Republic of the Philippines
Supreme Court
Manila

EN BANC

CLARYLYN A. LEGASPI, ROMEO R. DOMONDON, JR., BARTOLOME F. DULATRE, ALEJANDRO J. SISON, NESTOR M. JOVELLANOS, JERRYSON T. ICO, ROEL P. DINONG, FERNANDO D. BAUTISTA, BABYLAINE C. AQUI, GRACE U. DULATRE, OMAR G. VALDEZ, REYNALDO A. SOQUILA, CRESENCIO I. BELAMIDE, CARLO M. CABAOBAO, CRISTY R. REYNADO, JHON PAUL E. CAYABYAB, RUPERTO P. BOTON, THELMA P. VELANO, ADELAIDA V. BOTON, MARIE CYNARA PANAY, ONEIL C. JOVERO, SHEKINAH TOLENTINO, MARIO JIMENEZ, VERGEL T. PEREZ, RACHELLE ANNE PEREZ, CHRISTOPHER R. MILANES, LAUDEMER I. FABIA, IRISH CHERRY T. BUSTO, JANLEE REY F. SABADO, KENNETH B. GOTOC, IMELDA A. CUEVA, and MARICEL B. GOTOC, Petitioners, - versus - **COMMISSION ON ELECTIONS,** Respondent.	**G.R. No. 264661** Present: GESMUNDO, *C.J.*, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M., GAERLAN, ROSARIO, LOPEZ, J., DIMAAMPAO, MARQUEZ, KHO, JR., and SINGH, *JJ.* Promulgated: July 30, 2024

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DECISION

GAERLAN, *J.*:

Before this Court is a Petition for *Certiorari* and *Mandamus*[1] filed as a class suit in representation of all voters of the Province of Pangasinan who were allegedly denied their rights of suffrage, to petition the government for redress of grievances, and to have access to information on matters of public concern. Petitioners Clarylyn A. Legaspi et al. (Legaspi et al.) assert that said rights of theirs were affected by the supposed inaction of respondent *vis-à-vis* their requests for a manual recount (at their expense) of the provincial results for all positions contested in the May 9, 2022 National and Local Elections, and said inaction is argued to have effectively amounted to grave abuse of discretion and denial of due process on the part of respondent Commission on Elections (COMELEC).

Facts of the Case

COMELEC, through its Executive Director, received on May 27, 2022 a document entitled "*APELA PARA SA MANO-MANONG PAGBILANG MULI NG MGA BOTO SA PROBINSYA NG PANGASINAN*" (*APELA*). Said document was forwarded to respondent's Executive Director from COMELEC's Provincial Election Supervisor in Pangasinan, who in turn received the same from a certain Albert O. Quintinita (Quintinita), a supposed signatory to the document, but who appears not to be a party to the instant petition.

The *APELA* is a signature campaign petition with the following intent as embodied on its first page, *viz.*:

> Kami, bilang mamamayan at botante ng Pangasinan, ay humihiling na muling bilangin ang aming mga boto nitong nakaraang eleksyon (May 9, 2022), sa lalawigan ng Pangasinan dahil sa malawakang dayaan na nangyari. Bilang mga mamamayan at botante na nabigyan ng kapangyarihan na malayang pumili ng mga taong mamumuno sa aming bayan, alinsunod sa Saligang-Batas, naniniwala kami na nilabag ang aming karapatan sapagkat ang lumabas na resulta sa eleksyon ay taliwas sa binoto ng karamihan sa amin.
>
> Kami ngayon ay umaapela na muling bilangin ang mga ito ng wasto, tapat, malinis at alinsunod sa batas upang lumabas ang katotohanan at mahalal ang mga karapat-dapat na maupo sa pwesto. Nakalakip dito ang mga pangalan at lagda na sumusuporta sa pananawagang ito. Ang lahat ng ito ay nagmumula sa karapatang bumoto na isa sa mga pinakasagrado at pinakamahalagang saligan ng demokrasya.[2]

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1 *Rollo*, pp. 3–29.
2 *Id.* at 113–114.

As stated in the instant petition, petitioner Atty. Laudemer I. Fabia (Atty. Fabia) was responsible for preparing and circulating the said *APELA*.[3] Only the first page containing the foregoing paragraphs of intent is attached to the instant petition; the critical signature pages that support the same are notably absent from the record.

COMELEC's Law Department replied to Quintinita in a Letter[4] dated May 31, 2022, which contains the following guidance:

> Dear Mr. Quintinita,
>
> This is in response to the *APELA PARA SA MANO-MANONG PAGBILANG MULI NG MGA BOTO SA PROBINSYA NG PANGASINAN* which you signed together with other persons who were questioning the results of the 2022 National and Local Elections. The aforesaid document was received by the Office of the Executive Director on May 27, 2022, and was transmitted to this Department on even date.
>
> A perusal of the instant document shows that, although it was signed by several persons from different barangays and municipalities of the Province of Pangasinan, it did not specifically state the position involved and other details required for an election protest. Please be reminded that if you are contesting the elections or returns of an elective regional, provincial or city official, the petition should be filed directly with the Commission, through the Electoral Contests and Adjudication Department (ECAD), by **any candidate who was voted for in the same office** and **who received the second or third highest number of votes,** among others, **as reflected in the Statement of Votes.**
>
> . . . .
>
> On the other hand, if the instant election contest involves municipal officials, the verified petition should be directly filed before the proper Regional Trial Court also by a **candidate who was voted for the same office** and **who received the second or third highest number of votes.** In which case, the procedure provided in A.M. No. 10-4-1-SC shall be observed.
>
> We hope we have guided you accordingly.
>
> Thank you very much.
>
> Very truly yours,
>
> (Sgd.)
> ATTY. MARIA NORINA S. TANGARO-CASINGAL
> Director IV[5] (Emphasis in the original)

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3 *Id.* at 8.
4 *Id.* at 116–118.
5 *Id.* at 116–117.

Dissatisfied with the aforementioned response, Atty. Fabia (as spokesperson for the affected voters) sent a Letter[6] dated June 15, 2022 seeking COMELEC's reconsideration of the supposed denial of the *APELA*, *viz.*:

> On behalf of the more than seventy one thousand (71,000) duly registered Pangasinan voters, whose signatures are all contained in different Folders duly submitted to [the] Comelec Provincial Office in Pangasinan on May 16, 23 & 30, 2022, where initially, Folder Number 1 (297 pages), Folder Number 2 (274 pages), and Folder Number 3 (90 pages) containing a total of twenty one thousand (21,000) signatures were forwarded together with their petition in an Indorsement dated May 18, 2022 to the Commission on Elections by the Region I Comelec Director, and on behalf of many other registered voters in the Philippines, whose numbers are growing by the day, and around the world signing similar Petitions online in change.org, this is to request a reconsideration of the Law Department's above-cited Document DENYING the Pangasinan registered voters' ***APELA PARA SA MANO-MANONG PAGBILANG MULI NG MGA BOTO SA PROBINSYA NG PANGASINAN*** (APELA) on the ground that the ruling is contrary to law and the facts.
>
> In denying the *APELA*, the Commission on [Elections] cited Sections 2 and 3 of Comelec Resolution No. 8804 (March 22, 2010) which refers to an electoral contest filed by a ***candidate who was voted for in the same office and who received the second or third highest number of votes, among others, as reflected in the Statement of Votes.***
>
> The reason for the denial is flawed, misplaced and [*non-sequitur*].
>
> The *APELA* is not an election protest filed by a losing candidate in the May 9, 2022 elections, but a **PEOPLE'S INITIATIVE** in the exercise of their sovereign rights as provided for under the Constitution to petition the Comelec for a manual recount of the votes. To be sure, it is not being filed by a losing candidate against any winning candidate, nor are the petitioners seeking to be proclaimed winners in an election, thus, it cannot be treated as an electoral protest and, therefore, it cannot be governed by the procedural rules for an electoral protest.
>
> The *APELA* is an exercise of the people's right to information on matters of public concern. They have a constitutional right to be informed of all transactions, activities and occurrences in government that affect public interest. It is their sovereign right to know if their votes were accurately counted, which is a consequence of their sovereign right of suffrage. It is the sovereign people's **direct action** to know how their votes as contained in their ballots were counted, therefore, it must not be treated simplistically as an electoral protest filed by a losing candidate.
>
> The people's right to know proceeds from their sovereign right to vote because without [sic] knowing how their votes were counted would render their right to vote useless. Once again, the *APELA* is the people's exercise of their sovereign rights in this democratic nation, with all the acts of the government subject to public examination and available always to public cognizance. This

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6 *Id.* at 342–344.

> has to be at all times, so much so that our country and the people have always struggled to remain free and democratic, with sovereignty residing in the people and all government authority emanating from them.
>
> Needless to state, the sovereign voter's right to know how exactly their votes were counted, tallied and reported must certainly be granted and given importance for the legitimacy of the government itself and of the legal basis for the exercise of powers so ordained by the sovereign votes to exercise such powers in their behalf are put in question [sic].
>
> As observed by [Information Technology or] IT experts, whose testimony can be presented anytime the Commission would allow, because of the failure to comply with some legally mandated safeguards under the Automated Election System, like, among others, the selection of the precincts to be subjected to Random Manual Audit, the Petitioners feel they were denied complete security, assurance, and guarantee that their votes as indicated in their ballots were in fact properly read, counted, summed up and reported [in] Pangasinan, and probably all other provinces, were laid wide open to the manipulations of selfish criminal hackers and programmers who have manipulated the outcomes to suit the objectives of their candidates.
>
> Given the foregoing, the petitioners respectfully pray for a reconsideration of the denial of their *APELA*, and that their prayer for a manual recount of their ballots be granted by Comelec, which has the jurisdiction (over the ballots, [vote counting machines or] VCMs, [and] SD cards) and the competence to act on the *APELA* of the sovereign voters.
>
> Respectfully submitted.
>
> Dagupan City, this 16th [sic] day of June 2022.
>
> Sincerely and respectfully,
>
> (Sgd.)
> ATTY. LAUDEMER I. FABIA
> Spokesperson[7] (Emphasis in the original)

In addition to the aforementioned Letter, Atty. Fabia also submitted an Addendum[8] dated June 20, 2022 containing the following supplemental requests and manifestations:

> To supplement our request for reconsideration dated June 15, 2022, received by the Pangasinan OPES on June 17, 2022, it is respectfully manifested that the petitioners are ready, willing and able to shoulder all costs and expenses necessary to fully carry out the proper Order or command of the Commission on Elections in bringing out the ballots, counting them and making the necessary reports, etc. The call for the manual counting of the ballots under the auspices of the Commission on Elections is gaining momentum nationwide and this is so because our leaders must be determined

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7 *Id.*

8 *Id.* at 345.

> by our ballots and not by VCMs. In the interest of truth, even the proclaimed winners on the basis of VCMs should welcome a validation of their winning through the ballots themselves if indeed that was so after a manual recount.
>
> It is respectfully requested, therefore, that this ADDENDUM be admitted inasmuch as it is not prohibited by any rule, [and that] it will not result in any injury to anyone and it will result in finding the truth that transpired in the May 9, 2022 elections.
>
> Finally, we hereby reiterate our prayer for the opening of the ballot boxes to be witnessed by the people, count the ballots manually, allow the SD cards to be audited by independent I.T. professionals and the *tambiolo* system be employed in the selection of the precincts to be subjected to Random Manual Audit all at the expense of the petitioners.
>
> Dagupan City, this 29th day of June 2022.
>
> Very truly yours,
>
> (Sgd.)
> ATTY. LAUDEMER I. FABIA
> Spokesperson[9]

Finally, Atty. Fabia submitted a Manifestation with Urgent Request[10] dated June 30, 2022, which requested the opportunity and appropriate forum from the COMELEC for the presentation of video presentations, along with accompanying documentary and testimonial evidence, relative to the supposed scientific and factual bases of the *APELA*.

