



Republic of the Philippines
Supreme Court
 Baguio City

SUPREME COURT OF THE PHILIPPINES
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BAGUMBAYAN-VNP MOVEMENT, G.R. No. 206719
INC., and RICHARD J. GORDON,
ON HIS BEHALF AND ON BEHALF
OF OTHER CITIZENS OF THE
REPUBLIC OF THE PHILIPPINES
SIMILARLY SITUATED,
 Petitioners,

- versus -

COMMISSION ON ELECTIONS,
 Respondent.

TANGGULANG DEMOKRASYA G.R. No. 206784
(TAN DEM), INC., EVELYN L.
KILAYKO, TERESITA D.
BALTAZAR, PILAR L. CALDERON,
ELITA T. MONTILLA, and ANDREA
H. CEDO,
 Petitioners,

- versus -

COMMISSION ON ELECTIONS,
 Respondent.

BAGUMBAYAN-VNP MOVEMENT, G.R. No. 207755
INC., and RICHARD J. GORDON,
ON HIS BEHALF AND ON BEHALF
OF OTHER CITIZENS OF THE
REPUBLIC OF THE PHILIPPINES
SIMILARLY SITUATED,
 Petitioners,
 Present:
 BERSAMIN, C.J.,
 CARPIO, J.,
 PERALTA,
 DEL CASTILLO,*

* On official leave.

Keyes

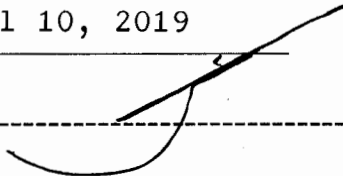
- versus -

PERLAS-BERNABE,**
LEONEN,
JARDELEZA,***
CAGUIOA,
REYES, A., JR.,
GESMUNDO,
REYES, J., JR.,
HERNANDO,
CARANDANG, and
LAZARO-JAVIER, JJ.

**COMMISSION ON ELECTIONS and
HON. SIXTO S. BRILLANTES, JR.,**
Respondents.

Promulgated:

April 10, 2019



X-----X

DECISION

REYES, A., JR., J.,

The Consolidated Case

Before this Court are three (3) separate petitions which this Court ordered consolidated in a Resolution¹ dated August 12, 2014.

In **G.R. No. 206719**, Bagumbayan-VNP Movement, Inc. (Bagumbayan) and Senator Richard J. Gordon (Senator Gordon) filed a Special Civil Action for *Mandamus*² lodged with the Court under Section 3, Rule 65 of the Rules of Court, for the purpose of compelling the Commission on Elections (COMELEC) to comply with the provisions of Section 14 of Republic Act (R.A.) No. 8436,³ as amended by R.A. No. 9369.⁴

** On leave.

*** On official leave.

¹ *Rollo* (G.R. No. 206784), p. 121.

² *Rollo* (G.R. No. 206719), pp. 3-17.

³ AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES. Approved on December 22, 1997.

⁴ AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 881, AS AMENDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED

Reyes

The Court notes that a petition to declare former Chairman of the COMELEC, Sixto S. Brillantes, Jr. (Chairman Brillantes) in contempt for presumably failing to comply with his commitments to this Court as manifested during oral arguments on May 8, 2013, in connection with the petition in **G.R. No. 206719**, was filed and docketed as **G.R. No. 207755**. While the petition was filed separately, under Section 4⁵ of Rule 71 of the Rules of Court, the Court exercised its discretion and ordered the consolidation of the contempt charge and the principal action for joint hearing and decision. As such, the Court will, likewise, rule on the charge of contempt alongside ruling on the merits of the instant petition.

In **G.R. No. 206784**, the petitioners Tanggulang Demokrasya (Tan Dem), *et al.* filed a Special Civil Action for *Mandamus*⁶ lodged with the Court under Section 3, Rule 65 of the Rules of Court, for the purposes of compelling COMELEC to use digital signatures in the electronic election returns, and provide for the basic security safeguards, which include the source code review, vote verification, and the random audit, in compliance with R.A. No. 9369.

The Parties

Petitioner Bagumbayan is a non-stock, non-profit corporation that operates through Bagumbayan-Volunteers for a New Philippines, a national political party which has been duly registered with the COMELEC since 2010. Petitioner Senator Gordon is a Filipino citizen of legal age, a registered voter, a taxpayer, and a resident of Olongapo City. He is currently a Senator of the Republic of the Philippines.

Petitioner Tan Dem is a people's organization created for the purpose of defending democracy in the Philippines, while petitioners Evelyn L. Kilayko, Teresita D. Baltazar, Pilar L. Calderon, Elita T. Montilla, and Andrea H. Cedo, are Filipino citizens, and registered voters and taxpayers. They will be collectively referred to as petitioners Tan Dem, *et al.*

ELECTION LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES. Approved on January 23, 2007.

⁵ Section 4. Proceedings for indirect contempt are either initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt, or, in all other cases, commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard, and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

⁶ *Rollo* (G.R. No. 206784), pp. 2-23.

Respondent COMELEC is a government agency created under Section 1(1), Article IX-C of the 1987 Constitution. It is vested by the fundamental law and by statute with the power and the duty to enforce and administer all laws relative to the conduct of elections in the country. Respondent Chairman Brillantes is the former Chairman of the COMELEC, and held such post at the time of the filing of this petition.

The Antecedent Facts

**For G.R. No. 206719 and
G.R. No. 207755**

On December 22, 1997, Congress enacted R.A. No. 8436, otherwise known as the *Election Modernization Act of 1997*, which authorized the COMELEC to adopt an automated election system (AES) for the process of voting, counting of votes and canvassing/consolidation of results of the national and local elections.⁷

On January 23, 2007, R.A. No. 9369 was signed into law, amending among others certain provisions of R.A. No. 8436, pertinently Section 10 of the latter, to read:

SEC. 12. Section 10 of Republic Act No. 8436 is hereby amended to read as follows:

SEC. 14. *Examination and Testing of Equipment or Device of the AES and Opening of the Source Code for Review.* - **The Commission shall allow the political parties and candidates or their representatives, citizens' arm or their representatives to examine and test** the equipment or device to be used in the voting and counting on the day of the electoral exercise, before voting start. Test ballots and test forms shall be provided by the Commission.

Immediately after the examination and testing of the equipment or device, parties and candidates or their representatives, citizen's arms or their representatives, may submit a written comment to the election officer who shall immediately transmit it to the Commission for appropriate action.

The election officer shall keep minutes of the testing, a copy of which shall be submitted to the Commission together with the minute of voting.

Once an AES technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof. (Underscoring and emphasis Ours)

⁷ Rollo (G.R. No. 206719), p. 90.

Meyer

To facilitate the review process as mandated by the law, the COMELEC promulgated Minute Resolution No. 10-0138⁸ on February 10, 2010, adopting the guidelines recommended by the COMELEC Advisory Council and the Technical Evaluation Council (TEC). This resolution set the guidelines for the conduct of the source code review, and was done a month before the May 10, 2010 National and Local Elections.

Years later, this time for the 2013 National and Local elections, the TEC submitted to the COMELEC on February 12, 2013⁹ the former's resolution on the certification of the validity of AES for the 2013 elections. As required by Section 9 of R.A. No. 9369, SLI Global Solutions (SLI), certified and categorically stated that "the AES, including its hardware and software components, are operating properly, securely, and accurately, in accordance with the provisions of the Act,"¹⁰ and that the same could be used by the voters, board of election inspectors (BEI), local and national boards of canvassers, as well as the COMELEC in the aforementioned elections.

On March 1, 2013,¹¹ the COMELEC promulgated Resolution No. 9651, the guidelines promulgated by COMELEC in order to fulfill its mandate to make the source code available. According to Resolution No. 9651, several requirements¹² must be submitted by interested parties before they may be allowed to partake in the source code review.

⁸ Id.

⁹ Id. at 91-92.

¹⁰ Id.

¹¹ Id.

¹² The following are interested political party or groups who may conduct a source code review for the May 13, 2013 Automated National and Local Elections:

1. Interested political party which means a political party, a sectoral party or a coalition of parties duly registered and/or accredited by the COMELEC;
2. Independent candidates who are running for a nationwide national position;
3. Interested group which means any legitimate organization or group duly accredited by the COMELEC, including its duly accredited citizens' arms, which possesses the technical capability and expertise in conducting the source code review. For the purpose, the following shall be not be allowed to conduct a review of the source code:
 - a. Any religious sect or denomination, organization or association, organized for religious purposes;
 - b. Any group or organization which is receiving monetary or any form of financial support from any foreign government, or foreign political party, foundation, or organization, whether directly or through any of its officers or members, or indirectly through third parties.

RESOLVED FURTHER, that all interested political parties, independent candidates for nationwide national positions, duly accredited interested groups, including the Commission's duly accredited citizens' arms mentioned above, must comply with the following guidelines embodied in COMELEC Minute Resolution No. 13-0027, COMELEC Minute Resolution No. 10-0138 and the COMELEC Advisory Council's (CAC) Resolution No. 2013-007, as follows:

1. Entities interested in conducting a source code review must signify their interest in writing for approval of the COMELEC, and submit the credentials of their source code reviewers, who shall meet the following qualifications:
 - a. Must at least have a 4-year bachelor's degree in any IT-related field, preferably with specialization in computer systems security or cryptography;

Subsequently, on March 14, 2013, COMELEC likewise promulgated Resolution No. 9657, which stated that to afford the COMELEC enough time to evaluate the request for source code review, and the credentials of the reviewer, there is a need to set a deadline within which the request, together with the credentials of its reviewer, should be filed, and where to file the same. Resolution No. 9657 resolved that the request for the conduct of the source code review by the political parties and interested groups, together with the credentials of the reviewer, shall be filed no later than April 1, 2013.¹³

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- b. Must have at least two (2) related publications (journal articles or international conference proceedings) or has at least five (5) years computer systems development experience as a professional specializing in computer systems security;
 - c. For the PCOS, the reviewer must have a C/C++ certification, a Client-Server applications architecture understanding, a proficiency in MS SQLSERVER 2005 or above and a Basic TCP/ICP knowledge, as evidenced by related industry certification consistent with internationally accepted standards;
 - d. For the CCS, the reviewer must have a Java Certification, a proficiency in Ubuntu, a proficiency in Linux Security, a proficiency in Apache Tomcat, a proficiency in MySQL, a proficiency in JSP, a proficiency in Network Security, a proficiency in Oracle, a proficiency in Shell Scripting and a basic TCP/IP knowledge, as evidenced by related industry certification consistent with internationally accepted standards.
2. Reviewer must submit, along with his/her qualifications, the following:
 - a. A reasonable minimum computer hardware specification to be used for the source code review;
 - b. A list of Software tools, including preferred operating system and development tools that will be used for the review. Should these tools require licenses, reviewer must submit the proper licenses. If the software is not readily available, the reviewer must submit the installer; and
 - c. The methodologies which they propose to use for the review.
 3. Entities approved by the COMELEC shall sign a non-disclosure agreement before they are allowed to conduct the source code review;
 4. COMELEC shall provide a secure and enclosed location/facility for the conduct of the source code review and all entries and exits into the facility shall be properly recorded. In order to strengthen the transparency and integrity of the review, the COMELEC shall provide video and audio recordings in the facility. These video recordings, without audio, may be fed live adjacent to the secured location open to the media, political parties, electoral reform organizations and other interested parties;
 5. A read-only copy of the source code shall be provided on secured COMELEC workstations in the secured location/facility;
 6. COMELEC shall endeavor to provide the computer hardware as preferred by the reviewer, along with the requested software. The COMELEC may optionally allow a reviewer to bring his/her own computer hardware, with the communications and USB port facilities thereafter deactivated, provided that the COMELEC shall erase all software and data from the hardware before and after the review;
 7. To ensure that the source code under review is identical to that used in the trusted build, COMELEC shall provide a clean computer system to be used by the reviewer to re-compile the source code to verify if the source code under review and the source code used in the trusted build are the same;
 8. The COMELEC shall make accessible the software engineers responsible in writing/creating/and or maintaining the software being reviewed, the expenses of which shall be shouldered by the parties conducting the review;
 9. No copy of the source code, documentation, any material supplied by the COMELEC or any part thereof may be taken out from the secured location/facility whether physically or electronically;
 10. No electronic device of any kind, including but not limited to laptops, mobile phones, cameras, USB drives and other storage devices, shall be permitted inside the secured location/facility;
 11. Each entity that conducts a source code review shall submit a report to the COMELEC within five (5) working days and provide a copy thereof to the CAC;
- RESOLVED FINALLY, that the COMELEC may modify the guidelines abovementioned as it may deem fit and necessary.

¹³ *Rollo* (G.R. No. 206719), p. 92.



As a result of the aforementioned issuances, several parties, Partido Demokratiko Pilipino-Lakas Bayan, Pwersa ng Masang Pilipino, the Parish Pastoral Council for Responsible Voting and the Liberal Party, in separate letters to the COMELEC, requested for participation in the source code review.¹⁴ From April 10 to 24, 2013, these parties conducted the source code review for the Consolidated Canvassing System and Elections Management System, but not for the Precinct Count Optical Scan (PCOS) source code, as the same had not yet been released due to negotiations between the COMELEC, Dominion Voting Systems (Dominion), and Smartmatic TIM (Smartmatic) over an issue involving a disagreement with the latter two institutions.

This disagreement started on September 6, 2012,¹⁵ when Smartmatic filed an action with the Court of Chancery in the State of Delaware in the United States against Dominion, to which the latter filed a counterclaim. According to COMELEC, this termination birthed two (2) consequences: first, Smartmatic lost its access to the program systems of Dominion, which signified that any counting error committed in the following elections could not be corrected; and *second*, Smartmatic failed to deliver to the COMELEC the source code, pursuant to Section 14 of R.A. No. 8436, a failure that meant the said source code would not be reviewable by any party or candidate participating in the 2013 elections.

The foregoing caused a delay in the availability of the source code, and thus, it was only on May 5, 2013 when a representative from SLI arrived in the Philippines with a copy of the PCOS source code that was subjected to the trusted build.¹⁶

On May 3, 2013, ten (10) days before the start of the elections, the petitioners filed the instant Petition for *Mandamus* (With Extremely Urgent Prayer to Set Petition for Oral Arguments), to compel COMELEC to obtain the source code and to make the same available for review of the petitioners and other similarly situated parties. The Court, thus, set the case for oral arguments on May 8, 2013.

During the oral arguments, Chairman Brillantes manifested before the Court that first, the COMELEC had already acquired the PCOS source code, and second, that the same will be deposited in escrow at the Bangko Sentral ng Pilipinas (BSP), thus making it available for review,¹⁷ subject to compliance with certain requirements.

The pertinent submission is highlighted, to wit:

¹⁴ Id. at 91-92.

¹⁵ Id. at 91.

¹⁶ Id. at 93.

¹⁷ Id.



JUSTICE LEONEN: Lastly, Mr. Chair and counsel. When the parties registered to review the source code, the parties that you mentioned to review the source code, the source code was not there. And understandably there may have been other interested persons or parties that would've wanted to line up in order to review the source code. But they were confused as to the signals that they were getting from both the media and the COMELEC. Understandably because you had to keep a few things to yourself in terms of executive privilege in order to be able to come out with the result that you just did at 3:00PM this afternoon. So there are parties that perhaps were not too encouraged to actually register, have their credentials examined by the COMELEC. And therefore would the COMELEC consider this situation and therefore perhaps you could amend your COMELEC Resolution so that in the interest of full transparency and credibility of this election, more qualified technicians or experts from different standpoints will be able to help you assure that the elections is [sic] truly credible, free, fair, and honest.

C. BRILLANTES: We will consider very seriously, your Honor. In fact, if you would ask my own personal opinion as Chairman of the Commission on Elections, I will have no objection to opening it up to everybody else. Because I am not really worried about any malicious contents of the source code. We will even accommodate again Senator Gordon. I back out, maybe I'll just back out, personally I'll back out my statement that we will not allow him. I think we should invite him tomorrow so he can see and maybe he can see his friends in the UNA who are also reviewing it, **so that they can review the source code and we would give them all the chance after the elections because we are not in the process of winding up and finishing all of the electoral needs in order to somehow ensure that we shall have a very, very clean and honest elections this coming May 13. And after which we believe that anybody or everybody who would want to can review the source code as it will be made available by Dominion and it will be deposited in the Central Bank.**

JUSTICE LEONEN: Just to clarify...but you were saying that you were going to invite Senator Gordon?

C. BRILLANTES: Tomorrow.

JUSTICE LEONEN: Tomorrow[?] Thank you.

x x x x

JUSTICE PEREZ: Just one suggestion, Mr. Chair. Are you willing or will you be able to reduce this manifestation which you just made, including the commitments that accompanied the manifestation? Can this be reduced to a unanimous resolution of the COMELEC because it's not only this Court which is interested with what you said. x x x.

C. BRILLANTES: Yes, your Honor. We would try insofar as the review of the 2010. Now opening it up to others who did not even apply to have the source code like Senator Gordon and his political party. And by the way, when we said his political party is not accredited, I am saying that it is not accredited to review the source code. It is an accredited political party but it is not accredited to review the source code because it did not

Perez

apply. We're willing to put this on a writing but I will have to get the votes of my six (6) other commissioners. Your Honor, we have one already here. I hope Commissioner Lim will join me. We have five (5) other commissioners. We shall take it up tonight.

JUSTICE SERENO: But there is no separate accreditation procedure?

C. BRILLANTES: No, your Honor.

JUSTICE SERENO: As long as you apply and comply with all the other requirements under the Resolution, the right to inspect would be automatic?

C. BRILLANTES: No, since the elections would be finished, your Honor by ... [interrupted]

JUSTICE SERENO: No, no. Assuming it's not too late. Assuming this Monday is not the elections, it would have been **automatically granted** as the representative of VNP-Bagumbayan. Assuming he complied with the requirements of your Resolution in March 2013.

C. BRILLANTES: We will allow. I said we wanted to relax it because we have a deadline.

[x x x]

JUSTICE SERENO: I also saw the resolution and if the resolution is to be followed, actually, it's very difficult to follow. **You actually just gave all the parties seventeen (17) days to list all the credentials of their reviewer, to specify all the hardware tools that they will need in order to conduct the review. And your required accreditation by the reviewer of so many software expertise. I don't know whether that kind of capability can ever be in only one person.** Perhaps it can be a team of reviewers that we would need.

C. BRILLANTES: Yes, your Honor.

JUSTICE SERENO: Because remember you were asking for certifications and those certifications are not easy to come by. So I suggest that you really give them time to comply with all the documentary requirements.

C. BRILLIANTES: We would do that, your Honor. We will amend our resolution to allow others. **But this has to be implemented after the elections, your Honor.**

JUSTICE SERENO: Okay.

x x x x

JUSTICE SERENO: Both parties are given simultaneous time of twenty (20) days to file their memoranda. That will mean therefore that your deadline to file the same will expire on May 28. Please comply with it. And Mr. Chairman, in that memorandum you will be filing on your behalf kindly include your compliance with the undertakings that you had made before this Court including a report on how you have proceeded, how were you able to call the parties, and how the possibility of the review has



been conducted and the discussion with the parties as well.¹⁸ (Emphasis Ours)

The very next day, the COMELEC and the BSP entered into an agreement for the escrow of the source code to be used in the 2013 elections. The source code was placed in a compartment inside the Currency Management Sub-Sector vault of the BSP for safekeeping, and the COMELEC, along with representatives from both SLI and Dominion, conducted the preliminary conference to the source code review, which included orientation on security protocols, working hours, the scope and duration of the review, the review process, proper report and documentation, house rules, and other matters agreed upon by all of the parties present.¹⁹ Representatives from several parties, sans the petitioners, attended the conference. This continued until the next day, when the parties agreed to postpone the conduct of the source code review to give way to the May 13, 2013 elections.

On May 23, 2013, the COMELEC wrote a letter to the counsel of the petitioners allowing the petitioners to participate in the source code review. The contents state:

Dear Atty. Reyes:

This is with respect to your communication inquiring with the [COMELEC] pertinent information relating to the source code review on the precinct count optical scan (PCOS) machines.

The undersigned would like to inform you that the Bagumbayan-VNP Movement, headed by Hon. Richard J. Gordon, may be allowed by the COMELEC to conduct the source code review provided that it will be held **after** all the accredited political parties and citizen's arms and following its submission of the credentials of its source code reviewers pursuant to the qualifications enumerated in COMELEC Resolution No. 9651 promulgated on March 1, 2013.

Although some political parties and citizen's arms have already started reviewing the source code of the PCOS machines, please be informed that the same has been suspended, in the meantime, to give priority to the May 13, 2013 Automated National and Local Elections. The source code review on the PCOS machines will resume right after the elections.

Further, as you may be aware, the PDP-Laban (PDP) and Pwersa ng Masang Pilipino (PMP) – both under the United Nationalist Alliance (UNA) coalition—are already given authority by the COMELEC to conduct source code review on the Consolidated Canvassing System (CCS), Elections Management System (EMS) and on the PCOS machines.

¹⁸ Id. at 139-143.

¹⁹ Resolution No. 9987, Section 13.



Alternatively, as one of the senatorial candidates of the UNA coalition, Former Senator Gordon is also welcome should he decide to join the aforementioned two (2) political parties in reviewing the source code of the PCOS machines.

In view of the foregoing, you may directly get in touch with the Project Management Office (PMO), through its Director Atty. Jose M. Tolentino, Jr., at (02) 527-5583.

With warm regards, I remain,

SIXTO S. BRILLANTES, JR.
Chairman²⁰ (Emphasis and underscoring Ours)

Thereafter, the petitioners filed the instant petition, reiterated in a Memorandum dated May 28, 2013 praying that the COMELEC obtain the source code and immediately make a complete copy of the source code available for the review of the petitioners and other similarly situated parties. Likewise, the petitioners prayed that the Court enjoins the COMELEC by way of a Temporary Restraining Order from removing the PCOS machine used for the May 13, 2013 National and Local Elections from the latter's respective precincts, schoolhouses, or present whereabouts and transferring them to the COMELEC's own or maintained storage facilities and/or opening up or, otherwise, tampering with the components, contents, and software encoded into the said machines.²¹

Concurrently, the petitioners filed on July 9, 2013²² a Verified Petition docketed as G.R. No. 207755, praying that then-COMELEC Chairman Brillantes be found guilty of Indirect Contempt under Rule 71, Section 3(b) and (d) of the Rules of Court, and accordingly fined.

The grounds for the same were centered on the petitioners' claim that Chairman Brillantes failed to comply with his commitments to the Court as manifested during the May 8, 2013 oral arguments. These commitments included making the source code available for review, and granting more time to parties to comply with the requirements to do so. As the facts attendant to the charge arose exclusively from the factual milieu gleaned from the instant petition, the Court will resolve both claims on their respective merits.

²⁰ *Rollo* (G.R. No. 206719), p. 121.

²¹ *Id.* at 149-150.

²² *Rollo* (G.R. No. 207755), pp. 3-10.



For G.R. No. 206784

Petitioners Tan Dem, *et al.* allege²³ that the COMELEC erred in promulgating Resolution No. 8786, or the “Revised General Instructions for the BEI On the Voting, Counting, and Transmission of Results in Connection With the May 10, 2010, National and Local Elections,” approved on March 4, 2010, which reversed Section 38 of COMELEC Resolution No. 8739, or the “General Instructions for the BEIs on the Voting, Counting, and Transmission of Results in Connection with the May 10, 2010 National and Local Elections.” In Resolution No. 8739, it was required for the members of the BEI to insert their respective security keys intended for the digital signature in the iButton security key receptacle. However, COMELEC Resolution No. 8786 directed all the BEIs nationwide not to sign the election returns transmitted electronically with their digital signatures.²⁴

Due to the foregoing, Tan Dem, *et al.* filed a separate Petition for *Mandamus* against the COMELEC, praying that *Mandamus* would be granted ordering the COMELEC to use digital signatures in the electronic transmission of electronic election returns, to provide and open the source code for review by interested groups, to provide for vote verification in the casting of votes, to provide for randomness in the selection of precincts for the manual audit, and to postpone the elections until such time that provisions for the use of digital signatures, review of the source code, vote verification and randomness of manual audit are set in place.²⁵

Tan Dem, *et al.* also pray that, should the elections be held without the digital signatures and the basic security safeguards, the Court order the COMELEC to manually count the votes in the physical ballots to validate the results contained in the electronic election returns, provided, there are no signs of tampering of said physical ballots and thereby, postpone the proclamation of the candidates, or order, if the candidates are proclaimed using the electronic election returns, declare the proclaimed candidates as *de facto* public officers, and order the COMELEC to re-effect the manual counting, and thereby affirm or revoke the proclamation of candidates, as appropriate upon completion of the manual count.²⁶

The Issues

The issues for resolution by the Court are four-fold:

²³ *Rollo* (G.R. No. 206784), p. 4.

²⁴ *Id.* at 5.

²⁵ *Id.* at 16.

²⁶ *Id.*



First, whether or not the petitioners have *locus standi* in this case;

Second, whether or not the petitioners are entitled to the Writ of *Mandamus* to compel COMELEC to open up the source code review for the elections immediately for the review of the petitioners and other similarly situated parties;

Third, whether or not the petitioners are entitled to the Writ of *Mandamus* (a) to compel COMELEC to use digital signatures in the electronic transmission of electronic election returns; (b) to provide for vote verification in the casting of votes, and provide for randomness in the selection of precincts for the manual audit; and (c) to postpone the elections until such time that provisions for the use of digital signatures, review of the source code, vote verification and randomness of manual audit are set in place; and

Fourth and finally, whether or not Chairman Brillantes is guilty of indirect contempt.

Ruling of the Court

After a careful review of the pleadings, the facts and evidence on record, as well as certain subsequent events which transpired in the period from the filing of this case to this present time, the Court finds that the consolidated petition must be dismissed.

I. The petitioners have the prerequisite *locus standi* to file the Petition for *Mandamus*.

In their Memorandum,²⁷ petitioners Bagumbayan and Senator Gordon state that they have *locus standi* to file the instant petition. They assert that Bagumbayan is a duly registered political party, while Senator Gordon was a candidate for Senator at the time of the filing, during the May 16, 2013 national and local elections.²⁸

Furthermore, they posit that when a *Mandamus* proceeding involves the assertion of a public right, pursuant to *Legaspi v. Civil Service Commission*,²⁹ the requirement of personal interest is satisfied by the mere fact that Senator Gordon is a citizen of the country.

²⁷ *Rollo* (G.R. No. 206719), pp. 125-153.

²⁸ *Id.* at 146.

²⁹ 234 Phil. 521 (1987).

Meyer

On the other hand, while the respondents concede that Senator Gordon has legal standing due to his status as a Filipino voter, they allege that the same does not apply to Bagumbayan.³⁰ The respondents posit that “even if Bagumbayan had legal standing to conduct a source code review, it failed to establish in its petition its capacity to conduct said review, as it did not submit the qualifications of its reviewer.”³¹

The Court agrees with the petitioners. *Locus standi*, or legal standing, is defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.³² The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.³³ This requirement of standing relates to the constitutional mandate that the Court settle only actual cases or controversies.³⁴

In *Mandamus* cases, jurisprudence is clear that the requirement of proper standing is properly addressed if the petitioning party has a clear and unmistakable right to compel the performance of the ministerial duty.³⁵ The Court finds that the requirement is satisfied by the petitioners. The petitioners have filed for *Mandamus* in their capacity as interested parties, Bagumbayan as a political party, and Tan Dem, *et al.*, as a people’s organization created for the purpose of defending democracy in the Philippines. R.A. No. 9369 grants them the right as members of “any interested political party or group” to conduct their own review of the source code. Here, a clear and unmistakable right exists as it is the ministerial duty of the COMELEC to make available the source code for purposes of examination and test by any political party or candidate, or even their representatives, as expressly stated by the law itself, to wit:

SEC. 12. Section 10 of Republic Act No. 8436 is hereby amended to read as follows:

SEC. 14. *Examination and Testing of Equipment or Device of the AES and Opening of the Source Code for Review.* - The Commission shall allow the **political parties and candidates or their representatives, citizens’ arm or their representatives** to examine and test. (Emphasis Ours)

³⁰ *Rollo* (G.R. No. 206719), p. 47.

³¹ *Id.* at 48.

³² *Galicto v. H.E. President Benigno Aquino III, et al.*, 683 Phil. 141, 170 (2012).

³³ *Id.*

³⁴ *Id.*

³⁵ *Heirs of Spouses Venturillo v. Judge Quitain* 536 Phil. 839, 846 (2006).

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The Court does not subscribe to the argument of the respondents that Bagumbayan lost that right when it failed to submit the qualifications of its reviewer, and which allegedly contravened the resolutions of the COMELEC. Section 12 of R.A. No. 9369 does not contain any provision or stipulation stating that the existence of the right to inspect may only come about after an interested party complies with any subsequent guidelines promulgated by the COMELEC. To rule otherwise would mean an unauthorized expanding or even the creation of unreasonable qualifications prerequisite to the review, which goes against both the spirit and letter of the law. Notably, pursuant to the *Legaspi*³⁶ case, a cause of action exists on the simple basis that they are Filipino citizens and voters asserting a public right. The Court held therein:

In the case before Us, the respondent takes issue on the personality of the petitioner to bring this suit. It is asserted that, the instant Petition is bereft of any allegation of Legaspi's *actual interest* in the civil service eligibilities of Julian Sibonghanoy and Mariano Agas... But what is clear upon the face of the Petition is that the petitioner has firmly anchored his case upon the right of the people to information on matters of public concern, which, by its very nature, is a public right. It has been held that:

* * * when the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the people are regarded as the real party in interest and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws x x x.

From the foregoing, it becomes apparent that when a mandamus proceeding involves the assertion of a public right, the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and therefore, part of the general "public" which possesses the right.³⁷

It is important to note that a Petition for *Mandamus* has often been held to be proper if there are dire considerations of public welfare and for the advancement of public policy.³⁸ It may also be taken into consideration to avoid future litigation³⁹ and in furtherance of the broader interest of justice and equities.⁴⁰ The law states that the COMELEC must allow political parties, candidates, and interested parties to examine and test the source code, regardless if those mentioned actually followed the subsequent guidelines as promulgated. Therefore, a cause of action to compel the COMELEC exists for Bagumbayan, as well as for any political party or candidate or their representative, as seen from the express mandate of the law. Thus, all the petitioners complied with the requirement of standing.

³⁶ Supra note 29.

³⁷ Id. at 529-530.

³⁸ *Hon. Jose, etc., et al. v. Zulueta and CA*, 112 Phil. 470, 475 (1961).

³⁹ *St. Peter Memorial Park, Inc. v. Campos, Jr.*, 159 Phil. 781, 791 (1975).

⁴⁰ *Marahay v. Judge Melicor*, 261 Phil. 33, 37 (1990).

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II. Petitioners are not entitled to the Writ of *Mandamus* to compel COMELEC to once again open up the source code review for the upcoming elections immediately for the review of the petitioners and other similarly situated parties, as the same has ceased to become a justiciable controversy and has become moot and academic.

As the thrust of its Petition for a Writ of *Mandamus*, the petitioners firmly advance their narrative that the COMELEC failed to comply with Section 14 of R.A. No. 8436, as amended by Section 12 of R.A. No. 9369. The brunt of the petitioners' grievances lies in the alleged procrastination and negligence in both obtaining the source code, as well as the delay in making the same available for review to all concerned.⁴¹ This delay is attributed to the requirements for review as found in the assailed resolutions issued by the COMELEC, which go against the mandate of R.A. No. 8436 to "promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof."

By introducing requirements deemed as difficult to obtain and fulfill before the source code would be reviewable by an interested party, the petitioners advocate that the respondents, in effect, ensured that the source code could not promptly be made reviewable, which would then go against the express provisions of the pertinent statute. Thus, the petitioners pray for *Mandamus* that would direct the COMELEC to allow the source code review even if there is a lack of compliance or even complete non-compliance for the requirements for review as promulgated by the COMELEC.

To counter the petitioners' claim, the respondents put forth the defense that the strict nature of the guidelines is necessary in order to safeguard the process, and that the COMELEC has the power to regulate the conduct of the review through its guidelines.⁴²

The respondents also posit the view that Resolution No. 9651, being the product of official acts, enjoys the presumption of regularity which all parties interested in reviewing the source codes must observe.⁴³

⁴¹ *Rollo* (G.R. No. 206719), p. 132.

⁴² *Id.* at 316.

⁴³ *Id.* at 317-318.

Maya

As a matter of great importance, the Court takes judicial notice⁴⁴ of the recent Resolution No. 10423 promulgated on September 21, 2018, or the Guidelines on the Conduct of the Local Source Code Review of the Automated Election Systems for the 13 May 2019 National and Local Elections by Interested Parties and Groups.

As a result of this new issuance, the dictates of procedural due process behoove the Court to dismiss the prayer for the Writ of *Mandamus* as to the source code. The Court holds that there has ceased to be a justiciable controversy.

A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.⁴⁵ In relation to the foregoing, a case is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value, and as a rule, courts decline jurisdiction over such a case, or dismiss it on ground of mootness.⁴⁶

The reasoning behind the dismissal of a case for being declared moot and academic is clear. Especially for pragmatic reasons, courts will not determine a moot question in a case in which no practical relief can be granted.⁴⁷ It is deemed unnecessary to indulge in an academic discussion of a case presenting a moot question as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.⁴⁸

In this case, the supervening event is found in the superseding of the assailed resolutions on the source code review with a new resolution, which pertains to the source code review for the upcoming 2019 elections. In Resolution 10423, it is observed that the COMELEC modified the qualifications for the local source code reviewer, to wit:

Sec. 5. Qualifications. The source code reviewer must be duly-authorized by the interested party or group and must be knowledgeable in computer programming languages and must be able to understand computer language preferably on the following programming languages and systems: C/C++, Java application development, Bash,

⁴⁴ Rule 139, Section 1. *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, **the official acts of legislative, executive and judicial departments of the Philippines**, the laws of nature, the measure of time, and the geographical divisions. (Emphasis Ours)

⁴⁵ *Velarde v. Social Justice Society*, 472 Phil. 285, 302 (2004).

⁴⁶ *Mendoza, et al. v. Mayor Villas, et al.*, 659 Phil. 409, 417 (2011).

⁴⁷ *Lanusa, Jr. v. Yuchengco*, 494 Phil. 125, 133 (2005).

⁴⁸ *Id.*

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Object Oriented Programming Language, Unix-like systems, and linux operating system.

The prescribed qualification is to ensure that the code reviewer can understand and appreciate the source codes of the AES to be reviewed. The interested parties and groups are expected to choose their reviewers based on this consideration.

Sec. 6. *Number of Reviewers; Limitations.* Each interested party or group may appoint primary and secondary code reviewers for each system. However, depending on the availability of space at any given time, each party or group may be limited to field only one (1) qualified reviewer at a given time.

The Court also observes that the application process contained in Resolution No. 10423 contains several steps before an interested party may actually get around to reviewing the source code. To wit:

IV. APPLICATION FOR THE LOCAL SOURCE CODE REVIEW

SEC. 7. *Procedure.* The interested party or group must submit a written request addressed to the Local Source Code Review Ad-hoc Committee signifying its intent to participate including its attachments. The written request must be signed by the duly-authorized representative of the party or group.

SEC. 8. *Written Request; Contents.* The written request shall contain the following details:

- i. Name of the interested party or group;
- ii. Intent to participate in the conduct of the local source code review;
- iii. Name of the local source code reviewer/s and the latter's credentials;
- iv. Signature of the duly-authorized representative of the interested party or group.

For this purpose, interested parties and groups shall completely fill-out Annex "A" of this resolution.

SEC. 9. *Annexes to the written request.* The written request shall attach the resumé of the local source code reviewer specifically mentioning his or her experience in computer programming or related field. Said resume shall be under oath.

For IT Groups, a favorable recommendation from the CAC and/or the DICT shall also be attached.

For Civil Society Organizations, a brief summary of the electoral reforms initiated or supported shall also be attached.

In the event that the interested parties or groups cannot submit the complete requirements, a reasonable explanation must also be attached.



SEC. 10. Approval. All requests filed within the specified period shall be subject to the approval of the Local Source Code Review Ad-hoc Committee. The approval or denial shall be based on the following:

- i. Request and its attachments;
- ii. Presence of Qualifications;
- iii. Date and time of the request received, if applicable; and
- iv. Availability of slots/space in the source code review room.

The approval or denial of the request shall be sent to the e-mail address of the interested party or group used in the application.

The approval of the request shall also be posted in the official website of the Commission on Elections.

As this Resolution No. 10423 now governs the conduct of the upcoming elections, and any automated election from here on out unless it, itself, is superseded by another, the cause of action of the petitioners has ceased to exist.

Despite its aforementioned misgivings about the conduct of the COMELEC at the time the consolidated petition was filed, the Court cannot turn a blind eye to this important development in the case's factual milieu, the issuance of the new Resolution No. 10423. Thus, as to the source code review, with a mention that the COMELEC should be more circumspect when it comes to its rule-making power, the Court rules that the claims of the petitioners are moot and academic.

III. The Writ of *Mandamus* does not lie to compel COMELEC to grant the other items being petitioned for.

As for those subjects not related to the source code review, the Court finds that *Mandamus* does not lie as regards the other claims of the petitioners, specifically to compel the COMELEC to use digital signatures in the electronic transmission of electronic election returns, to provide for vote verification in the casting of votes, and provide for randomness in the selection of precincts for the manual audit, and to postpone the elections until such time that provisions for the use of digital signatures, review of the source code, vote verification and randomness of manual audit are set in place.

Petitioners Tan Dem, *et al.*, maintain in their submitted petition that the COMELEC committed grave abuse of discretion in approving and proceeding with the conduct of automated elections for the year 2013,

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without the digital signatures allegedly required by R.A. No. 9369 in order to authenticate and consider the electronic election returns as “official election results” to be “used as the basis for the canvassing of votes and the proclamation of a candidate,”⁴⁹ and proceeding without the security safeguards, particularly the lack of the source code review by interested groups, the lack of vote verification, and the lack of randomness in the manual audit.⁵⁰

As to the issue on the digital signatures, Tan Dem, *et al.* state that the COMELEC removed the requirement of digital signatures, in supposed violation of the automated election laws. The petitioners disagree that the “machine signature” of a PCOS machine may be the functional equivalent of the aforementioned “digital signature.”⁵¹ First, property such as a PCOS machine cannot be a valid substitute because, as property, it cannot assume the identity of a person, only the latter able to acquire rights and to be the object of legal relations.⁵²

Likewise, the COMELEC was alleged to have disabled the vote verification of the PCOS machines that would have shown the actual votes as aptly scanned and read. Instead, the PCOS machines merely displayed the statement “Congratulations. Your vote has been registered.” According to Tan Dem, *et al.*, these statements only confirm that the voting process was finished, but not necessarily that the votes were actually read and recorded, as the votes were never displayed for confirmation.

Finally, Tan Dem, *et al.* accuse the COMELEC of failing to comply with the Random Manual Audit (RMA) as laid down in COMELEC Resolution No. 8837 and COMELEC Resolution No. 9595, for the May 2010 and May 2013 elections, respectively. The COMELEC purportedly ordered that the precincts of audits be selected and disclosed at least six hours before the close of polls during the May 2010 elections, while ordering the selection and disclosure of the subject precincts, at least four days and two days before the close of polls during the May 2013 elections. This allegedly rendered the RMA highly questionable as it diluted the intended probability of the audit, as well as made the selection of the subject precincts predictable.⁵³

On the other hand, the COMELEC advocates that it duly complied with the requirements for the use of digital signatures, the verification system, the conduct of the source code, and the RMA, and thus, *Mandamus* will not lie in this case.⁵⁴

⁴⁹ *Rollo* (G.R. No. 206784), p. 7.

⁵⁰ *Id.*

⁵¹ *Id.* at 8.

⁵² *Id.*

⁵³ *Id.* at 14.

⁵⁴ *Id.* at 53.



As to the contention of Tan Dem, *et al.* that digital signatures were not used in the transmission of electronic returns, the COMELEC advocates the view that it had already been held and decided by the Court that the machines used in the elections are capable of producing digitally-signed transmissions, as clarified in *Archbishop Capalla, et al. v. COMELEC*.⁵⁵

As for the allegations of Tan Dem, *et al.* that the COMELEC disabled the vote verification function of the PCOS machines to only show “Congratulations. Your vote has been registered,” instead of showing the actual votes scanned and read. COMELEC counters that there is nothing in the law that requires the actual votes scanned and read to be shown after the voter has registered his or her vote, and to compel COMELEC to adopt a procedure not mandated by the law is beyond the realm of *Mandamus*.⁵⁶

Finally, as for the allegation that there was a complete lack of randomness in the manual audit, COMELEC states that Tan Dem, *et al.* misconstrue the law, and that the term “random” pertains to the randomness of the selection of the precincts subject of the audit, not that the audit was to be done secretly or by surprise.⁵⁷

As was the case in the discussion of the source code, the Court likewise notes the recent promulgation of Resolution No. 10458, or the *General Instructions for the conduct of Random Manual Audit relative to the 13 May 2019 Automated National and Local Elections and subsequent elections thereafter*, on December 5, 2018, Resolution No. 10460, or the *General Instructions on the constitution, composition and appointment of the Electoral Board; use of the Vote Counting Machines; the process of testing and sealing of the Vote Counting Machines; and the voting, counting and transmission of election results*, on December 6, 2018, and Resolution No. 10487, or the *VCM Operation procedures for (A) Final Testing and Sealing (FTS) (B) Election Day and (C) Transmission of Election Results in connection with the 13 May 2019 National and Local Elections*, on January 23, 2019. The latter Resolution No. 10487, in particular, supplanted Resolution No. 10460.

The promulgation of these means that the previous cause of action, as regards the conduct of the COMELEC, removes the justiciable controversy existing in the consolidated petition, especially as it is these resolutions that now govern the conduct of the specific items being assailed. Regardless, even if the petitioners’ contentions that the COMELEC erred are taken into consideration, the same is without merit. The Court rules that the electronic transmission through the method promulgated by the COMELEC, as well as

⁵⁵ 687 Phil. 617 (2012).

⁵⁶ *Rollo* (G.R. No. 206784), p. 65.

⁵⁷ *Id.* at 69.

the authentication of the results, are valid under the law. According to A.M. No. 01-7-01-SC,⁵⁸ or the Rules on Electronic Evidence, promulgated by the Court⁵⁹ and alluded to with regard to the above mentioned authentication

⁵⁸ **Rule 2, DEFINITION OF TERMS AND CONSTRUCTION**

Section 1. Definition of terms. – x x x

x x x x

(e) “Digital Signature” refers to an electronic signature consisting of a transformation of an electronic document or an electronic data message using an asymmetric or public cryptosystem such that a person having the initial untransformed electronic document and the signer’s public key can accurately determine:

(i) whether the transformation was created using the private key that corresponds to the signer’s public key; and

(ii) whether the initial electronic document had been altered after the transformation was made.

(f) “Digitally signed” refers to an electronic document or electronic data message bearing a digital signature verified by the public key listed in a certificate.

x x x x

(j) “Electronic signature” refers to any distinctive mark, characteristics and/or sound in electronic form, representing the identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedure employed or adopted by a person and executed or adopted by such person with the intention of authenticating, signing or approving an electronic data message or electronic document. For purposes of these Rules, an electronic signature includes digital signatures.

x x x x

(n) “Private Key” refers to the key of a key pair used to create a digital signature.

(o) “Public Key” refers to the key of a key pair used to verify a digital signature.

RULE 5, AUTHENTICATION OF ELECTRONIC DOCUMENTS

Section 1. Burden of proving authenticity. – The person seeking to introduce an electronic document in any legal proceeding has the burden of proving its authenticity in the manner provided in this Rule.

Section 2. Manner of authentication. – Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:

(a) by evidence that it had been digitally signed by the person purported to have signed the same;

(b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document;

or

(c) by other evidence showing its integrity and reliability to the satisfaction of the judge.

RULE 6, ELECTRONIC SIGNATURES

Section 1. Electronic signature. – An electronic signature or a digital signature authenticated in the manner prescribed hereunder is admissible in evidence as the functional equivalent of the signature of a person on a written document.

Section 2. Authentication of electronic signatures. – An electronic signature may be authenticated in any of the following manner:

(a) By evidence that a method or process was utilized to establish a digital signature and verify the same;

(b) By any other means provided by law; or

(c) By any other means satisfactory to the judge as establishing the genuineness of the electronic signature.

Section 3. Disputable presumptions relating to electronic signatures. – Upon the authentication of an electronic signature, it shall be presumed that:

(a) The electronic signature is that of the person to whom it correlates;

(b) The electronic signature was affixed by that person with the intention of authenticating or approving the electronic document to which it is related or to indicate such person’s consent to the transaction embodied therein; and

(c) The methods or processes utilized to affix or verify the electronic signature operated without error or fault.

Section 4. Disputable presumptions relating to digital signatures. – Upon the authentication of a digital signature, it shall be presumed, in addition to those mentioned in the immediately preceding section, that:

(a) The information contained in a certificate is correct;

(b) The digital signature was created during the operational period of a certificate;

(c) No cause exists to render a certificate invalid or revocable;

(d) The message associated with a digital signature has not been altered from the time it was signed; and

(e) A certificate had been issued by the certification authority indicated therein.

⁵⁹ Promulgated on July 17, 2001.

Keyes

process, a “digital signature” refers to an electronic signature consisting of a transformation of an electronic document or an electronic data message using an asymmetric or public cryptosystem such that a person having the initial untransformed electronic document and the signer’s public key can accurately determine: (i) whether the transformation was created using the private key that corresponds to the signer’s public key; and (ii) whether the initial electronic document had been altered after the transformation was made, and that for purposes of the Rules, a digital signature is considered an electronic signature.

An electronic signature is likewise defined as “any distinctive mark, characteristic and/or sound in electronic form **representing the identity of a person** and attached to or logically associated with the electronic data message or electronic document or any methodology or procedure employed or adopted by a person and executed or adopted by such person with the intention of authenticating, signing or approving an electronic data message or electronic document.”⁶⁰

As gleaned from the wording of the law, the signature may be any distinctive mark or characteristic that represents the identity of a person. Thus, a machine signature of a PCOS machine may validly be considered the functional equivalent of the aforementioned “digital signature,” as it represents the identity of the individual, said signature naturally being created specifically for the person him or herself inputting the details.

It is critical to note that the Court *En Banc* has already recognized that the PCOS machines produce digital signatures. In *Archbishop Capalla*,⁶¹ the Court clarified during the oral arguments that there is no infirmity as regards the signature of a PCOS machine being the equivalent of a digital signature.⁶² The Court, in that case, categorically stated that the PCOS

⁶⁰ A.M. No. 01-7-01-SC, Rule 2, Section 1(j).

⁶¹ *Supra* note 55.

⁶² *Id.* at 683-688.

JUSTICE CARPIO: Okay, let us define first what a digital signature means.

ATTY. LAZATIN: The Rules of Court, Your Honor, defines “digital signature” as the first one it is electronic signature consisting of a transformation of an electronic document or an electronic data message using an asymmetric or public Cryptosystem such that a person having the initial untransformed electronic document and the signers public key can accurately determine: (i) whether the transformation was created using the private key that corresponds to the signers public key; and (ii) whether the initial electronic document has been altered after the transformation was made.

JUSTICE CARPIO: Therefore, digital signature requires private key and public key...

ATTY. LAZATIN: Yes, Your Honor.

JUSTICE CARPIO: ...and this private key and public key are generated by an algorithm, correct?

ATTY. LAZATIN: Yes, that’s right, Your Honor.

JUSTICE CARPIO: And there is another algorithm which, if you match... if you put together the private key and the message, will generate the signature.

ATTY. LAZATIN: That’s right, Your Honor.

JUSTICE CARPIO: And the third algorithm, that if you put together the public key and the signature it will accept or reject the message, that’s correct?



machines produce digitally-signed signatures, and the Court sees no need to disturb that finding absent any compelling evidence to the contrary adduced by the petitioners.

As for the contention of Tan Dem, *et al.* that the COMELEC removed the vote verification function of the PCOS machines, the Court had already previously granted the Writ of *Mandamus* to order the COMELEC to enable the vote verification feature which printed the voter's choices, in the aforementioned case of *Bagumbayan-VNP Movement, Inc. v. COMELEC*.⁶³ As a result of the Decision, the COMELEC made available the vote verification feature during the 2016 elections, and the "voter's receipts" were indeed recorded, considering that the verification machine and voter receipts achieve practically the same objective, as embodied in COMELEC Resolution No. 10096 dated April 21, 2016. Thus, there is no need to allow *Mandamus* in this particular instance.

Finally, regarding the accusation of Tan Dem, *et al.* that there was a complete lack of randomness in the manual audit as the COMELEC ordered the selection and disclosure of the subject precincts, in contravention to two COMELEC resolutions,⁶⁴ the same is utterly groundless. The law is clear that the "randomness" being advocated by Tan Dem, *et al.* refers to the random choice of the precinct per congressional district, and not the disclosure of the precincts which were in fact shown to have been randomly selected. According to Section 29 of R.A. No. 8436:

SEC. 29. Random Manual Audit. – Where the AES is used, there shall be a random manual audit in one precinct per congressional district randomly chosen by the Commission in each province and city. Any difference

ATTY. LAZATIN: That's correct, Your Honor.

x x x x

ATTY. LAZATIN: That's correct, Your Honor. But the machine, Your Honor, as I mentioned, is capable of accepting any number of digital signatures whether self-generated or by a third-party certification authority, Your Honor.

JUSTICE CARPIO: Okay. So, whoever is in possession of that iButton and in possession of the four (4) PINS, the set of PINS, for the other BEI number, can send a transmission?

ATTY. LAZATIN: Yes, Your Honor.

JUSTICE CARPIO: The moment you are in possession of the iButton and the four (4) sets of PINS

ATTY. LAZATIN: That's correct, Your Honor.

JUSTICE CARPIO: If they can send an electronic transmission that's digitally signed and when received by the COMELEC and matched with the public key will result with an official election return, correct?

ATTY. LAZATIN: That's correct. In the same way, Your Honor, that even if someone keeps his key or private key, Your Honor, if he is under threat he will also divulge it, Your Honor. It's the same.

JUSTICE CARPIO: Okay, so whoever wants to send it, he will have to get the private key from the BEI Chairman and the PIN numbers from the other members...

ATTY. LAZATIN: Yes, Your Honor.

JUSTICE CARPIO: ...before they can send the electronic transmission.

ATTY. LAZATIN: Yes, Your Honor.

JUSTICE CARPIO: Okay. That clarifies things. x x x.

⁶³ 782 Phil. 1306 (2016).

⁶⁴ *Rollo* (G.R. No. 206784), p. 14.

Reyes

between the automated and manual count will result in the determination of root cause and initiate a manual count for those precincts affected by the computer or procedural error.

The Court notes that the COMELEC was able to comply with the legal requirement by developing a system that replaced the previous manual method of random selection, and resulted in the random selection of 234 sample clustered precincts.⁶⁵ And, as previously mentioned, the point is moot with the promulgation of Resolution No. 10458, which will govern the May 13, 2019 elections and the subsequent elections.

IV. Chairman Brillantes is not liable for indirect contempt.

Finally, the Court does not agree with the petitioners' claim that former COMELEC Chairman Brillantes acted in a way that would make him liable for indirect contempt.

The petitioners allege that the respondents' refusal to abide by the Court's Resolution dated May 8, 2013 constitutes indirect contempt, as afore-outlined. Said Resolution stated, to wit:

After hearing the issues and arguments raised, the Court Resolved, in open court, to require the parties to SUBMIT simultaneously their respective MEMORANDA within twenty (20) days from date or until May 28, 2013.

The Chief Justice, in open court, DIRECTED the Chairperson of the COMELEC to include in his memorandum report of his COMPLIANCE with the undertakings he had made before this Court, including a report on how the COMELEC had proceeded to obtain and secure the source code of all the computerized voting machines used in the elections, how it was able to call the parties to make the same available for their review and how the review was conducted, as well as the discussions it had made with the parties.

Thereafter, with or without the parties' respective memoranda, the case shall be deemed SUBMITTED for resolution.⁶⁶

Put simply, the order of the Court was for Chairman Brillantes to include in his memorandum the various undertakings he made in open court. Clearly, the only set undertakings promised by Chairman Brillantes were the following: *first*, to allow review after an interested party applies and complies with all the requirements for review under the resolution, as queried by former Chief Justice Maria Lourdes P. A. Sereno, and as confirmed during the oral arguments; *second*, categorically stating that he

⁶⁵ Id. at 69.

⁶⁶ Id.



and the COMELEC would amend the resolutions to allow interested parties more time to comply with the documentary requirements, while mentioning that this would need to be implemented after the elections; and *third*, that the respondents would accommodate the petitioners' request to review the source code. All of which shall be reported in the memorandum.

The petitioners' accusations on the charge of indirect contempt fail to persuade. Under the law, a person guilty of any of the following acts may be punished for indirect contempt:

- (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
- (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
- (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;
- (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
- (e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
- (f) Failure to obey a subpoena duly served; and
- (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.⁶⁷

The Court's review of the records reveals that the respondents did not renege on these undertakings. As to the first undertaking, while the Court questioned and ultimately found that the guidelines promulgated by the respondents went against the law in allowing the source code review, for purposes of the charge of indirect contempt, the Court finds that the respondents discharged their duty in making the same available for review. This is evidenced by the fact that other parties complied with the requirements and were able to review the source code, a fact that the petitioners do not contest.

⁶⁷ RULES OF COURT, Rule 71, Section 3.

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As to the second undertaking, the respondents promulgated Resolution No. 9657, its purpose solely to grant interested parties time to comply with the documentary requirements, to wit:

NOW, THEREFORE, pursuant to the powers vested in it by the Constitution, the Omnibus Election Code, [R.A.] No. 9369, and other election laws, the [COMELEC] has RESOLVED, as it hereby RESOLVES, that the request for the conduct of source code review, together with the credentials of the reviewer, shall not be filed not later than 01 April 2013, during regular office hours, at the Office of the Clerk of the Commission, [COMELEC], 8F Palacio del Gobernador Condominium, Intramuros, Manila, free from filing fee.⁶⁸

As to the third, the Court agrees with the respondents that Chairman Brillantes' manifestations in open court, as well as its letter dated May 23, 2013, all sufficiently show that he made the effort to comply with the directive. It was the petitioners who failed to follow up on the respondents' initiative and invitation. While the petitioners indeed wrote a letter, this was done on the day itself of the review. It is not surprising, thus, that the respondents were unable to respond to the letter sent by the petitioners requesting for the immediate appraisal of the source code and the details appurtenant to the review. After all, the letter is dated May 9, 2013, the same day the review was scheduled, at 9:00 a.m., something the petitioners acknowledge. Both events occurred at around the same time on the same day, and it is impossible for the respondents to have replied to the same. It is ironic that the petitioners conveniently allege the lack of time to comply with the requirements of COMELEC, yet expect the respondents to reply the very same morning to a letter sent.

As for the SMS message allegedly sent by Senator Gordon asking for the time and venue of the source code review, there is nothing in the records that confirms the same. If the SMS message indeed existed, it was incumbent on the petitioners to produce it. This they failed to do, and as such, the Court cannot put any stock into this allegation.

In deciding that Chairman Brillantes is not liable for indirect contempt, the Court focuses solely on the undertakings that were directly promised to the Court, not those which the petitioner feels were promised. The Court does not subscribe to the arguments of the petitioners as articulated in their petition and reply, as to the propriety⁶⁹ of the source code being reviewed only after four days which is allegedly a lack of time. Likewise, the petitioners' speculations that there was no subsequent source code review or even was a source code to review for both the 2010 and the

⁶⁸ *Rollo* (G.R. No. 206719), pp. 108-109.

⁶⁹ *Rollo* (G.R. No. 207755), p. 91.

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2013 elections,⁷⁰ lose its sheen when one considers that other interested parties were able to review the code without a single complaint.

The Court reminds the petitioners that contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice and dignity.⁷¹ It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties-litigant or their witnesses during litigation.

In the case at bar, none of the above circumstances are present. This Court also notes that indirect contempt proceedings partake of the nature of a criminal prosecution; hence, strict rules that govern criminal prosecutions also apply to a prosecution for criminal contempt; the accused is to be afforded many of the protections provided in regular criminal cases; and proceedings under statutes governing them are to be strictly construed.⁷² Moreover, in contempt proceedings, if the answer to the contempt charge is satisfactory, the contempt proceedings end.⁷³ The Court finds that the respondents were able to properly show their compliance with their undertakings, both in their contemporaneous and subsequent actions, as well as in their responsive pleadings to the charge of the petitioners. As a result, the Court is satisfied that the respondents did not commit any acts which would signify possible disobedience and disrespect to the Court, and thus, Chairman Brillantes is not liable for indirect contempt.

WHEREFORE, the Court **DENIES** the petitioners' prayer for *Mandamus*. The consolidated petition, insofar as the source code is concerned, is **DISMISSED** on the ground of being **MOOT AND ACADEMIC** as a result of the supervening event which is the COMELEC's promulgation of Resolution No. 10423.

The Court, likewise, **DISMISSES** the Petition for *Mandamus* insofar as the other allegations of the petitioners on matters not involving the source code review, and **DISMISSES** the Petition for Indirect Contempt, both for utter lack of merit.

⁷⁰ Id. at 98.

⁷¹ *Roxas, et al. v. Judge Tipon, et al.*, 688 Phil. 372, 382 (2012).

⁷² *Esperida, et al., v. Jurado, Jr.*, 686 Phil. 775, 783 (2012).

⁷³ Id.

Meyer

SO ORDERED.

Reyes
ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

Lucas P. Bersamin
LUCAS P. BERSAMIN
Chief Justice

Antonio T. Carpio
ANTONIO T. CARPIO
Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

(On official leave)
MARIANO C. DEL CASTILLO
Associate Justice

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ESTELA M. PERLAS-BERNABE
Associate Justice

Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

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FRANCIS H. JARDELEZA
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ALFREDO BENJAMIN S. CAGUIOA
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Alexander G. Gesmundo
ALEXANDER G. GESMUNDO
Associate Justice

Jose C. Reyes, Jr.
JOSE C. REYES, JR.
Associate Justice


Ramon Paul L. Hernando
RAMON PAUL L. HERNANDO
Associate Justice

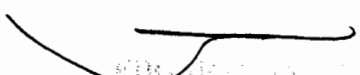

ROSMARIE B. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

CERTIFICATION

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


LUCAS P. BERSAMIN
Chief Justice


Clerk of Court