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 - 125

On 20 August 2018, the Commission on Elections (COMELEC) through its Law Department filed a *Manifestation with Urgent Motion* praying that the Tribunal's Precautionary Order on the Election Management System (EMS) Servers used in the 09 May 2016 National and Local Elections be lifted and that the COMELEC be allowed to back-up and/or clone the data therein in the presence of the representatives of the Senate Electoral Tribunal and the parties.

The COMELEC declared that the EMS Servers are intended to be used in the coming 13 May 2019 Automated National and Local Elections in order for the government to save a considerable amount of money. The COMELEC's request is premised on the following grounds:

1. The Government of the Republic of the Philippines, through the COMELEC, had already spent a considerable amount of money. In the May 9, 2016 National and Local Elections, for the EMS alone, COMELEC already spent the amount of Php6,576,396.96 representing the total lease bid and the purchase option price.

2. The Honorable Presidential Electoral Tribunal (PET), in PET Case No. 004 entitled "Manuel A. Roxas vs. Jejomar C. Binay" granted COMELEC's request to re-use the EMS server and the Consolidation and Canvassing System (CCS) laptops used in the May 10, 2010 Automated National and Local Elections for the May 13, 2013 Automated National and Local Elections.

The COMELEC further alleged that the subject EMS Servers were likewise covered by a Precautionary Protection Order in PET Case No. 005 (Ferdinand 'Bongbong' R. Marcos vs. Maria Leonor 'Leni Daang Matuwid' G. Robredo) and that the PET, in a Resolution dated 24 July 2018, already lifted its protection order and allowed the COMELEC to have the data therein backed-up and/or cloned.

The Tribunal's Precautionary Order adverted to by the COMELEC is Resolution No. 16-01 dated 07 July 2016 which, among others, directed the COMELEC:

> "to safeguard and preserve the integrity of all ballot boxes, their contents and keys, lists of voters with voting records, books of voters and other documents and materials or paraphernalia used or accomplished in connection with the 09 May 2016 elections for the office of Senator of the Philippines, as well as data storage devices containing electronic data evidencing the conduct and the results of election, which are in their keeping and custody, as the case may be; and to hold all such materials/documents subject to further orders and instructions of the Senate Electoral Tribunal."

While the aforesaid Resolution did not specifically mention the EMS, the same is within its coverage. As explained by the COMELEC, the EMS Servers are part of the Automated Election System (AES). They are considered as the core or brain of the election configuration. They are indispensable because they complete the AES. They manage all the data and election configuration. Without the EMS, there will be no election configuration. The functions of the EMS include among others:[1]

> 1. They contain the election database. It is where the election data were loaded such as the Project of Precincts (POPs), Voting Jurisdictions (Provinces, Cities, Municipalities, and Districts), List of Candidates, and others.

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[1] Manifestation with Urgent Motion filed by the COMELEC Law Department dated 20 August 2018, p. 2.

2. They create election configuration per precinct level, including the configuration of the Consolidated Canvassing System (CCS), Vote Counting Machines (VCMs), SD Cards, and provide security configurations.

3. They create digital certificates, public and private key certificate per VCM, issued to the Board of Canvassers (BOCs) and Board of Election Inspectors (BEIs).

The COMELEC clarified, however, that the EMS has no transmission functionality and has no connection or network with the VCMs. As its purpose is only for the generation of election configuration, the EMS does not contain election results.[2]

With the COMELEC's assurance that the proposed cloning or back-up of the data contained in the EMS Servers will not result to any kind of tampering and/or erasure of any and all traces of footprints stored in the system[3], and considering the purpose of the proposed course of action, the Tribunal is inclined to grant the COMELEC's request, subject, however, to the same conditions imposed by the PET, to wit: (a) The COMELEC shall have the data cloned and/or backed-up in the presence of representatives of the Tribunal and the parties; and (b) The COMELEC shall maintain custody, and preserve the integrity of the backed-up or cloned data.

WHEREFORE, the Executive Committee of the Tribunal Resolves to:

1. **LIFT** the Precautionary Order on the Election Management System Servers covered by SET Resolution No. 16-01 dated 07 July 2016;[4]

2. **ALLOW** the COMELEC to back-up and/or clone the data in the EMS Servers in the presence of representatives of the Tribunal and the parties; and

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[2] Reply (To the Comment/Opposition of Protestant Marcos dated 24 May 2018) filed by the COMELEC Law Department with the PET, dated 13 July 2018, p. 3.
[3] Ibid. p. 2.
[4] As modified by SET Resolution No. 16-06 dated 15 August 2016.

3. **DIRECT** the COMELEC to maintain custody and preserve the integrity of the backed-up or cloned data.

SO ORDERED.
05 September 2018.

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice
Member

ESTELA M. PERLAS-BERNABE
Associate Justice
Member