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Republic of the Philippines  
SUPREME COURT  
Manila

SUPREME COURT  
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SMARTMATIC  
CORPORATION,  
SMARTMATIC PHILIPPINES,  
INC.

TIM  
AND

*Petitioners,*

**270564**

Case No.: \_\_\_\_\_

For: Petition for *Certiorari*  
under Rule 65 of the Rules of  
Court with Prayer for the  
Issuance of a Temporary  
Restraining Order and/or  
Writ of Preliminary  
Injunction with urgent  
motion for special raffle

COMMISSION ON  
ELECTIONS *EN BANC*, ELISEO  
MIJARES RIO JR, AUGUSTO  
CADELIÑA LAGMAN,  
FRANKLIN FAYLOGA YSAAC  
AND LEONARDO OLIVERO  
ODOÑO

*Respondents,*

X-----X

**PETITION FOR CERTIORARI**  
**(With Extremely Urgent Application for the Issuance of a**  
**Temporary Restraining Order and/or Writ of Preliminary**  
**Injunction)**  
**With**  
**URGENT MOTION FOR SPECIAL RAFFLE**

Petitioners SMARTMATIC TIM CORPORATION<sup>1</sup>  
("Smartmatic TIM") and SMARTMATIC PHILIPPINES, INC.

<sup>1</sup> The Assailed Resolution refer to Smartmatic Philippines, Inc. However, the entity that participated in the proceedings before the Commission on Elections *en banc* is Smartmatic TIM Corporation, which entered into the Contract for the Secure Electronic Transmission Services (SETS) for the 2022 NLE Election Results dated 12 October 2021, as provider.

("Smartmatic PH") (collectively, the "Petitioners" or "Smartmatic"), by counsel, respectfully state:

### PREFATORY STATEMENT

The crux of this Petition is the whimsical and capricious exercise of judgment by the Commission on Elections ("COMELEC") in disqualifying Smartmatic from participating in the procurement process for the 2025 Automated Election System ("2025 AES"),<sup>2</sup> in gross violation of Smartmatic's right to due process.

While invoking its power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall" under Section 2(1) of Article IX-C of the 1987 Constitution, the COMELEC, in violation of the very constitutional provision it cites, arrogated upon itself the authority to determine the qualification of Smartmatic as a bidder in the procurement process for the 2025 AES, outside of the existing law on procurement - Republic Act No. 9184 ("R.A. 9184"), otherwise known as the "Government Procurement Reform Act," and its Implementing Rules and Regulations ("IRR").<sup>3</sup>

Acting on rumors that were never alleged, much less substantiated, in the proceedings before it, and without even giving Smartmatic the opportunity to refute the same, the COMELEC unjustly branded Smartmatic as an "imminent threat to the strength and integrity of our democratic processes,"<sup>4</sup> in stark contradiction to its own categorical finding that no irregularities attended the 2022 National and Local Elections ("NLE").<sup>5</sup>

Indeed, since 2010, Smartmatic, in all its dealings with the COMELEC and in the performance of its obligations under the various contracts relating to the past NLEs, has exhibited unquestionable competence and reliability, thus making the Philippines a model for automated elections in Southeast Asia. Ironically, Smartmatic is being disqualified even after its flawless performance in the 2022 NLE which

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<sup>2</sup> Certified true copies of the *Resolution* ("Assailed Resolution") and *Separate Opinion* of Honorable Commissioner Aimee P. Ferolino ("Separate Opinion") dated 29 November 2023 are attached hereto as Annexes "A" and "A-1", respectively, and made integral parts hereof.

<sup>3</sup> Assailed Resolution attached as Annex "A" hereof, p. 13.

<sup>4</sup> Assailed Resolution attached as Annex "A" hereof, p. 14.

<sup>5</sup> Assailed Resolution attached as Annex "A" hereof, p. 15.

has been widely reported as having the fastest transmission of election returns since the country adopted the AES in 2010.<sup>6</sup>

Worse, the COMELEC decided to disqualify Smartmatic just days before the submission of bids for the 2025 AES, leaving Smartmatic with very a small window to assail the grave injustice committed against it.

