

AUGUSTO S. SANCHEZ, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 78461. August 12, 1987

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PER CURIAM:

In G.R. No. 78461, candidate Augusto S. Sanchez (Sanchez) filed his petition on May 28, 1987 praying that respondent Commission on Elections (Comelec) after due hearing, be directed to conduct a recount of the votes cast three months ago in the May 11, 1987 senatorial elections to determine the true number of votes to be credited to him and prayed further for a restraining order directing the Comelec to withhold the proclamation of the last four (4) winning candidates on the ground that that votes intended for him were declared as astray votes because of the sameness of his surname with that of disqualified candidate Gil Sanchez, whose name had not been crossed out from the Comelec election returns and other election forms.

Sanchez further alleged that on May 12, 1987, he filed an "Urgent Petition to Recount and/or Re-appreciate Ballots" with the Comelec; acting on the petition, the Comelec ordered Sanchez to submit a Bill of Particulars where votes for "Sanchez" were not counted in his favor. Sanchez' compliance asserted that the invalidation of "Sanchez" votes occurred in all regions where the assailed Comelec forms were distributed and cited specific precincts in Quezon City, Batangas, Pampanga, Cebu, Caloocan, Manila and Iloilo as examples, without any particulars as to the number of votes.

The Court in its Resolutions of June 25, 1987 and July 10, 1987 sustained Comelec's position that it be allowed to complete the canvass of the returns of the senatorial elections (estimated at about 240,000 votes as of June 25, 1987) which would be subject thereafter to its resolution of Sanchez' therein pending petition for recount on the basis of the merits and relevant facts thereof, and therefore found no basis to issue the restraining order prayed for by Sanchez.

In the interval, it appears that on June 26, 1987, candidate Santanina T. Rasul (Rasul) filed her motion for intervention and opposition to Sanchez' petition for recount pending before respondent Comelec. On July 2, 1987, Rasul also filed her Supplemental Opposition raising additional grounds against the recount. On July 2 and 3, 1987, Rasul and candidate Juan Ponce Enrile (Enrile), then ranked 24th and 23rd, respectively, filed a petition with respondent Comelec praying for their immediate proclamation as duly-elected senators. The Comelec deferred action on these two petitions per its resolution dated July 4, 1987, until after the remaining uncanvassed returns shall have been completely canvassed. On July 11, 1987, Enrile also filed his motion for intervention and a motion to dismiss the Sanchez petition for recount. On July 13, 1987, the Comelec granted the motions for intervention filed by candidates Rasul and Enrile.

On July 16, 1987, the Comelec, by a vote of four to three, promulgated its decision dismissing petitioner Sanchez' petition for recount. On July 20, 1987, petitioner Sanchez filed a motion for reconsideration of the decision of July 16, 1987, which was opposed by intervenors Rasul and Enrile.

On July 25, 1987, the Comelec proclaimed Rasul as the 23rd senator-elect. At that time, the lead of Rasul over

Enrile was 1,910 votes only while the lead of Enrile over Sanchez was 73,034 votes with 31,000 votes still to be canvassed in three (3) municipalities of Sulu, namely, Parang, Maimbung and Patikul, and in 15 precincts in Lanao del Sur. In proclaiming Rasul as the 23rd senator-elect, the Comelec, while admitting that it was mathematically possible for Enrile to overtake Rasul, justified its action by rationalizing that "this is improbable, if not highly improbable" considering that the untabulated returns come from Muslim areas or towns "which are all bailiwicks of candidate Rasul," and "between a Muslim candidate and a non-Muslim one, in all probability the Muslim candidate will obtain a higher percentage of the votes cast."

On July 28, 1987, Enrile filed with this Court his petition [G.R. No. 79146 - Juan Ponce Enrile v. Comelec and Santanina Rasul] (1) to compel the Comelec to complete the canvass of votes cast for senators in the May 11, 1987 elections to determine the 23rd and 24th placers in the senatorial race and (2) to annul the proclamation of respondent Rasul or to suspend the effects of such proclamation pending the determination of the 23rd and 24th placers, on the ground of mathematical possibility that the uncanvassed votes would materially affect the 23rd and 24th rankings in the senatorial race, while the Comelec's proclamation of the first 20 elected senators was predicated upon a finding that the first 20 placers would no longer be affected by the certificates of canvass still to be submitted to the Comelec; and that Comelec gave the same reason when it proclaimed subsequently the 21st placer (Ernesto Herera) and 22nd placer (Mamintal Tamano).

