectors present refuses to sign, the chairman of the board shall note the same copy in each copy of the printed election returns. The member of the board of election inspectors concerned refusing to sign shall be compelled to explain his or her refusal to do so. Failure to explain an unjustifiable refusal to sign each copy of the printed election return by any member of the board of election inspectors shall be punishable as provided in this Act. (Emphasis supplied)

However, the above paragraph speaks of printed election returns and not of digital signatures which are made only on the electronic returns as provided in the latter part of Section 22. The penultimate paragraph of Section 22, as

amended, states: "The election returns transmitted electronically and digitally signed shall be considered as official election results and shall be used as the basis for the canvassing of votes and the proclamation of a candidate." Similarly, the last paragraph of Section 25, as amended, reads: "The certificates of canvass transmitted electronically and digitally signed shall be considered as official election results and shall be used as the basis for the proclamation of a winning candidate."

One of the hallmarks of the automated election system is the digital signature of BEI members on the election returns, and of members of the Board of Canvassers on the certificates of canvass. However, since automated elections began in the Philippines in 2010, the digital signature on the election returns have come from the VCMs and not from the teachers who comprise the BEI.

In *Capalla v. COMELEC*,^[15] the Court clarified during oral arguments that there is no infirmity as regards the signature of a Precinct Count Optical Scanner (PCOS) machine being the equivalent of a digital signature.

In *Bagumbayan-VNP Movement, Inc. v. COMELEC*,^[16] we held that:

As gleaned from the wording of the law, the signature may be any distinctive mark or characteristic that represents the identity of a person. Thus, a machine signature of a PCOS machine may validly be considered the functional equivalent of the aforementioned "digital signature," as it represents the identity of the individual, said signature naturally being created specifically for the person him or herself inputting the details.^[17]

In *AES Watch v. COMELEC*,^[18] we ruled that "the adoption of. . . another method to digitally sign the election results. . . are all suggestions subject to the COMELEC's sound judgment. The exercise of discretion on how to implement the chosen AES must be accorded with the presumption of regularity and should be respected."

Our pronouncement in *Sumulong v. COMELEC*^[19] is likewise apropos:

The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. The Commission may err, so may this court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created — free, orderly and honest elections. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere. (Emphasis supplied)

Here, while only the Electoral Boards from HUCs are able to digitally sign election returns generated by VCMs, the digital signatures generated by the VCMs themselves in other areas of the country are still sufficient for purposes of complying with the AES Law. The job of the Court is to say what the law is, not to dictate how another branch, agency, or instrumentality of government should do its job.^[20] Accordingly, mandamus will not lie to compel the COMELEC to implement the use of digital signatures.

IV

Citing *Bagumbayan-VNP*,^[21] petitioners claim to have a clear legal right to compel the COMELEC to perform the Election Transparency Activities stated in the Petition because they are similarly situated as the petitioners in said case. However, *Bagumbayan-VNP* involved therein petitioner's clear and unmistakable right to the source code of the selected AES technology pursuant to the last paragraph of Section 14 of R.A. No. 8436, as amended. In contrast, herein petitioners are not seeking access to the source code, but are seeking the disclosure of critical information on, and to be allowed access to, and the inspection of (a) the printing of the ballots; (b) the destruction or disposition of the defective ballots; (c) the configuration and preparation of the SD cards; (d) the preparation, testing, and deployment of the VCMs and all its parts, attachments, and tools; (e) National Technical Support

Center, technical hubs, including data centers, provincial and regional hubs; and (f) transmission diagram or data/communications network architecture including the transmission router server and/or "Meet-Me Room" and all devices and equipment that will be used to transmit election results.

We now discuss whether petitioners possess a well-defined legal right to judicially demand, and the COMELEC, the corresponding legal duty to allow, the disclosure of information on and/or access to and inspection of the abovementioned items.

The COMELEC may be compelled to allow the witnessing of the printing of ballots but the issue has become moot and academic

It is undisputed that despite the Letters[22] sent by various parties requesting that they be allowed to observe the printing of the official ballots at the NPO, the COMELEC disallowed the same and reasoned that (1) there are critical areas within the NPO wherein even personnel of the AES provider and the NPO are not allowed due to security reasons; (2) since the COMELEC is at the peak of printing, verifying, and hauling the ballots for overseas voting which would begin on April 10, 2022, any additional activity may cause delays in the preparations for overseas voting; and (3) due to the continuing pandemic, the number of persons in the premises must be limited.[23]

Section 187 of the Omnibus Election Code (OEC) provides:

Section 187. Committee on printing, storage, and distribution of official ballots and election returns. –

Upon the request of any candidate, political party or of civic, religious, professional, business, service, youth or any similar organizations collectively designated by the Commission, the latter shall allow any person designated by any of the former as watcher to . . . witness the printing and distribution of the ballots and the returns and guard the premises of the printer. (Emphasis supplied)

By the use of the word "shall," the COMELEC is not given discretion to allow a designated watcher to witness the printing of the ballots. As long as a request has been made by any candidate, political party, or civic, religious, professional, business, service, youth or any similar organizations collectively designated by the Commission, and that said individual or group has designated its watcher/s, it is the COMELEC's ministerial duty to allow the designated watcher/s to observe the printing of the ballots. That there are critical areas in the NPO which are off-limits due to security reasons is of no moment because under the law, the designated watchers are even entitled to guard the premises of the printer. That allowing observers may cause delays in the preparations for the April 10, 2022 overseas voting is also a flimsy excuse because the requests were sent as early as January 2022.

Lastly, while health protocols prevailing at the time constrained the number of persons allowed within the printer premises, such protocols did not authorize the COMELEC to disregard the law. It could still have allowed a limited number of watchers or implemented other ways for them to witness the printing without violating health protocols. In fact, during the March 9, 2022 JCOC hearing, Senator Imee Marcos opined that the one-day walkthrough and demo of the NPO would not suffice and that she supports the livestreaming suggestion of the representative from the Parish Pastoral Council for Responsible Voting (PPCRV), to wit:

THE CHAIRPERSON.

x x x Tama Tama iyon, kasi ang gusto natin, daily observation ng NPO, ng Sta. Rosa SD configuration. Hindi naman pwedeng sa walkthrough, demo-demo lang isang araw. Kailangang nakatutok.

Live streaming is a very good suggestion as well. And like you said, perfectly easy to set up.

x x x Kasi hindi pwedeng sekreto iyan.

MS. FLORORITA.

Yes, Madam Chair, I will raise—

THE CHAIRPERSON.

Napaka-importante ng election.[24] (Emphasis supplied)

Indeed, Commissioner Casquejo, who heads the poll body's printing committee, eventually apologized and acknowledged that the high number of COVID cases was not an excuse to bar observers. He confirmed that the COMELEC would thenceforth allow accredited political parties and citizens' arms to select, observe, and examine the ballots.[25]

We take judicial notice of the fact, as widely reported by the media, that the COMELEC had implemented measures in response to the clamor of various groups to allow them to observe the printing process. On March 17, 2022, the COMELEC began livestreaming the printing of ballots.[26] The livestream displayed various angles of the printing area, packing and shipping area, and quarantine room, the latter dedicated for rechecking defective ballots.[27] For the period that the stakeholders were prohibited from overseeing the printing process, the COMELEC announced that they could provide copies of the CCTV footage.[28] The COMELEC has also conducted random ballot checking in the presence of representatives from political parties and stakeholders.[29]

It bears stressing that the law does not limit the ways by which the COMELEC may allow the watchers to witness the printing process. Indeed, the now ubiquitous livestream format, among other methods, has helped strike a balance between ensuring the integrity of the ballots and transparency of the election process, as well as the equally important need to strictly observe health protocols. This is not to say, however, that on-site viewing of the printing process may be dispensed with entirely.

In light of the foregoing developments, the issue on the prohibition of watchers from witnessing the printing of ballots has been rendered moot.

The COMELEC may not be compelled to allow the witnessing of the configuration and preparation of SD cards and VCMs but it may be compelled to allow the examination and testing thereof

While the law mandates the COMELEC to allow the witnessing of the printing and distribution of ballots, no provision specifically mentions the witnessing of the configuration and preparation of SD cards and VCMs. The closest provision involves the examination and testing of AES equipment or devices as provided for in Section 14 of R.A. No. 8436, as amended by Section 12 of R.A. No. 9369, which used to be Section 10 of R.A. No. 8436, to wit:

Sec. 10 of R.A. No. 8436 in the original

Sec. 14 of R.A. No. 8436, as amended by Sec. 12 of R.A. No. 9369

SEC. 10. Examination and testing of counting machines. - The Commission shall, on the date and time it shall set and with proper notices, allow the political parties and candidates or their representatives, citizens' arm or their

representatives to examine and test the machines to ascertain that the system is operating properly and accurately. Test ballots and test forms shall be provided by the Commission.

After the examination and testing, the machines shall be locked and sealed by the election officer or any authorized representative of the Commission in the presence of the political parties and candidates or their representatives, and accredited citizens' arms. The machines shall be kept locked and sealed and shall be opened again on election day before the counting of votes begins.