At the core of this Petition is the COMELEC's blatant disregard of Smartmatic's right to due process as enshrined in no less than the 1987 Constitution, on which the COMELEC bases its arbitrary decision.

It is axiomatic in our jurisdiction that due process is not a mere procedural formality; rather, it serves as a barrier that shields individuals, including juridical entities, from the arbitrary and unjust actions by the State.<sup>7</sup> It demands that every party-litigant be afforded a fair hearing, the opportunity to present a defense, and judgment by an impartial tribunal,<sup>8</sup> all of which Smartmatic was deprived of in the proceedings *a quo*.

Lamentably, the burden now rests upon this Honorable Court to correct the actions of the COMELEC, not only for sake of vindicating Smartmatic's rights, but, more importantly, to uphold the clear and plain language of Section 2(1) of Article IX-C of the 1987 Constitution and the constitutional bounds of the powers of the COMELEC. Surely, the COMELEC cannot invoke its power to enforce and administer a law without a law, and in matters of procurement, separate from R.A. No. 9184. Verily, the objective of R.A. No. 9184, as crafted by Congress, is to safeguard public interest by ensuring a fair, honest, and competitive public bidding environment through strict adherence to bidding process rules, regulations, and guidelines.<sup>9</sup> This Honorable Court, as a bastion of justice, should not permit the brazen disregard of basic considerations of due process, lest a floodgate be opened to permit the unfettered discretion of government agencies to whimsically and capriciously decide whom to allow to participate in government procurement processes.

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<sup>6</sup> See Inquirer.net, Tina G. Santos, Fastest results, highest turnout, says Comelec of 2022 polls, available at <https://newsinfo.inquirer.net/1595907/fastest-results-highest-turnout-says-comelec-of-2022-polls> (last accessed on 11 October 2023), a printout of which is attached hereto as Annex "B" and made an integral part hereof.

<sup>7</sup> Garry v. Incay v. People, G.R. No. 223506, 28 November 2016

<sup>8</sup> *Ibid.*

<sup>9</sup> Felicitas v. Yunting, G.R. No. 232252 (Notice), 8 March 2022.

## I.

### NATURE AND PROPRIETY OF THE PETITION

1.1. This is a Petition for *Certiorari* under Rule 65 of the Rules of Court (the “Petition”) seeking to annul and set aside the *Resolution* dated 29 November 2023 (“Assailed Resolution”), in the case entitled “*In the matter of the petition to review the qualifications of Smartmatic Philippines, inc. as a prospective bidder in view of its failure in the 2022 elections to comply with the minimum system capabilities that resulted in serious and grave irregularities in the transmission and receipt of elections returns and, if warranted, to disqualify Smartmatic from participating in the bidding for the 2025 automated election system*” docketed as E.M. No. 23-003 before the COMELEC *En Banc*, for having been issued with grave abuse of discretion, amounting to lack or excess of jurisdiction.

1.2. Under Section 2, Article IX-C of the 1987 Constitution, the COMELEC exercises both administrative and quasi-judicial powers. In *Baytan v. COMELEC*,<sup>10</sup> this Honorable Court differentiated between these two functions, explicitly stating that under Section 2 of Article IX-C of the Constitution,<sup>11</sup> subsections 2(1), (3) – (9) are exercised under

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<sup>10</sup> G.R. No. 153945, 4 February 2003.

<sup>11</sup> SECTION 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

(4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens’ arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

the administrative functions of the COMELEC while it exercises quasi-judicial functions in relation to those cases enumerated under Section 2(2), viz:

“Under Section 2, Article IX-C of the 1987 Constitution, the COMELEC exercises both administrative and quasi-judicial powers. The COMELEC’s administrative powers are found in Section 2 (1), (3), (4), (5), (6), (7), (8), and (9) of Article IX-C.<sup>21</sup> The 1987 Constitution does not prescribe how the COMELEC should exercise its administrative powers, whether *en banc* or in division. The Constitution merely vests the COMELEC’s administrative powers in the "Commission on Elections," while providing that the COMELEC "may sit *en banc* or in two divisions." Clearly, the COMELEC *en banc* can act directly on matters falling within its administrative powers. Indeed, this has been the practice of the COMELEC both under the 1973 and 1987 Constitutions.”

