



Republic of the Philippines
Supreme Court
Manila

EN BANC

NATIONAL PRESS CLUB OF THE PHILIPPINES, AUTOMATED ELECTION SYSTEM WATCH, and GUARDIANS BROTHERHOOD, INC.

Petitioners,

- versus -

COMMISSION ON ELECTIONS,
Respondent.

G.R. No. 259354

Present:

GESMUNDO, C.J.,*
LEONEN,**
CAGUIOA,
HERNANDO,***,
LAZARO-JAVIER,
INTING,****
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,*****
DIMAAMPAO,
MARQUEZ,
KHO, JR.,***** and
SINGH, JJ.

Promulgated:

June 13, 2023

X - - - - -

DECISION

ROSARIO, J.:

* On official leave.
** Acting Chief Justice per Special Order No. 2977 dated June 1, 2023.
*** On official leave.
**** No part.
***** On leave.
***** No part.

Y

Our election laws mandate the Commission on Elections (COMELEC) not only to allow any person designated by any candidate, political party, civic, religious, professional, business, service, youth or similar organization collectively designated by the COMELEC to witness the printing and distribution of official ballots and returns and to guard the premises of the printer, but also to allow political parties, candidates, citizens' arms, or their representatives to examine and test the equipment or devices of the automated election system (AES), including but not limited to the vote counting machines (VCMs) and storage devices such as secure digital (SD) cards.

Petitioners National Press Club of the Philippines (NPCP), Automated Election System Watch (AES Watch) and Guardians Brotherhood, Inc. (GBI) pray that we issue a writ of *mandamus* commanding the COMELEC to:

- a) implement the use of digital signature for the 2022 National and Local Elections (NLE); and
- b) disclose critical information and allow access and inspection of the following to political parties, candidates, accredited media and other organizations:
 - i) printing of ballots at the National Printing Office (NPO), including examination of the ballots already printed without the presence of observers, as well as the publication of deployment destination of these ballots without the presence of observers;
 - ii) the reported 5.2 million defective ballots and allow public scrutiny of their disposition or destruction;
 - iii) configuration and preparation of the SD cards to be used in the VCMs through COMELEC-accredited observers in the Sta. Rosa, Laguna warehouse, including access to and examination of the SD cards that have already been configured and prepared without the presence of observers, and allow the public and/or parties to observe the Pre-Logic and Accuracy Test (Pre-LAT) and other tests to be conducted;
 - iv) preparation, testing, and deployment of the VCMs and their parts, attachments and tools through COMELEC-accredited observers;
 - v) the National Technical Support Center, technical hubs, including data centers, provincial and regional hubs; and
 - vi) transmission diagram or data/communications network architecture including all details of the transmission of the transmission router server and/or the "Meet-Me Room" and all equipment that will be used to transmit election results.

(collectively, the Election Transparency Activities).¹

I

In seeking the above reliefs, petitioners preliminarily allege that they have the clear legal right and requisite standing to initiate the Petition for *Mandamus*² as interested political parties or groups pursuant to our ruling in *Capalla v. COMELEC*.³ They claim that the time element justifies direct resort to this Court considering that, as of the date of the Petition, the 2022 NLE was barely 48 days away, not to mention the overseas Filipino workers (OFW) who would be exercising their right to vote in 18 days.

Going to the substantive issues, petitioners contend that the COMELEC violated its mandatory duty to implement digital signatures and allow observers in the printing of ballots, configuration, preparation and testing of the SD cards, VCMs and transmission diagrams as follows:

A. The COMELEC's alleged refusal to implement the use of digital signatures

Section 22 of Republic Act (R.A.) No. 8436,⁴ or the Automated Election System (AES) Law, as amended by R.A. No. 9369,⁵ mandates that each copy of the election returns be signed and thumbmarked by all members of the Board of Election Inspectors (BEI) and the watchers present. To implement this, COMELEC Commissioner Marlon Casquejo informed the Joint Congressional Oversight Committee on the AES hearing (JCOC hearing) on September 15, 2021 that COMELEC Minute Resolution No. 210021 dated January 20, 2021 already approved the use of digital signatures for the 2022 NLE.

During the March 9, 2022 JCOC hearing, it was discussed that all teachers/BEI members were enrolled to use the digital signatures. However, it will not be implemented nationwide but only in the National Capital Region, Cebu City and Davao City, despite the COMELEC's commitment. Commissioner Casquejo had previously sent a Letter⁶ dated March 7, 2022 to Senator Imee R. Marcos, as Chairperson of the Committee on Electoral Reforms and People's Participation, informing her "that there are equipment or materials which will be needed in order to use the digital signature" and

¹ *Rollo*, p. 5.

² *Id.* at 3-395 (inclusive of annexes).

³ 687 Phil. 617 (2012) [Per J. Peralta, *En Banc*].

⁴ 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.

⁵ An Act Amending Republic Act No. 8436, Entitled "An Act Authorizing The Commission On Elections To Use An Automated Election System In The May 11, 1998 National Or Local Elections And In Subsequent National And Local Electoral Exercises, To Encourage Transparency, Credibility, Fairness And Accuracy Of Elections, Amending For The Purpose Batas Pambansa Blg. 881, As Amended, Republic Act No. 7166 And Other Related Election Laws, Providing Funds Therefor And For Other Purposes." Approved on January 23, 2007.

⁶ *Rollo*, pp. 259-260.

that “no provider can supply and deliver the needed number of cable assembly to accommodate the approximate 300,000 to 350,000 teachers.”

However, it was pointed out that a cable assembly or download cable is not necessary for the implementation of digital signatures because they can be directly loaded in the VCMs without using iButton, a device used to load digital signatures. Despite the fact that it can be done and despite the fact that the law mandates its implementation, the COMELEC refuses to do so.

B. The COMELEC’s alleged refusal or failure to allow observers in the printing of ballots

Section 187 of the Omnibus Election Code (OEC) provides that the COMELEC should allow any candidate, political party or civic, religious, professional, business, service, youth or any similar organizations to observe and witness the printing of official ballots. Further, Section 15 of the AES Law, as amended, provides that “[a]ccredited political parties and deputized citizen’s arms of the Commission shall assign watchers in the printing, storage and distribution of official ballots.”

