G.R. No. 207264 – REGINA ONGSIAKO REYES versus COMMISSION ON ELECTIONS and JOSEPH SOCORRO B. TAN.

Promulgated:

OCTOBER 22, 2013

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DISSENTING OPINION

BRION, *J.*:

This Dissent responds to the *ponencia's* ruling on the following pending incidents:

(1) the Motion for Reconsideration[1] filed by petitioner Regina Ongsiako Reyes dated July 15, 2013;

(2) the Comment on the Motion for Reconsideration[2] filed by respondent Joseph Socorro B. Tan dated July 20, 2013; and

(3) the Manifestation and Notice of Withdrawal of the Petition[3] filed by Reyes dated July 22, 2013.

I. PROLOGUE

A. The January 25, 2013 Resolution and the Dissent

Previous to these incidents, the majority – in its **June 25, 2013 Resolution** – dismissed outright Reyes' petition for *certiorari*, filed to nullify the Commission on Elections (*COMELEC*) ruling cancelling her certificate of candidacy (*CoC*).

In my Dissent to this Resolution, I characterized the ruling as **"unusual"** for several reasons, the most important of which is that it raised very substantial issues as shown by the discussions below. In this light, the outright dismissal was attended by **undue haste and without even hearing Tan and allowing him to defend his case by himself.** As a result, the grounds that the Court cited in its Resolution of dismissal were ***reasons that the Court raised on its own, on contentious issues that, in the usual course of Court processes, are resolved after hearing the respondent and after joinder of issues***. In this unusual ruling, the Court, among others, held that:

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1 *Rollo*, pp. 308-376.
2 Id. at 378-408.
3 Id. at 409-412.

1. "[T]o be considered a Member of the House of Representatives, there must be concurrence of the following requisites:

1) a valid proclamation[;]
2) a proper oath[;] and
3) assumption of office[;]"[4] and
4) that "before there is a valid or official taking of the oath it must be made [a] before the Speaker of the House of Representatives, and [b] in open session."

2. The COMELEC committed no grave abuse of discretion when it ruled on the citizenship of Reyes as "[u]nless and until she can establish that she had availed of the privileges of Republic Act No. (*RA*) 9225 by becoming a dual Filipino-American citizen, and thereafter, made a valid sworn renunciation of her American citizenship, she remains to be an American citizen and is, therefore, ineligible to run for and hold any elective public office in the Philippines."[5]

3. The petitioner was not denied due process because she was given the opportunity to be heard. To quote its ruling, "in administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard."[6]

The Court's handling of the case was all the more "unusual" because the son of a member (Mr. Justice Presbitero J. Velasco, Jr.) of this Court, although not a direct party, directly stood to be benefited by the Court's ruling – a fact that was reiterated both during the deliberations of the Court and in the Dissenting Opinion filed.

As will be seen from the discussions below, the reason for the haste was apparently the desire to avoid the House of Representatives Electoral Tribunal (*HRET*) where Mr. Justice Velasco currently sits as Chairman and whose participation and ruling could result (if Reyes is unseated) in the declaration of the vacancy of the Marinduque congressional seat, not the seating of the second placer in the elections.

Aside from pointing out the undue haste that characterized the June 25, 2013 ruling, my previous Dissent argued that no outright dismissal should have been made because of the **intervening events** and "in light of

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4 Majority Resolution dated June 25, 2013, p. 7.
5 Id. at 11, quoting the ruling of the COMELEC First Division.
6 Id. at 11, quoting *Sahali v. Commission on Elections*, G.R. No. 201796, January 15, 2013.

the **gravity of the issues** raised and the potential **effect on jurisprudence**" of the Court's ruling on the case.

B. Facts and Supervening Developments of the Case

For a full appreciation of the facts and supervening developments, outlined below is a brief summary of the antecedents and the supervening developments in the present case.

Reyes filed her CoC on **October 1, 2012** for the position of Representative for the lone district of Marinduque.[7] Her opponent was former Congressman Lord Allan Jay Velasco, the son of a sitting Member of this Court, Associate Justice Presbitero J. Velasco, Jr.

On **October 10, 2012**, Tan filed with the COMELEC a petition to deny due course to or to cancel Reyes' CoC on the ground that she committed material misrepresentations in her CoC when she declared that: (1) she is a resident of Barangay Lupac, Boac, Marinduque; (2) she is a natural born Filipino citizen; (3) she is not a permanent resident or an immigrant to a foreign country; (4) her date of birth is July 3, 1964; (5) she is single; and (6) she is eligible to the office she seeks to be elected.[8]

On **March 27, 2013**, the COMELEC First Division issued a resolution granting Tan's petition and cancelling Reyes' CoC based on its finding that Reyes committed false material representation in her citizenship and residency.[9] Reyes duly filed a motion for the reconsideration of the COMELEC First Division's ruling on **April 8, 2013**.[10]

On **May 14, 2013** or a day after the congressional elections, the COMELEC *en banc* issued a resolution denying Reyes' motion for reconsideration, thus affirming the COMELEC First Division's ruling.[11] This resolution would have lapsed to finality on May 19, 2013 or five (5) days after the resolution's issuance, pursuant to Section 3, Rule 37 of the COMELEC Rules of Procedure.[12]

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7 *Rollo*, p. 68.

8 Id. at 40-41.

9 Id. at 40-51.

10 Id. at 140-157.

11 Id. at 52-60.

12 Section 3, Rule 37 of the COMELEC Rules of Procedure states:

> Section 3. *Decisions Final After Five Days.* - Decisions in pre-proclamation cases and petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate or to disqualify a candidate, and to postpone or suspend elections shall become final and executory **after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court**. [emphasis ours, italics supplied]

On **May 18, 2013**, the Marinduque Provincial Board of Canvassers (*PBOC*) – without being officially informed of the COMELEC's ruling – proclaimed Reyes as the duly elected member of the House of Representatives for Marinduque. **She garnered 52,209 votes as against the 48,396 votes for former Cong. Velasco.**[13]

On **May 31, 2013**, former Cong. Velasco filed an Election Protest *Ad Cautelam* against Reyes with the HRET.[14] On the same date, a certain Christopher Matienzo also filed a Petition for *Quo Warranto Ad Cautelam* questioning Reyes' eligibility before the HRET.[15]

On **June 5, 2013**, the COMELEC *en banc* issued a **Certificate of Finality** declaring its May 14, 2013 resolution final and executory.[16] Note that this came way after Reyes had been proclaimed the winner on May 18, 2013.

On **June 7, 2013**, Reyes – as the duly proclaimed winner – took her **oath of office** before House Speaker Feliciano R. Belmonte, Jr.[17]

On **June 10, 2013**, Reyes filed a petition for *certiorari* with prayer for a temporary restraining order, preliminary injunction and/or *status quo ante* order with the Court to annul the March 27, 2013 and the May 14, 2013 COMELEC resolutions **cancelling her CoC** for the position of Representative in the lone district of Marinduque, and the June 5, 2013 Certificate of Finality declaring the May 14, 2013 COMELEC resolution final and executory in SPA Case No. 13-053(DC).[18]

On **June 25, 2013**, the Court hastily, and without requiring the COMELEC and Tan to comment, dismissed Reyes' petition outright through a Resolution finding that the COMELEC did not commit any grave abuse of discretion in ruling on the case. The majority ruled as well that the COMELEC retained jurisdiction over the cancellation case considering that Reyes could not yet be considered a Member of the House of Representatives; thus, she could not assume office before the start of the congressional term at noon on June 30, 2013.[19]

On **June 28, 2013**, Reyes filed a Manifestation with the Court that on **June 19, 2013**, the COMELEC First Division denied former Cong.

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13 *Rollo*, p. 161.
14 Id. at 374.
15 Id. at 375.
16 Id. at 163-165.
17 Id. at 162.
18 Id. at 3-39.
19 Id. at 172-188.

Velasco's petition to declare the proceedings of the Marinduque PBOC and her subsequent proclamation null and void.[20]

At noon of **June 30, 2013**, by the authority of the 1987 Constitution, the term of the outgoing (2010-2013) elective congressional officials expired and the term of the incoming (2013-2016) officials began.[21]

On **July 2, 2013**, Reyes filed another Manifestation with the Court stating that she had assumed office and had started performing her functions as a Member of the House of Representatives on June 30, 2013.[22] As proof of her assumption to office, Reyes attached to the Manifestation a copy of a bill and a resolution she filed in the House of Representatives.[23]

On **July 9, 2013**, the COMELEC *en banc* issued a **Resolution annulling Reyes' proclamation** and proclaimed the second placer, former Cong. Velasco, as the duly elected Representative of the Lone District of Marinduque. **Notably, the COMELEC, at this point, was acting on the proclamation of a sitting member of the House of Representatives.**[24]

On **July 22, 2013**, the 16th Congress of the Republic of the Philippines formally convened, elected its officers, and, in a joint session, received the President of the Philippines for his State of the Nation Address.[25] Reyes, together with other Members of the House of Representatives, ceremonially took their oaths in open session before Speaker Feliciano Belmonte whom they earlier elected. Thus, the House of Representatives fully and formally accorded Reyes its recognition as the duly elected Member for the lone district of Marinduque.

C. The Motion for Reconsideration

In the interim, on **July 15, 2013, Reyes filed her Motion for Reconsideration with Motion for Inhibition of Justice Jose P. Perez** from the Court's June 25, 2013 Resolution.[26]

Reyes repleaded in her motion for reconsideration the arguments she raised in her petition for *certiorari* on **due process**, **citizenship** and

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20 The records of the case do not show whether former Cong. Velasco filed a motion for reconsideration before the COMELEC *en banc* from the June 19, 2013 First Division ruling denying his petition to declare the proceedings of the Marinduque PBOC and Reyes' proclamation void; id. at 212-215.

21 CONSTITUTION, Article VI, Section 7.

22 *Rollo*, pp. 263-265.

23 Id. at 266-299.

24 Id. at 391-393.

25 Id. at 409.

26 *Supra* note 1. In his Comment on the Motion for Reconsideration, Tan likewise asked for the inhibition of Associate Justice Arturo D. Brion who manifested before the Court his denial of the request as the matter that had been settled before in the 2010 HRET case between former Cong. Velasco and Edmund Reyes, the brother of Reyes. The matter was brought to the Court on *certiorari*, only to be withdrawn by former Cong. Velasco later on. See *Velasco v. Associate Justice Arturo D. Brion*, G.R. No. 195380.

residency requirements, and submitted the following **additional positions and arguments** in response to the arguments the majority made in dismissing her petition outright.