9.1. As stated in the Assailed Resolution, the COMELEC invoked its purported authority under Section 2(1), Article IX-C of the 1987 Constitution in disqualifying and disallowing Smartmatic from participating in the procurement process for the 2025 AES. Hence, Smartmatic was exercising its administrative powers when it issued the Assailed Resolution. However, in the same breath, the COMELEC admits that such issuance was done separately and distinctly from the exercise of any power conferred by law under R.A. 9184.<sup>12</sup>

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Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

(7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

(8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.

(9) Submit to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

<sup>12</sup>

Assailed Resolution attached as **Annex "A"** hereof, p. 13.

“Separately, however, to the power granted to the Commission (En Banc) as the Procuring Entity under relevant procurement laws, Sec. 2 (1) of Article IX of the 1987 Constitution grants upon the Commission the broad power to ‘enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.”

1.3. While the COMELEC *en banc* cites its constitutional power to enforce and administer laws, it ironically admitted that it is exercising such power outside of the very law it is mandated to enforce and administer. Undoubtedly, the law which the COMELEC *en banc* was mandated to enforce and administer is R.A. 9184 in relation to R.A. No. 8436.

1.4. R.A. No. 8436 [as amended by R.A. No. 9369] otherwise known as the “*Automated Election Systems Act*,” constitutes the COMELEC as the HoPE and mandates it to procure equipment and materials for the automated elections:

“Section. 12. Procurement of Equipment and Materials. - To achieve the purpose of this Act, the Commission is authorized to procure, in accordance with **existing laws**, by purchase, lease, rent or other forms of acquisition, supplies, equipment, materials, software, facilities, and other service, from local or foreign sources free from taxes and import duties, subject to accounting and auditing rules and regulation.”<sup>13</sup>

1.5. In *Pabillo v. COMELEC*,<sup>14</sup> this Honorable Court held that the “existing laws” adverted to in R.A. No. 8436 [as amended by R.A. No. 9369] is none other than R.A. 9184. The COMELEC was therefore exercising its administrative functions as the HoPE under R.A. 9184 in relation to R.A. No. 8436, as amended, when it issued the Assailed Resolution.

1.6. In fact, the *Petition* dated 15 June 2023, *Supplemental Petition* dated 29 June 2023 and *Second Supplemental Petition* dated 11 September 2023 (collectively “*Petitions*”)<sup>15</sup> filed by Private

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<sup>13</sup> Emphasis supplied.

<sup>14</sup> G.R. Nos. 216098 & 216562, 21 April 2015.

<sup>15</sup> Copies of the *Petition* dated 15 June 2023 (“*Petition*”), *Supplemental Petition* dated 29 June 2023 (“*Supplemental Petition*”), and *Second Supplemental Petition* dated 11 September

Respondents themselves are addressed to the COMELEC as the HoPE and referred to the Bids and Awards Committee ("BAC") which is constituted for procurement activities under R.A. 9184, thus:<sup>16</sup>

"2. The qualifications of Smartmatic be reviewed by the BAC in view of the serious and material irregularities in the transmission and reception of election results in the system which Smartmatic developed and provided for the 09 May 2022 Elections;

3. If serious and grave irregularities are not satisfactorily explained by Smartmatic, that the Honorable Commission as the Head of the Procuring Entity to instruct/order the BAC to disqualify or declare ineligible Smartmatic from participating in the procurement for the 2025 Automated Election System; and

[xxx]."

9.2. In rendering the Assailed Resolution separately from the very law it was mandated to enforce and without legal basis, the COMELEC erroneously interpreted the bound of its powers under Section 2(1), Article IX-C of the 1987 Constitution, in violation of its constitutional mandate under the same provisions, and in derogation of the wisdom of the legislature.

9.3. To stress, the procedures provided under R.A. No. 9184 and its IRR are mandatory and cannot be simply swept aside by the Commission. It is the Philippine legislature, in its wisdom, that passed R.A. No. 9184 into law and in turn, the Government Procurement Policy Board in the exercise of its quasi-legislative or rule-making power, which issued the IRR. It would thus, in fact, be a violation of Section 2 (1), Article IX-C of the 1987 Constitution for the Commission to disregard these procedures.

9.4. Verily, the COMELEC has no power to amend the law it is enforcing or supply itself with a procedure different therefrom. It must be recalled that the separation of powers is a fundamental principle in our system of government. R.A. No. 9184 and its IRR were crafted meticulously and intentionally to ensure that the rights of all parties involved in the bidding of government projects, the bidders

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2023 ("Second Supplemental Petition") are attached hereto as Annexes "C" to "E", respectively, and made integral parts hereof.

<sup>16</sup> See Petition attached as Annex "C" hereof, p. 9.

themselves, the government and more importantly, the public, are protected. Not least of these rights is the right to due process.

9.5. In *Diocese of Bacolod v. COMELEC*,<sup>17</sup> where the act of the COMELEC Law Department of issuing a letter directing the removal of tarpaulins was questioned, the COMELEC as respondent argued that a petition for certiorari filed directly with this Honorable Court violated the doctrine of hierarchy of courts:

“Respondents contend that petitioners’ failure to file the proper suit with a lower court of concurrent jurisdiction is sufficient ground for the dismissal of their petition. They add that observation of the hierarchy of courts is compulsory, citing *Heirs of Bertuldo Hinog v. Melicor*. While respondents claim that while there are exceptions to the general rule on hierarchy of courts, none of these are present in this case.”

9.6. In *Diocese of Bacolod*, this Honorable Court discussed, by way of exception to the **general rule on hierarchy of courts**, that recourse to this Honorable Court is permitted if one of the following situations is present:

- 1.) When there are genuine issues of constitutionality that must be addressed at the most immediate time;
- 2.) Issues involved are of transcendental importance;
- 3.) Cases of first impression;
- 4.) **The constitutional issues raised are better decided by this court;**
- 5.) The time element presented in this case cannot be ignored;
- 6.) **The filed petition reviews the act of a constitutional organ;**
- 7.) Petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law; and
- 8.) The petition includes questions that are “dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.”

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<sup>17</sup> G.R. No. 205728, 21 January 2015.



9.7. Of particular importance is this Honorable Court's discussion regarding the situations mentioned in item nos. (4) and (6):

"Fourth, the constitutional issues raised are better decided by this court. In *Drilon v. Lim*, this court held that:

'... it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion.'

**In this case, it is this court, with its constitutionally enshrined judicial power, that can rule with finality on whether COMELEC committed grave abuse of discretion or performed acts contrary to the Constitution through the assailed issuances.**

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Sixth, the filed petition reviews the act of a constitutional organ. COMELEC is a constitutional body. In *Albano v. Arranz*, cited by petitioners, this court held that '[i]t is easy to realize the chaos that would ensue if the Court of First Instance of each and every province were [to] arrogate itself the power to disregard, suspend, or contradict any order of the Commission on Elections: that constitutional body would be speedily reduced to impotence.'"

**In this case, if petitioners sought to annul the actions of COMELEC through pursuing remedies with the lower courts, any ruling on their part would not have been binding for other citizens whom respondents may place in the same situation.** Besides, this court affords great respect to the Constitution and the powers and duties

imposed upon COMELEC. **Hence, a ruling by this court would be in the best interest of respondents, in order that their actions may be guided accordingly in the future.**

9.8. A close examination of *Albano v. Arranz*,<sup>18</sup> cited by this Honorable Court in *Diocese of Bacolod*, shows that the basis of this Honorable Court's Decision therein was the 1935 Constitution which expressly states "that the decisions, orders, and rulings of the Commission shall be subject to review by this Honorable Court":

"Even assuming that the order to suspend the proclamation of the winner was in any way defective, the correction thereof did not lie within the authority of the statutory Courts of First Instance, since Article X, section 2 (in fine) expressly prescribes "that the decisions, orders, and rulings of the Commission shall be subject to review by this Honorable Court" and by no other tribunal (*Luison v. Garcia*, G. R. No. L-10916, May 20, 1957). **It is easy to realize the chaos that would ensue if the Court of First Instance of each and every province were to arrogate unto itself the power to disregard, suspend, or contradict any order of the Commission on Elections: that constitutional body would be speedily reduced to impotence.**"

9.9. This provision was likewise adopted, albeit with modification, in Article IX of the 1987 Constitution:

"Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to this Honorable Court on**

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<sup>18</sup> G.R. No. L-19260, 31 January 1962.