Representatives of various political parties went to the NPO to observe the printing of ballots but were denied entry. The COMELEC likewise denied all requests of political parties to observe the printing, reasoning that this will cause delay and that the number of persons in the premises ought to be limited due to COVID-19.

It was confirmed during the March 9, 2022 JCOC hearing that 66.4% of the ballots had already been printed without any witnesses from the political parties and other organizations. In addition, approximately 5.2 million ballots that were printed were defective. Unfortunately, since there were no observers during the printing of ballots, petitioners argue that there was no way to verify if said ballots were truly defective. Worse, they were not properly accounted for and, thus, could allegedly be used to cheat in the NLE.

C. The COMELEC’s alleged refusal or failure to be transparent in relation to the SD cards, VCMs, technical hubs, and transmission diagrams

During the March 9, 2022 JCOC hearing, it was discovered that the COMELEC had not been transparent with respect to the SD cards, VCMs, technical hubs, and transmission or data/communications network diagram, and that it was almost done with the configuration of SD cards and VCMs, supposedly in violation of its duty to promote transparent and credible elections.

In praying for the dismissal of the Petition, respondent COMELEC, in its Comment⁷ dated July 14, 2022, argues that the Petition has been rendered moot with the successful conduct of the 2022 NLE; that *mandamus* does not lie since the COMELEC did neither neglect the performance of its duties nor exclude another from enjoyment of a right, in particular, that it has consistently complied with its duty to use digital signatures in transmitting election returns; that it has been transparent in the printing of official ballots and did not continuously refuse to allow observers during the printing thereof; that it is not enjoined by law to allow access and inspection of the configuration of SD cards and preparation of VCMs nor to critical information regarding its hubs, servers and data centers including details of transmission of election results; and that, at any rate, the Petition involves political questions within the exclusive jurisdiction of Congress.

II

At the outset, the Petition is dismissible for having been rendered moot and academic by the conclusion of the 2022 NLE. A case becomes moot when it ceases to present a justiciable controversy by supervening events so that a declaration thereon would be of no practical use or value. Since, the essence of the Petition is to compel the COMELEC to ensure the transparency and credibility of the 2022 NLE by implementing “Election Transparency Activities,” this Court can no longer accord any of the reliefs prayed for by petitioners. Nonetheless, mootness of a case will not, in all instances, prevent the Court from rendering a decision thereon. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.⁸ Here, the last three exceptions to mootness are present. In particular, this case presents an opportunity for this Court to rule on novel issues, particularly on whether the law enjoins the COMELEC to allow access and inspection of the configuration of SD cards and preparation of VCMs, as well as to critical information regarding its hubs, servers, and data centers, including details of transmission of election results.

III

Mandamus is an extraordinary writ commanding a person, tribunal, corporation, board, or officer to do an act required to be done, as when they/it unlawfully neglects the performance of an act which the law specifically enjoins as a duty, and there is no other plain, speedy, and adequate remedy in the ordinary course of law.⁹ The duty is ministerial only when its discharge

⁷ *Rollo*, pp. 414–518.

⁸ *David v. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

⁹ RULES OF COURT, Rule 65, sec. 3; *Militante v. Court of Appeals*, 386 Phil. 522 (2000) [Per J. Puno, *En Banc*].

requires neither the exercise of official discretion nor judgment.¹⁰ *Mandamus* can be awarded only when the petitioner's legal right to the performance of the particular act, which is sought to be compelled, is *clear* and *complete*.¹¹

Thus, for *mandamus* to lie, the following requisites must exist:

- (a) the petitioner has a clear legal right to the act demanded;
- (b) it must be the duty of the respondent to perform the act because it is mandated by law;
- (c) the respondent unlawfully neglects the performance of the duty enjoined by law;
- (d) the act to be performed is ministerial, not discretionary; and
- (e) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.¹²

Petitioners possess locus standi

In *Guingona v. COMELEC*,¹³ we held that if the petition for *mandamus* is anchored on the people's right to information on matters of public concern, any citizen can be the real party-in-interest. The requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and thus, part of the general public which possesses the right. There is no need to show any special interest in the result. It is sufficient that they be citizens and, as such, are interested in the faithful execution of the laws.

Hence, petitioners, whose members are registered Filipino voters, journalists, media personnel, and concerned citizens, are clothed with personality to institute this special civil action for *mandamus*. While Dr. Nelson Celis lacks proof of authority to cause the preparation of the Petition and sign the verification and certification of non-forum shopping for and on behalf of petitioner AES Watch, the representatives of petitioners NPCP and GBI were properly authorized.

Petitioners are not entitled to a Writ of Mandamus to compel the COMELEC to implement the use of digital signatures since it is not a ministerial duty of the COMELEC

¹⁰ *Sanson v. Barrios*, 63 Phil. 198 (1936) [Per J. Recto, *En Banc*].

¹¹ *Angeles v. Secretary of Justice*, 628 Phil. 381, 397 (2010) [Per J. Leonardo-De Castro, First Division] citing *Laburada v. Land Registration Authority*, 350 Phil. 779, 792-794 (1998) [Per J. Panganiban, First Division].

¹² *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 705 (2010) [Per J. Bersamin, *En Banc*].

¹³ 634 Phil. 516, 527 (2010) [Per J. Carpio, *En Banc*].

In his Letter¹⁴ dated March 7, 2022, Commissioner Casquejo informed Senator Imee Marcos that “there are equipment or materials which will be needed in order to use the digital signature” and that “[d]uring the conduct of the market survey, it was found that no provider can supply and deliver the needed number of cable assembly to accommodate the approximate 300,000 to 350,000 teachers.” He emphasized that the COMELEC had exerted all efforts to make sure that the digital signature will be implemented on a nationwide level, but due to the pandemic and time constraints, it will be impossible for the then-upcoming NLE. Thus, the COMELEC *En Banc* decided to limit the use of digital signatures to highly urbanized cities (HUCs).