On the Issue of Jurisdiction

(1) **The COMELEC has lost jurisdiction over the cancellation of Reyes' CoC case considering that she had satisfied all the requirements stated in the Court's June 25, 2013 Resolution:**

(a) **She was the duly and validly proclaimed winner for the position of Representative of the lone district of Marinduque.** Also there is nothing in the records showing that her proclamation on May 18, 2013 has been annulled by the COMELEC prior to her assumption to office at noon on June 30, 2013. In fact, it was only on July 9, 2013 that the COMELEC annulled her proclamation and declared second placer former Cong. Velasco the winner.

(b) **She validly took her oath of office.** She took her oath of office before Speaker Belmonte on June 5, 2013 and also before President Benigno Simeon Aquino III on June 27, 2013.

The Court's interpretation of Section 6, Rule II of the House Rules that requires Members to take their oath before the Speaker in open session is completely illogical. ***First,*** the Speaker is an official authorized to administer oaths under Section 41 of the Administrative Code of 1987. This provision does not require that the oath be made in open session before Congress in order to be valid. ***Second,*** it would be actually and legally impossible for Congress to convene considering that the congressmen-elect cannot be considered Members of the House of Representatives without the oath and the Speaker cannot as well be elected as such without Members of the House of Representatives qualified to vote and elect a Speaker. ***Third,*** the oath before the Speaker in open session is a mere formality for those who have already taken their oath as the very same provision itself presupposes that the "Member" has already taken his or her oath.

(c) **She has assumed the duties of her office.** The Court can take judicial notice that June 30, 2013 has come to pass. She legally assumed the duties of her office at noon on June 30, 2013 and in fact, she has already filed a bill and a resolution in Congress.

(2) The Court's June 25, 2013 Resolution is contrary to the prevailing jurisprudence that the proclamation of a congressional

candidate, following the election, divests the COMELEC of jurisdiction over disputes relating to the election, returns and qualifications of the proclaimed representative in favor of the HRET; it also emasculates and usurps the jurisdiction of the HRET.

(3) The Court's June 25, 2013 Resolution violates the doctrine of *stare decisis* and is contrary to the HRET rules.

On the Issue of the Validity of Reyes' Proclamation

(1) The Court cannot pass upon the validity of Reyes' proclamation as it was never raised as an issue in the present case.

(2) The Court has no jurisdiction to rule on the legality of Reyes' proclamation since it is the COMELEC that has the original and exclusive jurisdiction over annulment of proclamations.

(3) The Court's June 25, 2013 Resolution is contrary to prevailing jurisprudence on the validity of the proclamation of a winning candidate. Reyes cites the cases of *Planas v. Commission on Elections,*[27] *Limkaichong v. Commission on Elections*[28] and *Gonzalez v. Commission on Elections*[29] where the Court upheld the validity of the proclamations made considering that the cancellation of their CoCs at that time had not attained finality. Even so, such questions on the validity of Reyes' proclamation are better addressed by the HRET which now has jurisdiction over the present case, citing *Lazatin v. The Commission on Elections.*[30]

(4) At any rate, based on the pronouncement of the Court in its June 25, 2013 Resolution that "until such time (June 30, 2013) the COMELEC retains jurisdiction," since the noon of June 30, 2013 has come and gone, COMELEC is now devoid of jurisdiction to annul Reyes' proclamation on May 18, 2013.

In the same motion, Reyes also alleges that there are now **two (2) pending cases filed against her in the HRET**: (1) **Election Protest *Ad Cautelam*** filed on **May 31, 2013**, entitled *Lord Allan Velasco v. Regina Ongsiako Reyes,* docketed as Case No. 13-028;[31] and (2) **Petition for *Quo Warranto Ad Cautelam* filed on May 31, 2013**, entitled *Christopher P. Matienzo v. Regina Ongsiako Reyes,* docketed as Case No. 13-027.[32]

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27 G.R. No. 167594, March 10, 2006, 484 SCRA 529.
28 G.R. Nos. 178831-32, 179120, 179132-33, 179240-41, April 1, 2009, 583 SCRA 1.
29 G.R. No. 192856, March 8, 2011, 644 SCRA 761.
30 241 Phil. 343 (1988).
31 *Supra* note 14.
32 *Supra* note 15.

D. The Comment

On July 22, 2013, Tan filed his **Comment** on Reyes' Motion for Reconsideration praying for the dismissal of her petition with finality.[33] Tan submitted the following arguments:

> (1) The COMELEC did not commit grave abuse of discretion in its appreciation of the evidence and its conclusion that Reyes was a naturalized US citizen. ***First***, the original certification issued by Acting Chief Simeon Sanchez was submitted to the COMELEC First Division and Reyes did not object to the admission of both the blog article and Sanchez's certification. ***Second***, the COMELEC is not bound to strictly adhere to the technical rules of procedure. ***Third***, Reyes herself admitted that she is an American citizen in her motion for reconsideration before the COMELEC *en banc;*
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> (2) The documents attached to Reyes' motion for reconsideration are prohibited evidence under Section 2, Rule 56 of the Rules of Court and should be expunged from the records;
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> (3) Reyes failed to comply with the requirements stated in the June 25, 2013 Resolution in order to become a Member of the House of Representatives. ***First,*** as has been held by the COMELEC, Reyes' proclamation was null and void considering that the May 14, 2013 Resolution of the COMELEC *en banc* cancelling her CoC became final and executory on May 19, 2013. ***Second,*** Reyes' oath was improper because it was not done before the Speaker in open session on July 22, 2013. ***Third,*** Reyes' assumption to office was invalid as she is an ineligible candidate and cannot, by law, be a Member of the House of Representatives;
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> (4) The COMELEC retains jurisdiction in a petition for cancellation of CoC until the candidate is deemed a member of the House of Representatives; and
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> (5) The Court has full discretionary authority to dismiss the present case which was prosecuted manifestly for delay and the issues raised are too insubstantial to warrant further proceedings.

On **July 23, 2013**, Reyes filed a **Manifestation and Notice of Withdrawal of Petition** in the present case, "without waiver of her arguments, positions, defenses/causes of action as will be articulated in the HRET which is now the proper forum." Reyes emphasized that she filed the

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[33] *Supra* note 2.

Manifestation and Notice of Withdrawal of Petition "considering the absence of any comment or opposition from the respondents to the petition." In her Motion, Reyes alleged:[34]

> 2. Petitioner was among the Members of the House of Representatives, representing the lone congressional district of the province of Marinduque, who attended the opening session, was officially and formally recognized as the duly elected representative of the said congressional district and voted for the Speakership of House of Representatives of Congressman Feliciano "Sonny" Belmonte, Jr.
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> 3. After the Speaker's election, the Members of the House of Representatives of the 16th Congress of the Republic of the Philippines formally took their oath of office before the Speaker in open session. With the Petitioner's admission and recognition in the House of Representatives, and the official opening and organization of the House of Representatives, all controversies regarding Petitioner's qualifications and election to office are now within the jurisdiction of the HRET.

II. THE DISSENT

A. Reyes cannot unilaterally withdraw her pending Petition for *Certiorari* before this Court.

Although not a disputed issue as the *ponencia* simply "Notes" Reyes' Manifestation and Notice of Withdrawal of Petition, I nevertheless address this point as a preliminary issue that the Court must rule upon on record in order to fully resolve all the outstanding issues.

I submit that Reyes can no longer and should not be allowed to unilaterally withdraw her petition.

a. The Rule on Adherence to Jurisdiction.

The rule on adherence of jurisdiction applies to the present case. This rule states that once the jurisdiction of a court attaches, the court cannot be ousted by subsequent happenings or events, although of a character that would have prevented jurisdiction from attaching in the first instance; the court retains jurisdiction until it finally disposes of the case.[35] If at all possible, the withdrawal should be for a meritorious and justifiable reason, and subject to the approval of the Court.

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34 *Supra* note 3.

35 *Aruego, Jr. v. Court of Appeals*, G.R. No. 112193, March 13, 1996, 254 SCRA 711, 719-720.

An illustrative case is *Aruego, Jr. v. Court of Appeals,*[36] where the Court ruled on whether the trial court, which acquired jurisdiction over the case through the filing of the complaint, lost that jurisdiction because of the passage of Executive Order No. 209 (Family Code of the Philippines). In ruling that the trial court cannot be ousted of its jurisdiction by subsequent happenings or events, the Court held:

> Our ruling herein reinforces the principle that the jurisdiction of a court, whether in criminal or civil cases, once attached cannot be ousted by subsequent happenings or events, although of a character which would have prevented jurisdiction from attaching in the first instance, and it retains jurisdiction until it finally disposes of the case.[37]

In the present case, the Court had acquired jurisdiction and has in fact ruled on Reyes' petition; thus the Court's jurisdiction should continue until it finally disposes of the case. Reyes cannot invoke the jurisdiction of this Court and thereafter simply withdraw her petition, especially after the Court has ruled and after its ruling has generated a lot of public attention and interest, some of them adverse to the reputation of the Court.

b. Lack of Factual and Legal Bases.

Reyes' justification for filing her Manifestation and Notice of Withdrawal of the Petition – the absence of any comment or opposition from the respondents to the Petition – is no longer supported by existing facts; Tan filed a Comment on Reyes' motion for reconsideration dated July 22, 2013. Thus, as matters now stand, Reyes' move is *not supported* by any ***factual justification***.

Reyes' ***legal justification***, on the other hand, could be seen in her allegations that she had been proclaimed, had taken her oath, and Congress itself has convened on July 22, 2013. Thus, pursuant to the Constitution, the HRET now has exclusive jurisdiction over all matters relating to her elections, returns and qualifications that the COMELEC had not finally resolved. **This ground, however, is a submitted issue in the present case and is for the Court to appreciate and rule upon in this motion for reconsideration; it is not a ground that Reyes can act upon on her own independently of the ruling of this Court.**

That cases - an election protest and a *quo warranto* petition - have been filed against Reyes before the HRET all the more render it imperative for this Court to settle, in a well reasoned manner, whether the jurisdiction exercised by the COMELEC through the cancellation of a CoC filed against Reyes, now rests with the HRET. At this point and after the attention that media have given the case, **no less than a ruling by the Court is needed** to

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36 Id.

37 Id. at 719-720.

clear the air as, constitutionally, the election, returns and qualifications of a member of the House of Representatives are already involved - a matter that on its face appropriately lies within the competence and jurisdiction of the HRET.

c. No Right of Withdrawal is Involved.

Reyes' unilateral withdrawal of her petition **after** the Court had acted on the petition, in my view, was **not done in the exercise of any right of withdrawal** that Reyes can demand from this Court. While no express rule exists under the Rules of Court on the withdrawal of an original petition before the Supreme Court, this is the only conclusion that can be made, consistent with the spirit that pervades the Rules of Court. Rule 17 of the Rules of Court on the dismissal of actions at the instance of the plaintiff embodies this spirit and can be applied *by analogy*.

