



Republic of the Philippines  
Supreme Court  
Manila

**EN BANC**

**JOSE MIGUEL T. ARROYO,**

Petitioner,

**G.R. No. 199082**

**-versus-**

**DEPARTMENT OF JUSTICE;  
COMMISSION ON ELECTIONS; HON.  
LEILA DE LIMA, in her capacity as  
Secretary of the Department of Justice; HON.  
SIXTO BRILLANTES, JR., in his capacity as  
Chairperson of the Commission on Elections;  
and the JOINT DOJ-COMELEC  
PRELIMINARY INVESTIGATION  
COMMITTEE and FACT-FINDING TEAM,  
Respondents.**

X-----X

**BENJAMIN S. ABALOS, SR.,**

Petitioner,

**G.R. No. 199085**

**-versus-**

**HON. LEILA DE LIMA, in her capacity as  
Secretary of Justice; HON. SIXTO S.  
BRILLANTES, JR., in his capacity as  
COMELEC Chairperson; RENE V.  
SARMIENTO, LUCENITO N. TAGLE,  
ARMANDO V. VELASCO, ELIAS R.  
YUSOPH, CHRISTIAN ROBERT S. LIM  
AND AUGUSTO C. LAGMAN, in their  
capacity as COMELEC COMMISSIONERS;  
CLARO A. ARELLANO, GEORGE C. DEE,  
JACINTO G. ANG, ROMEO B. FORTES  
AND MICHAEL D. VILLARET, in their  
capacity as CHAIRPERSON AND  
MEMBERS, RESPECTIVELY, OF THE  
JOINT DOJ-COMELEC PRELIMINARY**

**INVESTIGATION COMMITTEE ON THE  
2004 AND 2007 ELECTION FRAUD**

Respondents.

X-----X

**GLORIA MACAPAGAL-ARROYO,**  
Petitioner,

**G.R. No. 199118**

**Present:**

SERENO, C.J.,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,\*  
PEREZ,  
MENDOZA,  
REYES, and  
PERLAS-BERNABE, JJ.

**-versus-**

**COMMISSION ON ELECTIONS,**  
represented by Chairperson Sixto S.  
Brillantes, Jr., **DEPARTMENT OF JUSTICE,**  
represented by Secretary Leila M. De Lima,  
**JOINT DOJ-COMELEC PRELIMINARY**  
**INVESTIGATION COMMITTEE,**  
**SENATOR AQUILINO M. PIMENTEL III,**  
and **DOJ-COMELEC FACT FINDING**  
**TEAM,**

**Promulgated:**

SEPTEMBER 18, 2012 

Respondents.

X-----X

**DECISION**

**PERALTA, J.:**

The Court is vested with the constitutional mandate to resolve justiciable controversies by applying the rule of law with due deference to the right to due process, irrespective of the standing in society of the parties involved. It is an assurance that in this jurisdiction, the wheels of justice turn

\* On official leave.



unimpeded by public opinion or clamor, but only for the ultimate end of giving each and every member of society his just due without distinction.

Before the Court are three (3) consolidated petitions and supplemental petitions for *Certiorari* and Prohibition under Rule 65 of the Rules of Court filed by Jose Miguel T. Arroyo (Mike Arroyo) in G.R. No. 199082, Benjamin S. Abalos, Sr. (Abalos) in G.R. No. 199085 and Gloria Macapagal Arroyo (GMA) in G.R. No. 199118 assailing the following: (1) Commission on Elections (Comelec) Resolution No. 9266 “In the Matter of the Commission on Elections and Department of Justice Joint Investigation on the Alleged Election Offenses Committed during the 2004 and 2007 Elections Pursuant to Law”<sup>1</sup> dated August 2, 2011; (2) Joint Order No. 001-2011 (Joint Order) “Creating and Constituting a Joint DOJ-Comelec Preliminary Investigation Committee [Joint Committee] and Fact-Finding Team on the 2004 and 2007 National Elections Electoral Fraud and Manipulation Cases”<sup>2</sup> dated August 15, 2011; (3) Rules of Procedure on the Conduct of Preliminary Investigation on the Alleged Election Fraud in the 2004 and 2007 National Elections (Joint Committee Rules of Procedure)<sup>3</sup> dated August 23, 2011; and (4) Initial Report of the Fact-Finding Team dated October 20, 2011.<sup>4</sup> The consolidated petitions and supplemental petitions likewise assail the validity of the proceedings undertaken pursuant to the aforesaid issuances.

### **The Antecedents**

Acting on the discovery of alleged new evidence and the surfacing of new witnesses indicating the occurrence of massive electoral fraud and

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<sup>1</sup> *Rollo* (G.R. No. 199118), pp. 47-48.

<sup>2</sup> *Id.* at 49-53.

<sup>3</sup> *Id.* at 54-57.

<sup>4</sup> *Id.* at 58-139.

manipulation of election results in the 2004 and 2007 National Elections, on August 2, 2011, the Comelec issued Resolution No. 9266 approving the creation of a committee jointly with the Department of Justice (DOJ), which shall conduct preliminary investigation on the alleged election offenses and anomalies committed during the 2004 and 2007 elections.<sup>5</sup>

On August 4, 2011, the Secretary of Justice issued Department Order No. 640<sup>6</sup> naming three (3) of its prosecutors to the Joint Committee.

On August 15, 2011, the Comelec and the DOJ issued Joint Order No. 001-2011 creating and constituting a Joint Committee and Fact-Finding Team on the 2004 and 2007 National Elections electoral fraud and manipulation cases. The Joint Committee and the Fact-Finding Team are composed of officials from the DOJ and the Comelec. Section 2 of the Joint Order lays down the mandate of the Joint Committee, to wit:

Section 2. *Mandate.* – The Committee shall conduct the necessary preliminary investigation on the basis of the evidence gathered and the charges recommended by the Fact-Finding Team created and referred to in Section 4 hereof. Resolutions finding probable cause for election offenses, defined and penalized under the Omnibus Election Code and other election laws shall be approved by the Comelec in accordance with the Comelec Rules of Procedure. For other offenses, or those not covered by the Omnibus Election Code and other election laws, the corresponding criminal information may be filed directly with the appropriate courts.<sup>7</sup>

The Fact-Finding Team,<sup>8</sup> on the other hand, was created for the purpose of gathering real, documentary, and testimonial evidence which can

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<sup>5</sup> *Id.* at 47.

<sup>6</sup> *Id.* at 50.

<sup>7</sup> *Id.* at 50-51.

<sup>8</sup> Composed of the following:

1. Asec. Zabedin M. Azis – Chairman;
2. CP Edward M. Togonon – DOJ Member;
3. CP Jorge G. Catalan, Jr. – DOJ Member;
4. Atty. Cesar A. Bacani – NBI Member;

be utilized in the preliminary investigation to be conducted by the Joint Committee. Its specific duties and functions as enumerated in Section 4 of the Joint Order are as follows:

- a) Gather and document reports, intelligence information, and investigative leads from official as well as unofficial sources and informants;
- b) Conduct interviews, record testimonies, take affidavits of witnesses, and collate material and relevant documentary evidence, such as, but not limited to, election documents used in the 2004 and 2007 national elections. For security reasons, or to protect the identities of informants, the Fact-Finding Team may conduct interviews or document testimonies discreetly;
- c) Assess and evaluate affidavits already executed and other documentary evidence submitted or may be submitted to the Fact-Finding Team and/or Committee;
- d) Identify the offenders, their offenses and the manner of their commission, individually or in conspiracy, and the provisions of election and general criminal laws violated, establish evidence for individual criminal and administrative liability and prosecution, and prepare the necessary documentation, such as complaints and charge sheets for the initiation of preliminary investigation proceedings against said individuals to be conducted by the Committee;
- e) Regularly submit to the Committee, the Secretary of Justice and the Chairman of the Comelec periodic reports and recommendations, supported by real, testimonial and documentary evidence, which may then serve as the Committee's basis for immediately commencing appropriate preliminary investigation proceedings, as provided under Section 6 of this Joint Order; and
- f) Upon the termination of its investigation, make a full and final report to the Committee, the Secretary of Justice, and the Chairman of the Comelec.<sup>9</sup>

Pursuant to Section 7<sup>10</sup> of the Joint Order, on August 23, 2011, the Joint Committee promulgated its Rules of Procedure.

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5. Atty. Dante C. Jacinto – NBI Member;

6. Atty. Emmanuel E. Ignacio – Comelec Member; and

7. Atty. Arnulfo P. Sorreda – Comelec Member.

<sup>9</sup> *Rollo* (G.R. No. 199118), pp. 51-52.

The members of the Fact-Finding Team unanimously agreed that the subject of the Initial Report would be the electoral fraud and manipulation of election results allegedly committed during the May 14, 2007 elections. Thus, in its Initial Report<sup>11</sup> dated October 20, 2011, the Fact-Finding Team concluded that manipulation of the results in the May 14, 2007 senatorial elections in the provinces of North and South Cotabato and Maguindanao were indeed perpetrated.<sup>12</sup> The Fact-Finding Team recommended that petitioner Abalos and ten (10) others<sup>13</sup> be subjected to preliminary investigation for electoral sabotage for conspiring to manipulate the election results in North and South Cotabato. Twenty-six (26)<sup>14</sup> persons, including petitioners GMA and Abalos, were likewise recommended for preliminary investigation for electoral sabotage for manipulating the election results in Maguindanao.<sup>15</sup> Several persons were also recommended to be charged administratively, while others,<sup>16</sup> including petitioner Mike Arroyo, were recommended to be subjected to further investigation.<sup>17</sup> The case resulting from the investigation of the Fact-Finding Team was docketed as DOJ-Comelec Case No. 001-2011.

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<sup>10</sup> Section 7. *Rules of Procedure*. – Within forty-eight (48) hours from the issuance of this Joint Order, the Committee shall meet and craft its rules of procedure as may be complementary to the respective rules of DOJ and Comelec, and submit the same to the Secretary of Justice and the Comelec *En Banc* for approval within five (5) days from such initial meeting.

<sup>11</sup> *Rollo* (G.R. No. 199118), pp. 58-143.

<sup>12</sup> *Id.* at 124.

<sup>13</sup> Michael C. Abas; Col. Reuben Basiao; John Doe Alias Major Joey Leaban; John Doe alias Capt. Peter Reyes; Atty. Jaime Paz; Atty. Alberto Agra; Romy Dayday; Jeremy Javier; Atty. Lilian A. Suan-Radam and Atty. Yogie G. Martirizar.

<sup>14</sup> Gloria Macapagal Arroyo; Datu Andal Ampatuan, Sr.; Lintang H. Bedol; Norie K. Unas; John Doe alias Butch; Benjamin Abalos, [Sr.]; Nicodemo Ferrer; Estelita B. Orbase; Elisa A. Gasmin; Elsa Z. Atinen; Saliao S. Amba; Magsaysay B. Mohamad; Salonga K. Adzela; Ragah D. Ayunan; Susan U. Cabanban; Russam H. Mabang; Asuncion Corazon P. Reniedo; Nena A. Alid; Ma. Susan L. Albano; Rohaida T. Khalid; Araw M. Cao; Jeehan S. Nur; Alice A. Lim; Norijean P. Hangkal; Christina Roan M. Dalope; Maceda L. Abo

<sup>15</sup> *Rollo* (G.R. No. 199118), pp. 132-134.

<sup>16</sup> Former First Gentleman Miguel Arroyo; Bong Serrano; Salonga K. Edzela; Election Assistant Gani Maliga; Members of the SPBOC of Maguindanao Atty. Emilio Santos, Atty. Manuel Lucero and Atty. Dinah Valencia; PES Faisal Tanjili; RED for Region XI Remlani Tambuang; RED for ARMM Ray Sumalipao; Boboy Magbutay from the Visayas; and certain Pobe from the Caraga Region.

<sup>17</sup> *Rollo* (G.R. No. 199118), p. 137.

Meanwhile, on October 17, 2011, Senator Aquilino Pimentel III (Senator Pimentel) filed a Complaint-Affidavit<sup>18</sup> for Electoral Sabotage against petitioners and twelve others<sup>19</sup> and several John Does and Jane Does. The case was docketed as DOJ-Comelec Case No. 002-2011.

On October 24, 2011, the Joint Committee issued two subpoenas against petitioners in DOJ-Comelec Case Nos. 001-2011 and 002-2011.<sup>20</sup> On November 3, 2011, petitioners, through counsel, appeared before the Joint Committee.<sup>21</sup> On that preliminary hearing, the Joint Committee consolidated the two DOJ-Comelec cases. Respondents therein were likewise ordered to submit their Counter-Affidavits by November 14, 2011.<sup>22</sup>

Thereafter, petitioners filed before the Court separate Petitions for *Certiorari* and Prohibition with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction assailing the creation of the Joint Panel.<sup>23</sup> The petitions were eventually consolidated.

On November 14, 2011, petitioner Mike Arroyo filed a Motion to Defer Proceedings<sup>24</sup> before the Joint Committee, in view of the pendency of his petition before the Court. On the same day, petitioner GMA filed before the Joint Committee an Omnibus Motion *Ad Cautelam*<sup>25</sup> to require Senator Pimentel to furnish her with documents referred to in his complaint-affidavit and for the production of election documents as basis for the charge of electoral sabotage. GMA contended that for the crime of electoral sabotage

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<sup>18</sup> *Rollo* (G.R. No. 199085), pp. 163-194.

<sup>19</sup> Bong Serrano; Gabby Claudio; Nicodemo Ferrer; Michael C. Abas; Ben Basiao; John Oliver Leaban; Peter Reyes; Jaime Paz; Alberto Agra; Andrei Bon Tagum; Romy Dayday; Jeremy Javier.

<sup>20</sup> *Rollo* (G.R. No. 199118), p. 316.

<sup>21</sup> *Id.* at 17.

<sup>22</sup> *Rollo* (G.R. No. 199082), p. 21.

<sup>23</sup> Refers to the Joint Committee and Fact-Finding Team.

<sup>24</sup> *Rollo* (G.R. No. 199082), pp. 158-161.

<sup>25</sup> *Rollo* (G.R. No. 199118), pp. 250-259.

to be established, there is a need to present election documents allegedly tampered which resulted in the increase or decrease in the number of votes of local and national candidates.<sup>26</sup> GMA prayed that she be allowed to file her counter-affidavit within ten (10) days from receipt of the requested documents.<sup>27</sup> Petitioner Abalos, for his part, filed a Motion to Suspend Proceedings (*Ex Abundante Ad Cautelam*),<sup>28</sup> in view of the pendency of his petition brought before the Court.

In an Order<sup>29</sup> dated November 15, 2011, the Joint Committee denied the aforesaid motions of petitioners. GMA subsequently filed a motion for reconsideration.<sup>30</sup>

On November 16, 2011, the Joint Committee promulgated a Joint Resolution which was later indorsed to the Comelec.<sup>31</sup> On November 18, 2011, after conducting a special session, the Comelec *en banc* issued a Resolution<sup>32</sup> approving and adopting the Joint Resolution subject to modifications. The dispositive portion of the Comelec Resolution reads:

**WHEREFORE**, premises considered, the Resolution of the Joint DOJ-COMELEC Preliminary Investigation Committee in DOJ-COMELEC Case No. 001-2011 and DOJ-COMELEC Case No. 002-2011, upon the recommendation of the COMELEC's own representatives in the Committee, is hereby **APPROVED** and **ADOPTED**, subject to the following **MODIFICATIONS**:

1. That information/s for the crime of **ELECTORAL SABOTAGE** under **Section 42 (b) of R.A. 9369, amending Section 27 (b) of R.A. 6646**, be filed against **GLORIA MACAPAGAL-ARROYO, BENJAMIN**

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<sup>26</sup> *Id.* at 254.

<sup>27</sup> *Id.* at 257.

<sup>28</sup> *Rollo* (G.R. No. 199085), pp. 302-306.

<sup>29</sup> *Rollo* (G.R. No. 199118), pp. 260-264.

<sup>30</sup> *Id.* at 224.

<sup>31</sup> *Id.* at 319.

<sup>32</sup> *Id.* at 265-273.



**ABALOS, SR., LINTANG H. BEDOL, DATU  
ANDAL AMPATUAN, SR. and PETER REYES;**

2. That the charges against **MICHAEL C. ABAS, NICODEMO FERRER, REUBEN BASIAO, JAIME PAZ** and **NORIE K. UNAS** be subjected to further investigation;
3. That the charges against **JOSE MIGUEL T. ARROYO, BONG SERRANO, ALBERTO AGRA, ANDREI BON TAGUM, GABBY CLAUDIO, ROMY DAYDAY, JEREMY JAVIER, JOHN DOE a.k.a BUTCH**, be **DISMISSED** for insufficiency of evidence to establish probable cause;
4. That the recommendation that **ESTELITA B. ORBASE, ELIZA A. GASMIN, ELSA Z. ATINEN, SALIAO S. AMBA, MAGSAYSAY B. MOHAMAD, SALONGA K. EDZELA, RAGAH D. AYUNAN, SUSAN U. CANANBAN, RUSSAM H. MABANG, ASUNCION CORAZON P. RENIEDO, NENA A. ALID, MA. SUSAN L. ALBANO, ROHAIDA T. KHALID, ARAW M. CAO, JEEHAN S. NUR, ALICE A. LIM, NORIJEAN P. HANGKAL, CHRISTINA ROAN M. DALOPE, and MACEDA L. ABO** be administratively charged be subjected to further review by this Commission to determine the appropriate charge/s that may be filed against them;
5. That the findings of lack of probable cause against **LILIAN S. SUAN-RADAM** and **YOGIE G. MARTIRIZAR** be **REJECTED** by reason of the pendency of their respective cases before the Regional Trial Court of Pasay (Branch 114) and this Commission for the same offense under consideration.

In the higher interest of justice and by reason of manifest attempts to frustrate the government's right to prosecute and to obtain speedy disposition of the present case pending before the Commission, the Law Department and/or any COMELEC legal officers as may be authorized by this Commission is hereby **ORDERED** to **IMMEDIATELY PREPARE** and **FILE** the necessary Information/s before the appropriate court/s

SO ORDERED.<sup>33</sup> (Emphasis supplied.)

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<sup>33</sup>

*Id.* at 271-272.

On even date, pursuant to the above Resolution, the Comelec's Law Department filed with the Regional Trial Court (RTC), Pasay City, an Information against petitioner GMA, Governor Andal Ampatuan, Sr., and Atty. Lintang H. Bedol, for violation of Section 42 (b)(3) of Republic Act (R.A.) No. 9369, amending Section 27 (b) of R.A. No. 6646, docketed as Criminal Case No. RPSY-11-04432-CR.<sup>34</sup> The case was raffled to Branch 112 and the corresponding Warrant of Arrest was issued which was served on GMA on the same day.<sup>35</sup>

On November 18, 2011, petitioner GMA filed with the RTC an Urgent Omnibus Motion *Ad Cautelam*<sup>36</sup> with leave to allow the Joint Committee to resolve the motion for reconsideration filed by GMA, to defer issuance of a warrant of arrest and a Hold Departure Order, and to proceed to judicial determination of probable cause. She, likewise, filed with the Comelec a Motion to Vacate *Ad Cautelam*<sup>37</sup> praying that its Resolution be vacated for being null and void. The RTC nonetheless issued a warrant for her arrest which was duly served. GMA thereafter filed a Motion for Bail which was granted.

### Issues

In G.R. No. 199082, petitioner Arroyo relies on the following grounds:

- A. THE CREATION OF THE JOINT COMMITTEE VIA THE JOINT ORDER IS AT WAR WITH THE DUE PROCESS AND EQUAL PROTECTION CLAUSE OF THE CONSTITUTION, HAVING BEEN CREATED WITH THE SOLE END IN VIEW OF

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<sup>34</sup> *Id.* at 321.

<sup>35</sup> *Id.* at 226.

<sup>36</sup> *Id.* at 274-280.

<sup>37</sup> *Id.* at 439-451.

INVESTIGATING AND PROSECUTING CERTAIN PERSONS AND INCIDENTS ONLY, SPECIFICALLY THOSE INVOLVING THE 2004 AND 2007 ELECTIONS TO THE EXCLUSION OF OTHERS, IN VIOLATION OF THE DOCTRINE IN *BIRAOGO V. TRUTH COMMISSION* AND COMPANION CASE.

- B. NO LAW OR RULE AUTHORIZES THE JOINT COMMITTEE TO CONDUCT PRELIMINARY INVESTIGATION.
- C. THE CREATION OF THE JOINT COMMITTEE, WHICH FUSES THE COMMISSION ON ELECTIONS - A CONSTITUTIONALLY INDEPENDENT BODY - WITH THE DEPARTMENT OF JUSTICE – A POLITICAL AGENT OF THE EXECUTIVE – DEMOLISHES THE INDEPENDENCE OF THE COMMISSION ON ELECTIONS AS PROVIDED IN ARTICLE IX(A), SECTIONS 1 AND 2 AND IX(C) OF THE CONSTITUTION.
- D. IN VIEW OF THE NUMEROUS AND PERSISTENT PUBLIC PRONOUNCEMENTS OF THE PRESIDENT, HIS SPOKESPERSONS, THE HEADS OF THE DOJ AND THE COMELEC, AND MEMBERS OF THE JOINT COMMITTEE THAT CASES SHOULD BE FILED AGAINST PETITIONER AND HIS FAMILY AND ALLEGED ASSOCIATES BY THE END OF 2011, THE PROCEEDINGS THEREOF SHOULD BE ENJOINED FOR BEING PERSECUTORY, PURSUANT TO *ALLADO V. DIOKNO* AND RELATED CASES.
- E. THE CREATION AND CONSTITUTION OF THE JOINT COMMITTEE TRAMPLES UPON PETITIONER’S RIGHT TO A FAIR PROCEEDING BY AN INDEPENDENT AND IMPARTIAL TRIBUNAL.
- F. THE COMELEC, AND SUBSEQUENTLY, THE RTC OF PASAY CITY, HAVE ASSUMED JURISDICTION OVER THE SUBJECT MATTER SOUGHT TO BE INVESTIGATED BY THE JOINT COMMITTEE, TO THE EXCLUSION OF ANY BODY, INCLUDING THE JOINT COMMITTEE.<sup>38</sup>

In G.R. No. 199085, petitioner Abalos raises the following issues:

I.

DOES JOINT ORDER NO. 001-2011, CREATING THE JOINT DOJ-COMELEC FACT-FINDING TEAM AND PRELIMINARY INVESTIGATION COMMITTEE VIOLATE PETITIONER’S

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<sup>38</sup>

*Rollo* (G.R. No. 199082), pp. 21-23.

CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE  
LAW?

II.

DID THE CONDUCT AND PROCEEDINGS OF THE JOINT  
DOJ-COMELEC FACT-FINDING TEAM AND PRELIMINARY  
INVESTIGATION COMMITTEE VIOLATE PETITIONER'S  
CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW?

III.

DID THE DOJ AND COMELEC VIOLATE THE PRINCIPLE  
OF SEPARATION OF POWERS BY CREATING THE JOINT DOJ-  
COMELEC FACT-FINDING TEAM AND PRELIMINARY  
INVESTIGATION COMMITTEE WHICH ENCROACHED UPON THE  
POWERS OF THE LEGISLATURE AND THE REGIONAL TRIAL  
COURT?