Petitioners rely on the first paragraph of Section 22 of the AES Law, as amended, in arguing that it is the mandatory and ministerial duty of the COMELEC to fully implement the use of digital signatures. It states:

SEC. 22. *Electronic Returns.* - Each copy of the of the printed election returns shall bear appropriate control marks to determine the time and place of printing. **Each copy shall be signed and thumbmarked by all the members of the board of election inspectors and the watchers present.** If any member of the board of election inspectors present refuses to sign, the chairman of the board shall note the same copy in each copy of the printed election returns. The member of the board of election inspectors concerned refusing to sign shall be compelled to explain his or her refusal to do so. Failure to explain an unjustifiable refusal to sign each copy of the printed election return by any member of the board of election inspectors shall be punishable as provided in this Act. (Emphasis supplied)

However, the above paragraph speaks of **printed election returns** and not of digital signatures which are made only on the **electronic returns** as provided in the latter part of Section 22. The penultimate paragraph of Section 22, as amended, states: “The election returns transmitted electronically and **digitally signed** shall be considered as official election results and shall be used as the basis for the canvassing of votes and the proclamation of a candidate.” Similarly, the last paragraph of Section 25, as amended, reads: “The certificates of canvass transmitted electronically and **digitally signed** shall be considered as official election results and shall be used as the basis for the proclamation of a winning candidate.”

One of the hallmarks of the automated election system is the digital signature of BEI members on the election returns, and of members of the Board of Canvassers on the certificates of canvass. However, since automated elections began in the Philippines in 2010, the digital signature on the election returns have come from the VCMs and not from the teachers who comprise the BEI.

In *Capalla v. COMELEC*,¹⁵ the Court clarified during oral arguments that there is no infirmity as regards the signature of a Precinct Count Optical Scanner (PCOS) machine being the equivalent of a digital signature.

¹⁴ *Rollo*, pp. 259–260.

¹⁵ *Supra* note 3.

In *Bagumbayan-VNP Movement, Inc. v. COMELEC*,¹⁶ we held that:

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.¹⁷

In *AES Watch v. COMELEC*,¹⁸ we ruled that “the adoption of . . . another method to digitally sign the election results. . . are all suggestions subject to the COMELEC’s sound judgment. The exercise of discretion on how to implement the chosen AES must be accorded with the presumption of regularity and should be respected.”

Our pronouncement in *Sumulong v. COMELEC*¹⁹ is likewise *apropos*:

The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. **The Commission may err, so may this court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created — free, orderly and honest elections. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere.** (Emphasis supplied)

Here, while only the Electoral Boards from HUCs are able to digitally sign election returns generated by VCMs, the digital signatures generated by the VCMs themselves in other areas of the country are still sufficient for purposes of complying with the AES Law. The job of the Court is to say what the law is, not to dictate how another branch, agency, or instrumentality of government should do its job.²⁰ Accordingly, *mandamus* will not lie to compel the COMELEC to implement the use of digital signatures.

IV

Citing *Bagumbayan-VNP*,²¹ petitioners claim to have a clear legal right to compel the COMELEC to perform the Election Transparency Activities stated in the Petition because they are similarly situated as the petitioners in said case. However, *Bagumbayan-VNP* involved therein petitioner’s clear and unmistakable right to the source code of the selected AES technology pursuant to the last paragraph of Section 14 of R.A. No. 8436, as amended. In contrast, herein petitioners are not seeking access to the source code, but are seeking

¹⁶ 851 Phil. 685 (2019) [Per J. Reyes, Jr., *En Banc*].

¹⁷ *Id.* at 721.

¹⁸ G.R. No. 246332 (Resolution), December 9, 2020 [Per J. Lopez, *En Banc*].

¹⁹ 73 Phil. 288 (1941) [Per J. Abad Santos, *En Banc*].

²⁰ *Colvin v. Inslee*, 195 Wash. 2d 879, 894 (Wash. 2020).

²¹ *Supra.* (Erroneously cited as *Capalla v. COMELEC* in the Petition).

the disclosure of critical information on, and to be allowed access to, and the inspection of (a) the printing of the ballots; (b) the destruction or disposition of the defective ballots; (c) the configuration and preparation of the SD cards; (d) the preparation, testing, and deployment of the VCMs and all its parts, attachments, and tools; (e) National Technical Support Center, technical hubs, including data centers, provincial and regional hubs; and (f) transmission diagram or data/communications network architecture including the transmission router server and/or “Meet-Me Room” and all devices and equipment that will be used to transmit election results.

We now discuss whether petitioners possess a well-defined legal right to judicially demand, and the COMELEC, the corresponding legal duty to allow, the disclosure of information on and/or access to and inspection of the abovementioned items.

The COMELEC may be compelled to allow the witnessing of the printing of ballots but the issue has become moot and academic

It is undisputed that despite the Letters²² sent by various parties requesting that they be allowed to observe the printing of the official ballots at the NPO, the COMELEC disallowed the same and reasoned that (1) there are critical areas within the NPO wherein even personnel of the AES provider and the NPO are not allowed due to security reasons; (2) since the COMELEC is at the peak of printing, verifying, and hauling the ballots for overseas voting which would begin on April 10, 2022, any additional activity may cause delays in the preparations for overseas voting; and (3) due to the continuing pandemic, the number of persons in the premises must be limited.²³

Section 187 of the Omnibus Election Code (OEC) provides:

Section 187. Committee on printing, storage, and distribution of official ballots and election returns. –

Upon the request of any candidate, political party or of civic, religious, professional, business, service, youth or any similar organizations collectively designated by the Commission, **the latter shall allow any person designated by any of the former as watcher to . . . witness the printing and distribution of the ballots and the returns and guard the premises of the printer.** (Emphasis supplied)

By the use of the word “shall,” the COMELEC is not given discretion to allow a designated watcher to witness the printing of the ballots. As long as a request has been made by any candidate, political party, or civic, religious, professional, business, service, youth or any similar organizations

²² Letters dated January 25, 2022 of the Partido Demokratiko Pilipino–Lakas ng Bayan (PDP–LABAN) and Nationalist People’s Coalition (NPC), Letters dated January 12 and February 18, 2022 of the Lakas Christian Muslim Democrats (Lakas-CMD), and Letters dated January 11 and February 22, 2022 of the Partido Federal ng Pilipinas (PDP); *rollo*, pp. 261–262, 265–266, 271–272.

