



REPUBLIC OF THE PHILIPPINES
SENATE ELECTORAL TRIBUNAL

FRANCIS N. TOLENTINO,
Protestant,

SET Case No. 001-16

-versus-

LEILA M. DE LIMA,
Protestee.

X-----X

RESOLUTION NO. 16 – 142

Following the denial of his *Motion to Suspend Proceedings and/or Archive the Protest* on 22 November 2018,¹ Protestant Francis N. Tolentino, through counsel filed on 10 January 2019 a *Motion to Withdraw* the instant election protest dated 03 January 2019. He cited as reason the impending rigorous national campaign he will have to indulge himself into, being a senatorial candidate in the upcoming May 2019 elections for which his undivided attention is indispensable. Protestant Tolentino stressed that the voluntary withdrawal of his election protest is borne out of pure employment of practicality, and by no means to be taken as a surrender of his cause in proving and exposing election fraud committed against his then candidacy and the public interest in general. He also pointed out that he is withdrawing with his head held up high, and pride and honor intact not only for himself, but also to all those who aspire for free and honest elections.

Like the Protestant, the Tribunal, as the sole judge of all contests relating to election, returns and qualifications of Members of the Senate, desires to see this case to the end in order to ferret out the truth. Guided by the 2013 Rules of the Tribunal, the original timetable to complete the entire proceedings and render an initial determination on the pilot precincts of Protestant Tolentino was December 2017, or approximately one (1) year and six (6) months from the date of filing of the electoral protest on 20 June 2016. The Tribunal failed to meet its self-imposed

¹ Resolution No. 16-140 dated 22 November 2018.

deadline due to various factors and circumstances which adversely affected the smooth flow of the proceedings. The Tribunal deeply regrets that the instant election protest was not resolved on its target date or at the very least before the filing of the *Motion to Withdraw*. After all, the Tribunal has completed all the proceedings, except the evidentiary hearings where only two (2) witnesses were left to be presented by the Protestant when the motion to withdraw was filed.

The Tribunal has done its best to fulfill its mission to steadfastly uphold the true will of the electorate. The Tribunal has never reneged on this mission. The pertinent antecedents may, thus, be recalled.

FILING OF THE PROTEST AND AMENDED ELECTION PROTEST

On 20 June 2016, Protestant Francis N. Tolentino filed an *Election Protest (Ex Abundante Ad Cautelam)*² against Senator-elect Leila M. de Lima pursuant to Rule 16 of the 2013 Rules of the Tribunal, alleging that the election results during the 09 May 2016 National and Local Elections were sham, false, fraudulent, altered, padded, shaved and/or manufactured.³

On 07 July 2016, the Executive Committee of the Tribunal directed the issuance of *Summons* to Protestee de Lima requiring her to file her Answer to the Protest.⁴ The *Summons* dated 11 July 2016 was served on the Protestee on 12 July 2016, thereby giving her up to 27 July 2016 to file her Answer. De Lima's *Verified Answer* was received by the Tribunal at 3:45 in the afternoon of 27 July 2016, praying that the Tribunal DENY due course and DISMISS the protest outright for the main reason that it is insufficient in form and substance. Protestee de Lima stated, among others, that "*the alleged grounds for the Protest are mere conclusions of fact devoid of any credible and competent basis, bare, scattershot and general averments of fraud, deficient in substance and is a mere fishing expedition.*"⁵

² On account of the pendency of G.R. No. 224329 (Francis N. Tolentino vs. Commission on Elections, et al.) before the Supreme Court.

³ Election Protest, p.4.

⁴ Resolution No. 16-01 which was confirmed by the Full Tribunal in Resolution No. 16-07 dated 08 September 2016

⁵ Verified Answer, pars. 2.2.1 and 2.6, p.3.

On the same day that the Tribunal received Protestee's Answer, Protestant Tolentino filed, at 5:05 in the afternoon, a *Motion for Leave to File and to Admit Amended Election Protest*. The motion was anchored on the following grounds:

- (a) The Supreme Court, in a Resolution dated 31 May 2016, has dismissed his Petition, docketed as G.R. No. 224329, entitled "Francis N. Tolentino vs. Commission on Elections, et. al.", for being moot and academic; thus, there is a need to amend to drop the *Ex Abundante Ad Cautelam* nature of the Protest;
- (b) Since the filing of the Protest, there had been several other evidence and grounds for election protest against Protestee de Lima that had surfaced, which Protestant believes should be considered by the Tribunal; and
- (c) Considering the limited time given to Protestant to file his Protest and to collate his evidence in support thereof, it shall serve the paramount interest of justice that the issues set forth in his Amended Election Protest be fully threshed out and Protestant be given the ample opportunity to defend the millions of votes of Filipinos and the integrity of the Philippine electoral process.

On 28 July 2016, the *Executive Committee* of the Tribunal issued Resolution No. 16-04⁶ which (a) GRANTED the *Motion for Leave to File Amended Election Protest*; (b) ADMITTED the *Amended Election Protest* of Protestant Tolentino; and (c) DIRECTED Protestee de Lima to file her *Answer* to the *Amended Election Protest* within ten (10) days from service of a copy of the amended pleading and the resolution admitting the same. Copy of the Resolution was received by Protestee de Lima on 04 August 2016.⁷

Prior to her receipt of the aforesaid resolution, or on 02 August 2016, Protestee de Lima filed her *Comment/Opposition* to Protestant's *Motion for Leave to File Amended Election Protest*; stating that the new grounds relied upon by Tolentino in his Motion are not supervening facts that could have escaped his attention at the time his baseless protest was being drafted. Thus, those grounds should have been raised at the first instance as to give the Protestee the opportunity to controvert them in her Answer. Moreover, the amendment consisted

⁶ Confirmed by the Full Tribunal in Resolution No. 16-07 dated 08 September 2016.

⁷ Per Report of Process Server.

in the introduction of new statement of facts that essentially altered the grounds of the protest and broaden the scope of his protested precincts. Said amendment was for the purpose of curing a non-existing cause of action and its admission would cause a clear prejudice upon Protestee de Lima.⁸

In compliance with Resolution No. 16-04, Protestee de Lima filed her *Verified Answer to the Amended Election Protest* on 15 August 2016 reiterating her prayer for the outright dismissal of the protest.

The protested areas, as listed in the *Amended Election Protest*, cover some Sixty Thousand Six Hundred Eleven (60,611) established electoral precincts from the following provinces: Tawi-Tawi, Sulu, Basilan, Maguindanao, Lanao del Sur, Lanao del Norte, North Cotabato, Agusan del Norte, Zamboanga del Norte, Bohol, Cebu, Leyte, Western Samar, Eastern Samar, Bulacan, Pampanga, Quezon, Nueva Ecija, Iloilo, Aurora, Benguet, Ifugao, Isabela, Kalinga, and Ilocos Sur. Also included are the Overseas Absentee Voting centers in Hongkong (Peoples Republic of China), Kuala Lumpur (Malaysia), Seoul (Republic of Korea), Abu Dhabi and Dubai (United Arab Emirates), Beirut (Republic of Lebanon), Doha (Qatar), Manama (Kingdom of Bahrain), Jeddah (Kingdom of Saudi Arabia), London (United Kingdom of Great Britain), Madrid (Spain), Milan and Rome (Italy), and the City of Singapore.

The Canvass Board Service of the Tribunal, using the Project of Precincts from the Commission on Elections (COMELEC), was able to establish that the protested precincts consisted of Nineteen Thousand Two Hundred Eighty (19,280) clustered precincts. The Protestant prayed for the collection and revision of Fifteen Thousand One Hundred Sixty (15,160) clustered precincts as his votes were allegedly not counted or the Secure Digital (SD) cards were pre-loaded and/or there was an illegal by-pass of the Automated Election System (AES). He asked the Tribunal to annul the election results in Four Thousand One Hundred Twenty (4,120) clustered precincts as the ballots were allegedly pre-shaded or there was an improbable 100% voter turnout.

⁸ Comment/Opposition, pp. 1-2.

PRELIMINARY CONFERENCE

The issues in the *Amended Election Protest* having been joined, the Tribunal issued Resolution No. 16-08 dated 08 September 2016, calling the parties and their counsel to a preliminary conference scheduled on 06 October 2016 at 10:00 o'clock in the morning at the Supreme Court *En Banc* Conference Room in Manila. The parties were likewise required to file with the Tribunal not later than 27 September 2016, and to serve on the adverse party, their respective preliminary conference briefs.

On 27 September 2016, Protestee de Lima seasonably filed before the Tribunal her *Preliminary Conference Brief* a copy of which was served upon the counsel for Protestant Tolentino. In the case of the Protestant, he submitted his *Preliminary Conference Brief* only on 06 October 2016, the scheduled date of preliminary conference. As a result, the Tribunal cancelled the preliminary conference.

In view of his failure to file with the Tribunal and to serve to Protestee de Lima his *Preliminary Conference Brief* within the prescribed period, Protestant was required to SHOW CAUSE why his election protest should not be dismissed for failure to comply with Resolution No. 16-08 dated 08 September 2016.⁹ On 11 October 2016, Protestant Tolentino filed his *Compliance to the Show Cause Order*.

After an exchange of submissions by the parties¹⁰ and several pending incidents that needed to be resolved,¹¹ the Tribunal, on 01 December 2016, issued Resolution No. 16-20, which ruled that the negligence committed by, or aptly, the ignorance of, Protestant Tolentino's former Lead Counsel¹² in not filing the

⁹ Resolution No. 16-12 dated 06 October 2016.

¹⁰ On 13 October 2016, Protestee de Lima filed her Comment dated 12 October 2016 (to Protestant's Compliance dated 11 October 2016); on 17 October 2016, Protestant Tolentino filed a Motion to Leave to File and to Admit Reply, attaching thereto his Reply (To Comment dated 12 October 2016).

¹¹ On 10 November 2016 the Protestant filed a Motion to Admit Supplemental Protest; On 22 November 2016, the Tribunal issued Resolution No. 16-17 requiring Protestant Tolentino to deposit the amount of P3,315,785.36 not later than 29 November 2016 (representing cost of retention by the COMELEC of 6 CCS laptops and 151 VCMs); On 28 November 2016, Protestant filed an Urgent Clarificatory Manifestation and Motion reducing to 45 the number of VCMs to be retained by COMELEC with an undertaking to deposit the amount of P1,114,122.96 not later than 01 December 2016.

¹² Ho & Uy Law Firm.

Preliminary Conference Brief within the prescribed time was gross and substantial as to deprive Protestant Tolentino of due process. In adherence to its mission, the Tribunal decided to give the Protestant his day in court to prove his case not only to uphold his own interest but to ascertain and uphold the true will of the electorate. Instead of dismissing the protest, a preliminary conference was again scheduled on 26 January 2017.

The preliminary conference was held as scheduled on 26 January 2017. The matters discussed during the preliminary conference, included the following: 1) Admitted Facts and Documents; 2) Stipulation of Facts and Documents; 3) Admission of the Existence, Authenticity and Due Execution of Documents; 4) Issues Involved; 5) Documentary and Testimonial Evidence to be presented by the Parties; 6) The Pilot Precincts; and 7) The Schedules, to wit:

- A. Collection of ballot boxes was tentatively scheduled on March 20, 2017 until May 18, 2017.
- B. Revision shall commence on May 15, 2017 to June 30, 2017.
- C. Reception of evidence was set to begin on May 2, 2017 up to July 25, 2017. The hearing shall cover all evidence, whether *aliunde* or interwoven/connected with the ballots and election documents.

During the preliminary conference, Protestant Tolentino was furnished a summary of the cost estimates of collection covering his 3,507 pilot precincts listed in his *Preliminary Conference Brief*. On 31 January 2017, Protestant Tolentino filed an *Urgent Manifestation and Motion* reducing the pilot precincts to 2,973 clustered precincts. As alleged in the *Motion*, the purpose of the request was to expedite the proceedings and to limit the costs of collection of the ballot boxes and election documents. The request was granted by the Tribunal in Resolution No. 16-33 dated 06 February 2017. Another *Manifestation* was filed on 16 February 2017 which, in effect, further reduced the number of pilot precincts. After a series of meetings with Protestant's counsel, it was on 28 February 2017 when the number of pilot precincts was finally reduced to Seven Hundred Fifty-One (751) clustered precincts, divided into two (2) groups: Six Hundred Sixty-Three (663) clustered precincts for revision and Eighty-Eight (88) clustered precincts for annulment of election results. The list of pilot precincts is attached as "Annex A".

Aforesaid incidents delayed the issuance of the *Preliminary Conference Order*, which was eventually issued on 02 March 2017 as embodied in Resolution No. 16-38. Upon motion of Protestant Tolentino, the Order was amended on 09 May 2017¹³ in order to incorporate therein the purposes for which his evidence, both testimonial and documentary, would be presented, as well as the names and addresses of the corresponding witnesses and documents to be subpoenaed as stated in his *Manifestation* dated 01 March 2017.

In view of the foregoing developments, the schedules set in the original Preliminary Conference Order were no longer feasible. The Marawi Siege on May 23, 2017 contributed to the delay in the collection of ballot boxes and election document. It may be recalled that the armed conflict in Marawi City resulted in the declaration of Martial Law in Mindanao. Upon the advice of the Armed Forces of the Philippines (AFP),¹⁴ collection of ballot boxes and other election documents and paraphernalia from the provinces of Lanao del Sur, Lanao del Norte, Sulu, Basilan, Tawi-Tawi, North Cotabato, and Maguindanao was put on hold. The Canvass Board Service of the Tribunal was directed to await clearance from the AFP before undertaking the collection operations in the aforesaid provinces.

COLLECTION OF BALLOT BOXES AND ELECTION DOCUMENTS

As directed in Resolution No. 16-50 dated 25 May 2017, the Canvass Board Service (CBS) of the Tribunal commenced on 19 June 2017 the collection of ballot boxes, election documents and other paraphernalia from the designated pilot areas of Protestant Tolentino starting with Quezon Province. The retrieval of ballot boxes and election documents and paraphernalia was conducted from June 19 to August 25, 2017. Per CBS Report on the collection operations, Six Hundred Eighty-One (681) ballot boxes out of 751 ballot boxes were retrieved as of 25 August 2017, leaving a total of seventy (70) uncollected ballot boxes. The uncollected ballot boxes were from: Quezon -11; Bulacan - 4; Basilan -15; Zamboanga del Norte -1; and Lanao del Sur - 39.

¹³ Resolution No. 16-45A.

¹⁴ Meeting of CBS and AFP on 25 May 2017.

The Collection Team for Quezon Province was unable to collect eleven (11) ballot boxes from the Municipality of San Antonio while the Bulacan Collection Team also failed to collect four (4) ballot boxes from the Municipality of Sta. Maria for the simple reason that the ballot boxes did not have external markings that would enable the Teams to identify the precinct numbers. The Collection Teams could not ascertain which of the ballot boxes contained the pilot contested precincts.

The fifteen (15) ballot boxes pertaining to the Municipality of Al-Barka, Basilan were then under the custody of the Regional Trial Court, Branch 2, Isabela City, Basilan and were undergoing proceedings in connection with Election Protest No. 04-16 (*Bhenzar J. Yusoph vs. Darussalam S. Lajid*).

The uncollected ballot box from Zamboanga del Norte was Clustered Precinct No. 1 (1A and 1B) of the Municipality of Gutalac. The Collection Team was informed by the Election Officer of Gutalac that subject ballot box was included in the Random Manual Audit conducted by the COMELEC and was accordingly turned over to the COMELEC Main Office.

Thirty-nine (39) ballot boxes from the province of Lanao del Sur were uncollected as the AFP did not allow the SET Collection Team to undertake the collection activity in view of the armed conflict in Marawi City.

In view of the failure to collect fifteen (15) ballot boxes pertaining to the Municipality of Al-Barka, Basilan and thirty-nine (39) ballot boxes from the Province of Lanao del Sur, the Tribunal, in Resolution No. 16-64 dated 14 September 2017, required Protestant Tolentino to designate as substitute pilot precincts for the uncollected Mindanao ballot boxes, fifty-four (54) precincts from among his other contested precincts which were initially included as pilot precincts in his *Preliminary Conference Brief* dated 05 October 2016.

On 02 October 2017, last day for the filing of compliance, Protestant filed a *Motion for Extension* praying that he be given ten (10) days within which to comply since he needed time to review and analyze first the statistical data on the possible substitute pilot precincts.

Acting on the *Motion*, the Tribunal, in Resolution No. 16-67 dated 10 October 2017, granted the request subject to the condition that the fifty-four (54) clustered precincts shall be deemed withdrawn and shall no longer form part of his pilot precincts if he failed to identify his substitute pilot precincts within the requested period of ten (10) days.

However, instead of identifying his substitute precincts, Protestant Tolentino filed a *Manifestation and Motion* dated 12 October 2017, signifying his intention to pursue the collection of the fifteen (15) ballot boxes pertaining to the Municipality of Al-Barka, Basilan and thirty-nine (39) ballot boxes from Lanao del Sur.

Meanwhile, the eleven (11) ballot boxes from San Antonio, Quezon were retrieved on October 24-25, 2017, while the four (4) ballot boxes from Sta. Maria, Bulacan were retrieved on October 24, 2017,¹⁵ after the Tribunal was granted permission by the Presidential Electoral Tribunal (PET) to open the ballot boxes during collection to facilitate the identification of the contested ballot boxes.

In Resolution No. 16-81 dated 22 November 2017, the Tribunal granted his request to proceed with the collection of the thirty-nine (39) ballot boxes from Lanao del Sur. Notwithstanding the cessation of the hostilities in Marawi City, the Armed Forces of the Philippines did not allow the Tribunal to undertake collection activities in the Province of Lanao del Sur. Such fact was made known to the Protestant.

Later, the ballot box for Gutalac, Zamboanga del Norte was retrieved on 07 February 2018 from the COMELEC Main Office, while the fifteen (15) ballot boxes of Al-Barka, Basilan were retrieved on 20 February 2018, also from the COMELEC Main Office.¹⁶

Thus, only the 39 ballot boxes pertaining to the pilot contested precincts in Lanao del Sur remained uncollected.

¹⁵ PET Resolution dated 11 July 2017.

¹⁶ The local protest was on appeal.

REVISION PROCEEDINGS

On 14 September 2017, the Tribunal issued Resolution No. 16-65 setting the commencement of the revision proceedings. Twenty (20) revision teams were created. Revision of 650 ballot boxes was conducted from 18 October 2017 to 05 December 2017. Some of the significant observations during revision are as follows:¹⁷

1. Nine (9) out of the ten (10) ballot boxes from the Municipality of Pagbilao contained ballots and election documents that were accomplished during the 2013 National and Local Elections;
2. The ballot box for Clustered Precinct No. 8 of Calbayog City, Western Samar, contained ballots and election documents that were accomplished during the 2013 National and Local Elections;
3. A ballot box from the Municipality of San Jorge, Western Samar, labelled as Precincts Nos. 15 and 15A/B was found to contain ballots and election documents pertaining to Precincts Nos. 17 A/B, a non-pilot precinct;
4. In Dumangas, Iloilo, the ballots and other election documents inside the ballot box for Clustered Precinct No. 8 (17A, 18A, 19A), were found to belong to another clustered precinct (Clustered Precinct No. 43);
5. In Tongkil, Sulu, the ballot box for Clustered Precinct No. 15 (44A, 45A, 46A, 47A) was found to contain ballots and other election documents belonging to another clustered precinct (Precincts Nos. 48A, 49A, 50A), which are not among the pilot precincts of Protestant Tolentino;
6. Damaged ballots and election documents were discovered as follows:
 - a) In Dipolog City, Zamboanga del Norte, ballots and election documents of Clustered Precinct No. 2 (4A, 4B, 5A, 5B) appeared to have been previously soaked in water, and the ballot boxes for Clustered Precincts Nos. 6, 8, 9, 10, 12, 13, 16, 17, 20, 23, 27, 28, 29 and 30 have cracks and holes;
 - b) In Tuburan, Cebu, the ballots and elections documents of Clustered Precinct No. 2 (2A, 3A, 3B, 4A, 4B) were found to be wet but the revision team was able to conduct the revision by carefully separating each and every ballot and drying the same;

¹⁷ Resolution No. 16-83 dated 22 November 2017 and Resolution No. 16-88 dated 15 January 2018.

- c) In San Fernando City, Pampanga, the ballots and other election documents found inside the ballot box for Clustered Precinct No. 10 (24A, 25A/B, 26A) were found to be damaged and were not revised, it appearing that the same were previously soaked in water; and
- d) In Arayat, Pampanga, the ballot boxes for Clustered Precincts Nos. 1, 5, 7, 10, 14, 15, 16, 18 and 19 showed signs of breakage particularly on the upper black lid covers of the ballot boxes.

These observations were duly noted and acted upon by the Tribunal in Resolution No. 16-83 dated 22 November 2017 and Resolution No. 16-88 dated 15 January 2018 by the issuance of *Show Cause Orders* to the respective custodians of the ballot boxes.

It was likewise discovered that the ballots contained in two (2) ballot boxes from San Jorge, Western Samar, did not reflect the correct Ballot IDs. This was later explained by the COMELEC¹⁸ that the ballot IDs for the Municipality of San Juan de Buan, also in Western Samar, were inadvertently copied as the Ballot IDs of San Jorge. Attached to the Memorandum is the corrected Ballot IDs for the Municipality of San Jorge, which clearly showed that the Ballot IDs of subject precincts recorded during revision were the correct COMELEC-assigned Ballot IDs.

In compliance with the show cause orders,¹⁹ the following ballot boxes were delivered by the respective custodians to the Tribunal:

Nine (9) ballot boxes from Pagbilao, Quezon	Delivered by Mr. Aristo G. Catalla, Municipal Treasurer on 6 December 2017
One (1) ballot box from Calbayog, Western Samar	Delivered by the Assistant City Treasurer Evelyn O. Junio on 11 December 2017
One (1) ballot box from San Jorge, Western Samar	Delivered by ICO Municipal Treasurer Ofelia C. Adesas on 12 December 2017

¹⁸ Compliance filed by COMELEC Law Department on 27 December 2017 and the Memorandum, dated 22 December 2017, of Atty. Genevieve E. Velicaria-Guevarra, Vice Chairperson of the Printing Committee for the 09 May 2016 National and Local Elections.

¹⁹ Resolution No. 16-83 dated 22 November 2018 and Resolution No. 16-88 dated 15 January 2018.

One (1) ballot box from Dumangas, Iloilo	Delivered by Municipal Treasurer Grace A. Jomillo on 30 January 2018 (accompanied by the Election Officer III and the Provincial Election Supervisor)
--	--

With the delivery of the aforesaid ballot boxes and the retrieval of the ballot boxes from the COMELEC in February, another revision proceeding was set on 05 March 2018.²⁰ For this purpose, five (5) revision teams were created.

Upon his receipt of the copy of Resolution No. 16-97 dated 20 February 2018, which directed the revision of the remaining seventeen (17) ballot boxes of the pilot precincts on 05 March 2018, Protestant filed a *Motion for Partial Reconsideration*²¹ of the said Resolution particularly the revision of the ballots and documents contained in the newly delivered ballot boxes from Pagbilao, Quezon and Calbayog City, Western Samar on the ground that their integrity, security and authenticity were already compromised. He prayed for the exclusion from the revision proceedings the contents of the nine (9) ballot boxes coming from Pagbilao, Quezon and one (1) ballot box from Calbayog City, Western Samar.

Finding the *Motion for Partial Reconsideration* baseless, the Tribunal denied the same for lack of merit in Resolution No. 16-101 dated 05 March 2018. On 08 March 2018, Protestant Tolentino filed a *Manifestation* proclaiming his continuing objection to the opening of the ballot boxes subject of the *Motion for Partial Reconsideration* and that his participation in the revision should not be construed as a waiver of his right to subsequently question the integrity, accuracy and authenticity of the contents therein.

After the completion of the revision proceedings of the second batch of ballot boxes on 07 March 2018, the Tribunal issued Resolution No. 16-106 on 18 April 2018 declaring that the revision proceedings involving the pilot precincts was deemed terminated. With the report of the Canvass Board Service that only nine

²⁰ Resolution No. 16-97 dated 20 February 2018.

²¹ Filed on 02 March 2018.

(9) ballot boxes, out of 663 pilot precincts, were not revised and these pertain to the uncollected ballot boxes in Lanao del Sur, the Tribunal stated, thus:

“Culled from statistical reports, the total actual voters from the nine (9) unrevised precincts is 3,375. This constitutes only one percent (1%) of the actual voters from all the 663 pilot precincts for revision totaling 328,052. This, therefore, will not have a substantial effect on the revision results. For this reason, the Tribunal considers said precincts withdrawn from the pilot precincts but remain to be part of the contested non-pilot precincts.”

On 03 May 2018, Protestant Tolentino filed a *Motion for Reconsideration* of the Resolution praying that eight (8) clustered precincts from the Province of Lanao del Sur which were not retrieved due to security reasons be substituted. Protestant pointed out that the Tribunal, in granting his *Manifestation and Motion* dated 12 October 2017, allowed him to proceed with the collection of the remaining ballot boxes from Lanao del Sur. He implored the Tribunal to afford him the opportunity to further substantiate the allegation of electoral irregularities he pleaded in the instant case by allowing him to substitute the uncollected ballot boxes with the following:

Province	Municipality	Clustered Precinct Number	Precincts in Cluster
Tawi-Tawi	South Ubian	9	16A, 17A
		28	53A
Isabela	Angadanan	38	88A, 88B
		60	125A, 126A, 126B
Kalinga	Balbalan	10	18A, 18B
Agusan del Norte	Buenavista	39	77A, 77B, 78A
Quezon	Gumaca	22	62A, 62B, 63A, 64A
		24	67A, 68A, 69A

Verification, however, disclosed that while the proposed substitute precincts are among the protested precincts listed in the *Amended Election Protest* dated 27 July 2016, the precincts from the Municipalities of South Ubian (Tawi-Tawi), Angadanan (Isabela), Balbalan (Kalinga), and Buenavista (Agusan del Norte) were alleged to have a 100% turnout of voters, for which reason the Protestant moved not for the revision of ballots but for the annulment of the election results.

With respect to the Municipality of Gumaca (Quezon), the Protestant prayed for revision of ballots as these were allegedly affected by the illegal bypass of the AES and/or the use of pre-loaded SD Cards, but Clustered Precincts Numbers 22 and 24 of the said municipality do not form part of Protestant's pilot precincts as may be gleaned from his *Preliminary Conference Brief* dated 05 October 2016. The Tribunal ruled that if the *Motion for Reconsideration* of the Protestant is granted, it would be tantamount to amending his election protest. Thus, the *Motion for Reconsideration* of Resolution No. 16-106 was denied for lack of merit.²²

Also, on 03 May 2018, Protestant Tolentino filed a *Petition for Certiorari* with the Supreme Court docketed as G.R. No. 238665, in connection with the Tribunal's denial of his *Motion for Partial Reconsideration* of Resolution No. 16-97 which prayed for the exclusion of the contents of the nine (9) ballot boxes coming from Pagbilao, Quezon and one (1) ballot box from Calbayog City, Western Samar in the revision proceedings held on March 5, 2018.

The *Petition for Certiorari* was, however, dismissed by the Supreme Court in a Resolution promulgated on June 5, 2018 for his failure to sufficiently show that the Tribunal committed any grave abuse of discretion in rendering the challenged resolutions. His *Motion for Reconsideration* was denied with finality on 06 November 2018.

PRELIMINARY APPRECIATION

On 07 November 2017, the Legal Service of the Tribunal commenced with the preliminary appreciation of ballots and election documents. The purpose of preliminary appreciation is to validate the physical count of the votes of the parties as determined in the revision proceeding and to resolve preliminarily the objections and claims of the parties to particular ballots or votes therein. The proceeding covered a total of 637 clustered precincts which lasted until 12 December 2017.

The seventeen (17) ballot boxes which were revised on March 5 to 7, 2018 were subjected to preliminary appreciation proceedings on March 12 to 13, 2018.

²² Resolution No. 16-111 dated 15 May 2018.

PHOTOCOPYING OF OBJECTED AND CLAIMED BALLOTS

Pursuant to Resolution No. 16-70 dated 18 October 2017 and Resolution No. 16-78 dated 06 November 2017, the photocopying of objected and claimed ballots and other election documents commenced on 04 December 2017. The photocopying activity was completed on 06 April 2018. Ballots from 540 clustered precincts were photocopied for Protestant Tolentino while 654 ballot boxes were opened for photocopying upon the request of Protestee de Lima.

DECRYPTION OF SD CARDS AND PRINTING OF PICTURE IMAGES

Protestant Tolentino filed on 25 October 2017, a *Manifestation and Motion* dated 24 October 2017, seeking clarification on when the Vote Counting Machine (VCMs) enumerated in Resolution No. 16-17 dated 22 November 2016 will be used to aid in the revision proceedings and prayed that an Order be issued directing the COMELEC to decrypt and authenticate the SD Cards of his pilot precincts.

The Tribunal granted the prayer of Protestant Tolentino for the decryption and authentication of the SD Cards of his pilot precincts as the printed picture images would aid the Tribunal in appreciating and validating the votes obtained by the parties as reflected in the original paper ballots.²³

In compliance with Resolution No. 16-80 dated 22 November 2017, the Election Records and Statistics Department of the COMELEC, in a letter dated 04 December 2017, informed the Tribunal that the decryption of the SD Cards and the printing of the ballot images, audit logs and election returns pertaining to all the clustered precincts included in Protestant Tolentino's pilot precincts was to commence on 11 December 2017 and shall continue until completion. Upon receipt of the letter from COMELEC on 05 December 2017, the Tribunal sent a *Notice of Decryption*, informing the parties of the scheduled decryption activity. Said *Notice* likewise directed Protestant Tolentino to remit directly to the COMELEC not later than 07 December 2017 the amount of P425,575.00 to cover the cost of decryption as specified in the COMELEC Order of Payment.

²³ Resolution No. 16-80 dated 22 November 2017.

In an *Urgent Motion* filed on 07 December 2017, Protestant Tolentino prayed that the payment to the COMELEC of the decryption costs and the conduct of the decryption proceedings be held in abeyance. He asked the Tribunal to grant him time to evaluate and limit the SD cards to be decrypted. He requested a period of fifteen (15) days from 06 December, or until 21 December 2017, within which to submit the list of SD cards which he intends to be decrypted and authenticated. Protestant posited that a limitation of the number of SD cards to be decrypted would abbreviate the proceedings and cut the costs of the decryption and printing of the picture images of the ballots.

On 20 December 2017, Villamor Associates and Consultants entered its appearance as collaborating counsel for Protestant Francis N. Tolentino and filed on the same date an *Urgent Motion (For Extension of Time to Evaluate and Limit the Number of SD cards of the Clustered Precincts to be Decrypted)*. Explaining that the new firm was only recently engaged, Protestant thus prayed that he be given an additional period of twenty (20) days from 21 December 2017, or until 10 January 2018, within which to provide the list of the SD cards which he intends to be decrypted and authenticated. The Tribunal granted the same in Resolution No. 16-87 dated 08 January 2018.

In compliance with the directive in Resolution No. 16-87, Protestant Tolentino through his *Urgent Motion* filed on 10 January 2018, listed the clustered precinct numbers of the SD cards to be decrypted and authenticated. Upon verification by the Canvass Board Service, it was ascertained that the SD cards of Five Hundred Ninety Seven (597) clustered precincts included in the list may be allowed for decryption and authentication as these form part of Protestant's pilot precincts.²⁴

Upon payment of the decryption cost by the Protestant, the actual date of decryption started on 05 February 2018 and was completed on 28 February 2018. The activity included the authentication of the printed picture images by representatives of the Tribunal, the parties, and the COMELEC.

²⁴ Resolution No. 16-89 dated 17 January 2018.

CONDUCT OF BALLOT VALIDATION

With the decryption of the SD cards and the printing of the picture images, another layer of procedure was conducted by the Tribunal, namely, the Ballot Validation process. This aims to verify whether the number of actual ballots and the votes represented therein, as revised and appreciated, match the decrypted data stored in the SD card of the VCM for each pilot contested clustered precinct.

For this purpose, the Information and Communication Systems and Judicial Records Management Service of the Tribunal developed an electronic tool called the Ballot Validation System (BVS) which facilitated the pairing of actual ballot with its decrypted picture image. The BVS has two (2) phases: (1) Barcode Matching, and (2) Vote Matching.

The Barcode Matching Phase was conducted to verify whether the actual ballots were fed into and scanned by the VCM and whether the images saved in the SD card are scanned images of actual ballots fed into the VCM. This phase was undertaken and supervised by the Canvass Board Service from 19 June 2018 to 30 July 2018.

The Vote Matching Phase, on the other hand, verified whether the votes on the actual ballot match those which have been scanned and counted by the VCM as reflected in the printed picture image. The Legal Service conducted this activity from 26 June 2018 to 10 August 2018.

EVIDENTIARY HEARING

As agreed upon by the parties, the reception of evidence for the Protestant Tolentino commenced on 29 January 2018. At the said hearing, counsel for Protestant waived the presentation of twenty-nine (29) witnesses listed in the Amended Preliminary Conference Order dated 09 May 2017. He, however, manifested that he would be filing a motion for substitution of evidence.²⁵

²⁵ Resolution No. 16-104 dated 08 March 2018.

Hearing dates and the corresponding witnesses to be presented were set before the Hearing Commissioner. Counsel for Protestant, Atty. Michael Angelo Villamor committed to present his first round of evidence on 12 February 2018. Hearings were also scheduled on February 15, and 19 to 23, 2018. Atty. Villamor also manifested that he would present evidence up to the first week of March 2018.

On 05 February 2018, Protestant Tolentino filed an *Urgent Motion* praying for the postponement of the commencement of the presentation of evidence to the following week or on Monday, 19 February 2018, and for the resetting of scheduled hearing dates in accordance with such postponement.

The Executive Committee of the Tribunal granted Protestant's *Urgent Motion* in Resolution No. 16-92 dated 06 February 2018,²⁶ with the proviso that the delay caused by such postponement shall be charged to the period allotted for the presentation of Movant's evidence in accordance with Rule 64 of the 2013 Rules of the Tribunal.

Protestant filed another *Urgent Motion* dated 12 February 2018, praying for the resetting of the hearing date to present the affidavit of Mr. Felix P. Muga II from 19 February 2018 to sometime from 27 February 2018 to 02 March 2018 due to a medical procedure that said witness recently underwent.

On the same date, Protestant filed a *Motion for the Issuance of Subpoena Duces Tecum and Ad Testificandum* to compel the attendance of witnesses to testify and to produce pertinent election documents. Some of the witnesses listed in the Motion were not among those mentioned in the *Amended Preliminary Conference Order*, hence, they were excluded in the subpoena issued by the Hearing Commissioner.

On 14 February 2018, Protestant again filed an *Urgent Motion* praying for the further postponement of the presentation of evidence from 19 February 2018 to Monday, 26 February 2018, and for the resetting of scheduled hearing dates in accordance with such postponement. Said motion was not acted upon for lack of

²⁶ Confirmed by the Full Tribunal in Resolution No. 16-131 dated 27 September 2018.

material time to convene the Executive Committee of the Tribunal as the pleading was filed on 14 February 2018 at 4:30 P.M., which is the closing of office hours of the Tribunal, and 16 February 2018 was a special non-working holiday. Besides, a subpoena had already been issued to the officials of the COMELEC who were scheduled to testify on 19 February 2018.

On 15 February 2018, Mr. Rouie J. Peñalba, through the COMELEC Law Department, filed a *Motion for Postponement to Comply with the Subpoena Duces Tecum and Ad Testificandum* dated 13 February 2018 due to a conflict in schedule as a hearing had been scheduled on the same date at the Regional Trial Court (RTC) of Manila, Br. 46, relative to Criminal Case No. R-MLA-17-00244 CR entitled "People of the Philippines vs. Marlon Garcia, et. al."

The 19 February 2018 hearing pushed through as scheduled. Five (5) witnesses from the COMELEC testified and copies of the pertinent documents were submitted to the Tribunal. In the course of the hearing, it was agreed that counsel for Protestant would present Mr. Felix P. Muga II on 27 February 2018 together with Mr. Rouie J. Peñalba who earlier manifested that he would be available on the said date.

As manifested by Protestant's counsel during the hearing, counsel filed in the afternoon of the same day two (2) Urgent Motions: (a) an *Urgent Motion (To Admit Additional Evidence)* dated 19 February 2018, praying that Protestant be allowed to present additional evidence as identified therein and that corresponding amendments be made in the *Amended Preliminary Conference Order* to reflect such additional evidence; and (b) an *Urgent Motion to Reset Hearings*, also dated 19 February 2018, praying for the revision of the hearing dates agreed upon during the 29 January 2018 initial hearing and resetting the scheduled hearing dates in accordance with the schedule indicated therein which in effect would result to the postponement of the presentation of evidence to 26 February 2018, instead of 20 February 2018.

Resolution No. 16-99 dated 20 February 2018 required Protestee de Lima to comment to the *Urgent Motion to Admit Additional Evidence*. Meantime, reception of evidence took place on 26, 27 and 28 February 2018. Two (2)

COMELEC personnel from the Information Technology Department testified on 26 February 2018. On 27 February 2018, counsel for Protestant was not able to present Mr. Felix P. Muga II for failure to comply with Rule 66 of the 2013 SET Rules which requires the submission of the Judicial Affidavit of a witness five (5) days prior to his scheduled hearing. Mr. Rouie J. Peñalba, however, was able to testify on said date. The 28 February 2018 hearing was devoted to the marking of documentary exhibits for the Protestant.

Additional witnesses were presented by Protestant Tolentino on March 22 and 23, 2018 and on April 2, 3, 5 and 10, 2018. After the last subpoenaed witness was presented during the hearing on 10 April 2018, subsequent hearing dates had to be cancelled in Resolution No. 16-109 dated 25 April 2018 to give way to the preparation of the transcripts of stenographic notes. Thereafter, the Tribunal, in Resolution No. 16-118 dated 20 June 2018, ordered the resumption of the reception of evidence on 04 July 2018.

In fine, actual hearings were conducted on February 19, 26 and 27; March 22 and 23; April 2, 3, 5 and 10; July 4, 6, 9, 10 and 24; and August 23, 2018. The Protestant had presented eighteen (18) witnesses, thirteen (13) of whom are officials and employees of the COMELEC. The other witnesses consisted of: (1) Ms. Ma. Corazon M. Akol of the National Citizens' Movement for Free Elections (NAMFREL); (2) Mr. William Yu of Parish Pastoral Council for Responsible Voting (PPCRV); (3) Mr. Elie Moreno of SMARTMATIC; (4) Mr. Peter Anthony Banzon of the Department of Science and Technology (DOST); and (5) Mr. Felix P. Muga II, Associate Professor of Mathematics of the Ateneo de Manila University.

When the instant *Motion to Withdraw* the protest was filed on 10 January 2019, the Protestant still had two (2) remaining witnesses left to be presented, namely, Mr. Drex Laggui, purportedly a Forensic IT/IT Security Expert and Mr. Ivan Uy, representative from the United Nationalist Alliance (UNA). The purpose of their testimony as indicated in Protestant's *Urgent Motion (to Admit Additional Evidence)* dated 19 February 2018 is "to prove that the unauthorized introduction of a new program into the transparency server violated election laws and as a

result thereof, showed the vulnerability of the system and puts into question the results.”²⁷

Protestant Tolentino stated in his *Compliance and Manifestation* dated 26 June 2018 that he would present these two witnesses fifteen (15) days after receipt of the *raw audit log* files from the CCS laptops. The term “raw audit log” resulted into an exchange of submissions by the COMELEC and the Protestant,²⁸ causing a delay in the reception of evidence.

In Resolution No. 16-124 dated 05 September 2018, the Tribunal required the COMELEC to release to Protestant Tolentino the audit logs, in the format that is feasible and legally permissible, within fifteen (15) days from receipt of the Resolution and manifest to the Tribunal its compliance within three (3) days from the release of the audit logs to the Protestant.

In a *Manifestation with Motion* dated 24 September 2018, the COMELEC, through its Law Department, prayed that the period of fifteen (15) days given to it by the Tribunal to comply with Resolution No. 16-124 be counted from its receipt of the approval by the Presidential Electoral Tribunal (PET) for the access and generation of the audit logs of the CCS laptops chosen by the Protestant.

Acting thereon, the Tribunal, in Resolution No. 16-134 dated 08 October 2018, required the COMELEC to immediately seek authority from the PET to access all the six CCS laptops which were retained in its custody upon the request of Protestant Tolentino and manifest to the Tribunal its compliance within three (3) days from receipt of the Resolution.

In a *Manifestation* dated 08 November 2018,²⁹ COMELEC informed the Tribunal that it had filed the required *Manifestation and Motion* with the PET on 07 November 2018. To date, however, the COMELEC has not released the audit logs.

²⁷ Urgent Motion, p. 10.

²⁸ COMELEC filed its Comment on 06 July 2018; Protestant filed his Reply on 31 July 2018.

²⁹ Filed on 09 November 2018.

RESULTS OF TRIBUNAL PROCEEDINGS

Revision proceedings were conducted pursuant to the *Rules and Procedures Governing the Revision of Ballots under the Automated Election System* adopted by the Tribunal on 28 November 2013.

Under existing Tribunal guidelines on revision,³⁰ if the shade on the oval is less than fifty percent (50%), the vote is not counted but the party affected may claim the vote registered therein. The claims and objections of the parties were recorded and the corresponding ballots were marked with exhibit numbers for purposes of identification, in preparation for their examination by the Tribunal.

During the preliminary appreciation proceeding, the shades or marks used to register votes are examined with the primary objective of giving effect to the intention of the voter. Thus, shades or marks which do not comply with the 50% shading threshold set by the Tribunal were counted. Even shades or marks placed outside the oval were counted as votes under the "*Intent Rule*." Thus, votes which were considered ambiguous during revision were counted in favor of the parties. These cover instances like uniform encircling outside the oval; uniform shading of less than 25%,³¹ uniform manner of voting by encircling the names of the candidates or shading the numerals beside the names of the candidates. The key word is "uniformity" which shows the voter's clear intention.

Ballots with unnecessary markings, like names of candidates written on the ballots, were invalidated as the said marks were meant to identify the ballots. Thus, the votes of the party affected were deducted from the tally of votes during preliminary appreciation.

For VCM-rejected ballots which were claimed by the parties, the votes were admitted provided that the ballots do not bear any infirmity, the ballots are not in excess of the number of actual voters and the Minutes of Voting and Counting of Votes (MOV) did not report any incident relative thereto.

³⁰ Based on COMELEC Resolution No. 8804 dated 22 March 2010 (Rule 15, Section 6 [1]).

³¹ Shading threshold declared by the COMELEC for the 2016 National and Local Elections (COMELEC Resolution No. 16-0600, September 6, 2016).

All ballots found inside the ballot box, whether contested or uncontested, were examined during preliminary appreciation. Ballots which were not objected to or claimed by the parties could be rejected or admitted if there was a basis for doing so. Likewise, examination of the ballots was not limited to the specific objections and claims of the parties.

During the Ballot Validation activity, it was discovered that votes for senators, including the herein parties, were nullified by reason of overvoting, i.e., more than twelve (12) slots were shaded or marked. In instances where overvoting resulted from mere accidental markings, the votes of the parties, which were not counted by the VCM, were added in their favor. Similarly, in cases where the 13th vote are marks or signs indicating voters' desistance, the votes of the parties which were not counted by the VCM were also be added to their votes.

In like manner, when the VCM counted as votes even if the marks on the ovals were merely ink smudges, the votes were deducted from the parties' votes.

In one ballot, marked as exhibit "DL18", from Clustered Precinct No. 4 (16A, 18A, 19A, 20A, 21A, 23A) of Argao, Cebu, the oval beside Protestant Tolentino's name appeared to be fully shaded. Based on the *VCM Vote Summary*, the vote for Tolentino was not counted in his favor by the VCM. During revision and preliminary appreciation, one (1) vote was added to his tally of votes.

In a meeting held on 22 November 2018, the Tribunal approved and confirmed the foregoing rulings made by the Preliminary Appreciation Committees as well as the Vote Matching Committees. The Tribunal likewise ruled that:

- a. Overvotes in three (3) or more positions, not in the Senate position, do not invalidate the ballots.
- b. Ballots with thumbprints, as a rule, are considered marked ballots. However, if it would appear that the mistake was committed by the Board of Election Inspectors (BEI), the ballots should not be invalidated, like in the case of Clustered Precincts Nos. 24, 27, and 28 of San Fernando City, Pampanga.

- c. Ballots bearing the signatures of the voters are considered marked ballots and should be invalidated. However, if it appears that the same was the result of erroneous instruction given by the BEI to the voters, like in the case of Clustered Precinct No. 25 (61B, 62A/B, 63A/B) of San Fernando City, Pampanga, the ballots should be considered valid, as the voters should not be faulted.
- d. Ballots with two (2) different style of shading, i.e., some of the ovals were fully shaded while the other ovals were not fully shaded, the same should not be considered as a marking that would invalidate the ballot.
- e. As a rule, if the BEI signature is different from that of the BEI assigned to the clustered precinct, the ballot would be considered a Spurious Ballot. However, in the case of Clustered Precincts Nos. 28, 29 and 30 of Lucena City wherein the ballots for each clustered precinct were signed by any of the BEI Chairperson of the three (3) clustered precincts were admitted, as the fault is not attributable to the voters.
- f. Claims on VCM-rejected ballots should be rejected if based on available data it could be an indication of fraud or post-election operation (example: numerous ballots were rejected by the machine and when added to the valid ballots, the total number would be in excess of the number of actual voters as appearing in the MOV or Election Day Computerized Voters' List).

Applying the rulings issued and confirmed by the Tribunal, the Canvass Board Service of the Tribunal consolidated all the reports and prepared the tally of votes, indicating therein the number of votes added to or deducted from the parties in relation to their votes appearing in the Election Returns.

In an *Urgent Motion* dated 04 February 2019, Protestee de Lima urged the Tribunal not to simply grant Protestant Tolentino's *Motion to Withdraw* but to make public the results of the revision and appreciation proceedings. She argued, among others, that more than the private interest of the parties, the public has the

right to know that there was not an iota of truth to Tolentino's claims.³² She advanced the view that the mere filing of the motion to withdraw protest does not by itself divest the Tribunal of its jurisdiction over the case.³³

Protestant Tolentino, in his *Comment* dated 18 February 2019, prayed for the denial of Protestee's motion mainly on the ground that he has not completed the presentation of evidence, both documentary and testimonial, and has not even made his formal offer of documentary evidence.³⁴

OUR RULING

The motion for withdrawal of the election protest manifests the desistance of the Protestant from pursuing his case. There being no law or jurisprudence that prevents its approval, the Tribunal hereby grants the same. With the grant of Protestant's motion, the election protest is rendered moot. A case becomes moot when there is no more actual controversy between the parties, and a judgment thereon cannot have any practical legal effect or cannot be enforced.³⁵ When a case is moot, it becomes non-justiciable.³⁶ As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.

The rule, however, admits of exceptions. One of these exceptions is the exceptional character of the situation and the paramount public interest involved.³⁷ Well-settled is the doctrine that election contests involve public interest, not merely the personal interests of rival candidates.

Further, Protestant's desistance does not deprive the Tribunal of jurisdiction already acquired. Jurisdiction, once acquired, is not lost at the instance of the parties but continues until the case is terminated.³⁸ The Tribunal, as the sole judge of all contests relating to the election, returns and qualifications of Members of the

³² Urgent Motion, par. 8.

³³ Ibid., par. 6.

³⁴ Comment, pp. 2-3.

³⁵ Baldo, Jr. vs. COMELEC, G.R. No. 176135, June 16, 2009.

³⁶ Pormento vs. Estrada, G.R. No. 191988, August 31, 2010.

³⁷ Mendoza vs. Familara, G.R. No. 191017, November 15, 2011.

³⁸ Robles vs. HRET, G. R. No. 86647, February 5, 1990.

Senate,³⁹ has exclusive control, direction and supervision of all matters pertaining to its functions and operations.⁴⁰ Thus, the Tribunal has the discretion to continue or discontinue the processes. It may proceed to rule without need of further proceedings if, on its own determination, it may see fit under the circumstances.

In the instant case, the Tribunal, in the exercise of its discretion, opted to release the results of revision and appreciation in the pilot precincts as these proceedings had already been completed. The tally of votes in the 654 pilot precincts with the corresponding vote adjustments is presented in the table below.⁴¹ These cover 319,228 ballots from 654 clustered precincts that were examined during revision and appreciation. The details or the rulings on the objections and claims resulting to the adjustments of the parties' votes are found in "Annex B"⁴² and the summaries of rulings on claims and objections per city/municipality and province are attached as "Annex C."⁴³

TALLY OF VOTES

PROVINCE	ELECTION RETURNS ⁴⁴		VOTES PER REVISION		AFTER PA & BVS		ACTUAL RECOVERY Votes Added / (Deducted) to ER Votes	
	TOLENTINO	DE LIMA	TOLENTINO	DE LIMA	TOLENTINO	DE LIMA	TOLENTINO	DE LIMA
TAWI-TAWI	0	516	0	516	0	519	0	3
SULU	0	521	0	522	0	522	0	1
BASILAN	0	609	0	610	0	610	0	1
MAGUINDANAO	0	42	0	38	2	39	2	(3)
LANAO DEL SUR	0	0	0	0	0	0	0	0
LANAO DEL NORTE	0	589	0	595	0	595	0	6
NORTH COTABATO	0	1	0	1	0	1	0	0
CEBU	7,182	7,888	7,192	7,888	7,269	7,945	87	57
WESTERN SAMAR	8,042	13,757	8,092	13,826	8,138	13,902	96	145
ZAMBOANGA DEL NORTE	11,105	21,280	11,119	21,318	11,253	21,581	148	301
PAMPANGA	7,222	8,198	7,221	8,207	7,277	8,251	55	53
ILOILO	12,515	21,518	12,516	21,514	12,605	21,650	90	132
BULACAN	6,975	9,722	6,992	9,750	7,029	9,780	54	58
QUEZON	19,097	24,445	19,130	24,473	19,267	24,586	170	141
TOTALS	72,138	109,086	72,262	109,258	72,840	109,981	702	895

³⁹ Section 17, Article VI, 1987 Constitution.
⁴⁰ Rule 9 (i) 2013 SET Rules.
⁴¹ In the order the proceedings were conducted.
⁴² Annexes "B-1" to "B-14".
⁴³ Annexes "C-1" to "C-14".
⁴⁴ In precincts with no ER, the votes in the Statements of Votes by Precinct (SOVP) were recorded.

The vote adjustments also include the results of the ballot validation process namely, barcode matching and vote matching proceedings, wherein a total of 281,191 picture images from 532 clustered precincts were examined.

The Ballot Validation process was necessitated by the allegation of Protestant Tolentino that the SD cards had been pre-loaded with negative votes for certain candidates, including him. After conducting the aforesaid proceedings on 532 clustered precincts, it was confirmed that the barcodes of the actual paper ballots correspond to the barcodes of the picture images. Likewise, except for the findings earlier mentioned, the votes appearing on the actual ballots and picture images were the votes that were counted by the VCMs.

The results herein presented may not, however, be determinative of the existence or non-existence of electoral fraud during the 2016 National and Local Elections. At the outset, it was pointed out that Protestant Tolentino questioned the results in 15,160 clustered precincts out of the 92,509 clustered precincts that functioned during the 2016 National and Local Elections. The number of clustered precincts that were examined by the Tribunal does not even represent one percent (1%) of the total contested precincts.

Nonetheless, the pilot precincts were supposed to represent the areas where the Protestant deemed as best exemplifying or demonstrating the electoral fraud and anomaly he pleaded. The results negated his allegations that pre-loaded SD cards were used or that his votes were not counted.

As to the alleged illegal by-pass of the AES, the evidentiary weight of the evidence presented by the Protestant, both documentary and testimonial, was not taken into consideration by the Tribunal as the reception of evidence relative thereto was not completed.

On the other hand, the Tribunal finds that Protestant's evidence does not warrant the annulment of the election results in the eighty-eight (88) clustered precincts where there was an alleged pre-shading of ballots or an improbable or impossible 100% voter turnout.

While it may be true, as alleged by Protestee de Lima, that the power to annul election results, or declare a failure of elections, rests with the COMELEC *En Banc* as provided for in Section 6 of the Omnibus Election Code or B.P. 881,⁴⁵ the Tribunal may annul election results if, in its determination, fraud, terrorism or other electoral irregularities existed to warrant the annulment in the said clustered precincts. This was clearly enunciated by the Supreme Court in the consolidated cases of *Harlin C. Abayon vs. House of Representatives Electoral Tribunal and Raul A. Daza*.⁴⁶

As ruled in the aforesaid cases, when the election results in the contested precincts are annulled, the votes received by the parties would then be deducted from their tally of votes. However, *Abayon* sets forth two (2) indispensable requisites which must concur in order to justify the nullification of the election results in the concerned clustered precincts, namely:

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

In this connection, reference may be made to the Amended Preliminary Conference Order wherein Protestant Tolentino committed to present witnesses who would testify on the fact that they did not cast their votes during the 2016 National and Local Elections in the precincts where they are registered voters and yet the protested precincts reported a 100% voter turnout. Also listed as witnesses for the Protestant are registered voters and watchers in the precincts where pre-shading of ballots allegedly occurred. However, during the 29 January 2018 hearing as earlier mentioned, Protestant waived the submission of the affidavits and the presentation of the said witnesses. Protestant, thus, failed to prove the existence of the grounds that would justify the requested annulment.

⁴⁵ Verified Answer to Amended Election Protest, pp. 35-36.

⁴⁶ G.R. No. 222236 and G. R. No. 223032, May 3, 2016.

WHEREFORE, the Tribunal resolves to:

1. **GRANT** the *Motion to Withdraw* filed by Protestant Tolentino on 10 January 2019, and **CONSIDER** the instant election protest **CLOSED** and **TERMINATED**;
2. **GRANT** Protestee de Lima's *Urgent Motion (To Release the Results of Revision and Appreciation of Ballots in the 25% Pilot Protested Precincts)* dated 04 February 2019;
3. **NOTE** Protestant Tolentino's *Comment (on Protestee's Urgent Motion [To Release the Results of Revision and Appreciation of Ballots in the 25% Pilot Protested Precincts])* dated 18 February 2019;
4. **LIFT** the directive contained in Resolution No. 16-01 dated 07 July 2016, as modified in Resolution No. 16-06 dated 15 August 2016, requiring the Provincial Election Supervisors, Provincial Prosecutors, Provincial Treasurers, Election Officers, Municipal and City Treasurers and other election officials assigned or serving in the protested areas, as well as the Commission on Elections, to safeguard and preserve the ballot boxes and election documents, and other materials or paraphernalia, including data storage devices containing electronic data, used or accomplished in connection with the 09 May 2016 National and Local Elections;
5. **DIRECT** the Secretary of the Tribunal to forthwith cause the return to their respective places of origin all the ballot boxes and election documents and other election paraphernalia presently in the custody of the Tribunal in connection with the instant electoral protest, the expenses of which shall be charged to the deposit of Protestant Tolentino; and

6. **DIRECT** the Financial Management Service to return any excess deposit to the Protestee immediately and to the Protestant only after the return of the ballot boxes and election documents and other election paraphernalia has been completed.

SO ORDERED.

21 February 2019.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice
Member



MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Member



RICHARD J. GORDON
Senator
Member



MARIA LOURDES "NANCY" S. BINAY
Senator
Member

JOEL VILLANUEVA
Senator
Member

EMMANUEL "MANNY" D. PACQUIAO
Senator
Member

FRANKLIN M. DRILON
Senator
Member

ANTONIO "SONNY" F. TRILLANES IV
Senator
Member