**certiorari by the aggrieved party within thirty days from receipt of a copy thereof.**

9.10. Here, considering the constitutional issue as regards the limits of the powers of the COMELEC (a constitutional organ) under Section 2(1), Article IX-C of the 1987 Constitution, this Honorable Court is the proper court to decide on the issues raised herein pursuant to *Diocese of Bacolod*.

9.11. In fact, even before *Diocese of Bacolod*, this Honorable Court, and the COMELEC *en banc* itself, already recognized that a petition for certiorari filed before this Honorable Court is the proper remedy to assail a decision of the COMELEC *en banc* in the exercise of its administrative powers. Hence, in *Herbert Chua v. COMELEC*,<sup>19</sup> this Honorable Court held, thus:

“The records bear out, however, that Chua failed to take the proper legal remedy in questioning the ruling of Comelec En Banc within the reglementary period. He received a copy of the Resolution dated April 7, 2017 of the Comelec First Division on April 11, 2017.<sup>21</sup> Six (6) days thereafter, on April 17, 2017, he filed a motion for reconsideration which the Comelec En Banc denied in its Resolution dated November 6, 2017. **He received a notice of the said denial on November 9, 2017, thereby giving him twenty-four (24) days to file a petition for certiorari with this Court.**”

1.7. Notably, Smartmatic has no other legal remedy except to file the present Petition with this Honorable Court as a motion for reconsideration of an *en banc* ruling, resolution, order or decision is a prohibited pleading under Section 1, Rule 13 of the COMELEC Rules of Procedure.<sup>20</sup>

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<sup>19</sup> G.R. No. 236573, 14 August 2018.

<sup>20</sup> Rule 13, Section 1 of the COMELEC Rules of Procedure states:

“Section 1. What Pleadings are not Allowed. - The following pleadings are not allowed:

(a) motion to dismiss;

(b) motion for a bill of particulars;

1.8. Indeed, for reasons solely attributable to the arbitrary acts of the COMELEC, disregarding the mandatory provisions of R.A. 9184 and allowing the Petitioners to raise procurement issues directly before it, Smartmatic was deprived of the opportunity to avail of the processes and remedies under the law which the COMELEC was constitutionally mandated to enforce and administer. Hence, in line with *Diocese of Bacolod*, resort to this Honorable Court is the only remaining remedy available to Smartmatic to challenge the Assailed Resolution issued by the COMELEC, a constitutional commission.

## II.

### PARTIES

2.1. Petitioner Smartmatic TIM Corporation is a domestic corporation duly organized and existing under the laws of the Philippines with principal office address at Unit 1002 One World Place, 32nd Street, Bonifacio Global City, Taguig City, Philippines. For purposes of this case, it may be served with orders, resolutions, notices, court processes, pleadings, and papers through undersigned counsel at the address indicated.

2.2. Petitioner Smartmatic Philippines, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines with principal office address at Unit 1002 One World Place, 32nd Street, Bonifacio Global City, Taguig City, Philippines. For purposes of this case, it may be served with orders, resolutions, notices, court processes, pleadings, and papers through undersigned counsel at the address indicated.

2.3. Private Respondents, in their individual capacity as citizens, taxpayers, and registered voters, are the following:

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(c) motion for extension of time to file memorandum or brief;

(d) motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases;

(e) motion for re-opening or re-hearing of a case;

(f) reply in special actions and in special cases; and

(g) supplemental pleadings in special actions and in special cases.

- a. Eliseo Mijares Rio, Jr. is of legal age, Filipino, and with address at #7 B11 Soldiers Hills Village, Barangay Putatan, Muntinlupa City.
- b. Augusto Cadeliña Lagman, is of legal age, Filipino, and with address at 6053 Palma Street, Barangay Poblacion, Makati City.
- c. Franklin Fayloga Ysaac, is of legal age, Filipino, and with address at 28N Orchid Tower, Oriental Garden, Barangay PDP, Makati City.
- d. Leonardo Olivera Odoño, is of legal age, Filipino, and with address at 19871 Willow Street, Executive Heights, Bgy. Sun Valley, Paranaque City.

2.4. Atty. Jose M. Jose, Private Respondents' counsel before the COMELEC *En Banc*, may be served with orders, resolutions, notices, court processes, pleadings, and papers at 60 Rivera Street, Barangay Progreso, San Juan City, Metro Manila.

2.5. Respondent COMELEC, which issued the Assailed Resolution, may be served with orders, resolutions, notices, court processes, pleadings, and papers at its office at the Palacio del Gobernador Building, General Luna Street, Intramuros, Manila 1002.

### III.

#### TIMELINESS AND CIRCUMSTANCES OF THE FILING OF THE PETITION

4.1. On 29 November 2023, Smartmatic received the Assailed Resolution of even date through electronic mail.

4.2. As discussed in the preceding paragraphs, Petitioner has no other plain, speedy or adequate remedy except to file this Petition before this Honorable Court.

4.3. Under Section 4, Rule 65 of the Rules of Court, Petitioner has sixty (60) days from receipt of the Assailed Resolution, or until 29 January 2023, within which to file a Petition for *Certiorari*.

4.4. Thus, this Petition is timely filed.

#### IV.

#### PAYMENT OF DOCKET AND OTHER LAWFUL FEES AND DEPOSIT FOR COSTS

5.1. Simultaneous with the filing of this Petition, Petitioner paid to this Honorable Court the docket and other lawful fees as well as the deposit for costs as required under Section 7(b), Rule 141 of the Rules of Court.

5.2. Petitioner undertakes to submit a copy of the *Official Receipt* issued by this Honorable Court evidencing such payment within ten (10) days from the filing hereof.

#### V.

#### PROOF OF SERVICE AND WRITTEN EXPLANATION

6.1. In compliance with Sections 5 and 7, Rule 13 of the Rules of Court, duplicate original copies of this Petition were served on the Respondents by private courier and registered mail as shown by the *Affidavit of Service* attached to this Petition.

#### VI.

#### STATEMENT OF THE FACTS AND THE CASE

#### *Successful implementation of the 2010, 2013, 2016, 2019 and 2022 National and Local Elections*

7.1. It is a matter of record that since 2010, Smartmatic has been a trusted provider in the conduct of elections in the Philippines. Throughout the years, and particularly for the National and Local Elections in 2010, 2013, 2016, and 2019, Smartmatic has consistently qualified as a service provider for the automated elections and electronic transmission services. In these elections, Smartmatic has undoubtedly proven its eligibility, in compliance with the technical specifications of the COMELEC.<sup>21</sup> For the 2022 NLE, Smartmatic was duly awarded the Contract for the Procurement of Secure Electronic

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<sup>21</sup> See *Roque v. COMELEC*, G.R. No. 188456, 10 September 2009, *Capalla v. COMELEC*, G.R. No. 201112, 13 June 2012, and *Querubin v. COMELEC*, G.R. No. 218787, 8 December 2015.

Transmission Services for the 2022 NLE Election Results dated 12 October 2021 ("SETS Contract").<sup>22</sup>

7.2. On 12 August 2021, Smartmatic received Public Respondent's Notice of Award<sup>23</sup> for the SETS Contract. Thus, on 12 October 2021, the COMELEC and Smartmatic executed the SETS Contract.<sup>24</sup> On the same day, Smartmatic received the Notice to Proceed, which triggered the commencement of the SETS Contract's term, as provided in Article 2.1 thereof.

7.3. It bears stressing that the procedure for transmission of election results and features of Smartmatic's system were all duly approved by the COMELEC. In fact, on 6 May 2022, in accordance with R.A. No. 9396, **the Technical Evaluation Committee ("TEC") issued TEC Resolution No. 2022-001 certifying that the AES provided by Smartmatic is operating properly, securely, and accurately.**<sup>25</sup>

7.4. As it has consistently done in the past elections, Smartmatic faithfully complied with its obligations under the SETS Contract, and fully followed all of COMELEC's guidelines and instructions in compliance with the SETS Contract. All decisions in the implementation of the SETS Contract made by the COMELEC were likewise complied with by Smartmatic, as the provider.