On July 24, 1987, however, respondent Comelec, by a vote of five to two, announced its second decision reversing its earlier decision of July 16, 1987 of dismissal of Sanchez' petition and that it was instead granting Sanchez' petition for recount and/or re-appreciation of ballots. Comelec actually released this second decision on July 30, 1987.

On August 3, 1987, Enrile filed with this Court his second petition [G.R. No. 79121 - Juan Ponce Enrile v. Comelec and Augusto S. Sanchez] to (1) annul the Comelec decision granting Sanchez' petition for recount; and (2) to compel it to proclaim Enrile as duly-elected senator, with prayer for issuance of a temporary restraining order. Enrile alleged that the Comelec exceeded its jurisdiction in granting Sanchez' petition for recount and abused its discretion in refusing to proclaim him (Enrile) on the ground that Sanchez' petition for recount is not a pre-proclamation controversy which involves issues affecting extrinsic validity, and not intrinsic validity, of the said election returns and that as of July 25, 1987 up to now, Rasul's lead over him was only 1,916 votes while his lead over Sanchez was 73,034 votes, with only 31,000 votes remaining to be canvassed in the three (3) towns of Sulu and fifteen (15) precincts in Lanao del Sur could not offset his lead over Sanchez.

In its resolution of August 4, 1987, the Court, inter alia, required respondents to comment on Enrile's petition against the Comelec's recount decision, and directed the maintenance of the status quo. The parties were heard in oral argument at the joint hearing held on August 6, 1987, and the cases were thereafter submitted for resolution.

The basic issue at bar -- which Sanchez himself avers in his petition is "a case of first impression" -- is whether his petition for recount and/or re-appreciation of ballots filed with the Comelec may be considered a summary pre-proclamation controversy falling within the Comelec's exclusive jurisdiction (Sec. 242, Omnibus Election Code) or properly pertains to the realm of election protest falling within the exclusive jurisdiction of the Senate Electoral Tribunal as "the sole judge of all contests relating to the election, returns and qualification of the [Senate's] members." (Art. VI, Sec. 17, Constitution)

Without prejudice to the issuance of an extended opinion and after taking into consideration the applicable legal provisions and the contentions of the contending candidates as well as the two conflicting decisions of the Comelec, the Court rules that Sanchez' petition for recount and/or re-appreciation of the ballots cast in the senatorial elections does not present a proper issue for a summary pre-proclamation controversy. Considerations

of definition, usage, doctrinal jurisprudence and public policy demand such a ruling.

1. Sanchez anchors his petition for recount and/or re-appreciation on Section 243, paragraph (b) of the Omnibus Election Code[1] in relation to Section 234 thereof[2] with regard to material defects in canvassed election returns. He contends that the canvassed returns discarding "Sanchez" votes as stray were "incomplete" and therefore warrant a recount or re-appreciation of the ballots under Section 234. A simple reading of the basic provisions of the cited Section shows readily its inapplicability. By legal definition and by the very instructions of the Comelec (Res. No. 1865, Sec. 6, promulgated on March 11, 1987), an election return is incomplete if there is "omission in the election returns of the name of any candidate and/or his corresponding votes" (Sec. 234) or "in case the number of votes for a candidate has been omitted." (Sec. 6, Res. No. 1865)

Here, the election returns are complete and indicate the name of Sanchez as well as the total number of votes that were counted and appreciated as votes in his favor by the boards of inspectors. The fact that some votes written solely as "Sanchez" were declared stray votes because of the inspectors' erroneous belief that Gil Sanchez had not been disqualified as a candidate, involves an erroneous appreciation of the ballots. It is established by the law as well as jurisprudence (the cited section being a substantial reproduction of Section 172 of the 1978 Election Code and previous election laws) that errors in the appreciation of ballots by the board of inspectors are proper subject for election protest and not for recount or re-appreciation of the ballots.