²³ Memorandum from the Office of Commissioner Casquejo dated February 17, 2022; *rollo*, pp. 263–264.

collectively designated by the Commission, and that said individual or group has designated its watcher/s, it is the COMELEC's ministerial duty to allow the designated watcher/s to observe the printing of the ballots. That there are critical areas in the NPO which are off-limits due to security reasons is of no moment because under the law, the designated watchers are even entitled to guard the premises of the printer. That allowing observers may cause delays in the preparations for the April 10, 2022 overseas voting is also a flimsy excuse because the requests were sent as early as January 2022.

Lastly, while health protocols prevailing at the time constrained the number of persons allowed within the printer premises, such protocols did not authorize the COMELEC to disregard the law. It could still have allowed a limited number of watchers or implemented other ways for them to witness the printing without violating health protocols. In fact, during the March 9, 2022 JCOC hearing, Senator Imee Marcos opined that the one-day walkthrough and demo of the NPO would not suffice and that she supports the livestreaming suggestion of the representative from the Parish Pastoral Council for Responsible Voting (PPCRV), to wit:

THE CHAIRPERSON. x x x Tama Tama iyon, kasi ang gusto natin, daily observation ng NPO, ng Sta. Rosa SD configuration. **Hindi naman pwedeng sa walkthrough, demo-demo lang isang araw. Kailangang nakatutok.**

Live streaming is a very good suggestion as well. And like you said, perfectly easy to set up.

x x x Kasi hindi pwedeng sekreto iyan.

MS. FLORORITA. Yes, Madam Chair, I will raise—

THE CHAIRPERSON. Napaka-importante ng election.²⁴ (Emphasis supplied)

Indeed, Commissioner Casquejo, who heads the poll body's printing committee, eventually apologized and acknowledged that the high number of COVID cases was not an excuse to bar observers. He confirmed that the COMELEC would thenceforth allow accredited political parties and citizens' arms to select, observe, and examine the ballots.²⁵

We take judicial notice of the fact, as widely reported by the media, that the COMELEC had implemented measures in response to the clamor of various groups to allow them to observe the printing process. On March 17,

²⁴ *Rollo*, p. 247.

²⁵ Christia Marie Ramos, *Comelec exec apologizes for absence of observers in ballot printing*, INQUIRER.NET, available at <https://newsinfo.inquirer.net/1569874/fwd-comelec-exec-apologizes-for-absence-of-observers-in-ballot-printing-says-to-hold-random-inspection> (Last accessed on March 24, 2023).

2022, the COMELEC began livestreaming the printing of ballots.²⁶ The livestream displayed various angles of the printing area, packing and shipping area, and quarantine room, the latter dedicated for rechecking defective ballots.²⁷ For the period that the stakeholders were prohibited from overseeing the printing process, the COMELEC announced that they could provide copies of the CCTV footage.²⁸ The COMELEC has also conducted random ballot checking in the presence of representatives from political parties and stakeholders.²⁹

It bears stressing that the law does not limit the ways by which the COMELEC may allow the watchers to witness the printing process. Indeed, the now ubiquitous livestream format, among other methods, has helped strike a balance between ensuring the integrity of the ballots and transparency of the election process, as well as the equally important need to strictly observe health protocols. This is not to say, however, that on-site viewing of the printing process may be dispensed with entirely.

In light of the foregoing developments, the issue on the prohibition of watchers from witnessing the printing of ballots has been rendered moot.

The COMELEC may not be compelled to allow the witnessing of the configuration and preparation of SD cards and VCMs but it may be compelled to allow the examination and testing thereof

While the law mandates the COMELEC to allow the witnessing of the printing and distribution of ballots, no provision specifically mentions the witnessing of the configuration and preparation of SD cards and VCMs. The closest provision involves the examination and testing of AES equipment or devices as provided for in Section 14 of R.A. No. 8436, as amended by Section 12 of R.A. No. 9369, which used to be Section 10 of R.A. No. 8436, to wit:

Sec. 10 of R.A. No. 8436 in the original	Sec. 14 of R.A. No. 8436, as amended by Sec. 12 of R.A. No. 9369

²⁶ Kathleen De Villa, *Comelec live streams ballot printing*, INQUIRER.NET, available at <https://newsinfo.inquirer.net/1570450/comelec-live-streams-ballot-printing> (Last accessed on March 24, 2023).

²⁷ Livestreamed through the COMELEC's Facebook page at <https://www.facebook.com/comelec.ph/videos/ballot-printing-for-the-2022-national-and-local-elections-at-the-national-printi/507192420789392> and at <https://www.facebook.com/comelec.ph/videos/printing-of-ballots-at-the-national-printing-office/688916352244448>.

²⁸ *Comelec opens ballot printing process to stakeholders amid transparency concerns*, GMA NEWS ONLINE, available at <https://www.gmanetwork.com/news/topstories/nation/825155/comelec-opens-ballot-printing-process-to-stakeholders-amid-transparency-concerns/story/> (Last accessed on March 24, 2023).

²⁹ Richa Noriega, *Comelec conducts random ballot checking for May 2022 polls*, GMA NEWS ONLINE, available at <https://www.gmanetwork.com/news/topstories/nation/826158/comelec-conducts-random-ballot-checking-for-may-2022-polls/story/> (Last accessed on March 24, 2023).

<p>SEC. 10. <i>Examination and testing of counting machines.</i> - The Commission shall, on the date and time it shall set and with proper notices, allow the political parties and candidates or their representatives, citizens' arm or their representatives to examine and test the machines to ascertain that the system is operating properly and accurately. Test ballots and test forms shall be provided by the Commission.</p> <p>After the examination and testing, the machines shall be locked and sealed by the election officer or any authorized representative of the Commission in the presence of the political parties and candidates or their representatives, and accredited citizens' arms. The machines shall be kept locked and sealed and shall be opened again on election day before the counting of votes begins.</p> <p>Immediately after the examination and testing of the machines, the parties and candidates or their representatives, citizens' arms or their representatives, may submit a written report to the election officer who shall immediately transmit it to the Commission for appropriate action.</p>	<p>SEC. 12. Section 10 of Republic Act No. 8436 is hereby amended to read as follows:</p> <p>SEC. 14. <i>Examination and Testing of Equipment or Device of the AES and Opening of the Source Code for Review.</i> - The Commission shall allow the political parties and candidates or their representatives, citizens' arm or their representatives to examine and test [t]he equipment or device to be used in the voting and counting on the day of the electoral exercise, before voting starts. Test ballots and test forms shall be provided by the Commission.</p> <p>"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.</p> <p>"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."</p> <p>"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."</p>
--	---

Notably, the term "counting machines" was amended to read "equipment or device of the AES." Section 2 of R.A. No. 9369 defines AES as "a system using appropriate technology which has been demonstrated in the voting, counting, consolidating, canvassing, and transmission of election result, and other electoral process." While the words 'equipment' and 'device' are not defined in the law, Section 28 thereof lists examples of electronic devices used in the AES such as "counting machine, memory pack/diskette, memory pack receiver and computer set."

It is clear, therefore, that Congress did not intend to limit the examination and testing to the VCMs but even expanded it to include other equipment or devices of the AES such as the SD card. In fact, while the term "counting machines" was defined in R.A. No. 8436, it no longer appears under the amended provision on Definition of Terms in R.A. No. 9369, which now considers the entire system and not only the counting machines.

We agree with respondent COMELEC that the law does not specifically enjoin it to allow access and inspection of the configuration and preparation

of the VCMs and SD cards. The law only mandates it to allow political parties, candidates, citizens' arms, or their representatives to examine and test said equipment or devices. The fact that the law commands the COMELEC to provide test ballots and test forms is a clear indication that the examination and testing take place after the configuration of the devices and not during or before said configuration. Certainly, it would be absurd to allow the examination and testing of unconfigured equipment or devices.

Petitioners cite the similarly worded Letters dated January 11 and 12, 2022 of the Partido Federal ng Pilipinas (PFP) and Lakas Christian Muslim Democrats (Lakas-CMD) which requested, among others, a "walk thru and visit to the COMELEC Sta. Rosa warehouse" in order to (1) observe the uploading of contents to the SD cards; (2) conduct stress testing of the VCMs; and (3) randomly open and view the inside of the VCM as was done in 2016.³⁰

During the March 9, 2022 JCOC hearing, Ms. Jeannie Flororita, Director of the COMELEC IT Department, informed the panel of the scheduled walkthrough of the COMELEC warehouse on March 14, 2022. While Sen. Imee Marcos found the walkthrough to be insufficient,³¹ this is precisely what the Letters of the PFP and Lakas-CMD requested. Nonetheless, the records do not disclose what transpired during the purported March 14, 2022 walkthrough and whether the requests of the PFP and Lakas-CMD relative to the SD cards and VCMs were sufficiently met.

Further, while it was revealed during the same hearing that there was an official letter from the Office of Commissioner Casquejo disallowing the presence of witnesses at the NPO where the ballots were being printed, there was no formal denial of entry at the Sta. Rosa facility where the SD cards were being configured, presumably because there was no prior formal coordination with the COMELEC in the first place, as revealed by the exchange between the JCOC Chairperson and Attorneys Alexander Ramos and Hubert Guevara:

MR. GUEVARA.	Madam Chair, since 2016, we have been allowed to observe not only the printing of the ballots, even the configuration of the SD cards in Sta. Rosa warehouse.
THE CHAIRPERSON.	I understand that no one is allowed to go to Sta. Rosa either. What is going on?
MR. GUEVARA.	Exactly, Madam Chair, so which is very concerning for all of us. xxx
THE CHAIRPERSON.	Was that also in written form? Did you also get a letter prohibiting the entry to Sta. Rosa? Naku! Senator Koko, that is a very important part of the electoral process. Nakakanerbyos. Iyong SD card configuration, walang testigo.

³⁰ *Rollo*, pp. 271–273.

³¹ *Id.* at 246.

- So, Atty. Hubert, did you get a letter also like Alex did?
- MR. GUEVARA. Madam Chair, **walang advice sa amin.**
- THE CHAIRPERSON. Paano ninyo natuklasan na hindi pwedeng mag-observe?
- MR. GUEVARA. Kasi si Alex, Madam Chair, sa—we're coordinating with Alex, Madam Chair, on that. Then all of a sudden, hindi na rin nagpapapunta.
- MR. RAMOS. Madam Chair, can I be heard?
- THE CHAIRPERSON. Yes, Alex, please.
- MR. RAMOS. Every week, I go to the gates seeking entry. Every week.
- THE CHAIRPERSON. And then, hindi ka pinapapasok?
- MR. RAMOS. Ayaw. I cannot force the COMELEC guards to do that for me.
- THE CHAIRPERSON. Okay.
- MR. RAMOS. **Ang sabi nila, walang coordination, walang authority.** Same statement for the last 12 weeks.
- THE CHAIRPERSON. Okay. And, Atty. Hubert, you have the same experience that **you are forbidden entry without any formal advice. Is that correct?**
- MR. GUEVARA. **Madam Chair, we have people who go to the area. And these same people are prohibited from entering.**
- THE CHAIRPERSON. Iyon nga. So, hindi sila pinapapasok. Ganoon din?
- MR. GUEVARA. Yes, Madam Chair.³² (Emphasis supplied.)

While the Letters dated January 11 and 12, 2022 of the PFP and Lakas-CMD may be considered formal requests to the COMELEC, petitioners failed to establish that the watchers of said parties were denied access to the Sta. Rosa warehouse. Petitioners likewise failed to show that Attorneys Ramos and Guevara represented said parties or any other political party, citizens' arm, or candidate.

We reiterate our ruling in *Bagumbayan-VNP* that **the right to examine and test the equipment or device of the AES or to review the source code**

³² *Rollo*, pp. 241-243.

does not depend on compliance with any guidelines that the COMELEC may promulgate. 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.³³

There is no question that the COMELEC exercises no discretion in allowing political parties, candidates, citizens' arms, or their representatives to examine and test the equipment or device of the AES even up to the day of the electoral exercise, before voting starts. However, it is but reasonable and logical that the COMELEC first be permitted to determine whether an individual or entity wishing to examine or test said equipment is a bona fide political party, candidate or authorized representative thereof, or an accredited citizens' arm or authorized representative thereof. Sans vetting, allowing any individual or entity claiming to be a candidate, political party, or citizens' arm to examine or test the equipment would adversely affect the integrity of the electoral process considering that any unscrupulous individual could feign examination and testing in order to compromise the equipment.

While the COMELEC is mandated to ensure honest and transparent elections and election-related activities, it is equally mandated to ensure that the same be orderly and peaceful.³⁴ Hence, the COMELEC is justified in adopting measures that would ensure that access to the equipment or device of the AES is restricted to those persons or groups enumerated under the law.

We again take judicial notice of the fact that the COMELEC had asked the public and political parties to go to precincts nationwide on May 2 to 7, 2022 to personally witness the final testing and sealing of VCMs that would be used in the NLE.³⁵ The COMELEC had also opened for public viewing its warehouse in Sta. Rosa, Laguna where the SD cards were being configured.³⁶ Consequently, there has ceased to be a justiciable controversy as regards the SD cards and VCMs and the issue has, therefore, become moot and academic.

The COMELEC may be compelled to disclose certain transmission documents but the issue has become moot and academic

Petitioners seek to examine the complete transmission diagram or data/communications network architecture of the VCMs, including all the details of the transmission router server and/or the "Meet-Me Room" and all devices and equipment that will be used to transmit election results.

³³ *Supra* note 16, at 709.

³⁴ Republic Act No. 9369, sec. 1.

³⁵ Ombay, Giselle, *Comelec urges public to attend the final testing and sealing of VCMs on May 2-7*, GMA NEWS ONLINE, available at <https://gmanetwork.com/news/topstories/nation/826448/comelec-urges-public-to-attend-the-final-testing-and-sealing-of-vcms-on-may-2-7/story> (Last accessed on March 24, 2023).

³⁶ Garcia, Danilo, *Bodega ng Comelec binuksan sa publiko*, PILIPINO STAR NGAYON, available at <https://philstar.com/pilipino-star-ngayon/bansa/2022/03/24/2169469/bodega-ng-comelec-binuksan-sa-publiko> (Last accessed on March 24, 2023).

Respondent contends that although the law does not enjoin it to allow access and inspection of its hubs, servers, and data centers, including the transmission network architecture, it has consistently disclosed critical information thereon. As early as March 16, 2022, it disclosed in its official website the List of Local Hubs,³⁷ Order of Dispatch,³⁸ and Schedule of Dispatch of Accountable Forms/Supplies³⁹ to be used in the 2022 NLE. The loading and dispatch of various election items, including the equipment and supplies, were done publicly with prior notice to the political parties/groups, accredited citizens' arms, and the media, and on livestream.⁴⁰ Further, as early as March 22, 2022, it conducted an end-to-end demonstration of the AES for local source code reviewers, stakeholders, and the media.⁴¹ It likewise conducted a walkthrough of the Transparency Media Server on April 30, 2022 wherein election processes, such as the actual transmission of results from the VCMs to the Consolidation Canvassing System and how they related to the data centers, were explained to the public.⁴² Also disclosed during the walkthrough were information regarding the conduct of the Pre-LAT, the election day configuration test of each machine to ensure that the entire AES properly collects votes and tabulates the results. Despite possible security risks, the locations of the different servers/data centers to be used in the elections,⁴³ including the Central Data Center of which the "Meet-Me Room" constitutes a necessary part, were likewise divulged. The credibility of the Transmission Router, which is part of said "Meet-Me Room," has also been confirmed by the Technical Evaluation Committee (TEC), an independent committee established pursuant to Section 10 of the AES Law, together with Pro V&V, Inc., the established international certification entity.⁴⁴

In R.A. No. 8436, it was the declared policy of the State to "ensure free, orderly, honest, peaceful and credible elections, and assure the secrecy and sanctity of the ballot in order that the results of elections, plebiscites, referenda, and other electoral exercises shall be fast, accurate and reflective of the genuine will of the people." R.A. No. 9369 amended this to read "ensure free, orderly, honest, peaceful, credible **and informed** elections, plebiscites, referenda, recall and other similar electoral exercises by improving on the

³⁷ <https://comelec.gov.ph/index.html?r=2022NLE/LocalHubs>.

³⁸ <https://comelec.gov.ph/index.html?r=2022NLE/LocalHubs/AESOrderOfDispatch>.

³⁹ <https://comelec.gov.ph/index.html?r=2022NLE/LocalHubs/ScheduleOfDispatch>.

⁴⁰ <https://comelec.gov.ph/index.html?r=2022NLE/PressRelease/01April2022Advisorypdf>;
<https://comelec.gov.ph/index.html?r=2022NLE/PressRelease/01April2022pr>;
<https://facebook.com/comelec.ph/videos/dispatch-of-automated-election-system-supplies-for-the-2022-nle/744650766919578>.

⁴¹ <https://comelec.gov.ph/index.html?r=2022NLE/PressRelease/21Mar2022Advisory>;
<https://facebook.com/comelec.ph/videos/election-day-aes-end-to-end-demonstration/936883780201245>.

⁴² Jel Santos, *Comelec holds walkthrough of transparency media server to dispel public's fear*, MANILA BULLETIN ONLINE, available at <https://mb.com.ph/2022/04/30/comelec-holds-walkthrough-of-transparency-media-server-to-dispel-publics-fear> (Last accessed on March 24, 2023); <https://facebook.com/comelec.ph/videos/briefing-of-the-transparency-media-server-for-the-2022-national-and-local-electi/741336030357644/>.

⁴³ Samuel Medenilla, *Comelec transparency and media servers can handle data of up to 100K precincts*, BUSINESS MIRROR, available at <https://businessmirror.com.ph/2022/05/02/comelec-transparency-and-media-servers-can-handle-data-of-up-to-100k-precincts/> (Last accessed on March 24, 2023).

⁴⁴ <https://comelec.gov.ph/?r=2022NLE/AutomatedElectionSystem/TECResolutionNo202201>.

election process and adopting systems, which shall involve the use of an automated election system that will ensure the secrecy and sanctity of the ballot **and all election, consolidation and transmission documents** in order that the process shall be **transparent and credible** and that the results shall be fast, accurate and reflective of the genuine will of the people.”

It is, thus, clear that the State aims to protect the secrecy and sanctity not only of the ballot but also of “all election, consolidation and transmission documents.” However, this must be read not in isolation but in relation to the succeeding phrase “in order that the process shall be **transparent and credible**” and in line with the policy of ensuring not only free, orderly, honest, peaceful and credible elections, but also “**informed elections.**”

The focus on transparency is of specific and heightened relevance in an AES because such system, although potentially more accurate, is inherently less transparent than a manual election system. Under the former, results are tallied by machine while in the latter, the counting and tallying of results may be physically observed. While there is more room for honest mistakes under a manual system, the possibility of manipulation under either system remains and cannot be discounted. Even if the risk of fraud during the voting stage may be reduced in an automated system, it is during the succeeding phases such as the transmission of results where there may be greater cause for concern. Hence, the credibility of the system is directly proportional to the transparency of the entire process, from the preparation of the ballots to the canvassing of votes.

The policy of the AES Law echoes that of the fundamental law on full public disclosure of all State transactions involving public interest.⁴⁵ It is likewise a recognition of the constitutional right of the people to information on matters of public concern.⁴⁶

This Court has laid down two requisites which must concur before the exercise of the right to information may be compelled by a writ of *mandamus*:

- a) the information sought must be in relation to matters of public concern or public interest; and
- b) it must not be exempt by law from the operation of the constitutional guarantee.⁴⁷

Anent the first requisite, we have held that the constitutional guarantee to information on matters of public concern is not absolute. It does not open

⁴⁵ CONST., art. II, sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

⁴⁶ CONST., art. III, sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

⁴⁷ *Sereno v. Committee on Trade and Related Matters (CTRM) of the National Economic and Development Authority (NEDA)*, 780 Phil. 1, 12–13 (2016). [Per J. Bersamin, First Division].

M

every door to any and all information. The threshold question is, therefore, whether or not the information sought is of public interest or public concern. In determining whether a particular information is of public concern, there is no rigid test which can be applied. As held in *Legaspi v. Civil Service Commission*:⁴⁸

“Public concern,” like “public interest,” is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine on a case-by-case basis whether the matter at issue is of interest or importance, as it relates to or affects the public.⁴⁹

As regards the second requisite, the Constitution itself tempers its policy of full public disclosure and the right to information with reasonable conditions and limitations as may be prescribed by law. We have likewise recognized the following restrictions to the right to information: (1) national security matters and intelligence information; (2) trade secrets and banking transaction; (3) criminal matters; and (4) other confidential information.⁵⁰

More specifically, we recognized that State secrets regarding military, diplomatic, and other national security matters; classified law enforcement matters, such as those relating to the apprehension, prosecution, and detention of criminals which courts may not inquire into prior to such arrest, detention, and prosecution; and diplomatic correspondence, closed-door Cabinet meetings and executive sessions of either house of Congress, as well as the internal deliberations of the Court, are exempt from public disclosure.⁵¹ Nonetheless, said list of specific matters is non-exclusive and would not preclude us from dismissing a petition for *mandamus* on other matters.⁵²

That said, claims of exemption from the right to information are strictly construed, thus:

Every claim of exemption from the right to information, being a limitation on a right constitutionally granted to the people, is liberally construed in favor of disclosure and strictly against the claim of confidentiality. The claim of privilege as a cause for exemption from the obligation to disclose information must be clearly asserted by specifying the grounds for the exemption. In case of denial of access to the information, it is the government agency concerned that has the burden of showing that the information being sought is not a matter of public concern, or that the same is exempted from the coverage of the constitutional guarantee.⁵³

⁴⁸ 234 Phil. 521 (1987) [Per J. Cortes, *En Banc*].

⁴⁹ *Id.* at 535.

⁵⁰ *Chavez v. Presidential Commission on Good Government*, 360 Phil. 133 (1998) [Per J. Panganiban, First Division].

⁵¹ *Id.* at 160.

⁵² *Antolin-Rosero v. Professional Regulation Commission*, G.R. No. 220378, June 30, 2021 [Per J. Inting, Third Division].

⁵³ *Sereno v. Committee on Trade and Related Matters (CTRM) of the National Economic and Development Authority (NEDA)*, *supra* note 47, at 16.

Anent petitioners' prayer for access to and examination of the transmission diagram or data/communications network architecture of the VCMs, we find that the COMELEC has failed to discharge its burden of showing that such information is not a matter of public concern or that it is exempted by law from the constitutional guarantee. In fact, such documents are matters of public concern and interest which should be made available, especially considering that unauthorized transmissions and communications to and from network nodes plotted in the diagram or architecture may call into question the integrity of the elections. **We hold, therefore, that were it not for the mootness of the issue, the COMELEC may be compelled via a writ of *mandamus* to disclose the complete transmission diagram and data/communications network architecture of the VCMs.**

As regards petitioners' request for "all details of the transmission of the transmission router server and/or the 'Meet-Me Room' and all devices and equipment that will be used to transmit election results," we find that the prayer is too vague and broad for us to determine which details or documents the COMELEC should disclose to petitioners. Certainly, we cannot compel the COMELEC to reveal all details, some of which may contain confidential information which, if divulged, could pose serious security risks. Otherwise stated, *mandamus* will not lie to compel respondent to reveal certain information for the sake of transparency but at the expense of the security, integrity, and credibility of the AES.

