

Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **AUGUST 16, 2022**, which reads as follows:

“G.R. No. 258459 [Formerly UDK-17258] (Francisco Juegos Tito, and Partido Para sa Demokratikong Reporma [Partido Reporma], Represented by Its Chairperson, Pantaleon D. Alvarez, Petitioners, v. Commission on Elections and Alexander Petalcorin Agustin, Respondents).¹ – This Petition for *Certiorari*² seeks to annul the Decision of the Commission on Elections (COMELEC) denying the ‘Petition to Approve the Statement of Withdrawal of the Certificate of Candidacy of Alexander Petalcorin Agustin and to Give Due Course to the Certificate of Candidacy of Francisco Juegos Tito as Substitute Vice-Gubernatorial Candidate for the Province of Davao de Oro.’

Antecedents

For purposes of the May 2022 National and Local Elections (NLEs), petitioner Francisco Juegos Tito (Tito) and Alexander Petalcorin Agustin (Agustin) filed their Certificates of Candidacy (CoC) for the positions of Governor and Vice Governor, respectively, of the Province of Davao de Oro, under the banner of Partido Para sa Demokratikong Reporma (Partido Reporma).

On 03 November 2021, Tito withdrew his CoC for the position of Governor and expressed his desire to be substituted by another member of Partido Reporma.³ Subsequently, or on 15 November 2021, Tito filed a CoC,⁴ this time for the position of Vice Governor of Davao de Oro *vice* his party-mate, Agustin. In support thereof, Tito submitted the following documents:

¹ *Rollo*, pp. 74-A-74-C. In an Order dated 26 January 2022, the Court directed Tito to implead Alexander Petalcorin Agustin and Partido Reporma as parties.

² *Id.* at 3-73.

³ It appears that Tito was substituted by one Dorothy Gonzaga as Partido Reporma’s official candidate for Governor of Davao de Oro.

⁴ Annex C of the petition; *Rollo*, p. 43.

- (1) a Statement of Withdrawal executed by Agustin formally withdrawing his candidacy for the position of Vice Governor of Davao de Oro and naming Tito as his substitute;⁵
- (2) a Special Power of Attorney (SPA) signed by Agustin authorizing Tito to submit his Statement of Withdrawal before the appropriate COMELEC office;⁶ and
- (3) a Certificate of Nomination and Acceptance (CONA) signed by Partido Reporma Chairman Panfilo Lacson in Tito's favor.⁷

Tito claims that Agustin was not able to personally file his Statement of Withdrawal as the latter had to isolate, per protocol, after having been identified as a close contact of a person who had tested positive for COVID-19.⁸

Upon checking the COMELEC's website around 02 December 2021, Tito discovered that while his name was deleted from the list of candidates for Governor, Agustin's name was retained in the list of candidates for the position of Vice-Governor. Tito thereafter sent a letter to the COMELEC to inquire into the matter.⁹

In its Document No. 21-6753,¹⁰ the COMELEC, through its Law Department, responded and explained that Tito's withdrawal of his CoC for the position of Governor was given due course as it was compliant with all requirements. On the other hand, Agustin's withdrawal (and Tito's subsequent filing of a CoC as his substitute) for the position of Vice Governor was denied due to non-compliance with COMELEC requirements.

Specifically, the COMELEC Law Department took issue with the fact that Agustin did not personally file for the withdrawal of his CoC as required under COMELEC Resolution No. 10717. It likewise held that while filing through a representative may be allowed in some cases, the same must comply with certain requirements. In this case, and given Agustin's reason for not being able to personally file, the COMELEC required the submission of a Certification issued by the *Barangay* Chairperson or any other authorized office in the LGU stating that the withdrawing candidate was identified as a close contact with any person who was tested positive for COVID-19 and on quarantine or isolation, proof of identity of the representative, and a recording or CD/USB showing clearly the act of the aspirant signing the Statement of Withdrawal.

⁵ Id. at 41.

⁶ Id. at 42.

⁷ Id. at 44.

⁸ Id. at 45-46.

⁹ Id. at 48-49.

¹⁰ Id. at 52-54.

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Tito subsequently filed a motion¹¹ to reverse or set aside the Law Department's letter with the COMELEC *En Banc*.

In the meantime, Partido Reporma received a letter from the COMELEC requiring it to comment on a letter dated 08 November 2021¹² allegedly sent by Agustin repudiating the CONA issued in his favor by Partido Reporma and requesting that he be declared an independent candidate.

Partido Reporma thereafter informed¹³ the COMELEC that it was not notified by Agustin of said repudiation and that this being the case, Partido Reporma's right to due process has been violated. It thereby requested that the repudiation be 'treated as a mere scrap of paper' and that Partido Reporma will only accept Agustin's resignation 'so long as COMELEC accepts [petitioner] as the substitute candidate of Partido Reporma for Vice Governor in the province of Davao de Oro. Otherwise, Partido Reporma will be left with no candidate for said position.'¹⁴

A tentative list of candidates for the May 2022 elections was again posted by the COMELEC on its website on 28 December 2021.¹⁵ Tito's name was still not included in said list. He thus filed a motion for reconsideration but was advised by the Office of the Clerk of the COMELEC to instead file a petition which can be docketed as an election matter. Tito did so and his case was docketed as EM-22-003.