Immediately after the examination and testing of the machines, the parties and candidates or their representatives, citizens' arms or their representatives, may submit a written report to the election officer who shall immediately transmit it to the Commission for appropriate action.

SEC. 12. Section 10 of Republic Act No. 8436 is hereby amended to read as follows:

SEC. 14. Examination and Testing of Equipment or Device of the AES and Opening of the Source Code for Review. - The Commission shall allow the political parties and candidates or their representatives, citizens' arm or their representatives to examine and test [t]he equipment or device to be used in the voting and counting on the day of the electoral exercise, before voting starts. Test ballots and test forms shall be provided by the Commission.

"Immediately after the examination and testing of the equipment or device, parties and candidates or their representatives, citizen's arms or their representatives, may submit a written comment to the election officer who shall immediately transmit it to the Commission for appropriate action.

"The election officer shall keep minutes of the testing, a copy of which shall be submitted to the Commission together with the minute of voting."

"Once an AES technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof."

Notably, the term "counting machines" was amended to read "equipment or device of the AES." Section 2 of R.A. No. 9369 defines AES as "a system using appropriate technology which has been demonstrated in the voting, counting, consolidating, canvassing, and transmission of election result, and other electoral process." While the words 'equipment' and 'device' are not defined in the law, Section 28 thereof lists examples of electronic devices used in the AES such as "counting machine, memory pack/diskette, memory pack receiver and computer set."

It is clear, therefore, that Congress did not intend to limit the examination and testing to the VCMs but even expanded it to include other equipment or devices of the AES such as the SD card. In fact, while the term "counting machines" was defined in R.A. No. 8436, it no longer appears under the amended provision on Definition of Terms in R.A. No. 9369, which now considers the entire system and not only the counting machines.

We agree with respondent COMELEC that the law does not specifically enjoin it to allow access and inspection of the configuration and preparation of the VCMs and SD cards. The law only mandates it to allow political parties, candidates, citizens' arms, or their representatives to examine and test said equipment or devices. The fact that the law commands the COMELEC to provide test ballots and test forms is a clear indication that the examination and testing take place after the configuration of the devices and not during or before said configuration. Certainly, it would be absurd to allow the examination and testing of unconfigured equipment or devices.

Petitioners cite the similarly worded Letters dated January 11 and 12, 2022 of the Partido Federal ng Pilipinas (PFP) and Lakas Christian Muslim Democrats (Lakas-CMD) which requested, among others, a "walk thru and visit to the COMELEC Sta. Rosa warehouse" in order to (1) observe the uploading of contents to the SD cards; (2) conduct stress testing of the VCMs; and (3) randomly open and view the inside of the VCM as was done in 2016.[30]

During the March 9, 2022 JCOC hearing, Ms. Jeannie Flororita, Director of the COMELEC IT Department, informed the panel of the scheduled walkthrough of the COMELEC warehouse on March 14, 2022. While Sen. Imee Marcos found the walkthrough to be insufficient,[31] this is precisely what the Letters of the PFP and Lakas-CMD requested. Nonetheless, the records do not disclose what transpired during the purported March 14, 2022 walkthrough and whether the requests of the PFP and Lakas-CMD relative to the SD cards and VCMs were sufficiently met.

Further, while it was revealed during the same hearing that there was an official letter from the Office of Commissioner Casquejo disallowing the presence of witnesses at the NPO where the ballots were being printed, there was no formal denial of entry at the Sta. Rosa facility where the SD cards were being configured, presumably because there was no prior formal coordination with the COMELEC in the first place, as revealed by the exchange between the JCOC Chairperson and Attorneys Alexander Ramos and Hubert Guevara:

MR. GUEVARA.

Madam Chair, since 2016, we have been allowed to observe not only the printing of the ballots, even the configuration of the SD cards in Sta. Rosa warehouse.

THE CHAIRPERSON.

I understand that no one is allowed to go to Sta. Rosa either. What is going on?

MR. GUEVARA.

Exactly, Madam Chair, so which is very concerning for all of us. xxx

THE CHAIRPERSON.

Was that also in written form? Did you also get a letter prohibiting the entry to Sta. Rosa?

Naku! Senator Koko, that is a very important part of the electoral process. Nakakanerbyos. Iyong SD card configuration, walang testigo.

So, Atty. Hubert, did you get a letter also like Alex did?

MR. GUEVARA.

Madam Chair, walang advice sa amin.

THE CHAIRPERSON.

Paano ninyo natuklasan na hindi pwedeng mag-observe?

MR. GUEVARA.

Kasi si Alex, Madam Chair, sa—we're coordinating with Alex, Madam Chair, on that. Then all of a sudden, hindi na rin nagpapapunta.

MR. RAMOS.

Madam Chair, can I be heard?

THE CHAIRPERSON.

Yes, Alex, please.

MR. RAMOS.

Every week, I go to the gates seeking entry. Every week.

THE CHAIRPERSON.

And then, hindi ka pinapapasok?

MR. RAMOS.

Ayaw. I cannot force the COMELEC guards to do that for me.

THE CHAIRPERSON.

Okay.

MR. RAMOS.

Ang sabi nila, walang coordination, walang authority. Same statement for the last 12 weeks.

THE CHAIRPERSON.

Okay. And, Atty. Hubert, you have the same experience that you are forbidden entry without any formal advice. Is that correct?

MR. GUEVARA.

Madam Chair, we have people who go to the area. And these same people are prohibited from entering.

THE CHAIRPERSON.

Iyon nga. So, hindi sila pinapapasok. Ganoon din?

MR. GUEVARA.

Yes, Madam Chair.[32] (Emphasis supplied.)

While the Letters dated January 11 and 12, 2022 of the PFP and Lakas-CMD may be considered formal requests to the COMELEC, petitioners failed to establish that the watchers of said parties were denied access to the Sta. Rosa warehouse. Petitioners likewise failed to show that Attorneys Ramos and Guevara represented said parties or any other political party, citizens' arm, or candidate.

We reiterate our ruling in Bagumbayan-VNP that the right to examine and test the equipment or device of the AES or to review the source code does not depend on compliance with any guidelines that the COMELEC may promulgate. To rule otherwise would mean an unauthorized expanding or even the creation of unreasonable qualifications prerequisite to the review, which goes against both the spirit and letter of the law.[33]

There is no question that the COMELEC exercises no discretion in allowing political parties, candidates, citizens' arms, or their representatives to examine and test the equipment or device of the AES even up to the day of the electoral exercise, before voting starts. However, it is but reasonable and logical that the COMELEC first be permitted to determine whether an individual or entity wishing to examine or test said equipment is a bona fide political party, candidate or authorized representative thereof, or an accredited citizens' arm or authorized

representative thereof. Sans vetting, allowing any individual or entity claiming to be a candidate, political party, or citizens' arm to examine or test the equipment would adversely affect the integrity of the electoral process considering that any unscrupulous individual could feign examination and testing in order to compromise the equipment.

While the COMELEC is mandated to ensure honest and transparent elections and election-related activities, it is equally mandated to ensure that the same be orderly and peaceful.[34] Hence, the COMELEC is justified in adopting measures that would ensure that access to the equipment or device of the AES is restricted to those persons or groups enumerated under the law.

We again take judicial notice of the fact that the COMELEC had asked the public and political parties to go to precincts nationwide on May 2 to 7, 2022 to personally witness the final testing and sealing of VCMs that would be used in the NLE.[35] The COMELEC had also opened for public viewing its warehouse in Sta. Rosa, Laguna where the SD cards were being configured.[36] Consequently, there has ceased to be a justiciable controversy as regards the SD cards and VCMs and the issue has, therefore, become moot and academic.

The COMELEC may be compelled to disclose certain transmission documents but the issue has become moot and academic

Petitioners seek to examine the complete transmission diagram or data/communications network architecture of the VCMs, including all the details of the transmission router server and/or the "Meet-Me Room" and all devices and equipment that will be used to transmit election results.

Respondent contends that although the law does not enjoin it to allow access and inspection of its hubs, servers, and data centers, including the transmission network architecture, it has consistently disclosed critical information thereon. As early as March 16, 2022, it disclosed in its official website the List of Local Hubs,[37] Order of Dispatch,[38] and Schedule of Dispatch of Accountable Forms/Supplies[39] to be used in the 2022 NLE. The loading and dispatch of various election items, including the equipment and supplies, were done publicly with prior notice to the political parties/groups, accredited citizens' arms, and the media, and on livestream.[40] Further, as early as March 22, 2022, it conducted an end-to-end demonstration of the AES for local source code reviewers, stakeholders, and the media.[41] It likewise conducted a walkthrough of the Transparency Media Server on April 30, 2022 wherein election processes, such as the actual transmission of results from the VCMs to the Consolidation Canvassing System and how they related to the data centers, were explained to the public.[42] Also disclosed during the walkthrough were information regarding the conduct of the Pre-LAT, the election day configuration test of each machine to ensure that the entire AES properly collects votes and tabulates the results. Despite possible security risks, the locations of the different servers/data centers to be used in the elections,[43] including the Central Data Center of which the "Meet-Me Room" constitutes a necessary part, were likewise divulged. The credibility of the Transmission Router, which is part of said "Meet-Me Room," has also been confirmed by the Technical Evaluation Committee (TEC), an independent committee established pursuant to Section 10 of the AES Law, together with Pro V&V, Inc., the established international certification entity.[44]

In R.A. No. 8436, it was the declared policy of the State to "ensure free, orderly, honest, peaceful and credible elections, and assure the secrecy and sanctity of the ballot in order that the results of elections, plebiscites, referenda, and other electoral exercises shall be fast, accurate and reflective of the genuine will of the people." R.A. No. 9369 amended this to read "ensure free, orderly, honest, peaceful, credible and informed elections, plebiscites, referenda, recall and other similar electoral exercises by improving on the election process and

adopting systems, which shall involve the use of an automated election system that will ensure the secrecy and sanctity of the ballot and all election, consolidation and transmission documents in order that the process shall be transparent and credible and that the results shall be fast, accurate and reflective of the genuine will of the people."

It is, thus, clear that the State aims to protect the secrecy and sanctity not only of the ballot but also of "all election, consolidation and transmission documents." However, this must be read not in isolation but in relation to the succeeding phrase "in order that the process shall be transparent and credible" and in line with the policy of ensuring not only free, orderly, honest, peaceful and credible elections, but also "informed elections."

The focus on transparency is of specific and heightened relevance in an AES because such system, although potentially more accurate, is inherently less transparent than a manual election system. Under the former, results are tallied by machine while in the latter, the counting and tallying of results may be physically observed. While there is more room for honest mistakes under a manual system, the possibility of manipulation under either system remains and cannot be discounted. Even if the risk of fraud during the voting stage may be reduced in an automated system, it is during the succeeding phases such as the transmission of results where there may be greater cause for concern. Hence, the credibility of the system is directly proportional to the transparency of the entire process, from the preparation of the ballots to the canvassing of votes.

The policy of the AES Law echoes that of the fundamental law on full public disclosure of all State transactions involving public interest.[45] It is likewise a recognition of the constitutional right of the people to information on matters of public concern.[46]

This Court has laid down two requisites which must concur before the exercise of the right to information may be compelled by a writ of mandamus:

a)

the information sought must be in relation to matters of public concern or public interest; and

b)

it must not be exempt by law from the operation of the constitutional guarantee.[47]

Anent the first requisite, we have held that the constitutional guarantee to information on matters of public concern is not absolute. It does not open every door to any and all information. The threshold question is, therefore, whether or not the information sought is of public interest or public concern. In determining whether a particular information is of public concern, there is no rigid test which can be applied. As held in *Legaspi v. Civil Service Commission*:[48]

"Public concern," like "public interest," is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine on a case-by-case basis whether the matter at issue is of interest or importance, as it relates to or affects the public.[49]

As regards the second requisite, the Constitution itself tempers its policy of full public disclosure and the right to

information with reasonable conditions and limitations as may be prescribed by law. We have likewise recognized the following restrictions to the right to information: (1) national security matters and intelligence information; (2) trade secrets and banking transaction; (3) criminal matters; and (4) other confidential information.[50]

More specifically, we recognized that State secrets regarding military, diplomatic, and other national security matters; classified law enforcement matters, such as those relating to the apprehension, prosecution, and detention of criminals which courts may not inquire into prior to such arrest, detention, and prosecution; and diplomatic correspondence, closed-door Cabinet meetings and executive sessions of either house of Congress, as well as the internal deliberations of the Court, are exempt from public disclosure.[51] Nonetheless, said list of specific matters is non-exclusive and would not preclude us from dismissing a petition for mandamus on other matters.[52]

That said, claims of exemption from the right to information are strictly construed, thus:

Every claim of exemption from the right to information, being a limitation on a right constitutionally granted to the people, is liberally construed in favor of disclosure and strictly against the claim of confidentiality. The claim of privilege as a cause for exemption from the obligation to disclose information must be clearly asserted by specifying the grounds for the exemption. In case of denial of access to the information, it is the government agency concerned that has the burden of showing that the information being sought is not a matter of public concern, or that the same is exempted from the coverage of the constitutional guarantee.[53]

Anent petitioners' prayer for access to and examination of the transmission diagram or data/communications network architecture of the VCMs, we find that the COMELEC has failed to discharge its burden of showing that such information is not a matter of public concern or that it is exempted by law from the constitutional guarantee. In fact, such documents are matters of public concern and interest which should be made available, especially considering that unauthorized transmissions and communications to and from network nodes plotted in the diagram or architecture may call into question the integrity of the elections. We hold, therefore, that were it not for the mootness of the issue, the COMELEC may be compelled via a writ of mandamus to disclose the complete transmission diagram and data/communications network architecture of the VCMs.

As regards petitioners' request for "all details of the transmission of the transmission router server and/or the 'Meet-Me Room' and all devices and equipment that will be used to transmit election results," we find that the prayer is too vague and broad for us to determine which details or documents the COMELEC should disclose to petitioners. Certainly, we cannot compel the COMELEC to reveal all details, some of which may contain confidential information which, if divulged, could pose serious security risks. Otherwise stated, mandamus will not lie to compel respondent to reveal certain information for the sake of transparency but at the expense of the security, integrity, and credibility of the AES.

In any case, as averred by respondent, despite possible security risks, the locations of the different servers/data centers, including the Central Data Center of which the "Meet-Me Room" constitutes a necessary part, were already divulged. The credibility of the Transmission Router has also been confirmed by the TEC, an independent committee established pursuant to the AES Law, together with the established international certification entity.

In fine, it would be more prudent for this Court to decide on a case-by-case basis which types of election, consolidation, or transmission documents should be covered by the right to information, considering that the AES is an evolving system, instead of applying a shotgun approach as petitioners did.

The COMELEC does not have a ministerial duty to allow access to its technical hubs, servers, and data

centers

Petitioners lament that despite Commissioner Casquejo's commitment during the March 9, 2022 JCOC hearing that the COMELEC would allow observers in the regional/provincial hubs and data centers where the "Meet-Me Room" is located, no one has been allowed to observe these places.[54]

The law does not mandate the COMELEC to allow physical access to its hubs, servers, and data centers. It also cannot be said that the right to information includes or extends to physical access of said facilities. Moreover, the constitutional policy of full public disclosure of transactions involving public interest and the right to information are circumscribed by reasonable conditions and limitations as may be provided by law. Paragraph (c), Section 29 of R.A. No. 8436, as amended and renumbered as Section 35,[55] which penalizes the act of "causing access to. . . facilities. . . whether classified or declassified" and "whether or not said acts affect the electoral process or results," is one such limitation. Unlike paragraph (a) thereof which penalizes unauthorized utilization of ballots, electronic returns, electronic devices, et cetera, the acts under paragraph (c) are punishable regardless of authorization.

At most, the COMELEC may be compelled to provide information regarding its technical hubs and data centers, as it had already done so, but it cannot be compelled to allow what the law clearly prohibits. Unlike access to the premises of the printer for purposes of guarding the same or witnessing the printing and distribution of the ballots and returns,[56] there is no clear legal right to allow physical access to the technical hubs or data centers of the AES.

ACCORDINGLY, the Petition is DISMISSED for being moot and academic.

SO ORDERED.

Zalameda, M. Lopez, Gaerlan, Dimaampao, Marquez, and Singh, JJ., concur.

Gesmundo,[*] C.J. and Hernando,[***] J., on official leave.

Leonen,[**] SAJ., concur. See separate opinion.

Caguioa, J., see separate concurring opinion.

Lazaro-Javier, J., with concurrence.

Inting[****] and Kho, Jr.,[*****] JJ., no part.

J. Lopez,[*****] J., on leave.

[*] On official leave.

[**] Acting Chief Justice per Special Order No. 2977 dated June 1, 2023.

[***] On official leave.

[****] No part.

[*****][*] On leave.

[*****] No part.

[1] Rollo, p. 5.

[2] Id. at 3-395 (inclusive of annexes).

[3] 687 Phil. 617 (2012) [Per J. Peralta, En Banc].

[4] An Act Authorizing The Commission On Elections To Use An Automated Election System In The May 11, 1998 National Or Local Elections And In Subsequent National And Local Electoral Exercises, Providing Funds Therefor And For Other Purposes. Approved on December 22, 1997.

[5] An Act Amending Republic Act No. 8436, Entitled "An Act Authorizing The Commission On Elections To Use An Automated Election System In The May 11, 1998 National Or Local Elections And In Subsequent National And Local Electoral Exercises, To Encourage Transparency, Credibility, Fairness And Accuracy Of Elections, Amending For The Purpose Batas Pambansa Blg. 881, As Amended, Republic Act No. 7166 And Other Related Election Laws, Providing Funds Therefor And For Other Purposes." Approved on January 23, 2007.

[6] Rollo, pp. 259-260.

[7] Rollo, pp. 414-518.