7.5. Verily, the actions of Smartmatic have all been in compliance with, and limited to, the provisions of the SETS Contract, under the supervision and with due approval of the COMELEC, and pursuant to relevant laws, rules and regulations.

7.6. The COMELEC was thus successful in conducting a fair and credible elections, which was greatly aided by the reliable, stable, and secure transmission of election results over great distances from the precinct level to the Consolidation Canvassing System ("CCS") and finally to the servers for the consolidation of results and proclamation the winners in the elections.

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<sup>22</sup> See Smartmatic's *Ex Abundanti Ad Cautelam Comment* dated 12 October 2023 ("Smartmatic's Comment"), a copy of which is attached hereto as Annex "F" and made an integral part hereof, p. 3, par. 4.

<sup>23</sup> See copies of the Contract for the Procurement of Secure Electronic Transmission Services ("SETS") for the 2022 NLE Election Results dated 12 October 2021 ("SETS Contract") and Notice of Award (Annex N of the SETS Contract) attached hereto as Annexes "G" and "G-1", respectively, and made integral parts hereof.

<sup>24</sup> See SETS Contract attached as Annex "G" hereof.

<sup>25</sup> See a copy of the Technical Evaluation Committee ("TEC") Resolution No. 2022-001 dated 6 May 2022 attached hereto as Annex "H" and made an integral part hereof.

7.7. Smartmatic's successful execution of the SETS Contract under the supervision of the COMELEC contributed to the 2022 NLE having the fastest transmission of election returns since the country adopted the AES in 2010.<sup>26</sup> The media and transparency servers received 98.76 *per centum* of the election results just a day after the polls.<sup>27</sup> This unprecedented speed is a clear testament to the effective service of Smartmatic which provided the transparency, credibility, and accuracy of the 2022 NLE expected in all elections.

7.8. In fact, the COMELEC itself remarked that the 2022 NLE as the most successful election in Philippine history. Chairman George Erwin M. Garcia ("Chairman Garcia") even further stated, "*Na-restore ang trust ng mga mamamayan sa Comelec. Marunong naman palang bumilang. Tama naman palang mag-proclaim.*"<sup>28</sup>

7.9. Indisputably, the 2022 NLE was a success, owing to the efficient and reliable system provided by Smartmatic.

#### *Procurement for the 2025 Automated Election System*

7.10. On 22 February 2023, Smartmatic received an invitation from the COMELEC to attend an Election Summit, which was conducted in preparation for the 2025 NLE.

7.11. Thus, in anticipation of the 2025 NLE and the bidding process for the 2025 AES, Smartmatic commenced the preparation of its bidding documents as early as March 2023.

7.12. Thereafter, from 8 to 10 March 2023, Smartmatic's representatives attended the Election Summit, which was conducted in Sofitel, Philippine Plaza. This was later followed by the COMELEC's Procurement Summit which Smartmatic also attended in July 2023.

7.13. During the period from April to October 2023, Smartmatic received multiple Requests for Information from the COMELEC regarding the 2025 AES. On 27 October 2023 the COMELEC published

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<sup>26</sup> See Inquirer.net, Tina G. Santos, Fastest results, highest turnout, says Comelec of 2022 polls, available at <https://newsinfo.inquirer.net/1595907/fastest-results-highest-turnout-says-comelec-of-2022-polls> (last accessed on 11 October 2023), a printout of which is attached as Annex "B" hereof.

<sup>27</sup> *Ibid.*

<sup>28</sup> Inquirer.net, John Eric Mendoza, COMELEC's Garcia claims 2022 polls 'most successful election' in PH history available at <https://newsinfo.inquirer.net/1645296/comelecs-garcia-claims-2022-polls-most-successful-election-in-ph-history> (last accessed 3 December 2023), a printout of which is attached hereto as Annex "I" and made an integral part hereof.



the Invitation to Bid and on 30 October 2023, Smartmatic purchased the bidding documents.

7.14. Based on the initial timeline and milestones set for the bidding process, the Pre-Bid Conference was supposed to take place on 6 November 2023, and the Bid Submission on 20 November 2023. However, these milestones in the procurement process were postponed by the COMELEC on 4 November 2023.

7.15. Accordingly, acting on the request of some prospective bidders claiming that the bidding documents purchased were incomplete, COMELEC rescheduled the Pre-Bid Conference to 13 November 2023 and the Bid Submission to 28 November 2023.