Subsequently, Tito received word that EM-22-003 was denied by the COMELEC *En Banc* in a Minute Resolution issued on 12 January 2022 on the following grounds: (1) the signatures of Agustin appearing on the documents are different; and (2) lack of municipal health certification on Agustin's exposure to a COVID-19 positive patient.¹⁶

Tito requested¹⁷ for a certification as to the fact of denial of his petition. However, given the proximity of the scheduled printing of ballots on 19 January 2022 without any definitive response forthcoming from the COMELEC on his request, Tito filed this special civil action for *certiorari*¹⁸ seeking to annul the COMELEC's denial of EM-22-003. He now claims that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction on the following grounds:

- a. The COMELEC cannot judge for themselves whether the signature on the documents signed by Mr. Agustin was not

¹¹ Id. at 60-63.

¹² Id. at 55.

¹³ Id. at 57.

¹⁴ Id. at 58.

¹⁵ Id. at 67.

¹⁶ Id. at 6.

¹⁷ Id. at 68-71.

¹⁸ Id. at 3-73.

really his as the same was notarized. Furthermore, the authenticity of those signatures are supported by the Affidavit of petitioner himself and that of Partido Demokratikong Reporma's Secretary General;

b. The issue on the authenticity of signatures of Mr. Agustin was already settled when the Affidavit of Withdrawal of Mr. Agustin and the Certificate of Candidacy of petitioner were accepted by the receiving officer of the COMELEC;

c. The Certification issued by the Vice Chairperson of the COVID-19 Task Force dated November 12, 2021 (should be December 12, 2021) is enough to comply with the requirements under pertinent COMELEC resolutions or memoranda. Municipal health certification showing the alleged exposure of Mr. Agustin to a COVID positive would be a surplusage as this would serve no further purpose;

d. The said denial upheld the previous denial by the Legal Department which is bereft of power to refuse approval of the withdrawal by Mr. Agustin of his COC and to deny due course the substitution of petitioner Tito;

e. Assuming that it is possessed with such power, the Legal Department cannot exercise the same *motu proprio* (sic) or in the absence of any petition to deny due course and without notifying petitioner Tito in accordance with basic rules on due process;

f. Also, the Legal Department cannot anchor said denial on reasons cited in its December 7, 2021 letter as it is not provided by law; and

g. Mr. Agustin's repudiation of his COC cannot be given adverse effect to petitioner Tito's withdrawal since it was done without the former's personal appearance and without notifying Partido Reporma or petitioner Tito as it would result to violation of Partido Reporma's right to due process and unjust deprivation to fill in a candidate for a very important office of vice-governorship.¹⁹

Tito likewise prayed for the issuance of a writ of preliminary mandatory injunction to compel the COMELEC to include in the official ballots his name as the official candidate of Partido Reporma for the position of Vice Governor in the province of Davao de Oro.

In an Order dated 26 January 2022, this Court required²⁰ the COMELEC to comment on Tito's petition within a non-extendible period of ten (10) days from notice. Tito was also directed to submit a clearly legible duplicate original or certified true copy of the assailed COMELEC *En Banc* Resolution and to implead Agustin and Partido Reporma as parties, with the

¹⁹ Id. at 17-18.

²⁰ Id. at 74-A to 74-C.

latter being given the same ten day-period to file their respective comments on the petition. In the meantime, the Court issued a temporary restraining order (TRO) enjoining the COMELEC from enforcing the assailed *En Banc* Minute Resolution dated 12 January 2022 in EM-22-003.

As he was still unable to secure a copy of the assailed COMELEC Resolution, Tito filed a motion²¹ for extension of time to comply with the Court's directive. He claimed that while his counsel wrote the COMELEC to formally request for a copy of the resolution, the Office of the Clerk of the Commission sent a letter reply simply calling their attention to Section 2, Part IV, Rule 18 of the COMELEC Rules of Procedure and Section 5 of COMELEC Resolution No. 10673. Nevertheless, Tito committed to continue attempts to secure a copy of the assailed ruling. In due time, the Court received the Compliance²² and Amended Petition²³ filed by Tito with Partido Reporma, represented by its President Pantaleon D. Alvarez,²⁴ joining as co-petitioner (hereinafter, collectively referred to as 'petitioners').

The Office of the Solicitor General (OSG), on 07 February 2022, filed via email²⁵ a Comment²⁶ on behalf of respondent COMELEC. There, it maintained that the petition merits outright dismissal as it was filed without an attached written Decision being assailed in violation of Section 1, Rule 65 and par. 3 of Supreme Court Circular No. 1-88. In any case, the COMELEC asserts that the petition raises mere errors of judgment which are clearly beyond the ambit of a petition under Rule 65. With respect to the TRO, the COMELEC stated:

50. Finally, Respondent respectfully manifests that **even before the Honorable Court's issuance of the instant TRO on January 26, 2022, several pre-election activities, particularly those in preparation of the printing of the official ballots, have already commenced.** It also bears stressing that there are several other crucially important pre-election activities that are likewise dependent on the timely completion of the printing of the official ballots such as: (1) the Mandatory Preparatory Logic and Accuracy Tests (Pre-LAT), which guarantees the accuracy of the vote-count; and (2) the deployment of the machine-readable official ballots all over different regions of the country.

51. It is manifested that changes in the official ballot, introduced after the serialization of the machine-readable ballots and the configuration of the SD Cards may only be implemented by redoing the whole process, starting from the generation of the ballots. Particularly, any modification or correction on the ballot would require at least eight (8) days to

²¹ Id. at 77-89.

²² Id. at 90-95.

²³ Id. at 96-153.

²⁴ Id. at 149-150.

²⁵ Id. at 154.

²⁶ Id. at 155-173.

complete the process.

52. Given that the printing of the official ballots has already commenced, it is submitted that any adjustment, postponement or suspension on the same would be significantly detrimental to the timeliness of Respondent, which shall ultimately affect the conduct of credible elections.²⁷

In response, petitioners filed a Motion for Leave to File Reply and to Admit Reply²⁸ wherein they asserted that: (1) the failure to attach a copy of the assailed Resolution was due to the fault of the COMELEC who, despite several requests, has refused to issue a copy, even after the issuance of the TRO; (2) the COMELEC's findings of forgery on the documents signed by Agustin is not merely an error of judgment, but grave abuse of discretion; (3) the requirement of a Certification from the Municipal Health Officer (to excuse personal filing of a candidate identified to be a close contact of a person who tested positive for COVID-19) has no basis in law; (4) the COMELEC's act of denying the substitution without any action, proceeding, or petition questioning the validity of said substitution is grave abuse of discretion. Finally, petitioners assert that the COMELEC's non-compliance with the Court's TRO constitutes 'willful disobedience of the lawful process or order of this Honorable Supreme Court.' They thus pray that the COMELEC be held in contempt and the ballots for the province of Davao de Oro be considered invalid for having been printed in violation of the TRO.²⁹

More than a month later, petitioners filed a *Submission of Resolution*³⁰ furnishing the Court with a copy of an Order dated 07 March 2022 issued by the COMELEC *En Banc* dismissing EM-22-003. They thereafter prayed that the case now be submitted for resolution.

In said Order dated 07 March 2022,³¹ the COMELEC *En Banc* dismissed EM-22-003 which sought the approval of Agustin's withdrawal and his substitution by Tito as the official Partido Reporma candidate for Vice Governor for the province of Davao de Oro. The COMELEC *En Banc* reasoned that: (1) Section 39 of COMELEC Resolution No. 10717 clearly required the withdrawing candidate to personally file his statement of withdrawal. Records showed that the Statement of Withdrawal was not filed personally by Agustin³²; (2) Tito failed to establish that Agustin's case warrants an exception to the rule on personal filing³³; and (3) liberal construction of the rules cannot be justified in this case.³⁴

²⁷ Id. at 168-169. Emphasis supplied.

²⁸ Id. 175-193.

²⁹ Id. at 182-184.

³⁰ Id. at 197.

³¹ Id. at 200-205. It is noted, however, that the accompanying Notice, signed by Atty. Genesis M. Gatdula, Clerk of the Commission, states the date of the Order as 07 February 2022 (Id. at 198-199).

³² Id. at 203.

³³ Id. at 204-205.

³⁴ Id. at 205.

To date, the Court has yet to receive a Comment from Agustin.

Issue

This Court is asked to resolve whether the COMELEC committed grave abuse of discretion amounting to lack, or excess of, jurisdiction when it denied due course to the CoC filed by Tito as substitute official candidate of Partido Reporma for the position of Vice Governor of Davao de Oro.

Ruling of the Court

I

We first settle the technical issues attending this petition. It appears that the petition is dismissible on two grounds: mootness and Tito's failure to attach with the petition a copy of the judgment/order being assailed. For reasons to be explained hereunder, we find these two issues to be interrelated and shall thus proceed to discuss them jointly.

It is not disputed that EM-22-003 was dismissed by the COMELEC *En Banc* by way of its Order dated 07 March 2022. It is likewise not disputed that the petition, having been filed as early as January 2022, did not attach a copy of the COMELEC Order which it ultimately seeks to challenge.

Indeed, Section 3, Rule 46 in relation to Rule 65 of the Rules of Court requires that the petition 'be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof' such that a failure to so attach 'shall be sufficient ground for the dismissal of the petition.'

We find, however, that the peculiar circumstances of this case do not warrant a strict application of the foregoing rule.

First, under Section 40³⁵ of COMELEC Resolution No. 10717,³⁶ it

³⁵ This Section reads:

SECTION 40. Substitution of Aspirants/ Official Candidates in Case of Death, Disqualification or Withdrawal of Another. – An aspirant/official candidate of a duly registered PP or Coalition who dies, withdraws or is disqualified for any cause after the last day for the filing of COCs may be substituted by an aspirant/official candidate belonging to, and nominated by, the same PP or Coalition.

No substitute shall be allowed for any independent candidate.

The substitute of an aspirant who died, withdrew his candidacy, or was disqualified may file a COC for the Office affected on or before

provides that an official candidate of a duly registered political party or coalition who dies, withdraws, or is otherwise disqualified may be substituted by another candidate belonging to, and nominated by, the same political party or coalition. The same section requires that the CoC of the substituting candidate must be filed on or before **15 November 2021** 'so that the name of the substitute will be reflected on the official ballots.'

Here, Tito filed his CoC in substitution for Agustin on **15 November 2021**. Given that it was filed within the deadline set by the COMELEC, it can be reasonably presumed that there was sufficient time to resolve the matter of Tito's substitution prior to the printing of the official ballots.

Second, Tito claims that as early as 02 December 2021, the COMELEC had already resolved the matter of Tito's substitution when it published a list of official candidates for the position of Vice Governor of Davao de Oro for purposes of the May 2022 NLEs without Tito's name being included. This was not denied by the COMELEC in its letter dated 07 December 2021,³⁷ sent through its Law Department, where Tito was also informed that his CoC as substitute candidate for Agustin was not given due course.

Third, to contest the foregoing holding of the COMELEC Law Department, Tito filed a number of motions seeking to reverse the same.³⁸ These, however, were not immediately acted upon by the COMELEC.

Fourth, Tito claims that the COMELEC, on 28 December 2021, again posted a list of candidates for the May 2022 elections on its website. His name, however, was still not included among the candidates for the position of Vice Governor for Davao de Oro. Upon advice, Tito filed a formal petition which was later docketed as EM-22-003, the subject of this case.

Fifth, after hearing of the alleged dismissal of EM-22-003, Tito wrote the COMELEC several times³⁹ to request for a certification of the dismissal of his petition, presumably for purposes of elevating the same before the proper authorities. However, it appears from the record that it was only *after* this Court issued the TRO and directed petitioners to submit a copy of the assailed Resolution that the COMELEC deigned to respond⁴⁰ to Tito's requests. It also does not escape this Court's attention that the COMELEC

November 15, 2021 (Monday) so that the name of the substitute will be reflected on the official ballots.

³⁶ Also known as the 'RULES AND REGULATIONS GOVERNING: 1) POLITICAL CONVENTIONS; 2) SUBMISSION OF NOMINEES OF GROUPS OR ORGANIZATIONS PARTICIPATING UNDER THE PARTY-LIST SYSTEM OF REPRESENTATION; AND 3) FILING OF CERTIFICATES OF CANDIDACY AND NOMINATION OF AND ACCEPTANCE BY OFFICIAL CANDIDATES OF REGISTERED POLITICAL PARTIES OR COALITIONS OF POLITICAL PARTIES IN CONNECTION WITH THE MAY 9, 2022 NATIONAL AND LOCAL ELECTIONS.' Promulgated: 18 August 2021.

³⁷ Also referred to in some parts as Law Department Document No. 21-6753; *Rollo*, pp. 52-54.

³⁸ *Id.* at 60-65.

³⁹ *Id.* at 68-71.

⁴⁰ *Id.* at 139-140.

responded by making general references to some provisions in its Rules instead of directly informing Tito that his case was, at the time, still pending resolution by the COMELEC *En Banc*.

Sixth, it was only on 07 March 2022, or barely two (2) months from the May 2022 NLEs, that the COMELEC *En Banc* finally issued its Order dismissing Tito's petition.

The Court further notes the COMELEC's manifestation, contained in its Comment dated 03 February 2022, regarding its inability to comply with the TRO given that that the printing of the ballots has already commenced.⁴¹ Yet, in its response⁴² dated 09 February 2022 to a query from Tito's counsel, the COMELEC claims that it cannot give a categorical answer (to the question of whether the printing of the official ballots for the Province of Davao de Oro has already commenced) on account of a Non-Disclosure Agreement it signed with the National Printing Office.

As a general rule, this Court will not decide moot questions, or abstract propositions, or declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it.⁴³ The doctrine on mootness, however, is not without exceptions. Jurisprudence shows that courts may still decide a case otherwise moot and academic if it finds that: (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) **the case was capable of repetition yet evading review.**⁴⁴

Thus, and while the conclusion of the subject elections and the subsequent proclamation and assumption to office of the new officials of the Provincial Government of Davao de Oro have arguably rendered petitioner's prayers dismissible on the ground of mootness, We find that the case falls under the **fourth** exception to the mootness rule.

The circumstances previously enumerated, taken all together, support a view that the COMELEC has been, at best, less than forthright with respect to its handling of the matter of Tito's substitution. At worst, it would appear that the COMELEC would underhandedly have this Court dismiss Tito's case on a technicality which the COMELEC itself caused. This simply cannot be countenanced. Furthermore, and given that the period of time between the filing of CoCs and the actual elections is too short to be fully litigated prior to a case, such as this one, becoming moot, We thus find it proper to exercise our power of judicial review and settle this case on the merits.

⁴¹ Id. at 168-169.

⁴² Id. at 187-188.

⁴³ *Marquez v. Commission on Elections*, G.R. No. 244274, 03 September 2019.

⁴⁴ Id.

In other words, while indeed petitioner's prayer to be included in the official ballot as official candidate of Partido Reporma for the position of Vice Governor in the province of Davao de Oro has undoubtedly been rendered moot and academic, the issue of whether the COMELEC committed grave abuse of discretion remains unanswered.⁴⁵

II

Grave abuse of discretion has a precise meaning in remedial law. It is not mere abuse of discretion but must be grave 'as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.'⁴⁶ There must be a clear abuse of the authority vested in a tribunal. This abuse must be so serious and so grave that it warrants the interference of the Court to nullify or modify the challenged action and to undo the damage done.⁴⁷

We find, for reasons to be explained hereunder, that the COMELEC committed grave abuse of discretion amounting to lack, or excess of, jurisdiction when it denied due course to the CoC filed by Tito as substitute official candidate of Partido Reporma for the position of Vice Governor of Davao de Oro.

A

Section 73 of Batas Pambansa Blg. 881, or the Omnibus Election Code (OEC), states that a person who has filed a CoC may withdraw the same by submitting to the COMELEC a written declaration under oath. Section 77 of the OEC provides that in such case, the nominating political party may field a candidate to replace the one who died, withdrew or was disqualified.

When Tito filed his CoC as Partido Reporma's substitute candidate for the position of Vice Governor of Davao de Oro, he submitted the following documents: (a) a Statement of Withdrawal executed by Agustin formally withdrawing his candidacy and naming Tito as his substitute;⁴⁸ (b) an SPA signed by Agustin authorizing Tito to submit his Statement of Withdrawal

⁴⁵ See *Philippine National Bank v. Court of Appeals*, 353 Phil. 473, 480 (1998).

⁴⁶ *G.V. Florida Transport, Inc. v. Tiara Commercial Corp.*, 820 Phil. 235, 247 (2017).

⁴⁷ *Id.*

⁴⁸ *Rollo*, p. 41.

before the appropriate Comelec office;⁴⁹ and (c) a CONA signed by Senator Lacson, as Partido Reporma Chairman, in Tito's favor.⁵⁰

In denying due course to Tito's CoC, the COMELEC Law Department declared:

While it is true that there was a Special Power of Attorney issued by Mr. Agustin in favor of Mr. Tito authorizing him to submit his Sworn Statement of Withdrawal, it is important to note that while [COMELEC] Resolution No. 10717 requires the filing of Withdrawal of COCs to be PERSONALLY FILED by the withdrawing aspirant, filing thereof through an authorized representative is allowed in the following instances xxx:

1. The withdrawing aspirant is in an area under a granular lockdown or identified as a 'critical zone' by the concerned Local Government Unit (LGU);
2. The withdrawing aspirant was tested positive for COVID-19; and
3. The withdrawing aspirant was identified as a close contact with any person who was tested positive for COVID-19 and on quarantine or isolation.

In addition to the requirements set forth above, particularly, the Sworn Authority to file Sworn Statement of Withdrawal, Proof of Identity and the conduct of online verification by the Receiving Officer, the submission of either the following is required:

1. Certification issued by the Barangay Chairman or any other authorized office in the LGU, stating that the withdrawing aspirant is in an area under a granular lockdown or identified as 'critical zone' by the concerned LGU or was identified as a close contact with a person who was tested positive for COVID-19 and on quarantine or isolation; OR
2. Certification issued by a Physician stating that the withdrawing aspirant was tested positive for COVID-19.

In areas with no internet connectivity, in addition to the above-mentioned Certifications, the Receiving Officer is required to submit to the Commission the following:

1. Sworn Authority to File Sworn Statement of Withdrawal;
2. Proof of Identity of the duly authorized representative;

⁴⁹ Id. at 42.

⁵⁰ Id. at 44.

3. Video recorded in a compact disc (CD)/USB showing the video of the aspirant executing the Statement of Withdrawal of [CoC], showing clearly the act of signing of the said statement of withdrawal;
4. Picture of the withdrawing aspirant holding the duly signed Statement of Withdrawal of [CoC] shall likewise be saved in the same CD or USB;
5. A duly notarized Statement of Withdrawal of [CoC].⁵¹

In its Order dated 07 March 2022, the COMELEC *En Banc* affirmed its Law Department's findings and rejected Tito's argument of substantial compliance with the requirements for the filing of a Statement of Withdrawal.

Notably, the requirements cited by the COMELEC Law Department as basis for the denial of Tito's petition do **not** appear in COMELEC Resolution No. 10717. Said documents instead appear to only be required pursuant to 'a Memorandum of the Office of the Executive Director No. 21-2972 dated 02 October 2021 as supplemented by Memorandum of the Office of the Executive Director No. 21-3335-A dated 20 October 2021.'⁵²

Curiously, the COMELEC, in its Comment, did **not** traverse the issue of applicability of the requirements as above provided. The COMELEC *En Banc*'s Order dated 07 March 2022 similarly did **not** make any references to said Memoranda; it only cites Section 39 of COMELEC Resolution No. 10717.

Section 39 of COMELEC Resolution No. 10717 is hereinafter reproduced in full:

SECTION 39. Withdrawal of Certificate of Candidacy. – Any aspirant may personally file, at any time before Election Day and subject to Section 40 hereof, a sworn Statement of Withdrawal, in five (5) original copies, with the Office where the COC is filed.

No Statement of Withdrawal filed by a person other than the aspirant or if filed by mail, electronic mail, or facsimile shall be accepted.

The Regional Election Director, Provincial Election Supervisor, or the Election Officer concerned, upon the receipt of the sworn Statement of Withdrawal, shall notify the Law Department through electronic mail at law.coc@comelec.gov.ph in PDF format of the said withdrawal, stating the following:

⁵¹ Id. at 53, emphasis omitted.

⁵² Id.

- a. Name of the withdrawing aspirant;
- b. Position aspired for;
- c. Nominating PP or Coalition of PP, if any; and
- d. Name of the substitute, if any.

On the same day, the Receiving Officer shall immediately forward to the Law Department, two (2) original copies of the sworn Statement of Withdrawal. The Law Department shall, in turn, forward the other copy to the ERSD.

The Receiving Officer shall retain the three (3) remaining copies of the sworn Statement of Withdrawal for file.

The filing of a sworn Statement of Withdrawal of a COC shall not affect whatever civil, criminal or administrative liability an aspirant may have incurred.

The Law Department is authorized to act on all sworn Statements of Withdrawal and substitution of aspirants for local position. All actions of the Law Department shall remain valid and effective unless otherwise reversed or set aside by the Commission.

All sworn Statements of Withdrawal and substitution of aspirants for national positions shall be submitted to the Commission *En Banc* for resolution.

A sample form of the Statement of Withdrawal is hereto attached as **Annex 'N'**.

As earlier adverted to, there is clearly nothing in the above-cited Section which provides the requirements being asked of Tito. On the contrary, Section 39 of COMELEC Resolution No. 10717 only requires the submission of a Sworn Statement of Withdrawal signed by the withdrawing candidate. This was submitted by Tito when he filed his CoC as Partido Reporma substitute vice-gubernatorial candidate.

More significantly, no copy of the afore-cited Memoranda can be found through a cursory internet search.⁵³ There is also nothing in the records to show that the said Memoranda were ever published (whether online or in print) as to sufficiently inform those concerned of the existence of said requirements. In *Arroyo v. Department of Justice*,⁵⁴ We held that the publication requirement applies to both statutes and administrative regulations and issuances:

Publication is a necessary component of procedural due process to give as wide publicity as possible so that all persons having an interest in the proceedings may be notified thereof.

⁵³ As of 20 April 2022.

⁵⁴ 695 Phil. 302 (2012).

The requirement of publication is intended to satisfy the basic requirements of due process. It is imperative for it will be the height of injustice to punish or otherwise burden a citizen for the transgressions of a law or rule of which he had no notice whatsoever.⁵⁵

Viewed in this light, the COMELEC's action is tainted with grave abuse of discretion, as it not only appeared to have expanded the requirements of the law with respect to withdrawals of CoCs, it also applied the same *sans* proof that said requirements have been duly published for due process purposes.

B

Personal filing by the aspirant is mandated under Section 39 of COMELEC Resolution No. 10717 for purposes of withdrawing a candidacy. We nevertheless find, based on the documents submitted by Tito in support of the substitution sought, that the evil sought to be prevented by the requirement of personal filing - presumably, the filing of spurious withdrawals- has been sufficiently avoided. In fact, even granting *in gratia argumenti* the applicability of the requirements under the Memoranda cited by the COMELEC, We find that Tito was able to show substantial compliance with the same.

Aside from Agustin's notarized Statement of Withdrawal⁵⁶ the SPA he issued authorizing Tito to submit the same before the appropriate COMELEC office,⁵⁷ and the CONA⁵⁸ signed by Senator Lacson, as Partido Reporma Chairman, naming Tito as the party's official candidate, the records also show: (a) a Certification⁵⁹ dated 15 November 2021 issued by Partido Reporma Secretary General Edwin Jubahib (Jubahib) certifying that Agustin informed them of his inability to personally file his Statement of Withdrawal as he was identified as a close contact of a person who had tested positive for COVID-19; (b) a Certification⁶⁰ dated 12 January 2022 issued by Rodel G. Balili, Vice Chairperson of the COVID-19 Task Force in the Municipality of Nabunturan, where Agustin resides,⁶¹ to the effect that Agustin was identified to be a close contact of a person who had tested positive for COVID-19; and (c) the Affidavit⁶² dated 15 November 2021 executed by Jubahib attesting to the fact that he personally witnessed Agustin sign the Statement of Withdrawal.

⁵⁵ Id. at 309.

⁵⁶ *Rollo*, p. 41.

⁵⁷ Id. at 42.

⁵⁸ Id. at 44.

⁵⁹ Id. at 46.

⁶⁰ Id. at 47.

⁶¹ Id. at 42.

⁶² Id. at 50-51.

C

Justice Arturo Brion, in his Opinion in *Talaga v. Commission on Elections*,⁶³ explained the concept of substitution in the context of elections: 'Substitution refers to an exceptional situation in an election scenario where the law leans backwards to allow a registered party to put in place a replacement candidate when the death, withdrawal or disqualification of its original candidate occurs.'⁶⁴

Section 77 of the OEC governs cases of substitution, thus:

Section 77. *Candidates in case of death, disqualification or withdrawal of another.* - If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission.

For purposes of the upcoming May 2022 NLE, Section 40 of COMELEC Resolution No. 10717 further provides that:

SECTION 40. *Substitution of Aspirants/ Official Candidates in Case of Death, Disqualification or Withdrawal of Another.*

– An aspirant/official candidate of a duly registered PP or Coalition who dies, withdraws or is disqualified for any cause after the last day for the filing of COCs may be substituted by an aspirant/official candidate belonging to, and nominated by, the same PP or Coalition.

No substitute shall be allowed for any independent candidate.

The substitute of an aspirant who died, withdrew his candidacy, or was disqualified may file a COC for the Office affected on or before **November 15, 2021 (Monday)** so that the name of the substitute will be reflected on the official ballots.

⁶³ 696 Phil. 786 (2012).

⁶⁴ Id. at 918.

No substitution due to withdrawal shall be allowed after November 15, 2021.

The substitute for an aspirant/candidate who died or was disqualified by final judgment, may file a COC up to mid-day of Election Day; Provided that, the substitute and the substituted aspirant/candidate have the same surnames.

If the death or disqualification should occur between the day before the election and mid-day of Election Day, the substitute may file a COC with any of the Electoral Board, Election Officer, Provincial Election Supervisor or Regional Election Director, as the case may be, in the political subdivision where the person is a candidate, or in the case of a candidate for President, Vice President and Senator, with the Law Department; Provided that, the substitute and substituted candidate have the same surnames.⁶⁵

The OEC does not expressly speak of repudiation. Section 31(c) of COMELEC Resolution No. 10717, on the other hand, declares one who has repudiated a CONA from a duly registered political party or coalition to be an independent candidate who, under Section 40, cannot be validly substituted. In addition, while existing regulations provide for a deadline for the withdrawal (and substitution of withdrawing candidates), the same is not true for cases of repudiation.

In this case, the question as to whether Agustin *in fact* withdrew his candidacy or repudiated his nomination as official Partido Reporma candidate for the position of Vice Governor, Davao de Oro, persists. Ultimately, however, if the COMELEC's denial of Tito's CoC in this case is sustained, the fact would remain that regardless of whether Agustin withdrew his candidacy or repudiated the CONA issued to him, Partido Reporma will be left without a candidate from its own ranks and of its own choosing, for Vice Governor of the Province of Davao de Oro. To this Court's mind, this is deplorable as it not only operates to defeat Partido Reporma's right (under Section 77 of the OEC) to field a substitute candidate belonging to its party, it also unduly limits the exercise of the sovereign will of the electorate to be expressed through the ballot.

On this score, We find *apropos* Justice Brion's reminder that 'a failsafe method in an election situation is to give premium consideration not to the candidates or their parties, but to the electorate's process of choice and the integrity of the elections.'⁶⁶ In view of the attendant legal or factual equipoise situation, this Court leans towards the integrity of the electoral process and holds that Tito's CoC, as substitute Partido Reporma candidate for the position of Vice Governor of Davao de Oro, should have been given

⁶⁵ Emphases appear in the original.

⁶⁶ *Supra* note 64, at 918.

due course.

III

This Court has noted, earlier in this Resolution, the COMELEC's less than commendable handling of the matter subject of this case. Its decision to not comply with the TRO issued by this Court, as contained in the COMELEC's Resolution dated 26 January 2022,⁶⁷ is likewise keenly noted.

These, in turn, bring to mind the case of *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections*,⁶⁸ where this Court issued a severe reprimand to the COMELEC Chair and its Members for their failure to comply with a *Status Quo* Order issued by the Court.

In said case, the Court issued a *Status Quo* Order dated 02 February 2010 (and which was served on the same date) directing the COMELEC to include PGBI in the list of candidates under the party-list system in the 10 May 2010 elections pending the final determination of PGBI's qualification to be voted upon as a party-list organization. On 03 February 2010, the COMELEC manifested that it could no longer change the ballots because of the nature of an automated election. It pleaded insurmountable and tremendous operational constraints and costs implications of the automation of the elections as reasons for its avoidance of the Court's Order. Thus, and the Court's order notwithstanding, PGBI was never included in the ballot and, as a consequence, never voted upon as a party-list candidate in the 10 May 2010 elections.

After proceedings, the Court found the COMELEC's explanation unacceptable. It noted the COMELEC's own self-imposed deadline of 04 February 2010 for the correction of errors and omissions, prior to printing, of the published list of participating party-list groups and organizations in the 10 May 2010 elections:

The Comelec deadline could only mean that the Comelec had determined that changes in the official ballot could still be made at any time prior to the deadline. In the context of the cases then pending involving the registration of party-list organizations, the deadline was a clear signal from the Comelec that the cases would have to be resolved before the deadline; otherwise, the Comelec could not be held liable for their non-inclusion.

XXX

⁶⁷ Rollo, pp. 175-186.

⁶⁸ 661 Phil. 427 (2011).

In an exercise as important as an election, the Comelec cannot make a declaration and impose a deadline, and, thereafter, expect everyone to accept its excuses when it backtracks on its announced declaration. The Comelec knew very well that there were still cases pending for judicial determination that could have been decided before the deadline was set.

xxx

To be excused, the Comelec needed more than its generalized descriptions of the process of ballot printing and the alleged problems it faced. We needed reasons on how and why the deadline was set, as well as detailed and specific reasons why PGBI could no longer be listed while other errors and omissions could still be remedied.

Unfortunately for the Comelec, we did not see that kind of justification in its Compliance before us. Like the Comelec, we expect obedience to and respect for our Orders and Resolutions, and we cannot be sidetracked based solely on supposed operational constraints caused by the automated polls. Its treatment of our *Status Quo* Order simply meant that even before the Comelec deadline, a definitive ruling that a party-list organization should be included in the list to be voted upon would have been for naught as the Comelec would have anyway pleaded automation constraints. Even if its excuse had been meritorious, the Comelec effectively would have been guilty of misrepresentation on an election matter and in dealing with this Court.⁶⁹

This Court finds circumstances similar to the foregoing to obtain in this case. Here, the COMELEC itself set the deadline for filing of withdrawals (and substitutions) on 15 November 2021. This is presumably to give the COMELEC sufficient time to resolve any pending incidents regarding the matter of withdrawals and substitution so that ‘the name of the substitute will be reflected on the official ballots.’⁷⁰ Despite Tito’s compliance with said deadline, however, the COMELEC *En Banc* did **not** settle the issue of Tito’s substitution until 07 March 2022, or nearly two (2) months *after* it had started the printing of official ballots on 23 January 2022.⁷¹


In the meantime, and similar to what transpired in *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections*,⁷² the COMELEC, in its Comment to the petition, once again invoked the specter of possible derailment of the conduct of elections to justify non-compliance with the TRO issued by the Court:

⁶⁹ Id. at 439-440.

⁷⁰ COMELEC Resolution No. 10717, Sec. 40.

⁷¹ See <<https://newsinfo.inquirer.net/1543905/aes-ballot-printing-for-barmm-to-start>, last accessed 20 April 2022. See also <https://www.bworldonline.com/the-nation/2022/01/23/425225/comelec-starts-printing-ballots-for-may-elections/>> (visited 20 April 2022).

⁷² Supra note 69.



51. It is manifested that changes in the official ballot, introduced after the serialization of the machine-readable ballots and the configuration of the SD Cards, may only be implemented by redoing the whole process, starting from the generation of the ballots. Particularly, any modification or correction on the ballot would require at least eight (8) days to complete the process.

52. Given that the printing of the ballots has already commenced, it is submitted that any adjustment, postponement or suspension on the same would be significantly detrimental to the timeliness of [the COMELEC], which shall ultimately affect the conduct of credible elections.⁷³

As it turns out, the printing the ballots was completed on 02 April 2022, more than three (3) weeks from its target end date of 25 April 2022.⁷⁴ The COMELEC, as conscious as it was of the importance of observing timelines, failed to exert the same level of vigilance in resolving Tito's petition prior to the printing. Its ambiguous (and as it now turns out, disingenuous) responses to petitioner's repeated requests and queries regarding the status of his case also do not serve to inspire confidence that earnest efforts were indeed taken to resolve the case expeditiously. As a result, the COMELEC, wittingly or not, effectively disenfranchised voters who would have wanted to vote for a *bona fide*⁷⁵ Partido Reporma candidate for Vice Governor of Davao de Oro. As held by the Court in *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections*,⁷⁶ 'this is a consideration no less weighty than the automation of the election and cannot be simply disregarded on mere generalized allegations of automation difficulties.'

While the Court, like the COMELEC, is ever mindful of the necessity of observing the calendar of election activities, the latter is reminded that timeliness in the context of the conduct of credible elections covers *all* aspects of its election-related activities. This includes the COMELEC's timely resolution of incidents which require its final action so as not to defeat any substantive rights. Any undue delay in the resolution of the cases pending before it not only prejudices the litigants, but ultimately, the electorate as well.⁷⁷

⁷³ Rollo, pp. 168-169.

⁷⁴ Per Official Twitter Account of COMELEC, <https://twitter.com/COMELEC/status/1510096571781713925?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1510096571781713925%7Ctwgr%5E%7Ctwco%5Es1_c10&ref_url=https%3A%2F%2Fnewsinfo.inquirer.net%2F1577133%2Fcomelec-completes-printing-of-ballots-ahead-of-target-date> (visited 20 April 2022).

⁷⁵ Notably, in spite of everything that has transpired and contrary to its findings as stated in its Order dated 07 March 2022, the COMELEC website still listed Agustin as the official candidate of Partido Reporma for the position of Vice Governor of Davao del Oro. See Annex R to the Petition; rollo, p. 67. See also https://comelec.gov.ph/php-tpls-attachments/2022NLE/TentativeListsofCandidates/R11/DAVAO_DE_ORO/PROVINCIAL.pdf (visited 20 April 2022).

⁷⁶ Supra note at 69.

⁷⁷ See *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 452 Phil. 899 (2003).

Done

WHEREFORE, all the foregoing premises considered, the petition is **PARTLY GRANTED**.

The COMELEC is found to have committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied due course to the COC filed by petitioner Francisco Juegos Tito as substitute official candidate of Partido Reporma for the position of Vice Governor of Davao de Oro. The prayer to be included in the official ballot as official candidate of Partido Reporma for the position of Vice Governor in the province of Davao de Oro is, however, **DISMISSED** insofar as it has already become **MOOT** and **ACADEMIC**.

The COMELEC is also **STERNLY REMINDED** that the timely resolution of cases also forms part and parcel of its sacred duty of safeguarding the people's right of suffrage. Any undue delay in the resolution of the cases pending before it not only prejudices the litigants, but ultimately, the electorate it is expected to protect as well." Inting, J., no part. Lopez, M., J., on leave. Kho, Jr., J., no part. Singh, J., on leave. (33)

By authority of the Court:



MARIFE M. LOMIBAO-CUEVAS

Clerk of Court *per*

ATTY. MICHAEL PERT D. GONZAGA (reg)
Counsel for Petitioner
2nd Floor, DCT Building
Rizal Street, Tagum City
Davao del Norte
mpglawoffice2019@gmail.com


ATTY. CHARINA C. CABRERA (reg)
Counsel for Petitioner
#82 Walnut Drive, Ecoland Subdivision
Phase 7, Matina 8000 Davao City

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COMELEC (x)
Intramuros, Manila

THE SOLICITOR GENERAL (x)
Office of the Solicitor General
134 Amorsolo St., Legaspi Village
Makati City

ALEXANDER PETALCORIN AGUSTIN (reg)
Purok 8, Brgy. Mainit, Nabunturan
Davao de Oro



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