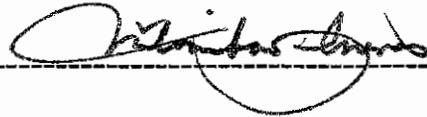


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G.R. No. 259354 (NATIONAL PRESS CLUB OF THE PHILIPPINES, AUTOMATED ELECTION SYSTEM WATCH, and GUARDIANS BROTHERHOOD, INC., Petitioners, v. COMMISSION ON ELECTIONS, Respondent.)

Promulgated:

June 13, 2023



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CONCURRENCE

LAZARO-JAVIER, J.:

This Petition for *Mandamus* seeks to compel the Commission on Elections (COMELEC): (1) to implement digital signatures and (2) to disclose critical information and allow access and inspection in the (a) printing of ballots and disposition of defective ballots; (b) configuration, preparation and testing of the SD cards; (c) preparation, testing, and deployment of Vote Counting Machines (VCMs); and (d) National Technical Support Center and technical hubs, as well as the transmission diagrams or data/communications network architecture.

**First.** In seeking to compel the COMELEC to implement digital signatures for the 2022 National and Local Elections (NLE), petitioners invoke Section 22 of the Automated Election System (AES) Law,<sup>1</sup> viz.:

SEC. 22. *Electronic Returns.* - Each copy of the printed election returns shall bear appropriate control marks to determine the time and place of printing. **Each copy shall be signed and thumb marked 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. The chairman of the boards shall then publicly read and announce the total numbers of registered voters, the total number of voters who actually voted and the total numbers of votes obtained by each candidate based on the election returns. (Emphasis supplied)

<sup>1</sup> Republic Act No. 8346, as amended by Republic Act No. 9369.



By COMELEC Minute Resolution No. 210021 dated January 20, 2021, COMELEC Commissioner Marlon Casquejo (Commissioner Casquejo) already approved the use of digital signatures for the 2022 NLE.

In March 2022, however, Commissioner Casquejo confirmed that despite the successful enrollment of all teachers/board of election inspectors to use the digital signatures, it will not be implemented nationwide just yet but only to the National Capital Region, Cebu City, and Davao City due to logistical issues. Specifically, “there are equipment or materials which will be needed in order to use the digital signature” and that “no provider can supply and deliver the needed number of cable assembly to accommodate the approximate 300,000 to 350,000 teachers.”

As discussed in the *ponencia*, the first paragraph of Section 22 of the AES Law actually refers to printed election returns and not to the entire plethora of election returns that will be used during the NLE. In fact, the only instance where the words “electronically and digitally signed” are mentioned is in the latter part of the same provision, *viz.*: “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.”

In other words, it is **not** expressly provided under the AES Law that digital signatures should be fully implemented, especially for the 2022 NLE. The initial approval of the use of digital signatures for the 2022 NLE was a mere initiative of the COMELEC in the exercise of its constitutional mandate to administer election laws. To be sure, the COMELEC is given considerable latitude in devising means and methods that will ensure the accomplishment of the great objective for which it was created—free, orderly, and honest elections. Unless these will be clearly illegal or will constitute grave abuse of discretion, this Court should not interfere, as here.<sup>2</sup>

Hence, I agree with the *ponente* that *mandamus* will not lie on this score.

**Second.** Petitioners likewise seek to compel the COMELEC to allow them to witness the printing of ballots, following Section 187<sup>3</sup> of the Omnibus Election Code and Section 15<sup>4</sup> of the AES Law.

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<sup>2</sup> *Ejercito v. Commission on Elections*, G.R. No. 223300 (Notice), May 31, 2016.

<sup>3</sup> Section 187. Committee on printing, storage, and distribution of official ballots and election returns. - xxx

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 observe the proceedings of the committee on the printing of official ballots and election returns, file objections, if any, witness the printing and distribution of the ballots and the returns and guard the premises of the printer.

<sup>4</sup> Section 15. Official Ballot. -

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Again, I agree with the *ponencia* that the act cannot be compelled by *mandamus*.

Section 187 of the Omnibus Election Code allows a duly designated watcher to do the following: (1) to observe the proceedings of the committee on the printing of official ballots and election returns; (2) to file objections; (3) to witness the printing and distribution of the ballots and the returns; and (4) to guard the premises of the printer.

Despite the restrictions brought about the pandemic, we agree with the *ponencia* that the law did not limit the means by which the COMELEC should comply with its mandate. On March 17, 2022, it initiated a way to allow the watchers to still observe the printing process while maintaining consideration of the health and safety protocols. Though not the usual method of physical observation of the process, the COMELEC instead conducted a livestream of the printing of the ballots. The livestream provided different angles to ensure that watchers can easily witness the entire printing process. The COMELEC even committed to provide copies of the CCTV footage thereafter, if necessary.

I agree that by adopting this method, the COMELEC should be deemed to have complied with the mandate of the Omnibus Election Code.

**Third.** I further subscribe to the view 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. There is a need to compare Section 14 of Republic Act No. 8436, as amended by Section 12 of Republic Act No. 9369, which used to be Section 10 of Republic Act No. 8436, *viz.*:

Section 10 of Republic Act No. 8436 in the original	Section 14 of Republic Act No. 8436, as amended by Section 12 of Republic Act No. 9369
SEC. 10. <i>Examination and testing of counting machines.</i> - The Commission shall, <b>on the date and time it shall set and with proper notices</b> , 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.	SEC. 12. Section 10 of Republic Act No. 8436 is hereby amended to read as follows:  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

Accredited political parties and deputized citizen's arms of the Commission shall assign watchers in the printing, storage and distribution of official ballots.

<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. (Emphasis supplied)</p>	<p>voting and counting on the day of the electoral exercise, <b>before voting starts</b>. 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><b>"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."</b> (Emphasis supplied)</p>
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The term "counting machines" in Republic Act No. 8436 was amended to read "equipment or device of the AES" in Republic Act No. 9369. AES is defined in Republic Act No. 9369 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."<sup>5</sup> Under the law, the words "equipment" and "device" are defined by enumerating examples thereof such as "counting machine, memory pack/diskette, memory pack receiver and computer set."<sup>6</sup>

I agree that the law only ordains the COMELEC to allow the examination and testing of equipment or devices which have already been configured. Apart from the fact that the law commands the COMELEC to provide test ballots and test forms, it also provides that *once an AES technology is selected for implementation, the COMELEC 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.*<sup>7</sup>

There is no need though for any formal coordination with the COMELEC pertaining to the date and time within which to conduct the examination and testing of equipment and devices. This is because the relevant proviso thereon as originally provided in Republic Act No. 8436 (Section 1, first paragraph) is no longer found in Republic Act No. 9369

<sup>5</sup> Republic Act No. 9369, sec. 2.

<sup>6</sup> Republic Act No. 9369, sec 28.

<sup>7</sup> Republic Act No. 9369, sec. 12.

(Section 12, first paragraph). Instead, Republic Act No. 9369 now provides, in general, that the COMELEC shall allow political parties, candidates or citizens' arm to examine and test the equipment or device to be used in the voting and counting, *before voting starts*. Thus, there is no need to set a particular date and time to examine and test the equipment and devices. The only qualification is that such examination and testing be done before the voting starts.

At any rate, 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 2022 NLE. Likewise, it had opened for public viewing its warehouse in Sta. Rosa, Laguna where the SD cards were being configured. Hence, the issue has become moot and academic.

**Fourth.** I agree that petitioners failed to show a clear legal right to the disclosure of transmission documents pursuant to the declared policy of the State in Republic Act No. 9369 to 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."

Too, the law does not enjoin the COMELEC to allow access and inspection of its hubs, servers, and data centers, including the transmission network architecture, but COMELEC has disclosed critical information thereon, such as: List of Local Hubs, Order of Dispatch, and Schedule of Dispatch of Accountable Forms/Supplies to be used in the 2022 NLE; and the locations of the different servers/data centers to be used in the elections, including the Central Data Center.

  
AMY C. LAZARO-JAVIER