IV.

DOES THE JOINT DOJ-COMELEC FACT-FINDING TEAM  
AND PRELIMINARY INVESTIGATION COMMITTEE HAVE THE  
POWER AND LEGAL AUTHORITY TO CONDUCT A  
PRELIMINARY INVESTIGATION OF THE SAME ELECTORAL  
SABOTAGE CASES WHICH THE COMELEC HAD ALREADY  
TAKEN COGNIZANCE OF?<sup>39</sup>

In G.R. No. 199118, petitioner GMA anchors her petition on the  
following grounds:

- I. THE EXECUTIVE DEPARTMENT, THROUGH THE DOJ,  
OSTENSIBLY ACTING "JOINTLY" WITH THE COMELEC,  
HAS ACTED BEYOND THE LIMITS OF THE  
CONSTITUTION, IN THAT IT HAS COMPROMISED THE  
INDEPENDENCE OF THE COMELEC.
- II. THE COMELEC HAS EFFECTIVELY ABDICATED ITS  
CONSTITUTIONAL MANDATE "TO INVESTIGATE AND,  
WHERE APPROPRIATE, PROSECUTE CASES OF  
VIOLATIONS OF ELECTION LAWS, INCLUDING ACTS OR  
OMISSIONS CONSTITUTING ELECTION FRAUDS,  
OFFENSES, AND MALPRACTICES" (ARTICLE IX-C,  
SECTION 2[6], 1987 CONSTITUTION OF THE REPUBLIC OF  
THE PHILIPPINES) IN FAVOR OF THE EXECUTIVE  
DEPARTMENT, ACTING THROUGH RESPONDENT  
JUSTICE SECRETARY DE LIMA.

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<sup>39</sup> *Rollo* (G.R. No. 199085), pp. 23-24.

- III. DOJ-COMELEC JOINT ORDER NO. 001-2011 AND THE JOINT COMMITTEE RULES HAVE NOT BEEN PUBLISHED PURSUANT TO *TAÑADA V. TUVERA*, G.R. No. L-63915 (29 DECEMBER 1986). AFTER ALL, AS THE HONORABLE COURT LIKEWISE DECLARED IN *REPUBLIC V. PILIPINAS SHELL PETROLEUM CORPORATION*, G.R. No. 173918 (08 APRIL 2008), (SIC)<sup>40</sup>

We deferred the resolution of petitioners' Motion for the Issuance of a TRO and, instead, required the respondents to comment on the petitions.<sup>41</sup> We likewise scheduled the consolidated cases for oral argument for which the parties were directed to limit their respective discussions to the following issues:

- I. Whether or not Joint Order No. 001-2011 "*Creating and Constituting a Joint DOJ-COMELEC Preliminary Investigation Committee and Fact-Finding Team on the 2004 and 2007 National Elections Electoral Fraud and Manipulation Cases*" is constitutional in light of the following:
- A. The due process clause of the 1987 Constitution
  - B. The equal protection clause of the 1987 Constitution
  - C. The principle of separation of powers
  - D. The independence of the COMELEC as a constitutional body
- II. Whether or not the COMELEC has jurisdiction under the law to conduct preliminary investigation jointly with the DOJ.
- A. Whether or not due process was observed by the Joint DOJ-COMELEC Fact-Finding Team and Preliminary Investigation Committee, and the COMELEC in the conduct of the preliminary investigation and approval of the Joint Panel's Resolution.<sup>42</sup>

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<sup>40</sup> *Rollo* (G.R. No. 199118), pp. 18-19.

<sup>41</sup> *Id.* at 281-282.

<sup>42</sup> *Id.* at 291-292.

The Court, thereafter, required the parties to submit their respective Memoranda.<sup>43</sup>

## **The Court's Ruling**

### *Procedural Issues*

Respondents claim that Mike Arroyo's petition is moot and that of GMA is moot and academic. They explain that the Mike Arroyo petition presents no actual controversy that necessitates the exercise by the Court of its power of judicial review, considering that he was not among those indicted for electoral sabotage in the 2007 national elections as the Comelec dismissed the case against him for insufficiency of evidence.<sup>44</sup> Anent the 2004 national elections, the Fact-Finding Team is yet to complete its investigation so Mike Arroyo's apprehensions are merely speculative and anticipatory.<sup>45</sup> As to the GMA petition, respondents aver that any judgment of the Court will have no practical legal effect because an Information has already been filed against her in Branch 112, RTC of Pasay City.<sup>46</sup> With the filing of the Information, the RTC has already acquired jurisdiction over the case, including all issues relating to the constitutionality or legality of her preliminary investigation.<sup>47</sup> Respondents also claim that the issues relating to the constitutionality and validity of the conduct of the preliminary investigation of GMA are best left to the trial court, considering that it involves questions of fact.<sup>48</sup> Respondents add that considering that the RTC has concurrent jurisdiction to determine a constitutional issue, it will be

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<sup>43</sup> *Id.* at 576-577.

<sup>44</sup> *Id.* at 326-327.

<sup>45</sup> *Id.* at 238.

<sup>46</sup> *Id.* at 330.

<sup>47</sup> *Id.* at 331.

<sup>48</sup> *Id.* at 333.

practical for the Court to allow the RTC to determine the constitutional issues in this case.<sup>49</sup>

We do not agree.

### *Mootness*

It cannot be gainsaid that for a court to exercise its power of adjudication, there must be an actual case or controversy, that is, one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution.<sup>50</sup> The case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice.<sup>51</sup>

A case becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value.<sup>52</sup> However, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial.<sup>53</sup>

Here, the consolidated cases are not rendered moot and academic by the promulgation of the Joint Resolution by the Joint Committee and the approval thereof by the Comelec. It must be recalled that the main issues in the three petitions before us are the constitutionality and legality of the creation of the Joint Committee and the Fact-Finding Team as well as the

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<sup>49</sup> *Id.* at 335.

<sup>50</sup> *Mattel, Inc. v. Francisco*, G.R. No. 166886, July 30, 2008, 560 SCRA 504, 514.

<sup>51</sup> *Id.*

<sup>52</sup> *Garayblas v. Atienza, Jr.*, G.R. No. 149493, June 22, 2006, 492 SCRA 202, 216; See: *Tantoy, Sr. v. Abrogar*, G.R. No. 156128, May 9, 2005, 458 SCRA 301, 305.

<sup>53</sup> *Garayblas v. Atienza, Jr.*, *supra*, at 216-217.

proceedings undertaken pursuant thereto. The assailed Joint Order specifically provides that the Joint Committee was created for purposes of investigating the alleged massive electoral fraud during the 2004 and 2007 national elections. However, in the Fact-Finding Team's Initial Report, the team specifically agreed that the report would focus on the irregularities during the 2007 elections. Also, in its November 18, 2011 Resolution, the Comelec, while directing the filing of information against petitioners Abalos and GMA, ordered that further investigations be conducted against the other respondents therein. Apparently, the Fact-Finding Team's and Joint Committee's respective mandates have not been fulfilled and they are, therefore, bound to continue discharging their duties set forth in the assailed Joint Order. Moreover, petitioners question the validity of the proceedings undertaken by the Fact-Finding Team and the Joint Committee leading to the filing of information, on constitutional grounds. We are not, therefore, barred from deciding on the petitions simply by the occurrence of the supervening events of filing an information and dismissal of the charges.

*Jurisdiction over the validity of the  
conduct of the preliminary investigation*

This is not the first time that the Court is confronted with the issue of jurisdiction to conduct preliminary investigation and at the same time with the propriety of the conduct of preliminary investigation. In *Cojuangco, Jr. v. Presidential Commission on Good Government [PCGG]*,<sup>54</sup> the Court resolved two issues, namely: (1) whether or not the PCGG has the power to conduct a preliminary investigation of the anti-graft and corruption cases filed by the Solicitor General against Eduardo Conjuangco, Jr. and other respondents for the alleged misuse of coconut levy funds; and (2) on the

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<sup>54</sup> 268 Phil. 235 (1990).



assumption that it has jurisdiction to conduct such a preliminary investigation, whether or not its conduct constitutes a violation of petitioner's right to due process and equal protection of the law.<sup>55</sup> The Court decided these issues notwithstanding the fact that Informations had already been filed with the trial court.

In *Allado v. Diokno*,<sup>56</sup> in a petition for *certiorari* assailing the propriety of the issuance of a warrant of arrest, the Court could not ignore the undue haste in the filing of the information and the inordinate interest of the government in filing the same. Thus, this Court took time to determine whether or not there was, indeed, probable cause to warrant the filing of information. This, notwithstanding the fact that information had been filed and a warrant of arrest had been issued. Petitioners therein came directly to this Court and sought relief to rectify the injustice that they suffered.

### *Hierarchy of courts*

Neither can the petitions be dismissed solely because of violation of the principle of hierarchy of courts. This principle requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court.<sup>57</sup> The Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. While this jurisdiction is shared with the Court of Appeals and the RTC, a direct invocation of this Court's jurisdiction is allowed when there are special and important reasons therefor, clearly and especially set out in the petition, as in the present case.<sup>58</sup> In the consolidated petitions, petitioners invoke exemption from the observance of

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<sup>55</sup> *Id.* at 241.

<sup>56</sup> G.R. No. 113630, May 5, 1994, 232 SCRA 192.

<sup>57</sup> *Bagabuyo v. Commission on Elections*, G.R. No. 176970, December 8, 2008, 573 SCRA 290, 296.

<sup>58</sup> *Id.*

the rule on hierarchy of courts in keeping with the Court's duty to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws, and that they have not abused the discretion given to them.<sup>59</sup>

It is noteworthy that the consolidated petitions assail the constitutionality of issuances and resolutions of the DOJ and the Comelec. The general rule is that this Court shall exercise only appellate jurisdiction over cases involving the constitutionality of a statute, treaty or regulation. However, such rule is subject to exception, that is, in circumstances where the Court believes that resolving the issue of constitutionality of a law or regulation at the first instance is of paramount importance and immediately affects the social, economic, and moral well-being of the people.<sup>60</sup> This case falls within the exception. An expeditious resolution of the issues raised in the petitions is necessary. Besides, the Court has entertained a direct resort to the Court without the requisite motion for reconsideration filed below or without exhaustion of administrative remedies where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or of the petitioners and when there is an alleged violation of due process, as in the present case.<sup>61</sup> We apply the same relaxation of the Rules in the present case and, thus, entertain direct resort to this Court.

### *Substantive Issues*

#### *Bases for the Creation of the Fact-Finding Team and Joint Committee*

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<sup>59</sup> Rollo (G.R. No. 199082), p. 6; rollo (G.R. No. 199085), p. 5; rollo (G.R. No. 199118), p. 9.

<sup>60</sup> *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*, G.R. No. 149719, June 21, 2007, 525 SCRA 198, 206.

<sup>61</sup> *Chua v. Ang*, G.R. No. 156164, September 4, 2009, 598 SCRA 229, 237-238.

Section 2, Article IX-C of the 1987 Constitution enumerates the powers and functions of the Comelec. Paragraph (6) thereof vests in the Comelec the power to:

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

This was an important innovation introduced by the 1987 Constitution, because the above-quoted provision was not in the 1935 and 1973 Constitutions.<sup>62</sup>

The grant to the Comelec of the power to investigate and prosecute election offenses as an adjunct to the enforcement and administration of all election laws is intended to enable the Comelec to effectively insure to the people the free, orderly, and honest conduct of elections. The failure of the Comelec to exercise this power could result in the frustration of the true will of the people and make a mere idle ceremony of the sacred right and duty of every qualified citizen to vote.<sup>63</sup>

The constitutional grant of prosecutorial power in the Comelec was reflected in Section 265 of Batas Pambansa Blg. 881, otherwise known as the *Omnibus Election Code*, to wit:

Section 265. *Prosecution.* The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other

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<sup>62</sup> *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*, G.R. No. 177508, August 7, 2009, 595 SCRA 477, 493-494.

<sup>63</sup> *Baytan v. Comelec*, 444 Phil. 812, 817-818 (2003); *Pimentel, Jr. v. Comelec*, 352 Phil. 424, 439 (1998).

prosecuting arms of the government: *Provided, however*, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal [public prosecutor], or with the Ministry [Department] of Justice for proper investigation and prosecution, if warranted.

Under the above provision of law, the power to conduct preliminary investigation is vested exclusively with the Comelec. The latter, however, was given by the same provision of law the authority to avail itself of the assistance of other prosecuting arms of the government.<sup>64</sup> Thus, under Section 2,<sup>65</sup> Rule 34 of the Comelec Rules of Procedure, provincial and city prosecutors and their assistants are given continuing authority as deputies to conduct preliminary investigation of complaints involving election offenses under election laws and to prosecute the same. The complaints may be filed directly with them or may be indorsed to them by the petitioner or its duly authorized representatives.<sup>66</sup>

Thus, under the Omnibus Election Code, while the exclusive jurisdiction to conduct preliminary investigation had been lodged with the Comelec, the prosecutors had been conducting preliminary investigations pursuant to the continuing delegated authority given by the Comelec. The

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<sup>64</sup> *Diño v. Olivarez*, G.R. No. 170447, December 4, 2009, 607 SCRA 251, 261; *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*, *supra* note 62, at 495-496; *Commission on Elections v. Español*, G.R. Nos. 149164-73, December 10, 2003, 417 SCRA 554, 565.

<sup>65</sup> Section 2. Continuing Delegation of Authority to Other Prosecution Arms of the Government. – The Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants are hereby given continuing authority, as deputies of the Commission, to conduct preliminary investigation of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the Commission or its duly authorized representatives and to prosecute the same. Such authority may be revoked or withdrawn anytime by the Commission whenever in its judgment such revocation or withdrawal is necessary to protect the integrity of the Commission, promote the common good, or when it believes that successful prosecution of the case can be done by the Commission.

<sup>66</sup> *Commission on Elections v. Español*, *supra* note 64, at 565.

reason for this delegation of authority has been explained in *Commission on Elections v. Español*:<sup>67</sup>

The deputation of the Provincial and City Prosecutors is necessitated by the need for prompt investigation and dispensation of election cases as an indispensable part of the task of securing fine, orderly, honest, peaceful and credible elections. Enfeebled by lack of funds and the magnitude of its workload, the petitioner does not have a sufficient number of legal officers to conduct such investigation and to prosecute such cases.<sup>68</sup>

Moreover, as we acknowledged in *People v. Basilla*,<sup>69</sup> the prompt and fair investigation and prosecution of election offenses committed before or in the course of nationwide elections would simply not be possible without the assistance of provincial and city fiscals [prosecutors] and their assistants and staff members, and of the state prosecutors of the DOJ.<sup>70</sup>

Section 265 of the Omnibus Election Code was amended by Section 43 of R.A. No. 9369,<sup>71</sup> which reads:

Section 43. Section 265 of Batas Pambansa Blg. 881 is hereby amended to read as follows:

SEC. 265. *Prosecution.* – The Commission shall, through its duly authorized legal officers, have the power, ***concurrent with the other prosecuting arms of the government***, to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same.<sup>72</sup>

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 565-566.

<sup>69</sup> G.R. Nos. 83938-40, November 6, 1989, 179 SCRA 190.

<sup>70</sup> *People v. Basilia*, *supra*, cited in *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*, *supra* note 62, at 496.

<sup>71</sup> 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.”

<sup>72</sup> Emphasis supplied.

As clearly set forth above, instead of a mere delegated authority, the other prosecuting arms of the government, such as the DOJ, now exercise concurrent jurisdiction with the Comelec to conduct preliminary investigation of all election offenses and to prosecute the same.

It is, therefore, not only the power but the duty of both the Comelec and the DOJ to perform any act necessary to ensure the prompt and fair investigation and prosecution of election offenses. Pursuant to the above constitutional and statutory provisions, and as will be explained further below, we find no impediment for the Comelec and the DOJ to create the Joint Committee and Fact-Finding Team for the purpose of conducting a thorough investigation of the alleged massive electoral fraud and the manipulation of election results in the 2004 and 2007 national elections relating in particular to the presidential and senatorial elections.<sup>73</sup>

### *Constitutionality of Joint-Order No. 001-2011*

#### *A. Equal Protection Clause*

Petitioners claim that the creation of the Joint Committee and Fact-Finding Team is in violation of the equal protection clause of the Constitution because its sole purpose is the investigation and prosecution of certain persons and incidents. They argue that there is no substantial distinction between the allegations of massive electoral fraud in 2004 and 2007, on the one hand, and previous and subsequent national elections, on the other hand; and no substantial distinction between petitioners and the other persons or public officials who might have been involved in previous election offenses. They insist that the Joint Panel was created to target only

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<sup>73</sup> Rollo (G.R. No. 199118), pp. 49-50.

the Arroyo Administration as well as public officials linked to the Arroyo Administration. To bolster their claim, petitioners explain that Joint Order No. 001-2011 is similar to Executive Order No. 1 (creating the Philippine Truth Commission) which this Court had already nullified for being violative of the equal protection clause.

Respondents, however, refute the above contentions and argue that the wide array of the possible election offenses and broad spectrum of individuals who may have committed them, if any, immediately negate the assertion that the assailed orders are aimed only at the officials of the Arroyo Administration.

We agree with the respondents.

The equal protection clause is enshrined in Section 1, Article III of the Constitution which reads:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, ***nor shall any person be denied the equal protection of the laws.***<sup>74</sup>

The concept of equal protection has been laid down in *Biraogo v. Philippine Truth Commission of 2010*:<sup>75</sup>

One of the basic principles on which this government was founded is that of the equality of right which is embodied in Section 1, Article III of the 1987 Constitution. The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has been embodied in a separate clause, however, to provide for a more specific guaranty against any form of undue favoritism or hostility from the government. Arbitrariness in

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<sup>74</sup> Emphasis supplied.

<sup>75</sup> G.R. Nos. 192935 and 193036, December 7, 2010, 637 SCRA 78.

general may be challenged on the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.

According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. It requires public bodies and institutions to treat similarly-situated individuals in a similar manner. The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly-constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.<sup>76</sup>

Unlike the matter addressed by the Court's ruling in *Biraogo v. Philippine Truth Commission of 2010*, Joint Order No. 001-2011 cannot be nullified on the ground that it singles out the officials of the Arroyo Administration and, therefore, it infringes the equal protection clause. The Philippine Truth Commission of 2010 was expressly created for the purpose of investigating alleged graft and corruption during the Arroyo Administration since Executive Order No. 1<sup>77</sup> specifically referred to the "previous administration"; while the Joint Committee was created for the purpose of conducting preliminary investigation of election offenses during the 2004 and 2007 elections. While GMA and Mike Arroyo were among those subjected to preliminary investigation, not all respondents therein were linked to GMA as there were public officers who were investigated upon in connection with their acts in the performance of their official duties. Private individuals were also subjected to the investigation by the Joint Committee.

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<sup>76</sup> *Id.* at 166-167.

<sup>77</sup> Creating the Philippine Truth Commission.



The equal protection guarantee exists to prevent undue favor or privilege. It is intended to eliminate discrimination and oppression based on inequality. Recognizing the existence of real differences among men, it does not demand absolute equality. It merely requires that all persons under like circumstances and conditions shall be treated alike both as to privileges conferred and liabilities enforced.<sup>78</sup>

We once held that the Office of the Ombudsman is granted virtually plenary investigatory powers by the Constitution and by law and thus may, for every particular investigation, whether commenced by complaint or on its own initiative, decide how best to pursue each investigation. Since the Office of the Ombudsman is granted such latitude, its varying treatment of similarly situated investigations cannot by itself be considered a violation of any of the parties' rights to the equal protection of the laws.<sup>79</sup> This same doctrine should likewise apply in the present case.

Thus, as the constitutional body granted with the broad power of enforcing and administering all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall,<sup>80</sup> and tasked to ensure free, orderly, honest, peaceful, and credible elections,<sup>81</sup> the Comelec has the authority to determine how best to perform such constitutional mandate. Pursuant to this authority, the Comelec issues various resolutions prior to every local or national elections setting forth the guidelines to be observed in the conduct of the elections. This shows that every election is distinct and requires different guidelines in order to ensure that the rules are updated to respond to existing circumstances.

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<sup>78</sup> *Santos v. People*, G.R. No. 173176, August 26, 2008, 563 SCRA 341, 369.

<sup>79</sup> *Dimayuga v. Office of the Ombudsman*, G.R. No. 129099, July 20, 2006, 495 SCRA 461, 469.

<sup>80</sup> 1987 Constitution, Article IX (C), Section 2 (1).

<sup>81</sup> 1987 Constitution, Article IX (C), Section 2 (4).

Moreover, as has been practiced in the past, complaints for violations of election laws may be filed either with the Comelec or with the DOJ. The Comelec may even initiate, *motu proprio*, complaints for election offenses.<sup>82</sup> Pursuant to law and the Comelec's own Rules, investigations may be conducted either by the Comelec itself through its law department or through the prosecutors of the DOJ. These varying procedures and treatment do not, however, mean that respondents are not treated alike. Thus, petitioners' insistence of infringement of their constitutional right to equal protection of the law is misplaced.

#### *B. Due Process*

Petitioners claim that the Joint Panel does not possess the required cold neutrality of an impartial judge because it is all at once the evidence-gatherer, prosecutor and judge. They explain that since the Fact-Finding Team has found probable cause to subject them to preliminary investigation, it is impossible for the Joint Committee to arrive at an opposite conclusion. Petitioners likewise express doubts of any possibility that the Joint Committee will be fair and impartial to them as Secretary De Lima and Chairman Brillantes had repeatedly expressed prejudgment against petitioners through their statements captured by the media.

For their part, respondents contend that petitioners failed to present proof that the President of the Philippines, Secretary of Justice, and Chairman of the Comelec actually made the statements allegedly prejudging their case and in the context in which they interpreted them. They likewise contend that assuming that said statements were made, there was no showing

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<sup>82</sup> 1993 Comelec Rules of Procedure, Sec. 3.

that Secretary De Lima had tried to intervene in the investigation to influence its outcome nor was it proven that the Joint Committee itself had prejudged the case. Lastly, they point out that Joint Order No. 001-2011 created two bodies, the Fact-Finding Team and the Joint Committee, with their respective mandates. Hence, they cannot be considered as one.

We find for respondents.

It is settled that the conduct of preliminary investigation is, like court proceedings, subject to the requirements of both substantive and procedural due process.<sup>83</sup> Preliminary investigation is considered as a judicial proceeding wherein the prosecutor or investigating officer, by the nature of his functions, acts as a quasi-judicial officer.<sup>84</sup> The authority of a prosecutor or investigating officer duly empowered to preside over or to conduct a preliminary investigation is no less than that of a municipal judge or even an RTC Judge.<sup>85</sup> Thus, as emphasized by the Court in *Ladlad v. Velasco*:<sup>86</sup>

x x x We cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective of serving the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may public's perception of the impartiality of the prosecutor be enhanced.<sup>87</sup>

In this case, as correctly pointed out by respondents, there was no showing that the statements claimed to have prejudged the case against petitioners were made by Secretary De Lima and Chairman Brillantes or

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<sup>83</sup> *Cruz, Jr. v. People*, G.R. No. 110436, June 27, 1994, 233 SCRA 439, 449.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 450, citing *Cojuangco, Jr. v. PCGG, et al.*, *supra* note 54.

<sup>86</sup> G.R. Nos. 170270-72, June 1, 2007, 523 SCRA 318.

<sup>87</sup> *Id.* at 345, citing *Tatad v. Sandiganbayan*, G.R. No. L-72335-39, March 21, 1998, 159 SCRA 70.

were in the prejudicial context in which petitioners claimed the statements were made. A reading of the statements allegedly made by them reveals that they were just responding to hypothetical questions in the event that probable cause would eventually be found by the Joint Committee.

More importantly, there was no proof or even an allegation that the Joint Committee itself, tasked to conduct the requisite preliminary investigation against petitioners, made biased statements that would convey to the public that the members were favoring a particular party. Neither did the petitioners show that the President of the Philippines, the Secretary of Justice or the Chairman of the Comelec intervened in the conduct of the preliminary investigation or exerted undue pressure on their subordinates to tailor their decision with their public declarations and adhere to a pre-determined result.<sup>88</sup> Moreover, insofar as the Comelec is concerned, it must be emphasized that the constitutional body is collegial. The act of the head of a collegial body cannot be considered as that of the entire body itself.<sup>89</sup> In equating the alleged bias of the above-named officials with that of the Joint Committee, there would be no arm of the government credible enough to conduct a preliminary investigation.<sup>90</sup>

It must also be emphasized that Joint Order No. 001-2011 created two bodies, namely: (1) the Fact-Finding Team tasked to gather real, documentary and testimonial evidence which can be utilized in the preliminary investigation to be conducted by the Joint Committee; and (2) the Joint Committee mandated to conduct preliminary investigation. It is,

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<sup>88</sup> *Santos-Concio v. Department of Justice*, G.R. No. 175057, January 29, 2008, 543 SCRA 70, 90.

<sup>89</sup> *Gutierrez v. House of Representatives Committee on Justice*, G.R. No. 193459, February 15, 2011, 643 SCRA 198, 234.

<sup>90</sup> *Santos-Concio v. Department of Justice*, *supra* note 88.

therefore, inaccurate to say that there is only one body which acted as evidence-gatherer, prosecutor and judge.

*C. Separation of powers*

Petitioners claim that the Joint Panel is a new public office as shown by its composition, the creation of its own Rules of Procedure, and the source of funding for its operation. It is their position that the power of the DOJ to investigate the commission of crimes and the Comelec's constitutional mandate to investigate and prosecute violations of election laws do not include the power to create a new public office in the guise of a joint committee. Thus, in creating the Joint Panel, the DOJ and the Comelec encroached upon the power of the Legislature to create public office.

Respondents dispute this and contend that the Joint Committee and Fact-Finding Team are not new public offices, but merely collaborations between two existing government agencies sharing concurrent jurisdiction. This is shown by the fact that the members of the Joint Panel are existing officers of the DOJ and the Comelec who exercise duties and functions that are already vested in them.

Again, we agree with respondents.

As clearly explained above, the Comelec is granted the power to investigate, and where appropriate, prosecute cases of election offenses. This is necessary in ensuring free, orderly, honest, peaceful and credible elections. On the other hand, the DOJ is mandated to administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and

administration of the correctional system.<sup>91</sup> It is specifically empowered to “investigate the commission of crimes, prosecute offenders and administer the probation and correction system.”<sup>92</sup> Also, the provincial or city prosecutors and their assistants, as well as the national and regional state prosecutors, are specifically named as the officers authorized to conduct preliminary investigation.<sup>93</sup> Recently, the Comelec, through its duly authorized legal offices, is given the power, concurrent with the other prosecuting arms of the government such as the DOJ, to conduct preliminary investigation of all election offenses.<sup>94</sup>

Undoubtedly, it is the Constitution, statutes, and the Rules of Court and not the assailed Joint Order which give the DOJ and the Comelec the power to conduct preliminary investigation. No new power is given to them by virtue of the assailed order. As to the members of the Joint Committee and Fact-Finding Team, they perform such functions that they already perform by virtue of their current positions as prosecutors of the DOJ and legal officers of the Comelec. Thus, in no way can we consider the Joint Committee as a new public office.

#### *D. Independence of the Comelec*

Petitioners claim that in creating the Joint Panel, the Comelec has effectively abdicated its constitutional mandate to investigate and, where appropriate, to prosecute cases of violation of election laws including acts or omissions constituting election frauds, offenses, and malpractices in favor of the Executive Department acting through the DOJ Secretary. Under the set-

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<sup>91</sup> Section 1, Chapter I, Title III, Book IV of the Administrative Code of 1987.

<sup>92</sup> Section 3 (2), Chapter 1, Title III, Book IV, Administrative Code of 1987.

<sup>93</sup> Rules of Criminal Procedure, Rule 112, Section 1.

<sup>94</sup> R.A. 9369, Sec. 43.

up, the Comelec personnel is placed under the supervision and control of the DOJ. The chairperson is a DOJ official. Thus, the Comelec has willingly surrendered its independence to the DOJ and has acceded to share its exercise of judgment and discretion with the Executive Branch.

We do not agree.

Section 1,<sup>95</sup> Article IX-A of the 1987 Constitution expressly describes all the Constitutional Commissions as independent. Although essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of their respective functions.<sup>96</sup> The Constitution envisions a truly independent Comelec committed to ensure free, orderly, honest, peaceful, and credible elections and to serve as the guardian of the people's sacred right of suffrage – the citizenry's vital weapon in effecting a peaceful change of government and in achieving and promoting political stability.<sup>97</sup>

Prior to the amendment of Section 265 of the Omnibus Election Code, the Comelec had the exclusive authority to investigate and prosecute election offenses. In the discharge of this exclusive power, the Comelec was given the right to avail and, in fact, availed of the assistance of other prosecuting arms of the government such as the prosecutors of the DOJ. By virtue of this continuing authority, the state prosecutors and the provincial or city prosecutors were authorized to receive the complaint for election offense and delegate the conduct of investigation to any of their assistants. The investigating prosecutor, in turn, would make a recommendation either

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<sup>95</sup> Section 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

<sup>96</sup> *Brillantes, Jr. v. Yorac*, G.R. No. 93867, December 18, 1990, 192 SCRA 358, 360.

<sup>97</sup> *Gallardo v. Tabamo, Jr.*, G.R. No. 104848, January 29, 1993, 218 SCRA 253, 264.

to dismiss the complaint or to file the information. This recommendation is subject to the approval of the state, provincial or city prosecutor, who himself may file the information with the proper court if he finds sufficient cause to do so, subject, however, to the accused's right to appeal to the Comelec.<sup>98</sup>

Moreover, during the past national and local elections, the Comelec issued Resolutions<sup>99</sup> requesting the Secretary of Justice to assign prosecutors as members of Special Task Forces to assist the Comelec in the investigation and prosecution of election offenses. These Special Task Forces were created because of the need for additional lawyers to handle the investigation and prosecution of election offenses.

Clearly, the Comelec recognizes the need to delegate to the prosecutors the power to conduct preliminary investigation. Otherwise, the prompt resolution of alleged election offenses will not be attained. This delegation of power, otherwise known as deputation, has long been recognized and, in fact, been utilized as an effective means of disposing of various election offense cases. Apparently, as mere deputies, the prosecutors played a vital role in the conduct of preliminary investigation, in the resolution of complaints filed before them, and in the filing of the informations with the proper court.

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<sup>98</sup> Comelec Rules of Procedure, Rule 34.

<sup>99</sup> **Comelec Resolution No. 3467** "In the Matter of Requesting the Honorable Secretary of Justice to Assign Prosecutors as Members of a Special Task Force to Assist the Commission in the Investigation and Prosecution of Election Offenses in the May 14, 2001 National and Local Elections and reiterating the Continuing Deputation of Prosecutors under Rule 34 of the Comelec Rules of Procedure"; **Resolution No. 8733** "In the Matter of Requesting the Honorable Secretary of Justice to Assign Prosecutors as Members of a Special Task Force Created by the Commission to Conduct the Investigation and Prosecution of Election Offenses in Connection with the May 10, 2010 National and Local Elections"; **Resolution No. 9057** "In the Matter of Requesting the Honorable Secretary of Justice to Assign Prosecutors as Members of a Special Task Force to Assist the Commission in the Investigation and Prosecution of Election Offenses in Connection with the October 25, 2010 Barangay and Sanguniang Kabataan Elections." (Emphasis supplied.)



As pointed out by the Court in *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*,<sup>100</sup> the grant of exclusive power to investigate and prosecute cases of election offenses to the Comelec was not by virtue of the Constitution but by the Omnibus Election Code which was eventually amended by Section 43 of R.A. 9369. Thus, the DOJ now conducts preliminary investigation of election offenses concurrently with the Comelec and no longer as mere deputies. If the prosecutors had been allowed to conduct preliminary investigation and file the necessary information by virtue only of a delegated authority, they now have better grounds to perform such function by virtue of the statutory grant of authority. If deputation was justified because of lack of funds and legal officers to ensure prompt and fair investigation and prosecution of election offenses, the same justification should be cited to justify the grant to the other prosecuting arms of the government of such concurrent jurisdiction.

In view of the foregoing disquisition, we find no impediment for the creation of a Joint Committee. While the composition of the Joint Committee and Fact-Finding Team is dominated by DOJ officials, it does not necessarily follow that the Comelec is inferior. Under the Joint Order, resolutions of the Joint Committee finding probable cause for election offenses shall still be approved by the Comelec in accordance with the Comelec Rules of Procedure. This shows that the Comelec, though it acts jointly with the DOJ, remains in control of the proceedings. In no way can we say that the Comelec has thereby abdicated its independence to the executive department.

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<sup>100</sup> *Supra* note 62.

The text and intent of the constitutional provision granting the Comelec the authority to investigate and prosecute election offenses 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.<sup>101</sup> The Comelec should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created.<sup>102</sup> We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this Court should not interfere.<sup>103</sup> Thus, Comelec Resolution No. 9266, approving the creation of the Joint Committee and Fact-Finding Team, should be viewed not as an abdication of the constitutional body's independence but as a means to fulfill its duty of ensuring the prompt investigation and prosecution of election offenses as an adjunct of its mandate of ensuring a free, orderly, honest, peaceful and credible elections.

Although it belongs to the executive department, as the agency tasked to investigate crimes, prosecute offenders, and administer the correctional system, the DOJ is likewise not barred from acting jointly with the Comelec. It must be emphasized that the DOJ and the Comelec exercise concurrent jurisdiction in conducting preliminary investigation of election offenses. The doctrine of concurrent jurisdiction means equal jurisdiction to deal with the same subject matter.<sup>104</sup> Contrary to the contention of the petitioners, there is no prohibition on simultaneous exercise of power between two coordinate bodies. What is prohibited is the situation where one files a complaint against a respondent initially with one office (such as the Comelec) for preliminary investigation which was immediately acted upon by said office

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<sup>101</sup> *Bedol v. Commission on Elections*, G.R. No. 179830, December 3, 2009, 606 SCRA 554, 569, citing *Loong v. Commission on Elections*, G.R. No. 133676, April 14, 1999, 305 SCRA 832.

<sup>102</sup> *Tolentino v. Comelec*, G.R. No. 148334, January 21, 2004, 465 SCRA 385, 416.

<sup>103</sup> *Id.*, citing *Pungutan v. Abubakar*, 150 Phil. 1 (1972).

<sup>104</sup> *Department of Justice v. Hon. Liwag*, 491 Phil. 270, 285 (2005).

and the re-filing of substantially the same complaint with another office (such as the DOJ). The subsequent assumption of jurisdiction by the second office over the cases filed will not be allowed. Indeed, it is a settled rule that the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others.<sup>105</sup> As cogently held by the Court in *Department of Justice v. Hon. Liwag*:<sup>106</sup>

To allow the same complaint to be filed successively before two or more investigative bodies would promote multiplicity of proceedings. It would also cause undue difficulties to the respondent who would have to appear and defend his position before every agency or body where the same complaint was filed. This would lead hapless litigants at a loss as to where to appear and plead their cause or defense.

There is yet another undesirable consequence. There is the distinct possibility that the two bodies exercising jurisdiction at the same time would come up with conflicting resolutions regarding the guilt of the respondents.

Finally, the second investigation would entail an unnecessary expenditure of public funds, and the use of valuable and limited resources of Government, in a duplication of proceedings already started with the Ombudsman.<sup>107</sup>

None of these problems would likely arise in the present case. The Comelec and the DOJ themselves agreed that they would exercise their concurrent jurisdiction jointly. Although the preliminary investigation was conducted on the basis of two complaints – the initial report of the Fact-Finding Team and the complaint of Senator Pimentel – both complaints were filed with the Joint Committee. Consequently, the complaints were filed with and the preliminary investigation was conducted by only one investigative body. Thus, we find no reason to disallow the exercise of concurrent jurisdiction jointly by those given such authority. This is especially true in this case

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<sup>105</sup> *Id.* at 287.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 287-288.

given the magnitude of the crimes allegedly committed by petitioners. The joint preliminary investigation also serves to maximize the resources and manpower of both the Comelec and the DOJ for the prompt disposition of the cases.

Citing the principle of concurrent jurisdiction, petitioners insist that the investigation conducted by the Comelec involving Radam and Martirizar bars the creation of the Joint Committee for purposes of conducting another preliminary investigation. In short, they claim that the exercise by the Comelec of its jurisdiction to investigate excludes other bodies such as the DOJ and the Joint Committee from taking cognizance of the case. Petitioners add that the investigation should have been conducted also by the Comelec as the 2007 cases of Radam and Martirizar include several John Does and Jane Does.

We do not agree.

While the Comelec conducted the preliminary investigation against Radam, Martirizar and other unidentified persons, it only pertains to election offenses allegedly committed in North and South Cotabato. On the other hand, the preliminary investigation conducted by the Joint Committee (involving GMA) pertains to election offenses supposedly committed in Maguindanao. More importantly, considering the broad power of the Comelec to choose the means of fulfilling its duty of ensuring the prompt investigation and prosecution of election offenses as discussed earlier, there is nothing wrong if the Comelec chooses to work jointly with the DOJ in the conduct of said investigation. To reiterate, in no way can we consider this as an act abdicating the independence of the Comelec.

*Publication Requirement*

In the conduct of preliminary investigation, the DOJ is governed by the Rules of Court, while the Comelec is governed by the 1993 Comelec Rules of Procedure. There is, therefore, no need to promulgate new Rules as may be complementary to the DOJ and Comelec Rules.

As earlier discussed, considering that Joint Order No. 001-2011 only enables the Comelec and the DOJ to exercise powers which are already vested in them by the Constitution and other existing laws, it need not be published for it to be valid and effective. A close examination of the Joint Committee's Rules of Procedure, however, would show that its provisions affect the public. Specifically, the following provisions of the Rules either restrict the rights of or provide remedies to the affected parties, to wit: (1) Section 1 provides that "the Joint Committee will no longer entertain complaints from the public as soon as the Fact-Finding Team submits its final report, except for such complaints involving offenses mentioned in the Fact-Finding Team's Final Report"; (2) Section 2 states that "the Joint Committee shall not entertain a Motion to Dismiss"; and (3) Section 5 provides that a Motion for Reconsideration may be availed of by the aggrieved parties against the Joint Committee's Resolution. Consequently, publication of the Rules is necessary.

The publication requirement covers not only statutes but administrative regulations and issuances, as clearly outlined in *Tañada v. Tuvera*.<sup>108</sup>

We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their

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<sup>108</sup> 230 Phil. 528 (1986).

effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.

Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.<sup>109</sup>

As opposed to *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*,<sup>110</sup> where the Court held that OMB-DOJ Joint Circular No. 95-001 is only an internal arrangement between the DOJ and the Office of the Ombudsman outlining the authority and responsibilities among prosecutors of both offices in the conduct of preliminary investigation, the assailed Joint Committee's Rules of Procedure regulate not only the prosecutors of the DOJ and the Comelec but also the conduct and rights of persons, or the public in general. The publication requirement should, therefore, not be ignored.

Publication is a necessary component of procedural due process to give as wide publicity as possible so that all persons having an interest in the proceedings may be notified thereof.<sup>111</sup> The requirement of publication is intended to satisfy the basic requirements of due process. It is imperative for

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<sup>109</sup> *Id.* at 535.

<sup>110</sup> G.R. No. 159747, April 13, 2004, 427 SCRA 46.

<sup>111</sup> *National Association of Electricity Consumers for Reforms (NASECORE) v. Energy Regulatory Commission (ERC)*, G.R. No. 163935, August 16, 2006, 499 SCRA 103, 125.

it will be the height of injustice to punish or otherwise burden a citizen for the transgressions of a law or rule of which he had no notice whatsoever.<sup>112</sup>

Nevertheless, even if the Joint Committee's Rules of Procedure is ineffective for lack of publication, the proceedings undertaken by the Joint Committee are not rendered null and void for that reason, because the preliminary investigation was conducted by the Joint Committee pursuant to the procedures laid down in Rule 112 of the Rules on Criminal Procedure and the 1993 Comelec Rules of Procedure.

*Validity of the Conduct of  
Preliminary Investigation*

In her Supplemental Petition,<sup>113</sup> GMA outlines the incidents that took place after the filing of the instant petition, specifically the issuance by the Joint Committee of the Joint Resolution, the approval with modification of such resolution by the Comelec and the filing of information and the issuance of a warrant of arrest by the RTC. With these supervening events, GMA further assails the validity of the proceedings that took place based on the following additional grounds: (1) the undue and unbelievable haste attending the Joint Committee's conduct of the preliminary investigation, its resolution of the case, and its referral to and approval by the Comelec, taken in conjunction with the statements from the Office of the President, demonstrate a deliberate and reprehensible pattern of abuse of inalienable rights and a blatant disregard of the envisioned integrity and independence of the Comelec; (2) as it stands, the creation of the Joint Committee was for

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<sup>112</sup> *Garcillano v. House of Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communication Technology, and Suffrage and Electoral Reforms*, G.R. No. 170338, December 23, 2008, 575 SCRA 170, 190.

<sup>113</sup> *Rollo* (G.R. No. 199118), pp. 222-249.

the singular purpose of railroading the proceedings in the prosecution of the petitioner and in flagrant violation of her right to due process and equal protection of the laws; (3) the proceedings of the Joint Committee cannot be considered impartial and fair, considering that respondents have acted as law enforcers, who conducted the criminal investigation, gathered evidence and thereafter ordered the filing of complaints, and at the same time authorized preliminary investigation based on the complaints they caused to be filed; (4) the Comelec became an instrument of oppression when it hastily approved the resolution of the Joint Committee even if two of its members were in no position to cast their votes as they admitted to not having yet read the voluminous records of the cases; and (5) flagrant and repeated violations of her right to due process at every stage of the proceedings demonstrate a deliberate attempt to single out petitioner through the creation of the Joint Committee.<sup>114</sup>

In their Supplement to the Consolidated Comment,<sup>115</sup> respondents accuse petitioners of violating the rule against forum shopping. They contend that in filing the Supplemental Petition before the Court, the Urgent Omnibus Motion *Ad Cautelam* with the RTC, and the Motion to Vacate *Ad Cautelam* with the Comelec, GMA raises the common issue of whether or not the proceedings before the Joint Committee and the Comelec are null and void for violating the Constitution. Respondents likewise claim that the issues raised in the supplemental petition are factual which is beyond the power of this Court to decide.

We cannot dismiss the cases before us on the ground of forum shopping.

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<sup>114</sup> *Id.* at 226-227.

<sup>115</sup> *Id.* at 472-488.



Forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another and possibly favorable opinion in another forum other than by appeal or the special civil action of *certiorari*.<sup>116</sup> There can also be forum shopping when a party institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same and related causes and/or to grant the same or substantially the same reliefs on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.<sup>117</sup>

Indeed, petitioner GMA filed a Supplemental Petition before the Court, an Urgent Omnibus Motion *Ad Cautelam* before the RTC, and a Motion to Vacate *Ad Cautelam* before the Comelec, emphasizing the unbelievable haste committed by the Joint Committee and the Comelec in disposing of the cases before them. However, a plain reading of the allegations in GMA's motion before the RTC would show that GMA raised the issue of undue haste in issuing the Joint Resolution only in support of her prayer for the trial court to hold in abeyance the issuance of the warrant of arrest, considering that her motion for reconsideration of the denial of her motion to be furnished copies of documents was not yet acted upon by the Joint Committee. If at all the constitutional issue of violation of due process was raised, it was merely incidental. More importantly, GMA raised in her motion with the RTC the finding of probable cause as she sought the judicial determination of probable cause which is not an issue in the petitions before us. GMA's ultimate prayer is actually for the court to defer the issuance of

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<sup>116</sup> *Philippine Radiant Products, Inc. v. Metropolitan Bank & Trust Company, Inc.*, 513 Phil. 414, 428 (2005).

<sup>117</sup> *Huibonhoa v. Concepcion*, G.R. No. 153785, August 3, 2006, 497 SCRA 562, 569-570.

the warrant of arrest. Clearly, the reliefs sought in the RTC are different from the reliefs sought in this case. Thus, there is no forum shopping.

With respect to the Motion to Vacate *Ad Cautelam* filed with the Comelec, while the issues raised therein are substantially similar to the issues in the supplemental petition which, therefore, strictly speaking, warrants outright dismissal on the ground of forum shopping, we cannot do so in this case in light of the due process issues raised by GMA.<sup>118</sup> It is worthy to note that the main issues in the present petitions are the constitutionality of the creation of the Joint Panel and the validity of the proceedings undertaken pursuant thereto for alleged violation of the constitutional right to due process. In questioning the propriety of the conduct of the preliminary investigation in her Supplemental Petition, GMA only raises her continuing objection to the exercise of jurisdiction of the Joint Committee and the Comelec. There is, therefore, no impediment for the Court to rule on the validity of the conduct of preliminary investigation.

In *Uy v. Office of the Ombudsman*,<sup>119</sup> the Court explained the nature of preliminary investigation, to wit:

A preliminary investigation is held before an accused is placed on trial to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials. While the right is statutory rather than constitutional, it is a component of due process in administering criminal justice. The right to have a preliminary investigation conducted before being bound for trial and before being exposed to the risk of incarceration and penalty is not a mere formal or technical right; it is a substantive right. To deny the accused's claim to a preliminary investigation is to deprive him of the full measure of his right to due process.<sup>120</sup>

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<sup>118</sup> See: *Disini v. Sandiganbayan*, G.R. No. 175730, July 5, 2010, 623 SCRA 354, 377.

<sup>119</sup> G.R. Nos. 156399-400, June 27, 2008, 556 SCRA 73.

<sup>120</sup> *Id.* at 93-94.

A preliminary investigation is the crucial sieve in the criminal justice system which spells for an individual the difference between months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other hand. Thus, we have characterized the right to a preliminary investigation as not a mere formal or technical right but a substantive one, forming part of due process in criminal justice.<sup>121</sup>

In a preliminary investigation, the Rules of Court guarantee the petitioners basic due process rights such as the right to be furnished a copy of the complaint, the affidavits, and other supporting documents, and the right to submit counter-affidavits, and other supporting documents in her defense.<sup>122</sup> Admittedly, GMA received the notice requiring her to submit her counter-affidavit. Yet, she did not comply, allegedly because she could not prepare her counter-affidavit. She claimed that she was not furnished by Senator Pimentel pertinent documents that she needed to adequately prepare her counter-affidavit.

In her Omnibus Motion *Ad Cautelam*<sup>123</sup> to require Senator Pimentel to furnish her with documents referred to in his complaint-affidavit and for production of election documents as basis for the charge of electoral sabotage, GMA prayed that the Joint Committee issue an Order directing the Fact-Finding Team and Senator Pimentel to furnish her with copies of the following documents:

- a. Complaint-affidavit and other relevant documents of Senator Aquilino Pimentel III filed before the Commission on Elections against Attys. Lilia Suan-Radam and Yogie Martirizar, as well as the Informations

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<sup>121</sup> *Ladlad v. Velasco*, *supra* note 86, at 344.

<sup>122</sup> *Estandarte v. People*, G.R. Nos. 156851-55, February 18, 2008, 546 SCRA 130, 144.

<sup>123</sup> *Rollo* (G.R. No. 199118), pp. 250-259.

filed in the Regional Trial Court of Pasay City, Branch 114 in Criminal Case Nos. R-PSU-11-03190-CR to R-PSU-11-03200-CR.

- b. Records in the petitions filed by complainant Pimentel before the National Board of Canvassers, specifically in NBC Case Nos. 07-162, 07-168, 07-157, 07-159, 07-161 and 07-163.
- c. Documents which served as basis in the allegations of “Significant findings specific to the protested municipalities in the Province of Maguindanao.”
- d. Documents which served as basis in the allegations of “Significant findings specific to the protested municipalities in the Province of Lanao del Norte.”
- e. Documents which served as basis in the allegations of “Significant findings specific to the protested municipalities in the Province of Shariff Kabunsuan.”
- f. Documents which served as basis in the allegations of “Significant findings specific to the protested municipalities in the Province of Lanao del Sur.”
- g. Documents which served as basis in the allegations of “Significant findings specific to the protested municipalities in the Province of Sulu.”
- h. Documents which served as basis in the allegations of “Significant findings specific to the protested municipalities in the Province of Basilan.”
- i. Documents which served as basis in the allegations of “Significant findings specific to the protested municipalities in the Province of Sultan Kudarat.”<sup>124</sup>

GMA likewise requested the production of election documents used in the Provinces of South and North Cotabato and Maguindanao.<sup>125</sup>

The Joint Committee, however, denied GMA’s motion which carried with it the denial to extend the filing of her counter-affidavit. Consequently, the cases were submitted for resolution *sans* GMA’s and the other

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<sup>124</sup> *Id.* at 251-253.

<sup>125</sup> *Id.* at 255.

petitioners' counter-affidavits. This, according to GMA, violates her right to due process of law.

We do not agree.

GMA's insistence of her right to be furnished the above-enumerated documents is based on Section 3 (b), Rule 112 of the Rules on Criminal Procedure, which reads:

(b) x x x

The respondent shall have the right to examine *the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense*. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense,

Objects as evidence need not be furnished a party but shall be made available for examination, copying or photographing at the expense of the requesting party.<sup>126</sup>

Section 6 (a), Rule 34 of the Comelec Rules of Procedure also grants the respondent such right of examination, to wit:

Sec. 6. *Conduct of preliminary investigation.* – (a) If on the basis of the complaint, affidavits and other supporting evidence, the investigating officer finds no ground to continue with the inquiry, he shall recommend the dismissal of the complaint and shall follow the procedure prescribed in Sec. 8 (c) of this Rule. Otherwise, he shall issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents giving said respondent ten (10) days from receipt within which to submit counter-affidavits and other supporting documents. *The respondent shall have the right to examine all other evidence submitted by the complainant.*<sup>127</sup>

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<sup>126</sup>

Emphasis supplied.

<sup>127</sup>

Emphasis supplied.

Clearly from the above-quoted provisions, the subpoena issued against respondent [therein] should be accompanied by a copy of the complaint and the supporting affidavits and documents. GMA also has the right to examine documents but such right of examination is limited only to the documents or evidence submitted by the complainants (Senator Pimentel and the Fact-Finding Team) which she may not have been furnished and to copy them at her expense.

While it is true that Senator Pimentel referred to certain election documents which served as bases in the allegations of significant findings specific to the protested municipalities involved, there were no annexes or attachments to the complaint filed.<sup>128</sup> As stated in the Joint Committee's Order dated November 15, 2011 denying GMA's Omnibus Motion *Ad Cautelam*, Senator Pimentel was ordered to furnish petitioners with all the supporting evidence.<sup>129</sup> However, Senator Pimentel manifested that he was adopting all the affidavits attached to the Fact-Finding Team's Initial Report.<sup>130</sup> Therefore, when GMA was furnished with the documents attached to the Initial Report, she was already granted the right to examine as guaranteed by the Comelec Rules of Procedure and the Rules on Criminal Procedure. Those were the only documents submitted by the complainants to the Committee. If there are other documents that were referred to in Senator Pimentel's complaint but were not submitted to the Joint Committee, the latter considered those documents unnecessary at that point (without foreclosing the relevance of other evidence that may later be presented during the trial)<sup>131</sup> as the evidence submitted before it were considered

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<sup>128</sup> *Rollo* (G.R. No. 199085), p. 747.

<sup>129</sup> *Rollo* (G.R. No. 199118), p. 262.

<sup>130</sup> *Rollo* (G.R. No. 199085), p. 748.

<sup>131</sup> *Id.* at 763.

adequate to find probable cause against her.<sup>132</sup> Anyway, the failure of the complainant to submit documents supporting his allegations in the complaint may only weaken his claims and eventually works for the benefit of the respondent as these merely are allegations unsupported by independent evidence.

We must, however, emphasize at this point that during the preliminary investigation, the complainants are not obliged to prove their cause beyond reasonable doubt. It would be unfair to expect them to present the entire evidence needed to secure the conviction of the accused prior to the filing of information.<sup>133</sup> A preliminary investigation is not the occasion for the full and exhaustive display of the parties' respective evidence but the presentation only of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof and should be held for trial.<sup>134</sup> Precisely there is a trial to allow the reception of evidence for the prosecution in support of the charge.<sup>135</sup>

With the denial of GMA's motion to be furnished with and examine the documents referred to in Senator Pimentel's complaint, GMA's motion to extend the filing of her counter-affidavit and countervailing evidence was consequently denied. Indeed, considering the nature of the crime for which GMA was subjected to preliminary investigation and the documents attached to the complaint, it is incumbent upon the Joint Committee to afford her ample time to examine the documents submitted to [the Joint Committee] in order that she would be able to prepare her counter-affidavit. She cannot, however, insist to examine documents not in the possession and custody of

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<sup>132</sup> *Id.* at 763-770.

<sup>133</sup> *PCGG v. Hon. Desierto*, 445 Phil. 154, 192 (2003).

<sup>134</sup> *Id.* at 193; *Raro v. Sandiganbayan*, 390 Phil. 917, 945 (2000).

<sup>135</sup> *PCGG v. Hon. Desierto*, *supra* note 133, at 193.

the Joint Committee nor submitted by the complainants. Otherwise, it might cause undue and unnecessary delay in the disposition of the cases. This undue delay might result in the violation of the right to a speedy disposition of cases as enshrined in Section 16, Article III of the Constitution which states that “all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.” The constitutional right to speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings.<sup>136</sup> Any party to a case has the right to demand on all officials tasked with the administration of justice to expedite its disposition.<sup>137</sup> Society has a particular interest in bringing swift prosecutions, and the society’s representatives are the ones who should protect that interest.<sup>138</sup>

Even assuming for the sake of argument that the denial of GMA’s motion to be furnished with and examine the documents referred to in Senator Pimentel’s complaint carried with it the denial to extend the filing of her counter-affidavit and other countervailing evidence rendering the preliminary investigation irregular, such irregularity would not divest the RTC of jurisdiction over the case and would not nullify the warrant of arrest issued in connection therewith, considering that Informations had already been filed against petitioners, except Mike Arroyo. This would only compel us to suspend the proceedings in the RTC and remand the case to the Joint Committee so that GMA could submit her counter-affidavit and other countervailing evidence if she still opts to. However, to do so would hold

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<sup>136</sup> *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008, 561 SCRA 135, 146.

<sup>137</sup> *Id.* ; *Yulo v. People*, G.R. No. 142762, March 4, 2005, 452 SCRA 705, 710.

<sup>138</sup> *Uy v. Adriano*, G.R. No. 159098, October 27, 2006, 505 SCRA 625, 647.



back the progress of the case which is anathema to the accused's right to speedy disposition of cases.

It is well settled that the absence [or irregularity] of preliminary investigation does not affect the court's jurisdiction over the case. Nor does it impair the validity of the criminal information or render it defective. Dismissal is not the remedy.<sup>139</sup> Neither is it a ground to quash the information or nullify the order of arrest issued against the accused or justify the release of the accused from detention.<sup>140</sup> The proper course of action that should be taken is to hold in abeyance the proceedings upon such information and to remand the case for the conduct of preliminary investigation.<sup>141</sup>

In the landmark cases of *Cojuangco, Jr. v. Presidential Commission on Good Government [PCGG]*<sup>142</sup> and *Allado v. Diokno*,<sup>143</sup> we dismissed the criminal cases and set aside the informations and warrants of arrest. In *Cojuangco*, we dismissed the criminal case because the information was filed by the PCGG which we declared to be unauthorized to conduct the preliminary investigation and, consequently, file the information as it did not possess the cold neutrality of an impartial judge. In *Allado*, we set aside the warrant of arrest issued against petitioners therein and enjoined the trial court from proceeding further for lack of probable cause. For one, there was serious doubt on the reported death of the victim in that case since the *corpus delicti* had not been established nor had his remains been recovered;

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<sup>139</sup> *Raro v. Sandiganbayan*, G.R. No. 108431, July 14, 2000, 335 SCRA 581; *Socrates v. Sandiganbayan*, G.R. Nos. 116259-60, February 20, 1996, 253 SCRA 773, 792; *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349, 355, citing *Doromal v. Sandiganbayan*, G.R. No. 85468, September 7, 1989, 177 SCRA 354.

<sup>140</sup> *San Agustin v. People*, G.R. No. 158211, August 31, 2004, 437 SCRA 392, 401.

<sup>141</sup> *Raro v. Sandiganbayan*, *supra* note 139; *Socrates v. Sandiganbayan*, *supra* note 139; *Pilapil v. Sandiganbayan*, *supra* note 139.

<sup>142</sup> *Supra* note 54.

<sup>143</sup> *Supra* note 56.

and based on the evidence submitted, there was nothing to incriminate petitioners therein. In this case, we cannot reach the same conclusion because the Information filed before the RTC of Pasay City was filed by the Comelec *en banc* which had the authority to file the information for electoral sabotage and because the presence or absence of probable cause is not an issue herein. As can be gleaned from their assignment of errors/issues, petitioners did not question the finding of probable cause in any of their supplemental petitions. It was only in GMA's memorandum where she belatedly included a discussion on the "insufficiency" of the evidence supporting the finding of probable cause for the filing of the Information for electoral sabotage against her.<sup>144</sup> A closer look at her arguments, however, would show that they were included only to highlight the necessity of examining the election documents GMA requested to see before she could file her counter-affidavit. At any rate, since GMA failed to submit her counter-affidavit and other countervailing evidence within the period required by the Joint Committee, we cannot excuse her from non-compliance.

There might have been overzealousness on the part of the Joint Committee in terminating the investigation, endorsing the Joint Resolution to the Comelec for approval, and in filing the information in court. However, speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be instantly attributed to an injudicious performance of functions.<sup>145</sup> The orderly administration of justice remains the paramount consideration with particular regard to the peculiar circumstances of each case.<sup>146</sup> To be sure, petitioners were given the opportunity to present

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<sup>144</sup> Memorandum of GMA, *rollo* (G.R. No. 199118), pp. 74-84.

