

EN BANC

G.R. No. 225152 — PARTIDO DEMOKRATIKO PILIPINO-LAKAS NG BAYAN (PDP-LABAN) herein represented by its Secretary-General, CONG. PANTALEON “BEBOT” ALVAREZ, vs. COMMISSION ON ELECTIONS *EN BANC*; LEON ESTRELLA PERALTA, et al., Intervenors

Promulgated

October 5, 2021

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CONCURRING OPINION

LAZARO-JAVIER, J.:

I concur with the erudite *ponencia* of Justice Mario V. Lopez that the Commission on Elections (COMELEC) committed grave abuse of discretion when it extended the deadline for filing of Statements of Contributions and Expenses (SOCs) in violation of the clear language of the law and the legislative intent behind it. Pertinently, Section 14 of Republic Act No. 7166¹ (RA 7166) or the Synchronized Elections Law of 1991 reads:

SECTION 14. *Statement of Contributions and Expenditures: Effect of Failure to File Statement.* — Every candidate and treasurer of the political party shall, **within thirty (30) days after the day of the election**, file in duplicate with the offices of the Commission the full, true and itemized statement of all contributions and expenditures in connection with the election.

No person elected to any public office shall enter upon the duties of his office until he has filed the statement of contributions and expenditures herein required.

The same prohibition shall apply if the political party which nominated the winning candidate fails to file the statement required herein within the period prescribed by this Act. (Emphases supplied)

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Based on this provision, candidates and treasurers of political parties had until June 8, 2016 within which to file their respective SOCs relative to the May 9, 2016 elections. As it was, however, the COMELEC *En Banc* promulgated Resolution No. 10147² dated June 23, 2016, extending the filing of SOCs to June 30, 2016.

As stated, I agree with Justice Lopez that the COMELEC acted in grave abuse of discretion when it issued Resolution No. 10147.

¹ Synchronized Elections Law of 1991, Republic Act No. 7166, November 26, 1991.

² IN RE: SEVERAL REQUESTS FOR EXTENSION TO FILE STATEMENT OF CONTRIBUTIONS AND EXPENDITURES BY CANDIDATES, POLITICAL PARTIES, AND PARTYLISTS ORGANIZATIONS IN RELATION TO THE 2016 NATIONAL AND LOCAL ELECTIONS, Resolution No. 10147, June 23, 2016.

First. Resolution No. 10147 obviously departed from the unequivocal language of the law. Section 14 of RA 7166 is clear – “[e]very candidate and treasurer of the political party **shall, within thirty (30) days after the day of the election, file in duplicate with the offices of the Commission the full, true and itemized statement of all contributions and expenditures in connection with the election.**” As duly noted by Justice Lopez, the use of the word “shall” means that the period is mandatory. In fact, unless otherwise provided, all periods under RA 7166 are mandatory, *viz.*:

SECTION 4. *Postponement, Failure of Election and Special Elections.* —
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In case a permanent vacancy shall occur in the Senate or House of Representatives at least one (1) 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.

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SECTION 6. *Nomination and Selection of Official Candidates.* — No political convention or meeting for the nomination or selection of the official candidates of any political party or organization or political groups or coalition thereof shall be held earlier than the following periods:

- (a) For President, Vice-President and Senators, one hundred sixty-five (165) days before the day of the election; and
- (b) For Members of the House of Representatives and elective provincial, city or municipal officials, seventy-five (75) days before the day of the election.

SECTION 10. *Annulment of the List of Voters.* — Any book of voters the preparation of which has been effected with fraud, bribery, forgery, impersonation, intimidation, force or any other similar irregularity or which is statistically improbable may be annulled, after due notice and hearing, by the Commission *motu proprio* or after the filing of a verified complaint: **Provided, That, no order, ruling or decision annulling a book of voters shall be executed within sixty (60) days before an election.**

SECTION 18. *Summary Disposition of Pre-proclamation Controversies.* — **All pre-proclamation controversies on election returns or certificates of canvass shall, on the basis of the records and evidence elevated to it by the board of canvassers, be disposed of summarily by the Commission within seven (7) days from receipt thereof.** Its decisions shall be executory after the lapse of seven (7) days from receipt by the losing party of the decision of the Commission.