COMELEC's Law Department replied anew *via* its Letter[11] dated July 7, 2022, *viz.*:

> Dear Mr. Quintinita [sic],
>
> This is in response to your letter and Addendum dated June 15, 2022 and June 20, 2022, respectively, which were electronically mailed to this Department by the Office of the Regional Election Director, Region I on July 1, 2022, seeking reconsideration on the alleged denial by this Department of the "*APELA PARA SA MANO-MANONG PAGBILANG MULI NG MGA BOTO SA PROBINSYA NG PANGASINAN*," which was filed by Albert P. Quintinita.
>
> You claim that [the] APELA is not an election protest filed by a losing candidate in the May 9, 2022 elections, but a PEOPLE'S INITIATIVE in the exercise of their right to information on matters of public concern as provided for under the Constitution. It is allegedly an exercise of the people's right to be informed if their votes were accurately counted and how their

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9 *Id.*
10 *Id.* at 354.
11 *Id.* at 119–122.

votes as contained in their ballots were counted. It should therefore not be treated as an election protest since it was not being filed by a losing candidate against any winning candidate.

Please be reminded that this Department sent the assailed May 31, 2022 letter respectfully informing Mr. Quintinita that it has no jurisdiction to act on your request. The reply was intended as guidance on the requirements for filing of cases before the Commission.

Nonetheless, considering your manifestation that the filed document was actually a People's Initiative, allow us to invite your attention to Article III of COMELEC Resolution No. 10650, promulgated on 31 January 2020, pertinent portions in relation to the requirements for filing of the [People's Initiative] Petition are hereinafter quoted, *viz*:

. . . .

In relation thereto, please be guided that the guidelines on electronic filing of pleadings is provided in Comelec Resolution No. 10673 provides [*sic*]. It reads:

. . . .

You are encouraged to visit the COMELEC website (*www.comelec.gov.ph*) for a copy of the afore-mentioned resolutions. Meanwhile, for more details on filing of petitions, you may contact the Office of the Clerk of the Commission at:

. . . .

We hope we have guided you accordingly.

Thank you very much.

Very truly yours,

(Sgd.)
ATTY. MARIA NORINA S. TANGARO-CASINGAL
Director IV[12]

Having considered the aforementioned response from COMELEC's Law Department as the final denial of their requests for a manual recount and for access to relevant information pertaining to the supposed truth behind what really happened during the National and Local Elections on May 9, 2022 in the Province of Pangasinan, and having no further response from COMELEC *vis-à-vis* the Manifestation with Urgent Request dated June 30, 2022, Legaspi, et al., thus, filed the instant original action directly with the Court.

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12 *Id.*

Arguments of the Parties

Legaspi, et al. present the following arguments in support of their plea to have their constitutional rights vindicated and affirmed, to wit:

1) The instant petition is not an electoral protest seeking to unseat any elected public officer or to proclaim any winner *vis-à-vis* the May 9, 2022 National and Local Elections, but is instead an election *controversy* cognizable by COMELEC that would vindicate Legaspi, et al.'s rights of suffrage, to information, and to petition the government for redress of grievances—fundamental rights inherent in petitioners as part of the collective popular sovereign.

2) Legaspi, et al. assert that COMELEC, in confusing Legaspi, et al.'s request for a recount of the provincial results in Pangasinan as either an electoral protest or as a petition for recall/initiative, failed to recognize that these remedies were not exclusive in vindicating Legaspi, et al.'s rights.

3) Legaspi, et al. further assert that COMELEC had no compelling state interest in denying the requested recount (which Legaspi, et al. assert as incumbent upon COMELEC to prove), and consequently, said denial violated Legaspi, et al.'s rights here.

4) The instant petition is in the nature of a class suit of transcendental importance relative to the rights invoked here, with Legaspi, et al. being representative of all the voters in the Province of Pangasinan who are too numerous to be joined at present.

5) In essence, Legaspi, et al. doubt the manner in which their votes and ballots were counted by COMELEC's vote-counting machines (VCMs) after the close of polls on May 9, 2022, mainly due to the supposedly unusual speed by which the election results were picked up and broadcasted in the news, along with other "red flags" such as the supposedly high voter turn-out in Pangasinan, and how the actual election results supposedly differed from pre-election surveys conducted in Pangasinan.

6) Legaspi, et al. were alarmed upon reading various opinions, observations, and postings online from a number of identified experts that all point to the statistical improbability (if not impossibility) of the election results, as summarized in the attached excerpts of an unsigned and unverified "Summary of Viral Social Media Postings."[13]

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[13] *Id.* at 347–353.

7) With their conclusion that the voting on May 9, 2022 was not transparent, the actual results of the May 9, 2022 National and Local Elections need to be verified by a manual counting crosschecked with the actual results transmitted to the various canvassing boards. The random manual audit conducted by COMELEC is inconclusive for purposes of reassuring Legaspi, et al., since there is no indication of any polling precincts or VCMs from Pangasinan were subjected to said audit.

8) Legaspi, et al.'s request for the manual recount in Pangasinan is ultimately grounded upon their sovereign right of suffrage, which to them, includes the right to know how their votes were counted, tallied, and reported, as well as the corresponding obligation of COMELEC to accommodate their request to present their testimonial, documentary, and video evidence of the supposed improbability (if not impossibility) of the May 9, 2022 election results. If their right to be sufficiently informed of how their votes were counted is denied, then ultimately their fundamental right of suffrage is negated.

9) The declaration of policy for COMELEC's automated election system, as spelled out in Section 1[14] of Republic Act No. 8436[15] (as amended by Section 1 of Republic Act No. 9369[16]), is enough to require and enable it to do all necessary and proper actions relative to the requested manual recount—all in the interest of transparency, accuracy, and truthfulness of the electoral process.

10) Crucially, Legaspi, et al. assert that the Court had already upheld COMELEC's authority to revert to manual recounts when the automated election system is shown to have failed to read ballots correctly (as discussed in *Loong v. Commission on Elections*[17] and to correct manifest

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14 Section 1. *Declaration of Policy.* – It is the policy of the State to ensure free, orderly, honest, peaceful, credible and informed elections, plebiscites, referenda, recall[s] and other similar electoral exercises by improving on the election process and adopting systems, which shall involve the use of an automated election system that will ensure the secrecy and sanctity of the ballot and all election, consolidation and transmission documents in order that the process shall be transparent and credible and that the results shall be fast, accurate and reflective of the genuine will of the people.
The State recognizes the mandate and authority of the Commission to prescribe adoption and use of the most suitable technology of demonstrated capability taking into account the situation prevailing in the area and the funds available for the purpose."

15 An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes (1997).

16 An Act Amending Republic Act No. 8436, Entitled 'An Act Authorizing the Commission on Elections to Use An Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises,' To Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending For The Purpose Batas Pambansa Blg. 881, As Amended, Republic Act No. 7166 And Other Related Election Laws, Providing Funds Therefor and for Other Purposes (2007).

17 365 Phil. 386 (1999) [Per J. Puno, *En Banc*].

errors in the certificates of canvass and election returns (as discussed in *Sandoval v. Commission on Elections*[18]).

11) Finally, Legaspi, et al. have no more plain, speedy, and adequate remedies in the ordinary course of law *vis-à-vis* COMELEC's inaction, which allegedly amounts to grave abuse of discretion.

In support of the instant petition, Legaspi, et al. attached their respective Judicial Affidavits[19] that narrate the following common assertions:

1) That each of them was aware of the existence of the *APELA* and had voluntarily signed the same;

2) That each of them was aware that the COMELEC had either dismissed or denied the *APELA*, that each knew of the instant petition being prepared for filing before the Court;

3) That each of them had read the instant petition and had signed its verification and certification against forum shopping portions with full understanding of, and agreement with, the instant petition's contents;

4) That each of them doubts the results of the May 9, 2022 National and Local Elections due to the highly suspicious, statistically improbably, and nearly impossible swiftness of the tallying, and that each were monitoring the election results on COMELEC's website, on social media and on various television news programs;

5) That each of them was surprised at the supposedly high voter turnout in the Province of Pangasinan, and that the results for the province differed substantially from pre-election surveys; and

6) That each of them came to know of the opinions of some election experts that doubted the speed, conduct, and overall transparency of the May 9, 2022 National and Local Elections, which validated each of their concerns and worries.

In its Comment[20] filed by the Office of the Solicitor General, COMELEC for its part submits the following arguments for the dismissal of the instant petition:

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18 380 Phil. 375 (2000) [Per J. Puno, *En Banc*].
19 *Rollo*, pp. 123–341.
20 *Id.* at 370–386.

1) The instant petition suffers from defective verifications, since it can be seen from a plain reading of the same that petitioners have no personal knowledge of facts recited therein, and that their action is based on their mere assertions that are based on their fears and speculations about how the automated election system was supposedly compromised – fears and speculations which are in turn only based on the hearsay opinions they came across on social media that had no specific mention of the election results in the Province of Pangasinan, the authors of which are not presently joined in the present proceedings, and the authenticity of which have not been sufficiently established.

2) *Mandamus* cannot lie here, since Legaspi, et al. cannot point to any clear factual or even legal basis for their right to have the election results in Pangasinan subjected to a manual recount. Thus, respondent cannot be said to have reneged on its suffrage-related duties under the law.

3) Legaspi, et al. have no *locus standi* to file the instant petition, since they have neither sustained any material injury (i.e., they were all able to cast their votes during the May 9, 2022 National and Local Elections). Moreover, the instant petition cannot be considered a class suit since the 32 petitioners from just 9 cities and municipalities in the Province of Pangasinan cannot be said to be representative of the entire class of 2,096,936 registered voters (with 1,828,196 who actually voted on May 9, 2022) coming from all 48 cities and municipalities in the said province.[21]

4) Finally, the instant petition presents no actual case or controversy, since Legaspi, et al. intend to neither nullify the May 9, 2022 National and Local Elections nor to unseat any incumbent elected official. Moreover, Legaspi, et al. have presented no concrete evidence of any alleged cheating or mass disenfranchisement during the said elections—they only present their bare assertion of their lack of faith in the COMELEC's VCMs utilized on May 9, 2022, which they have based on conjectures and suspicions that they came across online.

In their Reply,[22] Legaspi, et al. counter-assert the following:

1) The social media postings they came across online are not hearsay but point to records that could be verified by electronic means, such as an inspection of COMELEC's transparency server for the May 9, 2022 National and Local Elections. Moreover, the opinions they cite are those of experts *vis-à-vis* automated elections.

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21 *Id.* at 382.
22 *Id.* at 391–406.

2) Legaspi, et al. now allege specific factual issues, such as the supposedly surreptitious change in the source code downloaded to all VCMs, and the alleged manipulation of COMELEC's transparency server to reflect results that would already condition the minds of the public during the first hour after the close of polls on May 9, 2022.

3) COMELEC's non-transparent manner in failing to accommodate Legaspi, et al.'s requests are clearly instances of disregarding and ignoring their *APELA*, which violate their basic right of suffrage as explained above.

4) The Court should adopt a more liberal policy here *vis-à-vis locus standi*, since the issues presented by the instant petition are of transcendental importance due to the fundamental rights involved.

5) Finally, the instant petition constitutes a class suit since Legaspi, et al. represent the interests of fairly 72,000 voters[23] in Pangasinan who signed the *APELA* demanding for the manual recount. Moreover, there is a case and controversy present here, since COMELEC (in Legaspi, et al.'s eyes) had effectively denied the said *APELA*.

Issues before the Court

1) Whether the verifications *vis-à-vis* the instant petition are defective;

2) Whether Legaspi, et al. have *locus standi*;

3) Whether the instant petition can be classified as a class suit;

4) Whether there is an actual case or controversy here;

5) Whether Legaspi, et al. exhausted all administrative remedies before resorting to the instant petition; and

6) Ultimately, whether *certiorari* or *mandamus* can lie.

Ruling of the Court

The instant petition must be dismissed.

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[23] *Id.* at 402. As opposed to the figure of 71,000 stated in petitioner Atty. Fabia's Letter to respondent's Law Department dated June 15, 2022 (*id.* at 342–344).

In dealing with the six identified issues *in seriatim*, the Court now first discusses the sufficiency (or lack thereof) of the verifications made by Legaspi, et al.

Verification under the extant 2019 Rules of Court is defined under Rule 7, Section 4, *viz.*:

> Section 4. *Verification.* Except when otherwise specifically required by law or rule, pleadings need not be under oath or verified.
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> A pleading is verified by an affidavit of an affiant duly authorized to sign said verification. The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading, and shall allege the following attestations:
>
> (a) The allegations in the pleading are true and correct based on [their] personal knowledge, or based on authentic documents;
>
> (b) The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
>
> (c) The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
>
> The signature of the affiant shall further serve as a certification of the truthfulness of the allegations in the pleading.
>
> A pleading required to be verified that contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

Indeed, petitions for *certiorari* and *mandamus* are required to be properly verified under Rule 65, Sections 1[24] and 3.[25] Poring over the verifications done

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[24] Section 1. *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

[25] Section 3. *Petition for mandamus.* – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

and accomplished by Legaspi, et al., they all indeed contain phrases basically stating under oath that they individually attest that the instant petition contains true and correct statements based on their personal knowledge and existing authentic documents. However, the Court is at pains to determine how they were able to have personal knowledge of the following facts:

1) The alleged unusual speed of the transmission of the electoral results from the VCMs to COMELEC's transparency server on May 9, 2022, since they evidently were not present during the VCMs' transmission and had only monitored the election results on social media, on television, and on COMELEC's website (i.e., they were not present nearby any VCM or at respondent's headquarters housing the transparency server during the said transmission of results);

2) The observations of technical experts and international observers *vis-à-vis* the May 9, 2022 National and Local Elections, which they only came to know of *via* social media or sources online that are unauthenticated for evidentiary purposes; and

3) Their actual participation in the signing of the *APELA*, since again, the signature pages were not submitted as part of the records of the instant petition.

Florenz D. Regalado (Regalado), an eminent commentator and former member of the Court, wrote the following with regard to the rule on verification (i.e., Rule 7, Section 4):

> The second paragraph of this section has been further amended so that the pleader's affirmation of the truth and correctness of the allegations in his pleading shall be based not only on his "knowledge and belief" but specifically on his "personal knowledge or based on authentic records." In the 1964 Rules of Court, Sec. 6 of Rule 7 required personal knowledge of the facts averred, which was considered too strict since a person can reasonably affirm a fact based on his belief in its truth when there is or has been no other fact or reason contrary thereto.
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> However, that liberalized version is better regulated by the present amended provisions that facts should be attested to on the basis of one's personal knowledge or, especially with regard to old or vintage facts or events, by the recitals thereof in authentic records. Verification is intended to forestall allegations which are perjured or *hearsay*, and this purpose is reasonably subserved by the requirement for authentic documents such as official records which are exceptions to the hearsay evidence rule. *For the same reason, a verification cannot be made on facts obtaining or arising in whole or in part from mere information and belief.*[26] (Emphasis and underscoring supplied)

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[26] Florenz Regalado, I REMEDIAL LAW COMPENDIUM (2005 ed.), p. 159.

Regalado also emphasized that "[v]erification may be made by the party, his representative, lawyer or any person *who personally knows the truth of the facts alleged in the pleading*."[27] The crux of the instant petition's first issue, however, is if Legaspi, et al. did in fact have personal knowledge sufficient to establish their capacity to verify the instant petition in the first place, or failing that, if the instant petition is based on authenticated documents in conformity with Rule 7, Section 4. Put differently, *the Court must resolve the question of what happens to a seemingly valid and compliant verification portion that is based on a pleading containing no reasonable indication that the party pleading his or her case has any personal knowledge of the facts, or has attached any authentic documents in support of the said pleading.*

In this regard, the Court finds that Legaspi, et al. did *not* have sufficient personal knowledge that capacitated them to verify the instant petition. The third guideline on verification and certification against non-forum shopping, as laid down by the Court in *Altres v. Empleo*,[28] is instructive:

> 3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.[29]

The Court cited its reasoning in *Rombe Eximtrade (Phils.), Inc. v. Asiatrust Dev't., Bank*[30] for the aforementioned guideline, *viz.*:

> On the matter of verification, the purpose of the verification requirement is to assure that the allegations in a petition were made in good faith or are true and correct, not merely speculative. The verification requirement is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the petition signed the verification attached to it, and when matters alleged in the petition have been made in good faith or are true and correct. In this case, we find that the position, knowledge, and experience of Ferrer as Manager and head of the Acquired Assets Unit of Asiatrust, and his good faith, are sufficient compliance with the verification and certification requirements. This is in line with our ruling in *Iglesia ni Cristo v. Ponferrada*, where we said that it is deemed substantial compliance when one with sufficient knowledge swears to the truth of the allegations in the complaint.[31] (Citations omitted)

Here, Legaspi, et al. clearly do not have personal knowledge of the circumstances that prompted their fears and speculations regarding the results on the May 9, 2022 National and Local Elections. There is no indication that any of

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27 *Id.* Emphasis, italics, and underscoring supplied.
28 594 Phil. 246 (2008) [Per J. Carpio Morales, *En Banc*].
29 *Id.* at 261.
30 568 Phil. 810 (2008) [Per J. Velasco, Jr., Second Division].
31 *Id.* at 816–817.

them were intimately connected or concerned with the actual transmission of the tallies of the VCMs in their respective polling precincts all the way to COMELEC's servers, and it is clear from the records that their knowledge comes from mere information and belief based on news, social media, and opinionated sources found on the Internet that are unauthenticated in accordance with the Revised Rules on Evidence. Jurisprudence and the rules commonly state that mere information and belief as basis of a pleader's knowledge is clearly insufficient for purposes of verification. Thus, even if the verification portion of a pleading, just like Legaspi, et al. here, is compliant word-for-word with the requirements of Rule 7, Section 4, said compliance will not save the fact that a pleader's personal knowledge is actually not based on personal knowledge or even on any authenticated documents.

This is all the more so due to the fact that the instant petition is actually based on Legaspi, et al.'s collective belief that something (or many things) were amiss with regard to the conduct of the May 9, 2022 National and Local Elections. In *Negros Oriental Planters Assn., Inc. v. Hon. Presiding Judge of RTC-Negros OCC., Br. 52, Bacolod City*,[32] the Court held that the requirement verification implies that a "party cannot now merely state under oath that he *believes* the statements made in the pleading. He cannot even merely state under oath that he *has knowledge* that such statements are true and correct. His knowledge must be specifically alleged under oath to be either *personal knowledge* or at least *based on authentic records*."[33] Thus, "[a] pleading, therefore, wherein the Verification is merely based on the party's knowledge and belief produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied."[34]

With no showing here of how Legaspi, et al. came to have personal knowledge of the ultimate facts alleged in the instant petition, and with no other authenticated documents that can be utilized as basis for their verification (i.e., not even the communications from COMELEC's Law Department [which are mere unauthenticated photocopies], Legaspi, et al.'s Judicial Affidavits [which are merely self-serving and without any other evidentiary attachments], and especially not the 'Summary of Viral Social Media Postings' [which is unsigned and merely an aggrupation of excerpts of another document] and the *APELA* [which is also merely an unauthenticated photocopy of the first page and without the critical signature pages indicating their actual participation therein]), the Court can already treat the instant petition as a dismissible unsigned pleading.

Going now to the second issue, the Court is reminded of its definition of *locus standi* in *Integrated Bar of the Phils. v. Hon. Zamora*,[35] *viz.*:

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32 595 Phil. 1158 (2008) [Per J. Chico-Nazario, Third Division].
33 *Id.* at 1166. Emphasis in the original.
34 *Id.* at 1167.
35 392 Phil. 618 (2000) [Per J. Kapunan, *En Banc*].

> "Legal standing" or *locus standi* has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[36] (Citations omitted)

In the same case, the Court clarified that a mere general interest in a controversy that is actually shared by the whole citizenry is not specific enough to constitute *locus standi*, especially if the injury is not specified, *viz.*:

> In the case at bar, *the IBP primarily anchors its standing on its alleged responsibility to uphold the rule of law and the Constitution. Apart from this declaration, however, the IBP asserts no other basis in support of its locus standi. The mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry. Based on the standards above-stated, the IBP has failed to present a specific and substantial interest in the resolution of the case.* Its fundamental purpose which, under Section 2, Rule 139-A of the Rules of Court, is to elevate the standards of the law profession and to improve the administration of justice is alien to, and cannot be affected by, the deployment of the Marines. It should also be noted that the interest of the National President of the IBP who signed the petition, is his alone, absent a formal board resolution authorizing him to file the present action. To be sure, members of the BAR, those in the judiciary included, have varying opinions on the issue. Moreover, the IBP, assuming that it has duly authorized the National President to file the petition, has not shown any specific injury which it has suffered or may suffer by virtue of the questioned governmental act. Indeed, none of its members, whom the IBP purportedly represents, has sustained any form of injury as a result of the operation of the joint visibility patrols. Neither is it alleged that any of its members has been arrested or that their civil liberties have been violated by the deployment of the Marines. What the IBP projects as injurious is the supposed "militarization" of law enforcement which might threaten Philippine democratic institutions and may cause more harm than good in the long run. *Not only is the presumed "injury" not personal in character, it is likewise too vague, highly speculative and uncertain to satisfy the requirement of standing.* Since petitioner has not successfully established a direct and personal injury as a consequence of the questioned act, it does not possess the personality to assail the validity of the deployment of the Marines. This Court, however, does not categorically rule that the IBP has absolutely no

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[36] *Id.* at 632–633, *citing Joya v. Presidential Commission on Good Government*, 296-A Phil. 595 (1993) [Per J. Bellosillo, *En Banc*]; *House International Building Tenants Association, Inc. v. Intermediate Appellate Court*, 235 Phil. 703 (1987) [Per J. Cortes, Second Division]; and *Baker v. Carr*, 369 U.S. 186 (1962). *See also Association of Flood Victims v. Commission on Elections*, 740 Phil. 472 (2014) [Per Acting C.J. Carpio, *En Banc*]; and *Ifurung v. Carpio Morales*, 831 Phil. 135 (2018) [Per J. Martires, *En Banc*].

> standing to raise constitutional issues now or in the future. The IBP must, by way of allegations and proof, satisfy this Court that it has sufficient stake to obtain judicial resolution of the controversy.[37] (Emphasis supplied)

Here again, the Court is at pains to determine what gives Legaspi, et al. their legal standing to sue the COMELEC at present. They have specifically stated in the instant petition that they do not intend to unseat any elected official, and that they do not intend to have any winner proclaimed. They simply pray that they be given an opportunity to have some closure with regard to what they see as an automated election riddled with anomalies by a full manual audit of all VCMs utilized in the Province of Pangasinan on May 9, 2022.

While their collective status as members of the sovereign electorate is not in doubt, this is again similar to the situation in *Zamora*, which is merely a general interest shared by the entire voting population with regard to the outcome and conduct of the past national and local elections. There is no concrete injury that the Court can detect here, since Legaspi, et al. admitted to have participated in the electoral process by voting on May 9, 2022 without any governmental act barring them from the polls. Their fears and speculations relative to the automated election system being compromised are too vague and uncertain to constitute material interest here, since they did not substantiate the instant petition with specific allegations based on personal knowledge of the ultimate facts, or with authenticated documents and proof that would belie any counter-allegation of hearsay.

Instead, Legaspi, et al. have harped upon their insistence that the issues presented by the instant petition have overriding transcendental importance that necessitates the Court's intervention and adjudication. Indeed, even *Zamora* affirmed the Court's discretion in relaxing the requirements of *locus standi* in view of a suit's transcendental importance, *viz.*:

> Having stated the foregoing, it must be emphasized that this Court has the discretion to take cognizance of a suit which does not satisfy the requirement of legal standing when paramount interest is involved. In not a few cases, the Court has adopted a liberal attitude on the *locus standi* of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people. Thus, when the issues raised are of paramount importance to the public, the Court may brush aside technicalities of procedure. In this case, a reading of the petition shows that the IBP has advanced constitutional issues which deserve the attention of this Court in view of their seriousness, novelty and weight as precedents. Moreover, because peace and order are under constant threat and lawless violence occurs in increasing tempo, undoubtedly aggravated by the Mindanao insurgency problem, the legal controversy raised in the petition almost certainly will not

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[37] *Id.* at 633–634.

> go away. It will stare us in the face again. It, therefore, behooves the Court to relax the rules on standing and to resolve the issue now, rather than later.[38] (Citations omitted)

While the Court is aware of instances in the past such as *Chavez v. Public Estates Authority (PEA)*,[39] wherein direct resort to the Court's jurisdiction through a Rule 65 petition "brought by a citizen" and that "involves the enforcement of constitutional rights—to information and the equitable diffusion of natural resources" was recognized as having *locus standi* due to the transcendental importance[40] of the issues presented, said precedents cannot be applicable here. This is because cases like *Chavez v. PEA* involved matters that required the Court's immediate resolution on issues having direct and immediate bearing on constitutional rights and issues—e.g., when the renegotiations of the joint venture agreement between PEA and Amari Coastal Bay Development Corporation were close to be concluded.

Here, Legaspi, et al. point to no immediate danger to their constitutional rights posed by COMELEC's failure to undertake the requested full manual recount—other than their fear and speculation of enduring a number of years being led and governed by persons who may or may not be entitled to their elective positions. This goes into Legaspi, et al.'s very capacity to sue as citizens. In *Francisco, Jr. v. The House of Representatives*,[41] the Court said as much:

> When suing as a citizen, the interest of the petitioner assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[42] (Citations omitted)

Verily, the Court held in *Prof. David v. Pres. Macapagal-Arroyo*,[43] that in suits brought forward by concerned citizens, "there must be a showing that the issues raised are of transcendental importance which must be settled

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38 *Id.* at 634–635.

39 433 Phil. 506 (2002) [Per J. Carpio, *En Banc*]. *See also The Diocese of Bacolod v. COMELEC*, 751 Phil. 301 (2015) [Per J. Leonen, *En Banc*].

40 *Id.* at 528.

41 460 Phil. 830 (2003) [Per J. Carpio Morales, *En Banc*].

42 *Id.* at 895–896.

43 522 Phil. 705, 760 (2006) [Per J. Sandoval-Gutierrez, *En Banc*]. *See also Ching v. Bonachita-Ricablanca*, 887 Phil. 979, 993 (2020) [Per J. Delos Santos, Second Division]; *Ifurung v. Carpio Morales*, 831 Phil. 135 (2018) (Per J. Martires, *En Banc*]; and *Funa v. Villar*, 686 Phil. 571 (2012) [Per J. Velasco, Jr., *En Banc*].

early."[44] However, here, the Court fails to detect any immediate urgency that would merit the instant petition's elevation to a case impressed with transcendental importance—precisely because Legaspi, et al. have failed to show that *any* injury is either present or imminent to anyone. As the Court held in *In the Matter of: Save the SC Judicial Independence & Fiscal Autonomy Movement v. Abolition of JDF & Reduction of Fiscal Autonomy*,[45] "[a] mere invocation of transcendental importance in the pleading is not enough for this Court to set aside procedural rules,"[46] and that moreover, "it must be also shown that there is a clear and imminent threat to fundamental rights."[47]

Thus, the Court remains unconvinced with regard to Legaspi, et al.'s plea for leniency as to their legal standing. The Court cannot recognize the same based on their mere supposition that something (or many things) had gone awry *vis-à-vis* the results and conduct of the May 9, 2022 National and Local Elections – even if they invoke the supposed transcendental importance of the requested full manual recount. Without anything to substantiate the supposed material injury to anyone caused by COMELEC's alleged denial of their request for the said recount (which will be discussed below as actually not constituting any denial at all of Legaspi, et al.'s rights), or even the urgent need for the same, the Court cannot see how Legaspi, et al. stand to gain or lose as a result of the resolution of the instant petition.

Put simply, whether the Court grants the instant petition or not, Legaspi, et al. remain unscathed and unperturbed in terms of their constitutional rights for now, as will be explained below. Their anxieties with regard to what they may have read and heard about the results and conduct of the last elections may indeed remain – as it is their constitutional right to harbor such anxieties as involved citizens who care about democracy and the rule of law – but for obvious reasons the Court is presently not the proper forum for the resolution of such concerns.

Anent the third issue, the unamended and intact Rule 3, Section 12 of the 2019 Rules of Court defines a class suit as follows:

> Section 12. *Class suit.* – When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest.

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44 *Id.* at 760.
45 751 Phil. 30 (2015) [Per J. Leonen, *En Banc*].
46 *Id.* at 44.
47 *Id.*

Here, Legaspi, et al. allege that they are representing more than 71,000 voters from the Province of Pangasinan who signed the *APELA* and had the same filed before COMELEC for appropriate action. The problem with this assertion is that Legaspi, et al. failed to attach the *APELA*'s signature pages for the Court's verification. The Court, thus, cannot make an adequate determination as to whether the parties affected are so numerous that it is impracticable to join them all to the present proceedings, or even as to whether Legaspi, et al. are sufficiently numerous or representative of the supposed class they represent, or that they can fully protect the interests of all concerned. Moreover, participation in the *APELA*'s signature campaign does not automatically equate to any signatory's participation in the present proceedings without sufficient authorization for their supposed representatives to do so. The Court cannot speculate as to how many of the supposed 71,000 or more voters from Pangasinan actually desire to have the instant petition litigated on their behalf. With no sufficient basis for the Court's consideration, the instant petition cannot be designated as a class suit *vis-à-vis* the signatories to the *APELA*.

Anent the fourth issue, the Court is reminded of its ruling in *Kilusang Mayo Uno v. Hon. Aquino*[48] with regard to the requirement of an actual case or controversy for the exercise of the Court's power of judicial review, *viz.*:

> Most important in this list of requisites is the existence of an actual case or controversy. In every exercise of judicial power, whether in the traditional or expanded sense, this is an absolute necessity.
>
> There is an actual case or controversy if there is a "conflict of legal right, an opposite legal [claim] susceptible of judicial resolution." A petitioner bringing a case before this Court must establish that there is a legally demandable and enforceable right under the Constitution. There must be a real and substantial controversy, with definite and concrete issues involving the legal relations of the parties, and admitting of specific relief that courts can grant.
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> This requirement goes into the nature of the judiciary as a co-equal branch of government. It is bound by the doctrine of separation of powers, and will not rule on any matter or cause the invalidation of any act, law, or regulation, if there is no actual or sufficiently imminent breach of or injury to a right. The courts interpret laws, but the ambiguities may only be clarified in the existence of an actual situation.[49] (Citations omitted)

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48 850 Phil. 1168 (2019) [Per J. Leonen, *En Banc*].

49 *Id.* at 1188, *citing Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

The Court had previously elucidated on the nature of an actual case or controversy in *Information Technology Foundation of the Philippines v. Commission on Elections*,[50] *viz.*:

> The controversy must be justiciable – definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[51]

Thus, for an actual case or controversy to exist, the aggrieved party's rights must be fully established to be extant, due, and demandable *vis-à-vis* the other party's actions, which either violate or deny the said rights.

This is the crux of the instant petition and the Court's discussion: whether Legaspi, et al.'s constitutional rights of suffrage, to petition the government for redress of grievances, and to have access to information on matters of public concern were affected in any way by COMELEC's supposed denial of the *APELA* and its imperative request for a full manual recount of the election results in the Province of Pangasinan.

Beginning with regard to Legaspi, et al.'s right of suffrage, the Court harkens back to the case of *People v. San Juan*,[52] which outlined the conceptual core of the constitutional right of suffrage, *viz.*:

> Indeed, each time the enfranchised citizen goes to the polls to assert this sovereign will, that abiding credo of republicanism is translated into living reality. If that will must remain undefiled at the starting level of its expression and application, every assumption must be indulged in and every guarantee adopted to assure the unmolested exercise of the citizen's free choice. For to impede, without authority valid in law, the free and orderly exercise of the right of suffrage is to inflict the ultimate indignity on the democratic process. As numerous as they are insidious are long-standing techniques of terror and intimidation that have been conceived by man—in derogation of the right of suffrage—which we have repeatedly and unqualifiedly condemned. When the legislature provided in section 133 of the Revised Election Code an explicit and unequivocal guarantee of a voter's free access to the polling place, it could have intended no purpose other than to maintain inviolate the right to vote by safeguarding the voter against all manner of unauthorized interference and travesty that surveyors of fear can devise. Every unlawful obstacle, by whatever means or method, interposed to

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50 499 Phil. 281 (2005) [Per J. Panganiban, *En Banc*].

51 *Id.* at 304–305, *citing Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227 (1937); and *Delumen v. Republic*, 94 Phil. 287 (1954) [Per C.J. Paras].

52 130 Phil. 515 (1968) [Per J. Castro, *En Banc*].

> the free entry of a voter into the polling place to cast his vote, strikes at the very heart of the right of suffrage.[53]

Indeed, the common understanding of violations to the right of suffrage would be any impediment erected by the State or private persons and entities that would prevent legal and physical access to the polling precincts. However, here, the Court fails to see any violation thereof. Legaspi, et al. have admitted to participating in the electoral process by casting their votes on May 9, 2022. It is their submission, however, that corollary to the constitutional right of suffrage is the right to be fully informed of all steps and aspects of the vote-counting process, lest the right of suffrage be ultimately frustrated and denied by the supposed manipulation of COMELEC's automated election system, and to have the results fully and manually recounted should there be any whiff of electoral anomalies.

However, it is too much of a stretch for the Court to hold that the constitutional right of suffrage encompasses the supposed right of the sovereign electorate in a locality to have an entire election conducted thereat fully and manually recounted based on unsubstantiated surmises and unfounded conjectures that supposedly shadow the said election's conduct and results. This supposed right exists neither in the statute books nor in jurisprudence, and for the Court to recognize such right here would be a dangerous tread into the forbidden waters of judicial legislation.

Not even the case of *Loong*, which Legaspi, et al. cite as the authoritative precedent for the Court's power to recognize the suspension of the automated counting of ballots and the reversion to manual counting in the event of supervening circumstances, can be properly invoked here. Said case involved the VCMs utilized in certain municipalities in the Province of Sulu during the May 11, 1998 Autonomous Region in Muslim Mindanao Elections, which could not read the printed ballots due to an error in printing. The Court indeed noted that Republic Act No. 8436 failed to anticipate such technical issues, but that respondent was not powerless to address the same, *viz.*:

> . . . In enacting R.A. No. 8436, Congress obviously failed to provide a remedy where the error in counting is not machine-related for human foresight is not all-seeing. We hold, however, that the vacuum in the law cannot prevent the COMELEC from levitating above the problem. Section 2(1) of Article IX(C) of the Constitution gives the COMELEC the broad power "to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." Undoubtedly, the text and intent of this provision is to give the COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections. Congruent to

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[53] *Id.* at 522.

> this intent, the Court has not been niggardly in defining the parameters of powers of COMELEC in the conduct of our elections. . .
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> . . . .
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> . . . In the case at bar, the COMELEC order for a manual recount was not only reasonable. It was the only way to count the decisive local votes in the six (6) municipalities of Pata, Talipao, Siasi, Tudanan, Tapul and Jolo. The bottom line is that by means of the manual count, the will of the voters of Sulu was honestly determined. We cannot kick away the will of the people by giving a literal interpretation to R.A. 8436. R.A. 8436 did not prohibit manual counting when machine [count] does not work. Counting is part and parcel of the conduct of an election which is under the control and supervision of the COMELEC. It ought to be self-evident that the Constitution did not envision a COMELEC that cannot count the result of an election.[54]

Here, however, the situation is patently different. There is no allegation here that a great number of VCMs rejected or failed to read and count the ballots fed into them, or that an entire group of clustered polling precincts failed to transmit their results, or that an entire *barangay*, municipality, or city was not included in the provincial results of the May 9, 2022 National and Local Elections. There is not even an allegation here of a failure of elections in any part of Pangasinan. For COMELEC to exercise extraordinary powers here for a full manual count of the entire province would in turn require such extraordinary circumstances that would basically equate to an overall failure of the counting and transmission of the results of the May 9, 2022 National and Local Elections in Pangasinan—circumstances which are not present, alleged, or even proven in the instant petition. Also, therein lies the rub: the scenario in *Loong* would only work to be the jurisprudential basis for a manual count, *NOT a recount.*

On a minor note, the Court here also rejects Legaspi, et al.'s assertion that they can properly petition here for the correction of manifest errors in either the certificates of canvass or the election returns emanating from the Province of Pangasinan relative to the May 9, 2022 National and Local Elections. This old pre-proclamation procedure, as embodied in Section 15 of Republic Act No. 7166, was only cognizable before the appropriate canvassing body or COMELEC, and the Court notes that this provision has been rendered defunct due to the advent of automated elections in the Philippines.

Properly speaking, then, without any proof of the manipulations and anomalies complained of that would have prevented their votes from being counted, Legaspi, et al. had no legal justification to present to the COMELEC in order for the requested full manual count in Pangasinan to happen—to say nothing of a recount. Again, there is also no statutory basis for said recount—

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[54] *Loong v. Commission on Elections*, 365 Phil. 386, 419–420 (1999) [Per J. Puno, *En Banc*].

indeed, Legaspi, et al. could not even invoke the random manual audit provided for in Section 29 of Republic Act No. 8436 (as amended by Section 24[55] of Republic Act No. 9369), which only has a limited scope (*i.e.*, one polling precinct per congressional district).

Given the foregoing, the Court, thus, fails to see how the constitutional right of suffrage will suffer because of the COMELEC's supposed denial of the requested recount—the latter having no legal and factual basis. As things stand, Legaspi, et al.'s right of suffrage essentially and actually remains intact, unscathed, and unperturbed here.

Moreover, the Court fails to see how the COMELEC's communications amounted to a denial and violation of Legaspi, et al.'s constitutional right of suffrage. This is because of the sheer confusion caused by the language and terminologies employed in Atty. Fabia's Letters, especially the one dated June 15, 2022, which designates the *APELA* as a "people's initiative." While clearly the intended purpose of the *APELA* is nowhere near what is contemplated in the provisions Republic Act No. 6735, otherwise known as the "Initiative and Referendum Act," the COMELEC cannot be blamed for its puzzlement at the said designation.

Indeed, the COMELEC had no choice in the language of its last response, which had to directly address the explicit request for a people's initiative by merely calling Atty. Fabia's attention to the statutory and other formal requirements for a people's initiative. This is the same situation with the COMELEC's initial response to the *APELA*, because the COMELEC, well aware that no right to a recount of an entire province exists outside the realm of electoral protests filed by losing provincial or national candidates, could only respond with what is in the law for it to administer. Surely, the COMELEC cannot be faulted for its initial response after proverbially trying its best to squeeze water out of a stone.

Verily, the Court here cannot rightly and fairly consider the COMELEC's supposed denial as such, since obviously, there was no explicit language of such a denial in COMELEC's communications, and crucially, Legaspi, et al. are at fault and mostly to blame for the miscommunication as to what they were really demanding from the COMELEC. Not only did they demand for a recount without any legal and factual basis; they also caused a legal bemusement at COMELEC's expense with their poor choice of words

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[55] SEC. 24. A new Section 29 is hereby provided to read as follows:

Section 29. *Random Manual Audit.* – Where the AES is used, there shall be a random manual audit in one precinct per congressional district randomly chosen by the Commission in each province and city. any difference between the automated and manual count will result in the determination of root cause and initiate a manual count for those precincts affected by the computer or procedural error."

that far from clarified the situation, and which they used as a springboard for their direct resort to this Court. With no real and actual denial of anything related to Legaspi, et al.'s constitutional right of suffrage here, the Court consequently fails to detect any actual case or controversy relative to the same.

On a related note, the Court sees merit in affirming that the right of suffrage should indeed cover the accompanying right to have one's votes properly and rightly counted *vis-à-vis* an election. However, with no justiciable controversy here relative to Legaspi, et al.'s right of suffrage to begin with, such a ruling cannot be made at this time. The Court will, however, hold at present that for actual cases and controversies to be considered as extant and properly the basis for cases that invoke judicial review, concrete proof of an initiating party's rights and violations (existing or impending) thereof must be attendant. In other words, mere speculations and surmises relative to future *and past violations* of a party's rights are insufficient for purposes of determining whether a case constitutes a justiciable controversy.

As for Legaspi, et al.'s right to petition the government for redress of grievances, the Court simply and summarily notes that nothing here has prevented them from being heard before the COMELEC, and indeed before the Court. Their right to express their apprehensions and doubts with regard to the conduct and results of the May 9, 2022 National and Local Elections is constitutionally guaranteed and recognized, and the Court sees no indication here at all of the said right being violated or stymied.

Going now to Legaspi, et al.'s right to be informed on matters of public concern, the Court must point out at this stage that this should have been the anchor and lodestar of the instant petition. This is because it is fittingly the most appropriate constitutional right that Legaspi, et al. can invoke in order for their minds to be put at ease relative to the truth behind the results and conduct of the May 9, 2022 National and Local Elections.

A cursory discussion of this critical constitutional right is in order. Article III, Section 7 of the Constitution guarantees that "[t]he right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law." This has been accorded the designation in recent common parlance as the people's *freedom of information (FOI)*, which was first mentioned in Philippine jurisprudence in the case of *Subido v. Ozaeta*[56] albeit at the time as a corollary adjunct of the freedom of the press.

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[56] 80 Phil. 383 (1948) [Per J. Tuazon, *En Banc*].

Subido has been subsequently cited numerous times relative to FOI cases before the Court. In *Baldoza v. Judge Dimaano*,[57] the Court noted that the 1973 Constitution expressly recognized FOI[58] as part of the State's overall recognition of the importance of such right to citizens in a democracy, *viz.*:

> The access to public records predicated [is] on the right of the people to acquire information on matters of public concern. Undoubtedly in a democracy, the public has a legitimate interest in matters of social and political significance. In an earlier case, this Court held that *mandamus* would lie to compel the Secretary of Justice and the Register of Deeds to examine the records of the latter office. predicating the right to examine the records on statutory provisions, and to a certain degree by general principles of democratic institutions, this Court stated that while the Register of Deeds has discretion to exercise as to the manner in which persons desiring to inspect, examine or copy the records in his office may exercise their rights, such power does not carry with its authority to prohibit. . .
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> . . . .
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> The New [1973] Constitution now expressly recognizes that the people are entitled to information on matters of public concern and thus are expressly granted access to official records, as well as documents of official acts, or transactions, or decisions, subject to such limitations imposed by law. The incorporation of this right in the Constitution is a recognition of the fundamental role of free exchange of information in a democracy. There can be no realistic perception by the public of the nation's problems, nor a meaningful democratic decision-making if they are denied access to information of general interest. Information is needed to enable the members of society to cope with the exigencies of the times. As has been aptly observed: "Maintaining the flow of such information depends on protection for both its acquisition and its dissemination since, if either process is interrupted, the flow inevitably ceases." However, restrictions on access to certain records may be imposed by law. Thus, access restrictions imposed to control civil insurrection have been permitted upon a showing of immediate and impending danger that renders ordinary means of control inadequate to maintain order.[59] (Citations omitted)

FOI was also invoked as basis for the Court's rulings in *Tañada v. Hon. Tuvera*,[60] where the printing of unpublished presidential issuances in the Official Gazette was ordered lest the said issuances be deemed to have no binding force and effect. The Court said as much about FOI—which was adopted *in toto* from the 1973 Constitution for inclusion by reference in the

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57 163 Phil. 15 (1976) [Per J. Antonio, Second Division]. See *also Lantaco, Sr. v. Llamas*, 195 Phil. 325 (1981).

58 CONSTITUTION (1973), article IV, sec. 6: "[t]he right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, shall be afforded the citizen subject to such limitations as may be provided by law."

59 *Baldoza v. Judge Dimaano*, 163 Phil. 15, 19-21 (1976).

60 230 Phil. 528 (1986) [Per J. Cruz, *En Banc*].

1986 Freedom Constitution—in relation to the requirement of publication for laws and issuances of general application, *viz.*:

> We note at this point the conclusive presumption that every person knows the law, which of course presupposes that the law has been published if the presumption is to have any legal justification at all. It is no less important to remember that Section 6 of the Bill of Rights recognizes "the right of the people to information on matters of public concern," and this certainly applies to, among others, and indeed especially, the legislative enactments of the government.[61]

The first FOI case decided by the Court under the 1987 Constitution was the seminal and landmark decision in *Legaspi v. Civil Service Commission*,[62] where the Court upheld a citizen's access to records pertaining to the civil service eligibility of certain persons employed in the Cebu City Health Department. The Court noted that "it is the legitimate concern of citizens to ensure that government positions requiring civil service eligibility are occupied only by persons who are eligible."[63] In reasoning that such information was covered by FOI, and thus, petitioner therein was entitled to the Court's order for *mandamus*, the absence of any limitation in law that restricted access to said information was discussed, *viz.*:

> In the instant case, while refusing to confirm or deny the claims of eligibility, the respondent has failed to cite any provision in the Civil Service Law which would limit the petitioner's right to know who are, and who are not, civil service eligible. We take judicial notice of the fact that the names of those who pass the civil service examinations, as in bar examinations and licensure examinations for various professions, are released to the public. Hence, there is nothing secret about one's civil service eligibility, if actually possessed. Petitioner's request is, therefore, neither unusual nor unreasonable. And when, as in this case, the government employees concerned claim to be civil service eligible, the public, through any citizen, has a right to verify their professed eligibilities from the Civil Service Commission.
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> The civil service eligibility of a sanitarian being of public concern, and in the absence of express limitations under the law upon access to the register of civil service eligible for said position, the duty of the respondent Commission to confirm or deny the civil service eligibility of any person occupying the position becomes imperative. *Mandamus* therefore lies.[64]

Legaspi also made the following important pronouncements: (1) the constitutional provision recognizing FOI is "self-executing" and can be invoked "without need for any ancillary act of the Legislature;"[65] (2) the

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61 *Id.* at 534.
62 234 Phil. 521 (1987) [Per J. Cortes, *En Banc*].
63 *Id.* at 536.
64 *Id.*
65 *Id.* at 528.

"government agency having custody of the desired information" has the "burden of showing that the information requested is not of public concern, or if it is of public concern, that the same has been exempted by law from the operation of the guarantee;"[66] and (3) "[i]n determining whether or not a particular information is of public concern, there is no rigid test which can be applied."[67] Relative to this last pronouncement, the Court explained thus:

> "Public concern" like "public interest" is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine in a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public.[68]

Verily, *Legaspi* has set the standard for the Court's subsequent rulings relating to FOI cases. In *Valmonte v. Belmonte, Jr.*[69] the Court ruled that while information and documents on Government Service Insurance System (GSIS) loans granted to members of the former Batasang Pambansa were indeed matters of public interest and concern that were not covered by any exceptions to FOI, the GSIS could not be compelled to "prepare lists, abstracts, summaries and the like in [Legaspi, et al.'s] desire to acquire information on public concern."[70] Speaking through the late former Associate Justice Irene R. Cortes, who also penned the ruling in *Legaspi*, the Court granted the *mandamus* petition by only allowing access to the said information and documents "subject to reasonable regulations as to the time and manner of inspection"[71] to be determined and deemed necessary by GSIS.

In *Aquino-Sarmiento v. Morato*,[72] the Court granted access to the decisions and individual members' voting slips of the Movie & Television Review and Classification Board, since the said governmental actions and documents were made pursuant to official public functions and are public in character. In addition, the Court noted the following:

> The Court is not unaware of RA 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) which provides, among others, certain exceptions as regards the availability of official records or documents to the requesting public, e.g., closed-door Cabinet sessions and deliberations of this Court. Suffice it to state, however, that the exceptions therein enumerated find no application in the case at bar. Petitioner['s] request is not

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66 *Id.* at 534–535.
67 *Id.* at 535.
68 *Id.*
69 252 Phil. 264 (1989) [Per J. Cortes, *En Banc*].
70 *Id.* at 279.
71 *Id.* at 278.
72 280 Phil. 560 (1991) [Per J. Bidin, *En Banc*].

> concerned with the deliberations of respondent Board but with its documents or records made after a decision or order has been rendered. Neither will the examination involve disclosure of trade secrets or matters pertaining to national security which would otherwise limit the right of access to official records[.][73]

In *Chavez v. PCGG*,[74] the Court expressly recognized four limitations on the right to FOI: "(1) national security matters and intelligence information, (2) trade secrets and banking transactions, (3) criminal matters, and (4) other confidential information."[75] Said confidential information includes information relating to ongoing negotiations and/or proposals relative to the PCGG's discussions with putative owners and holders of ill-gotten wealth, *viz.*:

> Considering the intent of the Constitution, we believe that it is incumbent upon the PCGG and its officers, as well as other government representatives, to disclose sufficient public information on any proposed settlement they have decided to take up with the ostensible owners and holders of ill-gotten wealth. Such information, though, must pertain to definite propositions of the government, not necessarily to intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the "exploratory" stage. There is a need, of course, to observe the same restrictions on disclosure of information in general, as discussed earlier—such as on matters involving national security, diplomatic or foreign relations, intelligence and other classified information.[76]

In *Gonzales v. Hon. Narvasa*,[77] relative to a *mandamus* petition for the disclosure of the names of officials holding multiple positions in government and a list of the recipients of luxury vehicles that had recently been seized by the Bureau of Customs and turned over to the Office of the President, the Court ordered the Executive Secretary to answer therein petitioner's letter requesting the said information. Said the Court:

> Thus, we agree with petitioner that respondent Zamora, in his official capacity as Executive Secretary, has a constitutional and statutory duty to answer petitioner's letter dealing with matters which are unquestionably of public concern—that is, appointments made to public offices and the utilization of public property. With regard to petitioner's request for copies of the appointment papers of certain officials, respondent Zamora is obliged to allow the inspection and copying of the same subject to the reasonable limitations required for the orderly conduct of official business.[78] (Citation omitted)

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73 *Id.* at 570.
74 360 Phil 133 (1998) [Per J. Panganiban, First Division].
75 *Id.* at 160.
76 *Id.* at 166.
77 392 Phil. 518 (2000) [Per J. Gonzaga-Reyes, *En Banc*].
78 *Id.* at 531.

In *Chavez v. PEA*, the Court clarified that FOI could be invoked in order to gain access to official information on on-going negotiations before the signing of a government contract, especially in light of the transparency requirements of public bidding, and subject to the general limitations as discussed above. In *Kilusang Mayo Uno v. Director-General of the National Economic & Development Authority*,[79] the Court made an offhand note that the people's right to FOI did not cover personal matters embodied in strictly confidential personal data collected by the government. In *Hilado v. Judge Reyes*,[80] the Court restated and affirmed the public's right to access court records, which include pleadings and papers filed by private parties, *viz.*:

> In fine, access to court records may be permitted at the discretion and subject to the supervisory and protective powers of the court, after considering the actual use or purpose for which the request for access is based and the obvious prejudice to any of the parties. In the exercise of such discretion, the following issues may be relevant: "whether [the] parties have interest in privacy, whether [the] information is being sought for legitimate purpose or for improper purpose, whether there is threat of particularly serious embarrassment to [a] party, whether [the] information is important to public health and safety, whether sharing of [the] information among litigants would promote fairness and efficiency, whether [the] party benefitting from [the] confidentiality order is [a] public entity or official, and whether [the] case involves issues important to the public.[81] (Citations omitted)

In *Bantay Republic Act or Ba-Ra 7941 v. Commission on Elections*,[82] the Court affirmed the people's right to FOI when it compelled COMELEC to publicly disclose the names of nominees of party-list organizations that were participating in the May 14, 2007 National and Local Elections. In *Chavez v. National Housing Authority*,[83] the Court actually lamented the fact that there was "still no enabling law that provides the mechanics for the compulsory duty of government agencies to disclose information on government transactions."[84] There is still no law on the statute books to date. In the same case, the Court also made a distinction between a government agency's duty to disclose information from its duty to provide or permit access to information, *viz.*:

> Thus, the duty to disclose information should be differentiated from the duty to permit access to information. There is no need to demand from the government agency disclosure of information as this is mandatory under the Constitution; failing that, legal remedies are available. *On the other hand, the interested party must first request or even demand that he be allowed access to documents and papers in the particular agency. A request or demand is required; otherwise, the government office or agency will not know of the*

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79 521 Phil. 732 (2006) [Per J. Carpio, *En Banc*].
80 528 Phil. 703 (2006) [Per J. Carpio Morales, Third Division].
81 *Id.* at 721.
82 551 Phil. 1 (2007) [Per J. Garcia, *En Banc*].
83 557 Phil. 29 (2007) [Per J. Velasco, Jr., *En Banc*].
84 *Id.* at 112.

> *desire of the interested party to gain access to such papers and what papers are needed.* The duty to disclose covers only transactions involving public interest, while the duty to allow access has a broader scope of information which embraces not only transactions involving public interest, but any matter contained in official communications and public documents of the government agency.[85]

This requirement of a prior demand for access to information is of particular significance to the instant petition, which will be discussed later below.

In the historic case of *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*,[86] the Court affirmed that the people's right to FOI covered therein Legaspi, et al.'s right to be consulted on the peace agenda *vis-à-vis* the Government's negotiations with the Moro Islamic Liberation Front, as well as information related to the negotiations for the proposed Memorandum of Agreement on the Ancestral Domain of the Tripoli Agreement on Peace of 2001. The Government's invocation of executive privilege was crucially not recognized, since the executive order defining the authority of the Government's negotiating panel had already recognized the public's right to be consulted at various levels (both national and local) with regard to the said peace talks.[87]

In the more relevant case of *Guingona, Jr. v. Commission on Elections*,[88] the Court compelled the COMELEC to fully explain to the public its preparations for the May 10, 2010 National and Local Elections—the first fully automated national elections in the Philippines—on the basis of a catena of statutory provisions that relate to its duties as the country's electoral administrator. Incidentally, one provision cited by the Court therein is Section 1 of Republic Act No. 8436 (as amended by Section 1 of Republic Act No. 9369), or the State's declared policy, among others, to adopt an automated election system with a transparent and credible process of ballot counting and tally transmission.

The Court here notes that in *Guingona*, it had indeed granted therein petitioners' plea for *mandamus* even if the petition was anchored on mere news reports of supposed technical and logistical preparations relative to the May 10, 2010 National and Local Elections. However, in that case, the Court recognized the urgency of the petition, since it was filed on April 23, 2010—i.e., a little over two weeks before polling day. Indeed, the Court's Resolution was

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85 *Id.* at 113.

86 589 Phil. 387 (2008) [Per J. Carpio Morales, *En Banc*].

87 *See*, however, *Akbayan Citizens' Action Party v. Aquino*, 580 Phil. 422 (2008) [Per J. Carpio Morales, *En Banc*], where the Court upheld executive privilege *vis-à-vis* documents relating to the then-ongoing diplomatic negotiations for the proposed Japan-Philippines Economic Partnership Agreement.

88 634 Phil. 516 (2010) [Per J. Carpio, *En Banc*].

promulgated on May 6, 2010, or four days before polling day. The Court deemed it wise to brush aside technicalities and immediately order the COMELEC to inform the public of all election-related preparations even if there was no prior demand by any party due to the fact that time was already of the essence. Indeed, the time factor made that case one of transcendental importance.

In *Antolin v. Domondon*,[89] which is a case that will be crucial to the ultimate resolution of the instant petition, the Court balanced interests relating to an FOI demand for access to licensure examination papers, *viz.*:

> We are prepared to concede that national board examinations such as the CPA Board Exams are matters of public concern. The populace in general, and the examinees in particular, would understandably be interested in the fair and competent administration of these exams in order to ensure that only those qualified are admitted into the accounting profession. And as with all matters pedagogical, these examinations could be not merely quantitative means of assessment, but also means to further improve the teaching and learning of the art and science of accounting.
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> On the other hand, we do realize that there may be valid reasons to limit access to the Examination Papers in order to properly administer the exam. More than the mere convenience of the examiner, it may well be that there exist inherent difficulties in the preparation, generation, encoding, administration, and checking of these multiple choice exams that require that the questions and answers remain confidential for a limited duration. However, the PRC is not a party to these proceedings. they have not been given an opportunity to explain the reasons behind their regulations or articulate the justification for keeping the Examination Documents confidential. In view of the far-reaching implications of this case, which may impact on every board examination administered by the PRC, and in order that all relevant issues may be ventilated, we deem it best to remand these cases to the RTC for further proceedings.[90]

In *Re: Request for Copy of 2008 SALN and PDS of the Justices of the Supreme Court and Officers and Employees of the Judiciary*,[91] the Court effectively promulgated strict guidelines for access to copies of the statements of assets, liabilities, and net worth (or SALNs), personal data sheets, and *curricula vitae* of members, officials, and employees of the judiciary, despite the concerns of some magistrates regarding the motives behind such requests for access, *viz.*:

> The Court notes the valid concerns of the other magistrates regarding the possible illicit motives of some individuals in their requests for access to

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89 637 Phil. 164 (2010) [Per J. Del Castillo, First Division].

90 *Id.* at 182–183. *See also Antolin-Rosero v. Professional Regulation Commission*, G.R. No. 220378, June 30, 2021 [Per J. Inting, Third Division].

91 687 Phil. 24 (2012) [Per J. Mendoza, *En Banc*].

> such personal information and their publication. However, custodians of public documents must not concern themselves with the motives, reasons and objects of the persons seeking access to the records. The moral or material injury which their misuse might inflict on others is the requestor's responsibility and lookout. Any publication is made subject to the consequences of the law. While public officers [having] custody or control of public records have the discretion to regulate the manner in which records may be inspected, examined or copied by interested persons, such discretion does not carry with it the authority to prohibit access, inspection, examination, or copying of records. After all, public office is a public trust. Public officers and employees must at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[92]

In *Initiatives for Dialogue & Empowerment through Alternative Legal Services, Inc. v. Power Sector Assets & Liabilities Management Corp. (PSALM)*,[93] the Court bemoaned PSALM's refusal to accede to a request for detailed information regarding the winning bidder in the asset purchase agreement that covered the Angat Hydro-Electric Power Plant, which was a simple request covered by the transparency policy of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001." In *Sereno v. Committee on Trade & Related Matters (CTRM) of the National Economic and Dev't. Authority (NEDA)*,[94] restated the rule on government agencies bearing the burden of proving that information requested from them are excluded from the coverage of FOI, *viz.*:

> Every claim of exemption, being a limitation on a right constitutionally granted to the people, is liberally construed in favor of disclosure and strictly against the claim of confidentiality. However, the claim of privilege as a cause for exemption from the obligation to disclose information must be clearly asserted by specifying the grounds for the exemption. In case of denial of access to the information, it is the government agency concerned that has the burden of showing that the information sought to be obtained is not a matter of public concern, or that the same is exempted from the coverage of the constitutional guarantee.[95]

Most recently in *Colmenares v. Duterte*,[96] the Court pronounced the confidentiality clauses of certain loan agreements concluded between the Government and Chinese financial institutions as unduly restrictive and would not bar public availability of the contents of the entirety of the loan agreements in question. Here, the people's right to FOI is seen to have been complemented by Article XII, Section 21 of the Constitution, which explicitly states that

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92 *Id.* at 44–45

93 696 Phil. 486 (2012) [Per J. Villarama, Jr., *En Banc*].

94 780 Phil. 1 (2016) [Per J. Bersamin, First Division].

95 *Id.* at 16.

96 G.R. No. 245981, August 9, 2022 [Per J. Lopez. *En Banc*].

"[i]nformation on foreign loans obtained or guaranteed by the Government shall be made available to the public."

Verily, the constancy of jurisprudence relating to FOI, as elucidated above and which is a point of pride for Philippine constitutional law, shows how the Court accords primacy to such a fundamental right of an ordinary citizen to inquire into the dealings and functions of governance and administration that occur behind the scenes, so to speak. Subject to certain exceptions and limitations, a citizen whose right to FOI has either been denied or violated by a government agency may bring forth a suit for *mandamus* for the vindication of said right and the judicial compulsion of disclosure and/or grant of access to the State's troves and inventories that hold information crucial to the public discourse and welfare.

Said access may be subject to practical considerations for the orderly and sensible retrieval and examination of records, but generally speaking, no government agency may keep the proverbial door to such records shut in the absence of any compelling justification that must be judicially approved. This bias in favor of transparency and accountability is in keeping with democratic traditions and the sacred principle of popular sovereignty. It is thus both constitutional and commonsensical policy for every organ of the State to operate under a default open-door policy when it comes to the people's right to FOI.

However, the ultimate question here remains: was Legaspi, et al.'s right to FOI here either violated or denied by respondent to begin with?

Based on the records of the case, the Court answers the aforementioned question in the negative. To explain this, it is necessary to discuss the fifth issue of whether Legaspi, et al. exhausted all administrative remedies before resorting to the instant petition.

To recapitulate, the language of the *APELA* mentioned nothing about any request for the grant of access to any documents, electronic or otherwise, relative to the operation and transmission of the VCMs utilized in Pangasinan for the May 9, 2022 National and Local Elections. Nothing in Atty. Fabia's Letter dated June 15, 2022 to COMELEC's Law Department indicates any request for access to any specific information in COMELEC's custody. In actuality, said Letter bears only a vague invocation of Legaspi, et al.'s right to FOI without any particulars other than their desire to know how their votes were counted, tallied, and reported. Even the language of the Addendum dated June 20, 2022 is vague, since it requests for the "opening of the ballot boxes to be witnessed by the people, count the ballots manually, allow the SD cards to be audited by independent I.T. professionals and the *tambiolo* system be

employed in the selection of precincts to be subjected to Random Manual Audit all at the expense of Legaspi, et al."[97]

While this may almost be considered as a positive request for access to information, the Court must note that what Legaspi, et al. (through Atty. Fabia) are asking for here are all still in relation to the full manual recount of the provincial results, which has already been established to have no basis in law and fact. To consider this as an FOI request independent of the overarching context of the requested full manual recount would be pushing the envelope further than bearable, and would put an undue burden on both the Court and COMELEC to decipher and anticipate what exact information Legaspi, et al. are actually requesting. Are they, for instance, only interested in examining the ballots and secure digital (SD) cards? Are they not also interested in the transmission logs and other electronic records of the entire automated election system? What about COMELEC's transparency and other servers used on May 9, 2022? And what of the actual printouts of the VCMs that were generated immediately after the polls closed—including the voter-verified paper audit trail receipts that were generated for each voter and kept in COMELEC's custody?

Verily, such a generally worded, overly broad, and vague reference to ballot boxes and SD cards in an addendum to an already confusing request cannot rightly be considered to have been a proper demand for FOI here. Also, even if Legaspi, et al. mentioned in their prayer that they are indeed interested in gaining access to the transmission logs,[98] they are not actually requesting that they personally or by proxy be granted access to the same; they ask that the same be submitted to the Court with no reference to any purpose therefor. This is no longer an FOI request but virtually a motion to compel discovery filed before a tribunal that is not a trier of facts.[99]

Moreover, the Court takes judicial notice of COMELEC's Resolution No. 10685,[100] which outlines its FOI Manual that it adopted specifically for the recognition and enforcement of the people's constitutional right to FOI with regard to election-related matters. Its comprehensive contents provide for a veritable and well-defined procedure by which a citizen may request for access to information in the custody of COMELEC's offices and officials, and even

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97 *Rollo*, p. 345.

98 *Id.* at 26.

99 See *Gios-Samar, Inc. v. Department of Transportation and Communications*, 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*], specifically: "[a]ccordingly, for the guidance of the bench and the bar, we reiterate that when a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions." *Id.* at 187.

100 Promulgated on December 16, 2020.

has a commendable provision relating to a presumption in favor of disclosure and transparency, *viz.*:

> Section 8. *Application and Interpretation.* – There shall be a legal presumption in favor of access to information, public records and official records. No request for information shall be denied unless it clearly falls under any of the exceptions listed in the inventory or updated Inventory of Exceptions circularized by the Office of the President provided in the succeeding section.
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> The determination of the applicability of any of the exceptions to the request shall be the responsibility of the Head of the Office which is in custody or control of the information, public record or official record, or the responsible central or field officer duly designated by him in writing.
>
> In making such determination, the Head of the Office or his designated officer shall exercise reasonable diligence to ensure that no exception shall be used or availed of to deny any request for information or access to public records, or official records if the denial is intended primarily and purposely to cover up a crime, wrongdoing, graft or corruption.

The Court, thus, wonders why Legaspi, et al. did not first resort to this available process, which is complete with a procedure for the administrative appeal of denials of FOI requests and an express recognition in Section 37 of the said Resolution that "[u]pon exhaustion of all administrative remedies, the requesting party may file the appropriate judicial action in accordance with the Rules of Court." In effect, there was no denial of Legaspi, et al.'s right to FOI, since there was no proper FOI request here to begin with—despite an exhaustive FOI policy and manual in place since 2020.

The doctrine of exhaustion of administrative remedies stands as a pillar of the judicial system in this country by which disputes and controversies are decided and settled. Its essence was eloquently laid out in *Dimson (Manila), Inc. v. Local Water Utilities Administration*,[101] *viz.*:

> The doctrine of exhaustion of administrative remedies requires that when an administrative remedy is provided by law, relief must be sought by exhausting this remedy before judicial intervention may be availed of. No recourse can be had until all such remedies have been exhausted, and the special civil actions against administrative officers should not be entertained if there are superior administrative officers who could grant relief. *Carale v. Abarintos* explains the reason for this rule, thus:
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> Observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy. It ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters within the competence of the administrative agency, avoidance of

[101] 645 Phil. 309 (2010) [Per J. Peralta, Second Division].

> interference with the functions of the administrative agency by withholding judicial action until the administrative process had run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for this principle. The administrative process is intended to provide less expensive and [speedier] solutions to disputes. Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reasons of law, comity and convenience, will not entertain the case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.
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> Accordingly, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.
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> One final note. The doctrine of exhaustion of administrative remedies is a judicial recognition of certain matters that are peculiarly within the competence of the administrative agency to address. It operates as a shield that prevents the overarching use of judicial power and thus hinders courts from intervening in matters of policy infused with administrative character. The Court has always adhered to this precept, and it has no reason to depart from it now.[102]

There are indeed, exceptions to the doctrine, as the Court enumerated in *Maglalang v. Philippine Amusement and Gaming Corp.*,[103] *viz.*:

> (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an *alter ego* of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; and (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) where the rule of qualified

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102 Id. at 322.

103 723 Phil. 546 (2013) [Per J. Villarama, Jr., First Division], *See also Samar II Electrive Cooperative, Inc., et al., v. Seludo*, Jr., 686 Phil. 786 (2012) [Per J. Peralta, Third Division]; and *Ejera v. Merto*, 725 Phil. 180 (2014) [Per J. Bersamin, First Division].

> political agency applies; and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot.[104]

The Court sees none of the foregoing exceptions present here. Even if the Court had previously noted in the *Valmonte* case[105] that issues requiring the interpretation of the scope of the people's right to FOI were purely legal questions that would be an exception to the doctrine of exhaustion of administrative remedies, the Court must note now that such reasoning is outdated due to the present competence of government agencies with FOI policies and manuals (such as COMELEC) to rule in the first instance relative to FOI requests filed before them. As such, rulings on FOI requests are no longer pure questions of law, but now involve factual issues properly cognizable before government agencies with FOI adjudication processes, especially if they are highly technical in nature.

Thus, for failing to avail of an extant remedy properly within the province and primary competence of COMELEC, Legaspi, et al.'s assertion that they no longer had any plain, speedy, or adequate remedy in the ordinary course of law falls apart. As a requirement for both petitions for the prerogative writs of *certiorari* and *mandamus*, this constitutes a fatal *lacuna* in the instant Petition.

As for the sixth and final issue, the Court will first discuss the propriety (or more properly, the lack thereof) of *certiorari* to the case at bar. Another requisite for a petition for *certiorari* is the allegation of the existence of grave abuse of discretion, which was explained by the late Dean Willard B. Riano (Riano) in one of his last commentaries, *viz.*:

> 1. The standard of review in a petition for *certiorari* is whether the respondent has committed any grave abuse of discretion amounting to lack or excess of jurisdiction (*Lagman v. Medialdea, G.R. No. 231771, July 4, 2017*). *Certiorari* will not lie when there is a mere abuse of discretion by the tribunal, board or officer exercising judicial or quasi-judicial functions. Such kind of abuse does not amount to lack or excess of jurisdiction. For *certiorari* to lie, the abuse must be "grave" (*Sec. 1, Rule 65, Rules of Court*).
>
> Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility (*Basmala v. COMELEC, 567 SCRA 664, 668*). In a special civil action for *certiorari*, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of the public respondent for his issuance of the impugned order (*Gravides v. COMELEC, G.R. No. 199433, November 13, 2012; See also JM Agronomic Company, Inc. v. Liclican, G.R. No. 208587, July 29, 2015*).

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104 *Id.* at 557.

105 *Supra* note 70.

> 2. The phrase "grave abuse of discretion" amounting to lack or excess of jurisdiction means such capricious and whimsical exercise of judgment by the tribunal exercising judicial or quasi-judicial functions as to amount to lack of power (*Jardin v. NLRC, 326 SCRA 299, 304; See also Saint Mary Crusade to Alleviate Poverty of Brethren Foundation, Inc. v. Riel, G.R. No. 176508, January 12, 2015; JM Agronomic Company, Inc. v. Liclican, G.R. No. 208587, July 29, 2015; Arnado v. COMELEC, G.R. No. 210164, August 18, 2015*).
>
> To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law (*Tua v. Mangrobang, G.R. No. 170701, January 22, 2014; Dacles v. Millennium Erectors Corporation, G.R. No. 209822, July 8, 2015*).[106]

Even if one considers that COMELEC's communications in response to the requests for the full manual recount in Pangasinan were constitutive of acts done in its quasi-judicial functions, the Court fails to see what amounted to grave abuse of discretion here. Not only has it been established that COMELEC actually did not deny Legaspi, et al.'s request; it had also not been given any opportunity to accede to any FOI-related request, since Legaspi, et al. failed to avail of the remedies available in COMELEC's FOI Manual. Moreover, and as discussed above, it cannot be faulted for being confused with Legaspi, et al.'s requests, since their own wording muddled matters to a regrettably absurd degree. Clearly, COMELEC could not have committed grave abuse of discretion when it did not actually understand what proper relief they were seeking. Ultimately, according to Riano, "[t]he burden is on petitioner to prove that the respondent tribunal committed not merely a reversible error but also a grave abuse of discretion amounting to lack or excess of jurisdiction."[107] Here, Legaspi, et al. have obviously not sufficiently discharged said burden.

As for *mandamus*, the Court here reiterates that no statutory basis exists for Legaspi, et al.'s plea for a full manual recount of the provincial results of a national/local election. This right only pertains to losing candidates who have filed election protests for the revision of ballots they have identified as objectionable. Not even the generally worded declaration of policy in Republic Act No. 9369 can properly be the basis for such action by respondent. The proper forum for the grant of such a right to the public lies in Congress, and not the courts. As Riano commented, the issuance of a writ of *mandamus* is conditioned on the existence of a clear legal right, *viz.*:

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[106] Willard Riano, II CIVIL PROCEDURE: THE BAR LECTURE SERIES (2019 ed.), pp. 211–212.

[107] *Id.* at 214, *citing Umali v. The Judicial & Bar Council*, 814 Phil. 253 (2017) [Per J. Velasco, Jr., *En Banc*].

> 1. For a writ of *mandamus* to be issued, it is essential that petitioner should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required (*Philippine Coconut Authority v. Primex Coco Products, 495 SCRA 763, 777; Umali v. Judicial and Bar Council, G.R. No. 228628, July 25, 2017*).
>
> 2. The writ of *mandamus* can be awarded only when the petitioner's legal right to the performance of the particular act, which is sought to be compelled, is *clear* and *complete*. Under Rule 65 of the Rules of Court, **a** *clear legal right is a right which is indubitably granted by law or inferable as a matter of law. If the right is clear and the case is meritorious, objections raising merely technical issues will be disregarded. But where the right sought to be enforced is in substantial doubt or dispute, mandamus cannot issue* (*Angeles v. Secretary of Justice, 614 SCRA 478, 494*).
>
> 3. For *mandamus* to issue, it is essential that the person petitioning for it has a clear legal right to the claim sought. It will not issue to enforce a right, or to compel compliance with a duty, which is questionable or over which a substantial doubt exists. Thus, unless the right to relief sought is unclouded, it will be denied (*Araos v. Regala, 613 SCRA 207, 215*).[108] (Emphases and underscoring supplied; italics in the original).

With regard to Legaspi, et al.'s constitutional right to FOI, the Court recognizes that in theory, they are indeed entitled to the same. However, due to the vagueness and breadth of the information mentioned in their pleadings and communications to COMELEC, and also due to the fact that they failed to exhaust the administrative process (and accompanying internal appellate procedure) established by COMELEC in its FOI Manual, *mandamus* will still not lie here in their favor. Their right exists in fact, but it is in the way they asked for the information desired that has compromised the instant petition. They indeed have a constitutional right to FOI, but without properly requesting for the information they so desire, the said right cannot be embodied and manifested for proper and appropriate identification and action. In other words, without a concrete demonstration as to what information is being accessed—in order for the proper authorities to make proper determinations as to their inclusion or exception under the umbrella of FOI—the said right cannot ultimately be given its due.

Moreover, and crucially, the Court here must reexamine the notion that *mandamus* is still the appropriate remedy to enforce and recognize the people's constitutional right to FOI in light of government agencies such as COMELEC having crafted and promulgated FOI procedures that now appear to be quasi-judicial in nature. This is critical to the determination of whether a government agency's action on an FOI request constitutes either a ministerial or a discretionary act. As Riano commented,

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[108] *Id.* at 253.

> 1. *Mandamus* is a writ that commands the performance of a purely ministerial duty imposed by law (*Black's Law Dictionary, 5th Ed., 866*). A duty is ministerial when it demands no special judgment, discretion or skill. It is one in which nothing is left to discretion and is a simple and definite duty imposed by law (*Black's Law Dictionary, 5th Ed., 899*). Hence, *mandamus* will not be available to compel the performance of a discretionary act.
>
> *Mandamus*, for example, will not lie to control the discretion of a judge or compel him to decide a motion pending before him in a particular way (*Morada v. Caluag, 5 SCRA 1128, 1130*). In matters involving the exercise of judgment and discretion, *mandamus* may only be resorted to, to compel the respondent to take action; it cannot be used to direct the manner or the particular way discretion is to be exercised (*Cuarto v. Ombudsman, 658 SCRA 580, 594*). Hence, a judge may be compelled to act and rule on the motion. (Bar 1991)
>
> 2. For the writ of *mandamus* to issue, the petitioner must show that the act sought to be performed or compelled is ministerial on the part of the respondent. An act is ministerial when it does not require the exercise of judgment and the act is performed pursuant to a legal mandate. The burden of proof is on the petitioner to show that he is entitled to the performance of a legal right, and that the respondent has a corresponding duty to perform the act. The writ may not issue to compel an official to do anything that is not his duty to do so, or that is his duty not to do, or to obtain for the petitioner anything to which he is not entitled by law (*Mandanas v. Ochoa, G.R. No. 199802, July 3, 2018*).[109]

Clearly, the fact that COMELEC's FOI Manual provides for the constitution of an appeals and review committee to decide appeals from initial denials of FOI requests means that the administrative process as spelled out in the FOI manuals and procedures of government agencies like COMELEC have actually and already become *discretionary* in nature, and no longer purely ministerial. Government officials following their respective office's FOI manuals (which obviously vary in terms of scope and exceptions depending on the nature of the mandate of the government agency involved) must actually decide on the facts and law relative to FOI requests, unlike before when exceptions to FOI were few and far between and the disclosure or granting of access to information were basically ministerial functions. This, however, is not a regrettable development in the growth of FOI regulation, but a growing recognition of the importance of FOI in administrative law and practice. *As such, actions on FOI requests under the auspices of the concerned agency's FOI manual or similar established procedures that involve the determination of the factual and legal aspects of the said requests—especially if an internal appellate process is provided for—are deemed to be discretionary actions properly reviewable by either appeal or* certiorari, *depending on the attendant circumstances.*

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[109] *Id.* at 254–255.

To conclude, the Court must state that this ruling should not be seen or taken to be, on balance, an ultimate denial of Legaspi, et al.'s constitutional right to FOI – far from it. The Court here has actually recognized that they can still avail of the remedies contained in the COMELEC's FOI manual for the information they desire *vis-à-vis* the truth of the May 9, 2022 National and Local Elections. This ruling in fact affirms the people's constitutional right to FOI by its recognition and strengthening of FOI procedures duly crafted and promulgated by government agencies such as COMELEC. This is also in keeping with the Court's deference and respect accorded to it as the sole constitutionally empowered electoral body and watchdog having primary competence and specialized expertise over all things election-related.

On a final note, Legaspi, et al. should actually be commended for their courageous stance when they signed and filed the *APELA*, and ultimately when they came before this Court to seek relief. They must understand, however, that democracy and the rule of law presupposes the faithful adherence to established procedures for the assertion, recognition, and enforcement of their rights. Again, they still have the option of coming before the COMELEC in the proper manner by filing the appropriate FOI request, and they are totally within their constitutional right to do so, this after all being a free country still. This will also give the COMELEC the opportunity to have its first pass to adjudicate *vis-à-vis* the said requests, especially if it finds any exceptions to the general rule under FOI of disclosure and transparency, and to ensure that proper safeguards are in place should access be granted. However, to speculate further would be for the Court to preempt its decision on a future case that may be filed in relation to such adjudication. For now, the Court's judgment here suffices as its latest pronouncement relative to the people's constitutional right to FOI.

ACCORDINGLY, the instant Petition for *Certiorari* and *Mandamus* is hereby **DISMISSED**.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

See Separate Opinion

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

See dissenting opinion

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice