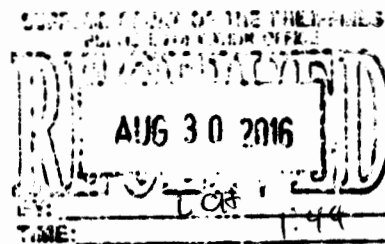Republic of the Philippines

Supreme Court
Manila

Presidential Electoral Tribunal

MANUEL A. ROXAS,
Protestant,

P.E.T. No. 004

Present:

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

- versus -

JEJOMAR C. BINAY,
Protestee.

Promulgated:

August 16, 2016

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RESOLUTION

BERSAMIN, *J.*:

On June 9, 2010, Congress, in joint session assembled and sitting as the National Board of Canvassers (NBOC), proclaimed protestee Jejomar C. Binay as the Vice President duly elected in the May 10, 2010 National and Local Elections after garnering 14,645,574 votes. Protestant Manuel A. Roxas came in second with 13,918,490 votes,[1] or a margin of 727,084 votes in favor of the protestee.

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*   No part.
**   On leave.
***   No part.
**** No part.
[1]   *Rollo* (Vol. I), pp. 109-110 (Joint Resolution of Both Houses No. 01).

On July 9, 2010, the protestant initiated this protest,[2] whereby he prayed as follows:

WHEREFORE, protestant respectfully prays that the Honorable Tribunal:

1. Immediately upon the filing of the instant Protest, ISSUE a Precautionary Protection Order;

    a. DIRECTING all City/Municipal Treasurers, Regional Election Directors, Provincial Election Supervisors, Election Officers, responsible personnel and custodians nationwide to take immediate steps and measures to safeguard the integrity of all ballot boxes and their contents, lists of voters with voting records, books of voters, audit logs, statistics report and any and all other documents or paraphernalia used in the 10 May 2010 elections, as well as data storage devices containing electronic data evidencing the conduct and the results of elections in all contested clustered precincts nationwide; and

    b. DIRECTING the Chairman, Commissioners, Executive Director, Department Directors, Division Chiefs/Heads, responsible personnel and custodians nationwide to take immediate steps and measurers to safeguard the integrity of the following:

        i. The Automated Election System, which includes but is not limited to, the Electoral Management System and the Election Day Management Platform and their hardware and software components, including the source code, all encryption, decryption and conversion keys, passwords, viewing systems, readers and all necessary and incidental peripheral/collateral systems;

        ii. Back-up compact discs of the Consolidation and Canvassing Systems at the city/municipal/provincial levels;

        iii. Main and back-up compact flash cards of the Precinct Count Optical Scan machines containing the election returns as electronically transmitted to the city/municipal/provincial Boards of Canvassers; and

        iv. Any and all other available sources of election data;

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[2] Id. at 1-108.

2. CREATE and CONSTITUTE a Technical Panel composed of independent experts appointed by the Honorable Tribunal to undertake and supervise the conduct of a comprehensive, system-wide forensic analysis of the Automated Election System, which includes but is not limited to, the Electoral Management System and the Election Day Management Platform, and their hardware and software components;

3. ORDER the conduct of a comprehensive, system-wide forensic analysis and comparison (which would not even require the bringing or transmittal of the ballot boxes) of the following, among others;

   a. The Automated Election System, which includes but is not limited to, the Election Management System and the Election Day Management Platform, and their hardware and software components, including the PCOS machine, source code, all encryption, decryption and conversion keys, passwords, viewing systems, readers and all necessary and incidental peripheral/collateral systems; and

   b. The genuineness, accuracy and integrity of, among others, the:

      i. Printed and electronically-generated official ballots and election returns;

      ii. Back-up compact discs of the Consolidating and Canvassing Systems at the city/municipal/provincial levels;

      iii. Main and back-up compact flash cards of the Precinct Optical Scan machines containing the election returns as electronically transmitted to the city/municipal/provincial Board of Canvassers;

      iv. Printed and electronically-generated Statement of Votes by Precinct; and

      v. Other available sources of election data, such as and compared with the Random Manual Audit Report and Reconciliation Reports;

4. ORDER the conduct of a proper, independent and transparent Random Manual Audit of votes cast for Vice-President as required by Section 29 of Republic Act No. 8436, as amended by Republic Act No. 9369, by comparing the votes contained in the official ballots with the votes as recorded by the compact flash cards;

5. ORDER the conduct of a manual revision of votes in the contested/affected clustered precincts based on the results of the forensic analysis and Random Manual Audit, and in connection therewith:

a. ORDER the ballot boxes and their contents with their keys, lists of voters with voting records, books of voters, audit logs, statistics report, electronic data storage devices and any and all other documents, paraphernalia or equipment relative to the contested clustered precincts to be brought before the Honorable Tribunal;

b. CONSTITUTE such number of Revision Committees as may be necessary to conduct the manual revision of votes; and

c. ORDER the necessary reconciliation, correction and completion of the affected Election Returns and Certificate of Canvass;

6. ANNUL and SET ASIDE the proclamation of protestee Jejomar C. Binay as the duly elected Vice-President of the Republic of the Philippines; and

7. PROCLAIM protestant Manuel A. Roxas as the duly elected Vice-President of the Republic of the Philippines.[3]

Upon being served with summons and the protest,[4] the protestee submitted his *Answer with Motion for Preliminary Hearing on Affirmative Defenses and Counter-Protest with Motion for Precautionary Protection Order*,[5] whereby he posited that the Tribunal had no jurisdiction over the protest because the protest was seeking to invalidate not only his election as the Vice President, but also the May 10, 2012 National and Local Elections "as a whole."[6] By way of counter-protest, the protestee claimed that fraud, anomalies and irregularities had occurred in 14,111 clustered precincts (or 59,696 established precincts) in the provinces comprising Regions VI, VII and CARAGA (specifically the Provinces of Aklan, Iloilo, Negros Occidental, Cebu, Bohol, Negros Oriental, Agusan del Norte and Agusan del Sur) that had unduly favored the protestant.[7] He prayed, *inter alia*, that a preliminary hearing of his affirmative defenses be held, and that the protest be dismissed.

On August 31, 2010, the Tribunal, acting on the protest and counter-protest, issued a precautionary protection order (PPO)[8] covering all the 76,340 clustered precincts, to wit:

NOW, THEREFORE, pursuant to Rule 36 of the 2010 Rules of the Presidential Electoral Tribunal, You, the Commission on Elections, your agents, representatives, or persons acting in your place or stead, including

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3   Id. at 103-106.
4   Id. at 616-617.
5   Id. at 642-719.
6   Id. at 650.
7   Id. at 701-711.
8   *Rollo* (Vol. II), pp. 1315-1316.

the municipal treasurers, elections officers, and the responsible personnel and custodians, are hereby DIRECTED to PRESERVE and SAFEGUARD the integrity of the ballot boxes, their contents and keys, list of voters with voting records, books of voters and other documents and paraphernalia used in the May 2010 elections for the position of Vice-President of the Republic of the Philippines, as well as the data storage devices containing the electronic data evidencing the results of elections in the contested 76,340 clustered precincts subject of the Protest and Counter-Protest, effective immediately and continuing until further orders from this Tribunal.

The Tribunal thereafter set the preliminary conference on September 30, 2010, and designated Associate Justice Bernardo P. Pardo (Ret.) as the hearing commissioner.[9] However, because the parties were unable to agree on the common issues, as well as on the procedure to expedite the proceedings at said preliminary conference, Justice Pardo advised them to file their respective desired motions with the Tribunal, including those for the deferment of the retrieval of ballot boxes, and for the disposition of threshold issues.[10]

On September 24, 2012, the Tribunal held another preliminary conference[11] in order to thresh out the various motions and requests filed by the Commission on Elections (COMELEC).[12]

Meanwhile, the Tribunal received the letter[13] from Executive Director Jose M. Tolentino, Jr, of the Project Management Office (PMO) of the COMELEC requesting authority to conduct the mandatory Hardware Acceptance Test (HAT) of the PCOS Machines and other IT equipment for use during the May 13, 2013 Synchronized Automated National, Local and ARMM Regional Elections. After hearing the concerned parties, the Tribunal granted the request subject to certain conditions stated in the resolution.[14]

Consequently, the COMELEC issued Resolution No. 13-0135,[15] whereby it scheduled the retrieval of the ballot boxes for use in the May 13, 2013 National and Local Elections to commence on February 19, 2013 until March 15, 2013.

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[9]   Id. at 1324-1326.
[10] Id. at 1635-1650.
[11] Rollo (Vol. V), pp. 3887-3888.
[12] Id. at 3590; rollo (Vol. IV), pp. 3456-3459; rollo (Vol. V), pp. 3583-3587); and rollo (Vol. V), p. 3590.
[13] Rollo (Vol. V), pp. 3975-3976.
[14] Id. at 4055.
[15] Rollo (Vol. VI), pp. 4312-4313; the resolution is entitled In The Matter of the Retrieval of Ballot Boxes Involved In PET Case No. 004 Entitled "Manuel A. Roxas vs. Jejomar C. Binay" For Use in the May 13, 2013 Elections.

Anent the submission of inventory reports by the retrieval committees, the Chief Justice issued an order dated March 26, 2013[16] modifying the Guidelines on the Retrieval of Ballot Boxes for the August 8, 2011 ARMM Elections. The Tribunal ratified the order dated March 26, 2013 on April 2, 2013.[17]

Noting that the parties had filed their certificates of candidacy for the Presidency in the May 9, 2016 National and Local Elections, the Tribunal directed them to move in the premises[18] by expressing their interest in pursuing the case. Neither of the parties has complied with the directive as of date.

In view of the holding of the May 9, 2016 National and Local Elections, and in response to the letter request[19] of COMELEC Executive Director Tolentino for the lifting of the PPO, the Tribunal lifted the PPO on February 23, 2016.[20]

After the holding of the National and Local Elections on May 9, 2016, the Philippines elected a new set of national and local officials. On May 30, 2016, the NBOC officially proclaimed Rodrigo R. Duterte as the newly elected President of the Philippines, and Ma. Leonor G. Robredo as the newly elected Vice President of the Philippines. Both of them took their respective oaths of office and assumed office at noon of June 30, 2016.

The term of the office of Vice President being contested by the parties had expired at noon of June 30, 2016. Vice President Robredo has assumed the office thereby contested. Clearly, the protest and the counter-protest that are the subject matter of this case have become moot and academic. As such, the Tribunal is constrained to dismiss the protest and the counter-protest. It is settled rule that the Tribunal should not anymore proceed in this case because any decision that may be rendered hereon will have no practical or useful purpose, and cannot be enforced.[21] Proceeding in this case until its resolution will then be an exercise in futility considering that there is no longer any practical reason why the Tribunal should still determine who had won as Vice President in the 2010 National and Local Elections if the term of such office had already expired.

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[16] *Rollo* Vol. VII), pp. 8-13.
[17] Id. at 20.
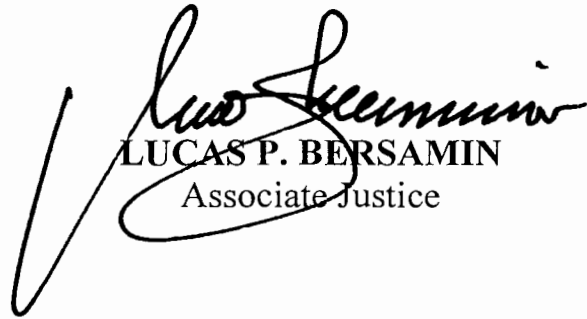[18] *Rollo* (Vol. VIII), p. 503.
[19] Id. at 504.
[20] Id. at 508.
[21] *Baldo, Jr. v. Commission on Elections*, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 310-311; *Sales v. Commission on Elections*, G.R. No. 174668, September 12, 2007, 533 SCRA 173, 176-177.

WHEREFORE, the Tribunal **DISMISSES** the protest filed by protestant Manuel A. Roxas, and the counter-protest filed by protestee Jejomar C. Binay on the ground of mootness.
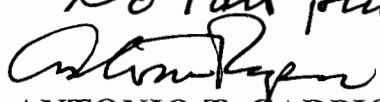
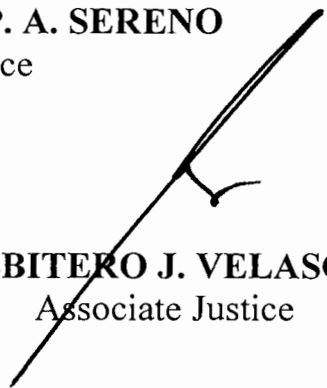No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

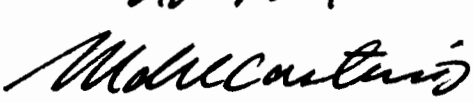No Part prior initiation

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On Leave)
ARTURO D. BRION
Associate Justice

No Part:

DIOSDADO M. PERALTA
Associate Justice

No Part

MARIANO C. DEL CASTILLO
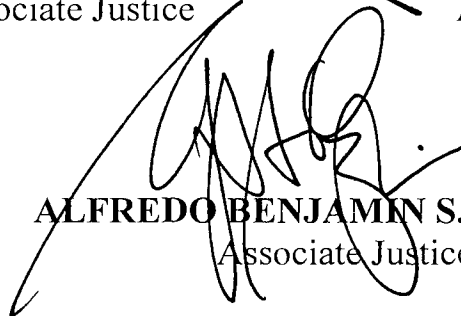Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

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.

MARIA LOURDES P. A. SERENO
Chief Justice