



Republic of the Philippines
Presidential Electoral Tribunal
Manila

FERDINAND “BONGBONG” R. MARCOS, JR., P.E.T. Case No. 005

Protestant,

Present:

PERALTA, *Chief Justice*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GISMUNDO,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
DELOS SANTOS,
GAERLAN,
ROSARIO, and
LOPEZ, J., JJ.

-versus-

**MARIA LEONOR “LENI DAANG
MATUWID” G. ROBREDO,**

Protestee.

Promulgated:

February 16, 2021

Anna L. R. Papa-Gambit

X-----X

DECISION

*“New beginnings are often
disguised as painful endings.”
Lao Tzu*

*“Then you will know the truth,
and the truth will set you free.”
John 8:32*

*“But part of surviving is
being able to move on.”
Alexandra Braken,
The Darkest Minds*

LEONEN, J.:

An election protest is no ordinary petition. It alleges anomalies and irregularities which, if proven true, would perniciously deprive a significant portion of the voting population of its constitutionally protected right of suffrage. Given this extraordinary nature, an election protestant takes on the heavy burden of clearly and specifically alleging, and then proving, the irregularities that led to a breakdown in our mechanisms for suffrage.

When the protestant fails to meet the strict requirement of specificity and established rules on evidence to support the allegations of election irregularities, the election protest must be dismissed.

The Court, sitting as the Presidential Electoral Tribunal (Tribunal), resolves the June 29, 2016 Election Protest¹ (Protest) filed by protestant Ferdinand “Bongbong” R. Marcos, Jr. (protestant), who challenges the election and proclamation of Maria Leonor “Leni Daang Matuwid” G. Robredo (protestee) as vice president in the 2016 national and local elections.

Protestant and protestee were two of six candidates for vice president during the May 9, 2016 elections. Protestee garnered 14,418,817 votes, while protestant received 14,155,344 votes, giving protestee a slim margin of only 263,473 votes over protestant.²

On May 30, 2016, Congress issued Resolution of Both Houses No. 1, which recognized the results of the canvass conducted and proclaimed protestee as the duly elected Vice President of the Philippines.³

On June 29, 2016,⁴ protestant filed this Protest premised on two causes of action:

A.
(First Cause of Action)

The proclamation of protestee Robredo as the duly elected [Vice President] is null and void because the [Certificates of Canvass (COCs)] generated by the [Consolidation and Canvass System (CCS)] are not

¹ *Rollo*, Vols. I and II, pp. 1–1047.

² Resolution of Both Houses No. 1, Resolution of both houses approving the report of the joint committee, declaring the results of the National Elections held on May 9, 2016, for the offices of President and Vice President, and proclaiming the duly elected President and Vice President of the Republic of the Philippines, May 30, 2016, <http://www.senate.gov.ph/16th_congress/resolutions/joint%20public%20session%20res%20both%20houses%20no.1.pdf> (last accessed on January 31, 2021).

³ *Id.*

⁴ *Rollo*, Vol. XLIX, pp. 39525.

authentic, and may not be used as basis to determine the number of votes that the candidates for Vice President received.

....

B.

(Second Cause of Action)

Massive electoral fraud, anomalies, and irregularities, such as, but not limited to terrorism, violence, force, threats, . . . intimidation, pre-shading of ballots, vote-buying, substitution of voters, flying voters, pre-loaded SD cards, misreading of ballots, unexplained, irregular and improper rejection of ballots containing votes for protestant Marcos, malfunctioning Vote Counting Machines (VCMs), and abnormally high unaccounted votes/undervotes for the position of [Vice President] compromised and corrupted the conduct of the elections and the election results for the position of [Vice President] in the protested precincts.⁵ (Citation omitted)

On July 12, 2016, this Tribunal issued a Precautionary Protection Order,⁶ directing the Commission on Elections to safeguard the integrity of all the ballot boxes, their contents, and other election paraphernalia in the 92,509 clustered precincts covered by the Protest.⁷

This Tribunal then issued Summons⁸ to protestee, directing her to file her answer to the Protest.

In her Verified Answer with Special and Affirmative Defenses and Counter-Protest,⁹ protestee alleged that the Protest failed to provide the specific acts or omissions that supposedly led to electoral frauds, anomalies, or irregularities in the protested 92,509 clustered precincts.¹⁰ She further pointed out that the Protest was a pre-proclamation controversy, which should have been lodged before the National Board of Canvassers, and not before this Tribunal.¹¹

As counter-protest, protestee contested the election results gathered from 7,547 clustered precincts in 13 provinces.¹² She alleged that vote-buying, intimidation, substitution, and other irregularities occurred in these provinces during the 2016 national and local elections. She stated that, had protestant not resorted to electoral fraud in these provinces, she would have received a higher number of votes.¹³

⁵ *Rollo*, Vol. II, pp. 927–929.

⁶ *Rollo*, Vol. XX, pp. 16012–16013.

⁷ *Id.*

⁸ *Id.* at 16010–16013.

⁹ *Rollo*, Vols. XXI–XXVII, pp. 16155–21525.

¹⁰ *Rollo*, Vol. XXI, pp. 16177–16186.

¹¹ *Id.* at 16167–16177.

¹² *Rollo*, Vol. XLIX, pp. 39529–39530. The provinces included in the Counter-Protest were Apayao, Mountain Province, Abra, Kalinga, Bataan, Capiz, Aklan, Antique, Sarangani, Sulu, Sultan Kudarat, South Cotabato, and North Cotabato.

¹³ *Rollo*, Vol. XXI, pp. 16406–16689.

Protestee then asked: (1) that a preliminary hearing be set; (2) that the Protest be dismissed for lack of jurisdiction and for insufficiency in form and substance; and (3) that her proclamation as vice president be affirmed.¹⁴

In a January 24, 2017 Resolution,¹⁵ this Tribunal confirmed that it had jurisdiction over the Protest, as Article VII, Section 4 of the 1987 Constitution mandates it to be the “sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President[.]”¹⁶

In the same Resolution, this Tribunal found the Protest to be sufficient in form and substance. It also denied protestee’s motion to dismiss the Protest, along with the setting for preliminary hearing of her special and affirmative defenses.¹⁷

On February 27, 2017, protestee moved for the reconsideration¹⁸ of this Tribunal’s January 24, 2017 Resolution.

On June 6, 2017, this Tribunal deferred¹⁹ resolving protestee’s Motion for Reconsideration, protestant’s Comment/Opposition²⁰ to the Motion, as well as protestee’s Motion for Leave of Court to File and Admit the Herein Incorporated Reply to Protestant’s Comment/Opposition,²¹ after the preliminary conference.

¹⁴ Id. at 16690.

¹⁵ *Rollo*, Vol. XXIX, pp. 22459-A–22459-H.

¹⁶ CONST., art. VII, sec. 4 states:

Section 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.

Unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

¹⁷ *Rollo*, Vol. XXIX, pp. 22459-A–22459-H.

¹⁸ Id. at 22674–22698.

¹⁹ *Rollo*, Vol. XXX, pp. 23285–23290.

²⁰ Id. at 22900–22924.

²¹ Id. at 22990–23006.

On April 25, 2017, this Tribunal, among others, directed the parties to file their respective preliminary conference briefs five days before the scheduled preliminary conference.²²

On July 11, 2017,²³ the preliminary conference was held. There, with protestant's consent, this Tribunal categorized his causes of action into: *first*, the annulment of protestee's proclamation; *second*, a revision and recount of ballots in Camarines Sur, Iloilo, and Negros Oriental; and *third*, the annulment of elections in Lanao del Sur, Maguindanao, and Basilan. The causes of action were elaborated as follows:

First Cause of Action - Annulment of Proclamation

The proclamation of protestee Robredo as the duly elected Vice President is null and void because the [certificates of canvass] generated by the [consolidated canvassing system] are not authentic, and may not be used as basis to determine the number of votes that the candidates for VICE PRESIDENT received.

Second Cause of Action - Revision and Recount

Revision and recount of the paper ballots and/or the ballot images as well as an examination, verification, and analysis of the voter's receipts, election returns, audit logs, transmission logs, the list of voters, particularly the [election day computerized voter's list], and [voters registration record], the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the [vote counting machines], [consolidated canvassing system] units, SD cards (main and backup), and the other data storage devices containing electronic data and ballot images in ALL of the 36,465 protested clustered precincts pursuant to Rules 38 to 45 of the 2010 PET Rules; and

Third Cause of Action - Annulment of Elections

Annulment of election results for the position of Vice President in the provinces of Maguindanao, Lanao del Sur[,] and Basilan, on the ground of terrorism, intimidation[,] and harassment of voters as well as pre-shading of ballots in all of the 2,756 protested clustered precincts that functioned in the aforesaid areas.²⁴

In the interim, protestant had filed another Motion for Technical Examination of the voters' signatures in Lanao del Sur, Maguindanao, and Basilan. This is a separate pleading from his Protest that also prayed for a technical examination as part of his third cause of action.²⁵

²² *Rollo*, Vol. XXXI, pp. 23087–23091.

²³ *Id.* at 23978-A–23798-E.

²⁴ *Rollo*, Vol. XLIX, p. 39540.

²⁵ *Rollo*, Vol. XXXI, pp. 23966–23972.

In an August 29, 2017 Resolution,²⁶ this Tribunal dismissed protestant's first cause of action, pointing out that the veracity of his allegations on the inauthenticity and unreliability of the certificates of canvass could only be determined by a manual recount of all votes in all precincts.²⁷ With protestant stating that he was limiting the manual recount to his second and third causes of action, this Tribunal ruled that resolving the first cause of action would have no practical effect.²⁸

This Tribunal likewise dismissed protestee's Motion for Reconsideration and reiterated that the Protest was sufficient in form and substance.²⁹

In the Preliminary Conference Order,³⁰ this Tribunal limited the issues to protestant's second and third causes of action, and to protestee's Counter-Protest. It then directed that the revision of ballots would begin with protestant's designated pilot provinces, which were Camarines Sur, Iloilo, and Negros Oriental. *The pilot provinces would serve as test cases, and the revision results would determine if this Tribunal would proceed with the revision of ballots in the remaining contested clustered precincts.*³¹

This Tribunal also reiterated the directive it had earlier issued in the preliminary conference, to limit the parties' witnesses to three per clustered precinct, and to submit a new list of witnesses that should include the clustered precinct each witness would testify on.³² It noted that protestant had not yet submitted his witness list, and warned him that his failure to comply would "be deemed a waiver of his right to name and identify his witnesses, and to present them during the reception of evidence."³³

This Tribunal deferred action on protestant's motion for the technical examination³⁴ of the voters' signatures in Lanao del Sur, Maguindanao, and Basilan. It explained that to do so would be premature, *as the result of the revision of ballots and reception of evidence in the pilot provinces—Camarines Sur, Iloilo, and Negros Oriental—would determine if this Tribunal would proceed with the other contested provinces.*³⁵

On October 23, 2017, the ballot images for the protested clustered precincts of the three pilot provinces were decrypted and printed.³⁶ The

²⁶ *Rollo*, Vol. XXXII, pp. 24482–24515.

²⁷ *Id.* at 24483–24484.

²⁸ *Id.*

²⁹ *Rollo*, Vol. XXIX, pp. 22674–22698.

³⁰ *Rollo*, Vol. XXXII, pp. 24485–24514. The PCO is included in the August 29, 2017 Resolution.

³¹ *Id.*

³² *Rollo*, Vol. XXXII, p. 24501.

³³ *Id.* at 24502.

³⁴ *Rollo*, Vol. XLIX, p. 39545.

³⁵ *Rollo*, Vol. XXXII, pp. 24510–24511.

³⁶ *Rollo*, Vol. XLIX, p. 39548.

ballot boxes and other election paraphernalia were later retrieved from the pilot provinces.³⁷

On January 16, 2018, this Tribunal issued its Revisor's Guide for the Revision of Ballots under the Automated Election System (Revisor's Guide) to govern revision proceedings in election protests.³⁸ Rule 4 of the Revisor's Guide provided the four objectives of revision of ballots:

- (a) To verify the physical count of the ballots;
- (b) To recount the votes of the parties;
- (c) To record the parties' objections and claims thereon; and
- (d) To accordingly mark such ballots which were objected to and claimed by the parties for purposes of identification during subsequent examination by the Tribunal and for reception of evidence, if any.³⁹

Additionally, the revision of ballots from the pilot provinces went through the following process:

[F]irst, prior to the actual recount of the votes of the parties, the [head revisors] were required to authenticate the ballots to ensure their genuineness, ensuring that the ballots contained all the security features of the official ballots and using ultraviolet lamps which could detect the hidden security marks; *second*, such [head revisors] segregated the ballots which were read by the [vote-counting machines] into four (4) categories: (1) Ballots for Protestant; (2) Ballots for Protestee; (3) Ballots for Other Candidates; and (4) Ballots with Stray Votes (ballots with no votes or those with more than one (1) vote for the Vice President position); *third*, the revisors for protestant and protestee registered their respective objections to the Ballots for Protestee and Ballots for Protestant, respectively; *fourth*, both Party Revisors registered their claims on the Ballots for Other Candidates and Ballots with Stray Votes; *fifth*, both Party Revisors registered their claims on ballots that were rejected by the [vote counting machines] and were not thus included in the ballot segregation, if any; and *lastly*, each [revision committee] recorded all relevant data, including the results of their revision, in a Revision Report signed by all three (3) members and to which the claims and objections of the Party Revisors were annexed for subsequent ruling by the Tribunal during the appreciation stage.⁴⁰ (Emphasis in the original, citations omitted)

The revision of ballots for the pilot provinces commenced on April 2, 2018, and ended on February 4, 2019.⁴¹

The three pilot provinces had 5,418 clustered precincts, but this Tribunal only revised paper ballots and decrypted ballot images from 5,415

³⁷ Id. at 39550.

³⁸ Id. at 39551.

³⁹ Presidential Electoral Tribunal's Revisor's Guide for the Revision of Ballots under the Automated Election System (2018), Rule 4.

⁴⁰ *Rollo*, Vol. XLIX, pp. 39553.

⁴¹ Id.

clustered precincts, as the Commission on Elections could not provide the decrypted ballot images of the damaged and unreadable paper ballots of three clustered precincts, namely: (1) Clustered Precinct 34, Barangay Niño Jesus, Bato, Camarines, Sur; (2) Clustered Precinct 13, Barangay Haring, Canaman Camarines Sur; and (3) Clustered Precinct 27, Barangay Cubay, San Joaquin, Iloilo.⁴²

Protestee then moved that the Revision Committees be directed to use a 25% threshold in determining the validity of a marked oval, as this was allegedly the threshold used during the 2016 national and local elections.⁴³

This Tribunal denied protestee's motion and ruled that her proposed 25% threshold was baseless.⁴⁴ It retained the 50% threshold under the 2010 Presidential Electoral Tribunal Rules,⁴⁵ and pointed out that the threshold mentioned in the Revisor's Guide⁴⁶ referred to the Rules' 50% threshold.⁴⁷

Protestee moved for reconsideration. Likewise, she furnished this Tribunal, for the first time, with the Commission on Elections' *En Banc* Resolution No. 16-0600, which adopted the Random Manual Audit Visual Guidelines.⁴⁸

In its Comment,⁴⁹ the Commission on Elections confirmed that for the 2016 national and local elections, it set the threshold at 25% as it calibrated the vote counting machines "to read marks that cover at least about 25%

⁴² Id.

⁴³ Id. at 39555–39556.

⁴⁴ *Rollo*, Vol. XXXIV, pp. 26366–26370.

⁴⁵ PET RULES (2010), Rule 43(I) states:

RULE 43. *Conduct of the Revision*. — The revision of votes shall be done through the use of appropriate [precinct count optical scan] machines or manually and visually, as the Tribunal may determine, and according to the following procedures:

.....

(I) In looking at the shades or marks used to register votes, the [revision committees] shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. Any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the [precinct count optical scan] machine, and not by human determination.

⁴⁶ Presidential Electoral Tribunal's Revisor's Guide for the Revision of Ballots under the Automated Election System (2018), Rule 62 states:

RULE 62. *Votes of the Parties*. — After the segregation and classification of ballots, the Head Revisor shall count the total number of ballots for the Protestant, Protestee, Other Candidates, and with Stray Votes and record said matter on the appropriate spaces of the Revision Report.

In examining the shades or marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such National and Local Elections reasons exist that will justify their rejection. Any issue as to whether a certain mark or shade is within the threshold shall be resolved by the assigned Revision Supervisor. Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.

⁴⁷ *Rollo*, Vol. XXXIV, pp. 26366–26370.

⁴⁸ Id. at 26483–26496.

⁴⁹ *Rollo*, Vol. XXXVII, pp. 28970–28983.

(when seen by human eyes) of the oval for each candidate as valid votes.”⁵⁰ It likewise stated that it used the 25% threshold for all the 2016 election protest cases filed before it.⁵¹

Acting on protestee’s Motion for Reconsideration, this Tribunal directed the Head Revisors to compare the election returns with the total number of votes read and counted by the vote counting machines.⁵² It explained that the purpose of the revision process was to recount the votes received by confirming “how the [vote counting machines] read and counted the votes during the elections.”⁵³ It then laid down the following guidelines:

Hence, in the segregation of ballots, the Tribunal held that its Head Revisors must be guided by the number of votes indicated in the Election Returns. The Tribunal held that, in using the Election Returns and not merely adopting a specific shading threshold, the Tribunal’s revision procedure will be more flexible and adaptive to calibrations of the voting or counting machines in the future. The Head Revisors were directed to use the Election Returns which normally would be inside the ballot boxes retrieved. However, in their absence, the Head Revisors were directed to use the certified true copies of Election Returns obtained from COMELEC. As to those ballots already previously revised, the procedure of verifying votes using the Election Returns was to be strictly enforced during the appreciation stage by the Tribunal.⁵⁴

Accordingly, this Tribunal amended Rule 62⁵⁵ of the Revisor’s Guide to refer the segregated ballots to the election returns generated by the vote counting machine and guidelines set by the Tribunal. It now reads:

RULE 62. *Votes of the Parties.* — *The segregation and classification of ballots shall be done by referring to the Election Return (ER) generated by the machine used in the elections.* The Head Revisor shall count the total number of ballots for the Protestant, Protestee, Other Candidates, and with Stray Votes and record said matter on the appropriate spaces of the Revision Report.

In examining the shades or marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as

⁵⁰ Id. at 28971.

⁵¹ Id. at 28972.

⁵² *Rollo*, Vol. XLI, pp. 32728–32748.

⁵³ *Rollo*, Vol. XLIX, p. 39558.

⁵⁴ Id. at 39559.

⁵⁵ Rule 62 of the Revisor’s Guide originally read:

RULE 62. *Votes of the Parties.* — After the segregation and classification of ballots, the Head Revisor shall count the total number of ballots for the Protestant, Protestee, Other Candidates, and with Stray Votes and record said matter on the appropriate spaces of the Revision Report.

In examining the shades of marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. Any issue as to whether a certain mark or shade is within the threshold shall be resolved by the assigned Revision Supervisor. Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.

votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such National and Local Elections reasons exist that will justify their rejection. *Any issue on the segregation and classification of ballots by the Head Revisor shall be resolved by the assigned Revision Supervisor, based on the guidelines set by the Tribunal.* Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.⁵⁶ (Emphasis supplied)

The revision and recount proceedings in the 5,415 clustered precincts in the three pilot provinces led to the following results:⁵⁷

	[Protestee]	[Protestant]
Camarines Sur	657,991	40,794
Iloilo	562,811	93,245
Negros Oriental	255,576	66,456
Total	1,476,378	200,495

On January 14, 2019, this Tribunal began its appreciation of the revised ballots, primarily to ascertain and give effect to the voters' intent. It then verified the physical count of the revised ballots and ruled on the parties' respective claims and objections.⁵⁸ The appreciation process was completed on August 14, 2019.⁵⁹

Acting on the objections registered by the parties, this Tribunal deducted the following votes from the results of the revised ballots:⁶⁰

	[Protestee]	[Protestant]
Camarines Sur	(358)	(8)
Iloilo	(285)	(34)
Negros Oriental	(205)	(56)
Total votes deducted	(848)	(98)

Next, acting on the claims made by the parties, the following votes were added to the parties:⁶¹

	[Protestee]	[Protestant]
Camarines Sur	12,004	734
Iloilo	16,825	2,127
Negros Oriental	5,819	1,254
Total votes added	34,648	4,115

⁵⁶ *Rollo*, Vol. XLIX, pp. 39557–39558.

⁵⁷ *Id.* at 39565.

⁵⁸ *Id.* at 39561.

⁵⁹ *Id.*

⁶⁰ *Id.* at 39569.

⁶¹ *Id.* at 39572.

This Tribunal then used the Provincial Certificates of Canvass to ascertain the number of votes received by the parties from the pilot provinces' 5,418 clustered precincts. However, this Tribunal subtracted the votes from the three clustered precincts with unavailable paper ballots, thus coming up with total votes in 5,415 clustered precincts:⁶²

	[Protestee]	[Protestant]
Votes in the 5,418 clustered precincts of the three pilot provinces based on the Provincial [Certificates of Canvass]	1,493,517	202,136
Less: Votes in the three (3) clustered precincts with unavailable paper ballots and ballots images	(859)	(51)
Total votes in the 5,415 clustered precincts	1,492,658	202,085

This Tribunal then deducted the parties' votes from the 5,415 clustered precincts from their total votes as proclaimed by the National Board of Canvassers (TOTAL A):⁶³

	[Protestee]	[Protestant]
Total votes as proclaimed	14,418,817	14,155,344
Less: Total votes in the 5,415 pilot clustered precincts	(1,492,658)	(202,085)
Total votes in the clustered precincts other than the 5,415 pilot precincts revised and appreciated (TOTAL A)	12,926,159	13,953,259

The revision and appreciation of ballots in the 5,415 clustered precincts of the pilot provinces generated the following results (TOTAL B):⁶⁴

	[Protestee]	[Protestant]
Votes in the 5,415 pilot clustered precincts after revision	1,476,378	200,495
Less: Votes deducted from sustained objections	(848)	(98)
Total Votes in the 5,415 pilot clustered precincts after revision after deducting sustained objections	1,475,530	200,397
Add: Votes added due to admitted claims (ballots with stray votes, ballots with over-votes, and [vote counting machine]-rejected ballots)	34,648	4,115
Total votes in the 5,415 pilot clustered	1,510,178	204,512

⁶² Id. at 39573.

⁶³ Id. at 39574.

⁶⁴ Id.

precincts after revision and appreciation (TOTAL B)		
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Finally, this Tribunal added TOTAL A and TOTAL B to get the total number of votes received by the parties after revision and appreciation of the 5,415 clustered precincts in the pilot provinces:⁶⁵

	[Protestee]	[Protestant]
Total votes in the clustered precincts other than the 5,415 pilot clustered precincts	12,926,159	13,953,259
Add: Total votes in the 5,415 pilot clustered precincts after revision and appreciation	1,510,178	204,512
Total votes in all clustered precincts after revision and appreciation of the ballots from the pilot clustered precincts	14,436,337	14,157,771

Based on the final tally after revision and appreciation, this Tribunal found that protestee increased her lead over protestant from 263,473 votes to 278,566 votes.⁶⁶

In the interest of due process,⁶⁷ this Tribunal required the parties to submit their respective memoranda, addressing the following matters:

- I. Their comments on the report on the revision and appreciation of votes relating to the three pilot provinces, Camarines Sur, Iloilo, and Negros Oriental as it relates to the Second Cause of Action;
- II. Their position on the following issues related to the Third Cause of Action:
 - A) Whether or not the results in the revision and appreciation of votes with respect to the Protestant's second cause of action moots or renders unnecessary the consideration of the Protestant's Third Cause of Action;
 - B) Whether or not the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action;
 - C) Assuming that the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action which is not mooted by the results of Tribunal's findings with respect to the second cause of action:
 - 1) What are the filing rules and requirements that a party must observe if he or she seeks the relief of annulment of elections before the Presidential Electoral Tribunal?
 - 2) What is the threshold of evidence that is required to prove failure or annulment of elections?

⁶⁵ Id. at 39574–39575.

⁶⁶ Id. at 39575.

⁶⁷ Id.

- 3) Will evidence other than those listed by the parties during the preliminary conference be considered?
 - 4) What percentage of votes/precincts needs to be proven as having been affected by the grounds for failure or annulment of elections?
 - 5) Will the threshold apply per province or to all three (3) provinces? Can there be failure or annulment in some but not all three (3) provinces?
 - 6) Should a similar pilot testing rule be equally applied in annulment of election cases?
- D) Assuming that the Tribunal is convinced that there is basis to find for the Protestant in the Third Cause of Action:
- 1) Will this mean that the elections for all the elective positions in the ballot be nullified with all its attendant legal consequences?
 - 2) Can our declaration as the Presidential Electoral Tribunal or the Supreme Court be a bar for any question relative to any present and future electoral protest involving the same area and for any position?
 - 3) Will it be necessary to call for special elections for the position of Vice President? If so, who has the competence to call for such elections?
 - 4) Will this mean “recovery” for the Protestant under Rule 65, which will, in turn, mean revision of all his contested precincts nationwide?
 - 5) What will be the effect of our ruling on Protestant's Third Cause of Action on protestee's counter protest?⁶⁸

In his Memorandum,⁶⁹ protestant claims that the Preliminary Appreciation Committee erred several times during its revision and appreciation of ballots.

First, he claims that the Preliminary Appreciation Committee erred in overruling his objections⁷⁰ to protestee's ballots in the pilot provinces for “lack of evidence *aliunde*” without giving him the opportunity to present evidence supporting his pilot Protest.⁷¹ He asserts that he was willing to present evidence to substantiate his claims, yet his motion to set the case for preliminary conference was not granted, leading to an “unfair and unjust” situation.⁷²

Protestant then claims that the Preliminary Appreciation Committee erred a second time in overruling his objections to the questionable ballots⁷³ in protestee's favor, which contained signatures of Board of Election Inspectors that were “glaringly different” from the signatures indicated in the other election documents.⁷⁴

⁶⁸ Id. at 39576–39577.

⁶⁹ *Rollo*, Vol. L, pp. 40341–40935.

⁷⁰ Id.

⁷¹ Id. at 40649.

⁷² Id.

⁷³ Id.

⁷⁴ Id. at 40650.

Third, protestant asserts that the Preliminary Appreciation Committee erred, yet again, when it counted unshaded⁷⁵ and ambiguously⁷⁶ shaded ballots in protestee's favor.

He then asks this Tribunal to look into the ballots that the Preliminary Appreciation Committee admitted as claims for protestee without specifying why,⁷⁷ as well as the previously rejected ballots admitted by the Preliminary Appreciation Committee.⁷⁸ He contends that it was wrong to consider the rejected ballots in protestee's favor without first verifying the reason behind the vote counting machines' rejection of the ballots and determining if the concerned voters were issued replacement ballots.⁷⁹

Protestant also maintains that his three causes of action are distinct from each other,⁸⁰ that the dismissal of one will not impact the other.⁸¹

Further, he stresses that his third cause of action is for the annulment of election results in Lanao del Sur, Maguindanao, and Basilan due to "terrorism, intimidation and harassment of voters, pre-shading of ballots, and substitution of voters";⁸² thus, it was not covered by Rules 46 and 65 of this Tribunal's Rules, because the relief asked for in the annulment of elections does not require the revision and recount of votes.⁸³

Protestant invokes *Tan v. Hataman*,⁸⁴ a case decided by the Commission on Elections. He narrates that in *Tan*, a technical examination was conducted on the signatures and thumbprints in the voters registration records, comparing them with the election day computerized voters list of the 2016 elections.⁸⁵ The results allegedly showed a discrepancy in as much as 40,528 signatures and 3,295 thumbprints.⁸⁶

This purportedly led the Voters Identification Division of the Commission on Elections' Election Records and Statistics Department to conclude that the 2016 elections had been marred by "different forms of election fraud such as massive substituted voting."⁸⁷

⁷⁵ Id. at 40651–40793.

⁷⁶ Id. at 40794–40878.

⁷⁷ Id. at 40879–40889.

⁷⁸ Id. at 40889–40892.

⁷⁹ Id. at 40892.

⁸⁰ Id. at 40896.

⁸¹ Id. at 40903.

⁸² Id. at 40904.

⁸³ Id.

⁸⁴ Docketed as EPC No. 2016-37.

⁸⁵ *Rollo*, Vol. L, p. 40905.

⁸⁶ Id.

⁸⁷ Id.

Protestant maintains that because his causes of action are distinct from each other, due process demands that he be allowed to present evidence for his third cause of action.⁸⁸ He asserts that his third cause of action “cannot be mooted by the results of the preliminary appreciation of the ballots involved in the pilot precincts” as the two causes of action are mutually exclusive.⁸⁹

Citing *Abayon v. House of Representatives Electoral Tribunal*,⁹⁰ protestant insists that a cause of action on the annulment of election results is independent of a cause of action on the recount and revision of ballots.⁹¹ He avers that *Abayon* has made it clear that a dismissal under Rule 37 of the 2011 House of Representatives Electoral Tribunal Rules, or the initial revision of ballots to determine the merit or legitimacy of an election protest, will not lead to the dismissal of an action for annulment of election results on the ground of terrorism, as the two causes of action are different.⁹²

He then opines that Rule 37 of the 2011 House of Representatives Electoral Tribunal Rules is the counterpart of Rule 65 of this Tribunal’s Rules;⁹³ thus, a dismissal of an election protest under Rule 65 is limited to the judicial recount and revision of ballots. However, if the election protest contains a cause of action distinct from revision and recount, that must proceed independently.⁹⁴

Finally, protestant advances that if his third cause of action is given due course, and he can prove his allegations of failure of elections in Lanao del Sur, Maguindanao, and Basilan, only the tainted votes for the vice presidency should be annulled and deducted from the votes received by both protestant and protestee. He underscores that there is no need to conduct special elections, as this may only lead to another election protest.⁹⁵

On the other hand, protestee underscores in her Memorandum⁹⁶ that per this Tribunal’s October 15, 2019 Resolution, her lead increased from 263,473 to 278,566 after the recount, revision, and appreciation of the ballots from the three pilot provinces.⁹⁷

Still, protestee claims that this Tribunal erred in its revision and appreciation of ballots. She posits that 848 votes were erroneously deducted from her total votes, despite lack of evidence *aliunde* supporting protestant’s

⁸⁸ Id. at 40907–40908.

⁸⁹ Id.

⁹⁰ 785 Phil. 683 (2016) [Per J. Mendoza, Special En Banc].

⁹¹ *Rollo*, Vol. L, pp. 40908–40910.

⁹² Id. at 40920–40921.

⁹³ Id.

⁹⁴ Id. at 40921.

⁹⁵ Id. at 40931–40932.

⁹⁶ *Rollo*, Vol. XLIX, pp. 39655–40098.

⁹⁷ Id. at 39661.

objections.⁹⁸ She argues that these⁹⁹ must be added back to the final count.¹⁰⁰

Protestee also contends that this Tribunal erred¹⁰¹ in invalidating votes due to alleged overvoting, despite the vote counting machines having counted them¹⁰² in her favor. She avers that this invalidation has disenfranchised the voters.¹⁰³

She further asserts that this Tribunal erred, yet again, when it invalidated ballots¹⁰⁴ without “specify[ing] the alleged markings on the ballots which would invalidate the votes for protestee.”¹⁰⁵

Protestee then assails this Tribunal’s decision to add 714 votes in protestant’s favor,¹⁰⁶ when there was no shade in the oval beside protestant’s name in each of these votes.¹⁰⁷ She also questions why overvotes in her favor were not counted, while protestant’s claims on the same ground were granted.¹⁰⁸ Other claims were likewise admitted when this Tribunal did not even state its reasons.¹⁰⁹

In any case, protestee argues that the revision, recount, and re-appreciation of the ballots affirmed her victory.¹¹⁰ She maintains that under Rule 65 of this Tribunal’s Rules, the Protest must be dismissed for protestant’s failure to establish any substantial recovery.¹¹¹

Protestee further asserts that protestant had already been given the opportunity to substantiate his allegations, and as he failed to do so, this Tribunal should not accommodate his whim at the expense of violating its own rules.¹¹² On this point, protestee narrates how this Tribunal deferred ruling on protestant’s motion for technical examination pending the results of the ballot revision of his designated pilot provinces twice. According to her, this exhibited Rule 65’s mandatory nature.¹¹³

⁹⁸ Id. at 39666 and 39681.

⁹⁹ Id. at 39667–39681.

¹⁰⁰ Id. at 39666.

¹⁰¹ Id. at 39681.

¹⁰² Id. at 39682–39690.

¹⁰³ Id. at 39690.

¹⁰⁴ Id. at 39690–39703.

¹⁰⁵ Id. at 39703.

¹⁰⁶ Id.

¹⁰⁷ Id. at 39703–39776.

¹⁰⁸ Id. at 39776.

¹⁰⁹ Id. at 39779.

¹¹⁰ Id. at 39782.

¹¹¹ Id. at 39782–39783.

¹¹² Id.

¹¹³ Id. at 39795.

Invoking *Mutilan v. Commission on Elections*,¹¹⁴ protestee contends that an annulment of elections is akin to a failure of elections, the jurisdiction of which falls on the Commission on Elections.¹¹⁵ She cites how the Court in *Abayon*¹¹⁶ declared that a resort to annulment of elections must be made only in exceptional circumstances,¹¹⁷ as it effectively invalidates the whole ballot, and not only the votes for the protested position.¹¹⁸

In maintaining that the Commission on Elections has made no reports of election irregularities, protestee invokes *Abayon*, which upheld the credibility of government agency statements over testimonies from a handful of witnesses.¹¹⁹ In any case, protestee argues that the 8,000 witnesses,¹²⁰ whom protestant sought to present to identify their signatures and ballots,¹²¹ were not even registered voters in Basilan, where he sought to annul the elections.¹²² She also asserts that there is neither allegation nor proof showing that she was responsible for the supposed fraud, anomalies, and irregularities that protestant claims.¹²³

Protestee then opines that a technical examination of election day computerized voters list is not a right. Before this may be allowed, protestant must first establish that fraud was committed to favor protestee.¹²⁴

Protestee likewise asserts that protestant's invocation of *Tan v. Hataman* to support his motion is misleading. She points out that the Commission on Elections dismissed¹²⁵ the case on December 5, 2019¹²⁶ which, as protestee notes, protestant conveniently left out in his pleadings.¹²⁷

In any case, protestee argues that in an annulment of election case, protestant must also prove that the fraud, anomalies, and irregularities affected more than 50% of the votes cast in Lanao del Sur, Maguindanao, and Basilan—which he failed to do.¹²⁸

Finally, protestee advances that her Counter-Protest is an “independent cause of action” which may only be dismissed upon the

¹¹⁴ 548 Phil. 699 (2007) [Per J. Carpio, En Banc].

¹¹⁵ *Rollo*, Vol. XLIX, p. 39797.

¹¹⁶ 785 Phil. 683 (2016) [Per J. Mendoza, Special En Banc].

¹¹⁷ *Rollo*, Vol. XLIX, p. 39800.

¹¹⁸ *Id.* at 39806.

¹¹⁹ *Id.* at 39804–39807.

¹²⁰ *Id.* at 39811.

¹²¹ *Id.* at 39808.

¹²² *Id.* at 39811–39853.

¹²³ *Id.* at 39854.

¹²⁴ *Id.*

¹²⁵ *Rollo*, Vol. XLIX, p. 39855.

¹²⁶ *Id.* at 40337–40340. Protest Annex A.

¹²⁷ *Id.* at 39856–39857.

¹²⁸ *Id.*

Protest's dismissal and continues to survive should this Tribunal proceed with protestant's third cause of action.¹²⁹

In a September 29, 2020 Resolution, this Tribunal directed the Commission on Elections to comment on protestant's factual allegation that according to it, massive fraud had attended the 2016 elections.¹³⁰

Additionally, this Tribunal directed the Commission on Elections to inform it: (1) if any petitions for failure of elections were filed in Lanao del Sur, Maguindanao, and Basilan, the provinces covered by protestant's third cause of action; and (2) if any special elections as an offshoot of the petitions were conducted in those provinces.¹³¹

This Tribunal likewise directed the Commission on Elections, along with the Office of the Solicitor General, to comment on the constitutional issues raised by the parties.¹³²

In its Compliance¹³³ with the September 29, 2020 Resolution, the Commission on Elections reports that during the 2016 national and local elections, eight petitions¹³⁴ seeking to declare a failure of elections were filed in Lanao del Sur, Maguindanao, and Basilan. However, *all* eight petitions were dismissed, and these rulings had reached finality.¹³⁵ The Commission added that no special elections were held in these provinces.¹³⁶

The Commission on Elections likewise confirms that this Tribunal has jurisdiction to annul the results of an election, as an "indispensable consequence" of its constitutional mandate to decide election contests.¹³⁷ It states that *Abayon* can be analogously applied to this Tribunal.¹³⁸ However, it emphasizes that to respect the right of suffrage, "the strictest standards and procedures of law must be set in place if [this Tribunal] becomes strongly and positively convinced to annul the results of the elections."¹³⁹

The Commission on Elections then emphasizes that in *Abayon*, the Court cited now Chief Justice Diosdado Peralta's (Chief Justice Peralta) dissent in the House of Representatives Electoral Tribunal's February 3,

¹²⁹ Id. at 39864.

¹³⁰ *Rollo*, Vol. L, pp. 41266–41270.

¹³¹ Id.

¹³² Id.

¹³³ Id. at 41331–41360.

¹³⁴ Id. at 41334–41338.

¹³⁵ Id. at 41338.

¹³⁶ Id.

¹³⁷ Id. at 41342.

¹³⁸ Id. at 41343.

¹³⁹ Id.

2016 Decision in *Daza v. Abayon*.¹⁴⁰ In his dissent,¹⁴¹ Chief Justice Peralta posited that to merit the “drastic action of nullifying the election,” the illegality of the ballots must affect more than 50% of the votes cast in the precincts sought to be annulled, and that lawful and unlawful ballots are impossible to distinguish.¹⁴²

The Commission on Elections also points out that the Court in *Abayon* had set out an additional requisite for the annulment of elections—that there must be strong evidence that the protestee is responsible for the alleged unlawful acts.¹⁴³

The Commission on Elections asserts that even if under Rule 65 of this Tribunal’s Rules, an election protest may be dismissed for failing to prove fraud in its chosen pilot provinces, this Tribunal may still determine the validity of protestant’s third cause of action.¹⁴⁴

However, the Commission on Elections underscores the stringent requirements in *Abayon* as basis for proving failure or annulment of elections and maintained that the threshold of more than 50% applies to all provinces subject of the election protest.¹⁴⁵

Citing the differences between the remedies of annulment of elections and declaration of failure of elections, the Commission on Elections states that this Tribunal is empowered to declare annulment of elections without holding special elections.¹⁴⁶

Finally, the Commission on Elections opines that *Tan v. Hataman* was dismissed for mootness and was not resolved on the merits; hence, there was no opportunity to rule on the findings of the Voters Identification Division or to “pass upon its validity, merit and probative value.”¹⁴⁷

In its Comment,¹⁴⁸ the Office of the Solicitor General argues that this Tribunal can declare annulment or failure of elections without infringing upon the Commission on Elections’ constitutional mandate.¹⁴⁹ Additionally,

¹⁴⁰ HRET Case No. 12-023 (EP), February 3, 2016, <https://hret.gov.ph/file-manager/2013-2016_023_decision-com.pdf> [Per R. Enverga, HRET].

¹⁴¹ J. Peralta, Dissenting Opinion in *Daza v. Abayon*, HRET Case No. 12-023 (EP), February 3, 2016, <https://hret.gov.ph/file-manager/2013-2016_023_dissenting-com.pdf> [Per R. Enverga, HRET].

¹⁴² *Rollo*, Vol. L, pp. 41343–41344.

¹⁴³ *Id.* at 41344.

¹⁴⁴ *Id.* at 41346–41347.

¹⁴⁵ *Id.* at 41348–41349.

¹⁴⁶ *Id.* at 41355–41356.

¹⁴⁷ *Id.* at 41345–41346.

¹⁴⁸ *Id.* at 41291–41330.

¹⁴⁹ *Id.* at 41312–41314.

it states that this Tribunal has no concomitant power to direct the conduct of special elections.¹⁵⁰

In his Consolidated Reply,¹⁵¹ protestant concurs with the Commission on Elections and the Office of the Solicitor General that this Tribunal possesses the power to annul elections even without calling for special elections; hence, there is no infringement on the powers and functions of the Commission on Elections.¹⁵²

Protestant then posits that this Tribunal has “no power to declare failure of elections” because such power, together with the power to call for special elections, is within the Commission on Elections’ jurisdiction.¹⁵³

Protestant adds that there is no need to call for special elections, as his third cause of action prayed for the annulment of elections, not failure of elections.¹⁵⁴ He then comments that the dismissal of all the petitions to declare a failure of elections in Lanao del Sur, Maguindanao, and Basilan is irrelevant.¹⁵⁵

Protestant likewise avers that even if the election protest in *Tan v. Hataman* was eventually mooted, the fact remained that upon a technical examination, 40,528 signatures and 3,295 thumbprints in 508 established precincts in Lanao del Sur, Maguindanao, and Basilan were found to be not identical with the original signatures or thumbprints of the legitimate voters in those provinces.¹⁵⁶ This led the Voters Identification Division to conclude that the 2016 elections in those provinces had been “marked with different forms of election fraud such as massive substituted voting.”¹⁵⁷

He emphasizes that the Commission on Elections admitted the existence of the June 5, 2018 Dactyloscopic and Questioned Documents Reports or the technical examination report submitted by the Voters Identification Division of the Commission on Elections Election Records and Statistics Department.¹⁵⁸

Protestant continues that, as confirmed by the Commission on Elections and the ruling in *Abayon*, the results in the revision and preliminary appreciation of ballots in his second cause of action will not moot his third cause of action, these two being distinct,¹⁵⁹ with separate

¹⁵⁰ Id. at 41317.

¹⁵¹ *Rollo*, Vol. LI, pp. 41937–41971.

¹⁵² Id. at 41941.

¹⁵³ Id. at 41943–41944.

¹⁵⁴ Id. at 41946–41947.

¹⁵⁵ Id. at 41947–41948.

¹⁵⁶ Id. at 41949–41950.

¹⁵⁷ Id. at 41950.

¹⁵⁸ Id.

¹⁵⁹ Id. at 41951.

scopes.¹⁶⁰ Thus, he asserts that his third cause of action could be properly recognized by this Tribunal,¹⁶¹ which has the competence to resolve it.¹⁶²

Finally, protestant agrees with the Commission on Elections that in an action for annulment of elections, electoral tribunals may determine who among the candidates obtained a majority of the legally cast votes. He continues that only the election results connected with the election contest will be affected in an annulment of elections, and not the entire election in the affected precincts, as that pertains to a declaration of failure of elections.¹⁶³ A declaration of annulment of elections does not need a special election over the contested position.¹⁶⁴

In her Consolidated Reply,¹⁶⁵ protestee submits that under Rule 65 of this Tribunal's Rules, the Protest must be dismissed due to protestant's failure to make out his case in the revision and appreciation of his three chosen provinces.¹⁶⁶

Protestee maintains that allowing protestant's third cause of action will give him six pilot provinces, a clear violation of Rule 65.¹⁶⁷ She also adds that protestant's failure to prove his case after the revision, recount, and appreciation of the ballots from his three pilot provinces rendered moot his third cause of action for annulment of elections.¹⁶⁸

Protestee likewise belies protestant's claims that the Commission on Elections has accepted the technical examination report from the Voters Identification Division, and points out that it even stated that the report has no probative value. She stresses that she was not a party to the case of *Tan v. Hataman*; thus, she was neither notified nor allowed to participate in the technical examination.¹⁶⁹

¹⁶⁰ Id. at 41955.

¹⁶¹ Id. at 41956–41957.

¹⁶² Id. at 41960.

¹⁶³ Id. at 41964.

¹⁶⁴ Id. at 41965.

¹⁶⁵ Id. at 41852–41895.

¹⁶⁶ Id. at 41868–41871.

¹⁶⁷ Id. at 41870. PET RULES (2010), Rule 65 states:

RULE 65. Dismissal; when proper. – The Tribunal may require the protestant or counter-protestant to indicate, within a fixed period, the province or provinces numbering not more than three, best exemplifying the frauds or irregularities alleged in his petition; and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof, and after making reasonable allowances, the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest.

The preceding paragraph shall also apply when the election protest involves correction of manifest errors.

¹⁶⁸ *Rollo*, Vol. LI, p. 41888.

¹⁶⁹ Id. at 41872–41874.

Moreover, protestee highlights that the report does not even account for 10% of the clustered precincts in Lanao del Sur, Maguindanao, and Basilan, falling short of the 50% threshold of fraud set in *Abayon*.¹⁷⁰

Protestee then echoes the Commission on Elections' warning that the annulment of elections is an extraordinary remedy, and as such, must be granted with caution and only under exceptional circumstances.¹⁷¹ She also points out that protestant failed to allege that she directly caused the electoral anomalies being complained of.¹⁷²

Finally, protestee reiterates that this Tribunal cannot proceed to protestee's third cause of action without first resolving if protestant substantiated his case through his pilot provinces.¹⁷³

On November 9, 2020, protestant sought the following: (1) that Associate Justice Mario Victor F. Leonen (Justice Leonen) inhibit himself from the case; (2) that the case be re-raffled to another justice; and (3) that all pending incidents in this case be resolved.¹⁷⁴ He alleged that since October 2019, the Protest has "remained in limbo."¹⁷⁵

That same day, the Office of the Solicitor General, led by Solicitor General Jose C. Calida, filed a similar Motion¹⁷⁶ arguing that, since the Protest was raffled to Justice Leonen, "the people has (sic) been suspended in animation for close to a year[.]"¹⁷⁷ It suggested that this inordinate delay manifested Justice Leonen's bias and partiality against protestant.¹⁷⁸

Both protestant¹⁷⁹ and the Office of the Solicitor General¹⁸⁰ asserted that Justice Leonen's strongly-worded dissent in the Marcos burial case showed his bias against and animosity toward protestant and his family. They also adverted to a newspaper article reporting that Justice Leonen had lobbied for the dismissal of the Protest, signifying that he had prejudged the case against protestant.¹⁸¹

On November 17, 2020, this Tribunal denied¹⁸² protestant's motion

¹⁷⁰ Id.

¹⁷¹ Id. at 41876–41877.

¹⁷² Id. at 41878–41888.

¹⁷³ Id. at 41889.

¹⁷⁴ *Rollo*, Vol. L, pp. 41462–41482, Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen (Justice Leonen); II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case.

¹⁷⁵ Id. at 41466.

¹⁷⁶ Id. at 41491.

¹⁷⁷ Id. at 41492.

¹⁷⁸ Id.

¹⁷⁹ Id. at 41467–41469.

¹⁸⁰ Id. at 41492 and 41499–41502.

¹⁸¹ Id. at 41472–41473 and 41501–41502.

¹⁸² Id. at 41602–41632.

for inhibition. It also cautioned the parties and the Solicitor General, who is not a party to the case, “to refrain from using language that undermines the credibility and respect due to this Tribunal.”¹⁸³ The Solicitor General was likewise reminded that, as the People’s Tribune, his client was the Republic of the Philippines and not private individuals.¹⁸⁴

The dispositive portion of the Resolution reads:

IN VIEW OF THE FOREGOING, this Tribunal resolves to **DENY** protestant’s Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-affle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case dated November 9, 2020.

The Office of the Solicitor General’s Omnibus Motion (Motion for Inhibition of Associate Justice Marvic M.V.F. Leonen and Reraffle) also dated November 9, 2020 is **NOTED WITHOUT ACTION**.

The protestee’s Countermanifestation (to the Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-affle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case dated November 9, 2020) is **NOTED**.

Let a copy of this Resolution be served on the Office of the Solicitor General.

SO ORDERED.¹⁸⁵ (Emphasis in the original)

For this Tribunal’s resolution are the following issues:

First, whether or not protestant has sufficiently shown reasonable recovery of votes after the revision and appreciation of ballots from the three pilot provinces;

Second, whether or not unfavorable results of revision and appreciation of votes in the second cause of action moots protestant’s third cause of action of annulment of election;

Third, whether or not the 2010 Presidential Electoral Tribunal Rules allows for different pilot provinces per cause of action.

Fourth, whether or not the ruling on protestant’s third cause of action affects protestee’s Counter-Protest; and

¹⁸³ Id. at 41630.

¹⁸⁴ Id.

¹⁸⁵ Id. at 41631.

Finally, whether or not the grant of the third cause of action will result in the calling of a special elections for the position of vice president and all other local and national candidates.

A democracy is only as secure as its elections. It is only as resilient as the faith of its people on its mechanisms for suffrage.

No electoral system is perfect, but doubts on the conduct of elections must be met with caution. Doubting election results at every turn forces us to run in circles. It hampers our development and frustrates the empowering objectives of popular sovereignty. Without clearly established anomalies, elections must be taken to have successfully manifested the free will of the sovereign.

Any election protest challenging the results of an election must clearly and specifically allege, and then prove, the irregularities that occurred. Specifying the precincts where each violation occurred, and how it transpired, is critical. Failure to do so warrants the protest's dismissal.

I

Allegations in election protests must be specific.

The results of an election may be challenged through different legal vehicles: first, failure of election cases; second, pre-proclamation petitions; and third, election contests. These have substantive and procedural differences, with varying remedies, but what remains consistent across all modalities is the requirement of *specificity*. Particularity on one's allegations, grounds, and bases cuts across all mechanisms for challenging election outcomes and must be present in *all* actions, regardless of the mode.

Under Batas Pambansa Blg. 881, or the Omnibus Election Code, a failure of election may be declared if, "on account of *force majeure*, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or . . . such election results in a failure to elect, [or] in any of such cases the failure or suspension of election would affect the result of the election[.]"¹⁸⁶ For its declaration, the alleged illegality must have affected more than 50% of the votes cast.¹⁸⁷

¹⁸⁶ ELECTION CODE, sec. 6.

¹⁸⁷ *Carlos v. Angeles*, 400 Phil. 405 (2000) [Per J. Mendoza, En Banc].

A pre-proclamation controversy concerns questions affecting the proceedings of the board of canvassers or “any matter raised under Sections 233, 234, 235, and 236 [of the Omnibus Election Code] in relation to the preparation, transmission, receipt, custody, and appreciation of the election returns.”¹⁸⁸ Further, *only* the issues provided in Section 243 of the Omnibus Election Code may be raised in a pre-proclamation controversy. The restrictive and exclusive¹⁸⁹ list includes:

- (a) Illegal composition or proceedings of the board of canvassers;
- (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 the authentic copies thereof as mentioned in Section 233, 234, 235, and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.¹⁹⁰

Under the Automated Election System,¹⁹¹ pre-proclamation controversies cover only two issues, both concerning the Board of Canvassers: (a) its illegal composition; and (b) its illegal proceedings.¹⁹²

Finally, election contests, which only contemplate post-election scenarios,¹⁹³ take the form of either an election protest or a petition for *quo warranto*.¹⁹⁴ Although distinct, both actions aim to unseat a winning candidate after proclamation and assumption of office.¹⁹⁵

An election protest involves “a contest between the defeated and winning candidates on the grounds of fraud or irregularities in the casting and counting of ballots, or in the preparation of the returns.”¹⁹⁶ It is centered on the issue of who actually and validly obtained the plurality of votes.¹⁹⁷

A petition for *quo warranto* is defined as “an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public

¹⁸⁸ ELECTION CODE, sec. 241.

¹⁸⁹ *Suhuri v. COMELEC*, 617 Phil. 852 (2009) [Per J. Bersamin, En Banc] citing *Matalam v. COMELEC*, 338 Phil. 447 (1997) [Per J. Panganiban, En Banc]; and *Sanchez v. COMELEC*, 237 Phil. 69 (1987) [Per Curiam, En Banc].

¹⁹⁰ ELECTION CODE, sec. 243.

¹⁹¹ COMELEC Resolution No. 8804 (2010).

¹⁹² COMELEC Resolution No. 8804 (2010), Rule 3, sec. 1.

¹⁹³ *Tecson v. COMELEC*, 468 Phil. 421 (2004) [Per J. Vitug, En Banc].

¹⁹⁴ A.M. No. 10-4-1-SC, Rule 1, sec. 3(t), 2010 Rules of Procedure in Election Contests before the Courts Involving Elective Municipal Officials.

¹⁹⁵ *Tecson v. COMELEC*, 468 Phil. 421 (2004) [Per J. Vitug, En Banc].

¹⁹⁶ *Samad v. COMELEC*, 296 Phil. 509, 521 (1993) [Per J. Cruz, En Banc].

¹⁹⁷ *Id.*

office.”¹⁹⁸ It is appropriate only “for the purpose of questioning the election of a candidate on the ground of disloyalty or ineligibility.”¹⁹⁹

The Constitution established distinct electoral tribunals to serve as “the sole judge[s] of all contests relating to the election, returns, and qualifications”²⁰⁰ concerning national elective positions. The Senate Electoral Tribunal rules on senatorial contests; the House of Representatives Electoral Tribunal on representatives; and the Supreme Court, as the Presidential Electoral Tribunal, on the president and vice president.

Jurisprudence discussing failure of election cases, pre-proclamation controversies, and election contests reveals that specificity in bases and allegations has always been critical to their appraisal.

As regards failure of elections, the Court emphasized in *Pasandalan v. Commission on Elections*:²⁰¹

A petition for a declaration of failure of election *must specifically allege* the essential grounds that would justify the exercise of this extraordinary remedy. Otherwise, the Comelec can dismiss outright the petition for lack of merit. No grave abuse of discretion can be attributed to the Comelec in such a case because the Comelec must exercise with utmost circumspection the power to declare a failure of election to prevent disenfranchising voters and frustrating the electorate’s will.²⁰² (Emphasis supplied)

The same is true of pre-proclamation controversies. Any challenge that relates to election returns must likewise be anchored on specificity. For instance, in *Macabago v. Commission on Elections*:²⁰³

Pre-proclamation controversies are properly limited to challenges directed against the Board of Canvassers and proceedings before said Board relating to particular election returns to which private respondent

¹⁹⁸ *Tecson v. COMELEC*, 468 Phil. 421, 462 (2004) [Per J. Vitug, En Banc].

¹⁹⁹ *Samad v. COMELEC*, 296 Phil. 509, 521 (1993) [Per J. Cruz, En Banc].

²⁰⁰ CONST., art. VI, sec. 17 provides:

SECTION 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

CONST., art. VII, sec. 4(7) provides:

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice- President, and may promulgate its rules for the purpose.

²⁰¹ 434 Phil. 161 (2002) [Per J. Carpio, En Banc].

²⁰² Id. at 167.

²⁰³ 440 Phil. 683 (2002) [Per J. Callejo, Sr., En Banc].

should have made *specific* verbal objections subsequently reduced to writing[.]²⁰⁴ (Emphasis supplied)

In *Macabago*, the need to aver a particular controversy at the first instance was emphasized. As pre-proclamation cases demand the petitioner to raise illegality *immediately*,²⁰⁵ there is a need for “specific verbal objections subsequently reduced to writing.”²⁰⁶

Speaking on the functions of the Commission on Elections and the House of Representatives Electoral Tribunal vis-à-vis election contests, the Court has also been strict in requiring specification and substantiation.²⁰⁷

The same wisdom must animate this Tribunal as we judge all “contests relating to the election, returns, and qualifications”²⁰⁸ of the highest electoral positions in our Republic.

Considering that specificity is at the crux of post-election challenges, in general, and election protests, in particular, it follows that petitions wanting in this requisite must be dismissed.

II

This Tribunal likewise requires specific allegations in the protests before it.

Rule 17 of A.M. No. 10-4-29-SC, the 2010 Rules of the Presidential Electoral Tribunal, states:

RULE 17. Contents of the Protest or Petition. —

(A) An election protest or petition for *quo warranto* shall commonly state the following facts:

- (a) the position involved;
- (b) the date of proclamation; and
- (c) the number of votes credited to the parties per the proclamation.

(B) A *quo warranto* petition shall also state:

²⁰⁴ Id. at 692.

²⁰⁵ *Laodenio v. COMELEC*, 342 Phil. 676 (1997) [Per J. Bellosillo, En Banc].

²⁰⁶ *Macabago v. COMELEC*, 440 Phil. 683, 692 (2002) [Per J. Callejo, Sr., En Banc].

²⁰⁷ *Corvera v. Savillo*, G.R. No. 208610 (Notice), November 11, 2014; *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013; *Lloren v. COMELEC*, 695 Phil. 288 (2012) [Per J. Bersamin, En Banc]; and *Peña v. HRET*, 337 Phil. 70 (1997) [Per J. Torres, Sr., En Banc].

²⁰⁸ CONST., art. VII, sec. 4.

- (a) the facts giving the petitioner standing to file the petition;
 - (b) the legal requirements for the office and the disqualifications prescribed by law;
 - (c) the protestee's ground for ineligibility or the specific acts of disloyalty to the Republic of the Philippines.
- (C) An election protest shall also state:
- (a) that the protestant was a candidate who had duly filed a certificate of candidacy and had been voted for the same office.
 - (b) the total number of precincts of the region, province, or city concerned;
 - (c) the protested precincts and votes of the parties to the protest in such precincts per the Statement of Votes By Precinct or, if the votes of the parties are not specified, an explanation why the votes are not specified; and
 - (d) *a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies, or irregularities in the protested precincts.* (Emphasis supplied)

Correlative provisions govern election contests under the jurisdiction of other tribunals.

The 2013 Rules of the Senate Electoral Tribunal and the 2015 Rules of the House of Representatives Electoral Tribunal both provide that “[a]n election protest shall state . . . the specific acts or omissions constituting the electoral fraud, anomaly or irregularity in the contested precincts.”²⁰⁹

Specificity is also required by both Section 10 of A.M. No. 10-4-1-SC, or the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials, and Rule 6, Section 7 of Commission on Elections Resolution No. 8804, or the Rules of Procedure on Disputes in an Automated Election System.

Section 10 of A.M. No. 10-4-1-SC states:

SECTION 10. *Contests of the protest or petition.* –

²⁰⁹ SET RULES (2013), Rule 22.
HRET RULES (2015), Rule 17 similarly states:

....

An election protest shall state:

....

(4) The specific acts or omissions complained of constituting the electoral frauds, anomalies or irregularities in the contested precincts[.]

- (a) An election protest or petition for *quo warranto* shall ***commonly*** and specifically state the following facts:
- (i) the position involved;
 - (ii) the date of proclamation; and
 - (iii) the number of votes credited to the parties per the proclamation.
- (b) A *quo warranto* petition shall also state:
- (i) if the petitioner is not a candidate for the same municipal position, the facts giving the petitioner standing to file the petition;
 - (ii) the qualifications for the municipal office and the disqualifications prescribed by law;
 - (iii) the petitioner's cited ground for ineligibility or the specific acts of disloyalty to the Republic of the Philippines.
- (c) An election protest shall also state:
- (i) that the protestant was a candidate who had duly filed a certificate of candidacy and had been voted for the same office;
 - (ii) the total number of precincts in the municipality;
 - (iii) the protested precincts and votes of the parties are not specified, an explanation why the votes are not specified; and
 - (iv) *a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts.*²¹⁰ (Emphasis supplied)

Rule 6, Section 7 of Commission on Elections Resolution No. 8804 similarly provides:

SECTION 7. *Contests of the protest or petition.* - An election protest or petition for *quo warranto* shall specifically state the following facts:

- a) The position involved
- b) That the protestant was a candidate who has duly filed a certificate of candidacy and has been voted for the same office.
- c) The date of proclamation; and
- d) The number of votes credited to the parties per proclamation

²¹⁰ A.M. No. 10-4-1-SC (2012), sec. 10.

An election protest shall also state:

e) The total number of precincts of the region, province or city concerned;

f) The protested precincts and votes of the parties in the protested precincts per the Statement of Votes By Precinct or, if the votes of the parties are not specified an explanation why the votes are not specified;

g) *A detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts.*²¹¹ (Emphasis supplied)

Basic wisdom underlies the need for specific allegations before entertaining pleas to set aside election outcomes. “The power to annul an election should be exercised with *the greatest care* as it involves the free and fair expression of the popular will.”²¹² A losing candidate cannot use an election protest as an expedient means to unseat the winner, when they are unsure of their factual bases.²¹³ “*It is only in extreme cases of fraud and under circumstances which demonstrate to the fullest degree a fundamental and wanton disregard of the law that elections are annulled, and then only when it becomes impossible to take any other step.*”²¹⁴

The Court has underscored that a protest wanting in specific factual footing must be dismissed; “otherwise, the assumption of an elected public official may, and will always be held up by petitions of this sort by the losing candidate.”²¹⁵ To entertain it would be to put no end to divisive and disruptive electoral contests,²¹⁶ and “the whole election process will deteriorate into an endless stream of crabs pulling at each other, racing to disembark from the water.”²¹⁷

The requirement of specificity deters fishing expeditions by losing candidates who, without clear bases for challenging election outcomes, are merely gambling with probabilities.²¹⁸ It prevents situations in which sweeping allegations of electoral fraud are used by defeated contenders to discover by happenstance surmised irregularities in elections.

The requirement also serves a practical purpose. As election protests determine who secured the plurality of votes, they require a manual recount and piecemeal scrutiny of ballots, demanding significant time and resources.

²¹¹ COMELEC Resolution No. 8804 (2010), Rule 6, sec. 7.

²¹² *Peña v. HRET*, 337 Phil. 70, 78 (1997) [Per J. Torres, Sr., En Banc].

²¹³ *Id.*

²¹⁴ *Id.* at 78–79.

²¹⁵ *Id.* at 77.

²¹⁶ *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013.

²¹⁷ *Peña v. HRET*, 337 Phil. 70, 78 (1997) [Per J. Torres, Sr., En Banc].

²¹⁸ *Abaya v. Concepcion*, G.R. No. L-56361, January 30, 1981 [Per J. Abad Santos, En Banc].

Thus, even before the actual scrutiny of ballots, proceedings to determine the sufficiency of a protest's allegations are required.²¹⁹ These include the protestee's submission of an answer or counter-protest,²²⁰ the parties' submission of preliminary conference briefs,²²¹ a preliminary conference,²²² and the formation of revision committees.²²³ Only then may this Tribunal determine if proceeding with the scrutiny demanded by the protestant is genuinely indispensable, or a mere superfluity that will needlessly expend scarce time and resources.

Failing to forward a "detailed specification of the acts or omissions complained of"²²⁴ makes the protest insufficient in form and substance, warranting its summary dismissal.²²⁵

As mentioned earlier, the Court has been strict in requiring specificity.

In *Corvera v. Savillo*,²²⁶ the losing mayoralty candidate filed an election protest alleging "discrepancies in the Random Manual Audit, glitches in the operation of the Precinct Count Optical Scan machines and strange pattern of votes . . . obtained by the administration, opposition and independent candidates in the Certificate of Canvass."²²⁷ The Court sustained the Regional Trial Court in dismissing the protest after finding that the requirements under A.M. No. 10-4-1-SC were not satisfied:

The [Regional Trial Court] extensively laid out the reasons and thoroughly explained to the satisfaction of the Court why it ruled to dismiss the election protest:

An intensive study and exhaustive analysis of the allegations of the Petition revealed that the insufficiency in substance arose from the failure of the protest to: (a) indicate the total number of precincts in the municipality of San Jose; (b) specifically state in detail the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts and how the various irregularities and anomalies had affected the results of the elections; (c) identify the precincts where the PCOS machines malfunctioned or failed to accurately account for the votes in favor of protestant; (d) allege with particularity the number of precincts where the CF cards were found defective; and (e) explain with particularity the failure to transmit the results and in what precincts. The foregoing considered, juxtaposed with the pertinent

²¹⁹ PET RULES (2010), Rules 22–29.

²²⁰ PET RULES (2010), Rule 24 and Rule 29(b).

²²¹ PET RULES (2010), Rule 29.

²²² PET RULES (2010), Rule 37(a).

²²³ PET RULES (2010), Rule 38.

²²⁴ PET RULES (2010), Rule 17.

²²⁵ PET RULES (2010), Rule 21(a).

²²⁶ G.R. No. 208610 (Notice), November 11, 2014.

²²⁷ Id.

provisions of A.M. No. 10-4-1-SC quoted hereunder, it succinctly appears that the instant election protest is destined for doomsday.²²⁸ (Citation omitted)

The Court stressed in *Corvera* that a protest lacking in detail as to the “acts or omissions complained of showing the electoral frauds, anomalies, or irregularities”²²⁹ should be struck down for being insufficient in form and substance. Bare claims of “glitches,” strange voting patterns, and discrepancies in the audit, without more, were found to be hollow accusations by a losing candidate unable to come to terms with defeat.²³⁰ In so ruling, the Court affirmed the need for strict compliance with the specificity requirement.

Corvera follows a line of jurisprudence affirming that general and sweeping allegations of election fraud and irregularities warrant a protest’s dismissal: *Peña v. House of Representatives Electoral Tribunal*,²³¹ *Aguillo v. Commission on Elections*,²³² and *Lloren v. Commission on Elections*.²³³

In *Peña*, petitioner Teodoro Peña, after losing in the congressional elections, contested 700 out of 742 election precincts *without specifically pointing out the precincts where the anomalies and irregularities had allegedly taken place*. Peña argued, as follows:

7. The elections in the precincts of the Second District of Palawan were tainted with massive fraud, widespread vote-buying, intimidation and terrorism and other serious irregularities committed before, during and after the voting, and during the counting of votes and the preparation of election returns and certificates of canvass which affected the results of the election. Among the fraudulent acts committed were the massive vote-buying and intimidation of voters, disenfranchisement of petitioner’s known supporters through systematic deletion of names from the list of voters, allowing persons to vote in excess of the number of registered voters, misappreciation, misreading and non-reading of protestant’s ballots and other irregularities.²³⁴ (Citation omitted)

The Court ruled that it was proper to dismiss Peña’s protest, noting that it failed to point to where and how the alleged violations occurred. It considered this omission fatal, as it went into the substance of the protest:

The prescription that the petition must be sufficient in form and substance means that the petition *must be more than merely rhetorical*. If

²²⁸ *Corvera v. Savillo*, G.R. No. 208610 (Notice), November 11, 2014.

²²⁹ A.M. No. 10-4-1-SC (2010), Rule 2, sec. 10, Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials.

²³⁰ *Corvera v. Savillo*, G.R. No. 208610 (Notice), November 11, 2014.

²³¹ 337 Phil. 70 (1997) [Per J. Torres, Sr., En Banc].

²³² G.R. No. 197975-76 (Notice), March 19, 2013.

²³³ 695 Phil. 288 (2012) [Per J. Bersamin, En Banc].

²³⁴ *Peña v. HRET*, 337 Phil. 70, 72 (1997) [Per J. Torres, Sr., En Banc].

the allegations contained therein are unsupported by even the faintest whisper of authority in fact and law, then there is no other course than to dismiss the petition, otherwise, the assumption of an elected official may, and will always be held up by petitions of this sort by a losing candidate.²³⁵ (Emphasis supplied)

In *Aguillo*, petitioners Nila Aguillo and Benjamin Del Rosario assailed the results of local elections in 133 clustered precincts in Cabuyao, Laguna. They alleged “massive vote buying activities,”²³⁶ “repeated or double transmission of results[.]”²³⁷ and “several instances of glitches and technical and electronic problems attending the counting and canvassing of votes[.]”²³⁸

The respondents assailed the protests for failing to specify the precincts in which the supposed fraud transpired. In ruling for the respondents, the Court invoked Rule 2, Section 10 of A.M. No. 10-4-1-SC, on the rule requiring specificity.²³⁹ Point by point, the Court addressed the allegations in the protest. First, petitioners’ claim of “repeated or double transmission”²⁴⁰ was easily belied by the statement of votes by precinct. Second, the allegation of “massive vote buying”²⁴¹ was not supported by any affidavit. Finally, the claim of “several instances of glitches and technical and electronic problems attending the counting and canvassing of votes”²⁴² was not supported by copies of election returns. Thus, the Court concluded:

[W]hat protestants entertain are mere doubts, fears and apprehensions in the efficiency, accuracy and reliability of the automated elections, [fueling] their self-serving belief that they probably won.

These doubts, fears[,] and expressions of probability are not actionable. They do not constitute a cause of action simply because they are not yet in the realm of a wrong which is the essence of a cause of action.²⁴³ (Citation omitted)

In *Lloren*, the losing candidate for vice mayor assailed the results of the 2010 elections, alleging “massive vote-buying, intimidation, defective PCOS machines in all the clustered precincts, election fraud, and other election-related manipulations[.]”²⁴⁴ He failed, however, to indicate the number of precincts in the municipality, leading the Court to affirm the Regional Trial Court’s dismissal of the protest:

²³⁵ Id. at 77.

²³⁶ *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013.

²³⁷ Id.

²³⁸ Id.

²³⁹ A.M. No. 10-4-1-SC (2010), Rule 2, sec. 10, Rules of Procedure in Election Contests Before the Courts Involving Municipal Officials. It requires “a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities the protested precincts.”

²⁴⁰ *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013

²⁴¹ Id.

²⁴² Id.

²⁴³ Id.

²⁴⁴ *Lloren v. COMELEC*, 695 Phil. 288, 292 (2012) [Per J. Bersamin, En Banc].

As the findings of the [Regional Trial Court] show, petitioner did not indicate the total number of precincts in the municipality in his election protest. The omission rendered the election protest insufficient in form and content, and warranted its summary dismissal, in accordance with Section 12, Rule 2 of the Rules in A.M. No. 10-4-1-SC[.]²⁴⁵

Through *Lloren*, the Court hearkened to the imperative of making specific allegations of fraud, irregularities, or anomalies, the failure of which warrants a protest's dismissal.

There may have been cases, such as *Cagas v. Commission on Elections*²⁴⁶ (2012) and *Panlilio v. Commission on Elections*²⁴⁷ (2009), where the Court appeared lenient on the specificity requirement.

However, these cases never truly hinged on the requirement of making specific factual allegations, but were decided on the basis of jurisdiction. Thus, they set no binding precedent on the matter of specificity in a protest's allegations.

*Cagas*²⁴⁸ centered on whether the Court had jurisdiction over a petition for certiorari assailing an interlocutory order of a Commission on Elections Division. The Court ruled in the negative, as the proper remedy was to seek a review of the order during the appeal of the Division's decision. The Court's statement that it would respect the Commission on Elections' "determination of the sufficiency of allegations contained in election protests"²⁴⁹ was nothing more than a preliminary statement on a peripheral matter that was not yet ripe for consideration, as it remained contingent on the Commission on Election's appraisal.

Similarly, *Panlilio*²⁵⁰ involved an issue of jurisdiction. There, the petitioner elevated to the Court interlocutory orders rendered by a Commission on Elections Division. The Court ruled that it had no jurisdiction.²⁵¹

On the other hand, *Corvera*, *Aguillo*, and *Lloren* have been more definitive—leaving little, if any, doubt in their pronouncements.

²⁴⁵ Id. at 300.

²⁴⁶ 679 Phil. 640 (2012) [Per J. Bersamin, En Banc].

²⁴⁷ 610 Phil. 551 (2009) [Per J. Leonardo-de Castro, En Banc].

²⁴⁸ *Cagas v. Commission on Elections*, 679 Phil. 640 (2012) [Per J. Bersamin, En Banc].

²⁴⁹ Id. at 654.

²⁵⁰ 610 Phil. 551 (2009) [Per J. Leonardo-de Castro, En Banc].

²⁵¹ Id. at 560. The Court ruled that under Rule 2, Section 5(c) of the 1993 Commission on Elections Rules of Procedure, "any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission *en banc* except motions on interlocutory orders of the Division, which shall be resolved by the Division which issued the order."

Corvera minced no words in characterizing a protest wanting in specific factual allegations:

The foregoing²⁵² considered, juxtaposed with the pertinent provisions of A.M. No. 10-4-1-SC quoted hereunder, it succinctly appears that the instant election protest is destined for doomsday.²⁵³

Meanwhile, as *Aguillo* underscored:

An election protest is allowed to ascertain, not suppress, the true will of the electorate. It is not meant to save face, to keep pride for the loser. This is exactly the reason why an election protest is required to state “a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts.” An election protest which is not only divisive but also disruptive of the affairs of a political unit cannot and should never be allowed to proceed on mere belief and suspicion of a losing candidate.²⁵⁴

Lloren’s language also leaves no room for doubt. It characterized dismissal as “*mandatory*”:

The omission²⁵⁵ rendered the election protest insufficient in form and content, and warranted its summary dismissal, in accordance with Section 12, Rule 2 of the Rules in A.M. No. 10-4-1-SC, . . .

.....

We note that the summary dismissal of the election protest upon any of the grounds mentioned in Section 12 is mandatory.²⁵⁶

III

This Protest could have been dismissed under Rule 21 of this Tribunal’s Rules. However, we painstakingly heard every argument to afford the parties due process.

Protestant alleged in his Protest that:

Massive electoral fraud, anomalies, and irregularities, such as, but not limited to terrorism, violence, force, threats, force, intimidating, pre-shading of ballots, vote-buying, substitution of voters, flying voters, pre-

²⁵² This refers to the protestant’s failure to specifically state the following in the protest: total number of precincts; detailed acts or omissions complained of showing fraud and irregularities; and specific precincts where the PCOS machines malfunctioned.

²⁵³ *Corvera v. Savillo*, G.R. No. 208610 (Notice), November 11, 2014.

²⁵⁴ *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013.

²⁵⁵ This refers to the total number of precincts in the municipality.

²⁵⁶ *Lloren v. COMELEC*, 695 Phil. 288, 300–301 (2012) [Per J. Bersamin, En Banc].

loaded SD cards, misreading of ballots, unexplained, irregular and improper rejection of ballots containing votes for protestant Marcos, malfunctioning Vote Counting Machine, and abnormally high unaccounted votes/ under votes for the position of Vice President compromised and corrupted the conduct of the elections and the election results for the position of the Vice-President in the protested precincts.²⁵⁷

These irregularities allegedly occurred in 39,221 clustered precincts scattered in around 27 provinces and cities in the Philippines.²⁵⁸ Of these clustered precincts, he prayed for the annulment of elections in 2,756 clustered precincts, and the conduct of judicial revision of votes in the remaining 36,465 clustered precincts.²⁵⁹

Protestant's allegations appeared bare, laden with generic and repetitious allegations, and lacked critical information as to the time, place, and manner that the alleged irregularities.

For instance, in Lanao del Sur, protestant claimed the presence of "violence, intimidation, and harassment of voters, as well as [the] illegal composition of the [Board of Election Inspectors], and proliferation of batch feeding of pre-shaded ballots in the clustered precincts" as supported by seven affidavits.²⁶⁰ However, he did not specify which precincts were affected by the alleged irregularities.

In Maguindanao, protestant claimed "terrorism, violence, threats, force, intimidation, pre-shaded ballots, massive substitution of voters and ballot-snatching" as supported by two affidavits.²⁶¹ Similarly, there was no particular precinct identified.

In Basilan, protestant contended that "official ballots . . . were not delivered to the polling precincts on Election day,"²⁶² and "pre-shading was prevalent,"²⁶³ as supported by eight affidavits.²⁶⁴ He indicated 11 out of the alleged 422 affected precincts.²⁶⁵

On protestant's claim that "terrorism, violence, force, threats, [and] intimidation"²⁶⁶ attended the elections, he made no mention of the acts that shed light on how these occurred. The Protest was silent on how they affected and disturbed the elections in the municipalities where these

²⁵⁷ *Rollo*, Vol. II, pp. 928-929.

²⁵⁸ *Id.* at 1042.

²⁵⁹ *Id.* at 1039.

²⁶⁰ *Id.* at 965-968.

²⁶¹ *Id.* at 968-970.

²⁶² *Id.* at 970-974.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.* at 928-929.

supposedly happened. He did not even point to the precincts where these irregularities transpired.

Protestant also referred to the “abnormally high unaccounted votes / undervotes” in 23 provinces and cities, but did not submit a single supporting affidavit, let alone articulate a satisfactory recollection of how these arose.

He likewise argued that the names of deceased persons were included in the Precinct Computerized Voters List,²⁶⁷ and that flying voters were rampant as they took the place of said supposedly deceased voters.²⁶⁸ Regrettably, he did not specify where these actually happened.

In any case, despite the blatant lack of specificity, this Tribunal still proceeded to painstakingly scrutinized the attachments protestant appended in his Protest.

Paragraph 7.14 of the Protest alleged that affiant Gonaranao P. Corontoz²⁶⁹ is an election assistant in Marawi City²⁷⁰ in Lanao del Sur, yet his Judicial Affidavit, attached as Annex GG-7, stated that he is an election assistant in the municipality of Tamparan.²⁷¹

In addition, Corontoz’s Judicial Affidavit lacked the date of examination:

Date and Place where examination was conducted:

**June _____, 2016 at the Office of the Provincial Election Supervisor
ay (sic) Provincial Capitol, Marawi City, Lanao del Sur[.]²⁷² (Emphasis in the
original)**

Footnote 77 of the Protest stated that affiant Imelda N. Dungog’s (Dungog) Affidavit is attached as Annex QQ-4,²⁷³ while Amalia S. Mitra’s (Mitra) is attached as Annex QQ-3.²⁷⁴ However, upon review of the records, Annex QQ-3 turned out to be Dungog’s Affidavit,²⁷⁵ while Annex QQ-4²⁷⁶ was Mitra’s Affidavit. Apart from these lapses, Dungog stated that she went to her precinct at 6:05 p.m., way past the official voting hours as prescribed in the Commission on Elections Resolution No. 10088,²⁷⁷ from 6:00 a.m. to

²⁶⁷ Id.

²⁶⁸ Id. at 1019.

²⁶⁹ In the Judicial Affidavit, his name is spelled as “Gonaranao P. Corontos”.

²⁷⁰ *Rollo*, Vol. II, p. 966.

²⁷¹ *Rollo*, Vol. XIX, p. 15342, Protest Annex GG-7.

²⁷² Id. at 15343.

²⁷³ *Rollo*, Vol. II, p. 987.

²⁷⁴ Id.

²⁷⁵ *Rollo*, Vol. XIX, p. 15784, Protest Annex QQ-3.

²⁷⁶ Id. at 15787, Protest Annex QQ-4.

²⁷⁷ COMELEC Resolution No. 10088 (2016), sec. 1 amending sec. 11.

5:00 p.m. only. It is not our business to speculate how Dungog cast her vote when it supposedly had been more than an hour since the polls closed.

Paragraphs 7.130 and 7.131 of the Protest stated that a certain Roy A. Timonio claimed that there was vote-buying from protestee's camp the night before election day, and that members of the Board of Election Inspectors "implemented a 'secure a number stub' scheme before the voters were allowed to vote."²⁷⁸ On the allegation of vote-buying, footnote 98 stated that Roy A. Timonio's Affidavit is attached as Annex TT-3.²⁷⁹ On the allegation on "secure a number stub scheme," his Affidavit was supposedly attached as Annex TT-9, per footnote 104.²⁸⁰ Yet, upon verifying with the case records, there was no Annex TT-9 attached to the Protest, thus the allegation on "secure a number stub scheme" is unsupported.

Annexes UU-2 to UU-6 are missing critical information, particularly, the number of votes obtained by protestant and protestee in certain areas in Iloilo.²⁸¹ The same incomplete averments on specific details were found in Annexes III-3,²⁸² III-4,²⁸³ and III-5.²⁸⁴

Annex WW-9, the Affidavit of a certain Cesar Reyes Aguinaldo, Jr. (Aguinaldo) of Sabang Uno, Calauag, Quezon, left a blank on what date he went to his precinct to vote. It also did not state who were the disenfranchised voters. Portions of his Affidavit read:

2. On May __, 2016 at around 9:30AM in the morning/afternoon, I went to Precint (sic) in order to participate in the 2016 National and Local Elections;

....

5. I am executing the affidavit in order to support the truth (sic) allegations that several irregularities were present during the recently concluded elections and that the voters/supporters of _____ were positively disenfranchised without any justification at all.²⁸⁵

Amending Certain Provisions of Resolution No. 10057 dated February 11, 2016 or Otherwise Known as the General Instructions for the Boards of Elections Inspectors (BEI) on the Testing and Sealing of Vote Counting Machines (VCMs), and Voting, Counting and Transmission of Election Results in Connection with the 09 May 2016 National and Local Elections.

²⁷⁸ *Rollo*, Vol. II, p. 993.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Rollo*, Vol. XIX, pp. 15866–15870, Protest Annex UU-2, Affidavit of Berdan Nalve; Annex UU-3, Affidavit of Henry Nuñez; Annex UU-4, Affidavit of Richard S. Terre; Annex UU-5, Affidavit of Marifel Soriano; and Annex UU-6, Affidavit of Jodae! Kayle Contreras, all from the Province of Iloilo.

²⁸² *Id.* at 15727, Protest Annex III-3, Affidavit of Lorenzo Sagucio, Jr. of Iloilo City.

²⁸³ *Id.* at 15728, Protest Annex III-4, Affidavit of Jerson Jaranilla of Iloilo City.

²⁸⁴ *Id.* at 15729, Protest Annex III-5, Affidavit of Imelda Malte of Iloilo City.

²⁸⁵ *Id.* at 15915, Annex WW-9, Affidavit of Cesar Reyes Aguinaldo, Jr., Quezon Province.

In any case, Annex WW-9 does not convince this Tribunal that the voters of Quezon were disenfranchised. Aguinaldo stated that protestant's supporters were not allowed to vote because their names "were not included in the Precinct Computerized [Voters] List[.]"²⁸⁶ He also stated that he knew these voters to be registered and with an active status in the Commission on Elections database.²⁸⁷ However, it was entirely possible that these voters were assigned in a different precinct. The Precinct Computerized Voters List is limited to the names of registered voters assigned to the particular precinct. It is immaterial for a supposed registered voter to attest to personally knowing that certain registered supporters were not in one list.

Like Annex WW-9, Annex DDD-2²⁸⁸ also lacked details on who were the disenfranchised voters, this time in Daraga, Albay.²⁸⁹

Even without scrutiny of the annexes, the Protest itself left several blanks, likewise signifying the absence of important details:

Bukidnon

....

7.132. Protestant Marcos strongly rejects and disputes the election results for the position of Vice-President as reflected above. This election protest assails and impugns the elections results for the position of Vice-President in each of the _____ protested clustered precincts that functioned in the province of Leyte because the same do not reflect the true results of the elections thereat.

....

7.137. In view of the foregoing, protestant Marcos prays for the **reopening** of the protested ballot boxes and the **manual recount, judicial revision, technical examination and forensic investigation** of the paper ballots and/or the ballot images, voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the Election Day Computerized Voter's List (EDCVL), voters registration records (VRRs), the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the VCM, SD cards (main and back up) and the other data storage devices containing electronic data and ballot images in each of the _____ protested clustered precincts which functioned in Bukidnon during the last elections.²⁹⁰ (Emphasis in the original)

²⁸⁶ Id.

²⁸⁷ Id.

²⁸⁸ Id. at 15602, Protest Annex DDD-2, Affidavit of Cannon Dyan, Manila.

²⁸⁹ Id.

²⁹⁰ *Rollo*, Vol. II, pp. 993-995.

Strangely, the allegation under paragraph 7.132 pertained to the province of Leyte, under the sub-heading Bukidnon.²⁹¹

Meanwhile, in Batangas and Cebu City:

7.178. In view of the foregoing, protestant Marcos prays for the **reopening** of the protested ballot boxes and the **manual recount, judicial revision, technical examination and forensic investigation** of the paper ballots and/or the ballot images, voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the Election Day Computerized Voter's List (EDCVL), voters registration records (VRRs), the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the VCM, SD cards (main and back up) and the other data storage devices containing electronic data and ballot images in each of the _____ protested clustered precincts which functioned in Batangas province during the last elections."²⁹² (Emphasis in the original)

....

7.302 In view of the foregoing, protestant Marcos prays for the **reopening** of the protested ballot boxes and the **manual recount, judicial revision, technical examination and forensic investigation** of the paper ballots and/or the ballot images, voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the Election Day Computerized Voters' List (EDCVL), voters registration records (VRRs), the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the VCM, SD cards (main and back up) and the other data storage devices containing electronic data and ballot images in each of the _____ protested clustered precincts which functions in Cebu City during the last elections.²⁹³ (Emphasis in the original)

In addition, footnote 260 also left particular details blank. Protestant did not indicate which annex pertained to the Certified True Copy of the Certificate of Canvass of Zamboanga City:

²⁶⁰ Certified true copy of the City/Municipality Certificate of Canvass of Zamboanga City is herein attached and made integral part of the protest as **ANNEX _____**.²⁹⁴ (Emphasis in the original)

It is not for this Tribunal to supply the missing details that protestant failed to indicate.

²⁹¹ Id. at 994.

²⁹² Id. at 1004.

²⁹³ Id. at 1032.

²⁹⁴ Id. at 1034.

As in *Peña, Corvera, Aguillo, and Lloren*, unsubstantiated allegations amount to nothing more than “mere doubts, fears and apprehensions”²⁹⁵ which deserve scant consideration. “These doubts, fears, and expressions of probability are not actionable. They do not constitute a cause of action simply because they are not yet in the realm of a wrong which is the essence of a cause of action.”²⁹⁶

We note that protestant’s claims of:

. . . [m]assive electoral fraud, anomalies, and irregularities, such as, but not limited to terrorism, violence, force, threats, force, intimidation, pre-shading of ballots, vote-buying, substitution of voters, flying voters, pre-loaded [Secure Digital] cards, misreading of ballots, unexplained, irregular and improper rejection of ballots containing votes for protestant, malfunctioning [vote counting machines], and abnormally high unaccounted votes / under votes for the position of Vice President compromised and corrupted the conduct of the elections and the election results for the position of the Vice-President in the protested precincts²⁹⁷

are glaringly similar to the allegations of the protestants in *Peña* and *Aguillo*. The allegations in *Peña* were articulated as follows:

7. The elections in the precincts of the Second District of Palawan were tainted with massive fraud, widespread vote-buying, intimidation and terrorism and other serious irregularities committed before, during and after the voting, and during the counting of votes and the preparation of election returns and certificates of canvass which affected the results of the election. Among the fraudulent acts committed were the massive vote-buying and intimidation of voters, disenfranchisement of petitioner’s known supporters through systematic deletion of names from the lists of voters, allowing persons to vote in excess of the number of registered voters, misappreciation, misreading and non-reading of protestant’s ballots and other irregularities.

....

9. Had the massive fraud, widespread intimidation and terrorism and other serious irregularities not been committed, the result of the elections for Member of the House of Representatives would have been different and the protestant would have garnered the highest number of votes for the Office of Member of the House of Representatives in the Second District of Palawan, which was the true expression of the will of the voters of the Province of Palawan.²⁹⁸

Protestant’s arguments in *Aguillo* were stated in this manner:

²⁹⁵ *Aguillo v. COMELEC*, G.R. Nos. 197975-76, (Notice) March 19, 2013.

²⁹⁶ *Id.*

²⁹⁷ *Rollo*, Vol. II, pp. 928–929.

²⁹⁸ *Peña v. HRET*, 337 Phil. 70, 72–73 (1997) [Per J. Torres, Sr., En Banc].

a. Various fraud and irregularities were prevalent at the precinct level, to wit:

.....

a.3. Another form of irregularity was the massive vote buying activities, whether in the form of money or kind, perpetrated by Protestee's allies, which further makes it difficult to conclude that the May 10, 2010 elections were clean, credible, honest and democratic.

a.4. Voters who have yet to cast their votes were no longer allowed to vote at 7 o'clock in the evening of election day even if they were within the thirty (30) meter radius from the pooling place, only because they were known supporters of herein Protestant[.]²⁹⁹

The glaringly similar allegations in *Peña* and *Aguillo* failed to impress the Court. There is no reason to treat this Protest differently. In fact, with more reason should this Tribunal be strict, as it deals with the two highest positions of power in our Republic.

Even though this Protest could have been dismissed under Rule 21 of this Tribunal's Rules, we painstakingly heard every argument that this Protest raised. We exercised prudence and made more than reasonable allowances for protestant—proceeding with the preliminary conference and permitting him to designate the maximum number of three pilot provinces best signifying his allegations.

Throughout the proceedings, when protestant's allegations were insufficient, this Tribunal resolved to direct him to allege with specificity.³⁰⁰ On every motion, this Tribunal ordered the opposing party to comment. When new arguments were surreptitiously raised or when allegations were unsubstantiated, we directed that evidence be properly presented.³⁰¹

This Tribunal conducted retrieval, revision, and appreciation of more than two million ballots from the pilot provinces that protestant designated.

²⁹⁹ *Aguillo v. COMELEC*, G.R. No. 197975-76 (Notice), March 19, 2013.

³⁰⁰ Protestant preliminarily delineated his causes of action into two. After asking clarificatory questions during the preliminary conference on July 11, 2017, this Tribunal categorized them into three causes of action instead, and dismissed his first cause of action for being "meaningless and pointless[.]" (*See rollo*, Vol. XLIX, pp. 39523–39579. *Marcos, Jr. v. Robredo*, P.E.T. Case No. 005 (Resolution), October 15, 2019 [Per Curiam]). This Tribunal gave the parties a preliminary conference guide prior to its conduct where it summarized their respective admissions, proposed stipulations, issues, and witnesses. As the parties requested, this Tribunal also gave them the time to comment on it, and these were adopted accordingly. Moreover, when this Tribunal released the results of the revision and appreciation of ballots in the October 15, 2019 Resolution, it resolved to hear the parties again.

³⁰¹ When protestant failed to specify his witnesses' corresponding clustered precincts after having been directed to substantiate his allegations, this Tribunal required him to submit anew a list of his witnesses and their corresponding clustered precincts, giving him a fresh period of time to do so. (*Marcos, Jr. v. Robredo*, P.E.T. Case No. 005, October 15, 2019 [Per Curiam, En Banc]).

In the October 15, 2019 Resolution,³⁰² this Tribunal informed the parties of the results of the revision and appreciation of ballots in the 5,415 clustered precincts in the pilot provinces.

Even as the results showed that protestant failed to establish massive fraud or irregularities in his designated pilot provinces, this Tribunal opted to take the prudent course yet again.

In the interest of due process, this Tribunal granted the parties another opportunity to be heard on whether it should proceed with the case. The parties were directed to submit a memorandum containing their comments and positions on specifically delineated issues within 20 working days.³⁰³

In separate motions, the parties requested for time to view, photocopy, and secure hard copies of the voluminous records of the case. This Tribunal granted their prayer in its November 5, 2019 Resolution.³⁰⁴

Later, the parties each submitted a Memorandum,³⁰⁵ as noted in this Tribunal's January 7, 2020 Resolution.³⁰⁶ Thereafter, several incidents concerning the contracts of this Tribunal's personnel, commissioners, and funding were resolved with dispatch.

In their respective memoranda, the parties made serious factual allegations that warranted verification from the Commission on Elections. They also raised constitutional issues, which led this Tribunal to require the Office of the Solicitor General's comment for a fair and full resolution of this Protest.

At every step, this Tribunal did not shirk its duty and afforded the parties due process to make and defend their arguments in the proper forum.

IV

In election protests before this Tribunal, the mandatory ceiling in designating pilot provinces is three. Failure to show substantial recovery of votes in these pilot provinces entails the protest's dismissal.³⁰⁷

³⁰² *Rollo*, Vol. XLIX, pp. 39523–39579. *Marcos, Jr. v. Robredo*, P.E.T. Case No. 005, October 15, 2019 [Per Curiam, En Banc].

³⁰³ *Id.* at 54.

³⁰⁴ *Rollo*, Vol. XLIX, pp. 39652–39653.

³⁰⁵ *Id.* at 39655–40098. Protestee's Memorandum; *rollo*, Vol. L, pp. 40341–40935, Protestant's Memorandum.

³⁰⁶ *Rollo*, Vol. L, pp. 41169–41172.

³⁰⁷ PET RULES (2010), Rule 65.

IV (A)

Rule 65 of this Tribunal's Rules mandates an election protest to be dismissed when the results of the revision and appreciation of the ballots in the pilot provinces do not support the allegation of fraud or irregularities. It states:

RULE 65. *Dismissal; when proper.* – The Tribunal *may* require the protestant or counter-protestant to indicate, within a fixed period, the province or provinces numbering not more than three, best exemplifying the frauds or irregularities alleged in his petition; and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof, and after making reasonable allowances, the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest.

The preceding paragraph shall also apply when the election protest involves correction of manifest errors. (Emphasis supplied)

Rule 65 gives this Tribunal the *discretion* to direct the protestant or counter-protestant to designate the pilot provinces that would best exemplify the alleged frauds or irregularities. This is apparent in the use of the permissive word, *may*:

The word “may” in Rule 65 refers to the discretion of the Tribunal to dismiss or not the protest, and if the Tribunal does not dismiss the protest, to require the protestant to designate “**not more than three**” pilot provinces, **a mandatory ceiling. The word “may” recognizes that the Tribunal may summarily dismiss the protest, in which event there will be no reason to require the designation of pilot provinces. But if the Tribunal does not dismiss the protest, there will be a need to designate “not more than three” pilot provinces.** The word “may” has never been interpreted to pertain to the number of pilot provinces, which must be “not more than three,” a language which is a clear mandatory command that the number of pilot provinces shall not exceed three.³⁰⁸ (Emphasis in the original)

While this Tribunal may direct the protestant to designate pilot provinces, Rule 65 also provides a mandatory ceiling of “not more than three pilot provinces,” limiting its designation to a maximum of three.

A ceiling is likewise imposed in election protests lodged before the Senate Electoral Tribunal³⁰⁹ and the House of Representatives Electoral

³⁰⁸ *Rollo*, Vol. XLIX, pp. 39580–39589. J. Carpio, Dissenting Opinion in *Marcos, Jr. v. Robredo*, P.E.T. Case No. 005, October 15, 2019 [Per Curiam, En Banc].

³⁰⁹ SET RULES (2013), Rules 39 and 42 states:

RULE 39. *Preliminary Conference; Purpose* — After the filing of the last responsive pleading and the issues have been joined, the Tribunal shall call the parties to preliminary conference to consider:

Tribunal.³¹⁰ In these tribunals, the protestant or protestee designates pilot precincts which consist of not more than 25% of the total number of those protested. The tribunals are mandated to direct the party to designate pilot precincts that best exemplify the electoral fraud or anomaly, and no discretion is afforded to them on this point.

Election protests filed before the trial courts and the Commission on Elections require a similar limitation.

In election protests involving elective regional, provincial, and city officials, Commission on Elections Resolution No. 8804, as amended,³¹¹ requires the protestant to list, as early as in the preliminary conference, pilot precincts for initial recount which are “at most twenty (20%) of the total number of his [or her] protested clustered precincts, but in no case exceeding two hundred (200) clustered precincts or be less than twenty (20) clustered precincts”³¹² that best illustrates the protest’s merits.

....

In an election protest, the following shall also be considered:

e. The list of pilot precincts consisting of not more than twenty-five percent (25%) of the total number of contested precincts, which the party deems as best exemplifying or demonstrating the electoral fraud or anomaly pleaded[.] (Emphasis supplied)

See also:

RULE 42. Preliminary Conference Brief. — Not later than five (5) working days before the preliminary conference, the parties shall file with the Tribunal in fifteen (15) legible copies and serve on the adverse party or parties, both through personal service, a preliminary conference brief, which shall contain:

....

In an election protest, the preliminary conference brief shall also contain the following:

f. The list of pilot precincts consisting of not more than twenty-five percent (25%) of the total number of contested precincts, which the party deems as best exemplifying or demonstrating the electoral fraud or anomaly pleaded[.]

³¹⁰ HRET RULES (2015), Rule 40 provides:

RULE 40. Post-Revision Determination of the Merit or Legitimacy of Protest Prior to Revision of Counter-Protest; Pilot Precincts; Initial Revision and/or Technical Examination. — Any provision of these Rules to the contrary notwithstanding, as soon as the issues in any contest before the Tribunal have been joined, *the protestant and the protestee shall be required to state and designate in the preliminary conference brief, at most twenty-five (25%) percent of the total number of precincts involved in the protest or counter-protest, as the case may be, which said parties deem as best exemplifying or demonstrating the electoral irregularities or fraud pleaded by them.*

The revision of the ballots or the examination, verification or re-tabulation of election returns and the reception of evidence shall begin only with the designated pilot protested precincts.

The revision of ballots or the examination, verification or re-tabulation of election returns and the reception of evidence in the remaining seventy-five (75%) protested precincts and twenty-five percent (25%) counter-protested precincts shall not commence until the Tribunal shall have determined through appreciation of ballots or election documents and/or reception of evidence, within a period not exceeding ten (10) successive working days, the merit or legitimacy of the protest, relative to the designated pilot protested precincts.

Based on the results of such post-revision determination, the Tribunal may dismiss the protest without further proceedings, if and when no reasonable recovery was established from the pilot protested precincts, or may proceed with the revision of the ballots or the examination, verification or re-tabulation of election returns in the remaining contested precincts.

The foregoing shall likewise apply to the twenty-five percent (25%) of designated pilot counter-protested precincts.

However, if the proclamation margin is only one thousand (1,000) votes or less, the revision of ballots or the examination, verification or re-tabulation of election returns and/or reception of evidence shall cover all the contested precincts. (Emphasis supplied)

³¹¹ COMELEC Resolution No. 9164 (2011).

³¹² COMELEC Resolution No. 9164 (2011), sec. 1.

A.M. No. 10-4-1-SC³¹³ and A.M. No. 07-4-15-SC,³¹⁴ which respectively govern election protests against elective municipal officials and barangay officials, require the protestant in both cases to pinpoint “a number of precincts, corresponding to *twenty percent [20%] of the total revised protested precincts*, that will best attest to the votes recovered or will best exemplify the frauds or irregularities pleaded”³¹⁵ to determine the merit of the protest.

Clearly, there is a mandatory ceiling in designating pilot provinces across different tribunals where election results may be contested, and for good reason.

IV (B)

This Tribunal was explicit in imposing the mandatory ceiling in pilot provinces to serve as a litmus test of the allegations in this protest.

*As early as the preliminary conference in this case, this Tribunal has explicitly stated that the pilot provinces shall serve as a litmus test “by which the Tribunal will make a determination as to whether it would proceed with the Protest—that is, retrieve and revise the ballots for the remaining protested clustered precinct—or simply dismiss the Protest for failure of the protestant to make out his case.”*³¹⁶ It is improper to impose new rules when the purpose of the proceedings before this Tribunal had been categorical at the outset. There is no reason to abandon this Tribunal’s unanimous ruling on this point.

When no substantial recovery of votes in the pilot provinces is shown, the election protest must be dismissed. This principle is consistent across all three tribunals.

In the Senate Electoral Tribunal:

RULE 76. *Pilot Precincts; Initial Determination.* — The revision of the ballots or the correction of manifest errors and reception of evidence shall begin with pilot precincts. If after the appreciation of ballots or election documents and/or reception of evidence in the pilot precincts, the Tribunal determines that the officially proclaimed results of the contested election will not be affected, the Tribunal shall dismiss the protest, counter or cross protest without further proceedings.³¹⁷

³¹³ Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials (2010), Rule 10, sec. 10.

³¹⁴ Rules of Procedure in Election Contests before the Courts Involving Elective Municipal and Barangay Officials (2007). The title of the rules does not appear to have been amended, but election protests involving elective municipal officials are now covered by SC Administrative Matter No. 10-4-1-SC.

³¹⁵ See A.M. No. 10-4-1-SC (2010), Rule 10, sec. 10 and A.M. No. 07-4-15-SC (2007), Rule 10, sec. 9.

³¹⁶ *Rollo*, Vol. XXXII, p. 24591.

³¹⁷ SET RULES (2013), Rule 76.

Likewise, in the House of Representatives Electoral Tribunal:

RULE 40. Post-Revision Determination of the Merit or Legitimacy of Protest Prior to Revision of Counter-Protest; Pilot Precincts; Initial Revision and/or Technical Examination. — . . .

The revision of the ballots or the examination, verification or re-tabulation of election returns and the reception of evidence shall begin only with the designated pilot protested precincts.

The revision of ballots or the examination, verification or re-tabulation of election returns and the reception of evidence in the remaining seventy-five (75%) protested precincts and twenty-five percent (25%) counter-protested precincts shall not commence until the Tribunal shall have determined through appreciation of ballots or election documents and/or reception of evidence, within a period not exceeding ten (10) successive working days, *the merit or legitimacy of the protest, relative to the designated pilot protested precincts.*

Based on the results of such post-revision determination, the Tribunal may dismiss the protest without further proceedings, if and when no reasonable recovery was established from the pilot protested precincts, or may proceed with the revision of the ballots or the examination, verification or re-tabulation of election returns in the remaining contested precincts.

The foregoing shall likewise apply to the twenty-five percent (25%) of designated pilot counter-protested precincts.

However, if the proclamation margin is only one thousand (1,000) votes or less, the revision of ballots or the examination, verification or re-tabulation of election returns and/or reception of evidence shall cover all the contested precincts.³¹⁸ (Emphasis supplied)

For election protests involving elective regional, provincial, and city officials:

Rule 15
Recount of Ballots

SECTION 6. *Conduct of the Recount. — . . .*

(b) The recount of the ballots in the remaining contested precincts shall not commence until the Division concerned shall have made a determination on the merit of the protest based on the results of the recount of the votes on the ballots from the pilot protested precincts and the review of other documentary exhibits which the protestant may submit. The documentary exhibits may be submitted by the protestant within a non-extendible period of ten (10) days from the completion of the recount of the pilot protested precincts.

³¹⁸ HRET RULES (2015), Rule 40.

Based on the above determination, *the Division may dismiss the protest, without further proceedings, if no reasonable recovery could be established from the pilot protested precincts.* Otherwise, the recount of the ballots in the remaining protested precincts shall proceed. The recount of the pilot counter-protested precincts if substantial recovery is likewise established by the counter protestant, shall then follow. For this purpose, there is substantial recovery when the protestant or counter protestant is able to recover at least 20% of the overall vote lead of the protestee or counter protestee.³¹⁹ (Emphasis supplied)

Similar language was employed concerning election protests against elective municipal officials:

Rule 10
Revision of Ballots

....

SECTION 10. Post-revision determination of the merit of legitimacy of the protest prior to revision of the counter-protest. — Based on the results of this post-revision preliminary determination, *the court may dismiss the protest without further proceedings if the validity of the grounds for the protest is not established by the evidence from the chosen twenty percent (20%) of the protested precincts;* or proceed with revision or examination of the ballots, or the verification or re-tabulation of election returns in the counter-protested precincts. In the latter case, the protestee shall be required to pay the cash deposit within a non-extendible period of three (3) days from notice.³²⁰ (Emphasis supplied.)

Finally, as to elective barangay officials:

Rule 10
Revision of Ballots

....

SECTION 9. *Post-revision determination of the merit of legitimacy of the protest prior to revision of the counter-protest. — ...*

Based on the results of such post-revision determination, *the court may dismiss the protest without further proceedings, if and when no reasonable recovery was established from the twenty percent pinpointed precincts,* or proceed with revision of the ballots or the examination, verification or re-tabulation of election returns in the counter-protested precincts.³²¹ (Emphasis supplied)

The results upon examination of ballots in the pilot provinces determine whether this Tribunal should proceed with the retrieval and

³¹⁹ COMELEC Resolution No. 8804 (201), as amended by Resolution No. 9720, Rule 15, sec. 6(b).

³²⁰ A.M. No. 10-4-1-SC (2010), Rule 10, sec. 10.

³²¹ A.M. No. 07-4-15-SC (2007), Rule 10, sec. 9.

revision of the remaining ballots in the other precincts. Thus, in this case, if the results in the pilot provinces supported protestant's allegation of massive fraud and irregularities *in protestee's favor*, this Tribunal must proceed with the Protest. Otherwise, it must be dismissed.³²²

Accordingly, in the Preliminary Conference Order, this Tribunal directed protestant to designate three provinces that best exemplified the frauds or irregularities he claims.³²³ Protestant, in turn, chose Camarines Sur, Iloilo, and Negros Oriental.³²⁴

A protestant or counter-protestant freely chooses their pilot provinces and makes the representation before this Tribunal that these provinces best exemplified the fraud or irregularities alleged in the Protest. Hence, the chosen pilot provinces are expected to cover *all* the causes of actions on these grounds. To allow a different set of pilot provinces for every cause of action would be to contravene the mandatory ceiling of "not more than three" pilot provinces.³²⁵

Additionally, providing different sets of pilot provinces for every cause of action would amount to a fishing expedition, where the parties will be emboldened to designate as many provinces or precincts as they can, in the hope that one of them will prove their allegation of fraud or irregularity. This, we cannot condone.

An election protest lodged before this Tribunal raises factual issues of fraud, anomalies, or irregularities in the presidential and vice presidential elections. Rule 65 itself refers to the "frauds or irregularities"³²⁶ alleged in the election protest. The expansive coverage of Rule 65 means that it encompasses all mechanisms.

If, indeed, protestant was convinced of his claims in Lanao del Sur, Maguindanao, and Basilan, then he should have indicated those three as his pilot provinces. But he did not, to no fault of this Tribunal.

The guidelines, incidents, proceedings, and *findings* in the revision and appreciation of ballots were laid out in the October 15, 2019 Resolution which this Tribunal unanimously passed. The ballots from the three pilot provinces that protestant handpicked to substantiate his allegations—Camarines Sur, Iloilo, and Negros Oriental—were thoroughly scrutinized.³²⁷

³²² *Rollo*, Vol. XLIX, pp. 39523–39579. *Marcos, Jr. v. Robredo*, P.E.T. Case No. 005, October 15, 2019 [Per Curiam, En Banc].

³²³ *Rollo*, Vol. XXXII, p. 24591.

³²⁴ *Id.*

³²⁵ PET RULES (2010), Rule 65.

³²⁶ PET RULES (2010), Rule 65.

³²⁷ *Rollo*, Vol. XLIX, p. 39542, October 15, 2019 Resolution.

As witnessed by the parties' representatives, this Tribunal went over the ballots from 5,415 clustered precincts in these provinces.³²⁸

Having carefully ruled on every claim and objection, this Tribunal tallied 1,510,178 votes in protestee's favor, and 204,512 votes in protestant's favor. It resulted in protestee increasing her lead over protestant from 263,473 to 278,566,³²⁹ confirming her victory in the 2016 elections.

IV (C)

Protestant invoked *Abayon v. House of Representatives Electoral Tribunal*³³⁰ to justify that the third cause of action for annulment of elections stands even if the result of the revision and appreciation of ballots affirmed protestee's victory.

Both parties cited *Abayon* in their pleadings. This Tribunal takes the opportunity to discuss the case.

Abayon involved Raul A. Daza's (Daza) election protest over the position of Representative of the First Legislative District of Northern Samar against Harlin C. Abayon (Abayon) concerning the 2013 elections. Abayon won by 52 votes.³³¹

Daza assailed the results in 25 clustered precincts in the municipalities of Biri, Capul, Catarman, Lavezares, San Isidro, and Victoria in Northern Samar. He averred that there was terrorism, "massive fraud, vote-buying, intimidation, employment of illegal and fraudulent devices and schemes before, during, and after the elections" to benefit Abayon.³³²

Upon revision of ballots, the House of Representatives Electoral Tribunal found that Abayon's votes increased by 28, and Daza's by 14. However, Daza *moved to withdraw* his prayer for recount, revision, and reappreciation of the ballots from the municipalities of Biri, Capul, and San Isidro. He also prayed that the tribunal receive evidence on the issue of terrorism.³³³

The House of Representatives Electoral Tribunal eventually annulled the results in five clustered precincts and deducted the votes which the parties received in specific clustered precincts. It ruled that Daza established

³²⁸ Id. at 39565.

³²⁹ Id. at 39574.

³³⁰ 785 Phil. 683 (2016) [Per J. Mendoza, Special En Banc].

³³¹ Id. at 690-691.

³³² Id. at 691.

³³³ Id. at 692.

that 50% of the votes cast in these clustered precincts were marred by massive terrorism, and it was impossible to determine the good votes from the bad.³³⁴ Daza's proclamation as the winning candidate was hinged on the following evidence:

The HRET highlighted that Daza presented testimonial and documentary evidence showing that: (1) prior to the May 13, 2013 elections, the National Democratic Front-Eastern Visayas (NDF-EV) had already shown its animosity and hostility towards him and his then incumbent governor son through the posting on the NDF-EV website and in conspicuous places statements declaring them as enemies of the people of Northern Samar; (2) comic magazines vilifying them were distributed; (3) "pulong-pulong" were held in the concerned barangays where the NDF-EV exhorted the resident-attendees to vote against him and in favor of Abayon, threatening to comeback if the result were otherwise; (4) his supporters and/or fellow Liberal Party candidates were prohibited from campaigning for him, and also from mounting tarpaulins/posters and distributing sample ballots; (5) Abayon had meetings with NDF-EV officials, during which times, he gave them money and guns; and (6) NDF-EV armed partisans were deployed around the school premises in the concerned precincts on election day.

The HRET found that Daza had adduced convincing evidence to establish that fear was instilled in the minds of hundreds of resident-voters in the protested clustered precincts from the time they had attended the "pulong-pulong" up until the election day itself when armed partisans were deployed to the schools to ensure that the voters would not vote for him but for Abayon.³³⁵

Sitting as a member of the House of Representatives Electoral Tribunal, then Associate Justice Peralta dissented. He found no clear and convincing evidence to warrant the annulment of election results in the five clustered precincts. He opined that the testimonies failed to identify a single ballot that was affected by terrorism. He added that there was no evidence that the alleged acts of terrorism were of Abayon's doing.³³⁶

He also pointed out that Daza's election protest, which alleged fraud, terrorism, and violence, was in effect a petition to declare a failure of elections, over which the Commission on Elections has exclusive jurisdiction, and not the House of Representatives Electoral Tribunal.³³⁷

Abayon filed a petition for certiorari before the Supreme Court.³³⁸

³³⁴ Id. at 694.

³³⁵ Id. at 693.

³³⁶ Id. at 705-707.

³³⁷ J. Peralta, Dissenting Opinion in *Daza v. Abayon*, HRET Case No. 13-023(EP), February 3, 2016, <https://hret.gov.ph/file-manager/2013-2016_023_dissenting-com.pdf> 19-21 [Per R. Enverga, HRET].

³³⁸ *Abayon v. Daza*, 785 Phil. 683, 690 (2016) [Per J. Mendoza, Special En Banc].

The Court held that the House of Representatives Electoral Tribunal has jurisdiction to annul the results:

Both Abayon and Daza do not contest the exclusive jurisdiction of the HRET to decide election protests filed against members of the House of Representatives. They, however, diverge as to the extent of its jurisdiction.

An Election Protest proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds or irregularities. It aims to determine who between them has actually obtained the majority of the legal votes cast and, therefore, entitled to hold the office.

The Court agrees that the power of the HRET to annul elections differ from the power granted to the COMELEC to declare failure of elections. The Constitution no less, grants the HRET with exclusive jurisdiction to decide all election contests involving the members of the House of Representatives, which necessarily includes those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections. To deprive the HRET the prerogative to annul elections would undermine its constitutional fiat to decide election contests. The phrase "election, returns and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. Consequently, the annulment of election results is but a power concomitant to the HRET's constitutional mandate to determine the validity of the contestee's title.

The power granted to the HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature. Thus, the HRET, as the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, may annul election results if in its determination, fraud, terrorism or other electoral irregularities existed to warrant the annulment. Because in doing so, it is merely exercising its constitutional duty to ascertain who among the candidates received the majority of the valid votes cast.

To the Court's mind, the HRET had jurisdiction to determine whether there was terrorism in the contested precincts. In the event that the HRET would conclude that terrorism indeed existed in the said precincts, then it could annul the election results in the said precincts to the extent of deducting the votes received by Daza and Abayon in order to remain faithful to its constitutional mandate to determine who among the candidates received the majority of the valid votes cast.³³⁹

The Court continued that a resort to annulment of elections is warranted only in exceptional circumstances:

It must be remembered that "[t]he power to declare a failure of elections should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the

³³⁹ Id. at 700-701.

law had been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever, or that the great body of the voters have been prevented by violence, intimidation and threats from exercising their franchise.” Consequently, a protestant alleging terrorism in an election protest must establish by clear and convincing evidence that the will of the majority has been muted by violence, intimidation or threats.

The Court adopted Chief Justice Peralta’s dissent, extensively quoting portions of it, and ruled that Daza failed to present clear and compelling evidence to annul the election results. The Court held that the evidence presented was “utterly weak, unclear and unconvincing.”³⁴⁰ It also adopted Chief Justice Peralta’s opinion which underscored the need to prove that the protestee was responsible for the alleged terrorism and violence:

It is worthy to note that no evidence was presented which will directly point to protestee as the one responsible for the incidents which allegedly happened before and during the elections. Absent anything that would concretely and directly establish protestee as the one who had induced or actually perpetrated the commission of terroristic acts and demonstrate that those incidents were part of a scheme to frustrate the free expression of the will of the electorate, the alluded handing of material considerations, including guns, to the NDF-EV officials, and the garnering of votes higher than those of the protestant in the protested clustered precincts, do not per se make him responsible for the charges of terrorism.³⁴¹

Abayon was reinstated as the duly elected representative of the First Legislative District of Northern Samar.³⁴²

In *Abayon*, the Court never truly hinged on the possibility of entertaining a separate cause of action of annulment of elections after determining the results of revision of ballots. The prayer for revision and reappreciation of votes was withdrawn, and the protest was anchored on the allegations of terrorism. Moreover, the case was decided on the extent of the House of Representatives Electoral Tribunal’s jurisdiction on election protests. *Abayon* set no binding precedent on whether a separate cause of action may be entertained after revision and appreciation of ballots in pilot provinces.

Thus, in this Protest, protestant is incorrect to invoke *Abayon* that his third cause of action survives despite an unfavorable resolution of his second cause of action.

³⁴⁰ Id. at 705.

³⁴¹ Id. at 706.

³⁴² Id. at 711.

To stress, this Tribunal's Rules directs the *forthwith dismissal* of an election protest if, upon examining the ballots and proof in the three provinces exemplifying the alleged fraud or irregularity, this "Tribunal is convinced that . . . the protestant or counter-protestant will most probably fail to make out [their] case, *without further consideration of the other provinces mentioned in the protest.*"³⁴³ This is clear and is not susceptible to any other interpretation.

V

Here, protestant failed to make out his case through his designated pilot provinces. Thus, this Protest must be dismissed.

In the August 29, 2017 Resolution, this Tribunal noted protestant's position that he would:

. . . no longer present any testimonial evidence to prove the material allegations in so far as the thirty-six thousand four hundred sixty-five (36,465) protested clustered precincts which functioned in the following protested areas of Cebu Province, Leyte, Negros Occidental, Negros Oriental, Masbate, Zamboanga del Sur, Zamboanga del Norte, Bukidnon, Iloilo Province, Bohol, Quezon Province, Batangas, Western Samar, Misamis Oriental, Camarines Sur, 2nd District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City, and Zamboanga City are concerned.³⁴⁴

This was reiterated in the October 15, 2019 Resolution:

As regards the Second Cause of Action, protestant maintained that he would no longer present any testimonial evidence to prove the material allegations insofar as the 36,465 protested clustered precincts were concerned and would rely only on the results of the revision of ballots.³⁴⁵

The second cause of action concerns whether protestant was able to determine if there was reasonable recovery of votes based on the results of the revision and appreciation of the protested ballots in protestant's chosen pilot provinces. Since this Tribunal's Rules provided no numerical equivalent to determine if protestant successfully made out his case, protestant must convincingly show that it is possible for him to overcome the protestee's lead. Only then will this Tribunal be compelled to proceed with the revision and appreciation of the other contested areas.

³⁴³ PET RULES (2010), Rule 65.

³⁴⁴ *Rollo*, Vol. XXXII, p. 24502, August 29, 2017 Resolution.

³⁴⁵ *Rollo*, Vol. XLIX, p. 39541, October 15, 2019 Resolution.

This Tribunal analyzed the resulting votes in the pilot provinces for protestant and protestee after the revision and appreciation. The ballots lacking decrypted images were deducted from the total number of votes cast in the pilot provinces because these ballots were not included in the revision. In the October 15, 2019 Resolution, this Tribunal summarized the number of revised ballots as follows:

Number of Ballots Revised					
Pilot Provinces	Number of Actual Voters	Number of Ballots deducted prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE ³⁴⁶			Total number of Ballots Revised ³⁴⁷
		Protestant	Protestee	Total	
Camarines Sur	841,496 ³⁴⁸	39	676	715	840,781
Iloilo Province	1,139,418 ³⁴⁹	12	183	195	1,139,223
Negros Oriental	658,924 ³⁵⁰	0	0	0	658,924
TOTAL	2,639,838	51	859	910	2,638,928

The total number of ballots for revision, 2,638,928, was divided into protestant's (202,085) and protestee's (1,492,658) shares of votes based on the Provincial Certificates of Canvass. The revision process left protestant with 200,495 votes, while protestee was left with 1,476,378 votes. Each party then raised claims and objections on these votes.

In the appreciation process, this Tribunal acted on the parties' claims and objections, which led to protestant garnering a total of 204,512 votes, and protestee garnering a total of 1,510,178 votes. The tables below summarized the process and results as follows:

³⁴⁶ Id. at 39565.

³⁴⁷ Id. at 39564, October 15, 2019 Resolution. Total Number of Ballots Revised = [Number of Actual Voters] – [Number of Ballots deducted prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE]

³⁴⁸ *Rollo*, Vol. XX, p. 15521, Protest Annex AAA (Provincial Certificate of Canvass).

³⁴⁹ Id. at 15856, Protest Annex UU (Provincial Certificate of Canvass).

³⁵⁰ *Rollo*, Vol. XIX, p. 15477, Protest Annex PP (Provincial Certificate of Canvass).

Number of Votes for Protestant after Revision and Appreciation								
Pilot Provinces	Number of Votes Received by Protestant based on Provincial Certificate of Canvass ³⁵¹	Number of Ballots deducted prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE ³⁵²	Number of Ballots to be Revised for Protestant ³⁵³	Number of Votes after Revision ³⁵⁴	Sustained Objections ³⁵⁵	Number of Votes After Deducting Sustained Objections ³⁵⁶	Number of Votes added to Protestant after Appreciation ³⁵⁷	Total Number of Votes for Protestant after Revision and Appreciation ³⁵⁸
Camarines Sur	41,219 ³⁵⁹	39	41,180	40,794	8	40,786	734	41,520
Iloilo Province	94,411	12	94,399	93,245	34	93,211	2,127	95,338
Negros Oriental	66,506	0	66,506	66,456	56	66,400	1,254	67,654
TOTAL	202,136	51	202,085	200,495	98	200,397	4,115	204,512

Number of Votes for Protestee after Revision and Appreciation								
Pilot Province	Number of Votes Received by Protestee based on Provincial Certificate of Canvass ³⁶⁰	Number of Ballots deducted prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE ³⁶¹	Number of Ballots Revised for Protestee ³⁶²	Number of Votes after Revision ³⁶³	Sustained Objections ³⁶⁴	Number of Votes After Deducting Sustained Objections ³⁶⁵	Number of Votes added to Protestee after Appreciation ³⁶⁶	Total Number of Votes for Protestee after Revision and Appreciation ³⁶⁷
Camarines Sur	664,190	676	663,514	657,991	358	657,633	12,004	669,637
Iloilo Province	573,729	183	573,546	562,811	285	562,526	16,825	579,351
Negros Oriental	255,598	0	255,598	255,576	205	255,371	5,819	261,190
TOTAL	1,493,517	859	1,492,658	1,476,378	848	1,475,530	34,648	1,510,178

³⁵¹ *Rollo*, Vol. XXXII, p. 24491, August 29, 2017 Resolution.

³⁵² *Rollo*, Vol. XLIX, p. 39565, October 15, 2019 Resolution.

³⁵³ Number of Ballots Revised for Protestant = [Number of Votes Received by Protestant based on Provincial Certificate of Canvass] – [Number of Ballots deducted prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE]

³⁵⁴ *Rollo*, Vol. XLIX, p. 39565, October 15, 2019 Resolution.

³⁵⁵ Id. at 39569.

³⁵⁶ Id. at 39574.

³⁵⁷ Id. at 39572.

³⁵⁸ Id. at 39574.

Total Number of Votes for Protestant after Revision and Appreciation = [Number of Votes After Deducting Sustained Objections] + [Number of Votes added to Protestant after Revision and Appreciation].

³⁵⁹ *Rollo*, Vol. XXXII, p. 24491, August 29, 2017 Resolution. See footnote 34 of the Resolution stating that the figure should 41,219, per Protestant's Comment of the Preliminary Conference Guides.

³⁶⁰ Id.

³⁶¹ *Rollo*, Vol. XLIX, p. 39565, October 15, 2019 Resolution.

³⁶² Number of Ballots Revised for Protestee = [Number of Votes Received by Protestee based on Provincial Certificate of Canvass] - [Total Number of Ballots deducted from Protestant prior to Revision due to LACK OF DECRYPTED BALLOT IMAGE]

³⁶³ *Rollo*, Vol. XLIX, p. 39565, October 15, 2019 Resolution.

³⁶⁴ Id. at 39569.

³⁶⁵ Id. at 39574.

³⁶⁶ Id. at 39572.

³⁶⁷ *Rollo*, Vol. XLIX, p. 39574, October 15, 2019 Resolution.

Total Number of Votes for Protestant after Revision and Appreciation = [Number of Votes After Deducting Sustained Objections] + [Number of Votes added to Protestant after Revision and Appreciation].

After revision and appreciation, protestant's total number of votes only increased by 204,512, while protestee's total number of votes increased by 1,510,178. By this alone, protestant failed to show reasonable recovery of votes in his designated pilot provinces which supposedly best exemplified his allegations of fraud and irregularities. It fails to convince this Tribunal that protestant can overcome protestee's lead.

It can be fairly deduced that if even if we break down these ballots by clustered precincts or by the established precincts that comprise a clustered precinct, none will demonstrate the fraud and irregularities protestant claims to have happened in the pilot provinces.

Considering that protestant failed to make out his case, per this Tribunal's Rules, this Protest must be forthwith dismissed "without further consideration of the other provinces mentioned in the protest."³⁶⁸

Justice Mario V. Lopez (Justice Lopez) concurs³⁶⁹ with the *ponencia's* finding that protestant failed to make out his case or show reasonable recovery of votes for his second cause of action. He observes that "[i]ndeed, the protestant failed to show that he will probably overcome the overall lead of the protestee in his second cause of action."³⁷⁰ As such, he agrees that there is no more need to revise the ballots in protestant's remaining protested clustered precincts.³⁷¹ Nonetheless, he proposes a formula to determine reasonable recovery.

Justice Lopez proposes that this Tribunal should determine reasonable recovery "based on the proportion of the protested clustered precincts (only those revised) in the pilot provinces and the total number of protested clustered precincts."³⁷² He continues that "if the protested pilot provinces comprise 20% of the total number of protested clustered precincts, then the determination of the reasonable recovery must use 20% as a basis for reasonable recovery."³⁷³

Using his proposed formula, Justice Lopez also concluded that protestant failed to show reasonable recovery, as protestee's lead increased by 15,093 votes³⁷⁴ after the revision of the pilot provinces.

VI

A word on failure of elections and annulment of election results.

³⁶⁸ PET RULES (2010), Rule 65.

³⁶⁹ J. Lopez, *Reflections*, pp. 1-11.

³⁷⁰ *Id.* at 1.

³⁷¹ *Id.*

³⁷² *Id.* at 8.

³⁷³ *Id.*

³⁷⁴ *Id.*

In the course of this Protest, the parties appeared to have confused the remedies of failure of elections and annulment of election results.

In *Abayon*,³⁷⁵ where petitioner Abayon had argued that an annulment of election results is similar to a declaration of failure of elections,³⁷⁶ the Court clarified the difference:

Consequently, the difference between the annulment of elections by electoral tribunals and the declaration of failure of elections by the COMELEC cannot be gainsaid. *First*, the former is an incident of the judicial function of electoral tribunals while the latter is in the exercise of the COMELEC's administrative function. *Second*, electoral tribunals only annul the election results connected with the election contest before it whereas the declaration of failure of elections by the COMELEC relates to the entire election in the concerned precinct or political unit. As such, in annulling elections, the HRET does so only to determine who among the candidates garnered a majority of the legal votes cast. The COMELEC, on the other hand, declares a failure of elections with the objective of holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect. When COMELEC declares a failure of elections, special elections will have to be conducted.³⁷⁷

Thus, the power to annul election results rests within the electoral tribunals. This power is "an incident of the judicial function of electoral tribunals,"³⁷⁸ and an indispensable consequence of the constitutional mandate³⁷⁹ of electoral tribunals to decide all election contests within their jurisdiction. *Abayon* continued that two indispensable requisites must concur to annul an election:

- (1) The illegality of the ballots must affect more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein; and
- (2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots.³⁸⁰

³⁷⁵ 785 Phil. 683 (2016) [Per J. Mendoza, Special En Banc].

³⁷⁶ Id. at 696.

³⁷⁷ Id. at 703--704.

³⁷⁸ *Abayon v. HRET*, 785 Phil. 683, 703 (2016) [Per J. Mendoza, Special En Banc].

³⁷⁹ PET RULES (2010), Rule 7 provides:

RULE 7. Express and implied powers - The Tribunal shall exercise all powers expressly vested in it by the Constitution or by law, and such other powers as may be inherent, necessary or incidental thereto for the accomplishment of its purposes and functions.

³⁸⁰ Id. at 705 citing J. Peralta, Dissenting Opinion in *Daza v. Abayon*, HRET Case No. 13-023(EP), February 3, 2016, <https://hret.gov.ph/file-manager/2013-2016_023_dissenting-com.pdf> [Per R. Enverga, HRET].

Abayon also extensively discussed how “no evidence was presented which will directly point to protestee as the one responsible for the incidents which allegedly happened before and during the elections.”³⁸¹

On the other hand, it is the Commission on Elections that can declare a failure of elections, a power that it had been vested with as early as the passage of the 1971 Election Code.

Republic Act No. 6388, or the 1971 Election Code, provided the following grounds to proclaim a failure of elections: (1) *force majeure*; (2) violence; (3) terrorism; or (4) fraud. It likewise provided the specific instances when a failure of elections shall be declared. The only power that the Supreme Court has is to confirm the date fixed by the Commission on Elections to hold a special election:

SECTION 11. *Failure of Election.* — If, on account of *force majeure*, violence, terrorism, or fraud, the election in any precinct or precincts has not been held on the date herein fixed or has been suspended before the hour fixed by law for the closing of the voting and such failure or suspension of election in any precinct or precincts would alter the result of the election for any office to be voted in said election, the Commission may, on the basis of a verified petition and after due notice and hearing, call for the holding or continuation of the election on a date reasonably close to the date of the election not held or suspended: *Provided, however,* That the holding or continuation of the election on the date fixed by the Commission shall not be effective unless confirmed by the Supreme Court. For this purpose the Commission shall immediately certify to the Supreme Court its resolution for review, transmitting with it the pertinent records of the proceedings.

When the 1978 Election Code³⁸² was decreed into law, it expanded the grounds to proclaim the postponement of elections, including “loss or destruction of election paraphernalia or records, . . . and other analogous cause of such a nature that the holding of a free, orderly and honest election should become impossible”:

SECTION 6. *Postponement of election.* — When for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, *force majeure*, and other analogous cause of such a nature that the holding of a free, orderly and honest election should become impossible in any voting center or political subdivision, the Commission on Elections, which hereinafter shall be referred to as the Commission, upon a verified petition and after due notice and hearing, shall postpone the election therein for such time as it may deem necessary.

³⁸¹ *Id.*

³⁸² Presidential Decree No. 1296 (1978).

The 1978 Election Code also differentiated a failure of election from the mere postponement of election. It then provided more comprehensive guidelines on the Commission on Elections' exercise of the duty to call for a special election. It stated:

SECTION 7. *Failure of election.* — If, on account of force majeure, violence, terrorism, or fraud the election in any voting center has not been held on the date fixed or has been suspended before the hour fixed by law for the closing of the voting and such failure or suspension of election in any voting center would affect the result of the election, the Commission may, on the basis of a verified petition and after due notice and hearing, call for the holding or continuation of the election on a date reasonably close to the date of the election not held or suspended.

SECTION 8. *Call of special election.* — Special election shall be called by the Commission by proclamation on a date to be fixed by it, which shall specify the offices to be voted for, that it is for the purpose of filling a vacancy or a newly created elective position, as the case may be. The Commission shall send copies of the proclamation, in numbers sufficient for due distribution and publication, to the provincial election supervisor or city election registrar concerned, who in turn shall publish it in their respective localities, by posting copies thereof in at least three conspicuous places in the city or in each municipality in the building, the public market, and his office, and one copy each in every voting center in the city or province.

Pending an election to fill a vacancy arising from any cause in the *interim* Batasang Pambansa, the vacancy shall be filled by majority vote of the Members of the *interim* Batasang Pambansa on nomination of the President.

The law then expanded and clarified the powers of the Commission on Elections by instituting it as the “sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory.”³⁸³

The rules were reiterated in the law³⁸⁴ governing the election of local government officials:

SECTION 5. *Failure of Election.* — Whenever for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, force majeure and other analogous causes of such a nature that the holding of a free, orderly and honest election should become impossible, the election for a local office fails to take place on the date fixed by law, or is suspended, or such election results in a failure to

³⁸³ Presidential Decree No. 1296 (1978), sec. 175 provides:
SECTION 175. Suspension and annulment of proclamation. — The Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory. It may, *motu proprio* or upon written petition, and after due notice and hearing order suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 hereof.

³⁸⁴ Batas Pambansa Blg. 52 (1979).

elect, the Commission on Elections shall, on the basis of a verified petition and after due notice and hearing, call for the holding or continuation of the election as soon as practicable.

Thereafter, the rules were also applied to the election of barangay officials in the Barangay Election Act of 1982.³⁸⁵

SECTION 16. *Postponement or Failure of Election.* — *When for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, force majeure, and other analogous causes of such nature that the holding of a free, orderly and honest election should become impossible in any barangay, the Commission on Elections, upon a verified petition, and after due notice and hearing, shall postpone the election therein for such time as it may deem necessary.*

If, on account of *force majeure*, violence, terrorism, or other analogous causes or fraud, the election in any barangay has not been held on the date herein fixed or has been suspended before the hour fixed by law for the closing of the voting therein and such failure or suspension of election would affect the result of the election, the Commission on Elections, on the basis of a verified petition and after due notice and hearing, shall call for the holding or continuation of the election on a date reasonably close to the date of the election not held or suspended.

In such case, the Minister of Local Government shall designate the persons who shall temporarily act as Punong Barangay (Barangay Captain) and Members of the Sangguniang Barangay (Barangay Council).

When the conditions in these areas warrant, upon verification by the Commission on Elections, or upon petition of at least thirty *per centum* of the registered voters in the barangay concerned, it shall order the holding of the barangay election. (Emphasis supplied)

Upon the enactment of the Omnibus Election Code,³⁸⁶ the Commission on Elections can now *motu proprio*³⁸⁷ proclaim a failure of election. The Code also provided for special elections regarding vacancy in the Batasang Pambansa³⁸⁸ and at the barangay level.³⁸⁹

³⁸⁵ Batas Pambansa Blg. 222 (1982).

³⁸⁶ ELECTION CODE, or Batas Pambansa Blg. 881 (1985).

³⁸⁷ ELECTION CODE, sec. 6 states:

SECTION 6. Failure of election. — If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

³⁸⁸ ELECTION CODE, sec. 7.

³⁸⁹ ELECTION CODE, sec. 45.

In the 1988 Rules of Procedure of the Commission on Elections, Rule 26 laid down the process for proclaiming the postponement or failure of election. In addition to repeating the guidelines set forth in the preceding laws, it provided:

RULE 26
Postponement or Suspension of Elections

.....

SECTION 3. *Motu Proprio Postponement.* — When the Commission acts *motu proprio*, notices of hearing must be sent to all interested parties by the fastest means available.

SECTION 4. *When Based Upon a Verified Petition.* — Unless a shorter period is deemed necessary by circumstances, within twenty-four (24) hours from the filing of the petition, the Clerk of Court concerned shall forthwith serve notices to all interested parties, indicating therein the date of hearing, through the fastest means available.

SECTION 5. *Time to File Opposition.* — Unless a shorter period is deemed necessary by the circumstances, within two (2) days from receipt of the notice of hearing, any interested party may file an opposition with the Law Department of the Commission.

SECTION 6. *Summary Proceeding.* — The hearing of the case shall be summary in nature.

SECTION 7. *Delegation of Reception of Evidence.* — The Commission may designate any of its officials who are members of the Philippine Bar to hear the case and to receive evidence.

SECTION 8. *Determination of Cessation of Cause.* — The determination of the cessation of the cause of the postponement or suspension of election or failure of election falls within the exclusive prerogative of the Commission.

Moreover, Republic Act No. 7056³⁹⁰ and Republic Act No. 7166³⁹¹ both provided that “[t]he postponement, declaration of failure of election, and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code (Batas Pambansa Blg. 881) shall be decided only by the Commission on Elections sitting *en banc* by a majority vote of its members.”³⁹²

Republic Act No. 7056 added that the “causes for the declaration of a failure of election may occur before or after the casting of votes or the day of

³⁹⁰ An Act Providing for the National and Local Elections in 1992, Pave the Way for Synchronized and Simultaneous Elections Beginning 1995, and Authorizing Appropriations Therefor (1991).

³⁹¹ An Act Providing for Synchronized National and Local Elections for the Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes (1991).

³⁹² See Republic Act No. 7056 (1991), sec. 7 and Republic Act No. 7166 (1991), sec. 4.

the election.”³⁹³ Republic Act No. 7166 added that in cases of permanent vacancies in Congress at least one year before the expiration of the term, the Commission “shall call and hold a special election to fill the vacancy not earlier than sixty (60) days nor longer than ninety (90) days after the occurrence of the vacancy. However, in case of such vacancy in the Senate, the special election shall be held simultaneously with the succeeding regular election.”³⁹⁴

At bottom, the power to declare a failure of elections, and consequently conduct special elections, is lodged exclusively with the Commission on Elections. Meanwhile, an electoral tribunal, after determining “who among the candidates garnered a majority of the legal votes cast,”³⁹⁵ is empowered to annul election results for the contested position before it.

The differences between the two remedies are clear and there is no overlap in their functions. Nonetheless, declarations of failure of elections and annulment of election results hinge on the same grounds and quantum of evidence.

The Commission on Elections, upon petition or *motu proprio*, may declare a failure of elections and call for special elections if it is shown with strong and convincing evidence that “*force majeure*, violence, terrorism, fraud, or other analogous causes”³⁹⁶ made it impossible to hold the scheduled elections.

Electoral tribunals may, in turn, annul election results if they are strongly convinced that the conduct of elections was tainted with “fraud, terrorism or other electoral irregularities existed to warrant the annulment.”³⁹⁷ However, being drastic and extraordinary, the remedy of annulment of elections must “be judiciously exercised with utmost caution and resorted only in exceptional circumstances.”³⁹⁸

³⁹³ Republic Act No. 7056 (1991), sec. 7.

³⁹⁴ Republic Act No. 7166 (1991), sec. 4.

³⁹⁵ *Abayon v. HRET*, 785 Phil. 683, 703 (2016) [Per J. Mendoza, Special En Banc].

³⁹⁶ ELECTION CODE, sec. 6 provides:

Section 6. *Failure of election*. — If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, *call for the holding or continuation of the election* not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

³⁹⁷ *Abayon v. HRET*, 785 Phil. 683, 701 (2016) [Per J. Mendoza, Special En Banc].

³⁹⁸ *Id.* at 709.

On September 29, 2020, this Tribunal directed the Commission on Elections to submit a report on whether petitions for failure of elections were filed in Lanao del Sur, Maguindanao, and Basilan in connection with the 2016 national and local elections.³⁹⁹

Accordingly, the Commission on Elections reported that there were indeed petitions filed for Lanao del Sur and Maguindanao, but none in Basilan. The Commission reported, as follows:

Province	Case No.	Case Title	Nature of the Case	Resolution
LANAO DEL SUR				
Marawi City, Lanao del Sur	SPA 16-111 (FE)	In the matter of the Petition to Declare Failure of Elections in Marawi City	Petition to Declare Failure of Elections	DISMISSED on the merits.
Marantao, Lanao del Sur	SPA 16-130 (FE)	In the matter of Declaring Failure of Elections in Barangays Bacong, Daana Ingud, Matampay, Poona Marantao, Kialdan, Lubo 1 and 2, Lumbac Kialdan, Mantapoli, Pantiamas, Tuca Kialdan and Punud Proper of the Municipality of Marantao, Lanao del Sur and to hold Special Elections or to Annul/Exclude Election Returns therein Samson U. Adiong	Declaration of Failure of Elections, hold Special Elections, or to Annul/Exclude Election Returns	DISMISSED on the merits.

³⁹⁹ *Rollo*, Vol. L, p. 41266–41286, September 29, 2020 Resolution.

Marantao, Lanao del Sur	SPA 16-131 (FE)	Alimoden Guro Cornell v. The Members of the BEI of Clustered Precinct Nos. of Brgys. Mantapoli, Pantaimas, Lubo, Kialdan, Tuka Kialdan, Lumbac Kialdan; The MBOC of the Municipality of Marantao, Province of Lanao del Sur, Alahoding Maruhom, as the Vice Mayor, Proclaimed in the recently concluded May 09, 2016 National, Local and ARMM Elections	In the matter of the Petition to Declare a Failure of Election in Clustered Precinct No. 0043A, 0044A, 0045A, 0045B, 0045C of Brgy. Lubo, 0047A, 0047B, 0048A, 0048B of Brgy. Lumbac Kialdan, 0049A, 0050A, 0051A, 0052A, Brgy. Mantapoli, 0079A, 0080A, 0081A, 0082A, 0083A of Brgy. Tuca Kialdan; 0069A, 0070A, 0071A, 0071B of Brgy. Pantaimas; 0040A, 0041A, 0042A, 0042B of Brgy. Kialdan in the Municipality of Marantao, Province of Lanao del Sur.	DISMISSED on the merits.
MAGUINDANAO				
Northern Kabuntalan, Maguindanao	SPA 16-114 (FE)	Magdon U. Dingalen v. Mohidin S. Lauban and the MBOC, Northern Kabuntalan, Maguindanao	For Annulment of Elections and/or Declaration of Failure of Elections and Annulment of Proclamation	DISMISSED on the merits.
Pagalungan, Maguindanao	SPA 16-122 (FE)	Guimid P. Matalam and Arkan M. Matalam v. Salik Mamasabulod, Abdillah Mamasabulod and Municipal Board of Canvassers (MBOC) of Pagalungan, Maguindanao	For Annulment of Elections and/or Declaration of Failure of Elections and Annulment of Proclamation	DISMISSED on the merits.
Sultan Kudarat, Maguindanao	SPA 16-125 (FE)	Ibrahim K. Ibrahim v. Shameem B. Mastura	Petition for Annulment of Election Results and/or Declaration of Failure of Elections	DISMISSED on the merits.
Datu Unsay, Maguindanao	SPA 16-132 (FE) Formerly SPC 16-016	Monawara Ampatuan, Kamarudin Ibrahim, Abdul Hamid Lumena, Tato G. Abdulradzak, Macmod Ebrahim, Norodin Datuali, Mulba Ampakay,	Petition for Annulment of Proclamation and/or Declaration of Failure of Elections	DISMISSED on the merits.

		Zacaria Saway, Mohammad Unggala and Rocky Nacio, in their capacities as local candidates for the May 9, 2016 elections in Datu Unsay, Maguindanao v. Reshal Ampatuan, Janine Mamalapat, Salahudin Tagadaya, Zuhari Guiapal, Wanay Dukay, Tho Pasawilan, Abdulrahim Abdullah, Ging Amman, Mohammad Shamron Sapalon, and Dor Engkel, in their capacities as proclaimed winning local candidates for the May 9, 2016 elections, and the MBOC, all for the Municipality of Datu Unsay, Maguindanao		
Sultan sa Barongis, Maguindanao	SPA 16-135 (FE) Formerly SPC 16-017	Abubakar Katambak and Sukarno Badal v. The MBOC of Sultan sa Barongis, Maguindanao, Ramdatu Angas, and Al-Fizzar Allandatu Angas	Petition for Declaration of Nullity and/or Annulment of Proclamation and/or Declaration of Failure of Elections	DISMISSED due to non-appearance of both parties ⁴⁰⁰

All the cases in the Commission on Elections' report, except for one, were dismissed on the merits. The Commission on Elections made findings of fact which led it to conclude that there was no failure of elections or any ground to annul the election results. This Tribunal respects the Commission on Elections' rulings, which have attained finality.

VII

Failing to make out his case through his designated pilot provinces—Camarines Sur, Iloilo, and Negros Oriental—protestant cannot now insist on the annulment of the election results in Lanao del Sur, Maguindanao, and Basilan. The Rules explicitly direct the forthwith dismissal of his Protest “without further consideration of the other provinces mentioned in the protest.”⁴⁰¹ A resort to his third cause of action can no longer be had.

⁴⁰⁰ *Rollo*, Vol. L, p. 41335–41433, COMELEC Compliance with September 29, 2020 Resolution.

⁴⁰¹ PET RULES (2010), Rule 17 (C)(d).

In any case, for a full disposition of this Protest, this Tribunal extensively scrutinized protestant's allegations and assessed the evidence he presented. Even then, we find that he failed to show *prima facie* evidence of his claims that "terrorism, intimidation and harassment of voters, pre-shading of ballots, and substitution of voters" attended the elections in Lanao del Sur, Maguindanao, and Basilan.⁴⁰²

As discussed in this Tribunal's August 29, 2017 Resolution,⁴⁰³ the parties were directed during the preliminary conference to limit their number of witnesses to three per clustered precinct for the second and third causes of action and to submit a new list of witnesses.⁴⁰⁴

This Tribunal likewise informed the parties that it would base its review of the sufficiency of the allegations of fraud on the evidence on record, and that failure to comply with the directive would be deemed "a waiver of his right to name and identify his witnesses, and to present them during the reception of evidence":

In view of protestant's clear and unequivocal declaration that he will no longer present any testimonial evidence on his Second Cause of Action, the Tribunal reiterates its directive to protestant to submit a new list of witnesses **for the Third Cause of Action** by limiting that number of witnesses to three (3) per clustered precinct, and already identifying the concerned clustered precinct, within a non-extendible period of five (5) days from receipt hereof. **Protestant's failure to do so will be deemed a waiver of his right to name and identify his witnesses, and to present them during the reception of evidence.**⁴⁰⁵ (Emphasis in the original, citation omitted)

Protestant submitted a Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action) dated September 8, 2017.⁴⁰⁶ This was another accommodation, considering that this Tribunal had previously dismissed protests on insufficient allegations alone. As earlier discussed, *Corvera*,⁴⁰⁷ *Aguillo*,⁴⁰⁸ *Lloren*,⁴⁰⁹ and *Peña*⁴¹⁰ declared that general allegations of irregularities, insufficient averments, and failure to specify precincts warrant the dismissal of election protests. However, despite being directed to state the *specific* clustered precinct per witness, which other petitioners had not been accorded in the past, protestant still did not comply.

⁴⁰² *Rollo*, Vol. L, p. 40904, Protestant's Memorandum.

⁴⁰³ *Rollo*, Vol. XXXII, pp. 24482-24641.

⁴⁰⁴ *Id.* at 24501.

⁴⁰⁵ *Id.* at 24502.

⁴⁰⁶ *Id.* at 24795-24819.

⁴⁰⁷ G.R. No. 208610 (Notice), November 11, 2014.

⁴⁰⁸ G.R. No. 197975-76 (Notice), March 19, 2013.

⁴⁰⁹ 695 Phil. 288 (2012) [Per J. Bersamin, En Banc].

⁴¹⁰ 337 Phil. 70 (1997) [Per J. Torres, Sr., En Banc].

Thus, in the September 19, 2017 Resolution,⁴¹¹ this Tribunal again ordered him to strictly comply with the August 29, 2017 Resolution directing him to identify his witnesses, this time with the concerned clustered precincts.

Protestant accordingly submitted another Manifestation and Compliance dated October 9, 2017,⁴¹² in which he—yet again—failed to satisfy the required information.

A review of protestant's Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action) dated October 9, 2017 yielded the following lapses: (1) lack of clustered precinct numbers;⁴¹³ (2) erroneous use of the established precinct number instead of the clustered precinct number as required in the Preliminary Conference Order;⁴¹⁴ (3) precinct numbers that do not exist based on the Project of Precincts for the 2016 elections;⁴¹⁵ (4) lack of witnesses for several clustered precincts;⁴¹⁶ and (5) repetition of the names of some witnesses.

Protestant has already waived his right to present witnesses. This Tribunal's rulings must not be arbitrarily vacated.

To reiterate, *Abayon* explained that since annulment of elections is a drastic and extraordinary remedy, it must “*be judiciously exercised with utmost caution and resorted only in exceptional circumstances*”:

The testimonies of a minute portion of the registered voters in the said precincts should not be used as a tool to silence the voice of the majority expressed through their votes during elections. To do so would disenfranchise the will of the majority and reward a candidate not chosen

⁴¹¹ *Rollo*, Vol. XXXII, pp. 24905–24907.

⁴¹² *Rollo*, Vol. XXXIII, pp. 25059–25245.

⁴¹³ For example, in Lanao del Sur, there was no clustered precinct number for Brgys. Cadingilan Occidental, Bairan, Bayang Proper, Sandab Madaya, and Lalaupung Upper, municipality of Bayang; Brgy. Pantaon-A, Municipality of Ganassi; Brgys. Bolao, Cambong, and Sabala Dilausan, municipality of Maguing; and Brgy. Pialot, municipality of Malabang; Raya Madaya and Tampilong in Marawi City; and Brgy. Notong, municipality of Pualas. In Maguindanao, there was no clustered precinct number for Brgy. Poblacion 7, Cotabato City. In Basilan, there was no clustered precinct number for Brgy. Lower Bato-Bato, municipality of Akbar.

⁴¹⁴ For all three pilot provinces, protestant used the precinct number and not the clustered precinct numbers in the list of witnesses. The August 29, 2017 Resolution required the use of clustered precinct numbers. A clustered precinct is composed of several established precincts. As an example, the Commission on Elections' Project of Precincts for the 2016 National and Local Elections shows that Established Precinct Nos. 0001A, 0002A, 0003A, and 0004A form Clustered Precinct 1 in Barangay Maganda, Lamitan City, Basilan. See <<https://comelec.gov.ph/?r=2016NLE/ProjectofPrecincts/POP>> (last accessed on February 5, 2021).

⁴¹⁵ In Basilan, Brgy. Basak in Lamitan City has no Precinct No. 0042A. Similarly, Brgy. Baimbing of Lamitan City has no Precinct Nos. 0067B, 0067C, and 0067P1.

⁴¹⁶ In Lanao del Sur, there were no witnesses for Brgys. Condaraan, Cairan, Cadayona, and Rantian, municipality of Bayang; Brgy. Pangadapun, Municipality of Ganassi; Brgy. Lilod Borocot, municipality of Maguing. In Maguindanao, there were no witnesses for Brgys. Calaan, Cabayuan, and Karim, municipality of Buldon. In Basilan, there were no witnesses for Brgy. Baguindan, municipality of Tipo-Tipo; Brgy. Sta. Clara, Lamitan City; Brgy. Upper Port Holland, municipality of Maluso, Brgy. Basak, municipality of Sumisip; and Brgy. Tong-Umus, municipality of Tabuan-Lasa.

by the people to be their representative. With such dire consequences, it is but expected that annulment of elections be judiciously exercised with utmost caution and resorted only in exceptional circumstances.⁴¹⁷ (Emphasis supplied)

Annuling the votes for vice president in the 2016 elections casts serious doubts on the victory of other nationally elected officials like the president, senators, and party-list representatives. This is why “the power to annul an election should be exercised with *the greatest care* as it involves the free and fair expression of the popular will. It is only in extreme cases of fraud and under circumstances which demonstrate to the fullest degree a fundamental and wanton disregard of the law that elections are annulled, and then only when it becomes impossible to take any other step.”⁴¹⁸

If this Tribunal were to give due course to protestant’s third cause of action, a formulation of ad hoc rules would be necessary. As pointed out by Justice Samuel H. Gaerlan, who concurs that this Protest must be dismissed for protestant’s failure to prove reasonable recovery in the pilot provinces,⁴¹⁹ pushing through with protestant’s third cause of action “is properly and optimally addressable through an exercise of this tribunal’s rule-making power.”⁴²⁰ This would, however, raise due process concerns, because the revision of ballots and reception of evidence have been completed, and results have been released.

More important, these were conducted precisely to determine if this Tribunal should proceed with the other contested provinces.⁴²¹ Changing the rules this late in the game to grant protestant’s third cause of action would not be a good precedent as it would tailor the Protest in favor of one party.

Besides, there is also protestee’s pending Counter-Protest that would be affected by a change in the rules. This Tribunal must be prepared to hear it if we decide to proceed with the annulment of elections.

In any case, we examine protestant’s evidence, guided by the framework that “[t]he testimonies of a minute portion of the registered voters in the precincts should not be used as a tool to silence the voice of the majority expressed through their votes during elections.”⁴²² We are reminded that “[s]tatistics never lie, but lovers often do[.]”⁴²³

⁴¹⁷ *Abayon v. HRET*, 785 Phil. 683, 709 (2016) [Per J. Mendoza, Special En Banc].

⁴¹⁸ *Peña v. HRET*, 337 Phil. 70, 78–79 (1997) [Per J. Torres, Sr., En Banc].

⁴¹⁹ J. Gaerlan, Reflections, p. 1.

⁴²⁰ *Id.* at 4.

⁴²¹ *Rollo*, Vol. XXXII, p. 24511.

⁴²² *Abayon v. HRET*, 785 Phil. 683, 709 (2016) [Per J. Mendoza, Special En Banc].

⁴²³ *Antonio v. Reyes*, 519 Phil. 337, 340 (2006) [Per J. Tinga, Third Division].

This Tribunal notes that the list of witnesses in protestant's annexes attached to the Protest and the list of witnesses in the October 9, 2017 Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action) bear the same names. Thus, we reviewed the affidavits of these witnesses for the provinces of Lanao Del Sur, Maguindanao, and Basilan.

Lanao del Sur

The affidavits of Amerah A. Maranda,⁴²⁴ Aliah L. Abdulkarim,⁴²⁵ Nabilah Sowaib,⁴²⁶ Rohanie Amanoddin,⁴²⁷ and Nouman A. Abdullah⁴²⁸ state similar facts: that they are all poll watchers who went to the municipal hall of Bacolod-Kalawi at around 5:00 a.m. on election day, but were prevented from entering. When Amerah, Aliah, Nabilah, and Rohanie went to Kalawi Central Elementary School, they narrated that supporters of a certain candidate intimidated them.

However, none of their allegations showed that no voting took place, or that registered voters were not allowed to cast their votes. Moreover, they did not attach identification cards to prove that they were official poll watchers of the candidate they supposedly represented during the 2016 elections.

Election Assistant Gonaranao P. Corontoz (Corontoz), in his Judicial Affidavit,⁴²⁹ alleged that errors were recorded during the final testing and sealing of the vote-counting machines. It would appear from his Affidavit that only one machine was faulty, and he did not state to which specific precinct it was assigned.⁴³⁰ In any case, the technical problem with the vote-counting machine happened during the final testing and sealing, and not during election day.

Election Assistant Amer D. Abdullah executed a Judicial Affidavit⁴³¹ and alleged ballot-snatching in the municipality of Pagayawan, but did not state the specific precincts.

The Judicial Affidavit of Marawi City Election Assistant Sanapia D. Benito⁴³² would no longer have any bearing after the Commission on Elections had found that there was no failure of elections in Marawi City.⁴³³

⁴²⁴ *Rollo*, Vol. XIX, pp. 15330–15331, Protest Annex GG-2.

⁴²⁵ *Id.* at 15332–15334, Protest Annex GG-3.

⁴²⁶ *Id.* at 15335–15336, Protest Annex GG-4.

⁴²⁷ *Id.* at 15337–15338, Protest Annex GG-5.

⁴²⁸ *Id.* at 15339–15340, Protest Annex GG-6.

⁴²⁹ *Id.* at 15341–15350, Protest Annexes GG-7 and GG-8.

⁴³⁰ *Id.* at 15343–15344.

⁴³¹ *Id.* at 15351–15356, Protest Annex GG-9.

⁴³² *Id.* at 15357–15363, Protest Annex GG-10.

⁴³³ *Rollo*, Vol. L, p. 41335. The Commission on Elections' Compliance (To the Resolution dated 29 September 2020). SPA 16-111 (FE), "In the matter of the Petition to Declare Failure of Elections in

Abdulnader M. Balt, a support staff member under the Office of the Election Officer of Lumbaca Unayan, did not state in his Judicial Affidavit⁴³⁴ the specific precincts where the alleged irregularities took place.

Maguindanao

Affiant Normina L. Taha⁴³⁵ (Taha) alleged that she was “a Team Leader of the Kilusang Bagong Lipunan (“KBL”) in charge over the whole of Datu Saudi Ampatuan in Maguindanao”⁴³⁶ and that during election day, she “was assigned to supervise the personnel of the KBL in the conduct of elections in Datu Pendililang Piang Elementary School[.]”⁴³⁷ She alleged that several men of the then incumbent mayor had intimidated her, yet her allegation does not show that voting did not take place, or that there was a substantial number of disenfranchised voters, or that protestee had anything to do with this.⁴³⁸

Bassir D. Utto⁴³⁹ (Utto), a candidate for vice mayoralty of Datu Saudi Ampatuan during the 2016 elections,⁴⁴⁰ also executed an Affidavit⁴⁴¹ alleging irregularities. A portion of his affidavit states:

2. On 9 May 2016, Election Day, around 9 a.m. at Barangay Kabinge, while I was doing my rounds to observe the conduct of elections, I was alarmed by the presence of armed men within fifty (50) meters from the voting center. I noticed that it was the group of MILF 118 Base Command Wahid Tundok with Nashro Dimaukom and Patrick Dimaukom (“Tundok group”), brother and nephew of incumbent Mayor Dimaukom. The Tundok group numbered a hundred men and I immediately noticed that about six (6) of them were brandishing their pistols in full view of the Armed Forces of the Philippines (“AFP”) soldiers and the public.⁴⁴²

Utto went on to narrate that after receiving Taha’s report, he proceeded to Datu Pendililang Piang Elementary School where he also saw the incumbent mayor’s armed men, whom the military and police also present in the area seemed to have tolerated.⁴⁴³

Marawi City,” was dismissed on the merits on August 16, 2016. A Certificate of Finality was issued by COMELEC on February 15, 2017.

⁴³⁴ *Rollo*, Vol. XIX, pp. 15364–15371, Protest Annex GG-11.

⁴³⁵ *Id.* at 15383–15385, Protest Annex HH-2.

⁴³⁶ *Id.* at 15383.

⁴³⁷ *Id.*

⁴³⁸ *Id.*

⁴³⁹ The Affidavit at times spelled as Utto as Uto.

⁴⁴⁰ *Rollo*, Vol. XIX, pp. 15386–15390, Protest Annex HH-3.

⁴⁴¹ *Id.*

⁴⁴² *Id.* at 15386.

⁴⁴³ *Id.* at 15387.

As Utto had admitted, the armed forces' presence is more than enough evidence to show that even if armed men were present, the military ensured that orderly elections would be conducted.

Incidentally, Utto admitted that he was a candidate who went from one polling place to another.⁴⁴⁴ Under Section 192 of the Omnibus Election Code, only authorized persons are allowed to stay within the polling place:

SECTION 192. *Persons allowed in and around the polling place.*

— During the voting, no person shall be allowed inside the polling place, except the members of the board of election inspectors, the watchers, the representatives of the Commission, the voters casting their votes, the voters waiting for their turn to get inside the booths whose number shall not exceed twice the number of booths and the voters waiting for their turn to cast their votes whose number shall not exceed twenty at any one time. The watchers shall stay only in the space reserved for them, it being illegal for them to enter places reserved for the voters or for the board of election inspectors or to mingle and talk with the voters within the polling place.

It shall be unlawful for any officer or member of the Armed Forces of the Philippines including the Philippine Constabulary or the Integrated National Police or peace officer or any armed person belonging to any extra-legal police agency, special forces, reaction forces, strike forces, home defense units, *barangay tanod*, or other similar forces or paramilitary forces, including special forces, security guards, special policemen, and all other kinds of armed or unarmed extra-legal police officers, to enter any polling place, unless it is his polling place where he will vote but in such case he should immediately leave the polling place, and within a radius of fifty meters from such polling place, no policeman or peace officer shall be allowed to enter or stay inside the polling place except when there is an actual disturbance of the peace and order therein. However, the board of election inspectors upon majority vote, if it deems necessary, may make a call in writing, duly entered in the minutes, for the detail of a policeman or any peace officer for their protection or for the protection of the election documents and paraphernalia, in which case, the said policeman or peace officer shall stay outside the polling place within a radius of thirty meters near enough to be easily called by the board of election inspectors at any time, but never at the door, and in no case shall the said policeman or peace officer hold any conversation with any voter or disturb or prevent or in any manner obstruct the free access of the voters to the polling place. It shall likewise be unlawful for any *barangay* official to enter and stay inside any polling place except to vote or except when serving as a watcher or member of the board of election inspectors, in which case, he shall leave the polling place immediately after voting.

Utto appears to have committed an election offense, having went to two different polling places to observe the elections despite being a candidate and not an authorized poll watcher. It could be that he just cast his vote in one of the polling places he visited, but no such statement was made in his Affidavit. Just the same, any registered voter has a stake in the

⁴⁴⁴ Id. at 15386–15387.

outcome of the elections, but the manner by which we ensure the clean, orderly, and honest elections should be within the bounds of law.

Basilan

The affidavits of Nasir A. Tawani,⁴⁴⁵ Abdulla I. Anjala,⁴⁴⁶ Amat A. Sarama,⁴⁴⁷ Mariabella E. Macay,⁴⁴⁸ Alamin O. Ibama,⁴⁴⁹ Sitti S. Bohong,⁴⁵⁰ Abdulbasir D. Tawani,⁴⁵¹ Massir S. Tawani,⁴⁵² Kais T. Itih,⁴⁵³ Muallam A. Gadjalul,⁴⁵⁴ Hussin A. Adjain,⁴⁵⁵ and Salaain A. Muhtarin,⁴⁵⁶ residents of various barangays in Sumisip, all alleged that there was pre-shading of ballots and that they were unable to vote on election day.

However, being unable to vote does not necessarily mean that no voting took place. A voter may have been unable to vote on election day for various reasons. They may have been transferred to the list of deactivated voters for failure to vote in two consecutive regular elections.⁴⁵⁷

Notably, Abdulla I. Anjala stated that he was a registered voter in Precinct No. 0053-A, Barangay Cabcaban, Sumisip.⁴⁵⁸ Yet, the Commission on Elections' Project of Precincts for 2016 shows no Precinct No. 0053-A in Sumisip.⁴⁵⁹ With no such precinct in Barangay Cabcaban, this Affidavit has no evidentiary value at all.

Likewise, in Lamitan City, Basilan, affiants also alleged irregularities in the elections, but their narratives were woefully lacking.

Said M. Uliling, a resident of Barangay Balagtasán, alleged in his Affidavit⁴⁶⁰ that he was instructed to pre-shade official ballots. Yet, there was no indication whether these ballots were fed into the vote-counting machines during the canvassing.⁴⁶¹

⁴⁴⁵ Id. at 15405–15406, Protest Annex II-8.

⁴⁴⁶ Id. at 15407, Protest Annex II-9.

⁴⁴⁷ Id. at 15408, Protest Annex II-10.

⁴⁴⁸ Id. at 15409, Protest Annex II-11.

⁴⁴⁹ Id. at 15410, Protest Annex II-12.

⁴⁵⁰ Id. at 15411, Protest Annex II-13.

⁴⁵¹ Id. at 15412, Protest Annex II-14.

⁴⁵² Id. at 15413, Protest Annex II-15.

⁴⁵³ Id. at 15414, Protest Annex II-16.

⁴⁵⁴ Id. at 15415–15416, Protest Annex II-17.

⁴⁵⁵ Id. at 15417–15418, Protest Annex II-18.

⁴⁵⁶ Id. at 15419–15420, Protest Annex II-19.

⁴⁵⁷ The procedure for deactivation of voters for the 2016 elections can be found in COMELEC Resolution No. 9863 (2014).

⁴⁵⁸ *Rollo*, Vol. XIX, p. 15407.

⁴⁵⁹ 2016 National and Local Elections Project of Precincts, available at <<https://comelec.gov.ph/?r=2016NLE/ProjectofPrecincts/POP>> (last accessed on December 10, 2020).

⁴⁶⁰ *Rollo*, Vol. XIX, p. 15421, Protest Annex II-20.

⁴⁶¹ Id.

For his part, Mady A. Anjalang⁴⁶² (Anjalang) stated that on election day, he was told that he could only vote after the supporters of the Liberal Party had done so.⁴⁶³ He was brought home by his companions after a sudden altercation with a civilian security escort who had threatened to shoot him, and was thus unable to cast his vote.⁴⁶⁴

If Anjalang was unable to cast his vote, it appears that it was of his own doing. He did not claim that he was prevented from casting his vote, but was simply told to wait. Yet, he chose to go home and, it would seem, never returned to the polling place.

Boy Sanson Akilin (Akilin) alleged in his Affidavit⁴⁶⁵ that there had been pre-shading of ballots. He added that in the early morning, only select voters had been initially allowed to vote.⁴⁶⁶ He also claimed:

4. That, it was not until about 10:00 o'clock in the morning, when a military vehicle arrived and talked to the Barangay Captain that all voters, without distinction, were already allowed entry to the polling place and allowed to cast votes[.]⁴⁶⁷

Notably, Akilin himself admitted that the issue of selecting voters who could cast their votes was resolved that same morning. As for the pre-shaded ballots, there was likewise no statement that these ballots were fed into the vote-counting machines.

Additionally, in Isabela City, Basilan, Gerry A. Salapuddin alleged ballot-snatching and feeding in particular areas, yet he did not explain how he had personal knowledge of these allegations:

Ballot Snatching and Feeding

5. Contrary to the directive of the COMELEC Central Office, the ballots for the clustered precincts in the Municipalities of Akbar, Tuburan, Al Barkah, Sumisip, Tabu-an Lasa, and in some barangays of the Municipalities of Muhammad Ajul and Lantawan, all in the Province of Basilan, were not delivered to such clustered precincts but were instead placed in the respective Municipal Halls. As a result, local candidates belonging to the Liberal Party, together with their armed men, took around 90% of these ballots from their respective Treasurers of said municipalities and brought said ballots to the households of their supporters and/or relatives to be filled-up.

⁴⁶² Id. at 15422, Protest Annex II-21.

⁴⁶³ Id.

⁴⁶⁴ Id.

⁴⁶⁵ Id. at 15423, Protest Annex II-22.

⁴⁶⁶ Id.

⁴⁶⁷ Id.

6. On the next day, 9 May 2016, these already filled-up ballots were then fed into the VCMs. As a result of these activities, 90% of the voters in these Municipalities were disenfranchised.⁴⁶⁸

In sum, the affidavits lacked specificity and any iota of proof of fraud or irregularity that would entail annulment of elections, falling short of the threshold in *Abayon*.

We note that protestant also advocated the application of the threshold set forth in *Abayon*:

96. As to whether the threshold will apply per province to all **three (3)** provinces, it can be inferred from the ruling in the case of *Abayon v. HRET and Daza* that if the annulment of the election results involves an entire province, the threshold in case of annulment of the election results covering an entire municipality should apply, *i.e.*, the illegality of the ballots must affect more than fifty percent (50%) of the total precincts of the municipality or province concerned.

97. As to whether there can be failure or annulment in some but not all **three (3)** provinces, the answer will depend on whether there is compliance with the threshold of evidence that is required to prove failure or annulment of elections and the percentage of votes/precincts that needs to be proven as having been affected by the grounds for failure or annulment of elections. If there is compliance for **ALL** the **three (3)** provinces then the elections results for the position of Vice-President in these 3 provinces shall be annulled.⁴⁶⁹ (Emphasis in the original)

The Commission on Elections likewise recommended that per *Abayon*, the threshold of evidence to prove annulment of elections consists of a showing that:

- (1) The illegality of the ballots must affect more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein;
- (2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots; and
- (3) There must be clear, convincing and strong evidence showing that the protestee is the one responsible for the unlawful acts complained of.⁴⁷⁰

This Tribunal applies the requisites in *Abayon*. Both parties have repeatedly invoked it, and the Commission on Elections itself has insisted on its applicability. We take this opportunity to scrutinize this case through the lens of *Abayon*.

⁴⁶⁸ Id. at 15398, Annex II-2, Affidavit of Gerry A. Salapuddin.

⁴⁶⁹ *Rollo*, Vol. L, p. 40931, Protestant's Memorandum.

⁴⁷⁰ Id. at 41349.

The first requisite—that the unlawful ballots must have affected *more than 50%* of the votes cast on the specific precincts sought to be annulled—was not met. The affidavits reviewed pertained to a measly few municipalities in Lanao del Sur, Maguindanao, and Basilan.

Lanao del Sur has a total of 39 municipalities and one city, yet protestant submitted affidavits referring to only three localities: the municipality of Bacolod-Kalawi,⁴⁷¹ the municipality of Lumbaca-Unayan,⁴⁷² and Marawi City.⁴⁷³

Interestingly, the Commission on Elections found that there was no failure of elections in Marawi City and in the municipality of Marantao during the 2016 elections.

On August 16, 2016, the Commission on Elections dismissed⁴⁷⁴ a petition to declare a failure of elections in Marawi City, docketed as SPA 16-111 (FE). It had ruled on the merits, considering the prior investigation⁴⁷⁵ that revealed the reported violence on election day, resulting in voters belatedly casting their votes.⁴⁷⁶ In dismissing this petition, the Commission on Elections explained:

Before the COMELEC can declare a failure of election two conditions must concur, namely (1) no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect; and (2) the votes not cast would have affected the result of the election[s]. The cause of such failure of election could only be any of the following: *force majeure*, violence, terrorism, fraud or other analogous causes. The phrase “resulted in failure to elect,” in turn, must be understood in its literal sense, which is “nobody was elected.”

A careful review of the circumstances surrounding the subject elections in Marawi City would disprove any claim of failure of elections therein.

The mere fact that the winning candidates in Marawi City have been proclaimed belies the argument that no voting took place in the precincts on the date fixed by law, or that the election resulted in the failure to elect. In fact, PES Dela Peña failed to appear during the scheduled hearing to present evidence that there was indeed failure of election in Marawi City. There is nothing in the records that will show that (a) elections were not conducted in the designated polling places; (b)

⁴⁷¹ *Rollo*, Vol. XIX, pp. 15330–15340, Protest: Annex GG-2, Affidavit of Amerah Maranda; Annex GG-3, Affidavit of Aliah L. Abdulkarim; Annex GG-4, Affidavit of Nabilah Sowaib; Annex GG-5, Affidavit of Rohanie Amanoddin; Annex GG-6, Affidavit of Nouman Abdullah.

⁴⁷² *Id.* at 15364–15371, Protest Annex GG-11, Affidavit of Abdalnader M. Balt.

⁴⁷³ *Id.* at 15341–15363, Protest Annexes GG-7 and GG-8, Affidavit of Gonarano P. Corontoz; Annex GG-9, Affidavit of Amer D. Abdullah; Annex GG-10, Affidavit of Sanapia D. Benito.

⁴⁷⁴ *Id.* at 41370–41374.

⁴⁷⁵ As reported by acting Provincial Election Supervisor of Lanao del Sur, Atty. Roberto dela Peña.

⁴⁷⁶ *Rollo*, Vol. L, p. 41371.

elections were suspended in the said city or barangays; and (c) after the voting and during the transmission of the election returns or in the custody or canvass thereof, such results in failure to elect on account of *force majeure*, violence, terrorism, fraud and other analogous causes.⁴⁷⁷ (Emphasis in the original, citations omitted)

The August 16, 2016 Resolution turned final on February 15, 2017.⁴⁷⁸ The Commission on Elections' ruling that there was no failure of elections in Marawi City is thus binding on this Protest, based on *res judicata* by conclusiveness of judgment. The rule is codified in Rule 39, Sec. 47(c) of the Rules of Civil Procedure, which states:

Rule 39
Execution, Satisfaction and Effect of Judgments

SECTION 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

.....

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

This rule was explained in *Webb v. Gatdula*:⁴⁷⁹

There is conclusiveness of judgment when “there is identity of parties in the first and second cases, but no identity of causes of action[.]” Moreover, “the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.” Thus, when a court of competent jurisdiction judicially tried and settled a right or fact, or an opportunity for a trial has been given, the court's judgment should be conclusive upon the parties. In *Nabus v. Court of Appeals*:

The doctrine [of conclusiveness of judgment] states that a fact or question which was in issue in a former suit, and was there judicially passed on and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein, as far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed or

⁴⁷⁷ Id. at 41373.

⁴⁷⁸ Id. at 41335.

⁴⁷⁹ G.R. No. 194469, September 18, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65754>> [Per J. Leonen, Third Division].

unvacated by proper authority. The only identities thus required for the operation of the judgment as an estoppel, in contrast to the judgment as a bar, are identity of parties and identity of issues.

It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. In order that this rule may be applied, it must clearly and positively appear, either from the record itself or by the aid of competent extrinsic evidence that the precise point or question in issue in the second suit was involved and decided in the first. And in determining whether a given question was an issue in the prior action, it is proper to look behind the judgment to ascertain whether the evidence necessary to sustain a judgment in the second action would have authorized a judgment for the same party in the first action. . . .

In essence, *res judicata* by bar by prior judgment prohibits the filing of a second case when it has the same parties, subject, and cause of action, or when the litigant prays for the same relief as in the first case. Meanwhile, *res judicata* by conclusiveness of judgment precludes the re-litigation of a fact or issue that has already been judicially settled in the first case between the same parties. If, between the first and second case, the causes of action are different and only the parties and issues are the same, *res judicata* is still present by conclusiveness of judgment.⁴⁸⁰ (Citations omitted)

While SPA No. 16-111 (FE) does not name any petitioner, the resolved matter is the same as that raised by protestant here. The grounds for annulment of election results are similar to the grounds for declaration of failure of elections. The Commission on Elections found no failure of elections in Marawi City because the elections were held, a majority of the voters cast their votes, and winning candidates were proclaimed. Thus, there is no need to re-litigate the same matter.

For the municipality of Marantao, two consolidated petitions had both alleged violence, terrorism, and pre-shading of ballots.⁴⁸¹ In dismissing the consolidated petitions, the Commission on Elections explained:

⁴⁸⁰ Id.

⁴⁸¹ *Rollo*, Vol. L, p. 41398, May 26, 2017 in SPA No. 16-130 (FE) and SPA No. 16-131 (FE).

Elections did take place in the assailed clustered precincts as the evidence on record establishes. There is no evidence on record that elections were suspended before the hour fixed by law for the closing of the voting because of the alleged terrorism and anomalies claimed in the petitions. Moreover, the alleged terrorism and anomalies did not result in failure to elect.

....

While there is evidence on record showing that there was a shooting incident at the Municipal Gym of Marantao, which resulted in the deaths of two of Petitioner Adiong's watchers, the same cannot be considered as sufficient basis to declare failure of elections because evidence shows that the violent encounter did not fully disrupt or adversely affect the voting in the questioned polling centers.⁴⁸²

The ruling that there was no failure of elections in the municipality of Marantao is also *res judicata* by conclusiveness of judgment.

Res judicata by conclusiveness of judgment also applies to the other cases resolved by the Commission on Elections involving cities and municipalities in Maguindanao and Basilan. Again, in determining whether this Tribunal should proceed to the third cause of action, we must recognize the Commission on Elections' various resolutions dismissing petitions to declare a failure of elections.

For Maguindanao, the Commission on Elections ruled that there was no failure of elections in the municipalities of Pagalungan,⁴⁸³ Sultan Kudarat,⁴⁸⁴ Sultan sa Barongis,⁴⁸⁵ Datu Unsay,⁴⁸⁶ and Northern Kabuntalan.⁴⁸⁷

Incidentally, Maguindanao has a total of 36 municipalities and one city,⁴⁸⁸ but the affiants protestant presented were both from the municipality of Datu Saudi Ampatuan.⁴⁸⁹

Meanwhile, Basilan has 11 municipalities and two cities,⁴⁹⁰ but the affidavits protestant presented refer only to the municipalities of Tuburan,⁴⁹¹ Sumisip,⁴⁹² Akbar,⁴⁹³ and Lamitan City.⁴⁹⁴

⁴⁸² Id. at 41410 and 41413.

⁴⁸³ Id. at 41382–41387, October 30, 2017 in SPA Case No. 16-122 (FE).

⁴⁸⁴ Id. at 41388–41395, November 17, 2016 Resolution in SPA No. 16-125 (FE).

⁴⁸⁵ Id. at 41338, November 8, 2016 and May 17, 2017 Resolutions in SPA No. 16-135 (FE).

⁴⁸⁶ Id. at 41417–41431, February 1, 2018 Resolution in SPA No. 16-132 (FE).

⁴⁸⁷ Id. at 41375–41381, January 15, 2018 Resolution in SPA No. 16-114 (FE).

⁴⁸⁸ Cotabato City is treated as a special province per the Commission on Elections' Project of Precincts for the 2016 elections, but is deemed included in Maguindanao for the third cause of action.

⁴⁸⁹ *Rollo*, Vol. XIX, pp. 15383–15390, Protest Annex HH-2, Affidavit of Normina L. Taha; and Annex HH-3, Affidavit of Bassir D. Utto.

⁴⁹⁰ Isabela City is treated as a special province as per COMELEC's Project of Precincts for the 2016 national and local elections, but is included in Basilan for the third cause of action.

The Provincial Certificates of Canvass for Lanao del Sur,⁴⁹⁵ Maguindanao,⁴⁹⁶ and Basilan⁴⁹⁷ indicate the total number of registered voters for these provinces, the total number of voters who actually voted, as well as the number of votes garnered per candidate for vice president and its percentage based on the total number of votes cast. Protestee presented the number of votes needed to reach the threshold laid down in *Abayon*:

102. Following the requirements laid down in *Abayon*, protestant Marcos must be able to show that at least **Five Hundred Fifty Four Thousand Forty Two (554,042) votes** were affected by the alleged electoral [frauds], anomalies and irregularities in the Provinces of Basilan, Lanao del Sur and Maguindanao:

	Total Number of Voters Who Actually Voted	Number of Votes That Must Have Been Affected
Basilan	190,704	95,353
Lanao del Sur	421,057	210,529
Maguindanao	496,319	248,160
TOTAL	1,108,080	554,042⁴⁹⁸

The Commission on Elections' finding that there was no failure of elections in several cities and municipalities in these provinces serves as *res judicata* by conclusiveness of judgment. Necessarily, we must subtract the number of votes in those areas from the total number of protested votes. After subtracting the number of votes, we can preliminarily determine whether the remaining votes will reach the threshold in *Abayon*.

The table below represents data for Lanao del Sur where, as discussed, petitions in Marawi City⁴⁹⁹ and the municipality of Marantao⁵⁰⁰ had been dismissed by the Commission on Elections on the merits.⁵⁰¹ The votes cast in these areas should no longer be included in the votes to be

⁴⁹¹ *Rollo*, Vol. XIX, pp. 15399–15401, Protest Annex II-3, Affidavit of Nurudin A. Dawalin; Annex II-4, Affidavit of Redzmar M. Hasim; and Annex II-5, Affidavit of Basir A. Saala.

⁴⁹² *Id.* at 15405–15420, Protest Annex II-8, Affidavit of Nasir A. Tawani; Annex II-9, Abdulla I. Anjala; Annex II-10, Affidavit of Amat A. Sarama; Annex II-11, Affidavit of Mariabella E. Macay; Annex II-12, Affidavit of Alamin O. Ibama; Annex II-13, Affidavit of Sitti S. Bohong; Annex II-14, Affidavit of Abdulbasir D. Tawani; Annex II-15, Affidavit of Massir S. Tawani; Annex II-16, Affidavit of Kais T. Itih; Annex II-17, Affidavit of Muallam A. Gadjalul; Annex II-18, Affidavit of Hussin Adjain; and Annex II-19, Affidavit of Salaain A. Muhtarim.

⁴⁹³ *Id.* at 15402–15404, Protest Annex II-6, Affidavit of Rahman S. Kapeng; and Annex II-7, Affidavit of Gani A. Alap.

⁴⁹⁴ *Id.* at 15421–15423, Protest Annex II-20, Affidavit of Said M. Uliling; Annex II-21, Affidavit of Mady A. Anjalang; and Annex II-22, Affidavit of Boy Sanson Akilin.

⁴⁹⁵ *Rollo*, Vol. XIX, pp. 15320–15321, Annex GG.

⁴⁹⁶ *Id.* at 15373, Protest Annex HH.

⁴⁹⁷ *Id.* at 15392, Protest Annex II.

⁴⁹⁸ *Rollo*, Vol. XLIX, p. 39857, Protestee's Memorandum.

⁴⁹⁹ *Rollo*, Vol. L, p. 41335, Docketed as SPA No. 16-111 (FE).

⁵⁰⁰ *Id.* at 41336, Docketed as SPA No. 16-130 (FE).

⁵⁰¹ *Id.* at 41335–41336.

annulled lest we run afoul of the rule on conclusiveness of judgment. These votes have been upheld and the results of the elections can no longer be questioned.

“Voter Turnout” was computed based on the voter’s turnout for the province. This Tribunal used the data from the Statement of Votes by City/Municipality for Lanao del Sur,⁵⁰² Maguindanao,⁵⁰³ and Basilan,⁵⁰⁴ attached as annexes to the Protest. “Votes to be Deducted” were likewise based on the same data:

LANAO DEL SUR			
<i>Marawi City</i>			
	Total Number of Registered Voters	Actual Voter Turnout based on Statement of Votes by City/Municipality	Votes to be Deducted from total number of protested ballots
Protestant	49,114	44,780	5,050
Protestee			21,782
Total			26,832
<i>Municipality of Marantao</i>			
Protestant	20,793	19,446	2,307
Protestee			7,405
Total			9,712
TOTAL number of votes to be deducted from protested ballots in the Province of Lanao del Sur			36,544

Meanwhile, data for Maguindanao is presented in the table below:

MAGUINDANAO			
<i>Municipality of Pagalungan</i>			
	Total Number of Registered Voters	Actual Voter Turnout based on Statement of Votes by City/Municipality	Votes to be Deducted from total number of protested ballots
Protestant	17,031	13,039	495
Protestee			7,030
Total			7,525
<i>Municipality of Sultan Kudarat</i>			
Protestant	44,719	41,320	13,494
Protestee			14,490
Total			27,984

⁵⁰² *Rollo*, Vol. XIX, pp. 15322–15329, Protest Annex GG-1.

⁵⁰³ *Id.* at 15375–15381, Protest Annex HH-1.

⁵⁰⁴ *Id.* at 15394–15397, Protest Annex II-1.

<i>Municipality of Sultan sa Barongis</i>			
Protestant	10,267	6,783	653
Protestee			2,985
Total			3,638
<i>Municipality of Datu Unsay</i>			
Protestant	5,827	4,287	56
Protestee			444
Total			500
<i>Municipality of Northern Kabuntalan</i>			
Protestant	10,538	6,694	1,524
Protestee			2,791
Total			4,315
TOTAL number of votes to be deducted from protested ballots in the Province of Maguindanao			43,962

Per the Commission on Elections, no petition to declare failure of elections and/or annulment of election results was filed for Basilan.

“Votes subject of annulment” refers to the total number of votes earned by protestant and protestee in the provinces. “Votes deducted due to COMELEC’s prior finding” refers to the projected number of votes that protestant and protestee garnered as seen in the two previous tables. We then compare the difference between the votes subject of annulment and the votes deducted with the numbers in the column “50+1 Threshold.” If the total remaining ballots are less than the threshold, this means that the annulment of election results for that particular province fails:

Determination of whether <i>Abayon’s</i> Threshold will be met if Third Cause of Action is given due course						
Province	Total Number of Actual Voters	50+1 Threshold	Votes Subject of Annulment	Votes Deducted due to COMELEC’s prior finding	TOTAL ballots that remain subject to annulment	50+1 Threshold Met?
Basilan	190,704	95,353				
Protestant			32,326	None	32,326	
Protestee			77,321	None	77,321	
					109,647	Yes
Lanao del Sur	421,057	210,529				
Protestant			56,243	7,357	48,886	
Protestee			180,539	41,228	139,311	
					188,197	No
Maguindanao	496,319	248,160				
Protestant			80,591	16,222	64,369	
Protestee			220,125	27,740	192,385	
					256,754	Yes

From this table, it is clear that the remaining contested ballots for Lanao del Sur will not meet the required threshold under the first requisite.

The table below represents the computation of votes for protestant and protestee if we combine the results of the revision and appreciation for the second cause of action, and the projected results for the third cause of action:

Combined total for all provinces			
	Protestant's remaining votes subject of annulment	Protestee's remaining votes subject of annulment	RESULT
Basilan	32,326	77,321	
Lanao Del Sur	48,886	139,311	
Maguindanao	64,369	192,385	
TOTAL	145,581	409,017	
Total Votes after revision and appreciation	14,157,771	14,436,337	
LESS (total of three provinces)	145,581	409,017	
TOTAL	14,012,190	14,027,320	Protestee maintains her lead
DIFFERENCE			15,130

There is prima facie showing that protestee would still maintain her lead even if we proceed with the third cause of action.

Protestant has repeatedly raised *Tan v. Hataman*, the case decided by the Commission on Elections. *Tan* was dismissed for mootness on December 5, 2019, and this ruling has turned final.⁵⁰⁵ In any case, to fully resolve the issue, we reviewed which specific precincts were chosen as pilot precincts in that case.

Based on the April 26, 2018 Order⁵⁰⁶ of the Commission on Elections' Second Division, the 167 pilot protested precincts⁵⁰⁷ were in the municipalities of Akbar, Lantawan, Tuburan, Tabuan-lasa, Sumisip, and

⁵⁰⁵ *Rollo*, Vol. L, p. 41345.

⁵⁰⁶ Penned by Presiding Commissioner Luie Tito F: Guia, available at <https://www.bongbongmarcos.com/wp-content/uploads/2018/05/BBM-Notice-with-Order-dtd-04.26.18_EPC-No.-2016-37.pdf> (last accessed on January 18, 2021).

⁵⁰⁷ An established precinct is different from a clustered precinct. An established precinct is the basic component of a clustered precinct. Several established precincts compose a clustered precinct.

Lamitan City in Basilan; Taraka in Lanao del Sur; and the municipalities of Barira, Sultan Kudarat, Pandag, and Datu Odin Sinsuat in Maguindanao.

As discussed, the Commission on Elections ruled in SPA No. 16-125 (FE) that there was no failure of elections in Sultan Kudarat, Maguindanao.⁵⁰⁸ Similar to Marawi City and the municipality of Marantao, the votes cast in Sultan Kudarat shall be excluded because of the Commission's prior finding.

In SPA No. 16-125 (FE), Ibrahim K. Ibrahim (Ibrahim) filed a petition to annul election results or declare a failure of elections against Shameem B. Mastura (Mastura). Both were mayoral candidates of Sultan Kudarat in 2016.⁵⁰⁹ Ibrahim alleged that Mastura committed electoral fraud:

- a) [Mastura]'s personnel shaded in advance the official ballots;
- b) [Mastura]'s personnel threatened to kill the legitimate voters who were supporting [Ibrahim];
- c) Barangay officials were tolerating elements engaged in the advance shading of ballots;
- d) Letting [Mastura]'s personnel man the polling places or precincts;
- e) Excluding [Ibrahim]'s poll watchers from their assigned precincts;
- f) Closing the precincts without just cause;
- g) Allowing [Mastura]'s voters to vote repetitively;
- h) Not inking voters;
- i) Allowing persons not on COMELEC's master list of voters to vote; and
- j) Feeding the ballots and the pre-shaded ballots to the VCM (PCOS) Machines.⁵¹⁰

The Commission on Elections denied the Petition, reasoning that:

Section 6 of the Omnibus Election Code lays down the conditions for Failure of Election to prosper, thus:

Sec. 6. Failure of election. — If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a

⁵⁰⁸ *Rollo*, Vol. L, pp. 41388–41395.

⁵⁰⁹ *Id.* at 41389.

⁵¹⁰ *Id.* at 41389–41390.

failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

Based on the foregoing provision, three instances justify a declaration of failure of election. These are:

- a) the election in any polling place has not been held on the date fixed on account of *force majeure*, violence, terrorism, fraud or other analogous causes;
- b) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud or other analogous causes; or
- c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud or other analogous causes.

The Supreme Court elucidates that what is common in these three instances is the resulting failure to elect. In the first instance, no elections is held while in the second, the election is suspended. In the third instance, circumstances attending the preparation, transmission, custody or canvas (sic) of the election returns cause a failure to elect. The term failure to elect means nobody emerged as a winner. Absent any showing that these conditions were not met, the Commission can deny the Petition.

A close perusal of the allegations in the Petition shows that [Ibrahim] does not contend that elections were not held or suspended. Neither does he allege that although there was voting, nobody was elected. [Ibrahim] simply posits that there was failure of elections on account of violence, intimidation and fraud committed by [Mastura]. These allegations do not fall under any of the conditions that would justify the declaration of failure of election.

....

[Ibrahim] averred that there was failure of election for the reason that no actual election was held since no actual voting was done by the real and legitimate voters of Sultan Kudarat on account of violence, intimidation, and fraud of [Mastura] and his personnel.

We are not persuaded.

....

As earlier discussed, the conditions set forth by law were not met in the instant case to declare failure of elections. Elections were held followed by the declaration of the winning candidate. Considering that there is no concurrence of the conditions seeking to declare failure of election, there is no longer need to receive evidence on alleged election irregularities.

Moreover, the nullification of elections or declaration of failure of elections is an extraordinary remedy. The party who seeks the

nullification of an election has the burden of proving entitlement to this remedy. It is not enough that a verified petition is filed. The allegations in the petition must make out a *prima facie case* for the declaration of failure of election, and convincing evidence must substantiate the allegations.⁵¹¹ (Citations omitted)

Since there was no ruling on the merits in *Tan*, the pilot precincts there were included in the computation of remaining votes to be annulled, as shown in the previous table. To reiterate, the votes that were removed from the computation of votes to be annulled are those where the Commission on Elections had ruled that there was no failure of elections. Thus, if we consider the alleged failure of elections in the pilot precincts in *Tan*, it would not change any of the computation in the table above, as these precincts already form part of it.

The second requisite in *Abayon* was also not proven. Protestant failed to allege that it was “impossible to distinguish with reasonable certainty between the lawful and unlawful ballots.”⁵¹² There is nothing that would prove the use of illegal ballots or that any illegal ballots existed.

Neither was the third requisite established, as there is no piece of evidence that would lead this Tribunal to believe that protestee “*is the one responsible for the unlawful acts complained of.*”⁵¹³ Protestant utterly failed to allege that protestee instigated the electoral irregularities complained of, let alone prove it.

All told, the third cause of action fails, and is likewise dismissed.

VIII

Protestant, citing Section 3 of Republic Act No. 1793,⁵¹⁴ which created this Tribunal, accused the member-in-charge of delay⁵¹⁵ in the resolution of the present election case. However, it is no longer good law.

⁵¹¹ Id. at 41391–41394.

⁵¹² *Abayon v. HRET*, 785 Phil. 683, 705 (2016) [Per J. Mendoza, Special En Banc].

⁵¹³ *Rollo*, Vol. L, p. 41349. Commission on Elections’ Comment citing *Abayon v. HRET*, 785 Phil. 683 (2016) [Per J. Mendoza, Special En Banc].

⁵¹⁴ SECTION 3. The Presidential Electoral Tribunal *shall decide the contest within twenty months after it is filed*, and within said period shall declare who among the parties has been elected, or, in the proper case, that none has been elected, and in case of a tie between the candidates for president or for vice-president involved in the contest, one of them shall be chosen President or Vice-President, as the case may be, by a majority vote of the members of the Congress in joint session assembled. The party who, in the judgment, has been declared elected, shall have the right to assume the office as soon as the judgment becomes final which shall be ten days after promulgation. The promulgation shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys, personally or by registered mail or by telegraph. No motion shall be entertained for the reopening of a case but only for the reconsideration of a decision under the evidence already of record. No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for reconsideration shall be resolved within ten days after it is submitted for resolution. As soon as a

The 1973 Constitution impliedly repealed Republic Act No. 1793 because it removed from the citizens the power to directly vote for the president and gave it to the members of the National Assembly.⁵¹⁶ Additionally, “the position of Vice-President was constitutionally non-existent”⁵¹⁷ under the 1973 Constitution.

Eventually, the direct election of the president and vice president was restored when the National Assembly passed Batas Pambansa Blg. 884,⁵¹⁸ which constituted an independent Presidential Electoral Tribunal. From a mere statutory creation, it then became a constitutional institution under the 1987 Constitution. *Atty. Macalintal v. Presidential Electoral Tribunal*⁵¹⁹ explained:

A plain reading of Article VII, Section 4, paragraph 7, readily reveals a grant of authority to the Supreme Court sitting *en banc*. In the same vein, although the method by which the Supreme Court exercises this authority is not specified in the provision, *the grant of power does not contain any limitation on the Supreme Court's exercise thereof*. The Supreme Court's *method* of deciding presidential and vice-presidential election contests, through the PET, is actually a derivative of the exercise of the prerogative conferred by the aforementioned constitutional provision. Thus, the subsequent directive in the provision for the Supreme Court to “promulgate its rules for the purpose.”⁵²⁰ (Emphasis supplied)

This Tribunal has promulgated its 2010 Rules which governs its proceedings. Under Rule 67, this Tribunal “shall follow the procedure prescribed for the Supreme Court in Sections 13 and 14, Article VIII of the Constitution.” These constitutional provisions, in turn, state:

ARTICLE VIII
Judicial Department

....

SECTION 13. The conclusions of the Supreme Court in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented,

decision becomes final, a copy thereof shall be furnished both houses of the Congress. (Emphasis supplied).

⁵¹⁵ *Rollo*, Vol. L, p. 41462–41490, Strong Manifestation with Extremely Urgent Omnibus Motion.

⁵¹⁶ *Atty. Macalintal v. PET*, 650 Phil. 326, 347 (2010) [Per J. Nachura, En Banc].

⁵¹⁷ *Id.* at 348.

⁵¹⁸ An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear, and Decide Election Contests in the office of the President and Vice-President of the Philippines, Appropriating Funds Therefor and For Other Purposes.

⁵¹⁹ 650 Phil. 326 (2010) [Per J. Nachura, En Banc].

⁵²⁰ *Id.* at 353.

or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower collegiate courts.

SECTION 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

Thus, there is no rule requiring an election protest to be decided within a particular timeframe, whether 20 months⁵²¹ or 12 months⁵²² after its filing.

Furthermore, an election protest is not an ordinary petition as it may deprive a significant portion of the voting population of its right of suffrage. Precisely due to such extraordinary nature, this Tribunal took pains to afford both parties every opportunity to present their case in the interest of due process. Throughout the proceedings, this Tribunal directed protestant to allege with specificity when his allegations were insufficient.⁵²³ We likewise directed the opposing party to comment on every motion. We instructed the parties to present evidence when they raised new arguments or unsubstantiated ones.⁵²⁴

⁵²¹ Republic Act No. 1793 (1957).

⁵²² Batas Pambansa Blg. 884 (1985) partly states:

SECTION 4. The Tribunal must decide the contest within twelve months after it is filed. In case of a tie between the candidates for President and/or for Vice-President involved in the contest, the Tribunal shall notify the Batasang Pambansa of such fact, in which case the President or Vice-President, as the case may be, shall be chosen by a vote of a majority of all the Members of the Batasang Pambansa in session assembled.

The promulgation of the judgment shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys, personally or by special registered mail or by telegram. No motion shall be entertained for the opening of a case but only for the reconsideration of a decision based on the evidence already of record. No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for reconsideration must be resolved within ten days after it is submitted for resolution. As soon as a decision becomes final, a copy thereof shall be furnished the Batasang Pambansa through the Speaker, and the Commission on Elections through its Chairman, in addition to the copies for the contestants or their attorneys.

⁵²³ Protestant preliminarily anchored his causes of action into two. After asking clarificatory questions during the preliminary conference on July 11, 2017, this Tribunal categorized them into three causes of action instead, and dismissed his first cause of action for being “meaningless and pointless[.]” (*See rollo*, Vol. XLIX, p. 39541, October 15, 2019 Resolution). This Tribunal gave the parties a preliminary conference guide prior to its conduct where it summarized their respective admissions, proposed stipulations, issues, and witnesses. As the parties requested, this Tribunal also gave them the time to comment on it, and these were adopted accordingly. Moreover, when this Tribunal released the results of the revision and appreciation of ballots in the October 15, 2019 Resolution, it resolved to hear the parties again. (*Marcos v. Robredo*, P.E.T. Case No. 005, October 15, 2019, p. 18 [Per Curiam, En Banc]).

⁵²⁴ When protestant failed to specify his witnesses’ corresponding clustered precincts after having been directed to substantiate his allegations, this Tribunal required the protestant to submit anew a list of his witnesses and their corresponding clustered precinct. He was given fresh period of time to comply with this Tribunal’s order. (*See rollo*, Vol. XLIX, pp. 39523–39578, October 15, 2019 Resolution).

When the revision and appreciation of ballots from protestant's pilot provinces failed to support his claim of electoral fraud and irregularity, this Tribunal opted to take the prudent course and direct the parties to comment on the results instead of dismissing the Protest outright, allowing the parties to defend their arguments in the proper forum. We likewise solicited the comments of the Commission on Elections and the Office of the Solicitor General and had them weigh in on the factual and constitutional issues raised by the parties.

This case is undoubtedly politically delicate, as it involves the second highest position in the land. However, it is also "the first and only election protest before the Tribunal in which the recount and revision process of the pilot provinces were successfully concluded and the [P]rotest itself resolved on the merits."⁵²⁵ Before this, only four⁵²⁶ election protests had been lodged before this Tribunal.

Unlike those four previous cases, which were dismissed for mootness due to abandonment,⁵²⁷ failure to substitute the deceased protestant,⁵²⁸ and expiration of term,⁵²⁹ this Protest was resolved on the merits after the revision and appreciation of ballots for protestant's three pilot areas had been concluded.

This Protest is in contrast to *Defensor-Santiago v. Ramos*,⁵³⁰ where protestant Miriam Defensor-Santiago moved to waive the revision of the remaining unrevised ballots from 4,017 precincts out of the 17,527 precincts of her three pilot areas of Metro Manila, Pampanga, and Zamboanga.⁵³¹ Her motion was granted and the revision was terminated.⁵³²

Similarly, in *Legarda v. De Castro*,⁵³³ the revision of ballots in 124,404 precincts in protestant Loren Legarda's pilot areas of Cebu, Pampanga, and Maguindanao was not completed because she failed to make the required additional deposit for the continuation of the revision. This led to the dismissal of her cause of action grounded on the revision of ballots.

⁵²⁵ *Rollo*, Vol. XLIX, pp. 39523–39578, *Marcos v. Robredo*, P.E.T. Case No. 005, October 15, 2019 [Per Curiam, En Banc].

⁵²⁶ *Defensor-Santiago v. Ramos*, P.E.T. Case No. 001, 323 Phil. 665 (1996) [Per Curiam, En Banc], *Poe v. Macapagal Arroyo*, P.E.T. Case No. 002, 494 Phil. 137 (2005) [Per J. Quisumbing, En Banc], *Legarda v. De Castro*, P.E.T. Case No. 003, 566 Phil. 123 (2008) [Per J. Quisumbing, En Banc], and *Roxas v. Binay*, P.E.T. Case No. 004, 793 Phil. 9 (2016) [Per J. Bersamin, En Banc].

⁵²⁷ *Defensor-Santiago v. Ramos*, P.E.T. Case No. 001, 323 Phil. 665 (1996) [Per Curiam, En Banc] and *Legarda v. De Castro*, P.E.T. Case No. 003, 566 Phil. 123 (2008) [Per J. Quisumbing, En Banc].

⁵²⁸ *Poe v. Macapagal-Arroyo*, P.E.T. Case No. 002 (Resolution), 494 Phil. 137 (2005) [Per J. Quisumbing, En Banc].

⁵²⁹ *Roxas v. Binay*, P.E.T. No. 004, 793 Phil. 9 (2016) [Per J. Bersamin, En Banc].

⁵³⁰ P.E.T. Case No. 001, 323 Phil. 665 (1996) [Per Curiam, En Banc].

⁵³¹ *Id.* at 693.

⁵³² *Id.* at 705.

⁵³³ P.E.T. Case No. 003, 566 Phil. 123, 126 and 137–138 (2008) [Per J. Quisumbing, En Banc].

The election protest in *Poe v. Macapagal-Arroyo*⁵³⁴ did not even reach the revision stage as protestant Ronald Allan Poe died only a few months after filing his election protest. His wife's motion for substitution was not granted, as she was not a real party in interest. This Tribunal pointed out that Mrs. Poe was "cognizant that as a mere substitute she cannot succeed, assume or be entitled to said elective office, and her utmost concern is not personal but one that involves the public's interest."⁵³⁵

The election protest in *Roxas v. Binay*⁵³⁶ likewise did not garner much traction and no preliminary conference order was released since the parties failed to agree on the common issues and on the procedure to expedite proceedings.⁵³⁷ The parties then filed their certificates of candidacy in the 2016 elections and failed to inform this Tribunal if they were still interested in pursuing the protest.⁵³⁸ The election protest was eventually mooted after the contested position of vice president had expired on June 30, 2016.⁵³⁹

Here, this Tribunal conducted and completed the retrieval, revision, and appreciation of more than two million ballots from protestant's designated pilot areas. This Protest also involved complex issues and presented this Tribunal with an opportunity to reconcile the *Abayon* ruling with Rule 65 of this Tribunal's Rules, which provides for the outright dismissal of the protest if the protestant fails to show reasonable recovery of votes after the revision and appreciation of ballots from the three pilot areas.

The determination of delay is not a mechanical process. "Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised."⁵⁴⁰

Considering the unique issues presented before this Tribunal, the volume of ballots that had to be recounted, revised, and appreciated, as well as the voluminous affidavits submitted by protestant—all of which had to be carefully reviewed to determine if they rose up to the degree of fraud required to annul election results—it cannot be said that inordinate delay attended the resolution of this Protest. This is the only case not mooted by events, and the only one that reached disposition.

Suffrage is at the heart of every democracy.⁵⁴¹ Election results must not be tainted with unnecessary doubt by losing candidates who cannot accept defeat.

⁵³⁴ P.E.T. Case No. 002, 494 Phil. 137 (2005) [Per J. Quisumbing, En Banc].

⁵³⁵ Id. at 142.

⁵³⁶ P.E.T. Case No. 004, 793 Phil. 9 (2016) [Per J. Bersamin, En Banc].

⁵³⁷ Id. at 14.

⁵³⁸ Id. at 15.

⁵³⁹ Id. at 16.

⁵⁴⁰ *Cagang v. Sandiganbayan, Fifth Division*, G.R. Nos. 206438, 206458, and 210141–42, July 31, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581>> [Per J. Leonen, En Banc].

⁵⁴¹ *In re: Geronimo v. Ramos*, 221 Phil. 130 (1985) [Per J. Gutierrez, Jr., En Banc].

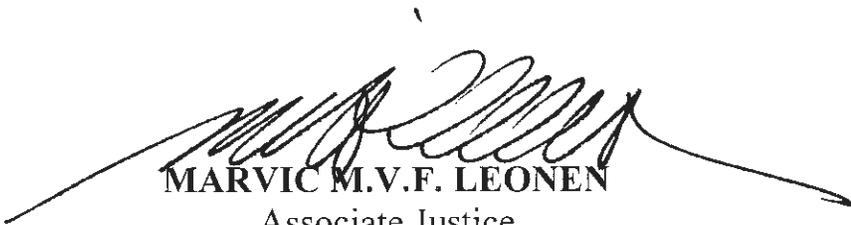
To reiterate, “the power to annul an election should be exercised with the greatest care as it involves the free and fair expression of the popular will. It is only in extreme cases of fraud and under circumstances which demonstrate to the fullest degree a fundamental and wanton disregard of the law that elections are annulled, and then only when it becomes impossible to take any other step.”⁵⁴²

What this Tribunal faces today is not an extreme case of fraud that deserves further consideration. Protestant failed to make out his case. There is no substantial recovery of votes in the pilot provinces that he himself had designated. To entertain the third cause of action is to risk frustrating the valid exercise of the nation’s democratic will and subject it to the endless whims of a defeated candidate.

The case has immense repercussions not only for the parties, but also for future election protests brought before this Tribunal. We have granted the parties every opportunity to make and defend their arguments before this Tribunal, the proper forum to hear this case. However, protestant still failed to substantiate his allegations of massive anomalies and irregularities in protestee’s favor. Instead, he chose to make sweeping allegations of wrongdoing and submitted incomplete and incorrect data. His abject failure to support his claims leaves this Tribunal with no other recourse but to dismiss his Protest.

WHEREFORE, the Presidential Electoral Tribunal **DISMISSES** the Election Protest filed by protestant Ferdinand “Bongbong” R. Marcos, Jr. for lack of merit. The Counter-Protest filed by protestee Maria Leonor “Leni Daang Matuwid” G. Robredo is likewise **DISMISSED**.

SO ORDERED.

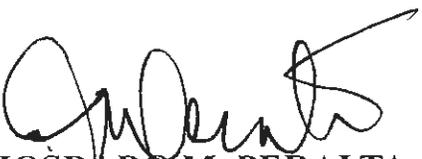


MARVIC M.V.F. LEONEN
Associate Justice

⁵⁴² *Peña v. HRET*, 337 Phil. 70, 78 (1997) [Per J. Torres, Sr., En Banc].

CERTIFICATION

I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the court.



DIOSDADO M. PERALTA
Chief Justice