SECTION 19. *Contested Composition or Proceedings of the Board: Period to Appeal: Decision by the Commission.* — Parties adversely affected by a ruling of the board of canvassers on questions affecting the composition or

proceedings of the board may appeal the matter to the Commission within three (3) days from a ruling thereon. **The Commission shall summarily decide the case within five (5) days from the filing thereof.**

SECTION 22. Election Contests for Municipal Offices. — All election contests involving municipal offices filed with the Regional Trial Court shall be decided expeditiously. The decision may be appealed to the Commission within five (5) days from promulgation or receipt of a copy thereof by the aggrieved party. **The Commission shall decide the appeal within sixty (60) days after the filing of the appeal, which decision shall be final, unappealable and executory.** (Emphases and underscoring added)

Notably, these provisions, along with Section 14, do not contain any clause authorizing the COMELEC to extend the mandatory periods contained therein. These provisions should be contrasted with those in the same law **expressly** allowing the COMELEC to fix a different date or otherwise excuse belated compliance, to wit:

Section 5. Election and Campaign Period. - Unless otherwise fixed by the Commission, the election period for the May 11, 1992 regular elections shall commence ninety (90) days before the day of the election and shall end thirty (30) days thereafter.

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Section 31. Per Diems of Election Inspectors and Other Officials. - The members of the board of election inspectors shall be paid a *per diem* of Two hundred pesos (P200.00) each for services on registration and revision days and Four hundred pesos (P400.00) each on the day of the election. Provincial, city and municipal treasurers, administrators and supervisors of the Department of Education, Culture and Sports assigned by the Commission to perform election duty shall receive a *per diem* of Four hundred pesos (P400.00) each on election day.

Said *per diem* shall be paid by the cashier or other finance officer of the Department of Education, Culture and Sports or of the Commission within fifteen (15) days after registration, revision and election days, respectively. There being funds actually available, **any delay in said payments to any of the above mentioned personnel without justifiable reason shall constitute an election offense** and all officials and other personnel responsible therefor, directly or indirectly, shall be liable under Sections 263 and 264 of the Omnibus Election Code. (Emphases and underscoring added)

Indeed, had Congress intended for a flexible period for compliance with the SOCE requirement, the law could have easily said so. Yet Congress deemed it proper to use the commanding word “shall” without carving any exception to the rule. This solidifies petitioner’s position that the COMELEC had no authority to issue Resolution No. 10147 for being contrary to Section 14 of RA 7166.

Second. The extension cannot find justification under the rule-making power of the COMELEC either.

Despite its role as the implementing arm of the government in the enforcement and administration of all laws and regulations relative to the conduct of an election, the COMELEC has neither the authority nor the license to expand, extend, or add anything to the law it seeks to implement. The resolutions which the COMELEC issues for this purpose should always be in accord with the law to be implemented, and should not override, supplant, or modify the same.³ Indeed, it is axiomatic that the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation; administrative or executive acts shall be valid only when they are not contrary to the laws or the Constitution.⁴

Here, the COMELEC arrogated unto itself the power to amend RA 7166, the very law it is mandated to implement, when it extended the filing of SOCEs contrary to the clear language of Section 14.

In *Lokin, Jr. v. Commission on Elections*⁵, the Court partly nullified Resolution No. 7804 insofar as it established an entirely new ground when a party-list organization can substitute another person in place of the nominee whose name has been submitted to the COMELEC. The Court held:

Indeed, administrative [Implementing Rules and Regulations] adopted by a particular department of the Government under legislative authority must be in harmony with the provisions of the law, and should be for the sole purpose of carrying the law's general provisions into effect. The law itself cannot be expanded by such IRRs, because an administrative agency cannot amend an act of Congress.