<sup>145</sup> *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 606, citing *Santos-Concio v. Department of Justice*, G.R. No. 175057, January 29, 2008, 543 SCRA 70.

<sup>146</sup> *Id.*

countervailing evidence. Instead of complying with the Joint Committee's directive, several motions were filed but were denied by the Joint Committee. Consequently, petitioners' right to submit counter-affidavit and countervailing evidence was forfeited. Taking into account the constitutional right to speedy disposition of cases and following the procedures set forth in the Rules on Criminal Procedure and the Comelec Rules of Procedure, the Joint Committee finally reached its conclusion and referred the case to the Comelec. The latter, in turn, performed its task and filed the information in court. Indeed, petitioners were given the opportunity to be heard. They even actively participated in the proceedings and in fact filed several motions before the Joint Committee. Consistent with the constitutional mandate of speedy disposition of cases, unnecessary delays should be avoided.

Finally, we take judicial notice that on February 23, 2012, GMA was already arraigned and entered a plea of "not guilty" to the charge against her and thereafter filed a Motion for Bail which has been granted. Considering that the constitutionality of the creation of the Joint Panel is sustained, the actions of the Joint Committee and Fact-Finding Team are valid and effective. As the information was filed by the Commission authorized to do so, its validity is sustained. Thus, we consider said entry of plea and the Petition for Bail waiver on the part of GMA of her right to submit counter-affidavit and countervailing evidence before the Joint Committee, and recognition of the validity of the information against her. Her act indicates that she opts to avail of judicial remedies instead of the executive remedy of going back to the Joint Committee for the submission of the counter-affidavit and countervailing evidence. Besides, as discussed earlier, the absence [or irregularity] of preliminary investigation does not affect the court's jurisdiction over the case nor does it impair the validity of the criminal information or render it defective.

It must be stressed, however, that this supervening event does not render the cases before the Court moot and academic as the main issues raised by petitioners are the constitutionality of the creation of the Joint Committee and the Fact-Finding Team and the validity of the proceedings undertaken pursuant to their respective mandates.

The Court notes that the Joint Committee and the Comelec have not disposed of the cases of the other respondents subjects of the preliminary investigation as some of them were subjected to further investigation. In order to remove the cloud of doubt that pervades that petitioners are being singled out, it is to the best interest of all the parties concerned that the Joint Committee and the Comelec terminate the proceedings as to the other respondents therein and not make a piecemeal disposition of the cases.

A peripheral issue which nonetheless deserves our attention is the question about the credibility of the Comelec brought about by the alleged professional relationship between Comelec Chairman Brillantes on one hand and the complainant Senator Pimentel and Fernando Poe, Jr. (FPJ), GMA's rival in the 2004 elections, on the other hand; and by the other Commissioners'<sup>147</sup> reasons for their partial inhibition. To be sure, Chairman Brillantes' relationship with FPJ and Senator Pimentel is not one of the grounds for the mandatory disqualification of a Commissioner. At its most expansive, it may be considered a ground for voluntary inhibition which is indeed discretionary as the same was primarily a matter of conscience and sound discretion on the part of the Commissioner judge based on his or her rational and logical assessment of the case.<sup>148</sup> Bare allegations of bias and prejudice are not enough in the absence of clear and convincing evidence to

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<sup>147</sup> Commissioners Elias R. Yusoph and Christian Robert S. Lim.

<sup>148</sup> *Dipatuan v. Mangotara*, A.M. No. RTJ-09-2190, April 23, 2010, 619 SCRA 48, 53; *Argana v. Republic of the Philippines*, 485 Phil 565, 591-592 (2004).

overcome the presumption that a judge will undertake his noble role to dispense justice according to law and evidence without fear or favor.<sup>149</sup> It being discretionary and since Commissioner Brillantes was in the best position to determine whether or not there was a need to inhibit from the case, his decision to participate in the proceedings, in view of higher interest of justice, equity and public interest, should be respected. While a party has the right to seek the inhibition or disqualification of a judge (or prosecutor or Commissioner) who does not appear to be wholly free, disinterested, impartial, and independent in handling the case, this right must be weighed with his duty to decide cases without fear of repression.<sup>150</sup>

Indeed, in *Javier v. Comelec*,<sup>151</sup> the Court set aside the Comelec's decision against Javier when it was disclosed that one of the Commissioners who had decided the case was a law partner of Javier's opponent and who had refused to excuse himself from hearing the case. *Javier*, however, is not applicable in this case. *First*, the cited case involves the Comelec's exercise of its adjudicatory function as it was called upon to resolve the propriety of the proclamation of the winner in the May 1984 elections for Batasang Pambansa of Antique. Clearly, the grounds for inhibition/disqualification were applicable. *Second*, the case arose at the time where the purity of suffrage has been defiled and the popular will scorned through the confabulation of those in authority.<sup>152</sup> In other words, the controversy arose at the time when the public confidence in the Comelec was practically nil because of its transparent bias in favor of the administration.<sup>153</sup> *Lastly*, in determining the propriety of the decision rendered by the Comelec, the

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<sup>149</sup> *Kilosbayan Foundation v. Janolo, Jr.*, G.R. No. 180543, July 27, 2010, 625 SCRA 684, 697-698.

<sup>150</sup> *Philippine Commercial International Bank v. Dy Hong Pi*, G.R. No. 171137, June 5, 2009, 588 SCRA 612, 632.

<sup>151</sup> Nos. L-68379-81, September 22, 1986, 144 SCRA 194.

<sup>152</sup> *Javier v. Commission on Elections*, Nos. L-68379-81, September 22, 1986, 144 SCRA 194, 196.

<sup>153</sup> *Id.* at 199.

Court took into consideration not only the relationship (being former partners in the law firm) between private respondents therein, Arturo F. Pacificador, and then Comelec Commissioner Jaime Opinion (Commissioner Opinion) but also the general attitude of the Comelec toward the party in power at that time. Moreover, the questioned Comelec decision was rendered only by a division of the Comelec. The Court thus concluded in *Javier* that Commissioner Opinion's refusal to inhibit himself divested the Comelec's Second Division of the necessary vote for the questioned decision and rendered the proceedings null and void.<sup>154</sup>

On the contrary, the present case involves only the conduct of preliminary investigation and the questioned resolution is an act of the Comelec *En Banc* where all the Commissioners participated and more than a majority (even if Chairman Brillantes is excluded) voted in favor of the assailed Comelec resolution. Unlike in 1986, public confidence in the Comelec remains. The Commissioners have already taken their positions in light of the claim of "bias and partiality" and the causes of their partial inhibition. Their positions should be respected confident that in doing so, they had the end in view of ensuring that the credibility of the Commission is not seriously affected.

To recapitulate, we find and so hold that petitioners failed to establish any constitutional or legal impediment to the creation of the Joint DOJ-Comelec Preliminary Investigation Committee and Fact-Finding Team.

*First*, while GMA and Mike Arroyo were among those subjected to preliminary investigation, not all respondents therein were linked to GMA;

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<sup>154</sup> *Id.* at 207.

thus, Joint Order No. 001-2011 does not violate the equal protection clause of the Constitution.

*Second*, the due process clause is likewise not infringed upon by the alleged prejudgment of the case as petitioners failed to prove that the Joint Panel itself showed such bias and partiality against them. Neither was it shown that the Justice Secretary herself actually intervened in the conduct of the preliminary investigation. More importantly, considering that the Comelec is a collegial body, the perceived prejudgment of Chairman Brillantes as head of the Comelec cannot be considered an act of the body itself.

*Third*, the assailed Joint Order did not create new offices because the Joint Committee and Fact-Finding Team perform functions that they already perform by virtue of the Constitution, the statutes, and the Rules of Court.

*Fourth*, in acting jointly with the DOJ, the Comelec cannot be considered to have abdicated its independence in favor of the executive branch of government. Resolution No. 9266 was validly issued by the Comelec as a means to fulfill its duty of ensuring the prompt investigation and prosecution of election offenses as an adjunct of its mandate of ensuring a free, orderly, honest, peaceful, and credible elections. The role of the DOJ in the conduct of preliminary investigation of election offenses has long been recognized by the Comelec because of its lack of funds and legal officers to conduct investigations and to prosecute such cases on its own. This is especially true after R.A. No. 9369 vested in the Comelec and the DOJ the concurrent jurisdiction to conduct preliminary investigation of all election offenses. While we uphold the validity of Comelec Resolution No. 9266 and Joint Order No. 001-2011, we declare the Joint Committee's Rules

of Procedure infirm for failure to comply with the publication requirement. Consequently, Rule 112 of the Rules on Criminal Procedure and the 1993 Comelec Rules of Procedure govern.

*Fifth*, petitioners were given the opportunity to be heard. They were furnished a copy of the complaint, the affidavits, and other supporting documents submitted to the Joint Committee and they were required to submit their counter-affidavit and countervailing evidence. As to petitioners Mike Arroyo and Abalos, the pendency of the cases before the Court does not automatically suspend the proceedings before the Joint Committee nor excuse them from their failure to file the required counter-affidavits. With the foregoing disquisitions, we find no reason to nullify the proceedings undertaken by the Joint Committee and the Comelec in the electoral sabotage cases against petitioners.

**WHEREFORE**, premises considered, the petitions and supplemental petitions are **DISMISSED**. Comelec Resolution No. 9266 dated August 2, 2011, Joint Order No. 001-2011 dated August 15, 2011, and the Fact-Finding Team's Initial Report dated October 20, 2011, are declared **VALID**. However, the Rules of Procedure on the Conduct of Preliminary Investigation on the Alleged Election Fraud in the 2004 and 2007 National Elections is declared **INEFFECTIVE** for lack of publication.

In view of the constitutionality of the Joint Panel and the proceedings having been conducted in accordance with Rule 112 of the Rules on Criminal Procedure and Rule 34 of the Comelec Rules of Procedure, the conduct of the preliminary investigation is hereby declared **VALID**.



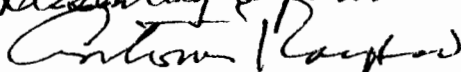
Let the proceedings in the Regional Trial Court of Pasay City, Branch 112, where the criminal cases for electoral sabotage against petitioners GMA and Abalos are pending, proceed with dispatch.


**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

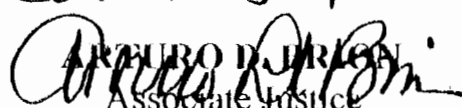
**WE CONCUR:**

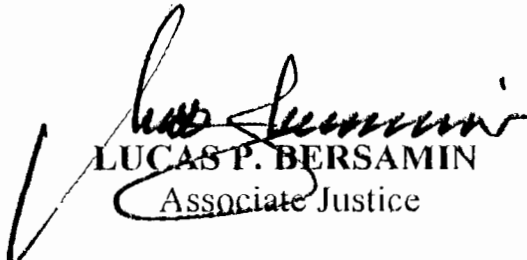
*I concur, except for the part where I  
disagree. Copies dissent.*  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

*See Separate Concurring &  
Dissenting Opinion*  
  
**ANTONIO T. CARPIO**  
Associate Justice

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice


*I join the dissenting and concurring  
opinion of Justice Sereno.*  
*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*See my Dissenting &  
Concurring Opn*  
  
**ARTURO D. IRIGAIN**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

*I join Justice A.D. Brion in his dissent.*

  
**ROBERTO A. ABAD**  
Associate Justice

On official leave  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

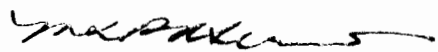
  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

### CERTIFICATION

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

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice