



REPUBLIC OF THE PHILIPPINES
SENATE ELECTORAL TRIBUNAL
COA-NCR Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,
Protestant,

-versus -

SET CASE No. 001-16

LEILA M. DE LIMA,
Protestee.

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RESOLUTION NO. 16-45-A

AMENDED PRELIMINARY CONFERENCE ORDER

At the Preliminary Conference in this case conducted by the Tribunal *En Banc* on 26 January 2017 at the Supreme Court *En Banc* Conference Room, Second Floor, Supreme Court Building I, Padre Faura, Manila starting at 11:15 o'clock in the morning, Protestant Francis N. Tolentino and his lead counsel, Atty. Pacifico A. Agabin, and counsel for Protestee Leila M. de Lima, Atty. Teddy Esteban F. Rigoroso, appeared. Atty. Rigoroso presented a Special Power of Attorney executed by Protestee de Lima, authorizing him to appear for and represent her in the proceedings.

I. ADMITTED FACTS AND DOCUMENTS

A. Facts Admitted by Both Parties:

1. Protestant Tolentino and Protestee de Lima were among the fifty (50) duly-registered candidates who vied for the position of Senator of the Republic of the Philippines in the 09 May 2016 Automated National and Local Elections.

2. On 10 May 2016, the Commission on Elections *En Banc* convened as the National Board of Canvassers pursuant to Comelec Resolution No. 10111 dated 03 May 2016.
 3. On 19 May 2016, the COMELEC-NBOC issued Resolution No. 007-16 and proceeded to proclaim as duly-elected senators the twelve (12) candidates who obtained the highest number of votes for the position of Senator of the Republic of the Philippines.
 4. Protestee de Lima garnered 14,144,070 votes as against Protestant Tolentino's 12,811,098 votes.
 5. Protestee de Lima had a lead advantage of 1,332,972 votes.
- B. Documents the Authenticity and Due Execution of which are Admitted by the Parties:
1. Certificates of Candidacy of Protestant Tolentino and Protestee de Lima (Annexes "A" to "A-5", Amended Election Protest)
 2. COMELEC-NBOC Resolution No. 007-16 dated 19 May 2016 (Annexes "C" to "C-2", Amended Election Protest)
 3. Senatorial Canvass Report (By Rank) as of 19 May 2016 (Annexes "D" to "D-3", Amended Election Protest)
- C. Provisions of Law Admitted by Protestant Tolentino but Not the Interpretation Given by Protestee de Lima:
1. R.A. No. 8436, as amended by R.A. 9639
 2. Section 2, Article IX (c) of the 1987 Constitution

II. STIPULATION OF FACTS AND DOCUMENTS

- A. Proposed by Protestant Tolentino and Admitted by Protestee de Lima:

1. COMELEC has not conducted a forensic audit of the effect of the change in the script made by Mr. Garcia to the AES.
2. The non-recording of protests in precincts in the Minutes of Testing and Sealing, Voting and Counting of Votes ("MOVs") does not preclude the filing of an election protest before the Honorable Tribunal.

B. Proposed by Protestee de Lima and Admitted by Protestant Tolentino:

1. COMELEC, in compliance with Sec. 19 of R.A. No. 9369, which amended Sec. 18 of R.A. No. 8436 has set up a Transparency Server at the Pope Pius XII Catholic Center Building to receive electronically transmitted precinct results and disseminate the same to the respective levels of board of canvassers, to the Liberal Party (LP) as the dominant majority, to the Parish Pastoral Council for Responsible Voting (PPCRV) as the accredited citizen's arm to conduct an unofficial count and to the *Kapisanan ng mga Brodkaster ng Pilipinas* (KBP).
2. That in Comelec Resolution No. 10105A promulgated on 05 May 2016, the Commission on Elections, in the interest of promoting transparency, approved the requests of certain media organizations for access to the same election result data from a mirror or redundancy server ("MS"). The MS end users were Rappler, Inc., GMA Network, Inc. and the Philippine Daily Inquirer.

C. Proposed by Protestee de Lima and Admitted by Protestant Tolentino as Part of the Records:

1. Complying with the Tribunal's Notice of Resolution No. 16-01, Protestee de Lima filed her Verified Answer on 27 July 2016. On the same day, Protestant Tolentino filed his Motion for Leave to File and to Admit Amended Election Protest but only served a copy of the same to Protestee de Lima on 29 July 2016.

2. In Resolution No. 16-04 dated 28 July 2016, the Honorable Tribunal granted Protestant Tolentino's Motion and required Protestee de Lima to file her Answer to the Amended Election Protest within ten (10) days from service. The Resolution was issued prior to Protestee de Lima's filing of a Comment/Opposition to Protestant Tolentino's Motion on 02 August 2016.
 3. Protestant Tolentino's total cash deposit made, as of the filing of the Preliminary Conference Brief by counsel for Protestee de Lima, is Two Hundred Thousand Pesos (P200,000.00).
- D. Proposed by Protestee de Lima and Admitted by Protestant Tolentino, subject to the Outcome of the Protest:
1. That the electronically transmitted precincts results nationwide were made available to the public through the Transparency and the Mirror Servers.
 2. Pursuant to Comelec Resolution No. 10111 promulgated on 03 May 2016, as amended, the canvass/consolidation of votes for the election of senators and party-list representatives in the 09 May 2016 National and Local Elections by the Comelec-NBOC continued from day to day until completed and that said canvass was open and public.
 3. Comelec-NBOC proclaimed all twelve (12) senators after determining that the remaining uncanvassed 1,211 votes can no longer materially affect Protestee de Lima's lead of 1,332,972 votes over Protestant Tolentino. The 1,211 votes consist of: 321 votes from Brgy. Lumbaca Ingud, Masiu, Lanao del Sur; 268 votes from Brgy. Mabuyong, Anini-y, Antique; 34 votes from Brgy. Insubuan, San Remegio, Antique; 119 votes from Brgy. San Francisco, Lope de Vega, Northern Samar; and 469 votes from detainee voting.

4. Pursuant to Sec. 24 of R.A. No. 9369 in relation to Comelec Resolutions Nos. 10078, 10090 and 10109, Comelec conducted a Random Manual Audit of randomly selected clustered precincts to determine whether the automated count of the Vote Counting Machines (VCMs) under an Automated Election System (AES) is accurate based on a manual verification of said count. For purposes of the 2016 NLE, the Commission has increased the number of RMA precincts to 715 in order to make the sample more proportionate to the number of clustered precincts per legislative district.

III. ADMISSION OF THE EXISTENCE, AUTHENTICITY AND DUE EXECUTION OF DOCUMENTS

A. Requested by Protestee de Lima and Admitted by Protestant Tolentino:

1. Certificates of Candidacy of Protestee de Lima and Protestant Tolentino (Annexes "1" and "2", Verified Answer)

B. Requested by Protestee de Lima and Admitted by Protestant Tolentino, subject to the Outcome of the Protest:

1. National Canvass Report No. 1 (Annex "3", Amended Answer)
2. National Canvass Report No. 2 (Annex "4", Amended Answer)
3. National Tally Sheet Consolidated Audit Report on Overseas Voting (CAROV) (42 posts including Taiwan and Israel) and Local Absentee Voting (Manual Elections) (Annex "5", Verified Answer)
4. National Canvass Report No. 3 (Annex "6", Verified Answer)

5. Senatorial National Canvass Report (by Rank) dated 19 May 2016
(Annex "8", Verified Answer)
 6. Comelec-NBOC Resolution No. 007-16 dated 19 May 2016
(Annex "9", Verified Answer)
 7. Minutes of Testing and Sealing, Voting and Counting of Votes ("MOVs") from the 16 clustered precincts that functioned in the entire Municipality of Al-Barka, Basilan
(Annexes "11" to "11-O", Verified Answer)
 8. Statement of Votes by Precinct ("SOVPs")
(Annexes "12" to "12-X" and Annexes "13" to "13-G", Verified Answer)
 9. Certificates of Canvass ("COCs") from CBOC-Asia, CBOC-Middle East and Africas and CBOC-Europe
(Annexes "12-Y" to "12-K", Verified Answer)
- C. Requested by Protestee de Lima and Admitted by Protestant Tolentino as Part of the Records:
1. Protestant Tolentino's Petition (With Urgent Prayer for Issuance of TRO) filed before the Supreme Court entitled "Francis N. Tolentino versus Commission on Elections, Sherwin Gatchalian, Ralph Recto, Leila de Lima" docketed as G.R. No. 224329
(Annex "7", Verified Answer)
 2. Supreme Court Resolution dated 31 May 2016 in G.R. No 224329 (Francis N. Tolentino versus Commission on Elections, Sherwin Gatchalian, Ralph Recto, Leila de Lima)
(Annex "10", Verified Answer)

IV. ISSUES INVOLVED

A. Issues raised by the Parties:

1. WHETHER OR NOT THE HONORABLE SENATE ELECTORAL TRIBUNAL SHOULD FIRST ORDER A FORENSIC AUDIT OF THE AUTOMATED ELECTION SYSTEM (AES) BEFORE PROCEEDING WITH THE PRESENTATION OF EVIDENCE AND REVISION/ CORRECTION OF BALLOTS.

(Both parties agreed to submit the issue for ruling after the Tribunal has completed the revision of pilot precincts.)

2. WHETHER OR NOT THE PURPORTED SENATORIAL RESULTS IN THE PROTESTED AREAS/PRECINCTS ARE FRAUDULENT, MANUFACTURED, PADDED, ALTERED AND DISTORTED VOTE TOTAL, WHICH DO NOT REFLECT THE TRUE NUMBER OF VOTES CAST BY THE ELECTORATE IN THE PROTESTED AREAS/PRECINCTS.

(Both parties agreed to proceed with the revision.)

3. WHETHER OR NOT THERE WAS PRE-SHADING OF BALLOTS IN THE PROTESTED PRECINCTS IN NEGROS OCCIDENTAL AND BASILAN, WHICH RESULTED IN FRAUDULENT AND MANUFACTURED VOTING RESULTS, THUS NECESSITATING THE ANNULMENT OF THE ELECTION RESULTS THEREIN.

4. WHETHER OR NOT THE VOTING RESULTS IN THE PROTESTED PRECINCTS WITH AN IMPOSSIBLE AND IMPROBABLE TURNOUT OF 100% OF THE REGISTERED VOTERS ARE MANUFACTURED, THUS NECESSITATING THE ANNULMENT OF THE ELECTION RESULTS THEREIN.

B. Legal Issues:

1. WHETHER OR NOT PROTESTANT TOLENTINO'S ELECTION PROTEST SHOULD BE DISMISSED OUTRIGHT FOR BEING INSUFFICIENT IN FORM AND SUBSTANCE, FOR PROTESTANT

TOLENTINO'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF RULE 22 IN RELATION TO RULE 23 OF THE 2013 RULES OF THE SENATE ELECTORAL TRIBUNAL, WHICH AMOUNTS TO A FAILURE TO STATE A CAUSE OF ACTION.

2. WHETHER OR NOT THE HONORABLE TRIBUNAL LACKS JURISDICTION TO CONDUCT A "FORENSIC AUDIT" OF CERTAIN ELECTION PRECINCT RESULTS AND TO ANNUL SAID CORRESPONDING PRECINCTS RESULTS BASED ONLY ON PROTESTANT TOLENTINO'S ALLEGATIONS AND ABSENT A REVIEW OF THE OFFICIAL BALLOTS AND OTHER PERTINENT ELECTION DOCUMENTS AND PARAPHERNALIA.

V. DOCUMENTARY EVIDENCE

- A. Protestant Tolentino will SUBMIT the following documentary evidence, viz:

	DOCUMENT	PURPOSE
1	Certificates of Canvass and Statements of Votes of the Protested Precincts*	To prove, among others, the purported results of the 2016 Automated NLE in the affected protested precincts, which are sham, fraudulent, manufactured, altered and distorted, and not reflective of the true results of the elections.
2	Project of Precincts for 2016 Automated NLE**	To prove, among others, the precincts covered by the 8-digit clustered precinct numbers used by Protestant Tolentino in his Amended Election Protest, and to prove the specific precincts which were merged/clustered and which functioned during the 09 May 2016 Automated NLE.
3	Election Day Computerized Voters List (EDCVL) used in the 2016 Automated NLE	To prove, among others, the number of registered voters in the protested precincts and the number of voters who actually voted or did not vote.
4	Forensic Audit Report	To prove, among others, the results of the forensic audit on the 2016 Automated NLE, and that the election results during the 2016 Automated NLE are not reflective of the ballots cast therein.

* Admitted by Protestee de Lima, subject to the results of revision

** Admitted by Protestee de Lima, subject to the outcome of the protest

During the scheduled preliminary conference, counsel for Protestant Tolentino requested that Protestant Tolentino be allowed to submit a list of additional evidence to supplement his Preliminary Conference Brief, which was prepared by his former counsel. The Tribunal, in open session, GRANTED the request. Counsel for Protestant Tolentino was directed to submit the list of additional evidence, copy furnished counsel for Protestee de Lima, who was given five (5) days from receipt of said pleading to file a *Comment* thereon.

Thus, on 20 February 2017, Protestant Tolentino filed his Compliance dated 16 February 2017 and manifested that the following shall serve as his additional evidence, to wit:

	DOCUMENT	PURPOSE ¹
1	Affidavit dated 17 June 2016 of Mama Kamal Subpangan	<u>To prove, among others, that: (a) the 2016 National and Local elections (the "2016 NLE") generated an impossible one hundred percent (100%) voter turnout in the protested precincts specified in the "Amended Protest" dated 27 July 2016 (the "Amended Protest"); (b) despite the affiants having casted their votes in favor of protestant, the 2016 NLE resulted in zero votes for protestant in the protested precincts; (c) the election results in affected protested precincts are not reflective of the ballots cast therein; and (d) protestant, and not protestee, should have been proclaimed as the 12th winning senatorial candidate during the 2016 NLE.</u>
2	Affidavit dated 17 June 2016 of Pendatun A. Subpangan	
3	Affidavit dated 17 June 2016 of Ad'k Pulis Macasalang	<u>To prove, among others, that (a) despite the affiants having cast votes in favor of protestant, the 2016 NLE resulted in zero votes for protestant in the protested precincts; (b) the election</u>
4	Affidavit dated 17 June 2016 of Saed Malacao Tabunaway	

¹ Protestant Tolentino's *Manifestation* dated 01 March 2017.