The COMELEC explains that Section 13 of Resolution No. 7804 has added nothing to Section 8 of R.A. No. 7941, because it has merely reworded and rephrased the statutory provision's phraseology.

The explanation does not persuade.

To reword means to alter the wording of or to restate in other words; to *rephrase* is to phrase anew or in a new form. Both terms signify that the meaning of the original word or phrase is not altered.

However, the COMELEC did not merely reword or rephrase the text of Section 8 of R.A. No. 7941, because it established an entirely new ground not found in the text of the provision. The new ground granted to the party-list organization the unilateral right to withdraw its nomination already submitted to the COMELEC, which Section 8 of R.A. No. 7941 did not allow to be done. Neither was the grant of the unilateral right contemplated by the drafters of the law, who precisely denied the right to withdraw the nomination (as the quoted record of the deliberations of the House of

³ See *Lokin, Jr. v. Commission on Elections*, 635 Phil. 372, 402 (2010).

⁴ *Id.*

⁵ *Id.*

Representatives has indicated). The grant thus conflicted with the statutory intent to save the nominee from falling under the whim of the party-list organization once his name has been submitted to the COMELEC, and to spare the electorate from the capriciousness of the party-list organizations.

In other words, the COMELEC's exercise of its rule making power is not an excuse for it to do actual legislation. As a spring cannot rise higher than its source,⁶ so must the COMELEC issuance not transcend the law it seeks to implement.

Third. In extending the period for compliance beyond 30 days, the COMELEC effectively condoned, if not exempted offenders from administrative liability for violating Section 14 of RA 7166 between June 9 to June 30, 2016.

To recall, the general rule is that an elected official's term of office begins every noon of June 30 immediately following his or her election.⁷ Meanwhile, Section 14 of RA 7166 requires winning candidates to first file their respective SOCEs before they could assume office, thus:

No person elected to any public offices shall enter upon the duties of his office **until he has filed the statement of contributions and expenditures** herein required. (Emphasis added)

Contrary to the COMELEC's interpretation, the clause "until he [or she] has filed the [SOCE]" does not authorize the COMELEC to extend the 30-day period for compliance. **It merely underscores the fact that the filing of one's SOCE is a condition precedent to one's assumption of office which must be done before he or she assumes such office normally by noon of June 30. But even after noon of June 30, he or she must still comply with the filing of SOCE as condition precedent to his or her assumption of office, without prejudice to his or her administrative or criminal liability.** Specifically, Section 14 of RA 7166 imposes a fine ranging from Php1,000.00 to Php60,000.00 and even perpetual disqualification from office:

Except candidates for elective barangay office, failure to file the statements or reports in connection with electoral contributions and expenditures are

⁶ See *De Santos v. Intermediate Appellate Court*, 241 Phil. 300, 308 (1988).

⁷ Article VII, Section 4 of the Constitution:

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.

Section 43 of the Local Government Code:

Section 43. *Term of Office.* -

(a) The term of office of all local elective officials elected after the effectivity of this Code shall be three (3) years, starting from noon of June 30, 1992 or such date as may be provided for by law, except that of elective barangay officials: Provided, That all local officials first elected during the local elections immediately following the ratification of the 1987 Constitution shall serve until noon of June 30, 1992.

required herein shall constitute an administrative offense for which the offenders shall be liable to pay an administrative fine ranging from One thousand pesos (P1,000.00) to Thirty thousand pesos (P30,000.00), in the discretion of the Commission.

The fine shall be paid within thirty (30) days from receipt of notice of such failure; otherwise, it shall be enforceable by a writ of execution issued by the Commission against the properties of the offender.

It shall be the duty of every city or municipal election registrar to advise in writing, by personal delivery or registered mail, within five (5) days from the date of election all candidates residing in his jurisdiction to comply with their obligation to file their statements of contributions and expenditures.

For the commission of a second or subsequent offense under this section, the administrative fine shall be from Two thousand pesos (P2,000.00) to Sixty thousand pesos (P60,000.00), in the discretion of the Commission. In addition, the offender shall be subject to perpetual disqualification to hold public office.⁸

Thus, when the COMELEC extended the filing of SOCEs from June 8, 2016 to June 30, 2016, all those who filed their SOCEs in between these dates, though non-compliant with Section 14 of RA 7166, are nonetheless pardoned for their transgression.

But the law does not provide for any exempting circumstance for non-filing of SOCEs within the 30-day period. In fact, even those who withdrew their candidacies are still required to comply with Section 14 of RA 7166.⁹ In other words, COMELEC Resolution No. 10147 crafted an exemption from Section 14, RA 7166; indubitably, this is nothing short of usurpation of legislative powers.

Fourth. In unilaterally extending the deadline for filing of SOCEs, the COMELEC supplanted the wisdom of the legislative branch with its own. As Justice Lopez aptly observed, the legislature intended to create window wherein concerned citizens may verify whether their local officials complied with Section 14 of RA 7166 and, consequently, file the necessary complaint or petition to prevent said officials from assuming office, thus:

MR. ALBANO. Well, Mr. Speaker, again a provision on Section 15 states, "That no person elected to any public office until he has filed the statement of contributions and expenditures herein required." **Now, Mr. Speaker, how do we verify whether that candidate – the elected candidate has filed his statement of contributions and expenditures? We are aware, Mr. Speaker, and based from the press reports of the COMELEC that even in this House there are many who did not comply with this provision. And yet, it is said here that he cannot assume his duties as such elected official if he has failed to file the statement of contributions and expenditures. So, Mr. Speaker, how do we verify this?**

⁸ Section 14, RA 7166.

⁹ See *Maturan v. COMELEC*, 808 Phil. 86, 92 (2017).

MR. PALACOL. Your Honor, there are offices where the statement of contributions and expenses are supposed to be filed. Now, 30 days after the election they are supposed to file that statement of expenses and their contributions. With this provision of law, any candidate or interested party can go to the particular office where the supposed statement has to be filed. And from that they can verify whether or not this particular winning candidate had filed his statement of contribution and expenditures. Now, it says here that not until and unless this winning candidate has filed his statement of contribution and expenses he cannot assume office.

MR. ALBANO. It is very clear here, the provision that the elected one cannot enter upon the duties of his office. My question is, how can we verify this? What can stop the elected candidate or the elected one enter into his duties? As I said if we base from the press reports that there are many – even who are Members of this Congress have not filed their statement of contributions and expenditures and the reason why they are now facing criminal charges.

MR. PALACOL. Your Honor, as I was stating, these 30 days period is allotted to any person who runs for a public office.

Now if a winning candidate is really desirous of assuming his position, as a matter of fact, you will observe that our election is on May 11, 1992 and the assumption is on June 30, which is more than 30 days. You can easily determine whether or not he had filed the corresponding statement. He is going to assume his office afternoon of June 30, 1992, more than 30 days period. So, he could just simply go to the particular office and check there whether this particular winning candidate had filed his statement. This is the scenario that will happen.

MR. ALBANO. Mr. Speaker, as I said, basing from COMELEC records there are even Members of Congress now sitting here who have not filed their statement of contributions and expenditures and yet they have entered into their duties. Why are we providing this, when this is honored in breach than in compliance, Mr. Speaker? Is the gentleman aware that there are even Members of Congress now facing criminal charges for failure to file statement of contributions and expenditures?