[8] David v. Macapagal-Arroyo, 522 Phil. 705, 754 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[9] RULES OF COURT, Rule 65, sec. 3; Militante v. Court of Appeals, 386 Phil. 522 (2000) [Per J. Puno, En Banc].

[10] Sanson v. Barrios, 63 Phil. 198 (1936) [Per J. Recto, En Banc].

[11] Angeles v. Secretary of Justice, 628 Phil. 381, 397 (2010) [Per J. Leonardo-De Castro, First Division] citing Laburada v. Land Registration Authority, 350 Phil. 779, 792-794 (1998) [Per J. Panganiban First Division].

[12] De Castro v. Judicial and Bar Council, 629 Phil. 629, 705 (2010) [Per J. Bersamin, En Banc].

[13] 634 Phil. 516, 527 (2010) [Per J. Carpio, En Banc].

[14] Rollo, pp. 259-260.

[15] Supra note 3.

[16] 851 Phil. 685 (2019) [Per J. Reyes, Jr., En Banc].

[17] Id. at 721.

[18] G.R. No. 246332 (Resolution), December 9, 2020 [Per J. Lopez, En Banc].

[19] 73 Phil. 288 (1941) [Per J. Abad Santos, En Banc].

[20] Colvin v. Inslee, 195 Wash. 2d 879, 894 (Wash. 2020).

[21] Supra. (Erroneously cited as Capalla v. COMELEC in the Petition).

[22] Letters dated January 25, 2022 of the Partido Demokratiko Pilipino–Lakas ng Bayan (PDP–LABAN) and Nationalist People's Coalition (NPC), Letters dated January 12 and February 18, 2022 of the Lakas Christian Muslim Democrats (Lakas-CMD), and Letters dated January 11 and February 22, 2022 of the Partido Federal ng Pilipinas (PDP); rollo, pp. 261-262, 265-266, 271-272.

[23] Memorandum from the Office of Commissioner Casquejo dated February 17, 2022; rollo, pp. 263-264.

[24] Rollo, p. 247.

[25] Christia Marie Ramos, Comelec exec apologizes for absence of observers in ballot printing
INQUIRER.NET, available at

<https://newsinfo.inquirer.net/1569874/fwd-comelec-exec-apologizes-for-absence-of-observers-in-ballot-printing-says-to-hold-random-inspection> (Last accessed on March 24, 2023).

[26] Kathleen De Villa, Comelec live streams ballot printing, INQUIRER.NET, available at <https://newsinfo.inquirer.net/1570450/comelec-live-streams-ballot-printing> (Last accessed on March 24, 2023).

[27] Livestreamed through the COMELEC's Facebook page at <https://www.facebook.com/comelec.ph/videos/ballot-printing-for-the-2022-national-and-local-elections-at-the-national-printing-office/507192420789392> and at <https://www.facebook.com/comelec.ph/videos/printing-of-ballots-at-the-national-printing-office/688916352244448>.

[28] Comelec opens ballot printing process to stakeholders amid transparency concerns, GMA NEWS ONLINE, available at <https://www.gmanetwork.com/news/topstories/nation/825155/comelec-opens-ballot-printing-process-to-stakeholders-amid-transparency-concerns/story/> (Last accessed on March 24, 2023).

[29] Richa Noriega, Comelec conducts random ballot checking for May 2022 polls, GMA NEWS ONLINE, available at <https://www.gmanetwork.com/news/topstories/nation/826158/comelec-conducts-random-ballot-checking-for-may-2022-polls/story/> (Last accessed on March 24, 2023).

[30] Rollo, pp. 271-273.

[31] Id. at 246.

[32] Rollo, pp. 241-243.

[33] Supra note 16, at 709.

[34] Republic Act No. 9369, sec. 1.

[35] Ombay, Giselle, Comelec urges public to attend the final testing and sealing of VCMs on May 2-7, GMA NEWS ONLINE, available at <https://gmanetwork.com/news/topstories/nation/826448/comelec-urges-public-to-attend-the-final-testing-and-sealing-of-vcms-on-may-2-7/story> (Last accessed on March 24, 2023).

[36] Garcia, Danilo, Bodega ng Comelec binuksan sa publiko, PILIPINO STAR NGAYON, available at <https://philstar.com/pilipino-star-ngayon/bansa/2022/03/24/2169469/bodega-ng-comelec-binuksan-sa-publiko> (Last accessed on March 24, 2023).

[37] <https://comelec.gov.ph/index.html?r=2022NLE/LocalHubs>.

[38] <https://comelec.gov.ph/index.html?r=2022NLE/LocalHubs/AESOrderOfDispatch>.

[39] <https://comelec.gov.ph/index.html?r=2022NLE/LocalHubs/ScheduleOfDispatch>.

[40] <https://comelec.gov.ph/index.html?r=2022NLE/PressRelease/01April2022Advisorypdf>;

<https://comelec.gov.ph/index.html?r=2022NLE/PressRelease/01April2022pr>;

<https://facebook.com/comelec.ph/videos/dispatch-of-automated-election-system-supplies-for-the-2022-nle/744650766919578>.

[41] <https://comelec.gov.ph/index.html?r=2022NLE/PressRelease/21Mar2022Advisory>;

<https://facebook.com/comelec.ph/videos/election-day-aes-end-to-end-demonstration/936883780201245>.

[42] Jel Santos, Comelec holds walkthrough of transparency media server to dispel public's fear, MANILA BULLETIN ONLINE, available at <https://mb.com.ph/2022/04/30/comelec-holds-walkthrough-of-transparency-media-server-to-dispel-publics-fear> (Last accessed on March 24, 2023); <https://facebook.com/comelec.ph/videos/briefing-of-the-transparency-media-server-for-the-2022-national-and-local-electi/741336030357644/>.

[43] Samuel Medenilla, Comelec transparency and media servers can handle data of up to 100K precincts, BUSINESS MIRROR, available at <https://businessmirror.com.ph/2022/05/02/comelec-transparency-and-media-servers-can-handle-data-of-up-to-100k-precincts/> (Last accessed on March 24, 2023).

[44] <https://comelec.gov.ph/?r=2022NLE/AutomatedElectionSystem/TECResolutionNo202201>.

[45] CONST., art. II, sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

[46] CONST., art. III, sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

[47] *Seren v. Committee on Trade and Related Matters (CTRM) of the National Economic and Development Authority (NEDA)*, 780 Phil. 1, 12-13 (2016). [Per J. Bersamin, First Division].

[48] 234 Phil. 521 (1987) [Per J. Cortes, En Banc].

[49] *Id.* at 535.

[50] *Chavez v. Presidential Commission on Good Government*, 360 Phil. 133 (1998) [Per J. Panganiban, First Division].

[51] *Id.* at 160.

[52] *Antolin-Rosero v. Professional Regulation Commission*, G.R. No. 220378, June 30, 2021 [Per J. Inting Third Division].

[53] *Seren v. Committee on Trade and Related Matters (CTRM) of the National Economic and Development Authority (NEDA)*, *supra* note 47, at 16.

[54] *Rollo*, p. 34.

[55] SEC. 35. Prohibited Acts and Penalties. — The following shall be penalized as provided in this Act, whether or not said acts affect the electoral process or results:

(a)

Utilizing without authorization, tampering with, damaging, destroying or stealing:

(1)

Official ballots, election returns, and certificates of canvass of votes used in the system; and

(2)

Electronic devices or their components, peripherals or supplies used in the AES such as counting machine, memory pack/diskette, memory pack receiver and computer set;

(b)

Interfering with, impeding, absconding for purpose of gain, preventing the installation or use of computer counting devices and the processing, storage, generation and transmission of election results, data or information;

(c)

Gaining or causing access to using, altering, destroying or disclosing any computer data, program, system software, network, or any computer-related devices, facilities, hardware or equipment, whether classified or declassified;

. . . (Emphases supplied)

[56] Batas Pambansa Blg. 881, art. XVI, sec. 187.

SEPARATE CONCURRING OPINION

LEONEN, SAJ.:

The right to participate in the electoral process is not isolated to the moment citizens cast their votes. To be truly meaningful, the right should be accessible at every stage of the electoral process. Consistent transparency will ensure a healthy democracy. Thus, in allowing the exercise of this right, the Commission on Elections should be oriented towards creating as many opportunities for election transparency activities with due regard for reasonable security reasons.

I concur with the ponencia as it rules that the Commission on Elections cannot be compelled to implement individual digital signatures in a specific manner. I further concur that the Commission on Elections must allow observers to witness the printing of ballots and to disclose transmission documents. However, I respectfully disagree that observers are not allowed to witness the configuration and preparation of secure digital (SD) cards and vote counting machines (VCM), as well as inspect transmission hubs, servers, and data centers subject to reasonable security reasons.

As the ponencia astutely notes, courts may decide moot cases if:

first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.[1] (Citations omitted)

This case presents an opportunity to establish guiding principles that will ensure free, orderly, honest, peaceful, credible, and informed elections,[2] especially as regards the duty of the Commission on Elections to allow the observation of printing of ballots and the examination and testing of equipment and devices of the automated election system. While the Commission on Elections voluntarily fulfilled petitioners' request prior to the resolution of the case, this Court may definitively rule on the Commission's duties under the law to protect the transparency of future elections. Otherwise, voters and concerned citizens may be forced to litigate during each campaign period depending on the inclination of government officials to yield to public outcry against restrictive practices in the electoral process.

The Petition prays for the issuance of a writ of mandamus, the requisites of which this Court discussed in

Lihaylihay v. Treasurer of the Philippines:[3]

A writ of mandamus may issue in either of two (2) situations: first, "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"; second, "when any tribunal, corporation, board, officer or person... unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."

The first situation demands a concurrence between a clear legal right accruing to petitioner and a correlative duty incumbent upon respondents to perform an act, this duty being imposed upon them by law.

Petitioner's legal right must have already been clearly established. It cannot be a prospective entitlement that is yet to be settled. In *Lim Tay v. Court of Appeals*, this Court emphasized that "[m]andamus will not issue to establish a right, but only to enforce one that is already established." In *Pefianco v. Moral*, this Court underscored that a writ of mandamus "never issues in doubtful cases."

Respondents must also be shown to have actually neglected to perform the act mandated by law. Clear in the text of Rule 65, Section 3 is the requirement that respondents "unlawfully neglect" the performance of a duty. The mere existence of a legally mandated duty or the pendency of its performance does not suffice.

The duty subject of mandamus must be ministerial rather than discretionary. A court cannot subvert legally vested authority for a body or officer to exercise discretion. In *Sy Ha v. Galang*:
[M]andamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

This Court distinguished discretionary functions from ministerial duties, and related the exercise of discretion to judicial and quasi-judicial powers. In *Samson v. Barrios*:

Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. A purely ministerial act or duty, in contradistinction to a discretionary act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of 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 nor judgment. . . . Mandamus will not lie to control the exercise of discretion of an inferior tribunal . . . , when the act complained of is either judicial or quasi-judicial. . . . It is the proper remedy when the case presented is outside of the exercise of judicial discretion.

Mandamus, too, will not issue unless it is shown that "there is no other plain, speedy and adequate remedy in the ordinary course of law." This is a requirement basic to all remedies under Rule 65, i.e., certiorari, prohibition, and mandamus.[4] (Emphasis in the original, citations omitted)

Section 22 of Republic Act No. 8436, as amended by Republic Act No. 9369, states in no uncertain terms that "[t]he election returns transmitted electronically and digitally signed shall be considered as official election results and shall be used as the basis for the canvassing of votes and the proclamation of a candidate." As a constitutional body designated to enforce and administer all laws and regulations relative to the conduct of an election, it is not discretionary upon the Commission on Elections whether to implement this provision.

However, as the ponencia found, the Commission on Elections has been implementing this provision since 2010, albeit VCMs have affixed digital signatures rather than individual teachers comprising the electoral board. Such should be deemed substantial compliance in light of the current logistical constraints present in the mode of

implementation sought by petitioners. Section 1 of Republic Act No. 8436, as amended by Republic Act No. 9369, "recognizes the mandate and authority of the Commission [on Elections] to prescribe the adoption and use of the most suitable technology of demonstrated capability taking into account the situation prevailing in the area and the funds available for the purpose."

On the configuration and preparation of SD cards and VCMs, the ponencia judiciously observed that Republic Act No. 8436, as amended by Republic Act No. 9369, has been expanded to allow the examination and testing not only of counting machines but of equipment or device of the automated election system.[5] The automated election system refers to "a system using appropriate technology which has been demonstrated in the voting, counting, consolidating, canvassing, and transmission of [the] election result, and other electoral [processes]."[6] Section 28 of the same Act enumerates examples of electronic devices such as "counting machine, memory pack/diskette, memory pack receiver and computer set."

As the ponencia ruled, examination and testing have been expanded to the entire automated election system. However, I respectfully disagree with the ponencia that the right to examine and test may only be exercised after the devices are configured because the law mentions the provision of test ballots and test forms. Lawmakers cannot be expected to foresee and enumerate what technologies and processes may be developed to implement automated elections. Hence, the terminologies used in the law are not overly specific. The wording in the law at present is broad enough to encompass the inclusion of the configuration and preparation of SD cards and VCMs among the matters which interested parties have a right to observe before voting starts. The interpretation should not be unduly narrowed to refer only to the point after configuring the devices.

Indeed, for the implementation of an automated election system, SD cards and VCMs must be prepared and configured. To assess the reliability of these devices, it is essential to go through this phase. The effectiveness of the system will be impacted by accurate programming of these technologies. Examining the setup and preparation of SD cards and VCMs fosters greater transparency, much like how voting processes may be examined, not just the printed ballots. Thus, the Commission on Elections must allow petitioners to witness the configuration and preparation of SD cards and VCMs.

As regards allowing the inspection of transmission hubs, servers, and data centers, the same is also mandatory upon the Commission on Elections. Here, the ponencia cites the policy declaration in the law to ensure the secrecy and sanctity of the ballot and all election, consolidation, and transmission documents to rule that mandamus will not lie. I am of the view that the secrecy and sanctity of the ballot and all election, consolidation, and transmission documents are not incompatible with transparency with critical information regarding transmission hubs, servers, and data centers. Election transparency initiatives actually aim to involve voters in defending the ballot's integrity and confidentiality against fraud and other anomalies. Additionally, the ballot's secrecy and sanctity apply to its contents, which include the votes cast and the voter's identity.

The reason behind the principle of ballot secrecy is to avoid vote buying through voter identification. Thus, voters are prohibited from exhibiting the contents of their official ballots to other persons, from making copies thereof, or from putting distinguishing marks thereon so as to be identified. Also proscribed is finding out contents of the ballots cast by particular voters or disclosing those of disabled or illiterate voters who have been assisted. Clearly, what is forbidden is the association of voters with their respective votes, for the purpose of assuring that the votes have been cast in accordance with the instructions of a third party.[7]

There is no such threat to the secrecy and sanctity of the ballot where concerned citizens demand disclosure of the means, methods, and digital infrastructures by which ballots will collectively be processed. This Court has even recognized that automation of elections will further safeguard the secrecy and sanctity of the ballot:

In a democratic system of government, the people's voice is sovereign. Corollarily, choosing through the ballots the [persons] who are to govern the country is perhaps the highest exercise of democracy. It is thus the interest of the state to insure honest, credible and peaceful elections, where the sanctity of the votes and the secrecy of the ballots are safeguarded, where the will of the electorate is not frustrated or undermined. For when the popular will itself is subverted by election irregularities, then the insidious seeds of doubt are sown and the ideal of a peaceful and smooth transition of power is placed in jeopardy. To automate, thus breaking away from a manual system of election, has been viewed as a significant step towards clean and credible elections, unfettered by the travails of the long wait and cheating that have marked many of our electoral exercises.[8]

The ponencia points out that Section 35(c) of Republic Act No. 8436, as amended by Republic Act No. 9369, disallows physical access to transmission hubs, servers, and data centers. However, a closer reading of the provision will show that it does not prevent authorized physical access thereto. Rather, it prohibits access by using, altering, destroying, or disclosing any computer data, program, system software, network, or any computer-related devices, facilities, hardware, or equipment. The qualified "whether classified or declassified" further reveals that such refers to hacking and tampering with the foregoing. The same does not penalize the ocular inspection of transmission hubs, servers, and data centers integral to the automated election system.

The Commission on Elections may better guarantee the secrecy and sanctity of the ballot by allowing greater participation in election transparency activities relating to the automated election system.

In all instances of election transparency activities, the public's right to participate in election transparency activities should be the primordial consideration. This right of participation goes hand-in-hand with the constitutional right of the people to information on matters of public concern:

Article II, Section 28 – Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transaction involving public interest.

Article III, Section 7 – The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.[9]

The right to information allows the public to ensure honesty in public service and check abuses in the government.[10] The right to participate in election transparency activities enables citizens to ensure clean, credible elections. Yet, this Court is mindful that there may be reasonable security reasons to regulate the exercise of this right. These reasonable security reasons must be clearly and convincingly shown. In creating an exemption for reasonable security reasons, the Commission on Elections should always "try to resolve the tension in a way that protects the right of participation." [11]

ACCORDINGLY, I vote to DISMISS the Petition.

[1] David v. Macapagal-Arroyo, 522 Phil. 705, 754 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[2] Republic Act No. 8436 (1997), sec. 1, as amended by Republic Act No. 9369 (2007).

[3] 836 Phil. 400 (2018) [Per J. Leonen, Third Division].

[4] Id. at 412-414.

[5] Republic Act No. 8436 (1997), sec. 14, as amended by Republic Act No. 9369 (2007).

- [6] Republic Act No. 8436 (1997), sec. 2, as amended by Republic Act No. 9369 (2007).
- [7] ABS-CBN Broadcasting Corp. v. Commission on Elections, 380 Phil. 780, 804 (2000) [Per J. Panganiban En Banc].
- [8] Roque, Jr. v. Commission on Elections, 615 Phil. 149, 190 (2009) [Per J. Velasco, Jr., En Banc].
- [9] CONST., art. II, sec. 28, and art. III, sec. 7.
- [10] Sabio v. Gordon, 535 Phil. 687 (2006) [Per J. Sandoval-Gutierrez, En Banc].
- [11] The Diocese of Bacolod v. Commission on Elections, 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

SEPARATE CONCURRING OPINION

CAGUIOA, J.:

Petitioners pray for the Court to compel respondent Commission on Elections (COMELEC) to implement the use of digital signature for the 2022 National and Local Elections (NLE), to disclose critical information, and to allow access to various documents, activities, and stations of the COMELEC for the 2022 NLE. The ponencia rules on these prayers for relief as follows:

PRAYER FOR WRIT OF

MANDAMUS TO COMPEL THE COMELEC TO:

RULING IN THE PONENCIA

a.

implement Section 22 of Republic Act (R.A.) No. 8436,[1] or the Automated Election System (AES) Law, as amended by R.A. No. 9369[2] which mandates that the electronic election returns be digitally signed by the members of the Board of Election Inspectors (BEI).

Petitioners are not entitled to a Writ of Mandamus to compel the COMELEC to implement the use of digital signatures since it is not a ministerial duty of the COMELEC.

In *Capalla v. COMELEC*,[3] the Court already ruled on the issue raised by petitioners and declared that the COMELEC is not required to have the election returns digitally signed by the BEI because the digital signatures generated by the Vote Counting Machines (VCMs) are sufficient compliance to the AES Law.[4]

b.

disclose critical information and allow access and inspection of the following to political parties, candidates, accredited media, and other organizations:

i.

printing of ballots at the National Printing Office, including the examination of the ballots already printed without the presence of observers, as well as the publication of deployment destination of these ballots without the presence of observers;

The COMELEC may be compelled to allow the witnessing of the printing of ballots but the issue has become moot and academic.

The COMELEC is duty-bound under Section 187 of the Omnibus Election Code to allow designated watchers to

witness the printing of the ballots. Its initial refusal of the request of various parties relating to this activity cannot be excused on the basis of the claimed security and health reasons of the COMELEC as the language of Section 187 is mandatory. It could still have allowed a limited number of watchers to comply with health protocols.

Nevertheless, records show that on March 17, 2022, the COMELEC began livestreaming the printing of the ballots which shows the printing area and the quarantine room which is dedicated for rechecking defective ballots. The COMELEC had likewise conducted ballot checking in the presence of representatives from stakeholders. Thus, this issue had become moot.[5]

ii.

the reported 5.2 million defective ballots and allow public scrutiny of their disposition or destruction;

iii.

configuration and preparation of the Secure Digital (SD) cards to be used in the VCMs through COMELEC-accredited observers in its Sta. Rosa, Laguna warehouse, including access to and examination of the SD cards that have already been configured and prepared without the presence of observers and allow the public and/or parties to observe the Pre-Logic and Accuracy Test (Pre-LAT) and other tests to be conducted;

The COMELEC may not be compelled to allow the witnessing of the configuration and preparation of SD cards and VCMs, but it may be compelled to allow the examination and testing thereof.

The AES Law does not specifically enjoin the COMELEC to allow access to and inspection of the configuration and preparation of the VCMs and SD cards. The law's mandate is only with respect to their examination and testing, which evidently takes place after the configuration of the devices.

Nevertheless, the records reveal that the COMELEC had scheduled a walkthrough of its warehouse in response to requests therefor by certain parties. Moreover, there was no formal coordination for entry into the COMELEC's Sta. Rosa, Laguna facility. While the COMELEC is mandated to ensure transparency of the elections, it is also required that the same be orderly and peaceful.

Finally, the COMELEC had called upon the public to witness the final testing and sealing of the VCMs before the elections. It also opened for public viewing its warehouse in Sta. Rosa, Laguna where the SD cards were being configured. Thus, this issue had become moot.[6]

iv. preparation, testing, and deployment of the VCMs and all [their] parts, attachments, and tools through COMELEC-accredited observers;

v.

National Technical Support Center, technical hubs, including data centers, provincial and regional hubs; and

The COMELEC may be compelled to disclose certain transmission documents but the issue had become moot and academic.

The COMELEC failed to discharge its burden of showing that the information sought by petitioners are not matters of public concern or that they are exempted by law from the constitutional guarantee of right to

information. However, the prayer is now moot because the information sought has already been divulged and the credibility of the transmission router has been confirmed by the Technical Evaluation Committee.[7]

vi.

transmission diagram or data/communications network architecture including all details of the transmission of the transmission router server and/or the "Meet-Me Room" and all devices and equipment that will be used to transmit election results.[8]

I concur in the dispositions and, ultimately, in the dismissal of the Petition. I write to stress the importance of assessing the prayers to compel access to information, documents, and sites used for the 2022 NLE vis-à-vis the constitutional right to information on matters of public concern or interest, as well as of the proper construction of laws which limit this right, such as R.A. No. 9369.

It is crucial to include a discussion of the
reliefs prayed for vis-à-vis the constitutional
right to information on matters of public
concern or interest

The people's right to information on matters of public concern is articulated in Section 7, Article III of the 1987 Constitution:

SEC. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Complementing the right to information is another constitutional provision enunciating the policy of full disclosure and transparency in government. Section 28, Article II provides:

SEC. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

As early as in *Legaspi v. Civil Service Commission*[9] (*Legaspi*), the Court already held that these provisions of the Constitution concerning the people's right to information are self-executing. They supply the rules by means of which the right may be enjoyed, by guaranteeing the right and mandating the duty to afford access to sources of information. As such, these constitutional provisions, can, of and by themselves, be invoked in a mandamus case, without need for an enabling statute.[10]

In this regard, Congress still found it fitting to statutorily express the State's policy of transparency in R.A. 6713,[11] otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, which provides:

SEC. 4. Norms of Conduct of Public Officials and Employees. – (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

. . . .

(e) Responsiveness to the public. – Public officials and employees shall extend prompt, courteous, and adequate service to the public. Unless otherwise provided by law or when required by the public interest, public officials and employees shall provide information of their policies and procedures in clear and understandable language, ensure openness of information, public consultations and hearings whenever appropriate, encourage suggestions, simplify and systematize policy, rules and procedures, avoid red tape and develop an understanding and appreciation of the socio-economic conditions prevailing in the country, especially in the depressed rural and urban areas.

....

SEC. 5. Duties of Public Officials and Employees. – In the performance of their duties, all public officials and employees are under obligation to:

....

(e) Make documents accessible to the public. – All public documents must be made accessible to, and readily available for inspection by, the public within reasonable working hours.

Legaspi, citing American jurisprudence, laid down the reason behind the incorporation in the Constitution of the guarantee of access to matters of public concern: that it is a recognition of the essentiality of the free flow of ideas and information in a democracy and that access to information aids the people in democratic decision-making by giving them a better perspective of the vital issues confronting the nation.[12]

However, the constitutional guarantee to information is not absolute, as it is circumscribed by: 1) the nature of the information sought, i.e., it must be of public concern or one that involves public interest, and 2) reasonable conditions and limitations prescribed by law.[13]

In the present case, there is no doubt that the information and data sought to be accessed by petitioners, all of which relate to the conduct of the 2022 NLE, satisfy the first requisite, concerning as they do the exercise by the people of their fundamental right to suffrage. The issue, it appears, lies in the presence of the second requisite.

The mandamus to compel access to the subject election-related documents and activities is sought by petitioners mainly on the basis of statutory provisions allegedly commanding the COMELEC to allow such access. However, in truth, because the information and data sought in the present case are doubtlessly imbued with public interest or concern, what is crucial is that petitioners' right to demand access thereto is gauged through the lens of the constitutional right to information and the State's policy of transparency in its dealings.

Indeed, I submit that in all mandamus cases concerning access to information from the State, the threshold analysis should be whether such access is guaranteed under the Constitution i.e., whether the information sought is imbued with public interest or concern. There is no need to search for statutory footing. Resort to statutes is necessary only to determine the existence of limitations to, or reasonable exceptions from, the guaranteed right of access.

R.A. No. 9369 must be narrowly construed as it impinges on the fundamental right to information under the Constitution

During the deliberations of the case, it was submitted that petitioners failed to establish their legal right to access transparency documents and inspect the COMELEC's hubs because there is no law guaranteeing access to "election, consolidation, and transmission" documents, as the State aims to protect the secrecy and sanctity of these documents, based on Section 1 of R.A. 9369 in relation to the prohibition under Section 35(c) of the same

law. Allegedly, the policy of transparency extends only to the "election process in general" and does not cover transmission documents and, by analogy, election and consolidation documents.

Sections 1 and 35(c) of R.A. 9369 provide:

SEC. 1. Declaration of Policy. – It is policy of the State to ensure free, orderly, honest, peaceful, credible and informed elections, plebiscites, referenda, recall and other similar electoral exercises by improving on the election process and adopting systems, which shall involve the use of an automated election system that will ensure the secrecy and sanctity of the ballot and all election, consolidation and transmission documents in order that the process shall be transparent and credible and that the results shall be fast, accurate and reflective of the genuine will of the people.

....

SEC. 35. Prohibited Acts and Penalties. – The following shall be penalized as provided in this Act, whether or not said acts affect the electoral process or results:

....

(c) Gaining or causing access to, using, altering, destroying or disclosing any computer data, program, system software, network, or any computer-related devices, facilities, hardware or equipment, whether classified or declassified.

As shown by a reading of the law, the stance that transmission documents need not be transparent may set a dangerous precedent for cases involving the constitutional right of the people to information vis-à-vis not only transmission documents during elections, but likewise consolidation and election documents in general, which are lumped with "transition documents" in Section 1. The sweeping declaration that these documents need not be disclosed to the public as they are not covered by the transparency policy declared under R.A. 9369 can have dire consequences far beyond the corners of the present case.

Further, election, transmission, and consolidation of the votes cast during an election virtually comprise the entire election process. Thus, there appears to be no good reason in distinguishing "the election process in general" from the "election, transmission, and canvassing" in terms of the application of the State's policy of transparency and the people's right to information.

Anent the proper reading of R.A. 9369, it must be done in relation to the right to information under Article II, Section 28 and Article III, Section 7 of the Constitution, mandating full disclosure of matters of public concern or interest. Again, these provisions are self-executing. Further, they establish the general rule that such matters must be accessible to the public, and the exceptions are only those clearly provided in statutes. In fine, I submit that it is imperative to construe Sections 1 and 35(c) of R.A. 9369 in the context of them being exceptions or limitations to the constitutional right to information. Without any such proper interpretation, the non-disclosure of information carries a weighty presumption of invalidity as it impinges on a fundamental right.[14]

Here, I submit that, properly interpreted, Section 1 and Section 35(c) of R.A. 9369 do not sweepingly exempt "election, transmission, and canvassing" documents from the ambit of the policy of transparency. A sweeping construction of the law renders it unreasonably broad as it will already cover practically the entirety of the election process. Legaspi commanded that "what may be provided for by the Legislature are reasonable conditions and limitations upon the access to be afforded which must, of necessity, be consistent with the declared State policy of full public disclosure of all transactions involving public interest." [15]

As such, R.A. 9369 must be narrowly construed in such a way that its objectives of preserving the sanctity of the ballots and, purportedly, of the election documents, align with the commands of the Constitution for State

transparency.

First, Section 1 is a mere declaration of a general policy. It does not categorically and clearly prohibit access to all election, consolidation, and transmission documents. In the interpretation of restrictions on constitutional rights, doubts must be resolved in favor of upholding the latter.

Second, Section 1 must be read in relation to the fundamental election principle of the secrecy of the ballots. Thus, the "election, transmission, and consolidation" documents which can be exempted from the scope of the right to information are only those where access thereto would run the risk of violating this principle by the disclosure of information relating to the voters.

Third, in addition to ballot secrecy, the recognized restrictions of the right to information must likewise be considered. Hence, those documents which may entail the following information may be kept confidential and classified: 1) national security matters and intelligence information, 2) trade secrets and banking transactions, 3) criminal matters, and 4) other confidential information, including those under the Ethical Standards Act, diplomatic correspondence, closed door Cabinet meetings and executive sessions of the Congress, as well as internal deliberations of the Supreme Court.[16]

Finally, Section 1 must be read in relation to its own declaration that "the [election] process shall be transparent and credible and that the results shall be fast, accurate and reflective of the genuine will of the people." To my mind, this last sentence of the first paragraph of Section 1 reflects the overall policy of transparency of the State in matters relating to the conduct of elections in general — a policy that mirrors the mandate of the provisions on the right to information in the Constitution.

The same considerations must likewise be employed in the construction of the prohibition under Section 35(c) of R.A. 9369, especially since it not only bears on the right to information but likewise makes the acts stated therein criminal. An overly broad interpretation renders inutile the people's right to access information relating to the exercise of their right to suffrage.

In *Bantay Republic Act or BA-RA 7941 v. COMELEC*[17] (*Bantay Republic*), a law was likewise claimed by the COMELEC as basis for refusing to disclose election-related information. Therein, a mandamus case was filed with the Court seeking the disclosure by the COMELEC of the names of party-list nominees for the 2007 elections. The COMELEC earlier refused such request on the basis, among others, of Section 7 of R.A. 7941,[18] otherwise known as the Party-List System Act, which commands that the names of the party-list nominees shall not be shown in the certified list of parties which the same law requires to be posted before elections. In granting, the mandamus and ordering the immediate disclosure of the information sought, the Court narrowly construed R.A. 7941 and noted that the information sought do not concern national security and that there was no express prohibition in the law against the disclosure of the names of party-list nominees, thus:

As may be noted, no national security or like concerns is involved in the disclosure of the names of the nominees of the party-list groups in question. Doubtless, the Comelec committed grave abuse of discretion in refusing the legitimate demands of the petitioners for a list of the nominees of the party-list groups subject of their respective petitions. Mandamus, therefore, lies.

The last sentence of Section 7 of R.A. 7941 reading: "[T]he names of the party-list nominees shall not be shown on the certified list" is certainly not a justifying card for the Comelec to deny the requested disclosure. To us, the prohibition imposed on the Comelec under said Section 7 is limited in scope and duration, meaning, that it extends only to the certified list which the same provision requires to be posted in the polling places on election day. To stretch the coverage of the prohibition to the absolute is to read into the law something that is not intended. As it were, there is absolutely nothing in R.A. No. 7941 that prohibits the Comelec from

disclosing or even publishing through mediums other than the "Certified List" the names of the party-list nominees. The Comelec obviously misread the limited non-disclosure aspect of the provision as an absolute bar to public disclosure before the May 2007 elections. The interpretation thus given by the Comelec virtually tacks an unconstitutional dimension on the last sentence of Section 7 of R.A. No. 7941.[19] (Emphasis supplied)

Bantay Republic likewise occasioned a discussion on the interplay between the fundamental rights to information and of suffrage, declaring that the people have the right to vote on the basis of an informed judgment. Hence, the Court, as far back as in the 1914 case of *Gardiner v. Romulo*,^[20] has frowned upon interpretations of the law that would hinder in any way the free and intelligent casting of votes in an election.^[21]

Similarly, the present case involves information which bears on the people's right of suffrage. Suffrage is at the very heart of our republican democracy as it ensures that the State derives its power from the consent of the governed.^[22] Hence, the people have a right to ensure themselves that the election process faithfully upholds their right of suffrage and that the results of the elections are reflective of their true will.

In sum, I concur that access to the information and documents sought by petitioners may be compelled by mandamus as they are imbued with public interest and concern, thus, covered by the constitutional right to information. Nevertheless, as ruled in the ponencia, the prayer for such access by petitioners have been mostly rendered moot because the COMELEC had already disclosed the information in various occasions. Moreover, the election hubs and centers of the COMELEC are presumably already vacated as the 2022 NLE had long passed.

For the above reasons, I vote to DISMISS the Petition.

[1] An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes, approved on December 22, 1997.

[2] An Act Amending Republic Act No. 8436, entitled "An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, as amended, Republic Act No. 7166 and Other Related Election Laws, Providing Funds Therefor and for Other Purposes," approved on January 23, 2007.

[3] 687 Phil. 617 (2012).

[4] See ponencia., pp. 6-8.

[5] See *id.* at 9-11.

[6] See *id.* at 11-16.

[7] See *id.* at 16-19.

[8] See *id.* at 2-3.

[9] G.R. No. L-72119, May 29, 1987, 150 SCRA 530.

[10] See *id.* at 534-535.

[11] An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for

Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes, approved on February 20, 1989.

[12] See *Legaspi v. Civil Service Commission*, supra note 9, at 540.

[13] See *Bantay Republic Act or BA-RA 7941 v. COMELEC*, G.R. No. 177271, May 4, 2007, 523 SCRA 1, citing *Legaspi v. Civil Service Commission*, id.

[14] See *Bantay Republic Act or BA-RA 7941 v. COMELEC*, id. at 16.

[15] *Legaspi v. Civil Service Commission*, supra note 9, at 535.

[16] See *Chavez v. Presidential Commission on Good Government*, G.R. No. 130716, December 9, 1998, 299 SCRA 744, 764-765.

[17] Supra note 13.

[18] An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Therefor, approved on March 3, 1995.

[19] *Bantay Republic Act or BA-RA 7941 v. COMELEC*, supra note 13, at 16.

[20] 26 Phil. 521 (1914).

[21] See *Bantay Republic Act or BA-RA 7941 v. COMELEC*, supra note 13, at 17.

[22] See *Palatino v. COMELEC*, G.R. No. 189868, December 15, 2009, 608 SCRA 248, 253.

CONCURRENCE

LAZARO-JAVIER, J.:

This Petition for Mandamus seeks to compel the Commission on Elections (COMELEC): (1) to implement digital signatures and (2) to disclose critical information and allow access and inspection in the (a) printing of ballots and disposition of defective ballots; (b) configuration, preparation and testing of the SD cards; (c) preparation, testing, and deployment of Vote Counting Machines (VCMs); and (d) National Technical Support Center and technical hubs, as well as the transmission diagrams or data/communications network architecture.

First. In seeking to compel the COMELEC to implement digital signatures for the 2022 National and Local Elections (NLE), petitioners invoke Section 22 of the Automated Election System (AES) Law,[1] viz.:

SEC. 22. Electronic Returns. - Each copy of the printed election returns shall bear appropriate control marks to determine the time and place of printing. Each copy shall be signed and thumb marked by all the members of the board of election inspectors and the watchers present. If any member of the board of election inspectors present refuses to sign, the chairman of the board shall note the same copy in each copy of the printed election returns. The member of the board of election inspectors concerned refusing to sign shall be compelled to explain his or her refusal to do so. Failure to explain an unjustifiable refusal to sign each copy of the printed election return by any member of the board of election inspectors shall be punishable as provided in this Act. The chairman of the boards shall then publicly read and announce the total numbers of registered voters, the total number of voters who actually voted and the total numbers of votes obtained by each candidate based on the election returns. (Emphasis supplied)

By COMELEC Minute Resolution No. 210021 dated January 20, 2021, COMELEC Commissioner Marlon Casquejo (Commissioner Casquejo) already approved the use of digital signatures for the 2022 NLE.

In March 2022, however, Commissioner Casquejo confirmed that despite the successful enrollment of all teachers/board of election inspectors to use the digital signatures, it will not be implemented nationwide just yet but only to the National Capital Region, Cebu City, and Davao City due to logistical issues. Specifically, "there are equipment or materials which will be needed in order to use the digital signature" and that "no provider can supply and deliver the needed number of cable assembly to accommodate the approximate 300,000 to 350,000 teachers."

As discussed in the ponencia, the first paragraph of Section 22 of the AES Law actually refers to printed election returns and not to the entire plethora of election returns that will be used during the NLE. In fact, the only instance where the words "electronically and digitally signed" are mentioned is in the latter part of the same provision, viz.: "the election returns transmitted electronically and digitally signed shall be considered as official election results and shall be used as the basis for the canvassing of votes and the proclamation of a candidate."

In other words, it is not expressly provided under the AES Law that digital signatures should be fully implemented, especially for the 2022 NLE. The initial approval of the use of digital signatures for the 2022 NLE was a mere initiative of the COMELEC in the exercise of its constitutional mandate to administer election laws. To be sure, the COMELEC is given considerable latitude in devising means and methods that will ensure the accomplishment of the great objective for which it was created—free, orderly, and honest elections. Unless these will be clearly illegal or will constitute grave abuse of discretion, this Court should not interfere, as here.[2]

Hence, I agree with the ponente that mandamus will not lie on this score.

Second. Petitioners likewise seek to compel the COMELEC to allow them to witness the printing of ballots, following Section 187[3] of the Omnibus Election Code and Section 15[4] of the AES Law.

Again, I agree with the ponencia that the act cannot be compelled by mandamus.

Section 187 of the Omnibus Election Code allows a duly designated watcher to do the following: (1) to observe the proceedings of the committee on the printing of official ballots and election returns; (2) to file objections; (3) to witness the printing and distribution of the ballots and the returns; and (4) to guard the premises of the printer.

Despite the restrictions brought about the pandemic, we agree with the ponencia that the law did not limit the means by which the COMELEC should comply with its mandate. On March 17, 2022, it initiated a way to allow the watchers to still observe the printing process while maintaining consideration of the health and safety protocols. Though not the usual method of physical observation of the process, the COMELEC instead conducted a livestream of the printing of the ballots. The livestream provided different angles to ensure that watchers can easily witness the entire printing process. The COMELEC even committed to provide copies of the CCTV footage thereafter, if necessary.

I agree that by adopting this method, the COMELEC should be deemed to have complied with the mandate of the Omnibus Election Code.

Third. I further subscribe to the view that Congress did not intend to limit the examination and testing to the VCMs but even expanded it to include other equipment or devices of the AES such as the SD card. There is a need to compare Section 14 of Republic Act No. 8436, as amended by Section 12 of Republic Act No. 9369, which used to be Section 10 of Republic Act No. 8436, viz.:

Section 10 of Republic Act No. 8436 in
the original

Section 14 of Republic Act No. 8436, as amended by Section 12 of Republic Act No. 9369

SEC. 10. Examination and testing of counting machines. - The Commission shall, on the date and time it shall set and with proper notices, allow the political parties and candidates or their representatives, citizens' arm or their representatives to examine and test the machines to ascertain that the system is operating properly and accurately. Test ballots and test forms shall be provided by the Commission.

After the examination and testing, the machines shall be locked and sealed by the election officer or any authorized representative of the Commission in the presence of the political parties and candidates or their representatives, and accredited citizens' arms. The machines shall be kept locked and sealed and shall be opened again on election day before the counting of votes begins.

Immediately after the examination and testing of the machines, the parties and candidates or their representatives, citizens' arms or their representatives, may submit a written report to the election officer who shall immediately transmit it to the Commission for appropriate action. (Emphasis supplied)

SEC. 12. Section 10 of Republic Act No. 8436 is hereby amended to read as follows:

SEC. 14. Examination and Testing of Equipment or Device of the AES and Opening of the Source Code for Review. - The Commission shall allow the political parties and candidates or their representatives, citizens' arm or their representatives to examine and test [t]he equipment or device to be used in the voting and counting on the day of the electoral exercise, before voting starts. Test ballots and test forms shall be provided by the Commission.

"Immediately after the examination and testing of the equipment or device, parties and candidates or their representatives, citizen's arms or their representatives, may submit a written comment to the election officer who shall immediately transmit it to the Commission for appropriate action.

"The election officer shall keep minutes of the testing, a copy of which shall be submitted to the Commission together with the minute of voting."

"Once an AES technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof." (Emphasis supplied)

The term "counting machines" in Republic Act No. 8436 was amended to read "equipment or device of the AES" in Republic Act No. 9369. AES is defined in Republic Act No. 9369 as "a system using appropriate technology which has been demonstrated in the voting, counting, consolidating, canvassing, and transmission of election result, and other electoral process." [5] Under the law, the words "equipment" and "device" are defined by enumerating examples thereof such as "counting machine, memory pack/diskette, memory pack receiver and computer set." [6]

I agree that the law only ordains the COMELEC to allow the examination and testing of equipment or devices which have already been configured. Apart from the fact that the law commands the COMELEC to provide test ballots and test forms, it also provides that once an AES technology is selected for implementation, the COMELEC shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof. [7]

There is no need though for any formal coordination with the COMELEC pertaining to the date and time within which to conduct the examination and testing of equipment and devices. This is because the relevant proviso thereon as originally provided in Republic Act No. 8436 (Section 1, first paragraph) is no longer found in Republic Act No. 9369 (Section 12, first paragraph). Instead, Republic Act No. 9369 now provides, in general,

that the COMELEC shall allow political parties, candidates or citizens' arm to examine and test the equipment or device to be used in the voting and counting, before voting starts. Thus, there is no need to set a particular date and time to examine and test the equipment and devices. The only qualification is that such examination and testing be done before the voting starts.

At any rate, the COMELEC had asked the public and political parties to go to precincts nationwide on May 2 to 7, 2022 to personally witness the final testing and sealing of VCMs that would be used in the 2022 NLE. Likewise, it had opened for public viewing its warehouse in Sta. Rosa, Laguna where the SD cards were being configured. Hence, the issue has become moot and academic.

Fourth. I agree that petitioners failed to show a clear legal right to the disclosure of transmission documents pursuant to the declared policy of the State in Republic Act No. 9369 to ensure the "secrecy and sanctity of the ballot and all election, consolidation, and transmission documents in order that the process shall be transparent and credible and that the results shall be fast, accurate, and reflective of the genuine will of the people."

Too, the law does not enjoin the COMELEC to allow access and inspection of its hubs, servers, and data centers, including the transmission network architecture, but COMELEC has disclosed critical information thereon, such as: List of Local Hubs, Order of Dispatch, and Schedule of Dispatch of Accountable Forms/Supplies to be used in the 2022 NLE; and the locations of the different servers/data centers to be used in the elections, including the Central Data Center.

[1] Republic Act No. 8346, as amended by Republic Act No. 9369.

[2] *Ejercito v. Commission on Elections*, G.R. No. 223300 (Notice), May 31, 2016.

[3] Section 187. Committee on printing, storage, and distribution of official ballots and election returns. - xxx

Upon the request of any candidate, political party or of civic, religious, professional, business, service, youth or any similar organizations collectively designated by the Commission, the latter shall allow any person designated by any of the former as watcher to observe the proceedings of the committee on the printing of official ballots and election returns, file objections, if any, witness the printing and distribution of the ballots and the returns and guard the premises of the printer.

[4] Section 15. Official Ballot. –

xxx

Accredited political parties and deputized citizen's arms of the Commission shall assign watchers in the printing, storage and distribution of official ballots.

[5] Republic Act No. 9369, sec. 2.

[6] Republic Act No. 9369, sec. 28.

[7] Republic Act No. 9369, sec. 12.

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