Under this Rule, dismissal *by notice* of the plaintiff can only be before service of the defendant's answer or before service of a motion for summary judgment. On the other hand, dismissal of a complaint *by motion* of the plaintiff can only be upon approval by the court and upon such terms and conditions that the court shall deem to be proper.

The points comparable to the markers laid down by Rule 17 have all been reached and left behind in the present case so that Reyes can no longer be said to have full and sole control over her petition: the Court has ruled on the petition and a Dissent has in fact been filed against the ruling; the petitioner has filed a motion for reconsideration and the respondent has filed its Comment on the Motion. External developments have also taken place, among them, the proclamation of Reyes as winner; the administration of her oath of office no less than by the Speaker of the House and by the President of the Philippines; and the convening of the House of Representatives where Reyes fully participated. All these developments cannot simply be disregarded in one sweep by the simple act of withdrawal that Reyes wishes the Court to approve.

d. Implications from Court's Exercise of Jurisdiction.

Lastly, we must consider that **our exercise of jurisdiction over the present petition is an original one**, undertaken in the exercise of the Court's expanded jurisdiction under the second paragraph of Section 1, Article VIII of the Constitution, to determine whether the COMELEC committed grave abuse of discretion in cancelling Reyes' CoC and in declaring the COMELEC's ruling final after Reyes had been proclaimed, taken her oath, and assumed office.

The fact that developments (properly raised and pleaded) have intervened and have cut across these questioned COMELEC actions **all the more render it necessary for the Court to determine whether the HRET's jurisdiction has already begun and where, in fact, the COMELEC's jurisdiction ended**. This approach will clear the air so that the substantive issues on Reyes' election, returns and qualifications can be resolved by the proper body without any doubt hanging over the question of jurisdiction.

B. The grave abuse of discretion in the CoC cancellation proceedings.

To proceed now to the crux and the overriding issue of the petition and one that the intervening developments have not overtaken under the circumstances of this case – **did the COMELEC sufficiently accord Reyes due process, or did a violation of her right to due process occur?**

The due process issue is important as a finding of violation, because of the inherent arbitrariness it carries, necessarily amounts to grave abuse of discretion, and lays to rest all questions regarding the COMELEC's continued exercise of jurisdiction.

In *Mendoza v. Commission on Elections,*[38] the Court elaborated on the due process standards that apply to the COMELEC's proceedings:

> The appropriate due process standards that apply to the COMELEC, as an administrative or quasi-judicial tribunal, are those outlined in the seminal case of *Ang Tibay v. Court of Industrial Relations,* quoted below:
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> (1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. x x x
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> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.
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> (3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, **that of having something to support its decision. A decision with absolutely nothing to support it is a nullity**[.]
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> (4) **Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant**

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38 G.R. No. 188308, October 15, 2009, 603 SCRA 692.

evidence as a reasonable mind might accept as adequate to support a conclusion."

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.

These are now commonly referred to as cardinal primary rights in administrative proceedings.

The first of the enumerated rights pertain to the substantive rights of a party at hearing stage of the proceedings. The essence of this aspect of due process, we have consistently held, is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential; in the case of COMELEC, Rule 17 of its Rules of Procedure defines the requirements for a hearing and these serve as the standards in the determination of the presence or denial of due process.

The second, third, fourth, fifth, and sixth aspects of the *Ang Tibay* requirements are reinforcements of the right to a hearing and are the inviolable rights applicable at the deliberative stage, as the decision-maker decides on the evidence presented during the hearing. These standards set forth the guiding considerations in deliberating on the case and are the material and substantial components of decision-making. *Briefly, the tribunal must consider the totality of the evidence presented which must all be found in the records of the case (i.e., those presented or submitted by the parties); the conclusion, reached by the decision-maker himself and not by a subordinate, must be based on substantial evidence.*

Finally, the last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based. As a component of the rule of fairness that underlies due process, this is the *"duty to give reason"* to enable the affected person to understand how the rule of fairness has been administered in his case, to expose the reason to public scrutiny and

> criticism, and to ensure that the decision will be thought through by the decision-maker.[39] (citations omitted, italics supplied, emphasis ours)

Reyes invokes both the due process component rights at the hearing and deliberative stages and alleges that these component rights have all been violated. These allegations are discussed below.

a. The right to be heard.

In her petition, Reyes argues that the COMELEC violated her right to due process when it took cognizance of the documents submitted by Tan that were not testified to and which were offered and admitted in evidence without giving her the opportunity to question the authenticity of these documents and to present controverting evidence.

Based on the pleadings filed in the present case, no factual and legal basis is evident for Reyes to complain of the denial of her **hearing stage rights**.

In the first place, she does not dispute that she fully participated in the proceedings of the cancellation of her CoC until the case was deemed submitted for resolution; she had representation during the proceedings before the COMELEC First Division where she duly presented her evidence and summed up her case through a memorandum.

In addition, she even filed a motion for reconsideration from the COMELEC First Division resolution dated March 27, 2013 cancelling her CoC. Under these circumstances, the COMELEC had more than satisfied the opportunity to be heard that the *Ang Tibay hearing stage rights* require. Reyes had her day in court from the perspective of her hearing rights, and she cannot now complain of any denial of this right.

b. Violation of Reyes' deliberation stage rights.

The violation of Reyes' deliberation stage rights, however, is a different matter altogether and one that this Court cannot close its eyes to, most especially after this violation was made glaring in the rulings below.

To recall, the COMELEC First Division, in this case, found - based on Tan's submitted evidence (Eli J. Obligacion's blog article and the Sanchez certification) - that Reyes was a holder of a U.S. passport, which she continued to use until June 30, 2012. The COMELEC also found that she also failed to establish that she had applied for repatriation under RA 9225 by taking the required Oath of Allegiance and by executing an Affidavit of

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[39] Id. at 712-714.

Renunciation of her American Citizenship. Based on these findings, the COMELEC First Division ruled that Reyes remains an American citizen who is ineligible to run and hold any elective office. This conclusion and the use of the hearsay evidence occasioned a strong dissent from no less than COMELEC Chairman Sixto S. Brillantes, Jr.

As likewise emphasized in my previous Dissenting Opinion, the COMELEC seemed to have recklessly thrown away the rules of evidence in concluding – to the point of grave abuse of discretion – that Reyes misrepresented that she is a natural born Filipino citizen and that she had abandoned and lost her domicile of origin when she became a naturalized American citizen. To quote and reiterate what I said:

> *First*, Tan submitted an article published online (**blog article**) written by one Eli J. Obligacion (*Obligacion*) entitled "Seeking and Finding the Truth About Regina O. Reyes." This printed blog article stated that the author had obtained records from the BID stating that Reyes is an American citizen; that she is a holder of a US passport and that she has been using the same since 2005.
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> How the law on evidence would characterize Obligacion's blog article or, for that matter, any similar newspaper article, is not hard for a law student answering the Bar exam to tackle: the article is double hearsay or hearsay evidence that is twice removed from being admissible as it was offered to prove its contents (that Reyes is an American citizen) without any other competent and credible evidence to corroborate them. Separately of course from this consideration of admissibility is the question of probative value. On top of these underlying considerations is the direct and frontal question: did the COMELEC gravely abuse its discretion when it relied on this piece of evidence to conclude that Reyes is not a Filipino citizen?
>
> *Second,* Tan also submitted a **photocopy** of a certification issued by Simeon L. Sanchez of the BID showing the travel records of Reyes from February 15, 2000 to June 30, 2012 and that she is a holder of US Passport No. 306278853. This certification also indicates in some entries that Reyes is an American while other entries denote that she is Filipino. The same questions of admissibility and probative value of evidence arise, together with the direct query on the characterization of the COMELEC action since the COMELEC concluded on the basis of these pieces of evidence that Reyes is not a Filipino citizen because it is not only incompetent but also lacks probative value as evidence.
>
> Contributory to the possible answer is the ruling of this Court that a "certification" is not a certified copy and is not a document that proves that a party is not a Filipino citizen.[40] (italics and emphases supplied)

For reasons only known to the Commission, the COMELEC egregiously ignored the settled principle in jurisprudence that uncorroborated hearsay does not constitute substantial evidence. In *Rizal*

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40 Dissenting Opinion of Justice Arturo D. Brion dated June 25, 2013, p. 17.

Workers Union v. Hon. Calleja,[41] the Court, citing *Ang Tibay,* categorically ruled:

> **The clear message of the law is that even in the disposition of labor cases, due process must never be subordinated to expediency or dispatch**. Upon this principle, the unidentified documents relied upon by the respondent Director must be seen and taken for what they are, mere inadmissible hearsay. They cannot, by any stretch of reasoning, be deemed substantial evidence of the election frauds complained of. And as this Court held in *Ang Tibay v. CIR:*
>
> > **x x x (the) assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force.** ***Mere uncorroborated hearsay or rumor does not constitute substantial evidence.***[42](citation omitted, italics supplied, emphases ours)

At the very least, the COMELEC should have considered whether purported **evidence from a person not before the court** and whose statement cannot be confirmed for the genuineness, accuracy and truth of the basic fact sought to be established in the case should be taken as the "truth."

Even without the use of technical rules of evidence, common sense and the minimum sense of fairness, to my mind, dictate that a blog article published online or unidentified documents cannot simply be taken to be evidence of the truth of what they say, nor can photocopies of documents not shown to be genuine can be taken as proof of the "truth" on their faces. By accepting these materials as statements of the "truth," the COMELEC clearly violated Reyes' right to both procedural and substantive due process.

c. Tan did not submit the original immigration certification.

In his Comment to Reyes' motion for reconsideration, Tan apparently tried to give the COMELEC a helping hand in curing the fatal evidentiary deficiency of its case by claiming that the original certification issued by Acting Chief Simeon Sanchez was submitted to the COMELEC First Division, thus subtly belying the statement of Chairman Brillantes in his dissent that only a photocopy of the certification was before them. Chairman Brillantes pointedly stated:

> The travel records submitted by Petitioner are also without bearing. The printed internet article from the blog of a certain Eli Obligacion showing that Respondent used a US Passport on June 30, 2012 is hearsay while **the purported copy of the Bureau of Immigration Certification is merely a**

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41 264 Phil. 805 (1990).

42 Id. at 811.

> **xerox copy and not even certified to be a true copy of the original, thus similarly inadmissible.**[43] (emphasis supplied)

This claim does not appear to have been refuted nor rebutted in the records before us, except in Tan's claim that came out of the blue. The records (specifically, the Certified True Copy from the MACHINE COPY ON FILE WITH THE OFFICE OF THE CLERK OF THE COMMISSION of the Sanchez Certification dated January 22, 2013 – submitted by Reyes),[44] however, plainly show that the copy on file with the COMELEC of the Sanchez certification is a machine copy and not an original copy. The statement that a machine copy is on file with the COMELEC came from no less than the Clerk of the Commission, Ma. Josefina E. dela Cruz. Thus, Chairman Brillantes was correct – what was before the COMELEC, when it ruled on the Tan petition, was a mere machine copy of the Sanchez certification.

c.1. The Sanchez certification – even if admitted – is insufficient.

Even assuming for the sake solely of argument that the Sanchez certification is admissible and has probative value, the certification itself is not sufficient to establish that Reyes was a naturalized U.S. citizen.

In *Frivaldo v. Commission on Elections,*[45] the Court ruled that Juan Frivaldo was a naturalized U.S. citizen on the basis of a certification from a United States District Court that he was a **naturalized U.S. citizen** and was thus disqualified from serving as Governor of the Province of Sorsogon. In *Frivaldo,* the evidence clearly showed that Frivaldo was naturalized as a citizen of the United States in 1983 *per* the certification of the United States District Court, Northern District of California, as duly authenticated by Vice Consul Amado P. Cortez of the Philippine Consulate General in San Francisco, U.S.A.

In a similar case – *Labo, Jr. v. Commission on Elections*[46] – the Court also found Ramon Labo to be a naturalized Australian citizen on the basis of a certification from the Australian Government that he was indeed a naturalized Australian citizen and was thus disqualified from serving as Mayor of Baguio City. The *Labo* records showed that he had been **married to an Australian citizen and was naturalized as an Australian citizen** in 1976, pursuant to a certification from the Australian Government through its Consul in the Philippines which certification was later affirmed by the Department of Foreign Affairs.

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43 *Rollo,* p. 166.
44 Id. at 135-137.
45 255 Phil. 934 (1989).
46 257 Phil. 1 (1989).

In Reyes' case, the COMELEC's conclusion (based on the Sanchez certification) that Reyes was a naturalized American citizen was not grounded on the required premises and was thus not supported by substantial evidence. Unlike *Frivaldo and Labo,* **Tan miserably failed to submit relevant evidence showing that Reyes had been a naturalized American citizen (such as a certification from the U.S. government that Reyes was a naturalized U.S. citizen) who would now require the application of RA 9225 to run for elective office**. As emphasized in my previous Dissenting Opinion, Tan's submitted evidence does not adequately prove that Reyes was a naturalized American citizen. To quote my previous Dissent:

> To begin with, the evidence submitted by Tan, even assuming that it is admissible, arguably does not prove that Reyes was a naturalized American citizen. At best, the submitted evidence could only show that Reyes was the holder of a US passport indicating that she is American, nothing more. In *Aznar v. Comelec,* the Court ruled that the mere fact that respondent Osmeña was a holder of a certificate stating that he is an American did not mean that he is no longer a Filipino, and that an application for an alien certificate of registration did not amount to a renunciation of his Philippine citizenship. In the present case, the fact that Reyes is a holder of a US passport does not portend that she is no longer a natural born Filipino citizen or that she had renounced her Philippine citizenship. In addition, how the Comelec arrived at a conclusion that Reyes is naturalized American citizen can be seen as baffling as it did not appear to have provided any factual basis for this conclusion.[47]

d. Reyes' alleged admission of American citizenship – discussed.

Tan interestingly argues that Reyes herself admitted before the COMELEC *en banc* (in her motion for reconsideration of the March 27, 2013 COMELEC First Division ruling cancelling her CoC) that she is an American citizen. Supposedly, this admission constitutes sufficient basis for the COMELEC *en banc* to cancel her CoC.

I must **reject this argument** for several reasons.

First, the COMELEC, both division and *en banc,* did not find the supposed admission material in resolving Reyes' motion for reconsideration. The COMELEC *en banc* itself, in its May 14, 2013 resolution, merely considered Reyes' motion for reconsideration[48] – the source of the supposed admission - "a mere rehash and a recycling of claims."[49] Thus, the alleged admission is not an issue at all in the present petition. Based on the

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47 Dissenting Opinion of Justice Arturo D. Brion dated June 25, 2013, pp. 20-21.
48 Before the COMELEC *en banc.*
49 *Rollo,* p. 53.

COMELEC rulings, **what stands out before the Court is the utter lack of basis supporting the COMELEC's cancellation of Reyes' CoC.**

Second, from the perspective of the present petition for *certiorari*, Tan apparently overlooks the legal issues presented before the Court as these issues determine the scope of the Court's *certiorari* jurisdiction. The core issues before the Court are: (i) whether the COMELEC committed grave abuse of discretion in cancelling Reyes' CoC; and (ii) whether the subsequent proclamation of Reyes (before the COMELEC *en banc's* May 14, 2013 resolution, cancelling her CoC, became final) divested the COMELEC of jurisdiction to rule on her qualifications and transferred the matter to the HRET.

In this light, the alleged admission is not an issue that can be submitted and appreciated by this Court in the present proceedings. If the Court appreciates at all the evidence that the COMELEC cited, appreciated and evaluated, it is for the purpose of determining if the appreciation and evaluation are so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error.[50] Note that – as pointed out above – the COMELEC never even considered the alleged admission in its rulings. Thus, there is no basis for this Court to consider or appreciate this admission in the present proceedings.

Third, an admission of dual citizenship, without more, is not a sufficient basis for a CoC cancellation, as this Court has already held in its settled rulings.

While Reyes might have admitted in her motion for reconsideration before the COMELEC that she had been **married to an American citizen**, the admission did not mean that she had already lost her Philippine citizenship in the absence of any showing that, by her act or omission, she is deemed under the law to have renounced it. **Section 4, Article 4 of the Constitution** is very clear on this point – ***"Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it."***

As applied to Reyes, her possession and use of a U.S. passport, by themselves, did not signify that she is no longer a natural born Filipino citizen or that she had renounced her Philippine citizenship.

The latest related jurisprudence on this matter is *Cordora v. Commission on Elections,*[51] where the Court held that **the twin requirements of RA 9225 do not apply to a candidate who is a natural**

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50 *Sabili v. Commission on Elections,* G.R. No. 193261, April 24, 2012, 670 SCRA 664, 681.

51 G.R. No. 176947, February 19, 2009, 580 SCRA 12.

born Filipino citizen who did not become a naturalized citizen of another country, thus:

> We have to consider the present case in consonance with our rulings in *Mercado v. Manzano, Valles v. COMELEC,* and *AASJS v. Datumanong. Mercado* and *Valles* involve similar operative facts as the present case. *Manzano* and *Valles*, like Tambunting, possessed dual citizenship by the circumstances of their birth. Manzano was born to Filipino parents in the United States which follows the doctrine of *jus soli*. Valles was born to an Australian mother and a Filipino father in Australia. Our rulings in *Manzano* and *Valles* stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. **Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process.** *AASJS* states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain his Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.
>
> R.A. No. 9225, or the Citizenship Retention and Reacquisition Act of 2003, was enacted years after the promulgation of *Manzano* and *Valles*. The oath found in Section 3 of R.A. No. 9225 reads as follows:
>
> > I _____ , solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.
>
> In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship *per se*, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent rulings in *Jacot v. Dal and COMELEC, Velasco v. COMELEC*, and *Japzon v. COMELEC*, all of which involve natural-born Filipinos who

later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. **In the present case, Tambunting, a natural-born Filipino, did not subsequently become a naturalized citizen of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.**[52]

e. Conclusion and consequences of the COMELEC's violation of Reyes' due process rights.

Based on these considerations, I submit that the violation of Reyes' right to due process raises a **serious jurisdictional issue** that cannot be glossed over or disregarded at will, and cannot be saved by the claim that she had been accorded her hearing rights. The latter relates purely to the actual hearing process and is rendered meaningless where there is failure at the more substantive deliberation stage.

Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right should be declared void for lack of jurisdiction. The rule is equally true for quasi-judicial bodies (such as the COMELEC), for the constitutional guarantee that no man shall be deprived of life, liberty or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where the violation occurs.[53] **Consequently, the assailed March 27, 2013 and May 14, 2013 COMELEC resolutions cancelling Reyes' CoC should be declared void for having been rendered in violation of her right to due process.**

As a relevant side observation, the nullity of the cancellation proceedings before the COMELEC fully validates the PBOC's action in proclaiming Reyes as the winner in the congressional elections. The proclamation of Reyes, of course, is not a material issue in the present case as I discuss at length below. I will dwell on it nevertheless in order *to clear the air,* to place matters in their proper perspective, and if only to clarify and rectify what has been erroneously and recklessly claimed by the *ponencia*, particularly on the effect of a proclamation on the jurisdictional boundary separating the COMELEC and the HRET.

C. <u>Proclamation is not a disputed and submitted issue.</u>

a. The present petition is for the nullification of the COMELEC CoC proceedings and rulings.

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52 Id. at 23-25; citations omitted, italics supplied, emphases ours.

53 *Montoya v. Varilla,* G.R. No. 180146, December 18, 2008, 574 SCRA 831, 843.

A very critical point to appreciate in considering the present petition for *certiorari* is that it was filed by Reyes who is **pointedly questioning the cancellation of her CoC**. **She never asked this Court in her petition to act on her proclamation**.

The party who has the interest and the personality to seek the annulment of Reyes' proclamation is **the losing candidate** – former Cong. Velasco – who is not even a party to the present petition and who **never raised the issue of the validity of Reyes' proclamation before this Court**.

Thus, **the fact of proclamation is an undisputed matter** before this Court and cannot be attacked directly or collaterally until after the issue of Reyes' qualifications (which would necessarily include the merits of the validity or invalidity of her CoC) is resolved before the proper tribunal. The entity, too, that can annul or set aside the proclamation – at this stage of the case – should be the HRET, not this Court. Any other manner or forum for the resolution of the Marinduque election dispute would result in a **clash of jurisdiction** that the law and the decided cases have sought to avoid.

In this light, I note with concern the majority's attempt in the Court's June 25, 2013 Resolution to indirectly question the validity of Reyes' proclamation by holding that:

> More importantly, we cannot disregard a fact basic in this controversy- that before the proclamation of petitioner on 18 May 2013, the COMELEC *En Banc* already finally disposed of the issue of petitioner's lack of Filipino citizenship and residency via its Resolution dated 14 May 2013. After 14 May 2013, there was, before the COMELEC, no longer any pending cases on petitioner's qualifications to run for the position of Member of the House of Representative. We will inexcusably disregard this fact if we accept the argument of the petitioner that the COMELEC was ousted of jurisdiction when she was proclaimed, which was four days after the COMELEC En Banc decision. **The Board of Canvassers which proclaimed petitioner cannot by such act be allowed to render nugatory a decision of the COMELEC En Banc which affirmed a decision of the COMELEC First Division.** [emphasis ours][54]

In the present *ponencia* that this Dissent disputes, the attack on the proclamation again surfaces, this time, directly and unabashedly. To quote the present *ponencia*:

> The averred proclamation is the critical pointer to the correctness of petitioner's submission. **The crucial question is whether or not the petitioner could be proclaimed on 18 May 2013. Differently stated, was there basis for the proclamation of petitioner on 18 May 2013?**

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54 Resolution dated June 25, 2013, p. 9.

> Dates and events indicate that **there was no basis for the proclamation of petition on May 18, 2013**. Without the proclamation, the petitioner's oath of office is likewise baseless, and without a precedent oath of office, there can be no valid and effective assumption of office.[55]

I submit that the Court cannot rule on the issue of the validity or invalidity of Reyes' **proclamation** as this is **NOT an issue raised in the present petition before this Court, nor an issue in the COMELEC proceedings that is now under review.** Proclamation is a separate COMELEC action that came after and separately from the CoC cancellation ruling.

As a cautionary note, any ruling by the Court on the validity or invalidity of Reyes' proclamation is beyond the Court's jurisdiction at the present time since the **Court does not have original jurisdiction over annulment of proclamations** and **no petition is before this Court seeking to impugn or sustain Reyes' proclamation**. By law, it is the COMELEC that has the original and exclusive jurisdiction over pre-proclamation controversies, including the annulment of proclamations[56] for positions other than the President, the Vice President, and the Members of the two Houses of Congress which all have their specific constitutional rules on the resolution of their elections, returns and qualifications.[57]

As matters now stand, from the perspective of the petition for *certiorari* now before this Court, the proclamation is simply ***an event*** (albeit, an important one) that transpired in the course of the election process and in Reyes' assumption to office as Member of the House of Representatives. If it can be an issue at all, the issue is **whether it did or did not transpire**; its legal standing or **legality is not in issue** and cannot be questioned before this Court simply because **no such issue is before us**.

Once proclamation is established as a fact, the COMELEC's jurisdiction ends and the HRET's jurisdiction begins. As Mr. Justice Antonio T. Carpio very ably argued in his own Dissenting Opinion, any legal issue on the validity or invalidity of the proclamation then passes on to the HRET; to hold otherwise would lead to conflicts of jurisdiction that the law could not have intended.

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55 *Ponencia*, p. 2.

56 Section 242 of the Omnibus Election Code states:
Section 242. Commission's exclusive jurisdiction of all pre-proclamation controversies. - The Commission shall have exclusive jurisdiction of all pre-proclamation controversies. It may *motu proprio* or upon written petition, and after due notice and hearing, order the partial or total suspension of the proclamation of any candidate-elect or annual partially or totally any proclamation, if one has been made, as the evidence shall warrant in accordance with the succeeding sections.

57 RA 7166, Section 15.

To reiterate what I have stated above, the party who may have the standing to raise this issue is not before us. In her motion for reconsideration, Reyes – the party who presented the petition before this Court – pointedly stated that she never raised the issue of her proclamation before this Court.

Tan, in his Comment (*i.e.,* the first time he was ever heard by this Court), mentioned "proclamation" but only to assert that Reyes had not complied with the requirements of the June 25, 2013 Resolution of this Court to become a Member of the House of Representatives – a legal issue extraneous to the CoC cancellation that he initiated. Tan's claim that the May 14, 2013 COMELEC *en banc* ruling became final on May 19, 2013, on the other hand, clearly forgets that the proclamation took place a day before, or on May 18, 2013.

In sum, **it is only the *ponencia* that raises, argues about, and seeks to impugn the validity of Reyes' proclamation**. This, by itself, is another unusual feature of this case – self-raised arguments from the Court on an issue that had not been raised in the petition or in any significant manner, in the Comment.

b. Mere mention of the word "proclamation" in the petition is not sufficient basis to argue that the validity of such proclamation has already been raised before this Court.

In its bid to make an issue of the validity of Reyes' proclamation, the *ponencia* now argues that it was Reyes herself who raised the matter of her proclamation in her petition.

This is **a very misleading and careless claim** if indeed the *ponencia* would insist on this position. As has been repeatedly mentioned, Reyes' petition addresses the COMELEC's cancellation of her CoC, not her proclamation which she does not complain about and which she has not brought before this Court as an issue. This is the context in which any mention of the word "proclamation" should be read and understood, and such mention should not be unduly stretched to bring before this Court an issue that is not before it.

For the Court's ready and easy understanding of the context of Reyes' mention of the word "proclamation," her argument in her petition runs this way:

a. the COMELEC's cancellation of her CoC should be nullified as it was attended by grave abuse of discretion amounting to lack or excess of jurisdiction; and

b. in any case, with the fact of proclamation by the PBOC, the COMELEC has now lost jurisdiction over the cancellation proceedings as jurisdiction now rests with the HRET.[58]

Understood in this manner, Reyes' main cause of action is the nullity of the COMELEC's action on her CoC – the COMELEC ruling she wants the Court to nullify. This cause of action has nothing to do with her proclamation – a separate COMELEC action (through its PBOC) that came after the COMELEC *en banc's* ruling. **The mention of proclamation in Reyes' petition, examined closely, was an assertion of fact leading to a legal conclusion that was apparently made to support her position that the assailed COMELEC CoC cancellation never lapsed to finality and did not become executory**. It was nothing more and nothing less than this, yet this merited the June 25, 2013 Resolution's own conclusion that to be a member of the House of Representatives, there must be a proclamation, an assumption to office and an oath taken before the Speaker of the House while the House is assembled in session.

All these, of course, do not affect the main question raised before this Court – whether the COMELEC gravely abused its discretion in ruling on the cancellation of Reyes' CoC. If indeed it did, then there is no valid and standing COMELEC *en banc* ruling that would prevent the proclamation of Reyes as the duly-elected congresswoman of the lone district of Marinduque. If the COMELEC did not commit any grave abuse of discretion, then the Court should so rule. What happens then to the proclamation – a legal question that is not before this Court – is a matter that should be taken up before the proper tribunal. Viewed in this manner, everything goes back to the allegation of grave abuse of discretion that Reyes brought before this Court.

c. Upon proclamation, the HRET alone has jurisdiction over Reyes' qualifications, including the validity of her proclamation.

With the fact of Reyes' proclamation established or undisputed, the **HRET alone – to the exclusion of any other tribunal – has jurisdiction over Reyes' qualifications, including the matter of the validity or invalidity of her proclamation.**

Prevailing jurisprudence dictates that **upon proclamation** of the winning candidate and **despite the allegation of the invalidity of the proclamation**, the **HRET acquires jurisdiction** to hear the election contest

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58 *Rollo*, p. 22.

involving the election, returns and qualifications of a member of the House of Representatives.

As early as 1988, in *Lazatin v. The Commission on Elections,*[59] the Court held that upon proclamation, oath and assumption to office of the winning candidate as Member of the House of Representatives, any question relating to the invalidity of the winning candidate's proclamation should be addressed to the sound judgment of the HRET.

In this cited case, Carmelo Lazatin assailed the jurisdiction of the COMELEC to annul his proclamation after he had taken his oath and assumed his office as Congressman of the First District of Pampanga. In reversing the COMELEC's annulment of Lazatin's proclamation, the Court held:

> The petition is impressed with merit because petitioner has been proclaimed winner of the Congressional elections in the first district of Pampanga, has taken his oath of office as such, and assumed his duties as Congressman. For this Court to take cognizance of the electoral protest against him would be to usurp the functions of the House Electoral Tribunal. **The alleged invalidity of the proclamation (which had been previously ordered by the COMELEC itself) despite alleged irregularities in connection therewith, and despite the pendency of the protests of the rival candidates, is a matter that is also addressed, considering the premises, to the sound judgment of the Electoral Tribunal.**[60]

Guerrero v. Commission on Elections[61] explained the *rationale* behind the ruling in *Lazatin*, as follows:

> But as we already held, in an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as Congressman is raised, that issue is best addressed to the HRET. **The reason for this ruling is self-evident, for it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate.**[62]

The Court reiterated the ruling in the subsequent cases of *Aggabao v. Commission on Elections*[63] *and Vinzons-Chato v. Commission on Elections.*[64] The latest jurisprudence on the matter is *Limkaichong v. Commission on Election.*[65] In *Limkaichong*, the petitioners therein argued that the irregularity that tainted Jocelyn Sy Limkaichong's proclamation should prevent the HRET from acquiring jurisdiction. In ruling against the petitioners, the Court held:

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59 241 Phil. 343 (1988).
60 Id. at 345; emphasis ours.
61 391 Phil. 344 (2000).
62 Id. at 354; emphasis ours.
63 490 Phil. 285 (2005).
64 548 Phil. 712 (2007).
65 *Supra* note 28.

> **The fact that the proclamation of the winning candidate, as in this case, was alleged to have been tainted with irregularity does not divest the HRET of its jurisdiction.** The Court has shed light on this in the case of *Vinzons-Chato*, to the effect that:
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> > x x x. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction:
> >
> > x x x x
> >
> > **In fine, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.**[66]

In the case now before us, Tan argues in his Comment on Reyes' Motion for Reconsideration that Reyes' proclamation on May 18, 2013 was null and void, citing the July 9, 2013 COMELEC *en banc* resolution annulling Reyes' proclamation. He emphasizes that the finality of the May 14, 2013 resolution on May 19, 2013 automatically voided Reyes' May 18, 2013 proclamation, rendering it a ministerial duty for the COMELEC to annul Reyes' proclamation and proclaim Velasco as the sole eligible candidate and winner for the position of Representative of Marinduque.

In his Concurring Opinion, Justice Abad argues that Reyes' case, which the COMELEC has already decided with finality, can no longer be taken over by the HRET even if Reyes had already assumed office, if such decision has been elevated to the Supreme Court on *certiorari.* He argues that the HRET cannot oust the Supreme Court of its jurisdiction under the Constitution.

These allegations fall within the type of situation that the above-cited cases cover so that the COMELEC (and even this Court) is now barred from ruling on the validity of Reyes' proclamation. The issue should now be left to the sound discretion of the HRET. Even this Court is covered by this ruling as the grant of jurisdiction to the HRET is exclusive; the Court's turn will come in a duly filed petition for *certiorari* under Rule 65 of the Rules of Court.

c.1. *Codilla* is not applicable and cannot be used to support the view

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[66] Id. at 35-36; italics supplied, emphases ours, citations omitted.

that the COMELEC, not the HRET, has jurisdiction over the validity of Reyes' proclamation.

In his Comment, Tan cited the case of ***Codilla, Sr. v. Hon. de Venecia***[67] to support his argument that it is the COMELEC, not the HRET, that has jurisdiction over the present case.

Eufrocino Codilla, Sr. and Ma. Victoria Locsin were candidates for the position of Representative of the 4th Legislative District of Leyte during the May 14, 2001 elections. Codilla garnered the highest number of votes (71,350 versus Locsin's 53,447 votes) but his proclamation was suspended because he was facing charges of indirect solicitation of votes. Codilla filed a motion to lift the suspension order. The COMELEC Second Division, without resolving Codilla's pending motion, issued a resolution declaring his disqualification and directing the immediate proclamation of Locsin. Despite Codilla's timely Motion for Reconsideration where he squarely raised the invalidity of Locsin's proclamation, the votes cast for Codilla were declared stray and Locsin was proclaimed winner.

Codilla duly filed with the COMELEC *en banc* a petition to annul Locsin's proclamation. The COMELEC *en banc* granted Codilla's petition and declared Locsin's proclamation as null and void. **Locsin did not appeal from this decision** and Codilla was proclaimed the duly-elected Representative of the 4th District of Leyte. In the meantime, Locsin took her oath of office on June 18, 2001 and assumed office on June 30, 2001.

In the petition for mandamus and *quo warranto* Codilla filed with this Court to question Locsin's proclamation, the latter argued in defense that the COMELEC *en banc* had no jurisdiction to annul her proclamation. She maintained that the COMELEC *en banc* had been divested of jurisdiction to review the validity of her proclamation because she had become a member of the House of Representatives and the proper forum to question her membership was the HRET.

The Court disregarded Locsin's arguments and held that the HRET could not assume jurisdiction as Locsin's proclamation was invalid.

Even a cursory reading of *Codilla* would reveal that its factual antecedents and legal issues are far different from those of the present case; thus, *Codilla* cannot be used as basis to hold that the COMELEC, not the HRET, has jurisdiction over the issue of the validity of Reyes' proclamation.

First, **the *Codilla* ruling was made in a petition brought before this Court to question Locsin's proclamation.**

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67 442 Phil. 139 (2002).

The Court found that Locsin's proclamation was **patently invalid** because: (1) Codilla's right to due process was denied during the entire proceedings leading to the proclamation of Locsin; (2) the order of disqualification was not yet final, hence the votes cast in favor of Codilla could not be considered stray; and (3) Locsin, as a mere second placer, could not be proclaimed. Specifically, the Court in *Codilla* characterized the hurried and premature proclamation of Locsin who obtained the second highest number of votes as "brazen" because the petition to disqualify the winning candidate had not yet been determined with finality.

Unlike *Codilla* and as I have repeatedly harped on, **the present Reyes petition relates to the COMELEC's cancellation of her CoC and is not about her proclamation.** In fact, her proclamation was never an issue before the COMELEC. Specifically, proclamation was not an issue in the Motion for Reconsideration Reyes filed on April 8, 2013 and which the COMELEC First Division ruled upon on March 27, 2013. It was this First Division ruling that the COMELEC *en banc* ruled upon on May 14, 2013. These facts alone show that **Reyes' proclamation was a separate COMELEC action that <u>came after</u> and <u>separately from</u> the CoC cancellation ruling.**

Second, as will be discussed at length below, the records before the Court do not support the patent invalidity of Reyes' proclamation. Without a final and executory ruling cancelling Reyes' CoC, and in the absence of any order from the COMELEC to suspend Reyes' proclamation, the PBOC acted well within its authority to proclaim Reyes who garnered the highest number of votes, unlike Locsin who was a mere second placer.

Third, the core issue in *Codilla* was whether the candidate who garnered the second highest number of votes could be validly proclaimed as the winner in the election contest in the event that the winner is disqualified. The Court took note in this case of the settled jurisprudence that a candidate who obtained the second highest number of votes is not entitled to assume the position in case the winner is disqualified.

In the present case, the core issues before the Court are: (i) whether the COMELEC committed grave abuse of discretion in cancelling Reyes' CoC; and (ii) as an *obiter* side issue, whether the subsequent proclamation of Reyes divested the COMELEC of jurisdiction to rule on her qualifications. Thus, the facts and issue raised are far different from *Codilla.* If this cited case is applicable at all, it is under the ruling that the Court has jurisdiction because grave abuse of discretion on the part of the COMELEC is involved.

Fourth, from the perspective of this Court, the jurisprudential rule that *Codilla* establishes is that the jurisdiction of this Court prevails when there is

grave abuse of discretion rendering a ruling void. Thus, the Court assumed jurisdiction despite the previous proclamation of Locsin as the proclamation was void. Parenthetically, in *Codilla*, what was brought squarely before the Court was a petition questioning the proclamation of Locsin itself.

d. Nothing in the records support the view that Reyes' proclamation is invalid, even assuming that this issue is presently before this Court.

Assuming *arguendo* that the Court can rule on the validity of Reyes' proclamation, the records before this Court suggest that the PBOC correctly proclaimed Reyes.

The antecedents outlined above show that it was only on March 27, 2013 that the COMELEC First Division ruled on Tan's cancellation petition. It was also only May 14, 2013 that the COMELEC *en banc* denied Reyes' motion for reconsideration. By the COMELEC's own Rules, this *en banc* ruling does not become final and executory until after five (5) days from its promulgation.[68] Thus, it was only on May 19, 2013 that the *en banc* ruling should have lapsed to finality, but before then, on May 18, 2013, the PBOC had proclaimed Reyes.

In this regard, I find Justice Abad's position that the May 14, 2013 COMELEC *en banc* Resolution became final and executory on May 27, 2013 to be without factual and legal basis. As stated elsewhere in this Opinion, the assailed resolution could not have attained finality because Reyes' proclamation on May 18, 2013 divested the COMELEC of jurisdiction over matters pending before it with respect to Reyes' eligibility.

First, I note that Justice Abad failed to cite any legal basis for his proposition that the May 14, 2013 COMELEC *en banc* resolution became final and executory on May 27, 2013 after Reyes failed to file a petition within ten (10) days from receipt of the COMELEC's May 14, 2013 resolution. On the contrary, Section 3, Rule 37 of the COMELEC Rules of Procedure expressly states that "decisions in x x x petitions to deny due course to or cancel certificates of candidacy, x x x shall become final and executory after the lapse of **five (5) days from their promulgation** unless restrained by the Supreme Court." Thus, in the present case, Reyes' proclamation on May 18, 2013 came one (1) day ahead of the May 19, 2013 deadline for the finality of the May 14, 2013 resolution, pursuant to the afore-cited rule.

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[68] COMELEC Rules of Procedure, Rule 37, Section 3. *Supra* note 12.

Second, even if we reckon the date of finality of the May 14, 2013 COMELEC *en banc* resolution from the date of receipt (May 16, 2013) of the said resolution, Reyes' proclamation would still be three (3) days ahead of the deadline for finality. COMELEC Resolution No. 9648 dated February 22, 2013 provides that the ruling of the Commission *En Banc* shall become final and executory if no restraining order is issued by the Supreme Court **within five (5) days from receipt** of the decision or resolution. Applied in this case, Reyes' proclamation on May 18, 2013 came three (3) days ahead of the May 21, 2013 deadline for the finality of the May 14, 2013 COMELEC *en banc* resolution, pursuant to Section 28(1) of COMELEC Resolution No. 9648.

Significantly, the PBOC was legally in the position to make a proclamation as the canvass had been completed, with Reyes as the winner; at that point, the PBOC had no official notice of any final and executory COMELEC *en banc* ruling.

COMELEC Resolution No. 9648 which the *ponencia* conveniently ignores clearly provides that the Board is authorized to proclaim a candidate who obtained the highest number of votes ***except*** in case the CoC of the candidate who obtains the highest number of votes has been ***cancelled or denied due course by a final and executory decision or resolution***. In such cases, the Board is authorized to proceed to proclaim the candidate who obtained the second highest number of votes, provided the latter's CoC has not likewise been cancelled by a final and executory decision or resolution.[69]

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[69] It must be mentioned, however, that a recent COMELEC issuance, Resolution No. 9648 dated February 22, 2013, otherwise known as the "GENERAL INSTRUCTIONS FOR THE BOARD OF CANVASSERS ON THE CONSOLIDATION/CANVASS AND TRANSMISSION OF VOTES CONNECTION WITH THE MAY 13, 2013 NATIONAL AND LOCAL ELECTIONS," provides that a ruling of the Commission *En Banc* shall become final and executory if no restraining order is issued by the Supreme Court within five (5) days from **RECEIPT** of the Decision or Resolution. It pertinently states:

> Section 28. x x x
>
> **PROCLAMATION OF THE WINNING CANDIDATES**
>
> x x x x
>
> A candidate who obtained the highest number of votes shall be proclaimed by the Board, except for the following:
>
> 1. In case the certificate of candidacy of the candidate who obtains the highest number of votes has been cancelled or denied due course by a final and executory Decision or Resolution, the votes cast for such candidate shall be considered stray, hence, the Board shall proceed to proclaim the candidate who obtains the second highest of number votes, provided, the latter's certificate of candidacy has not likewise been cancelled by a final and executory Decision or Resolution;
>
> x x x x
>
> **In all cases, a Decision or Resolution is deemed final and executory if, in case of a Division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of the ruling of the Commission *En Banc*, no restraining order was issued by the Supreme Court within five (5) days from receipt of the Decision or Resolution.**
>
> In cases where a Petition to Deny Due Course or cancel a Certificate of Candidacy, Declare a Nuisance Candidate, or for Disqualification remains pending with the Commission on the day of canvassing and no order of suspension of proclamation is issued by the Commission *En Banc* or Division

Thus, without a final and executory ruling cancelling Reyes' CoC, and in the absence of any order from the COMELEC to suspend Reyes' proclamation, the PBOC acted well within its authority to proclaim Reyes as the winner in the Marinduque congressional elections.

d.1 The Allegations of Bad Faith

In its arguments, the *ponencia* harps on the COMELEC ruling of May 14, 2013 and claims that "What the petitioner did was to 'take the law into her hands' and secure a proclamation in complete disregard of the COMELEC *en banc* decision that was final on May 14, 2013 and final and executory five days thereafter."[70] The *ponencia* thereafter proceeds to pointedly allege "bad faith" and claims that "[s]he cannot sit as Member of the House of Representatives by virtue of a baseless proclamation knowingly taken, with knowledge of the existing legal impediment."[71]

These arguments forget the existing legal realities pointed out above. It forgets, too, that it cannot single out and isolate a set of circumstances in a given case and, based on these, impute bad faith against a party to the case in the absence of a clear showing of such bad faith based on the totality of all the attendant circumstances.

Elementary fairness demands that if bad faith would be imputed, the *ponencia* should have viewed the Marinduque election dispute in its entirety, starting from the fact that **Reyes handily won over her opponent** and that the **only claim to negate this victory is the cancellation of her CoC** through **extremely questionable proceedings before the COMELEC**. Notably, in these proceedings, no less than COMELEC Chairman Brillantes spoke out to comment on the grave abuse of discretion that transpired. If only the *ponencia* had been mindful of this reality and the further reality that the **democratic choice of a whole province should be respected**, then perhaps it would not have carelessly imputed bad faith on Reyes.

Everything considered, Reyes was well within her rights to move for her proclamation as the winning candidate who garnered the highest number of votes. Stated in the context of the *ponencia,* it cannot attribute bad faith to Reyes since ***she was merely exercising her legal right as the winning candidate***, following the legal truism that the proper exercise of a lawful right cannot constitute a legal wrong for which an action will lie, although the act may result in damage to another, for no legal right has been invaded.[72]

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where said Petition is pending, the Board shall proceed to proclaim the winner. [emphases ours]

70 *Ponencia*, p. 4.

71 Id. at 5-6.

72 See *Sps. Custodio v. Court of Appeals,* 323 Phil. 575, 588-589 (1996), where the Court held:

e. The COMELEC *en banc*'s cancellation of Reyes' CoC on May 14, 2013 did not render her proclamation void.

The *ponencia's* position that the COMELEC *en banc* already cancelled with finality Reyes' CoC on May 14, 2013 prior to her proclamation on May 18, 2013 is simply **incorrect**.

The COMELEC *en banc's* May 14, 2013 Resolution (cancelling Reyes' CoC) could not have attained finality as Reyes' valid proclamation on May 18, 2013 had the effect of divesting the COMELEC of jurisdiction over matters pending before it relating to Reyes' eligibility.

Two material records are critical in considering this point.

The ***first*** is the proclamation on May 18, 2013 which came one (1) day ahead of the May 19, 2013 deadline for the finality of the May 14, 2013 resolution, pursuant to Section 3, Rule 37 of the COMELEC Rules of Procedure. Under this COMELEC Rule, "decisions in x x x petitions to deny due course to or cancel certificates of candidacy, x x x shall become final and executory after the lapse of five (5) days from their promulgation unless restrained by the Supreme Court."[73]

As has been mentioned earlier, this proclamation was based on the results of the voting on the May 13, 2013 elections and the PBOC canvass that Reyes secured **52,209 votes**, as against former Cong. Velasco's **48,396 votes**. **This election result is the silent argument in this case that can hardly be contested, or, if at all, must be addressed before the proper tribunal.** Before this proper tribunal rules, the Marinduque electorate – who had voted for Reyes on May 13, 2013 despite the COMELEC First Division ruling cancelling her CoC – should not be disenfranchised, particularly not by this Court through its flawed June 25, 2013 ruling.

The ***second*** material record is the COMELEC Order of June 5, 2013 which declared its resolution of May 14, 2013 final and executory. **When the COMELEC made this declaration, Reyes had long been proclaimed by the PBOC as the candidate who had garnered the highest number of**

The proper exercise of a lawful right cannot constitute a legal wrong for which an action will lie, although the act may result in damage to another, for no legal right has been invaded. One may use any lawful means to accomplish a lawful purpose and though the means adopted may cause damage to another, no cause of action arises in the latter's favor. Any injury or damage occasioned thereby is *damnum absque injuria*. The courts can give no redress for hardship to an individual resulting from action reasonably calculated to achieve a lawful end by lawful means. [citations omitted, italics supplied]

73 *Supra* note 12.

votes. This material record further strengthens the conclusion that no legal impediment existed for the PBOC on May 18, 2013 when it proclaimed Reyes.

Given this conclusion, an interesting question that still arises is: has Reyes now fully and successfully blocked the objections to her candidacy?

The **short answer is NO**, far from it, as already impliedly suggested above. If former Cong. Velasco and the *quo warranto* petitioner before the HRET are determined to pursue their petitions, then they are free to do so without any hindrance from this Court; what simply transpires is the transfer of the forum of their disputes from the COMELEC to the HRET.

Hard though this conclusion may seem for the HRET petitioners, it is the command of no less than the Constitution and, as such, must be strictly obeyed. The upside, of course, of this observation is that they are not denied their legal remedies; these are simply relocated to another forum out of respect for their separation of powers and independence that the Constitution ordains.

D. Reyes' proclamation divested the COMELEC of jurisdiction over her qualifications in favor of the HRET.

a. The latest applicable jurisprudential rulings.

I reiterate my previous Dissenting Opinion position that the **proclamation** of the winning candidate is the **operative fact that triggers the jurisdiction of the HRET** over election contests relating to the winning candidate's election, returns, and qualifications.

In other words, the proclamation of a winning candidate divests the COMELEC of its jurisdiction **over matters pending before it at the time of the proclamation;** the party questioning the election, returns and the qualifications of the winning candidate should now present his or her case in a proper proceeding (*i.e., an election protest or a quo warranto petition)* before the HRET that, by constitutional mandate, has the sole jurisdiction to hear and decide cases involving the election, returns and qualifications of members of the House of Representatives.

I take ***firm exception*** to the majority's conclusion that the COMELEC retains jurisdiction over disputes relating to the election, returns and qualifications of the representative who has been proclaimed but who has not yet assumed office. This ruling is contrary to the Court's prevailing jurisprudence on the matter.

Prevailing jurisprudence dictates that the **proclamation alone** of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representatives in favor of the HRET, although some of these decided cases mention that the COMELEC's jurisdiction ends and the HRET's own jurisdiction begins once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives.

The latest relevant ruling on COMELEC/HRET jurisdictional boundary came *via Jalosjos, Jr. v. Commission on Elections*[74] where **the Court, through Mr. Justice Roberto Abad no less,** categorically ruled that "*[t]he Court has already settled the question of when the jurisdiction of the COMELEC ends and when that of the HRET begins.*"[75] In *Jalosjos,* the Court held that the proclamation of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representative in favor of the HRET. I note, at this point, that by arguing in his Concurring Opinion that the COMELEC's jurisdiction ends and the HRET begins only upon the assumption to the office on June 30 by the winning candidate, Justice Abad conveniently eschews the prevailing jurisprudence of the Court on the matter and makes an extraordinary *volte face* from his categorical declaration in *Jalosjos, Jr.*

In that case, the Court ruled that the COMELEC acted without jurisdiction when it issued its June 3, 2010 order granting the motion for reconsideration and declaring Jalosjos ineligible after he had already been proclaimed the winner for the position of Representative of the Second District of Zamboanga Sibugay. Significantly, **at the time the COMELEC issued the order, Jalosjos had yet to take his oath of office and assume the duties of his office,** *viz.:*

> **Here, when the COMELEC *En Banc* issued its order dated June 3, 2010, Jalosjos had already been proclaimed on May 13, 2010 as winner in the election. Thus, the COMELEC acted without jurisdiction when it still passed upon the issue of his qualification and declared him ineligible for the office of Representative of the Second District of Zamboanga Sibugay.**

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74 G.R. Nos. 192474, 192704 and 193566, June 26, 2012, 674 SCRA 530.

75 Id. at 534-535.

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> Here, however, the fact is that on election day of 2010 the COMELEC *En Banc* had as yet to resolve Erasmo's appeal from the Second Division's dismissal of the disqualification case against Jalosjos. Thus, there then existed no final judgment deleting Jalosjos' name from the list of candidates for the congressional seat he sought. The last standing official action in his case before election day was the ruling of the COMELEC's Second Division that allowed his name to stay on that list. Meantime, the COMELEC *En Banc* did not issue any order suspending his proclamation pending its final resolution of his case. With the fact of his proclamation and assumption of office, any issue regarding his qualification for the same, like his alleged lack of the required residence, was solely for the HRET to consider and decide.
>
> Consequently, the Court holds in G.R. 192474 that the COMELEC *En Banc* exceeded its jurisdiction in declaring Jalosjos ineligible for the position of representative for the Second District of Zamboanga Sibugay, which he won in the elections, since it had ceased to have jurisdiction over his case. **Necessarily, Erasmo's petitions (G.R. 192704 and G.R. 193566) questioning the validity of the registration of Jalosjos as a voter and the COMELEC's failure to annul his proclamation also fail. The Court cannot usurp the power vested by the Constitution solely on the HRET.**[76] (citations omitted, emphases ours, italics supplied)

Similarly, in the earlier *Perez v. Commission on Elections,*[77] the Court ruled that the COMELEC did not have jurisdiction to rule on a motion for reconsideration dated May 22, 1998 and could not have passed upon the eligibility of Marcita Mamba Perez who was already a Member of the House of Representatives. In this case, **the Court considered Perez a Member of the House of Representatives on the sole basis of her proclamation**. The Court also held that upon filing of the petition on June 16, 1998, the Court no longer had jurisdiction over the same:

> As already stated, the petition for disqualification against private respondent was decided by the First Division of the COMELEC on May 10, 1998. The following day, May 11, 1998, the elections were held. Notwithstanding the fact **that private respondent had already been proclaimed on May 16, 1998 and had taken his oath of office on May 17, 1998**, petitioner still filed a motion for reconsideration on May 22, 1998, which the COMELEC *en banc* denied on June 11, 1998. Clearly, this could not be done. Sec. 6 of R.A. No. 6646 authorizes the continuation of proceedings for disqualification even after the elections if the respondent has not been proclaimed. **The COMELEC en banc had no jurisdiction to entertain the motion because the proclamation of private respondent barred further consideration of petitioner's action. In the same vein, considering that at the time of the filing of this petition on June 16, 1998, private respondent was already a member of the House of Representatives, this Court has no jurisdiction over the same.** Pursuant to Art. VI, §17 of the Constitution, the House of Representatives Electoral Tribunal has the exclusive original

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76 Id. at 535-536.

77 G.R. No. 133944, October 28, 1999, 317 SCRA 641.

jurisdiction over the petition for the declaration of private respondent's ineligibility.[78] (italics supplied; emphases and underscore ours)

In *Planas v. Commission on Elections,*[79] a 2006 case, the Court held that the general rule is that the proclamation of a congressional candidate divests the COMELEC of jurisdiction in favor of the HRET, *viz.:*

> **The general rule is that the proclamation of a congressional candidate divests COMELEC of jurisdiction in favor of the HRET.** This rule, however, is not without exception. As held in *Mutuc, et al. v. COMELEC, et al.,*
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> > x x x **It is indeed true that after proclamation the usual remedy of any party aggrieved in an election is to be found in an election protest**. But that is so only on the assumption that there has been a valid proclamation. Where as in the case at bar the proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues.
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> > In the case at bar, at the time of the proclamation of Defensor who garnered the highest number of votes, the Division Resolution invalidating his certificate of candidacy was not yet final, hence, he had at that point in time remained qualified. Therefore, his proclamation was valid or legal.
> >
> > **Following *Mutuc* then, as at the time of Defensor's proclamation the denial of his CoC due course was not yet final, his proclamation was valid or legal and as he in fact had taken his oath of office and assumed his duties as representative, the COMELEC had been effectively divested of jurisdiction over the case.**[80] (citation omitted, italics supplied, emphases and underscores ours)

b. Refutation of the *ponencia's* jurisprudential claims.

To support its erroneous conclusion that the COMELEC still retained jurisdiction over the present case, the majority, in the Court's June 25, 2013 Resolution, ***disingenuously*** cites the cases of *Vinzons-Chato v. Commission on Elections,*[81] *Limkaichong v. Commission on Elections*[82] and *Gonzalez v. Commission on Elections,*[83] where the Court invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns and qualifications ends, and the HRET own jurisdiction begins.

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78 Id. at 646-647.
79 *Supra* note 27.
80 Id. at 536.
81 *Supra* note 64.
82 *Supra* note 28.
83 *Supra* note 29.

What the majority conveniently failed to cite in these cases, however, was the Court's definitive qualification that where the candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an election protest with the HRET. In *Vinzons-Chato v. Commission on Elections*,[84] the Court pertinently held:

> The Court has invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. **Stated in another manner, where the candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an electoral protest with the HRET.**
>
> **In the present case, it is not disputed that respondent Unico has already been proclaimed and taken his oath of office as a Member of the House of Representatives (Thirteenth Congress); hence, the COMELEC correctly ruled that it had already lost jurisdiction over petitioner Chato's petition**. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction[.] [emphases and underscore ours]

The majority also conveniently failed to note the Court's explicit qualification in *Limkaichong* that the proclamation of a winning candidate divests the COMELEC of jurisdiction over matters pending before it at the time of the proclamation. The Court pointedly stated in this case that -

> We do not agree. The Court has invariably held that once a winning candidate **has been proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, **the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications.** The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members.
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84 *Supra* note 64, at 179-180.

> Accordingly, after the proclamation of the winning candidate in the congressional elections, the remedy of those who may assail one's eligibility/ineligibility/qualification/disqualification is to file before the HRET a petition for an election protest, or a petition for *quo warranto,* within the period provided by the HRET Rules. In *Pangilinan v. Commission on Elections*, we ruled that where the candidate has already been proclaimed winner in the congressional elections, the remedy of petitioner is to file an electoral protest with the Electoral Tribunal of the House of Representatives.[85] (citations omitted, italics supplied, emphases and underscore ours)

c. Analysis and Observations.

This survey of jurisprudence delineating the jurisdiction of the COMELEC, *vis-à-vis* the HRET, indubitably shows that the **operative fact** that clearly divests the COMELEC of its jurisdiction is the **proclamation of the winning candidate** and not the assumption to the office as the majority erroneously concluded in the Court's June 25, 2013 Resolution. As I previously noted in my previous Dissent, the majority's conclusion on the issue of jurisdiction between the COMELEC and the HRET is a major retrogressive jurisprudential development; is a complete turnaround from the Court's prevailing jurisprudence; and is a ruling that can effectively emasculate the HRET.

As my previous Dissent discussed, under the HRET Rules of Procedure, no election protest or *quo warranto* petition can successfully be filed if the HRET's jurisdiction would be viewed in the manner the majority posits (*i.e.,* after proclamation, oath and assumption when Congress convenes) as the HRET Rules require that the election protest or *quo warranto* petition be filed fifteen (15) days after the winning candidate's proclamation.[86]

In this regard, I take exception to Justice Abad's view that the period for the filing of an election protest or a petition for *quo warranto* is merely a deadline. **The HRET Rules clearly state that filing periods are jurisdictional**. Rule 19 of the 2011 HRET Rules provides that the period for the filing of the appropriate petition, as prescribed in Rules 16[87] and Rule 17,[88] is jurisdictional and cannot be extended. Significantly, the filing of an election protest or petition for *quo warranto* beyond the periods provided in

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85 *Supra* note 28, at 33-37.

86 See Dissenting Opinion of Justice Arturo D. Brion dated June 25, 2013, pp. 15-16.

87 RULE 16. Election Protest. – *A* verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within fifteen (15) days after the proclamation of the winner.

88 RULE 17. Quo Warranto. – A verified petition for quo warranto contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned within fifteen (15) days from the date of the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

Rule 16 and Rule 17 of the HRET Rules is a ground for summary dismissal of the petition.

Thus, using the facts of the present case, if indeed no election protest or *quo warranto* petition can be filed until after July 22, 2013 (the day that Congress convened), then the HRET would simply dismiss any petition filed after that date for having filed out of time since Reyes was proclaimed on May 18, 2013 or more than 2 months before Congress formally convened. We cannot simply close our eyes to this resulting absurdity proposed by the majority, considering that the presumption is always against absurdity, and it is the duty of the courts to interpret the law in such a way as to avoid absurd results.[89]

Interestingly, even the losing candidate, former Cong. Velasco, and the *quo warranto* petitioner do not appear to agree with the majority's position as they made sure they filed their petitions within fifteen (15) days from the time Reyes was proclaimed. They filed their petitions on May 31, 2013, or well within 15 days from May 18, 2013.

To reconcile the "apparent" conflicts in jurisprudence, I wish to point out the following observations to the Court:[90]

> (1) "The proclamation of a congressional candidate following the election divests the COMELEC of its jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representatives in favor of the HRET."[91] This is the prevailing doctrine that has been consistently espoused by the Court and is, in fact, consistent with the HRET rules; thus, it should be upheld.
>
> (2) "The statement that – 'once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives, COMELEC's jurisdiction over election contests relating to the candidate's election, returns, and qualifications ends and the HRET's own jurisdiction begins' - ***must be read in relation to the time the Supreme Court rendered its decision on the case it ruled upon, since at this juncture, the three aforementioned conditions (proclamation, oath and assumption) are already existing as a matter of fact.***" [92] In other words, this iteration of the rule only recognizes the simple fact that the three conditions are already existing at the time that the Court decides the case. To my mind, it does not and should not overcome the prevailing rule that the proclamation of the congressional candidate divests the COMELEC of

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89 *People of the Philippines v. Villanueva*, No. L-15014, April 29, 1961.

90 See Dissenting Opinion of COMELEC Commissioner Christian Robert S. Lim in SPC No. 13-010; *rollo*, p. 256.

91 Ibid.

92 Ibid.

its jurisdiction over the candidate's election, returns and qualifications in favor of the HRET.

d. Conclusion: ***Only the HRET can now rule on the pending election disputes; the Court only comes in under Rule 65 if the HRET gravely abuses the exercise of its discretion.***

Despite the recourse to this Court and the original jurisdiction we now exercise over the petition, our action on the present petition should understandably be limited. **We can only rule on the existence of the grave abuse of discretion we found and on the consequent invalidity of the COMELEC action in the cancellation case before it; we cannot rule on the issue of Reyes' qualifications** (*i.e.,* on the issue of citizenship and residency). We have so held in *Perez v. Commission on Elections*[93] and *Bello v. Commission on Elections*[94] and **we have no reason to change tack now**. The HRET, as the constitutionally designated tribunal to rule at the first instance, should resolve the issues presented before it, including the task of appreciating the supposed admission of Reyes that she married an American citizen.

III. EPILOGUE

In the Court's final deliberation on the case, the *ponente* – as expected – dwelt on the "proclamation" aspect of the case. The *ponente* essentially maintained that Reyes should not be allowed to evade the "final" COMELEC decision that cancelled her CoC, by having herself illegally proclaimed by the PBOC and subsequently claiming that the COMELEC cancellation ruling never became final because it was overtaken by the proclamation that divested the COMELEC of jurisdiction over the election dispute.

I likewise harped on the "grave abuse of discretion" argument that I have outlined above. I pointed out that the proclamation is not an issue before the Court as the petition is for the nullification of the COMELEC ruling cancelling Reyes' CoC – an event that stands by itself and that came way before the proclamation. I pointed, too, to the terms of Reyes' petition that, under the established rules of procedure, define the issues brought by her before the Court: Reyes never questioned her own proclamation, and the losing candidate – former Cong. Velasco – never questioned the proclamation before the Court. Justice Marvic Mario Victor F. Leonen and Justice Carpio raised their own arguments, too. Justice Leonen counseled

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93 *Supra* note 77.

94 G.R. Nos. 191998, 192769 and 192832, December 7, 2010, 637 SCRA 59.

caution and joined Justice Carpio in pointing out that the venue now to question the proclamation is the HRET.

All these arguments, of course, came to naught and this outcome – while patently objectionable for its own grave abuse of discretion – came after full argument, for and against, and could be charged to the usual vagaries of decision-making in the Court. What came as a surprise, however, was not the argument that hewed to the *ponencia's* "proclamation" line, but the novel argument from no less than the Chief Justice.

Out of the blue and without any previous circulated written opinion, the Chief Justice argued that in the COMELEC's resolution of July 9, 2013, annulling Reyes' proclamation (*a resolution rendered by the COMELEC long after the disputed cancellation of CoC ruling on May 14, 2013, and likewise long after the proclamation of May 18, 2013 that the ponencia capitalized on*), she saw how Reyes acted in bad faith and the Court should not allow this kind of action to pass. She thus declared that she was voting based on this consideration.

To be sure, I tried to point out that the COMELEC July 9, 2013 resolution is not covered by the petition; that the COMELEC's statements in its resolution had never been placed in issue before the parties; that Reyes herself was never heard on this matter; and that bad faith cannot and should not be deduced from the cited incident but from the totality of the attendant circumstances: Reyes won the elections by a wide margin and is now being dispossessed of that victory through the grave abuse of discretion that the COMELEC committed in cancelling her CoC. But all these proved unavailing as the ensuing 5 to 4 vote showed.

It was in this manner – *through layer upon layer of grave abuse of discretion* – that the democratic choice of the people of the Province of Marinduque was subverted.

ARTURO D. BRION
Associate Justice