MR. PALACOL. I am aware of that situation, your Honor, but as I was telling, your Honor, **there is sufficient time within which to verify whether or not this particular candidate** – of course when one assumes office, in order there will be no hindrance, I feel that he has to comply with the provision of law and that he file his statement of expenditure and contribution. **Anyway, as I have stated a while ago, there are sufficient time. Our election is on May 11, 1992, and they are going to assume office only more than 30 days...**

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MR. ALBANO. Mr. Speaker, my last query was about the verification of how to comply with item (b) of Section 15 and I would like to get the reaction of our distinguished sponsor. How can this item (b) be fully implemented without being disregarded in the sense that an elected public office may enter into the duties of his office without complying with the

filing of the statement of expenditures and contributions? Because even in this very halls of Congress according to the Commission on Elections, there were many or there are members of Congress who are now facing criminal charges for violation of the Election Code.

MR. PALACOL. Your Honor, we agree with you on the present situation that there are some winning candidates ... who up to the present have not yet filed their statement of expenditures and contributions. Well, in order to compel or hasten the filing of the certificate of expenditures and contributions, we inserted in this provision of the present measure that before [he enters] the assumption of the office to which he ran for and won, he has to file his certificate of expenditures and contributions. And you will observe, Your Honor, that is very explicit here: "No person elected to public office shall enter upon the duties of his office until he has filed the statement of contributions and expenditures herein required." In other words, it is the duty of the winning candidate to file his certificate of expenditures and contributions before he enters into assumption of his duties.

Now anybody can question this winning candidate. And of course, we know that there are offices where a particular candidate has to file his certificate of statement of expenditures and contributions.

MR. ALBANO. For the sake of argument, Mr. Speaker, ...

MR. PALACOL. Although, of course, there is always that possibility that a candidate who had won may enter his duties without even filing his certificate of expenditures and contributions. But that is an exception to the general rule.

MR. ALBANO. Now, Mr. Speaker, for the sake of argument, suppose an elected person did not file his statement of contributions and expenditures as herein required, and then enters into an office, how is he going to be booted out of that office?

MR. PALACOL. I think, Your Honor, there is a proper remedy for that in our courts of law.

MR. ALBANO. So there is a need . . .

MR. PALACOL. He could be enjoined from assuming the position to which he was elected. (emphasis added)

The subsequent portion which may have been inadvertently omitted in the draft *ponencia* is just as significant:

MR. ALBANO. But he has taken his oath of office and actually performed – does it mean therefore that one has to file a case in court before he can be...

MR. PALACOL. He has to file before he takes his oath – before he assumes the position he has to file his certificate of expenditures and contributions.

MR. ALBANO. Mr. Speaker, the elected official has already entered into his duties, and as a matter of fact exercised his duties but failed to file at the

required day or the required period of time, how is he going to be stopped from assuming when he has already assumed office? Is there going to be a protest? And it seems there is no penal provision in this section?

MR. PALACOL. What is your suggestion, Your Honor?

Mr. ALBANO. Well, my recommendation is we might as well be silent and allow the Revised Election Code provisions to prevail. After all, those who have failed to file their statement of contributions and expenditures are now facing criminal charges. And so it is best that we delete this particular provision so that we do not carry a provision here that is honored more in breach than in compliance. (emphasis added)

Verily, a concerned citizen may file an injunctive suit to prevent a winning candidate from assuming office come noon of June 30 immediately following his or her election. Congress clarified, however, that such suit must be filed **before** said winning candidate has assumed office. It, too, must be filed **after** the lapse of the 30-day period under Section 14, otherwise the case would be premature. To illustrate, insofar as the 2016 elections is concerned, the injunctive suit should be filed from June 9, 2016 until before noon of June 30, 2016.

But when COMELEC extended here the filing of SOCEs to June 30, 2016, the deadline of filing the same coincided with the date of assumption of office. Thus, there was no more window for filing injunctive suits. The beginning, June 30, 2016, also marked the end, June 30, 2016. In other words, COMELEC effectively negated the remedy crafted by Congress against non-compliant officials when it issued Resolution No. 10147.

The 30-day period in Section 14 of RA 7166 serves another practical purpose – to minimize the opportunity for tampering or manipulation of reported contributions and expenses. To recall, the provision does not simply require the filing of SOCEs. The law further requires that these SOCEs be **full, true, and itemized statements** of all contributions and expenditures. Extending the period for compliance, however, diminishes the transparency of the reports and trustworthiness of the data reported in the SOCEs.

Worse, the COMELEC may have unwittingly given the candidates sufficient elbow room to make sure that their SOCE conforms with the mandatory spending limits in Section 13 of RA 7166.¹⁰ In *Cumigad v.*

¹⁰ **Section 13. Authorized Expenses of Candidates and Political Parties.** - The agreement amount that a candidate or registered political party may spend for election campaign shall be as follows:

(a) For candidates. - Ten pesos (P10.00) for President and Vice-President; and for other candidates Three Pesos (P3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy: Provided, That a candidate without any political party and without support from any political party may be allowed to spend Five Pesos (P5.00) for every such voter; and

(b) For political parties. - Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.

Any provision of law to the contrary notwithstanding any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, duly reported to the Commission shall not be subject to the payment of any gift tax.

People,¹¹ we recognized that Section 14 of RA 7166 decriminalizes the non-filing of SOCEs as the law now only prescribes the imposition of administrative fines. Yet we ruled that campaign overspending remains to be a criminal offense pursuant to Section 100 in relation to Sections 262 and 264 of Batas Pambansa 881 (BP 881)¹² or the Omnibus Election Code, as well as Section 13 of RA 7166.¹³ Thus, if we allow Resolution No. 10147 to pass judicial scrutiny, we may have very well provided violators with the avenue to “correct” their mistakes.

Finally. The grant of extensions to file SOCEs relative to the 2010 and 2013 elections does not justify the issuance of Resolution No. 10147. Sans any legal basis, tradition will never justify any action devoid of authority. Indeed, no practice or tradition established by mere tolerance can ripen into a doctrine without judicial acquiescence¹⁴. In the absence of judicial confirmation of the validity of the challenged practice, the repeated but erroneous application thereof will not crystallize into law.

I therefore vote to **GRANT** the petition and **NULLIFY** COMELEC Resolution No. 10147 for having been issued in grave abuse of discretion. Considering, however, that a number of candidates relied in good faith on the extension granted under said resolution, it is only proper for the Court to apply our ruling prospectively in accordance with the doctrine of operative fact.

¹¹ *Cumigad v. People*, G.R. No. 245238, August 27, 2020.

¹² **Section 100. Limitations upon expenses of candidates.** - No candidate shall spend for his election campaign an aggregate amount exceeding one peso and fifty centavos for every voter currently registered in the constituency where he filed his candidacy: Provided, That the expenses herein referred to shall include those incurred or caused to be incurred by the candidate, whether in cash or in kind, including the use, rental or hire of land, water or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign: Provided, further, That where the land, water or aircraft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.

Section 262. Other election offenses. - Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute election offenses: Sections x x x 100 x x x

x x x

Section 264. Penalties. - Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty.

¹³ **Section 13. Authorized Expenses of Candidates and Political Parties.** - The agreement amount that a candidate or registered political party may spend for election campaign shall be as follows:

(a) For candidates. - Ten pesos (P10.00) for President and Vice-President; and for other candidates Three Pesos (P3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy: Provided, That a candidate without any political party and without support from any political party may be allowed to spend Five Pesos (P5.00) for every such voter; and

(b) For political parties. - Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.

Any provision of law to the contrary notwithstanding any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, duly reported to the Commission shall not be subject to the payment of any gift tax.

¹⁴ See *Guingona v. Gonzales*, 292 Phil. 327, 335 (1993).

Thus, SOCEs submitted within the extended period or until June 30, 2016 are deemed timely filed.


AMY C. LAZARO-JAVIER
Associate Justice