In any case, as averred by respondent, despite possible security risks, the locations of the different servers/data centers, including the Central Data Center of which the "Meet-Me Room" constitutes a necessary part, were already divulged. The credibility of the Transmission Router has also been confirmed by the TEC, an independent committee established pursuant to the AES Law, together with the established international certification entity.

In fine, it would be more prudent for this Court to decide on a case-by-case basis which types of election, consolidation, or transmission documents should be covered by the right to information, considering that the AES is an evolving system, instead of applying a shotgun approach as petitioners did.

The COMELEC does not have a ministerial duty to allow access to its technical hubs, servers, and data centers

Petitioners lament that despite Commissioner Casquejo's commitment during the March 9, 2022 JCOC hearing that the COMELEC would allow observers in the regional/provincial hubs and data centers where the "Meet-Me Room" is located, no one has been allowed to observe these places.⁵⁴

⁵⁴ Rollo, p. 34.

The law does not mandate the COMELEC to allow physical access to its hubs, servers, and data centers. It also cannot be said that the right to information includes or extends to physical access of said facilities. Moreover, the constitutional policy of full public disclosure of transactions involving public interest and the right to information are circumscribed by reasonable conditions and limitations as may be provided by law. Paragraph (c), Section 29 of R.A. No. 8436, as amended and renumbered as Section 35,⁵⁵ which penalizes the act of "causing access to . . . facilities. . . whether classified or declassified" and "whether or not said acts affect the electoral process or results," is one such limitation. Unlike paragraph (a) thereof which penalizes unauthorized utilization of ballots, electronic returns, electronic devices, *et cetera*, the acts under paragraph (c) are punishable regardless of authorization.

At most, the COMELEC may be compelled to provide information regarding its technical hubs and data centers, as it had already done so, but it cannot be compelled to allow what the law clearly prohibits. Unlike access to the premises of the printer for purposes of guarding the same or witnessing the printing and distribution of the ballots and returns,⁵⁶ there is no clear legal right to allow physical access to the technical hubs or data centers of the AES.

ACCORDINGLY, the Petition is **DISMISSED** for being moot and academic.

SO ORDERED.

RICARDO R. ROSARIO
Associate Justice

⁵⁵ SEC. 35. *Prohibited Acts and Penalties.* — The following shall be penalized as provided in this Act, **whether or not said acts affect the electoral process or results:**

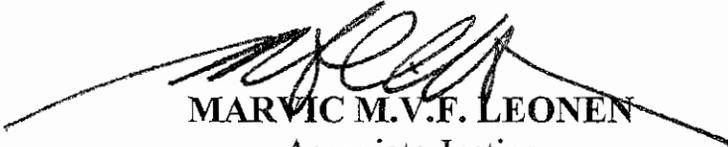
- (a) Utilizing without authorization, tampering with, damaging, destroying or stealing:
 - (1) Official ballots, election returns, and certificates of canvass of votes used in the system; and
 - (2) Electronic devices or their components, peripherals or supplies used in the AES such as counting machine, memory pack/diskette, memory pack receiver and computer set;
- (b) Interfering with, impeding, absconding for purpose of gain, preventing the installation or use of computer counting devices and the processing, storage, generation and transmission of election results, data or information;
- (c) Gaining or **causing access to** using, altering, destroying or disclosing any computer data, program, system software, network, or any computer-related devices, **facilities**, hardware or equipment, **whether classified or declassified;**
... (Emphases supplied)

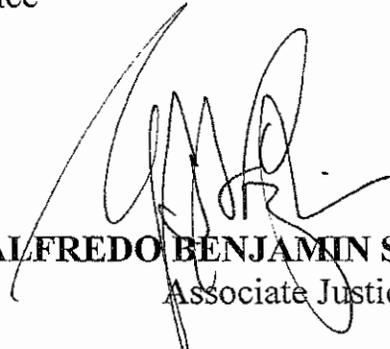
⁵⁶ Batas Pambansa Blg. 881, art. XVI, sec. 187.

WE CONCUR:

On Official Leave
ALEXANDER G. GISMUNDO
Chief Justice

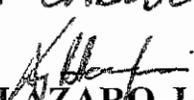
Concur. see separate opinion


MARVIC M.V.F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

*See separate
Concurring
Opinion*

On Official Leave
RAMON PAUL L. HERNANDO
Associate Justice

with concurrence

AMY C. LAZARO-JAVIER
Associate Justice

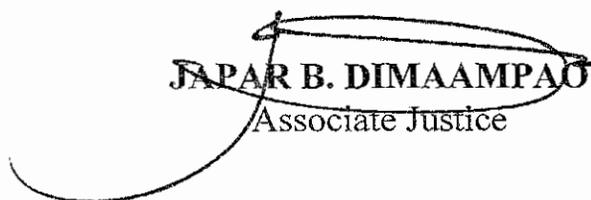
No part
HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


MARIO Y. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

On Leave
JHOSEP Y. LOPEZ
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

✓

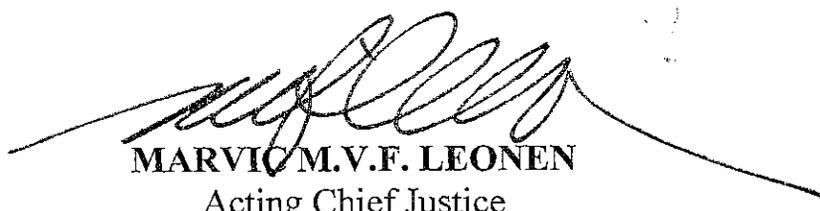

JOSE MIDAS P. MARQUEZ
Associate Justice

No part
ANTONIO T. KHO, JR.
Associate Justice


MARIA FILOMENA D. SINGH
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.


MARVIC M.V.F. LEONEN
Acting Chief Justice
(per S.O. No. 2977 dated June 1, 2023)