2. The appreciation of the ballots cast in the precincts is not a "proceeding of the board of canvassers" for purposes of pre-proclamation proceedings under section 241, Omnibus Election Code, but of the boards of election inspectors who are called upon to count and appreciate the votes in accordance with the rules of appreciation provided in section 211, Omnibus Election Code. Otherwise stated, the appreciation of ballots is not part of the proceedings of the board of canvassers. The function of ballots appreciation is performed by the boards of election inspectors at the precinct level.

3. The scope of pre-proclamation controversy is limited to the issues enumerated under sec. 243 of the Omnibus Election Code. The enumeration therein of the issues that may be raised in pre-proclamation controversy, is restrictive and exclusive. In the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects (sec. 234), appear to have been tampered with, falsified or prepared under duress (sec. 235) and/or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (sec. 236), which are the only instances where a pre-proclamation recount may be resorted to, granted the preservation of the integrity of the ballot box and its contents, Sanchez' petition must fail. The complete election returns whose authenticity is not in question, must be prima facie considered valid for the purpose of canvassing the same and proclamation of the winning candidates.

4. To expand the issues beyond those enumerated under sec. 243 and allow a recount/reappreciation of votes in every instance where a claim of misdeclaration of stray votes is made would open the floodgates to such claims and paralyze canvass and proclamation proceedings, given the propensity of the loser to demand a recount. The law and public policy mandate that all pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing and just as summarily decided. (Sec. 246, Omnibus Election Code)

5. The Court has always stressed as in *Alonto vs Comelec*[3] that "the policy of the election law is that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible. As declared in *Abes, et al. vs. Commission on Elections*, L-28348, December 15, 1967, the powers of the Comelec are essentially executive and administrative in nature, and the question of whether or not there had been terrorism, vote buying and other irregularities in the election should be ventilated in a regular election protest, and the Commission on Elections is not the proper forum for deciding such

matters," and that the Comelec and the courts should guard "both against proclamation grabbing through tampered returns" and "the equally pernicious effects of excessive delay of proclamations" and "attempts to paralyze canvassing and proclamation." To allow the recount here notwithstanding the multifarious administrative and financial problems of conducting such a recount, as enumerated by the Comelec in its two decisions - when now three months after the elections the question of who is entitled to the 24th seat of the Senate would remain unresolved for how long no one can tell - is unthinkable and certainly contrary to public policy and the mandate of the law that the results of the election be canvassed and reported immediately on the basis of the authentic returns which must be accorded prima facie status as bona fide reports of the votes cast for and obtained by the candidates.[4]

6. Election cases involve not only the adjudication of the private interest of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the offices within their gift. They are imbued with public interest (*Vda. de Mesa v. Mencias*, 18 SCRA 533, 538).

7. The ground for recount relied upon by Sanchez is clearly not among the issues that may be raised in a pre-proclamation controversy. His allegation of invalidation of "Sanchez" votes intended for him bear no relation to the correctness and authenticity of the election returns canvassed. Neither the Constitution nor statute has granted the Comelec or the board of canvassers the power in the canvass of election returns to look beyond the face thereof, once satisfied of their authenticity (*Abes v. Comelec* 21 SCRA 1252, 1256).

8. In *Grand Alliance for Democracy v. Comelec, et al.*, G.R. No. 78302, promulgated May 27, 1987, the Court restated certain principles governing canvass proceedings, which are fully applicable here, *mutatis mutandis*, to wit:

"The Court has restated the settled doctrine in senatorial elections in *Ilarde v. Commission on Elections*, 31 SCRA 72, thus: 'Canvass proceedings are administrative and summary in nature, and a strong prima facie case backed up by a specific offer of evidence and indication of its nature and importance has to be made out to warrant the reception of evidence aliunde and the presentation of witnesses and the delays necessarily entailed thereby. Otherwise, the paralyzation of canvassing and proclamation proceedings leading to a vacuum in so important and sensitive an office as that of Senator of the Republic could easily be brought about - this time involving the eight place and next time involving perhaps all the eight places, when it is considered that the position of senator is voted for, nationwide by all the voters of the 66 provinces and 57 cities comprising the Philippines.'

"And in *Anni v. Izquierdo*, 57 SCRA 692, the Court declared that: 'The decisive factor is that where it has been duly determined by Comelec after investigation and examination of the voting and registration records that actual voting and election by the registered voters had taken place in the questioned precincts, the election returns cannot be disregarded and excluded with the resulting disenfranchisement of the voters but must be accorded prima facie status as bona fide reports of the result of the voting for canvassing and proclamation purposes.'"

"As the Court stated in *Anni v. Rasul*, 46 SCRA 758. 'The rule has been time-tested. To allow a respondent in the Comelec to raise belated questions concerning returns at any time during the pendency of the case on review before the Comelec notwithstanding that he has not originally raised such questions before the canvassing board and only when he finds his position endangered would mean undue delays in pre-proclamation proceedings before the Comelec, x x x . The Court has stressed that Comelec and the courts should guard both against the proclamation grabbing through tampered and spurious returns as well as attempts and machinations to paralyze canvassing and proclamation x x x x .'"

"It should be added that the other alleged irregularities, such as the omissions of the Commission on Elections

in the distribution and protection of the election forms and paraphernalia, involve the discharge of its administrative duties and so do not come under the jurisdiction of this Court, which can review the decisions, orders and rulings of the body only in cases of grave abuse of discretion committed by it in the discharge of its quasi-judicial powers (Aratuc v. Commission on Elections, 88 SCRA 251; Guevara v. Commission on Elections, G.R. No. L-12596, July 31, 1958; Filipinas Engineering Co. v. Ferrer, 135 SCRA 25)."

9. As of July 25, 1987, and as the canvassing results stand, Rasul as of her proclamation as the 23rd Senator-elect, had a lead over Enrile of 1,910 votes, while Enrile had a lead over Sanchez of 73,034 with only 31,000 votes still to be canvassed (in three municipalities of Sulu and in 15 precincts of Lanao del Sur.) Said uncanvassed votes (31,000) are clearly not sufficient in number to offset the 73,034 votes lead of Enrile over Sanchez even if awarded to the latter. There is no need to wait for the canvass of the votes from the 3 municipalities of Sulu and the 15 precincts in Lanao del Sur, which still remains up to this late day a big question mark of when and how they will finally get canvassed, assuming their integrity has been preserved. Candidate Juan Ponce Enrile is therefore entitled to proclamation as the 24th senator-elect in the May 11, 1987 elections. Enrile's petition against Rasul has been rendered moot.

ACCORDINGLY, the Petition in G.R. No. 79212 (Juan Ponce Enrile v. Commission on Election and Augusto Sanchez) is hereby GRANTED and the decision of respondent Commission on Elections promulgated on July 30, 1987 granting Sanchez' petition for recount is hereby SET ASIDE. The respondent Comelec is hereby ordered to proclaim petitioner Juan Ponce Enrile as a duly elected senator in the May 11, 1987 elections. The petitions in G.R. No. 78461 (Augusto S. Sanchez v. Commission on Election) and G.R. No. 79146 (Juan Ponce Enrile v. Commission on Elections and Santanina T. Rasul) are both DISMISSED. This decision shall be IMMEDIATELY EXECUTORY upon its promulgation.

Teehankee, C.J., Yap, Fernan, Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and Cortes, JJ., concur.

Sarmiento, J., dissent in a separate opinion.

Melencio-Herrera, J., on leave.

[1] Sec. 243. xxx

(b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;

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[2] Sec. 234. Materials defects in the election returns. - If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction: Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials: Provided, further, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and thereafter complete the

returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates. (Sec. 172, 1978 EC)

[3] 22 SCRA 878, 884, per Reyes, J.B.L.

[4] Bashier vs. Comelec, 43 SCRA 238 Anni vs. Izquierdo, 57 SCRA 692.

Sanchez vs COMELEC : 78461 : August 12, 1987 : J. Sarmiento : En Banc : Dissenting Opinion Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:#{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

SARMIENTO, J.:

I vote to dismiss the petition in G.R. No. 79212, and consequently, to sustain the recount of ballots ordered by the respondent Commission on Elections.

I hold that paragraph (b), Section 243, of the Omnibus Election Code of the Philippines is the basis enough for the challenged recount order. Thus:

SEC. 243. Issues that may be raised in pre-proclamation controversy. - The following shall be proper issues that may be raised in a pre-proclamation controversy:

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(h) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or certain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234 and 236 of this Code;

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I agree with the respondent Commission that the erroneous invalidation of votes cast in favor of "Sanchez" on account of the inclusion of "Gil Sanchez" in the election forms distributed nationwide on election day, although Gil Sanchez, a nuisance candidate, had been earlier disqualified, makes the election return either "incomplete" or "materially defective" within the meaning of Section 234 of the Code, thus:

SEC. 234. Material defects in the election returns. - if it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call or all members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction: Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials: Provided, further, That of the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and

thereafter complete the returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.

