

**MARCOS “MACOY” CABRERA AMUTAN, PETITIONER,
VS. THE COMMISSION ON ELECTIONS (COMELEC), ITS
CONSTITUTED SPECIAL PROVINCIAL BOARD OF CANVASSERS
(SPBOC) OF THE FIFTH (5TH) DISTRICT ...**

G.R. No. 266331, December 03, 2025

Ponente: SINGH, J.

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SINGH, J.:

This resolves the Petition for Certiorari and Prohibition[1] (Petition) under Rule 64 of the Rules of Court with Extremely Urgent Prayer for Temporary Restraining Order (TRO) and/or Status Quo Ante Order (SQAQO)/Writ of Preliminary Injunction (WPI) and with Equally Urgent Motion for Special Raffle filed by petitioner Marcos "Macoy" Cabrera Amutan (Amutan) to reverse and set aside the March 16, 2023 Writ of Execution[2] issued by the respondent Commission on Elections (COMELEC) in SPA No. 21-002 (DC).

The Facts

Amutan and respondents Francisco Paolo Crisostomo (Crisostomo) and Alvie Poblete (Poblete) were among the six candidates who vied for two seats for the position of Member, Sangguniang Panlalawigan, representing the Fifth District of the Province of Cavite in the May 9, 2022 National and Local Elections.[3]

In particular, the candidates for the said positions during the 2022 elections were, as follows:[4]

MEMBER, SANGGUNIANG PANLALAWIGAN–FIFTH DISTRICT

#

NAME TO APPEAR ON THE BALLOT

SEX

NAME

POLITICAL PARTY

1

ALUMIA, DANTE (IND)

MALE

ALUMIA, DANTE BALINGIT INDEPENDENT

2

AMUTAN MACOY (NUP)

MALE

AMUTAN, MARCOS CABRERA NATIONAL UNITY PARTY

3

ANARNA, GERARDO (PROMDI)

MALE

ANARNA, GERARDO CASTILLO ABAG PROMDI

4

BELAMIDE AIDEL (NPC)

MALE

BELAMIDE, AIDEL PAUL GARCIA NATIONALIST PEOPLE'S COALITION

5

CRISOSTOMO, BM-PAOLO (LAKAS)

MALE

CRISOSTOMO, FRANCISCO PAOLO POBLETE LAKAS CHRISTIAN MUSLIM DEMOCRATS

6

POBLETE, BM PAOLO (PDDS)

MALE

POBLETE, ALVIC MADLANGSAKAY PEDERALISMO NG DUGONG DAKILANG SAMAHAN

On October 12, 2021, Crisostomo filed a Petition before the COMELEC to declare Poblete as a nuisance candidate. This case was entitled Francisco Paolo Poblete Crisostomo vs. Alvie Madlangsakay Poblete, docketed as SPA No. 21-002 (DC).[5]

SPA No. 21-002 (DC) was still unresolved as of May 9, 2022.[6] Thus, candidates Aidel Paul Belamide (Belamide) and Amutan, having garnered the two highest votes, were proclaimed as winners for the two seats for Board Members representing the Fifth District of the Province of Cavite.[7] The tally of votes garnered by each candidate is provided in the table below:[8]

POSITIONS/NAMES OF CANDIDATES

VOTES GARNERED

PERCENTAGE OF VOTES

RANKING

MEMBER, SANGGUNIANG PANLALAWIGAN – FIFTH DISTRICT

ALUMIA, DANTE (IND) (INDEPENDENT)

19[,]643

5.33

6

AMUTAN, MACOY (NUP) (NATIONAL UNITY PARTY)

95[,]972

26.07

2

ANARNA, GERARDO (PROMDI) (ABAG PROMDI)

34[,]652

9.49

4

BELAMIDE, AIDEL (NPC) (NATIONALIST PEOPLE'S COALITION)

106[,]626

28.96

1

CRISOSTOMO, BM-PAOLO (LAKAS) (LAKAS CHRISTIAN MUSLIM DEMOCRATS)

81[,]553

22.15

3

POBLETE, BM PAOLO (PDDS) (FEDERALISMO NG DUGONG DAKILANG SAMAHAN)

29[,]325

7.96

5

On May 18, 2022, Crisostomo filed an election protest before the COMELEC against Belamide and Amutan, docketed as EPC No. 004-2022, praying, among others, that the votes cast in favor of Poblete, as a nuisance candidate, be counted in favor of Crisostomo, and that after due hearing, the fraudulent proclamation of the winning candidates as board members of the Fifth District be annulled, or, at the very least, the effects of such proclamation be suspended, pending the resolution of the protest case.[9]

On June 14, 2022, the COMELEC First Division issued a Resolution granting Crisostomo's Petition in SPA No. 21-002 (DC) and declaring Poblete a nuisance candidate, with the dispositive portion of the Resolution stating:

WHEREFORE, premises considered, the Petition is hereby GRANTED.

Respondent ALVIC MADLANGSAKAY POBLETE is DECLARED a NUISANCE CANDIDATE.

Accordingly, his Certificate of Candidacy for Member, Sangguniang Panlalawigan of the 5[th] District of Cavite in the [May 9,] 2022 National and Local Elections is hereby DENIED DUE COURSE and/or CANCELLED.

SO ORDERED.[10] (Emphasis in the original)

With no motion for reconsideration filed by Poblete, the COMELEC issued a Certificate of Finality of the said Resolution rendered in SPA No. 21-002 (DC) on August 16, 2022.[11] Thereafter, the COMELEC issued the assailed Writ of Execution on March 16, 2023, the dispositive portion of which reads:

NOW THEREFORE, the Election Officer is hereby DIRECTED to immediately implement this Writ of Execution by serving a copy hereof together with the certified true copy of the Resolution of the Commission (First Division)[,] dated [June 14,] 2022, upon Respondent ALVIC MADLANGSAKAY POBLETE and to submit a return of service thereof to the Clerk of the Commission.

ACCORDINGLY, the Commission (First Division) hereby DIRECTS, after due notice to the parties, the Special Provincial Board of Canvassers (SPBOC) of Fifth (5th) District, Province of Cavite, composed of:1. Atty. Genesis M. Gatdula – Chairperson

2. Atty. John Rex C. Laudiangco – Vice Chairperson

3. Dir. Ester Villaflor-Roxas – Member

4. Three [] Supporting Staff

5. Two[] Sub-Canvassing Committees

to do the following:

- CONVENE on [April 12,] 2023 at 2:00 p.m. at the COMELEC Session Hall, 8th Floor, Palacio del Gobernador Bldg., Intramuros, Manila, to do the following:

- ANNUL the proclamation of duly elected Members of the Sangguniang Panlalawigan for the Fifth (5th) District, Province of Cavite;

- COUNT and CANVASS the votes for nuisance candidate Alvie Maglangsakay Poblete in favor of Petitioner Francisco Paolo Poblete Crisostomo. However, if there is a ballot that contains votes in favor of both Francisco Paolo Poblete Crisostomo and Respondent Alvie Madlangsakay Poblete, only one vote shall be counted in favor of the Petitioner;

- AMEND/CORRECT the Certificate of Canvass of Votes and Proclamation of Sangguniang Panlalawigan Members for the Fifth (5th) District, Province of Cavite, based on the Amended Statement of Votes by Precint; and

- PROCLAIM the duly elected Members of the Sangguniang Panlalawigan for the Fifth (5th) District, Province of Cavite in accordance with the result of the proper counting of votes.[12] (Emphasis in the original)

Seeking relief, Amutan filed this Petition before the Court alleging that the COMELEC acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed Writ of Execution.[13]

Notably, Amutan alleged that the assailed Writ of Execution was served by the COMELEC to his wife only on March 29, 2023, and to him personally on April 4, 2023, to their surprise.[14] Amutan argues that the COMELEC violated his right to due process when it ordered the annulment of his proclamation ex parte in the Writ of Execution without prior notice or affording him any opportunity to be heard.[15] He contends therefore that the annulment of his proclamation as winner through the Writ of Execution is null and void.[16]

In a Resolution,[17] dated April 18, 2023, the Court required the respondents to comment on the Petition and the prayer for TRO/SQAO/WPI. As the Court awaited the compliance of all the parties, from August 29, 2023 to October 12, 2023, Amutan filed seven Extremely Urgent Reiterative Motions for the Immediate Issuance of a TRO and/or SQAO.[18] In the successive Motions, Amutan informed the Court that the Special Provincial Board of Canvassers (SPBOC) had already convened and begun the recount of the votes.[19]

On September 26, 2023, the SPBOC issued a Certificate of Canvass of Votes and Proclamation of Winning Candidate for the Position of Member, Sangguniang Panlalawigan, Fifth District of Cavite[20] certifying an Amended Statement of Votes by the Precinct, which is reflected in the table below:[21]

NAMES OF CANDIDATES

NUMBER OF VOTES OBTAINED

ALUMIA, DANTE

19,643

AMUTAN, MACOY

95,972

ANARNA, GERARDO

34,952

BELAMIDE, AIDEL

106,626

CRISOSTOMO, BM PAOLO

103,783

Based on this Amended Statement of Votes by the Precinct, the SPBOC declared Belamide and Crisostomo as the winning candidates and the duly elected members of the Sangguniang Panlalawigan of the Fifth District, Province of Cavite,[22] thereby annulling the earlier proclamation of Amutan and unseating him as board member.

In his Petition before the Court, Amutan explicitly states that he does not contest the propriety and legality of the declaration that Poblete is a nuisance candidate in SPA No. 21-002 (DC).[23] Instead, Amutan forwarded the following positions:

- The votes for Poblete should not be credited to Crisostomo because they do not have the same surname and such action is in violation of the COMELEC rules.
- The Writ of Execution was improper as it ordered the crediting of votes for Poblete to Crisostomo despite the matter not being litigated or passed upon in the Petition declaring Poblete as a nuisance candidate, and despite this relief not being specifically prayed for by Crisostomo in his original Petition.
- The filing of a separate election protest by Crisostomo before the COMELEC to pray for the crediting of votes in his favor after the declaration that Poblete is a nuisance candidate constitutes forum shopping that should warrant the dismissal of all of Crisostomo's pending Petitions.
- The COMELEC committed grave abuse of discretion in ordering the annulment of the original proclamation of winners before the recount of votes was concluded and without notice and hearing to the affected parties, despite Amutan's pleas to be heard.

In its Comment,[24] the COMELEC, through the Office of the Solicitor General (OSG), argued that, firstly, Amutan has no legal standing to file the Petition and assail the Writ of Execution issued in a petition for disqualification of a nuisance candidate as he is not a real party-in-interest. Secondly, the OSG also argued that the crediting of votes of nuisance candidate Poblete in favor of Crisostomo is the necessary consequence of the COMELEC resolution granting Crisostomo's Petition for Disqualification. Thirdly, Amutan, not being a real

party-in-interest in the Petition for Disqualification, could not have been denied due process as he is a mere silent observer in the declaration of nuisance candidate case. Finally, the OSG contends that the filing by Crisostomo of an election protest pending the resolution of the original Petition to declare a nuisance candidate is not tantamount to forum shopping.[25]

On the other hand, Crisostomo, in his Comment,[26] submits that the COMELEC did not commit grave abuse of discretion and that the Writ of Execution and the original Resolution it implemented in SPA No. 21-002 (DC) were issued within the powers of the COMELEC.[27] Similarly, Crisostomo argues that Amutan is without legal standing to question the effects of the declaration of Poblete as a nuisance candidate.[28] Finally, the petition to disqualify a nuisance candidate and the electoral protest address fundamentally different issues and are invoked at different stages of the electoral process.[29]

Meanwhile, Poblete, despite repeated notices issued by the Court, through counsel, failed to submit a Comment.[30] In view of such non-submission, he is considered to have waived his right to file a Comment.

The Issue

Did the COMELEC commit grave abuse of discretion when it issued the assailed Writ of Execution?

The Ruling of the Court

Prefatorily, the Court takes consideration of the intervening events that substantially affect the justiciability of the issue in this Petition.

On September 26, 2023, the COMELEC SPBOC for the Fifth District of Cavite already concluded its recount of votes and proclaimed Crisostomo as the new member of the Province of Cavite's Sangguniang Panlalawigan, together with Belamide.[31]

With the proclamation of the winners of the 2022 elections for the two board member seats for the Fifth District, this Petition, with its prayers to restrain the conduct of the recount of votes and to reverse the assailed Writ of Execution in SPA No. 21-002 (DC), has been rendered moot.

The mootness is even more resonant now that the 2025 elections have already been concluded, and the disposition of this case is of no practical value to the 2022 to 2025 terms of the supposed winning board members.

Be that as it may, jurisprudence provides clear standards when the Court may still decide a case that would otherwise be moot and academic.

It is settled that a case becomes moot when it ceases to present a justiciable controversy because of supervening events so that a declaration in the moot case would be of no practical use or value.[32]

However, in the case of *Timbol v. COMELEC*,[33] the Court reiterated the exceptions to the principle of mootness, thus:

A case is moot and academic if it "ceases to present a justiciable controversy because of supervening events so that a declaration thereon would be of no practical use or value." When a case is moot and academic, this court generally declines jurisdiction over it.

There are recognized exceptions to this rule. This court has taken cognizance of moot and academic cases when: (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review.[34] (Emphasis supplied, citations omitted)

Here, the Court is provided with an opportunity to revisit the treatment of votes for nuisance candidates,

especially under the current regime of automated elections. Undoubtedly, this issue is of paramount public interest, requiring the Court to formulate the controlling principles to guide the public, and to prevent the repetition of previous erroneous interpretation of the applicable law.

Defining a nuisance candidate

Section 69 of the Omnibus Election Code (OEC) provides the modes of assailing a nuisance candidacy, either through the own initiative of the COMELEC[35] or through a verified Petition filed by an interested party:

Section 69. Nuisance candidates. — The Commission may, *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

Nuisance candidates are those who file their certificates of candidacy (COC) with the following purposes: (1) to put the election process in mockery or disrepute; (2) to cause confusion among the voters by the similarity of their names with the registered candidates; or (3) under circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the COC has been filed.[36] Thus, the essential characteristic that defines a nuisance candidate is the desire not to win public office, but to prevent a faithful determination of the true will of the electorate.[37]

Basis of crediting or transferring votes from a nuisance candidate to a legitimate candidate

Preliminarily, the Court makes a distinction between the terms "counting" and "crediting" of votes.

On the one hand, "counting of votes" should be understood as the literal act of including a vote in the tally of the candidate voted for based on the face of the ballot. Under the manual system of elections, in cases of "vague votes," or where the vote cannot be determined as cast in favor of a particular candidate due to the vote being cast only for the common name of candidates, the vote is presumed to have been cast in favor of the legitimate candidate and is not considered stray in order to "save" said vote, pursuant to Section 211 of the OEC.[38] Section 211 of the OEC provides that a vote is presumed valid, unless there is clear and good reason to justify its rejection. On the other hand, "crediting of votes" is the transfer of the votes cast for the nuisance candidate to the tally of votes for the legitimate candidate with the same name as the nuisance candidate, i.e., the second type of nuisance candidates.[39]

Thus, in the "counting of votes" rule, the votes as reflected on the face of the ballots are merely given effect by counting them, while in the "crediting of votes" rule, the votes cast in favor of the nuisance candidate are transferred to the legitimate candidate.

In *Santos v. COMELEC*,[40] the Court explained the jurisprudence involving petitions for disqualification of nuisance candidates and the effect on the votes cast for the nuisance candidate:

The Court has resolved several petitions involving cases where the COMELEC declared a nuisance candidate before and after the elections.

In *Bautista v. COMELEC*..., the case involved the disqualification of Edwin "Efren" Bautista as a nuisance candidate for the position of mayor in Navotas because his name was confusingly similar to Cipriano "Efren"

Bautista and he had no financial means to support a campaign. Several days before the election or on April 30, 1998, the COMELEC issued a resolution declaring Edwin Bautista as a nuisance candidate and ordered the cancellation of his [Certificate of Candidacy]. A motion for reconsideration was filed and it was only resolved by the COMELEC on May 13, 1998, or after the elections. Thus, a separate tally for "EFREN BAUTISTA," "EFREN," "E. BAUTISTA," and "BAUTISTA" were made by the municipal board of canvassers. Cipriano Bautista filed a petition to declare illegal the proceedings of the municipal board of canvassers, but, it was denied by the COMELEC stating that the separate tallies should be considered as stray votes.

On appeal, the Court reversed the COMELEC. It ruled that the separate tallies were made to remedy any prejudice that may be caused by the inclusion of a potential nuisance candidate. Such inclusion was brought about by technicality, specifically Edwin Bautista's filing of a motion for reconsideration, which prevented the April 30, 1998 resolution from becoming final at that time. Ideally, the matter should have been resolved with finality prior to election day. Its pendency on election day exposed the evils brought about by the inclusion of a nuisance candidate.

The Court further held therein that the votes separately tallied were not stray votes. It emphasized that a stray vote is invalid because there is no way of determining the real intention of the voter. In that case, however it was clear that the votes for Edwin "Efren" Bautista were actually intended by the electorate for Cipriano "Efren" Bautista, thus, the votes for Edwin Efren Bautista should be credited in favor of Cipriano "Efren" Bautista. The Court also underscored that: As we said earlier, the instant petition is laden with an issue which involves several ramifications. Matters tend to get complicated when technical rules are strictly applied. True it is, the disqualification of Edwin Bautista was not yet final on election day. However, it is also true that the electorate of Navotas was informed of such disqualification. The voters had constructive as well as actual knowledge of the action of the COMELEC delisting Edwin Bautista as a candidate for mayor. Technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself, as in this case.

Similarly, *Martinez III v. House of Representatives Electoral Tribunal (Martinez III)* involved a petition to declare Edilito C. Martinez a nuisance candidate for the position of representative in the fourth legislative district of Cebu because his name was confusingly similar with Celestino A. Martinez III. The COMELEC rendered a decision declaring Edilito Martinez as a nuisance candidate only on June 12, 2007, or almost one (1) month after the elections. Thus, the jurisdiction regarding the election was transferred to the House of Representatives Electoral Tribunal (HRET) and Celestino Martinez III filed an election protest therein against the winning candidate Benhur Salimbangon. The HRET ruled that the ballots containing "MARTINEZ" and "C. MARTINEZ" should not be counted in favor of Celestino Martinez III because Edilito Martinez was not yet declared a nuisance candidate at the time of the elections.

The Court reversed the HRET and held that the votes for "MARTINEZ" and "C. MARTINEZ" should have been counted in favor of Celestino Martinez III because such votes could not have been intended for Edilito C. Martinez, who was declared a nuisance candidate in a final judgment. It emphasized that the candidacy of Edilito C. Martinez was obviously meant to confuse the electorate. The Court also stated that Celestino Martinez III should not have been prejudiced by the COMELEC's lethargy in resolving the nuisance case. It was explained therein:

Ensnared in our jurisprudence is the well-founded rule that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. An election protest is imbued with public interest so much so that the need to dispel uncertainties which becloud the real choice of the people is imperative. The prohibition against nuisance candidates is aimed precisely at preventing uncertainty and confusion in ascertaining the true will of the electorate. Thus, in certain situations as in the case at bar, final judgments declaring a nuisance

candidate should effectively cancel the certificate of candidacy filed by such candidate as of election day. Otherwise, potential nuisance candidates will continue to put the electoral process into mockery by filing certificates of candidacy at the last minute and delaying resolution of any petition to declare them as nuisance candidates until elections are held and the votes counted and canvassed.

Recently, in *Dela Cruz v. COMELEC* (*Dela Cruz*), a petition to declare Aurelio Dela Cruz a nuisance candidate for the position of vice-mayor of Bugasong, Antique was filed because his name was confusingly similar with the name of Casimir Dela Cruz and the former did not have the financial capacity to campaign for the elections. On January 29, 2010, the COMELEC declared Aurelio Dela Cruz a nuisance candidate, however, his name was not deleted in the certified list of candidates and he still received votes during the automated elections. In its Resolution No. 8844, the COMELEC stated that the votes for Aurelio Dela Cruz, a nuisance candidate, should be considered stray. Thus, Casimir Dela Cruz filed a petition for certiorari before the Court to annul and set aside the said resolution.

In reversing the COMELEC, the Court ruled that even in the automated elections, the votes for the nuisance candidate should still be credited to the legitimate candidate. It held that the previous COMELEC Resolution No. 4116 — declaring that the vote cast for a nuisance candidate, who had the same surname as the legitimate candidate, should be counted in favor of the latter — remains good law. The Court underscored that:

[. . .] the possibility of confusion in names of candidates if the names of nuisance candidates remained on the ballots on election day, cannot be discounted or eliminated, even under the automated voting system especially considering that voters who mistakenly shaded the oval beside the name of the nuisance candidate instead of the bona fide candidate they intended to vote for could no longer ask for replacement ballots to correct the same.

Finally, upholding the former rule in Resolution No. 4116 is more consistent with the rule well-ensconced in our jurisprudence that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. Indeed, as our electoral experience had demonstrated, such infirmities and delays in the delisting of nuisance candidates from both the Certified List of Candidates and Official Ballots only made possible the very evil sought to be prevented by the exclusion of nuisance candidates during elections.

Accordingly, the Court consistently declared that the votes cast for the nuisance candidate must be credited in favor of the legitimate candidate with a similar name to give effect to, rather than frustrate, the will of the voters even if the declaration of the nuisance candidate became final only after the elections.^[41] (Emphasis supplied, citations omitted)

Thus, the crediting of votes rule is applied to the second type of nuisance candidate, i.e., the candidate who runs to cause confusion among the voters by the similarity of names with that of other registered candidates. In prevailing jurisprudence, the Court has consistently ruled that the votes cast for a nuisance candidate who has a confusingly similar name to a legitimate candidate should be credited in favor of the latter.

However, an examination of the OEC shows that the crediting of votes rule finds no basis in law.

Primarily, Section 69 of the OEC only provides the following effect of declaring a nuisance candidate—the refusal to give due course or the cancellation of the COC of the nuisance candidate.

SECTION 69. Nuisance candidates. – The Commission may, *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which

clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

Further, Section 211 of the OEC provides the rules in reading and appreciation of ballots:

SECTION 211. Rules for the appreciation of ballots. – In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voters' will:

....

5. When on the ballot is written a single word which is the first name of a candidate and which is at the same time the surname of his opponent, the vote shall be counted in favor of the latter.

....

17. Where there are two or more candidates voted for in an office for which the law authorizes the election of only one, the vote shall not be counted in favor of any of them, but this shall not affect the validity of the other votes therein.

....

19. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot.

....

24. Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray and shall not be counted but it shall not invalidate the ballot. (Emphasis supplied).

Following the express wording of the OEC, it is clear that the crediting of votes cast from the nuisance candidate to a legitimate candidate finds no support therein. To recall, the effect of declaring a nuisance candidate under Section 69 is the cancellation of his or her COC and, in turn, such person is deemed to have never filed a COC, or never became a candidate. Following paragraphs 19 and 24 of Section 211 above, if the votes are cast in favor of a nuisance candidate, i.e., a person who has not filed a COC or has been disqualified by final judgment, then such votes cast are considered stray votes.

Further, an examination of prevailing jurisprudence, as cited in Santos,[42] shows that the current rule on crediting of votes is founded on a misapplication of the doctrines laid down in *Bautista v. COMELEC*[43] and *Martinez III v. House of Representatives Electoral Tribunal*.[44]

In *Bautista*, the Court reversed the COMELEC in ruling that the votes cast in favor of Edwin "Efren" Bautista were considered stray votes, or such votes where the real intention of the voter cannot be determined. Instead, the Court ruled that it was duly established that the voters, in writing "EFREN BAUTISTA," "EFREN," "E. BAUTISTA," and "BAUTISTA" on the segregated stray ballots intended to vote for Cipriano "Efren" Bautista (Efren) considering that not only has he been known to use that name when he ran previously from 1962 to 1980, but the electorate of Navotas had knowledge prior to the elections that Edwin has been disqualified. Thus, the Court counted the votes in Cipriano's favor and did not consider the votes as stray, but as votes originally cast in favor of Efren.

In *Martinez III*, Celestino A. Martinez (Celestino) filed a petition to declare Edilito C. Martinez (Edilito) as a nuisance candidate and claimed that the ballots with only "MARTINEZ" or "C. MARTINEZ" should be counted

in his favor. Acting on his petition, the House of Representatives Electoral Tribunal (HRET) considered these votes as stray votes and did not count them following Section 211(1) of the OEC. Applying Bautista, the Court reversed the HRET and counted the votes in favor of Celestino, but for the reason that Edilito had been disqualified, and thus, was never a candidate to begin with. So, all votes for "Martinez" should be counted in favor of the sole Martinez in the roster of candidates.

It is, therefore, apparent that Bautista and Martinez III involved cases of counting of votes, as opposed to crediting of votes, as the votes clearly appearing on the ballots were merely given effect by counting them, in favor of the candidate written on the ballot. These cases involve nuisance and legitimate candidates who have confusingly similar names, where the votes cast in favor of the nuisance candidates were not considered stray, but were counted in favor of the legitimate candidate because the OEC mandates that the declaration of a candidate as a nuisance candidate has the effect of cancelling his or her COC on the day of the elections. The nuisance candidate is thus, deemed to have never been a candidate.

Thus, under current jurisprudence, in cases where a nuisance candidate is declared as such, whose COC is annulled or not given due course, the following are the corresponding effects on the kinds of votes reflected in the ballot:

- The votes clearly cast for the legitimate candidate are counted in favor of the legitimate candidate;
- The votes clearly cast for the nuisance candidate, whose COC is cancelled or not given due course, are considered stray votes; and
- The votes cast for the common or similar name of the nuisance and legitimate candidates, or such votes wherein the intent of the voter cannot be determined on the face of the ballot, are counted in favor of the legitimate candidate, as no other candidate is deemed to have run for that position as of the day of the election.

Counting the votes of a nuisance candidate under an Automated Election System

In the May 2010 Elections, the country adopted the Automated Election System (AES) using the Precinct Count Optical Scan (PCOS), under which ballots contain the printed full names of candidates.[45] Under the AES, official ballots are used, containing "the pre-printed names of all candidates and with ovals corresponding to each of the names printed [wherein] the ovals are the spaces where voters express their choice through marking or shading using a marking pen." [46] Thus, as opposed to the manual system of elections where voters had to handwrite the names of the candidates they vote for on the blank ballots, under the AES, the voters will simply shade the oval next to the printed name of their chosen candidate.

Further, under the AES, PCOS machines, which later became Vote-Counting Machines (VCMs), are used to count and tally the votes automatically based on the shaded oval in the ballot. Under the manual system of elections, the counting and canvassing of votes were done manually by the Board of Election Inspectors. Thus, under the AES, with the removal of the human intervention in the counting and canvassing of ballots, VCMs will determine the corresponding votes garnered by a candidate based only on the shading of the ovals. With the AES, election inspectors no longer assess whether votes are "vague" as the machines merely count the shaded ovals to count a vote. Effectively, then, the third kind of vote in nuisance candidates cases, i.e., vague votes, is no longer applicable under the AES.

In *Dela Cruz v. COMELEC*, [47] the COMELEC made the following distinctions between a manual system of elections and the AES:

On the claim of equal protection violation, COMELEC contends that there is a substantial distinction between a manual election where Resolution No. 4116 applies, and an automated election governed by Resolution No. 8844. While the votes for the nuisance candidate were not considered stray but counted in favor of the [bona fide] candidate, this is no longer the rule for automated elections. COMELEC cites the following factors which changed the previous rule: (1) the official ballots in automated elections now contain the full names of the official candidates so that when a voter shaded an oval, it was presumed that he carefully read the name adjacent to it and voted for that candidate, regardless of whether said candidate was later declared disqualified or nuisance; (2) since the names of the candidates are clearly printed on the ballots, unlike in manual elections when these were only listed in a separate sheet of paper attached to the ballot secrecy folder, the voter's intention is clearly to vote for the candidate corresponding to the shaded oval; (3) the rules on appreciation of ballots under [Article XVIII, Section 211] of the Omnibus Election Code apply only to elections where the names of candidates are handwritten in the ballots; and (4) with the use of the automated election system where the counting of votes is delegated to the Precinct Count Optical Scan (PCOS) machines, pre-proclamation controversies, including complaints regarding the appreciation of ballots and allegations of misreading the names of the candidates written, were flaws which the automation rectified. Aside from being germane to the purpose of our election laws, Resolution No. 8844 is not limited to existing conditions as it is applicable to all persons of the same class even in succeeding elections, and covered all disqualified and nuisance candidates without distinction.[48] (Emphasis supplied, citations omitted)

The case of Dela Cruz is the first instance where the Court had the opportunity to apply the doctrines in Bautista and Martinez III to cases involving the AES.

In Dela Cruz, the Court upheld as good law COMELEC Resolution No. 4116 which provides that votes cast for a nuisance candidate declared as such, specifically for having the same surname as a legitimate candidate, shall not be considered stray but shall be counted in favor of the legitimate candidate.[49] Thus, the Court applied Bautista and held that the possibility of confusion in the names of candidates remained even under the AES:

As far as COMELEC is concerned, the confusion caused by similarity of surnames of candidates for the same position and putting the electoral process in mockery or disrepute, had already been rectified by the new voting system where the voter simply shades the oval corresponding to the name of their chosen candidate. However, as shown in this case, COMELEC issued Resolution No. 8844 on May 1, 2010, nine days before the elections, with sufficient time to delete the names of disqualified candidates not just from the Certified List of Candidates but also from the Official Ballot. Indeed, what use will it serve if COMELEC orders the names of disqualified candidates to be deleted from list of official candidates if the official ballots still carry their names?

We hold that the rule in Resolution No. 4116 considering the votes cast for a nuisance candidate declared as such in a final judgment, particularly where such nuisance candidate has the same surname as that of the legitimate candidate, not stray but counted in favor of the latter, remains a good law. As earlier discussed, a petition to cancel or deny a COC under Section 69 of the OEC should be distinguished from a petition to disqualify under Section 68. Hence, the legal effect of such cancellation of a COC of a nuisance candidate cannot be equated with a candidate disqualified on grounds provided in the OEC and Local Government Code.

Moreover, private respondent admits that the voters were properly informed of the cancellation of COC of Aurelio because COMELEC published the same before election day. As we pronounced in Bautista, the voters' constructive knowledge of such cancelled candidacy made their will more determinable, as it is then more logical to conclude that the votes cast for Aurelio could have been intended only for the legitimate candidate, petitioner. The possibility of confusion in names of candidates if the names of nuisance candidates remained on the ballots on election day, cannot be discounted or eliminated, even under the automated voting system especially considering that voters who mistakenly shaded the oval beside the name of the nuisance candidate instead of the bona fide candidate they intended to vote for could no longer ask for replacement ballots to correct the same.

Finally, upholding the former rule in Resolution No. 4116 is more consistent with the rule well-ensconced in our jurisprudence that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. Indeed, as our electoral experience had demonstrated, such infirmities and delays in the delisting of nuisance candidates from both the Certified List of Candidates and Official Ballots only made possible the very evil sought to be prevented by the exclusion of nuisance candidates during elections.[50] (Emphasis supplied, citations omitted)

In *Santos*, the Court affirmed the ruling in *Dela Cruz* and held that the votes cast in favor of nuisance candidates shall be credited in favor of the legitimate candidate with a similar name, founded on the principle that this recourse will give effect to the will of the voters rather than frustrate the same.[51]

In *Zapanta v. COMELEC*,[52] the Court upheld the *Santos* ruling and clarified the distinction in the crediting of votes cast in favor of a nuisance candidate to a legitimate candidate, particularly for a multi-slot office:

With the recent promulgation of *Santos*[,] this Court clarified how the votes of nuisance candidates in a multi-slot office should be treated:

In a multi-slot office, such as membership in the Sangguniang Panlungsod, a registered voter may vote for more than one candidate. Hence, it is possible that the legitimate candidate and nuisance candidate, having similar names, may both receive votes in one ballot. The Court agrees with the OSG that in that scenario, the vote cast for the nuisance candidate should no longer be credited to the legitimate candidate; otherwise, the latter shall receive two votes from one voter.

Therefore, in a multi-slot office, the COMELEC must not merely apply a simple mathematical formula of adding the votes of the nuisance candidate to the legitimate candidate with the similar name. To apply such simple arithmetic might lead to the double counting of votes because there may be ballots containing votes for both nuisance and legitimate candidates.

As properly discussed by the OSG, a legitimate candidate may seek another person with the same surname to file a candidacy for the same position and the latter will opt to be declared a nuisance candidate. In that scenario, the legitimate candidate shall receive all the votes of the nuisance candidate and may even receive double votes, thereby, drastically increasing his odds.

At the same time, it is also possible that a voter may be confused when he reads the ballot containing the similar names of the nuisance candidate and the legitimate candidate. In his eagerness to vote, he may shade both ovals for the two candidates to ensure that the legitimate candidate is voted for. Similarly, in that case, the legitimate candidate may receive two (2) votes from one voter by applying the simple arithmetic formula adopted by the COMELEC when the nuisance candidate's COC is cancelled.

Thus, to ascertain that the votes for the nuisance candidate is accurately credited in favor of the legitimate candidate with the similar name, the COMELEC must also inspect the ballots. In those ballots that contain both votes for nuisance and legitimate candidate, only one count of vote must be credited to the legitimate candidate.

While the perils of fielding nuisance candidates against legitimate candidates cannot be overemphasized, it must also be guaranteed that the votes of the nuisance candidate are properly and fairly counted in favor of the said legitimate candidate. In that manner, the will of the electorate is upheld.

Here, the *Santos* doctrine must be applied: the votes for petitioner alone should be counted in favor of private respondent; if there are votes for both petitioner and private respondent in the same ballot, then only one (1) vote should be counted in the latter's favor. This will not only discourage nuisance candidates, but will also prevent the disenfranchisement of voters.[53] (Emphasis supplied, citations omitted)

Considering the foregoing jurisprudence, which applied the Bautista and Martinez III doctrines in the context of the AES, the Court deems that it is high time to revisit these pronouncements and clarify their applicability under the AES.

As discussed above, careful examination of Bautista and Martinez III shows that there was, in fact, no crediting of votes under the manual system of elections, i.e., the transfer of the votes cast for the nuisance candidates to the tally of votes of the legitimate candidate with the same or similar name as the nuisance candidate. Instead, the votes clearly cast for the legitimate and nuisance candidates are counted correspondingly in their favor, but for nuisance candidates, their votes are considered stray, pursuant to Section 211 of the OEC.

As for vague votes cast for the common or similar names of the nuisance and legitimate candidates, under the manual system of elections, the same are counted in favor of the legitimate candidates. However, under the AES, there can no longer be vague votes precisely because the voting machines will base its count on the ovals shaded in the ballots. Thus, as opposed to the manual system of elections where the voters had to handwrite the name of their chosen candidates, there should no longer be any room for confusion under the AES. In other words, votes cast for nuisance candidates, who have been declared as such, should be considered stray and not credited or transferred to legitimate candidates, consistent with the Court's pronouncements in Bautista and Martinez III.

The "crediting of votes" rule runs afoul of the fundamental principles of our democratic and republican State, and the clear letter of the law

It bears stressing that the voice of the sovereign people must be respected and, in elections, the safeguarding of the will of the electorate must always be paramount.

In *Tolentino v. COMELEC*,^[54] the Court reiterated the fundamental role of the electoral exercise in our democracy, thus:

[T]he consistent rule has been to respect the electorate's will and let the results of the election stand, despite irregularities that may have attended the conduct of the elections. This is but to acknowledge the purpose and role of elections in a democratic society such as ours, which is: [T]o give the voters a direct participation in the affairs of their government, either in determining who shall be their public officials or in deciding some question of public interest; and for that purpose all of the legal voters should be permitted, unhampered and unmolested, to cast their ballot. When that is done and no frauds have been committed, the ballots should be counted and the election should not be declared null. Innocent voters should not be deprived of their participation in the affairs of their government for mere irregularities on the part of the election officers, for which they are in no way responsible. A different rule would make the manner and method of performing a public duty of greater importance than the duty itself.^[55] (Emphasis supplied, citations omitted)

After all, a democracy is only as secure as its elections. It is only as resilient as the faith of its people in its mechanisms for suffrage.^[56]

With the adoption of the AES, the people's choices are better expressed through the shading of the oval representing their vote. Each candidate is also assigned a number pertaining to the order of their arrangement on the ballot and located beside the oval. All these implements provide a largely different environment to the manual system of elections. It cannot simply be held that voters will just be as vulnerable to confusion distinguishing between legitimate and nuisance candidates, as before. Nor will that confusion, if existing, be easily translated to the shading of the ballot. Therefore, to maintain the idea that, even in the automated system, the people can still get easily confused by the similar sounding names of candidates and mistakenly vote for their unintended choice

is to perpetuate the caricature that the Filipino voter is illiterate.

Similarly, a rule that is without unequivocal basis in law and supplants people's choices on the basis of perceived errors in the way they had cast their vote usurps the very sovereign will that the rule intends to protect.

After all, it is the duty of the Court to apply the law as it is worded. This is the plain meaning rule, as expressed in the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.[57]

In *Victoria v. COMELEC*,[58] the Court explained, thus:

Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the maxim, *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.[59] (Citation omitted)

Moreover, under current jurisprudence, the process by which other candidates are treated as mere bystanders and unduly prevented from participating in proceedings for the declaration of a nuisance candidate and the subsequent recount of votes unjustly prevents them from enjoying due process of law to which they are entitled because, ultimately, the effect could be the annulment of their proclamation as a winner and a resultant loss in the tally of votes, as what happened to Amutan here.

In *Santos*, the Court pronounced that only the nuisance candidate and the legitimate candidate have legal personality in the appropriate action as they would stand to be benefited or injured; while other candidates may be affected by the result of the recount, the votes they received will not be changed:

Thus, when a verified petition for disqualification of a nuisance candidate is filed, the real parties-in-interest are the alleged nuisance candidate and the interested party, particularly, the legitimate candidate. Evidently, the alleged nuisance candidate and the legitimate candidate stand to be benefited or injured by the judgment in the suit. The outcome of the nuisance case shall directly affect the number of votes of the legitimate candidate, specifically, whether the votes of the nuisance candidate should be credited in the former's favor.

Glaringly, there was nothing discussed in *Timbol* that other candidates, who do not have any similarity with the name of the alleged nuisance candidate, are real parties-in-interest or have the opportunity to be heard in a nuisance petition. Obviously, these other candidates are not affected by the nuisance case because their names are not related with the alleged nuisance candidate. Regardless of whether the nuisance petition is granted or not, the votes of the unaffected candidates shall be completely the same. Thus, they are mere silent observers in the nuisance case.[60] (Emphasis supplied, citations omitted)

In the case of *Teves v. COMELEC*,[61] the winning candidate similarly claimed that his right to due process was violated by being left out of the proceedings pertaining to the declaration of a nuisance candidate, and the succeeding recount of votes, in which he eventually lost. But the Court, in *Teves*, reiterated that the status of a winning candidate in a petition for declaration of a nuisance candidate is merely that of an observer.[62] Not being a real party-in-interest, the winning candidate's non-participation in the COMELEC proceedings to declare a nuisance candidate will not affect the results. The number of votes the winning candidate has garnered will remain the same, with the COMELEC proceeding merely on the appreciation of the votes cast by the voter and determine whether all of the votes obtain by the declared nuisance candidate will have to be credited in favor of the declared real candidate.[63]

However, the Court in *Uy, Jr. v. COMELEC*,[64] adopting the ponente's views in that case, has clarified that

while candidates who are not real parties-in-interest lack legal standing, they are however, entitled to be heard should their proclamation be affected, thus:

In *Santos v. COMELEC*, the Court held that candidates who have no similarity in the name of the nuisance candidate are not real parties in interest and are mere "silent observers" in the nuisance case. However, nothing in *Santos* allows the suspension of proclamation of these silent observers without observance of due process of law. Evidently, the suspension order directly affected Roberto being the candidate who garnered the highest number of votes and who must be proclaimed without delay. As such, the [COMELEC] should have at the very least notified and heard Roberto. Otherwise, the proclamation of a candidate may be unjustly suspended simply because of the pendency of the nuisance case. Worse, the manner of informing the PBOC of the advance copy of the suspension order led it to *motu proprio* suspend Roberto's proclamation. Taken together, the [COMELEC] gravely abused its power and violated the rules on basic fairness when it suspended the proclamation of Roberto without giving him the opportunity to be heard.[65] (Emphasis supplied, citations omitted)

What *Uy* recognizes is that the current process of sidelining winning candidates in nuisance candidacy cases violates the due process of law. Yet, the winning candidates may directly be prejudiced by the results of such determination. If in the *Uy* case, a candidate whose proclamation was suspended was deemed to have the right to be heard, what more in this case when the petitioner had already been proclaimed as a winner, and his proclamation has been threatened to be annulled by the assailed Writ.

The Court must, therefore, now clarify that in the application of guidelines on the crediting of votes for nuisance candidates under the AES, the pronouncements in *Bautista* and *Martinez III* are no longer controlling.

Thus, under the AES, in cases where a nuisance candidate is declared as such, the following are the corresponding effects on the kinds of votes reflected in the ballot:

- The votes clearly cast for the legitimate candidate are counted in favor of the legitimate candidate; and
- The votes clearly cast for the nuisance candidate, whose COC is cancelled or not given due course, are considered stray votes and shall not be counted in favor of any other candidate.

The victory of Amutan should be upheld

Given the foregoing disquisition, the Court must now apply the rule laid down in the present case.

In June 24, 2022, the COMELEC First Division declared Poblete a nuisance candidate and his COC was denied due course and cancelled. The votes cast for Poblete should, therefore, now be considered stray and should not be credited in favor of any other candidate. Resultantly, the assailed Writ of Execution, which cancelled the victory of Belamide and Amutan and ordered the crediting of votes for Poblete in favor of Crisostomo, is invalid.

Moreover, the declaration by the SPBOC which pronounced Belamide and Crisostomo as winners, arising from the invalid Writ of Execution, should also be annulled and set aside.

Ultimately, the proclamation of Belamide and Amutan as winners for the two seats for board members representing the Fifth District of the Province of Cavite, having garnered the two highest votes, should be reinstated.

Proper voter education is central to solutions in the political processes beyond judicial reach

As a final note, the Court echoes the potent words of Associate Justice Alfredo Benjamin S. Caguioa that in the exercise of the people's right to suffrage, upholding the will of the electorate takes center stage as against deterring nuisance candidates from joining the race.

To be true, the harms brought about by machinations involving nuisance candidates continues. It is also important to emphasize that the threat to the fairness and integrity of our elections remains real and imminent, not just from political factions within the country, but also from foreign agents who wish to harm the country's national interest. The Court shares in the responsibility to ensure that the electoral system is not vulnerable to manipulation and sabotage. However, this duty must conform to Constitutional contours and those guidelines established by the election laws enacted by Congress.

In this regard, electoral education, as eloquently forwarded by Justice Caguioa, should inhabit the approach of the political branches of the State. It is through a recognition of the people's needs, values and choices, and a genuine approach to empower the electorate that the ills of unfair electoral practices may be mitigated. Otherwise, a continuous stretching of judicial interventions in the guise of well-intentioned voter protection may prove elitist, or even short-sighted, supplanting people's votes for the wisdom of the courts, and ultimately, undemocratic.

ACCORDINGLY, the Petition is GRANTED. The Writ of Execution, dated March 16, 2023, for the COMELEC Resolution in SPA No. 21-002 (DC), dated August 16, 2022, is declared INVALID and ANNULLED.

The Certificate of Canvass of Votes and Proclamation of Winning Candidate for the Position of Member, Sangguniang Panlalawigan Fifth District of Cavite issued by the Special Provincial Board of Canvassers on September 26, 2023 is similarly declared VOID.

The proclamation of Aidel Paul Belamide and Marcos "Macoy" Cabrera Amutan as winners for the two seats for board members representing the Fifth District of the Province of Cavite, having garnered the two highest votes, is UPHELD.

SO ORDERED.

Gesmundo, C.J., Inting, Zalameda, Gaerlan, Rosario, Dimaampao, Marquez, and Villanueva, JJ., concur.

Leonen,[*] SAJ. and Caguioa,[*] J., see separate concurring opinion.

Hernando,**] J., I join the dissent of Justice Lopez.

Lazaro-Javier,**] J., dissent.

Lopez,***] J., on official leave but left a dissenting opinion.

Kho, Jr.,****] J., on official business.

[*] With separate concurring opinion.

**] Dissenting.

***] On official leave but left a dissenting opinion.

****] On official business.

[1] Rollo, pp. 3-45.

[2] Id. at 58-61. Penned by Presiding Commissioner Socorro B. Inting of the First Division, Commission on Elections.

[3] Id. at 11.

[4] Id.

[5] Id. at 12.

[6] Id.

[7] Id.

[8] Id. at 56-57.

[9] Id. at 13-14.

[10] Quoted in the Writ of Execution in SPA No. 21-002 (DC), rollo, p. 58.

[11] Rollo, p. 59.

[12] Id. at 59-60.

[13] Id. at 6.

[14] Id. at 16.

[15] Id. at 35.

[16] Id. at 36.

[17] Id. at 65-A-65-B.

[18] Id. at 448-558.

[19] Id. at 502-503.

[20] Id. at 535-537.

[21] Id. at 535.

[22] Id. at 536.

[23] Id. at 16.

[24] Id. at 223-248.

[25] Id. at 229-230.

[26] Id. at 249-284.

[27] Id. at 255, 262-263, 271.

[28] Id. at 269-270, 274.

[29] Id. at 272.

[30] Id. at 560.

[31] Id. at 535-537; See Zacarian Sarao, Comelec names new Cavite 5th district provincial board member, PHIL. DAILY INQUIRER, September 26, 2023, available at <https://newsinfo.inquirer.net/1837119/comelec-names-new-cavite-5th-district-sangguniang-panlalawigan-member> (last accessed on February 20, 2024); Victoria Tulad, Comelec proclaims new Cavite board member, ABS-CBN NEWS, September 26, 2023, available at

<https://news.abs-cbn.com/news/09/26/23/comelec-proclaims-new-cavite-board-member> (last accessed on February 20, 2024); GMA Integrated News, Comelec names new Cavite provincial board member, GMA NEWS ONLINE, September 26, 2023, available at <https://www.gmanetwork.com/news/topstories/regions/883355/comelec-names-new-cavite-provincial-board-member/story/> (last accessed on February 20, 2024); Dennis Abrina. 2022 election winner in Cavite proclaimed, THE MANILA TIMES, September 28, 2023, available at <https://www.manilatimes.net/2023/09/28/regions/2022-election-winner-in-cavite-proclaimed/1912102> (last accessed on February 20, 2024).

[32] See *National Press Club of the Philippines v. Commission on Elections*, 942 Phil. 271, 276 (2023) [Per J. Rosario, En Banc].

[33] 754 Phil. 578 (2015) [Per J. Leonen, En Banc].

[34] *Id.* at 584-585.

[35] *De Alban v. COMELEC*, 921 Phil. 524 (2022) [Per J. Lopez, M., En Banc].

[36] *Uy, Jr. v. COMELEC*, 945 Phil. 446, 473-474 (2023) [Per J. Lopez, M., En Banc].

[37] *Id.* at 474.

[38] See *Bautista v. COMELEC*, 359 Phil. 1, 16-17 (1998) [Per J. Melo, En Banc].

[39] *Dela Cruz v. COMELEC*, 698 Phil. 548, 568-569 (2012) [Per J. Villarama, En Banc].

[40] 839 Phil. 672 (2018) [Per J. Gesmundo, En Banc].

[41] *Id.* at 689-693.

[42] *Id.*

[43] 359 Phil. 1 (1998) [Per J. Melo, En Banc].

[44] 624 Phil. 50 (2010) [Per J. Villarama, Jr., En Banc].

[45] See COMELEC Resolution No. 8804, *In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in connection with the May 10, 2010 Elections*.

[46] *Id.*, Rule 2, sec. 1(d).

[47] 698 Phil. 548 (2012) [Per J. Villarama, Jr., En Banc].

[48] *Id.* at 557.

[49] *Id.* at 568.

[50] *Id.* at 567-569.

[51] *Santos v. COMELEC*, 839 Phil. 672, 693 (2018) [Per J. Gesmundo, En Banc].

[52] 848 Phil. 342 (2019) [Per J. Leonen, En Banc].

[53] *Id.* at 362-364.

[54] 465 Phil. 385 (2004) [Per J. Carpio, En Banc].

[55] *Id.* at 410.

[56] Marcos, Jr. v. Robredo, 897 Phil. 1, 32 (2021) [Per J. Leonen, En Banc].

[57] Duterte Youth Party-List v. COMELEC, 958 Phil. 507, 619 (2024) [Per J. Rosario, En Banc].

[58] 299 Phil. 263 (1994) [Per J. Quiason, En Banc].

[59] Id. at 268.

[60] Santos v. COMELEC, 839 Phil. 672, 696 (2018) [Per J. Gesmundo, En Banc].

[61] 936 Phil. 205 (2023) [Per J. Lopez, J., En Banc].

[62] Id. at 236.

[63] Id. at 238.

[64] 945 Phil. 446 (2023) [Per J. Lopez, M., En Banc].

[65] Id. at 471.

SEPARATE CONCURRING OPINION

LEONEN, SAJ.:

I concur in the result that the Petition must be granted and that the assailed Writ of Execution dated March 16, 2023 issued by the Commission on Elections (COMELEC) in SPA No. 21-002(DC) (Assailed Writ) be annulled.[1] I likewise agree with the ruling that, whether under the manual or automated system of elections, votes clearly cast for a legitimate candidate shall be counted in that candidate's favor.[2] Conversely, votes clearly cast in favor of a nuisance candidate, whose certificate of candidacy is cancelled or not given due course, must be considered stray votes and not credited to any candidate.[3] A contrary ruling—that is, crediting of votes of a nuisance candidate in favor of another—has no statutory basis and would amount to judicial legislation.[4]

In this connection, I join Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) in clarifying the proper application of existing jurisprudence, which developed under the manual system of elections. Under such jurisprudence:

(a)

Votes clearly cast for a legitimate candidate shall be counted in their favor;[5]

(b)

Votes cast for a common or similar name to a nuisance and another registered candidate, or vague votes—or those cast for the common or similar name where the voter's intent cannot be determined from the face of the ballot—shall be credited to the legitimate candidate;[6] and

(c)

Votes cast for a nuisance candidate whose candidacy was filed merely to mock or put in disrepute the election process, or whose acts clearly demonstrate a lack of bona fide intention to run for office and thereby prevent a faithful determination of the electorate's true will, shall not be considered stray votes but instead credited to the legitimate candidate.[7] This stands in contrast to the ponencia's statement that votes clearly cast for a nuisance candidate whose certificate of candidacy is cancelled or not given due course shall be considered stray votes.[8]

This doctrine, however, arose within the context of manual appreciation of ballots, where voters wrote candidate

names by hand and election inspectors were required to discern intent from the writing.[9] It must be emphasized that such principles cannot automatically be applied to the Automated Election System (AES) that is now in effect.[10]

With the adoption of the AES pursuant to Republic Act No. 9369, the electorate is provided with machine-readable ballots that clearly contain—printed thereon—each candidate's first name or name by which they are commonly known, their last name, and their political party affiliation.[11] In this system, the voter merely shades the oval corresponding to the candidate's name.[12] The machine then reads these marks automatically and tabulates the results. This technological change has effectively eliminated the ambiguity that once necessitated the ballot appreciation rules under Section 211 of the Omnibus Election Code. As astutely stated in the ponencia, voters cannot simply be held to be just be as vulnerable to confuse legitimate and nuisance candidates, as in the manual system of elections; that confusion, if existing, cannot be easily translated to the shading of the ballot.[13] As such, the AES has rendered obsolete the concept of vague votes, or those from which the voter's intent cannot be determined from the face of the ballot.[14]

Nevertheless, certain portions of Section 211 of the Omnibus Election Code remain applicable even under the AES, particularly those which do not depend on manual interpretation. Specifically:

(a)

Where only the first name or surname of a candidate is written, such vote shall be counted in their favor, if there is no other candidate with the same first name or surname running for the same office;[15] and

(b)

Any vote in favor of a person who has not filed a certificate of candidacy shall be considered as a stray vote, although it shall not invalidate the whole ballot.[16]

For purposes of Item (b) above, as stated by the ponencia, the effect of declaring a nuisance candidate under Section 69 is the cancellation of their certificate of candidacy.[17] Consequently, such person is deemed never to have filed a certificate of candidacy.[18] The phrase "a person who has not filed a certificate of candidacy" thus includes a nuisance candidate,[19] and a vote for such person is a stray vote.[20]

Additionally, as correctly observed by Justice Caguioa, a closer reading of the Omnibus Election Code reveals that a finding that a person is a nuisance candidate merely authorizes the COMELEC to refuse to give due course to or to cancel the certificate of candidacy of said nuisance candidate.[21] The law does not authorize the COMELEC to credit the votes cast for a nuisance candidate in favor of another, nor to annul the proclamation of duly-elected officials on that basis. For this reason, I agree that the COMELEC First Division acted with grave abuse of discretion when it issued the Assailed Writ. The Assailed Writ went beyond merely declaring Alvie Madlangsakay Poblete a nuisance candidate and canceling his Certificate of Candidacy; it further directed the board of canvassers to annul the proclamation of duly-elected members, and credit Poblete's votes in Francisco Paolo Poblete Crisostomo's favor, among others.[22]

Given the foregoing, I fully agree with the ponencia that the votes for a nuisance candidate cannot be credited to another candidate as this practice of "crediting" has no legal basis[23] and must be revisited.[24] The Omnibus Election Code does not grant the COMELEC or the Court authority to transfer votes from one person to another.[25] To persist in this practice would constitute a form of judicial legislation.

ACCORDINGLY, I vote to GRANT the Petition.

- [1] Ponencia, pp. 24-25.
- [2] Id. at 23.
- [3] Id.
- [4] See J. Caguioa, Separate Concurring Opinion, p. 3. See also ponencia, p. 15.
- [5] J. Caguioa, Separate Concurring Opinion, p. 17.
- [6] Id. at 18. See also ponencia, p. 15.
- [7] Id. at 17-18. See also ponencia, p. 15.
- [8] Ponencia, p. 15.
- [9] See *Bautista v. COMELEC*, 359 Phil. 1 (1998) [Per J. Melo, En Banc]; *Martinez III v. House of Representatives Electoral Tribunal*, 624 Phil. 50 (2010) [Per J. Villarama, En Banc].
- [10] See COMELEC Resolution No. 8804 (2010), In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in connection with the May 10, 2010 Elections.
- [11] See sample ballot in "Look: Comelec releases ballot face for 2022 elections", John Eric Mendoza, INQUIRER.net, January 25, 2022, available at <https://newsinfo.inquirer.net/1544770/look-comelec-releases-ballot-face-for-2022-elections> (last accessed on October 24, 2025).
- [12] Ponencia, pp. 20-21.
- [13] Id.
- [14] Id. at 20. See also J. Caguioa, Separate Concurring Opinion, p. 13.
- [15] OMNIBUS ELECTION CODE, sec. 211(1).
- [16] OMNIBUS ELECTION CODE, sec. 211(19).
- [17] Ponencia, p. 13. See OMNIBUS ELECTION CODE, sec. 69.
- [18] Ponencia, p. 14. See OMNIBUS ELECTION CODE, sec. 69.
- [19] See OMNIBUS ELECTION CODE, sec. 69.
- [20] Ponencia, p. 14.
- [21] J. Caguioa, Separate Concurring Opinion, p. 5. See also OMNIBUS ELECTION CODE, sec. 69, which reads:
- SECTION 69. Nuisance candidates. — The Commission may, motu proprio or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.
- [22] Ponencia, p. 4.
- [23] Id. at 14.

[24] Id. at 8, 19.

[25] See id. at 20.

SEPARATE CONCURRING OPINION

CAGUIOA, J.:

I concur in the ponencia's granting of the Petition for Certiorari and Prohibition (Petition) filed by petitioner Marcos "Macoy" Cabrera Amutan (Amutan) which challenges the Writ of Execution[1] dated March 16, 2023 (assailed WOE) issued by the Commission on Elections (COMELEC) First Division. The assailed WOE was issued in relation to the earlier issued COMELEC Resolution[2] dated June 14, 2022 (June 14, 2022 COM Res) which declared Alvie Madlangsakay Poblete (Poblete) as a nuisance candidate. Poblete earlier filed a Certificate of Candidacy (CoC) for one of the two seats in the Sangguniang Panlalawigan (SP) of the 5[th] District of Cavite in the 2022 National and Local Elections (NLE).

Specifically, the assailed WOE, in light of said June 14, 2022 COM Res, directed the Special Provincial Board of Canvassers (SPBOC) to, among others: (1) annul the proclamation of the SP Members elected, which included Amutan; (2) credit the votes of nuisance candidate Poblete in favor of therein petitioner Francisco Paolo Poblete Crisostomo (Crisostomo); and (3) thereafter proclaim the duly elected SP Members in accordance with the result of the new counting of votes.

I agree that this case presents the perfect platform to revisit the practice of the crediting of votes of nuisance candidates which, as shown hereunder, has always stood on shaky legal grounds and, with the advent of electronic voting in this jurisdiction, has likewise lost any factual or practical basis it may have had under the manual system of elections.

The procedural aspect

I likewise concur that the case is mooted because the 2025 NLE has come to pass and the terms of the 2022 SP Members have now expired.

Nevertheless, jurisprudence shows that courts may still decide a case otherwise moot and academic if it finds that, among others, the case involves a situation of exceptional character and of paramount public interest; the issues raised require the formulation of controlling principles to guide the Bench, the Bar and the public, and the case is capable of repetition yet evading review. All of these circumstances obtain in this case.

There is a need to revisit the crediting of votes rule in nuisance candidate cases, especially under the present Automated Election System (AES).

The action to declare a person a nuisance candidate is laid down in Section 69 of the Omnibus Election Code (OEC) which provides:

SECTION 69. Nuisance candidates. – The Commission may, motu proprio or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. (Sec. 26,

1978 EC)

Thus, a nuisance candidate is a person shown to have no bona fide intention to run for the office for which his or her CoC was filed, and who has committed any of the following acts:

1)

Filing of his or her CoC to put the election process in mockery or disrepute;

2)

Filing of his or her CoC to cause confusion among the voters by the similarity of the names of the registered candidates; or

3)

By other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the CoC has been filed and thus prevent a faithful determination of the true will of the electorate.

The "crediting of votes" rule, under present jurisprudence, is applied to the second kind of a nuisance candidate above. Poblete, the nuisance candidate in the present case, falls under the same class and so consequently, the votes cast in his name were transferred to the legitimate candidate, Crisostomo, who shares a common name with Poblete.

As stated at the outset, this is a good opportunity for the Court — as indeed, it is high time — to revisit this "crediting of votes" rule and finally correct this long-standing, but erroneous jurisprudence, for the following reasons:

1)

This rule lacks basis in law and is, thus, a form of judicial legislation;

2)

The cases which applied this rule in the current AES were resolved upon a wrong understanding of *Bautista v. Commission on Elections*[3] (*Bautista*) and *Martinez III v. House of Representatives Electoral Tribunal*[4] (*Martinez III*) — which cases were all resolved under the manual election system. The misunderstanding was that *Bautista* and *Martinez III* applied the rule of crediting of votes as understood today (votes clearly cast for the nuisance candidate are credited to the legitimate candidate). They did not. Instead, *Bautista* and *Martinez III* counted the votes for the candidates who were clearly voted for in the ballots. Only the vague votes were construed to have been cast for the legitimate candidate;

3)

This "crediting of votes" rule leads to legally flawed consequences in nuisance candidate cases, for instance:

a)

the right to due process of the winning candidate (the one who won in the first counting and canvassing of ballots) is violated because his or her proclamation is annulled or suspended without him or her being accorded prior notice and/or hearing. The lack of due process stems from the treatment of such winning candidate as a "mere observer" to the proceeding between the nuisance candidate and the candidate who questions the nuisance candidate, despite the substantial injury that he or she suffers as a consequence of the nuisance candidate action and the crediting of votes which follows its granting;

b)

it creates a substantial variance between the writ of execution and the decision the writ implements, with the writ of execution adding remedies which are not provided for in the decision, nor even prayed for by the petitioner in the nuisance candidate action; and

c)

the votes cast for the nuisance candidate, despite his CoC being cancelled and denied due course, are given effect by being credited to the legitimate candidate. This counters the basic doctrine that a person whose CoC is cancelled is treated to have never become a candidate, and to have, therefore, never received votes. In short, the nuisance candidate whose CoC is cancelled should not have any valid votes that can be credited to the legitimate candidate;

4)

The "crediting of votes" rule defeats the will of the voter which is clearly reflected in the ballot, and is substituted effectively by the ruling of the Court;

5)

Under the current AES, there can be no more confusion severe enough that would lead a reasonably diligent voter to wrongfully cast his or her vote in favor of another candidate who he or she did not intend to vote for.

6)

The answer to the pernicious practice by unscrupulous politicians of fielding nuisance candidates to cause confusion among voters of another legitimate candidate is not to distort the law in the manner discussed above, but rather to educate the voters to enable them to distinguish the candidates properly using tools such as the "ballot face" released by the COMELEC in advance of every election.

The "crediting of votes" rule has no basis in law.

An examination of Section 69 of the OEC on nuisance candidates readily shows the absence of any language whatsoever that allows the crediting or transfer of votes of a nuisance candidate in favor of the legitimate candidate that the former shares a common name with. The only consequence of a granted nuisance candidate petition provided under Section 69 is that his or her CoC will be cancelled or not given due course. Nothing more.

As regards the treatment of the votes reflected on the ballot, the rules on the construction or "appreciation" of ballots in nuisance candidate cases are laid down in paragraphs (1), (4), (5), (17), (19), and (24) of Section 211[5] of the OEC, which can be summarized as follows:

1)

If the words written on the ballot are surnames of two or more candidates, the votes shall not be counted in favor of any of them, except in favor of the candidate who has been an incumbent for more than a year, if there be any (paragraphs 1, 4 and 17);

2)

An exception to no. 1 above is the case of multi-slot positions wherein the number of candidates sharing the same surnames is equal to the number of such surnames written on the ballot. The votes shall be counted for all of such candidates having the same surnames (paragraph 4); and

3)

Votes cast for a person not having filed a CoC and those disqualified by final judgment shall be strayed, but the ballot shall be valid (paragraphs 19 and 24).

Finally, Section 211 lays down the fundamental rule that must be observed in all cases where ballots must be appreciated — in the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voters' will.

Clearly, the relevant rules on appreciation of ballots do not allow for the transfer of the votes cast for the nuisance candidate to the legitimate candidate. If the votes are clearly cast for the nuisance candidate, then no. 3 above applies in which case the votes are strayed. This is consistent with Section 69 which provides as a consequence of a declaration as a nuisance candidate that his or her CoC is cancelled or not given due course. Per case law, the effect of such cancellation is the treatment of the person concerned as never having filed his CoC or become a candidate.

To give effect to the votes cast for only the common names of the nuisance and legitimate candidate—votes which are therefore vague and do not show the intent of the voter—jurisprudence has construed such votes as having been intended for the legitimate candidate and thus, must be counted accordingly.

"Counting of votes" versus "crediting of votes."

At the outset, there is need to clarify the terms "counting" and "crediting" of votes, as these terms are used in this Separate Concurring Opinion.

Counting of votes merely means the literal act of including the vote in the tally of the candidate voted for based on the face of the ballot. If such vote cannot be determined on the face of the ballot because the votes are cast only for the common names of the parties (vague votes), under the old manual system of elections, the vote is presumed to have been cast for the legitimate candidate in order to "save" the same from being avoided. This is in line with the basic rule laid down in Section 211 that a vote must be presumed valid and doubts should be resolved in favor of such validity so that the vote can be given effect.^[6] To recall, such vote would have otherwise been considered stray under Section 211(4) of the OEC which provides that a ballot cast for names shared by two or more candidates so that it is impossible to determine who was voted for, the ballot shall be strayed or invalidated.

On the other hand, in line with recent jurisprudence, there is crediting or transfer of votes when the votes cast for the nuisance candidate, based on the face of the ballots, are added to the votes of the legitimate candidate having the same name as the nuisance candidate. Crediting thus presupposes that there are votes clearly cast for the nuisance candidate but which were tallied for the legitimate candidate.

The key distinction between counting and crediting of votes is that in the former, the votes as reflected in the ballots are merely given effect, whereas in the latter, the votes as reflected in the ballots are defeated and are substituted with another meaning, i.e., that they were cast for a candidate other than the one whose name is clearly written or shaded in the ballot.

Having laid down such premises, let us examine how votes were merely counted in favor of the candidate voted

for under the manual system of elections, but were credited and transferred from such candidate to another candidate under the current AES.

In cases decided under the manual system of elections, the Court merely applied the rules on appreciation of vague votes and counted them accordingly. There was no crediting or transfer of votes from the nuisance candidate to the legitimate candidate.

It appears that the first nuisance candidate case in jurisprudence was Bautista. In that case, candidates Cipriano "Efren" Bautista (Cipriano) and Edwin "Efren" Bautista (Edwin) were running for the position of Mayor of Navotas, Metro Manila during the 1998 Elections. Cipriano filed a petition to declare Edwin a nuisance candidate, which the COMELEC granted. Edwin moved for reconsideration which remained pending until election day. Since Edwin's name remained in the certified list of candidates; the COMELEC Regional Election Director issued a directive to segregate the votes containing "EFREN BAUTISTA," "EFREN," "E. BAUTISTA" and "BAUTISTA," numbering 12,034, as these were the votes that were not clearly intended for a specific candidate and are therefore vague. The Board of Election Inspectors (BEI) proceeded with the counting of the votes excluding the segregated stray votes. Thereafter, the COMELEC En Banc denied Edwin's motion for reconsideration and declared that he was a nuisance candidate.[7]

During the canvassing, the Municipal Board of Canvassers (MBOC) of Navotas refused to canvass as part of the valid votes of Cipriano the segregated stray votes. Cipriano questioned the same before the COMELEC. However, the COMELEC ruled that the MBOC did not err in excluding in the canvass the segregated stray votes following Section 211(4) of the OEC.

In reversing the COMELEC, the Court, ruled that these votes could not be considered stray. A stray vote is invalidated because there is no way of knowing the real intention of the voter. However, in this case, it was sufficiently established that the voters, in writing "EFREN BAUTISTA," "EFREN," "E. BAUTISTA" and "BAUTISTA" on the segregated stray ballots, intended to vote for Cipriano, who has been known as "Efren Bautista" having used such appellation while running for various elective positions from 1962-1980. As such, these votes were counted in Cipriano's favor, with the Court ruling that to invalidate and consider them stray will result in the disenfranchisement of the will of the electorate, which is the situation our election laws are trying to prevent.

In Martinez III, the Court reiterated the doctrine in Bautista. Celestino A. Martinez III (Celestino) filed a petition to declare Edilito C. Martinez (Edilito) a nuisance candidate. Both candidates were running for the position of Representative in the Fourth Legislative District of Cebu Province. The COMELEC only issued its decision declaring Edilito a nuisance candidate a month after the elections. Thus, Celestino filed an election protest before the House of Representatives Electoral Tribunal (HRET), wherein he claimed as his, the 5,401 ballots with only "MARTINEZ" or "C. MARTINEZ" written on them that were not counted by the BEI in his favor because there was another candidate who had the same surname and initial.[8] During the revision, these ballots were not counted and were temporarily classified as stray. The HRET sustained the BEI in considering these votes as stray following Section 211(1) of the OEC. In reversing the HRET, the Court applied the doctrine in Bautista and allowed the ballots with "MARTINEZ" and "C. MARTINEZ" to be counted in favor of Celestino.

Thus, a reading of Bautista and Martinez III shows that these landmark cases merely gave effect to the votes that clearly appeared on the ballots, by counting them in favor of the candidate actually written on the ballot. This includes votes clearly cast for the nuisance candidates, except only that these latter votes were ultimately rendered

stray pursuant to Section 211(19) of the OEC, after the nuisance candidates' CoCs were cancelled or denied due course. As to the ballots which bore vague votes as they were cast only for the common names of the nuisance and legitimate candidates, Bautista and Martinez III — applying the basic rule on ballot appreciation to presume that the ballot is valid and to give effect thereto whenever legally possible — the Court correctly construed such vague votes to have been cast for the legitimate candidate and were thus "counted" in his or her favor.

From these, it is evident that a successful nuisance candidate case produces three kinds of votes reflected in the ballots:

1)

votes clearly cast for the legitimate candidate;

2)

votes clearly cast for the nuisance candidate; and

3)

votes which are vague and cannot be determined on the face of the ballot for whom they are cast.

For the first kind, the votes are simply "counted" for the legitimate candidate. For the second kind, the votes are strayed pursuant to Section 211(19) of the OEC as they cannot be given effect because the CoC of the nuisance candidate for whom they are cast and should have been counted is cancelled or not given due course. For the third kind of votes, as it cannot be determined on the ballots' faces for whom these votes are cast, the same are appreciated or construed to have been cast and therefore counted for the legitimate candidate, because a contrary interpretation (i.e., construing them as cast for the nuisance candidate) will render them stray.

To demonstrate this using the facts and the Court's ruling in Bautista and Martinez III.

Names of the legitimate and nuisance candidates, respectively

Votes as reflected in the ballots

Nature of the votes

Ruling of the Court

BAUTISTA V. COMMISSION ON ELECTIONS

Cipriano "Efren" Bautista (legitimate candidate) and Edwin "Efren" Bautista (nuisance candidate)

"CIPRIANO BAUTISTA"

Votes clearly cast for the legitimate candidate, Cipriano Bautista

Counted in favor of Cipriano Bautista (legitimate candidate)

"EDWIN BAUTISTA"

Votes clearly cast for the nuisance candidate, Edwin Bautista. (29 votes)

Counted for Edwin Bautista (nuisance candidate) but were ultimately rendered stray pursuant to Section 211(19) after Edwin's COC was cancelled.

"BAUTISTA," "EFREN," "EFREN BAUTISTA" AND "E. BAUTISTA"

Vague votes because the intention of the voter cannot be ascertained. The votes are cast only for the names shared in common of the parties.

Vagueness was settled in favor of the construction that they were cast for Cipriano (legitimate candidate) and were thus counted in his favor. This is to save the votes from being strayed.

MARTINEZ III v. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL

Celestino A. Martinez III (legitimate candidate) and Edilito C. Martinez (nuisance candidate)

"CELESTINO MARTINEZ;" "CELESTINO"

Votes clearly cast for the legitimate candidate, Celestino

Counted in favor of Celestino (legitimate candidate)

"EDILITO MARTINEZ;" "EDILITO"

Votes clearly cast for the nuisance candidate, Edilito (363 votes)

Counted in favor of Edilito (nuisance candidate) but later strayed because Edilito's CoC was cancelled.

"C. MARTINEZ;" "MARTINEZ"

Vague votes because the intention of the voter cannot be ascertained. The votes are cast only for the names shared in common of the parties

Vagueness was settled in favor of the construction that they were cast for Celestino (legitimate candidate) and were thus counted in his favor. This is to save the votes from being strayed

Dela Cruz v. Commission on Elections[9] (Dela Cruz) pioneered the crediting of votes rule under the AES but the same was premised upon a wrong understanding and a misapplication of the doctrines in Bautista and Martinez III.

With the adoption of the AES in the country on May 10, 2010, in which ballots already contained the printed full names of the candidates, along with their political parties, if any, there arose optimism that the practice of fielding candidates to confuse voters would no longer be as pervasive, or, at least, its effectiveness in terms of actually causing such confusion upon the electorate would be tremendously. tempered, if not, eradicated altogether.

Compared to the manual system of elections in which voters were required to handwrite the names of their preferred candidates on blank ballots, voters under the AES merely had to shade the oval next to their chosen candidate's full name.[10] Moreover, under the manual system, the counting and canvassing of the ballots were done manually by the BEI, who had to physically read each ballot, tally each vote and segregate each ballot accordingly.[11] Under the AES, the voters feed their printed ballots into Precinct Count Optical Scan (PCOS) machines,[12] which later became Vote-Counting Machines[13] (VCMs), and the machines count and tally the

votes and ballots automatically, in accordance with a set threshold of the shading in the oval.[14] In short, the AES entailed no human intervention in the counting and canvassing of the ballots. It was the machines themselves which did these electronically and which even likewise produced the election returns.[15]

One effect of this removal of human intervention in the counting of votes and canvassing of ballots is the corresponding elimination of human intervention in the appreciation of ballots on the level of the BEI. There is no longer any need for the examination of every ballot under the AES since the voters themselves feed the ballots into the VCMs, which machines then count and canvass the ballots electronically. The VCMs have built-in standards that needed no discretion, such as the shading threshold for a vote to be counted. The VCMs also do not acknowledge "vague" votes because they need only to measure the shading of the ovals to count them as votes or not. Under the AES, the third kind of votes (votes which are vague and cannot be determined on the face of the ballot for whom they are cast) was essentially rendered obsolete.

It thus became readily apparent that the rules on appreciation of ballots under Section 211 became applicable only in election contests filed post proclamation of the winners, and no longer found application in the counting and canvassing of the votes on election day.

Unfortunately, the nuisance candidate cases later filed under the AES misconstrued the rulings in *Bautista* and *Martinez III*. These subsequent cases misunderstood the "counting of votes" done in *Bautista* and *Martinez III* as "crediting of votes" from the nuisance candidates to the legitimate candidates.

The trail of case law which wrongfully interpreted case precedents began with *Dela Cruz*.^[16]

In *Dela Cruz*, a petition for certiorari was filed with the Court assailing COMELEC Resolution No. 8844^[17] (COM Res 8844) which considered as stray the votes cast in favor of certain candidates who were either disqualified or whose CoCs had been cancelled/ denied due course but whose names still appeared in the ballots for the May 2010 elections. Petitioner Casimira S. Dela Cruz (Casimira) and Aurelio N. Dela Cruz (Aurelio) filed their CoCs for Vice-Mayor of Bugasong Municipality, Antique. Casimira filed a petition to declare Aurelio a nuisance candidate, which the COMELEC First Division granted. Despite this, Aurelio's name remained in the official ballots on election day. During the canvassing of votes, the MBOC of Bugasong refused to count the votes of Aurelio in favor of Casimira on the basis of COM Res 8844. Thus, Casimira came in only second. She filed an election protest with the Regional Trial Court praying for the tallying in her favor of the 532 votes cast for Aurelio and her consequent proclamation as Vice-Mayor after such recounting. Casimira argued before the Court that she would have won the elections had the MBOC properly added Aurelio's votes to hers, in accordance with the crediting rule under COMELEC Resolution No. 4116 (COM Res 4116). She contended that COM Res 8844 violated her constitutional right to equal protection of the laws because there was no substantial difference between the previous manual elections and AES to justify the non-observance of the crediting rule under COM Res 4116.

On the other hand, the COMELEC contended that the AES had brought about significant changes in the handling and treatment of ballots, so that pre-proclamation controversies concerning the appreciation of ballots and misreading of the votes thereon, are matters that the AES has already rectified and are thus, then, already rendered obsolete. It submitted that the rules in Section 211 of the OEC on the appreciation of ballots applied only to ballots in which the votes were handwritten by the voters under the manual election system; under the AES, the names of the candidates are written in full on the ballots which the voters are presumed to have fully read, such that the ballots will always express the voters' true will. The COMELEC took the following positions in *Dela Cruz*:

- (1) the official ballots in automated elections now contain the full names of the official candidates so that when

a voter shaded an oval, it was presumed that he carefully read the name adjacent to it and voted for that candidate, regardless of whether said candidate was later declared disqualified or nuisance; (2) since the names of the candidates are clearly printed on the ballots, unlike in manual elections when these were only listed in a separate sheet of paper attached to the ballot secrecy folder, the voter's intention is clearly to vote for the candidate corresponding to the shaded oval; (3) the rules on appreciation of ballots under Section 211, Article XVIII of the Omnibus Election Code apply only to elections where the names of candidates are handwritten in the ballots; and (4) with the use of the automated election system where the counting of votes is delegated to the Precinct Count Optical Scan (PCOS) machines, pre-proclamation controversies, including complaints regarding the appreciation of ballots and allegations of misreading the names of the candidates written, were flaws which the automation rectified. Aside from being germane to the purpose of our election laws, Resolution No. 8844, is not limited to existing conditions as it is applicable to all persons of the same class even in succeeding elections, and covered all disqualified and nuisance candidates without distinction.[18]

The Court, however, did not rule in favor of COMELEC and granted the petition and declared COM Res 8844 null and void, holding that the previous rule under the old COMELEC Resolution—COM Res 4116 which reflected Bautista and Martinez III—that votes cast for a nuisance candidate must not be considered stray and that they should be counted in favor of the bona fide candidate — is still good law under the AES.

The problem with Dela Cruz is that it failed to properly appreciate jurisprudence and the COMELEC Resolution the Court sought to apply. The language in Dela Cruz shows the intention of the Court to maintain the treatment of the ballots under Bautista and Martinez III, but mistakenly understood such old treatment to mean that all the votes cast for the nuisance candidate were credited and transferred to the legitimate candidate in these cases. Dela Cruz failed to observe the distinction drawn by the Court therein — between those clearly cast for the candidates and those in which the intention of the voter was vague, and that only the latter kind of votes should be credited in favor of the bona fide candidate. To quote Dela Cruz on its impression of Martinez III — which, to stress, was erroneous:

In the more recent case of Martinez III v. House of Representatives Electoral Tribunal, this Court likewise applied the rule in COMELEC Resolution No. 4116 not to consider the votes cast for a nuisance candidate stray but to count them in favor of the bona fide candidate notwithstanding that the decision to declare him as such was issued only after the elections.

....

Here, Aurelio was declared a nuisance candidate long before the May 10, 2010 elections. On the basis of Resolution No. 4116, the votes cast for him should not have been considered stray but counted in favor of petitioner...

....

WHEREFORE, the petition is hereby GIVEN DUE COURSE and the writ prayed for, accordingly GRANTED. COMELEC Resolution No. 8844 dated May 1, 2010 insofar as it orders that the votes cast for candidates listed therein, who were declared nuisance candidates and whose certificates of candidacy have been either cancelled or set aside, be considered stray, is hereby declared NULL and VOID. Consequently, the 532 votes cast for Aurelio N. Dela Cruz during the elections of May 10, 2010 should have been counted in favor of Casimira S. Dela Cruz and not considered stray votes, making her total garnered votes 6,921 as against the 6,428 votes of private respondent John Lloyd M. Pacete who was the declared winner. (Emphasis supplied, citation omitted)

Contrary to Dela Cruz's reading of Bautista and Martinez III, there was never a crediting of votes under the manual system of elections. Votes were counted in favor of the parties, including the nuisance candidate, when such votes were clear. On the other hand, it was the vague votes that were taken to mean votes for the legitimate

candidate and were counted accordingly. However, under the AES, there are no longer vague votes because the machines only either count or not count a shading in the ovals as votes. Dela Cruz thus mistakenly applied the rule of appreciation on vague votes under the manual system to votes clearly cast for the nuisance candidate under the AES, leading to the crediting of such votes to the legitimate candidate. Stated differently, the nuances of the kinds of votes produced under the manual elections were left out. The third kind of treatment of votes (construing vague votes to mean votes validly cast for the legitimate candidate) was carelessly applied to the second kind of votes (those cast clearly for the nuisance candidate). These votes, instead of being transferred to the legitimate candidate, should have been strayed in line with the rulings in Bautista, Martinez III, and the submissions of the election body.

Jurisprudence after Dela Cruz followed the latter's misunderstanding and misapplication of Bautista and Martinez III as to the treatment of votes in nuisance candidate cases.

Tragically, the Court's blunder in construing precedent cases in Dela Cruz as to the treatment of votes in nuisance candidate cases was applied in subsequent jurisprudence, without any independent examination of the mother cases of Bautista and Martinez III, and how votes were treated in nuisance candidate cases during the time of manual elections.

In *Santos v. COMELEC En Banc*[19] (*Santos*), which, similar to the present case, involved the multi-slot position of Sangguniang Panlungsod Members, the Court ordered the Special City Board of Canvassers to count the votes cast for the nuisance candidate in favor of the bona fide candidate. However, it appears that Santos likewise misread the cases of Bautista and Martinez III. The Court, discussing Bautista, opined:

The Court further held therein that the votes separately tallied were not stray vote's. It emphasized that a stray vote is invalid because there is no way of determining the real intention of the voter. In that case, however, it was clear that the votes for Edwin "Efren" Bautista were actually intended by the electorate for Cipriano "Efren" Bautista, thus, the votes for Edwin "Efren" Bautista should be credited in favor of Cipriano "Efren" Bautista.[20] (Emphasis supplied)

Santos likewise discussed Martinez III and Dela Cruz and concluded that:

Accordingly, the Court consistently declared that the votes cast for the nuisance candidate must be credited in favor of the legitimate candidate with a similar name to give effect to, rather than frustrate, the will of the voters, even if the declaration of the nuisance candidate became final only after the elections.

. . . .

Evidently, as seen in Bautista, Martinez III and Dela Cruz, the Court does not require a specific or special proceeding before the votes of the nuisance candidate is credited to the legitimate candidate. As long as there is a final and executory judgment declaring a person a nuisance candidate, the votes received by the nuisance candidate shall be credited to the legitimate candidate.[21] (Emphasis supplied)

In *Zapanta v. COMELEC*,[22] the Court, applying Santos as it also involves a multi-slot office (Sangguniang Panlungsod Member), similarly counted the votes cast for the nuisance candidate in favor of the legitimate candidate.

At this juncture, I respectfully clarify below the statements made in the ponencia regarding how current jurisprudence treats votes cast for a legitimate candidate and a nuisance candidate, which reads:

1)

The votes clearly cast for the legitimate candidate are counted in favor of the legitimate candidate;

2)

The votes clearly cast for the nuisance candidate, whose COC is cancelled or not given due course, are considered stray votes; and

3)

The votes cast for the common or similar name of the nuisance and legitimate candidates, or such votes wherein the intent of the voter cannot be determined on the face of the ballot, are counted in favor of the legitimate candidate, as no other candidate is deemed to have run for that position as of the day of the election.[23] (Emphasis supplied)

Item 2) above is inaccurate. Current jurisprudence actually "credited" votes clearly cast for the nuisance candidate to the legitimate candidate, thus these votes are not considered as stray votes.

Thus, under current jurisprudence, all of the votes cast for the nuisance candidate are credited or transferred to the legitimate candidate; none are counted for the nuisance candidate whose name was chosen by the voter as it appears in his or her ballot, and considered as stray votes.

The "crediting of the votes" rule leads to absurd consequences that run counter to fundamental constitutional, statutory and procedural principles.

First, it inevitably leads to a violation of the due process rights of the winning candidate, who is supposedly not entitled to notice and hearing because he or she is not a real party in interest in the nuisance candidate case.

One of the consequences of a successful petition to disqualify a nuisance candidate is the crediting of the latter's votes to the legitimate candidate. This then results in an increase in the votes of the legitimate candidate, which may then lead to the legitimate candidate advancing ahead of a candidate who was previously proclaimed as the winning candidate, which was the situation that happened in the recent en banc case of Uy, Jr. v. Commission on Elections.[24]

Despite this, the Court has consistently, albeit erroneously, ruled that such winning candidate is not a real party-in-interest in the nuisance candidate case and therefore, not entitled to notice and hearing. The reason for this ruling was that the votes of these "other candidates" who do not share a common name with the nuisance candidate remain the same, and only the votes of the legitimate candidate changes because the votes of the nuisance candidate are added to the votes of the latter. Thus, only the nuisance and legitimate candidates are the proper parties-in-interest, according to prevailing jurisprudence.

With due respect, these rulings, i.e., the current jurisprudence, glaringly violate the due process rights of the winning candidate and should, thus, be revisited by this Court.

To stress, Amutan was proclaimed as winner in the elections as a Member of the SP. However, his proclamation was annulled as a consequence of the successful nuisance candidate case against Poblete and the crediting of Poblete's votes to Crisostomo. As a consequence of such annulment, Amutan ultimately lost his bid as a Member of the SP. No doubt, such bid entailed tremendous amounts of resources and effort. More than these resources

going to waste, the will of the voters was also frustrated. To stress, Amutan was the voters' choice as he had gathered enough votes to end up second in the race, and thus entitled to the final seat in the SP. Thus, the annulment of his proclamation amounted to a frustration of the voter's will, specifically the vast plurality who chose him to be an SP Member.

Despite this substantial injury not only to Amutan but also to the plurality of voters who voted for him, the infliction of such injury, i.e., depriving Amutan of the office of SP Member despite having been proclaimed as winner in the elections must only come after the due process requirements of notice and opportunity to be heard.

Unfortunately, Amutan's proclamation was annulled without so much as a notice, let alone a chance to be heard. Hence, COMELEC violated his due process rights. In *Sandoval v. Commission on Elections*[25] (*Sandoval*), the Court ruled that while the COMELEC had jurisdiction to set aside the proclamation of the petitioner therein, its exercise of such jurisdiction was tainted with illegality for failing to accord said petitioner prior notice and hearing, thus:

Although the COMELEC is clothed with jurisdiction over the subject matter and issue of SPC No. 98-143 and SPC No. 98-206, we find the exercise of its jurisdiction tainted with illegality. We hold that its order to set aside the proclamation of petitioner is invalid for having been rendered without due process of law. Procedural due process demands prior notice and hearing. Then after the hearing, it is also necessary that the tribunal show substantial evidence to support its ruling. In other words, due process requires that a party be given an opportunity to adduce his evidence to support his side of the case and that the evidence should be considered in the adjudication of the case. The facts show that COMELEC set aside the proclamation of petitioner without the benefit of prior notice and hearing and it rendered the questioned order based solely on private respondent's allegations. We held in *Bince, Jr. vs. COMELEC*:

"Petitioner cannot be deprived of his office without due process of law. Although public office is not property under Section 1 of the Bill of Rights of the Constitution, and one cannot acquire a vested right to public office, it is, nevertheless, a protected right. Due process in proceedings before the COMELEC, exercising its quasi-judicial functions, requires due notice and hearing, among others. Thus, although the COMELEC possesses, in appropriate cases, the power to annul or suspend the proclamation of any candidate, We had ruled in *Farinas vs. Commission on Elections*, *Reyes vs. Commission on Elections* and *Gallardo vs. Commission on Elections* that the COMELEC is without power to partially or totally annul a proclamation or suspend the effects of a proclamation without notice and hearing." [26] (Emphasis in the original, citations omitted)

The Court in *Sandoval* further emphasized that the notice and hearing requirement should be done prior to the resolution of the nuisance candidate case so that such resolution could appreciate the side of the respondent, as well as his or her pieces of evidence. In the present case, the annulment of Amutan's proclamation without being accorded prior notice and hearing, certainly amounts to a violation of his right to due process.

During the case deliberations, it was suggested that Amutan has no legal standing in the case and that only the nuisance candidate and the legitimate candidate have legal personality in the action as they would stand to be benefited or injured, and that while other candidates may be affected by the results of the count, the votes that these other candidates received will not be changed.

The view that Amutan and other candidates lacked locus standi because their numbers remain unchanged regardless of how the nuisance candidate action turns out fails to consider the fact that in Philippine elections, and specifically in multi-slot offices, it is not the number of votes obtained by each candidate per se that determines the outcome. Rather, it is such number of votes relative to the number of votes obtained by other candidates vying for the same position. In short, Philippine election is a plurality contest: one's rank in the list of candidates arranged by number of votes obtained determines if he or she is victorious.

In the case of Amutan, Crisostomo, and the other candidates who were vying to become members of the SP, the two candidates obtaining the most number of votes won the two seats at stake. Thus, even if the number of votes of Amutan and the candidates other than Poblete and Crisostomo had no risk of any change in their number of votes from the nuisance candidate case, the crediting of the votes of Poblete to Crisostomo's favor brought about, as it did, a change in the rankings, which ultimately led to the annulment of Amutan's proclamation. He was knocked out of the second place by Crisostomo when the latter's votes were increased by the number of votes credited to him from Poblete.

The annulment of Amutan's original proclamation as a winning candidate, which was a consequence of the declaration of Poblete as a nuisance candidate, should, without a doubt, qualify as an "injury" for purposes of the locus standi test. In fact, that Amutan's right to due process of law was violated can only mean that Amutan had a right which he was deprived of without prior notice and hearing. The recognition that his right to due process of law was violated could have very well been a recognition of his legal standing to intervene or be impleaded as an indispensable party in the nuisance candidate action.

Second, the crediting of votes rule leads to a situation in which the writ of execution substantially varies the decision it seeks to implement, with the former adding remedies neither mentioned in the decision nor prayed for by Amutan in the nuisance candidate action.

The dispositive portion of the June 14, 2022 COM Res reads:

WHEREFORE, premises considered, the Petition is hereby GRANTED.

Respondent ALVIC MADLANGSAKAY POBLETE is DECLARED a NUISANCE CANDIDATE.

Accordingly, his Certificate of Candidacy for Member, Sangguniang Panlalawigan of the 5th District of Cavite in the 9 May 2022 National and Local Elections is hereby DENIED DUE COURSE and/or CANCELLED.

SO ORDERED.[27] (Emphasis in the original)

Applying the ruling in Santos, COMELEC issued the assailed WOE which provided for substantial remedies that were neither prayed for in the petition nor provided in the Resolution sought to be executed. The assailed WOE provides:

ACCORDINGLY, the Commission (First Division) hereby DIRECTS, after due notice to the parties, the Special Provincial Board of Canvassers (SPBOC) of Fifth (5[th]) District, Province of Cavite, composed of:

1. Atty. Genesis M. Gatdula – Chairperson
2. Atty. John Rex C. Laudiangco – Vice Chairperson
3. Dir. Ester Villaflor-Roxas – Member
4. Three (3) Supporting Staff
5. Two (2) Sub-Canvassing Committees

to do the following:

- 1.

CONVENE on 12 April 2023 at 2:00 p.m. at the COMELEC Session Hall, 8th Floor, Palacio del Gobernador Bldg., Intramuros, Manila, to do the following:

- 2.

ANNUL the proclamation of duly elected Members of the Sangguniang Panlalawigan for the Fifth (5th) District, Province of Cavite;

3.

COUNT and CANVASS the votes for nuisance candidate Alvic Madlangasakay Poblete in favor of Petitioner Francisco Paolo Poblete Crisostomo. However, if there is a ballot that contains votes in favor of both Francisco Paolo Poblete Crisostomo and Respondent Alvie Madlangasakay Poblete, only one vote shall be counted in favor of the Petitioner;

4.

AMEND/CORRECT the Certificate of Canvass of Votes and Proclamation of Sangguniang Panlalawigan Members for the Fifth (5th) District, Province of Cavite, based on the Amended Statement of Votes by Precinct; and

5.

PROCLAIM the duly elected Members of the Sanggunialig Panlalawigan for the Fifth (5th) District, Province of Cavite in accordance with the result of the proper counting of votes.[28] (Emphasis in the original)

As seen above, the language of the assailed WOE goes way beyond the Resolution it supposedly executes. While a WOE can include remedies not spelled out in the decision being implemented if the same are necessarily included in or necessary consequences of the main decision or case, none of these exceptions obtain here.

The assailed WOE went beyond the June 14, 2022 COM Res when it annulled the proclamation of Amutan, ordered the crediting of Poblete's votes in favor of Crisostomo, and ultimately ordered the proclamation of winners based on the new count and canvass of votes.

The only thing that the COMELEC First Division included in the disposition of the June 14, 2022 COM Res was the finding that Poblete's use of a name strikingly similar to that of Crisostomo evinced an intent to sow confusion among the electorate, and as such, the former should be declared a nuisance candidate and his CoC should be cancelled. By no stretch of the imagination can it be deduced from the June 14, 2022 COM Res that it necessarily included the annulment of the previous proclamation of Amutan. Nor can it be said that such annulment and the crediting of votes to Crisostomo is necessary to give effect to the cancellation of Poblete's CoC.

Another thing — the "surplus" remedies in the assailed, WOE expanded the effects of the June 14, 2022 COM Res to persons who, according to settled jurisprudence, are not parties-in-interest in the said case. Candidates such as Amutan, who are deemed as "mere silent observers"[29] since they are not supposed to be benefitted or injured by the nuisance candidate case, suddenly find themselves in the crossfire as they sustain material injury because of the COMELEC's superfluous orders in the assailed WOE. Amutan's real and legitimate interest in the implementation of the WOE makes him an indispensable party, and no remedy can be sought without him being impleaded. Amutan, being the candidate who lost what would have been his seat in the SP, should have been, in fact, impleaded in the case if the assailed WOE would be allowed to stand.

Such is the absurd irony created by the 'crediting of votes' rule as espoused in Dela Cruz—it becomes inevitable that the due process rights of other candidates who are not impleaded will be breached because they are supposedly not real-parties-in-interest in the main nuisance candidate case. It is this clear absurd consequence perpetuated by case law that should now impel the Court to revisit the issue, and rectify the situation.

Third, the votes cast for the nuisance candidate, whose CoC was cancelled, are given effect by their transfer and

addition to the votes of the legitimate candidate – contrary to settled jurisprudence that such persons whose CoCs are cancelled are deemed never to have become candidates and could not have received votes.

To stress, the CoC of a person who is declared to be a nuisance candidate is cancelled as a result of such declaration, following the clear mandate of Section 69 of the OEC. In the words of Dela Cruz, "[s]trictly speaking, a cancelled certificate cannot give rise to a valid candidacy, and much less to valid votes." [30] Dela Cruz concludes that as there are no valid votes to speak of, there can be none that can be counted in favor of the candidate whose CoC was cancelled. This, then, begs the question: how then can such non-existent votes be counted in favor of the bona fide candidate?

It appears to me that the conclusion of the Court in Dela Cruz, based on its discussion of the nature of a nuisance candidate case which results in the cancellation of the CoC of such nuisance candidate, should have been that the votes cast for the nuisance candidate whose CoC was cancelled and therefore, deemed to have never been filed, cannot be counted in favor of any candidate including the legitimate candidate. This is because, similar to the CoC of the nuisance candidate, such votes are deemed never to have existed legally. Thus, they could and should not be given any effect whatsoever. This is likewise the categorical directive of Section 211(19) of the OEC.

Unfortunately, while the Court recognized in Dela Cruz that a cancelled CoC of a nuisance candidate cannot give rise to a valid candidacy, and much less to valid votes, it nevertheless still concluded that such votes may be credited in favor of the legitimate candidate, citing, albeit erroneously, COM Res 4116, Bautista and Martinez III.

The crediting of the votes rule, far from upholding the will of the voters, avoids the same and supplants it with the will of the Court.

Dela Cruz and the succeeding cases which adopted its doctrine of wholesale crediting of votes justify this measure by referencing the well-entrenched rule in election law that ballots must be liberally appreciated to the end that the choice of the electorate is not defeated by technical infirmities. Dela Cruz held:

Finally, upholding the former rule in Resolution No. 4116 is more consistent with the rule well-ensconced in our jurisprudence that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. Indeed, as our electoral experience had demonstrated such infirmities and delays in the delisting of nuisance candidates from both the Certified List of Candidates and Official Ballots only made possible the very evil sought to be prevented by the exclusion of nuisance candidates during elections.[31] (Citation omitted)

With all due respect to the members of the Court in Dela Cruz, I fail to fathom how the crediting rule as observed in that case bolsters the choice of the voter. To my mind, the crediting or transfer of votes clearly cast for the nuisance candidate in favor of the legitimate candidate who the voter clearly rejected is, quite frankly, the opposite of upholding the voters' will as clearly shown on the face of the ballot. This treatment of the votes literally disregards the choice of the voters (who really voted for the nuisance candidate) and effectively substitutes the same with that of COMELEC or this Court. It is literally counting of the vote for a person clearly not intended to be voted for based on the ballot's face.

In Santos, the Court ruled that the crediting of votes from the nuisance candidate to the legitimate candidate is a "necessary consequence" [32] of the declaration that a candidate was a nuisance. This is why, per Santos, the

crediting becomes a matter of course and is no longer litigated as an issue.

This is erroneous. In fact, as repeatedly mentioned above, the precedent cases under the manual elections system observed no such crediting of votes. The Court merely counted the clear and the vague votes as laid down in the table above.

To be sure, election laws must give effect to the will of the voters.[33] Such will is expressed through the ballots; hence, the ballots are the best evidence of the same. If the will of the people is determinable, the same must be respected,[34] because the people have an undeniable right to have elected officials of their unfettered choice.[35] It is not for COMELEC, or the Court, to substitute the electorate's will with a choice that is more sound or "legitimate," when the electorate's voice is clear and undeniable from the face of the ballot. As in statutory construction, where the vote on the ballot is clear, it must be respected instead of the current jurisprudence which imputes to the voter a different intent than what is apparent on the face of the ballot. There is, indeed, danger in speculating on the motives of the voter who had clearly shown such motive by his or her handwriting on the ballots. The sweeping conclusion that the voter intended to vote for the legitimate candidate finds no support in law or jurisprudence.

Indeed, I humbly submit that the practice of crediting of votes is a greater evil than simply preventing the people from casting their votes. In the former, the voter's vote is not only not given effect, but is even added to the votes of his or her candidate's opponent, thus lessening further the chance that the voter's choice of leader actually wins the office, while boosting the odds therefor of the voter's non-choice.

To be sure, in crediting, it is not the voter's intent that is being ascertained and given meaning. As mentioned, such intent can only be reasonably ascertained from the ballots. However, as it happens in crediting, the intent of the voter which the ballot reflects is completely rejected, if such intent that is clearly shown is to vote for the nuisance candidate. Instead, the preference for the legitimate candidate is imputed and read into the ballot which, to emphasize, does not at all show such preference. This is because the Court assumes that the voter was mistaken and confused when he or she cast his or her vote for the nuisance candidate despite, again, the total absence of proof of such confusion or mistake.

Truth is, there can be a myriad of possible reasons, other than mistake and confusion, why the voter shaded the oval corresponding to the nuisance candidate. As can be taken from the cases decided during the manual elections, the nuisance candidates can — and have been shown to — receive legitimate votes clearly and undoubtedly cast in their favor, and were thus counted accordingly. It is not difficult to imagine that a nuisance candidate would have legitimate supporters, at the very least, from family, relatives, and friends. Protest votes against political elites are also not a thing of fiction and had been cast for lesser-known political underdogs over the past elections and, in more than a few instances, such protest votes even led to unexpected victories for the underdogs.

Moreover, such sweeping presumption of confusion or mistake on the voter's part can only be anchored on the cynical impression that the voters lacked the intelligence to cast their votes as they intended to. Thus, their real intent must be uncovered by some higher power such as the Court, and through a deeper "understanding" of his or her ballot than just a plain reading of the same. This is incredibly elitist and counters basic disputable presumptions in our Rules on Evidence, such as that people intend the ordinary consequences of their voluntary acts.[36]

Lest we forget, in our system of elections, each person gets to cast only one vote. Thus, suppressing that one vote and ascribing it a meaning other than what is clearly intended by the voter as appearing on the face of the ballot denies him or her the only opportunity he or she has in choosing his or her leader for the subject position. Even

assuming that a majority of the purported voters of the nuisance candidate intended to vote for the legitimate candidate, those few who did not have such intention would have been denied of their sole voice in the election of the concerned public position if their votes were credited to the legitimate candidate.

Another point: a finding that a candidate is a nuisance candidate is largely based on such candidates' intentions, specifically, (a) that he or she had no bona fide intent to run for the position sought, thus preventing a faithful determination of the true will of the electorate, or (b) that his or her CoC was filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of other registered candidates. In the case of a nuisance candidate having a similar name to a legitimate candidate, his or her intention in the filing of his CoC is to confuse the voters and spoil the legitimate candidate's chances of winning the elections. As such, his CoC may be cancelled or denied due course by the COMELEC.

However, the nuisance candidate's intention to confuse the voters does not ipso facto mean that the voters were actually confused. This is, in fact, non-sequitur. To impute such confusion on the voters from the mere finding that a nuisance candidate intended such outcome, as a result of which their votes become hijacked, is to punish the electorate for the actions of the nuisance candidate.

In the exercise of the people's right to suffrage, upholding the will of the electorate takes centerstage as against deterring nuisance candidates from joining the race.

Make no mistake, the traditional practice of fielding nuisance candidates is abhorrent and should very much be deterred and punished. The effects of nuisance candidates entering the mix of legitimate candidates to cause confusion are well-documented in jurisprudence. These nuisance candidates not only pose logistical challenges to the State but, more importantly, bring about confusion and frustration of the democratic process.

However, deterrence of this abhorred practice is not a license to disregard the clear choice of the people of who shall become their leaders.

In choosing between the two ideals of eliminating nuisance candidacy and upholding the people's votes in their ballots, consideration must be had of the substantial changes in our election system since the manual system. There is no doubting the improvements that went with the automation of our election system. For example, vague votes in the sense of them cast only for the common names of candidates are altogether eliminated. Under the AES, unless a voter shades two or more ovals (for single-slot offices), there is no more any real possibility of avoiding votes due to the candidacy of nuisance candidates which was the evil sought to be addressed by the so-called 'crediting of votes' rule.

Moreover, under the AES, the full names of candidates and their political parties (if any) are listed and numbered in the ballots. The official ballot face is released to the public some time before the elections. Thus, it becomes merely a matter of informing and educating voters of the identity of their aspiring leaders. In fact, it should be part of the candidate's due diligence in campaigning that he or she invest efforts in making sure that his or her constituents and supporters will be able to shade the correct ovals in the ballots. With the proliferation of social media, spreading information has become more convenient and cheaper; thus, such information campaigns should be easily accomplishable.

While these means are nowhere near fool-proof, and while nuisance candidacy is not entirely eradicated under the AES, albeit significantly reduced, this road should still be taken as against the crediting scheme, with all the absurdities and legal loopholes surrounding the latter, as discussed above. Suffrage and free elections are the

foundations of our democratic republican state. They ensure the Constitutional declaration that sovereignty must reside in the people and all government authority must emanate from them.[37] In the difficult choice between deterring nuisance candidacies and upholding the people's will as expressed in the ballots, the latter must always be chosen, lest we risk disintegration of the very foundations of our democracy.

The answer to the pernicious practice by politicians of fielding nuisance candidates to frustrate the electability of other legitimate candidates is proper voter education.

During the case deliberations, it was raised that the abandonment of the crediting of votes rule, while legally sound, may not be very practical in that it will remove the deterrence that the rule effects upon candidates who may entertain thoughts of fielding nuisance candidates to weaken an opposing legitimate candidate. It was also pointed out that the rule appears to be a "necessary evil" to protect legitimate candidates from the effects of having other candidates in the ballots that may cause the former's voters to cast their votes for the wrong candidate.

I assure my colleagues that, in making the submissions in this writing, I share the same apprehensions and fears. Indeed, it is a tricky task to preserve the law's integrity by enforcing the spirit in which it was passed by the legislators, and, as a consequence, abandoning an erroneous interpretation and application which appear to have actually worked as deterrence against malicious fielding of nuisance candidates and as a sort of retribution to legitimate candidates who, in the end, gets to credit all of the votes of the nuisance candidate to themselves.

However, I am reminded of the real task of this Court in deciding cases involving the elections — that of ensuring that the will of the voters is given full force and effect. However noble and just it may seem, protecting legitimate candidates at the expense of attributing false intentions to the voters simply cannot be sustained because it is contrary to the basic nature of democratic elections.

How then do we deter this age-old practice of fielding nuisance candidates and protect legitimate candidates from the same? I respectfully submit that the solution lies in voter education.

Indeed, nothing is more powerful and consistent with the idea of "enforcing the will of the people" than by ensuring that such will is clear from the ballots cast and that the choices of candidates are made intelligently. Predators naturally go for the easiest preys. In the realm of politics, these preys are oftentimes the voters, who unfortunately may not have received sufficient education and instructions which may enable them to distinguish one candidate from another, or, at least, to know which of the choices before him or her is the candidate he or she had intended to vote for.

Surely, I will not go to the extent of saying that this solution is simple. Basic education and common sense in general are unfortunately rare commodities available only to those privileged enough to afford obtaining them, especially in the far-flung provinces. As such, too many voters are exposed to the risk of getting "scammed" by politicians wishing to deplete the votes of their opponents. However, by taking all the votes cast for the nuisance candidate en masse and crediting them to the legitimate candidate, the system of crediting of votes is not entirely different from such devious acts because the votes cast legitimately for the nuisance candidate are still frustrated. In short, in both scenarios — fielding of nuisance candidates and the crediting of votes of the nuisance candidate to the legitimate candidate — it is the voters whose right to suffrage is eroded as their choices are given meanings that they did not intend when they cast the same.

Thus, the way to address the evils of nuisance candidacy is to ensure that no voter falls victim to such scheme

through voter education. Voters must be properly advised, lectured, and capacitated with the tools and information which may enable them to cast their votes accurately and effectively.

Over the past years, especially since the advent of the automated election system, the COMELEC and the government in general have introduced innovations aimed at improving voter literacy and readiness for the election day. One such innovation is the printing and publishing of the "ballot face" — a printout of the official ballots that will be used in the actual elections, thus, containing the exact same information that voters are going to be met with when they start filling up their ballots on election day. The printing of the ballot face ahead of the elections helps to familiarize the voters with the candidates, to prevent confusion and delay on election day. Thus, using such tool, candidates can host information drives to their constituents by referring to their positioning in the ballot face, the number in which their names appear on the ballot, and the candidates that they share similar names with and should not be voted for by their constituents. This way, the voters are empowered to cast their votes towards the candidate they intend to vote for, and the courts will no longer resort to guessing the true intentions of the voters based on their ballot.

In these lights, I vote to GRANT the Petition and ANNUL the assailed Writ of Execution of the COMELEC.

[1] Rollo, pp. 58-61. Penned by Presiding Commissioner Socorro B. Inting.

[2] Id. at 317-324. Penned by Presiding Commissioner Socorro B. Inting and Commissioner Aimee P. Ferolino.

[3] 359 Phil. 1 (1998) [Per J. Melo, En Banc].

[4] 624 Phil. 50 (2010) [Per J. Villarama, Jr., En Banc].

[5] SECTION 211. Rules for the appreciation of ballots. – In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voters' will:

1. Where only the first name of a candidate or only his surname is written, the vote for such candidate is valid, if there is no other candidate with the same first name or surname for the same office.

....

4. When two or more wards are written on the same line on the ballot, all of which are the surnames of two or more candidates, the same shall not be counted for any of them, unless one is a surname of an incumbent who has served for at least one year in which case it shall be counted in favor of the latter.

When two or more words are written on different lines on the ballot all of which are the surnames of two or more candidates bearing the same surname for an office for which the law authorizes the election of more than one and there are the same number of such surnames written as there are candidates with that surname, the vote shall be counted in favor of all the candidates bearing the surname.

5. When on the ballot is written a single word which is the first name of a candidate and which is at the same time the surname of his opponent, the vote shall be counted in favor of the latter.

....

17. Where there are two or more candidates voted for in an office for which the law authorizes the election of only one, the vote shall not be counted in favor of any of them, but this shall not affect the validity of the other votes therein.

....

19. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot.

....

24. Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray and shall not be counted but it shall not invalidate the ballot.

[6] See *Bautista v. Commission on Elections*, supra note 3, at 13.

[7] *Id.* at 6-7.

[8] *Martinez III v. House of Representatives Electoral Tribunal*, supra note 4, at 54-55.

[9] 698 Phil. 548 (2012) [Per J. Villarama, Jr., En Banc].

[10] COMELEC Resolution No. 8804, In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in connection with the May 10, 2010 Elections, Rule 2, sec. 1 (2010) states:

d) Official ballot refers to the paper ballot with the pre-printed names of all candidates and with ovals corresponding to each of the names printed. The ovals are the spaces where voters express their choice through marking or shading using a marking pen. (Emphasis in the original)

[11] See OMNIBUS ELECTION CODE, sec. 210.

[12] See COMELEC Resolution No. 8804 (2010), Rule 2, sec. 1(c).

[13] *Bagumbayan-VNP Movement, Inc. v. COMELEC*, 782 Phil. 1306, 1309-1310 (2016) [Per J. Leonen, En Banc].

[14] *Vinzons-Chato v. HRET*, 702 Phil. 40, 59 (2013) [Per J. Perlas-Bernabe, En Banc].

[15] See Republic Act No. 9369 (2007), sec. 2 (l).

[16] Supra note 9.

[17] In the Matter of Local Candidates Disqualified/Cancelled/Denied Due Course/Withdrawn The Certificates of Candidacy For the May 10, 2010 Automated Elections, promulgated on May 1, 2010.

[18] *Dela Cruz v. Commission on Elections*, supra note 9, at 557.

[19] 839 Phil. 672 (2018) [Per J. Gesmundo, En Banc].

[20] *Id.* at 690.

[21] *Id.* at 693-694.

[22] 848 Phil. 341 (2019) [Per J. Leonen, En Banc].

[23] Ponencia, p. 15.

[24] 945 Phil. 446 (2023) [Per J. M. Lopez, En Banc].

[25] 380 Phil. 375 (2000) [Per J. Puno, En Banc].

- [26] Id. at 392.
- [27] Rollo, p. 324.
- [28] Id. at 59-60.
- [29] Santos v. COMELEC En Banc, supra note 19, at 696.
- [30] Dela Cruz v. Commission on Elections, supra note 9, at 563.
- [31] Id. at 568-569.
- [32] Santos v. COMELEC En Banc, supra note 19, at 695.
- [33] Papandayan, Jr. v. Commission on Elections, 430 Phil. 754, 773 (2002) [Per J. Mendoza, En Banc].
- [34] Batabor v. COMELEC, 478 Phil. 795, 797 (2004) [Per J. Sandoval-Gutierrez, En Banc].
- [35] Badelles v. Cabili, 136 Phil. 383, 396 (1969) [Per J. Fernando, En Banc].
- [36] See RULES OF COURT, Rule 131, sec. 3(c).
- [37] See CONST. (1987), art. II, sec. 1.

DISSENT

LAZARO-JAVIER, J.:

The ponencia revisited the rule of crediting of votes in nuisance candidates by reason of the automation of the elections. It reasoned that, "as opposed to the manual system of elections where voters had to handwrite the names of the candidates they vote for on the blank ballots, under the [Automated Election System] (AES), the voters will simply shade the oval next to the printed name of their chosen candidate. Further, under the AES, Precinct Count Optical Scan (PCOS) machines, which later became Vote-Counting Machines (VCMs), are used to count and tally the votes automatically based on the shaded oval in the ballot. Under the manual system of elections, the counting and canvassing of votes were done manually by the Board of Election Inspectors. Thus, under the AES, with the removal of the human intervention in the counting and canvassing of ballots, VCMs will determine the corresponding votes garnered by a candidate based only on the shading of the ovals. With the AES, election inspectors no longer assess whether or not votes are "vague" as the machines merely count the shaded ovals to count a vote. Effectively, then, the third kind of votes in nuisance candidates' cases, i.e., vague votes, is no longer applicable under the AES."^[1]

I respectfully beg to differ.

For one, the confusion caused by a nuisance candidate remains, regardless of the automation of the election.

As enumerated by the ponencia, there are three kinds of nuisance candidates. They are those who file their certificates of candidacy with the following purposes: (1) to put the election process in mockery or disrepute; (2) to cause confusion among the voters by the similarity of their names with the registered candidates; or (3) under circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed.

It is settled that the rule on crediting of votes is only applied to a specific type of nuisance candidate, i.e., the candidate who runs to cause confusion among the voters by the similarity of names with that of other registered candidates.

It is a case of *idem sonans* or one where the name of the nuisance candidate and the legitimate candidate have close resemblance such that it completely obliterates the thin line between the impostor and the genuine choice of the people. The rule on crediting of votes does not apply indiscriminately to all kinds of nuisance candidates. It applies only where deception is employed by maliciously mirroring and impersonating another candidate through *idem sonans*, and where the voter becomes the unwilling victim of said diabolical scheme.

Consequently, this rule on crediting of votes should not be viewed in a technical manner where we only apply it to "vague" votes. Instead, we must consider the rationale of the law in declaring this specific type of candidate as a nuisance candidate.

The confusion relative to this kind of nuisance candidate remains the same, regardless of the mode of election, whether it be handwritten or automated. They are so-called "nuisance candidates" because their strategy is to use the name and "piggyback" on the goodwill of a legitimate or bona fide candidate. It simply means that this scheme of deception would not be possible were it not for the existence of a bona fide candidate. The nuisance candidate feeds on the legitimate candidate's hard-earned trust, with the intent to steal the votes by mimicry. Will automation erase this form of deception?

The answer is a resounding "No." Automation of elections was made for expediency and efficiency, but it does not cleanse the process from the confusion caused by nuisance candidates. If at all, deception only learns to wear a new mask.

By analogy, in intellectual property laws, we apply the dominancy test to determine if there was trademark infringement. The dominancy test focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. We apply this rule because "a business is remembered and revered by its goodwill and reputation. Hence, for a business, its mark is not simply a random, meaningless combination of letters, phrases or symbols. Rather, these emblems embody the quality of the goods and services offered by the entity." [2] Similarity in trademarks will cause confusion regardless of the method consumers use in choosing their products. When confronted with similarly named or branded products, the place and circumstances—whether buying the products online or in a physical store—do not lessen the impact of confusion.

Will the dominancy test not apply if consumers shop online, where they can see both the product of the infringer and the product of the trademark owner? Can one now say that confusion was eradicated? Confusion follows the consumer wherever the choice is, no matter what platform they are using.

So, what's in a name for a political candidate?

A candidate's name is his or her most powerful campaign paraphernalia. A candidate's name represents his or her identity, reputation, and the trust voters place in him or her. Everything that they achieved and the recognition of the people is attached to their names. It is the most pervasive form of advertisement. It is a candidate's own trademark.

Consider a situation where the bona fide candidate's name is Juan Dela Cruz, while the nuisance candidate's name is Jun Dela Cruz. Will the automation of the election process eliminate the confusion caused by the similarity of their names? If the electorate recognizes the legitimate candidate only by his last name, then seeing both the names of Juan Dela Cruz and Jun Dela Cruz on the ballot will still cause confusion, and the voters will still be confused about which oval to shade. This is the very reason why Jun Dela Cruz was declared a nuisance candidate in the first place.

It is thus only fair to count the votes in favor of the bona fide candidate. The rule on crediting of votes should be applied in a way that reflects the purpose of the law, i.e., to prevent electoral manipulation and ensure that votes are rightfully attributed to candidates who have earned their place through genuine political participation.

This confusion among candidates despite the automation of elections was illustrated in following cases:

In *Teves v. Commission on Election*,^[3] Ruel Gaudia (Ruel) used "Ruel Degamo" as the name to appear in the official ballot, and ran against Roel Degamo. Ruel deliberately changed his last name to Degamo. His last name was Gaudia, but he has no birth certificate as he was merely raised by his surrogate guardians. The COMELEC En Banc held that the use of "Ruel" Degamo was in bad faith because he was actually known to be "Grego" but he suddenly used "Ruel" in the 2022 National and Local Elections. Too, he knows that he is a Gaudia but suddenly used Degamo.^[4]

The Court En Banc held that despite the automation of the elections, Ruel was a nuisance candidate as he ran with the intention to mislead the voters to vote for him instead of "Roel Degamo," viz.:

There is no doubt that confusingly similar names and/or surnames may cause disorientation on the electorate in a manual election system, as there are rules on interpretations that involves the use of the names and the surnames[.]

Even with the automation of election system, this Court has held that such development will not eliminate confusion on the part of the voters.

. . . .

From the Certified List of Voters and the Official Ballot, it can be observed that there is as noticeable likeness to the name of candidates "Roel Degamo" and "Ruel Degamo". First, their names are only distinguishable by one vowel as the incumbent uses the letter "o" while the independent candidate uses the letter "u". Second, the name "Roel" and the nickname "Ruel" have similar pronunciation. Likewise, the two candidates used Degamo as their surnames. Similar with the circumstances in *Zapanta*, the only way to distinguish "Roel" and "Ruel" is their number on the ballot and their political affiliations[.]

Even the conduct of automated elections should not be treated as an automatic safeguard against the confusion brought by nuisance candidates. The complexity of the human mind cannot be easily comprehended. In an election by which different ballots are encountered every three years, it cannot be said that the human eye would be trained enough to immediately spot the difference between two candidates bearing similarities in names. This is especially true where the ballot has to be a one[-]page document and has to be adjusted to accommodate all possible candidates, which makes it more challenging to read and for which the dominant part of the name used in the ballot gets immediate attention. Moreover, during the campaign period, it is the name of candidates and the way by which they introduced themselves that causes a lasting memory recall among the voters. When the people who knows Roel Degamo is suddenly confronted with a name Ruel Degamo, which was used only in the 2022 National and Local Elections, the same would easily caused confusion as early as the campaign period until the shading of oval in the ballot in an automated election.

Here, the circumstances surrounding the case shows that candidate Grego Gaudia Degamo purposely used the nickname "Ruel" to cause confusion to the electorate. As observed by the COMELEC Second Division, it was only for the 2022 Elections that he used "Ruel Degamo." He was known as Grego and merely used the nickname "Ruel" recently. He also used the surname of those who has taken custody of him even though he was not legally adopted by them.^[5]

In *Santos v. Commission on Elections*,^[6] the Court En Banc through the erudite Chief Justice Alexander G. Gesmundo, declared that Rosalie Isles Roxas (Rosalie) was a nuisance candidate whose votes must be counted in

favor of the bona fide candidate Jennifer Antiquera Roxas despite the automation of the elections. As found by the COMELEC, Rosalie suspiciously indicated her name in the ballot to be "Roxas Jenn-Rose," which was strikingly similar with the bona fide candidate's name in the ballot as "Roxas Jenny." The COMELEC also observed that the nickname "Jenn-Rose" did not resemble the name of Rosalie as her real nickname was actually "Saleng." [7] Citing *Dela Cruz v. COMELEC*, [8] we held:

In reversing the COMELEC, the Court ruled that even in the automated elections, the votes for the nuisance candidate should still be credited to the legitimate candidate. It held that the previous COMELEC Resolution No. 4116 – declaring that the vote cast for a nuisance candidate, who had the same surname as the legitimate candidate, should be counted in favor of the latter – remains good law. The Court underscored that:

[T]he possibility of confusion in names of candidates if the names of nuisance candidates remained on the ballots on election day, cannot be discounted or eliminated, even under the automated voting system especially considering that voters who mistakenly shaded the oval beside the name of the nuisance candidate instead of the bona fide candidate they intended to vote for could no longer ask for replacement ballots to correct the same. [9] (Emphasis in the original)

For another, the rule on crediting of votes serves as a form of punishment to prevent the proliferation of these nuisance candidates. It has a two-fold purpose: (1) it creates a strong disincentive for individuals to exploit name similarity as a strategy; and (2) it protects the bona fide candidate whose name and goodwill have been exploited.

The sole purpose of this type of nuisance candidate is to be the saboteur of the legitimate candidate: The goal is to maliciously reduce the votes cast in favor of the bona fide candidate. If the sanction is merely to disqualify them, what good does it serve? After all, the objective of the nuisance candidate has been achieved. The penalty should not be a mere "token penalty." Disqualification is in order, but standing alone, it is nothing but hollow justice. The penalty of disqualification would be of little value and would not be a form of deterrent. Despite being disqualified, the nuisance candidate still succeeded. The plan has worked. They walk away victorious and satisfied, having accomplished the very thing they set out to do in the first place.

In short, we are rewarding nuisance candidates. We are not just tolerating them. We are enabling and empowering them. We have become their conspirators by letting them leave the electoral process unscathed. We have shunned the hijacker from the airplane, yet we left their bomb behind and allowed it to explode.

In protecting the will of the electorate, the system of crediting of votes in favor of the legitimate candidate must be maintained.

The ponencia held that "to maintain the idea that, even in the automated system, the people can still get easily confused by the similar sounding names of candidates and mistakenly vote for their unintended choice is to perpetuate the caricature that the Filipino voter is illiterate."

We must confront the uncomfortable truth that most of the Filipino voters still need to be educated on the nuances of technology vis-à-vis the electoral process. While I agree that we must be advocates of voter education, we must not unnecessarily place the burden on the electorate to solve these issues caused by nuisance candidates.

In recognizing that there are illiterate voters, we must adopt a proactive stance. The Court must place the necessary safeguards that ensure the integrity of the electoral process and protect the true will of the electorate. This involves going beyond just education; it means providing a mechanism that actively prevents the exploitation of voters by nuisance candidates.

No matter how small the margin of error may be and no matter how few may be misled by the confusingly-similar names, the Court has a solemn obligation to protect the voice of the people for the electorate deserves nothing

less.

While we are still in the process of improving voter education, what, then, will this Court do?

[1] Ponencia, p. 16.

[2] *Emzee Foods v. Elarfoods, Inc.*, 897 Phil. 328 (2021) [Per J. Gaerlan, First Division].

[3] 936 Phil. 205 (2023) [Per J. Lopez, En Banc].

[4] *Id.* at 226-228.

[5] *Id.* at 229-236.

[6] 839 Phil. 672 (2018) [Per CJ Gesmundo, En Banc].

[7] *Id.* at 692-693.

[8] 698 Phil. 548 (2012) [Per J. Villarama, En Banc].

[9] 839 Phil. 672, 692-693 (2018) [Per CJ Gesmundo, En Banc].

DISSENTING OPINION

LOPEZ, J., J.:

The Court faces a pivotal question in this case: should the votes cast for a candidate declared as a nuisance candidate be considered stray votes, or should they be credited to the legitimate candidate with a similar name? The ponencia answers this question by holding that under the Automated Election System (AES), the votes cast for a nuisance candidate should be considered stray and not credited to any other candidate.

I respectfully dissent and express my concerns about the implications of this ruling on our democratic processes and the sanctity of the people's will.

To recall, the case centers on a dispute arising from the 2022 elections for two Board Member seats in the Fifth District of Cavite Province. Six candidates competed for these positions, including petitioner Marcos "Macoy" Cabrera Amutan, respondents Francisco Paolo Crisostomo and Alvie Poblete, along with Aidel Paul Belamide, Dante Alumia, and Gerardo Anarna.[1]

Prior to the election, in October 2021, Crisostomo filed a petition (SPA No. 21-002) with COMELEC seeking to declare Poblete a nuisance candidate based on name similarity, as both used "Paolo"/"BM Paolo" on the ballot. This petition remained unresolved when the May 9, 2022 elections were conducted. Belamide and Amutan received the highest votes (106,626 and 95,972, respectively) and were proclaimed winners, with Crisostomo placing third (81,553 votes) and Poblete receiving 29,325 votes.[2]

Following the election, Crisostomo filed an election protest against Belamide and Amutan on May 18, 2022, requesting that votes cast for Poblete be counted in his favor. On June 14, 2022, COMELEC's First Division granted Crisostomo's original petition, declaring Poblete a nuisance candidate and canceling his Certificate of Candidacy, which became final on August 16, 2022. Subsequently, on March 16, 2023, COMELEC issued a Writ of Execution ordering the annulment of Belamide and Amutan's proclamation, the crediting of Poblete's votes to Crisostomo, and the reconvening of the Special Provincial Board of Canvassers to proclaim new winners based on the amended vote count.[3]

Seeking relief, Amutan submitted this Petition to the Court contending that the COMELEC overstepped its authority and exercised grave abuse of discretion that constitutes either absence or excess of jurisdiction when it issued the contested Writ of Execution.[4]

I explain below the dissent.

Crediting Votes to Legitimate Candidates Prevents Electoral Manipulation

The purpose of Section 69 of the Omnibus Election Code (OEC) in allowing the Commission on Elections (COMELEC) to declare nuisance candidates is to prevent the electoral process from being mocked or put into disrepute, and to avoid confusion among voters due to similarity of names,[5] thus:

Section 69. Nuisance candidates. — The Commission may, motu proprio or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. (Emphasis supplied)

This provision recognizes that nuisance candidacies are often filed not with a genuine intention to run for office, but rather to manipulate the electoral process and prevent a faithful determination of the true will of the electorate.

Two key criteria for democracies are effective participation and voting equality.[6] Political equality, coupled with the participation of the people in voting, means every citizen must have an equal chance to express their choice, which will be counted when making collective decisions. The essence of democratic elections is to convert the collective will of the people into government. Thus, an accurate conversion of the people's will must be prioritized in order to effectively safeguard democracy.

In this context, the proper treatment of votes cast for nuisance candidates must be approached with a primary focus on giving full effect to the genuine intention of the voters. In *Piccio v. House of Representatives Electoral Tribunal*,[7] this Court stated that "election laws are liberally and equitably construed to give fullest effect to the manifest will of the people." [8] This principle has been consistently upheld in our jurisprudence and is foundational to our democratic system.

The doctrine established in *Bautista v. COMELEC*[9] and *Martinez III v. House of Representatives Electoral Tribunal*[10] served a vital purpose in preventing the disenfranchisement of voters who may have been confused by the similarity of names between legitimate and nuisance candidates. By crediting the votes cast for a nuisance candidate in favor of the legitimate candidate with a similar name, these cases sought to give effect to what was presumed to be the genuine intention of the voters.

In *Teves v. Commission on Elections*,[11] the Court recently reaffirmed this principle, stating that "the effect of including nuisance candidates in a ballot, whether the election be done manually or through automation, is the same: to confuse the electorate. If the will of the electorate is to be upheld, the votes obtained by the nuisance candidate should be added in favor of the legitimate candidate." [12] This recognition of the continuing potential for voter confusion even under the AES is crucial.

In *Teves*, We stated:

Even the conduct of automated elections should not be treated as an automatic safeguard against the confusion brought by nuisance candidates. The complexity of the human mind cannot be easily comprehended. In an election by which different ballots are encountered every three years, it cannot be said that the human eye would be trained enough to immediately spot the difference between two candidates bearing similarities in names. This is especially true where the ballot has to be a one page document and has to be adjusted to accommodate all possible candidates, which makes it more challenging to read and for which the dominant part of the name used in the ballot gets immediate attention. Moreover, during the campaign period, it is the name of candidates and the way by which they introduced themselves that causes a lasting memory recall among the voters. When the people who knows Roel Degamo is suddenly confronted with a name Ruel Degamo, which was used only in the 2022 National and Local Elections, the same would easily cause confusion as early as the campaign period until the shading of oval in the ballot in an automated election.[13] (Emphasis supplied)

This Court must recognize a critical fact: technological advancements in our electoral system have not eliminated the threat of nuisance candidacies. Political operators continue to exploit similar names to siphon votes from legitimate candidates. When a candidate is declared a nuisance candidate on the ground of confusion after receiving votes, those votes should be counted in favor of the legitimate candidate with a similar name to preserve voter intent.

This position serves both practical and constitutional purposes. Practically, it removes the incentive for fielding nuisance candidates, as their votes will ultimately benefit the legitimate candidate they were meant to undermine. Constitutionally, it upholds the paramount principle that elections must reflect the true will of the people. When voters are confused by similar names, crediting these votes in favor of the legitimate candidate is not a manipulation of results but a democratic safeguard that restores the voters' genuine intentions.

Automated Elections Have Not Eliminated the Problem of Nuisance Candidates

The ponencia suggests that under the AES, there should no longer be any room for confusion since voters simply shade the oval next to the printed name of their chosen candidate. The ponencia posits that maintaining the idea that voters can still be confused by similar-sounding names "perpetuate[s] the caricature that the Filipino voter is illiterate." [14]

I must respectfully disagree with this characterization. The root concern that must be addressed is not voter illiteracy but rather the sophisticated tactics employed by political operators to manipulate the electoral process. The fielding of nuisance candidates with names similar to legitimate candidates remains a prevalent tactic precisely because it continues to be effective, even under the AES. This is not a reflection on the intelligence or literacy of Filipino voters but rather on the insidious nature of these tactics and the psychological factors that affect voter behavior.

The mere fact that there are countless cases on nuisance candidates on the ground of causing confusion among the voters by the similarity of the names of the registered candidates is a testament to this insidious and prevalent electoral manipulation tactic.[15] It is thus in the context of elections that the strategic fielding of nuisance candidates exploits confusion among the ordinary intelligent electorate.

The treatment of votes cast for nuisance candidates as stray votes, rather than crediting them to legitimate candidates with similar names, creates a perverse incentive for political operators to field nuisance candidates. If political operators know that votes cast for a nuisance candidate will simply be discarded as stray votes, this

creates a perverse and powerful incentive to field such nuisance candidates to siphon votes away from their opponents.

This concern is not theoretical but is evidenced by the facts of the present case. The votes received by Poblete, declared a nuisance candidate, amounted to 29,325 votes or 7.96% of the total votes cast.[16] These are not insignificant numbers and could decisively affect the outcome of close elections.

Clearly, our electoral system must be designed with "democratic safeguards" to counteract attempts at electoral manipulation. The crediting of votes of nuisance candidates in favor of legitimate candidates with similar names serves as a safeguard, reducing the incentives for political operators to field nuisance candidates.

The primary purpose of elections is to ascertain and give effect to the sovereign will of the people. As the Court eloquently stated in *Tolentino v. COMELEC*,[17] "the consistent rule has been to respect the electorate's will and let the results of the election stand, despite irregularities that may have attended the conduct of the elections." [18] The crediting of votes from nuisance candidates to legitimate candidates with similar names serves this imperative by giving effect to what is presumed to be the genuine intention of the voters. As noted in *Cipriano "Efren" Bautista v. COMELEC*,[19] "technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself." [20]

Stray votes may lead to disenfranchisement

The treatment of votes cast for nuisance candidates as stray votes carries a significant risk of disenfranchisement. In the present case, 29,325 voters (7.96% of the total) who cast their ballots for Poblete had their votes essentially nullified. It is reasonable to presume that many of these voters intended to vote for the legitimate candidate with a similar name, Crisostomo.

As eloquently explained in *Nolasco v. COMELEC*: [21]

Suffrage is the means by which our people express their sovereign judgment. Its free exercise must be protected especially against the purchasing power of the peso ... If that will must remain undefined at the starting level of its expression and application, every assumption must be indulged in and every guarantee adopted to assure the unmolested exercise of the citizen's free choice. For to impede, without authority valid in law, the free and orderly exercise of the right of suffrage, is to inflict the ultimate indignity on the democratic process. [22] (Emphasis supplied)

Thus, election laws and judicial interpretations should be guided by an inclusive democracy principle that seeks to count, rather than discard, votes whenever possible.

Crediting Votes Must Be the Rule to Uphold Democratic Principles

The established doctrine requiring that votes cast for nuisance candidates be credited to legitimate candidates with similar names is, but a necessary safeguard rooted in fundamental democratic principles. However, it also serves as an effective deterrent that prevents scheming political operators from continuing to field nuisance candidates.

As intimated earlier, when voters enter the polling place, they carry with them impressions formed during the campaign period. When confronted with two similar names, voters recalling the candidates in the campaign period may inadvertently select the wrong candidate despite their genuine intention. To treat such votes as stray is

to penalize voters for confusion that was deliberately manufactured by those who fielded the nuisance candidate. In this light, the crediting rule serves as an important deterrent against electoral manipulation.

The ponencia's position that votes for nuisance candidates should be treated as stray creates a scenario where political operators who field nuisance candidates achieve their intended objective regardless of whether their candidate is eventually declared a nuisance. The damage is done: votes that would have gone to the legitimate candidate are effectively nullified, being shelved into the category of stray votes. The nuisance candidate need not win. The goal of the nuisance candidate was never to win but to prevent the legitimate candidate from winning by siphoning away votes. By treating these votes as stray, We end up validating this strategy, ensuring its continued effectiveness. The political operator suffers no consequence—the COC is cancelled, but the harm to the legitimate candidate is unchanged. This is not a system that deters electoral manipulation; it is a system that incentivizes and rewards it. The automation of our electoral system has done nothing to change this fundamental dynamic.

In contrast, crediting votes to the legitimate candidate serves as one deterrent in the electoral toolbox. When political operators know that their nuisance candidate's votes may ultimately be credited to the very candidate they sought to undermine, the entire strategy becomes moot. The risk-reward calculation changes: instead of guaranteed damage with no downside, the strategy now carries the risk of wasting energy and resources for no eventual upside. Those who attempt to corrupt the electoral process should not profit from their misconduct. The rule of crediting votes ensures that manipulators do not end up benefitting from their schemes and that voters are not punished for confusion that was deliberately manufactured by the wily political operators. Any rule that treats votes for nuisance candidates as stray under the AES fundamentally fails to protect our democracy from manipulation and must be rejected.

For these reasons, I must respectfully dissent. The votes cast for Poblete should be credited to Crisostomo, the legitimate candidate with a similar name. This is not only the just result in this case but also the correct interpretation of our electoral laws and constitutional principles. When COMELEC determines that a candidate is a nuisance based on name similarity, it is making a factual finding that voters were or would be confused. Crediting votes is simply the logical remedy that follows from that finding. We should not abandon voters to the consequences of deliberately manufactured confusion and reward those who sought to undermine our democracy.

[1] Ponencia, p. 2.

[2] Id. at 2-3.

[3] Id. at 3-4.

[4] Id. at 5.

[5] *De Alban v. Commission on Elections*, 921 Phil. 524, 534-535 (2022) [Per J. M. Lopez, En Banc].

[6] Dissenting Opinion, J. J. Lopez, *Mangudadatu v. COMELEC*, G.R. Nos. 260219 & 260231, April 22, 2025 [Per J. Gaerlan, En Banc] at 16. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website. ROBERT A. DAHL, *ON DEMOCRACY* 37 (1998); ROBERT A. DAHL, *DEMOCRACY AND ITS CRITICS* 109 (1989).

[7] 912 Phil. 189 (2021) [Per J. Caguioa, En Banc].

[8] Id. at 206.

[9] 359 Phil. 1 (1998) [Per J. Melo, En Banc].

[10] 624 Phil. 50 (2010) [Per J. Villarama, Jr., En Banc].

[11] 936 Phil. 205 (2023) [Per J. J. Lopez, En Banc].

[12] Id. at 240.

[13] Id. at 235-236.

[14] Ponencia, p. 21.

[15] See Teves v. Commission on Elections, 936 Phil. 205, 240 (2023) [Per J. J. Lopez, En Banc]; Zapanta v. Lagasca, 848 Phil. 342 (2019) [Per J. Leonen, En Banc]; Marquez v. Commission on Elections, 861 Phil. 667 (2019); Uy, Jr. v. Commission on Elections, 945 Phil. 446 (2023) [Per J. M. Lopez, En Banc].

[16] Ponencia, p. 3.

[17] 465 Phil. 385 (2004) [Per J. Carpio, En Banc].

[18] Id. at 410.

[19] 359 Phil. 1 (1998) [Per J. Melo, En Banc].

[20] Id. at 17.

[21] 341 Phil. 761 (1997) [Per J. Puno, En Banc].

[22] Id. at 779-780.

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