I am satisfied with this holding of the respondent Commission:

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x x x In order to be regarded as a true expression of the people's will, an election return must reflect all the votes cast in favor of a candidate, or at least such number of votes as would be enough to declared him elected. Otherwise, to the extent that this will is not made manifest, the election return is incomplete and materially defective.[1]

In any event, I do not believe that Section 243 of the Code makes an exclusive enumeration of the grounds that may be raised in a pre-proclamation controversy. What I believe is more significant is the fact that the Commission on Elections is the office charged by our very Constitution, among other things, to "[e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall." [2] While the same Constitution has made the House Electoral Tribunal the "sole judge of all contests relating to the election, returns, and qualifications" [3] of the members of Congress, that to me does not lessen the significance of the Commission's chief mission as the watchdog of elections and all other political exercises. In *Olfato v. Commission on Elections*, [4] we therefore said:

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To give a strict interpretation of Section 175 (second sentence) of the 1978 Election Code would be to limit the grounds in pre-proclamation controversies to matters purely affecting election returns. WE believe that to revert to the old doctrine prohibiting the Comelec from looking behind the election returns as to the existence of election irregularities is not consistent with the very purpose of the law. Clearly, Sections 172, 173 and 174 only speak of irregularities committed in the preparation of election returns themselves. WE cannot see any difference however if the Comelec be allowed to suspend a canvass or suspend or annul a proclamation of a candidate-elect on the ground that irregularities or mistakes in the preparation of the returns such as tampering, altering, falsifying of returns, material defects or discrepancies of election returns exist and deny said authority to the Comelec if based on grounds not apparent on the face of the election returns but indirectly affecting their integrity. Cer-tainly, it would be ridiculous to deny the Comelec the authority to suspend a canvass or suspend or annul a proclamation if based on grounds of election irregularities committed during the election which would necessarily also vitiate or affect the integrity of the election returns such as fake voters whose votes cast and included during the canvass would inevitably be reflected in the election returns themselves, although not apparent upon the face. Seemingly genuine returns based on fake votes are equally spurious as tampered election returns. To sustain the validity of election returns despite a prima facie showing of the commission prior to the voting of election irregularities independent of the subsequent act of preparing the election returns is to stamp our approval on making said election returns as an impenetrable shield in the perpetuation of anomalies.[5]

I am of the opinion that what we said in *Olfato* applies with equal force here. I have no doubt that the disregard of certain "Sanchez" votes diminishes the integrity of the returns as much as a tampered or falsified return that would justify a Comelec action by way of a pre-proclamation disposition.

In this connection, I find Commissioner Haydee Yorac's dissent in the first Comelec decision persuasive:[6]

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x x x I take the legal position that where events take place and acts are committed in the course of canvassing

and before proclamation which event and acts are seasonably brought to the attention of the Commission, and which the Commission can

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expeditiously act upon or address administratively, the Commission must take jurisdiction. The grounds must be analogous to those which are grounds for pre-proclamation controversy and must not be identified by any provision of law as grounds for election protest. A gap in the law does not warrant an abnegation of duty. Art. 9. Civil Code.[7]

It is not for me to point that there is no showing, as candidate Enrile alleges, that a recount would land candidate Sanchez in the winning column (at the expense of the former, who is holding on at the 24th slot). What to me is essential is the fact that by a recount, we may be assured of the true will of the people. If such a recount will mean the inclusion of Sanchez in the winning ticket, then so be it. That is the mandate of the people. But if not, it means that the electorate prefer candidate Enrile.

For I do not believe that the technicalities of the legal rules enunciated in the election laws should be an impediment to the determination of the popular will. I am not saying that a recount is by itself a departure from the provisions of the election laws -- as I said, Section 243 of the Election Code furnishes sufficient basis for the Comelec action in question. But if we do so, it is not the first time that we would have assumed such an activist posture. In his concurrence in our benchmark ruling in *Pimentel v. Comelec*,^[8] retired Chief Justice Enrique Fernando wrote:

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"x x x While the approach followed by the Court may appear to be a departure from what has long been considered traditional, I have no hesitancy in joining my brethren. For me, what is paramount is that through this mode of resolving a dispute where urgency is of the essence, the basic right of suffrage is safeguarded and vitalized. That is the controlling consideration. I shall explain why, to my mind, it is so.

"1. Let me start with this authoritative doctrine coming from the pen of Justice Laurel in the leading case of *Moya v. del Fierro*: 'As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must contrive to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common meal. Republicanism, or so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority. He has a voice in his Government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justiciable cases, to give it efficacy and not stifle or frustrate it.' It is such a cardinal principle that led this Court in *Badelles v. Cabili* to state: 'A republic then to be true to its name requires that the government rests on the consent of the people, consent freely given, intelligently arrived at, honestly recorded, and thereafter counted.'^[9]

These petitions, reduced to their barest essentials, are the aftermath of a mad scramble for the last Senatorial slots, but I am more inclined to view the same, Augusto Sanchez's petition in particular, as welcome opportunities to ascertain the genuine mandate of the people. At the same time, we would have animated the right of suffrage.

In fine, I reject candidate Enrile's objections based on rigid application of the Omnibus Election Code.

It seems to me unfair, if unfounded, for candidate Enrile to suspect efforts on the part of the respondent Comelec "to keep petitioner Enrile from sitting in the Senate."^[10] I cannot pin specific blame on any party for this fiasco, although I would be lacking in candor if I hold the respondent Comelec entirely free from responsibility either. But I believe that it is largely by accident that it is candidate Enrile who now finds himself in the middle of the

controversy. But then, so is candidate Sanchez.

Notwithstanding the former Defense Minister's doubts on the veracity of the records of the respondent Commission pointing to a case of mistake in appreciating the "Sanchez" votes, I am strongly of the opinion that there was indeed such misappreciation of the votes cast for the name "Sanchez".

The inclusion of "Gil Sanchez" in the election forms is not disputed, and neither is the damage caused to legitimate candidate Augusto Sanchez arising from the erroneous nullification of "Sanchez" votes. There is then no question that an error has been committed, an error neither the Comelec nor candidate Sanchez is prepared to assume responsibility for. But nevertheless, there was such an error. The extent thereof is a matter of evidence and it is on candidate Sanchez that the burden of proof lies. In all cases, the error must be corrected.

A recount, while admittedly a tedious process, is not, however, "interminable."^[11] We must entrust to the Comelec such faith and confidence that it will perform its solemn duties under the Constitution. It should know when to stop. It is not without power to limit the number of ballot boxes to reopen for the purpose only of counting the "Sanchez" stray votes.

Let me state in closing that a recount is proper whenever there has been a patent failure to properly credit votes in favor of a candidate. This is particularly true in the case of Augusto Sanchez who obviously was the victim of a nuisance candidacy. Under the Constitution:

Sec. 10. Bona fide candidates for any public office shall be free from any form of harassment and discrimination.^[12]

There is nothing in the Omnibus Election Code that penalizes nuisance candidacies, yet there must be some way of vindicating victims of nuisance candidates. It is no argument that this would "open the floodgates to recount"^[13] since it is a matter of right on the part of legitimate aspirants to protect their candidacies. Otherwise, Gil Sanchez -- his true identity is a mystery to this day -- and many more of his ilk would have served their unscrupulous purposes.

[1] In the Matter of the Petition for a Recount, SPC No. 87-179, July 30, 1987, 10.

[2] CONST., art. XI (C), sec. 2 (1).

[3] Supra, art. VI, sec. 17.

[4] No. L-52749, March 31, 1981, 103 SCRA 741 (1981).

[5] Supra, 780-781; emphases in original.

[6] In the Matter of the Petition for a Recount, SPC No. 87-179, July 16, 1987, Yorac, Comm., dissenting.

[7] Supra, 2.

[8] No. L-68113, October 31, 1984, 134 SCRA 571 (1984).

[9] Supra, 572-573.

[10] Petition, G.R. No. 79212, 28.

[11] Id., 29.

[12] CONST., art. IX (C), sec. 10.

[13] Petition, id., 25.

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