7.16. On 13 November 2023, Smartmatic (SMMT-TIM 2016 INC) attended the Pre-Bid conference.

7.17. Despite Smartmatic's readiness to proceed with the bid, on 21 November 2023, the COMELEC again rescheduled the Bid Submission to 12 December 2023 supposedly to give ample time to all bidders to prepare the bids.

#### *Disqualification Proceedings before the COMELEC En Banc*

7.18. Simultaneous with the preparations for the 2025 NLE and the procurement process for the 2025 AES, on 15 and 29 June 2023 and 11 September 2023, Private Respondents filed their *Petition*, *Supplemental Petition*, and *Second Supplemental Petition* of even dates (collectively "Petitions") before the COMELEC *En Banc*, respectively alleging the following:<sup>29</sup>

- i. The transmission of the results of certain precincts allegedly preceded the printing of election results.<sup>30</sup>
- ii. A scheme to clone VCM transmissions were supposedly shown by how the logs reflect the same IP Address for certain machines instead of separate IP Addresses.<sup>31</sup>

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<sup>29</sup> See *Petition*, *Supplemental Petition* and *Second Supplemental Petition* attached as Annexes "C", "D" and "E" hereof, respectively.

<sup>30</sup> See *Petition* attached as Annex "C" hereof, pp. 5-6, par. 13-15.

<sup>31</sup> See *Supplemental Petition* attached as Annex "D" hereof, pp. 2-4, par. 3-9.

- iii. Smartmatic's affiliates and/or representatives allegedly met with the representatives of a presidential candidate while the SETS Contract was still in force in violation of Clause 5.13 of the SETS Contract.<sup>32</sup>

7.19. On 5 October 2023, the COMELEC issued an *Order* of even date ("Order"), directing Smartmatic to comment on the Petitions within five (5) days from receipt of the same.<sup>33</sup> In the same order, the COMELEC informed the parties of the hearing, which was to be conducted on 17 October 2023.<sup>34</sup> Additionally, the COMELEC set a conference for pre-marking of all the evidence on 16 October 2023.<sup>35</sup>

7.20. It bears noting at this point that both the Petitions and the Notice of the Order refers to "Smartmatic Philippines, Inc." and not Smartmatic TIM.<sup>36</sup>

7.21. Thus, on 11 October 2023, Smartmatic filed its *Entry of Appearance with Motion for Additional Time* of even date,<sup>37</sup> where it stated that the Petitions incorrectly refer to Smartmatic PH considering that the entity that entered into the SETS Contract was Smartmatic TIM. All the later submissions of Smartmatic TIM likewise states the correction of such fact.

7.22. Following the grant of an additional period of one (1) day within which to file its Comment, Smartmatic filed its *Ex Abundanti Ad Cautelam Comment* ("Smartmatic's Comment") on 12 October 2023, where it argued on the following points:

- i. The Petitions are improper as they do not raise legitimate issues worthy of consideration by the COMELEC. In fact, Petitioners have no standing to file the Petitions and seek the disqualification of Smartmatic from participating in the bidding process for the 2025 National and Local Elections.<sup>38</sup>
- ii. Contrary to the allegations in the Petitions, the records clearly show that there is no variance between the data

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<sup>32</sup> See Second Supplemental Petition attached as Annex "E" hereof, pp. 1-2, par. 2-4.

<sup>33</sup> A copy of the Order dated 5 October 2023 ("Order") is attached hereto as Annex "J" and made an integral part hereof; emphasis supplied.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Id.*

<sup>36</sup> See Order attached as Annex "J" hereof, p. 3.

<sup>37</sup> A copy of the Entry of Appearance with Motion for Additional Time dated 11 October 2023 is attached hereto as Annex "K" and made an integral part hereof.

<sup>38</sup> See Smartmatic's Comment attached as Annex "F" hereof, pp. 7-12, par. 16-31.

received at the national board of canvassers and the transparency server.<sup>39</sup>

- iii. The allegation and insinuation that some transmissions came from a private IP address is not a violation of any rule of law, much less is it an indication of any wrongdoing of fraud.<sup>40</sup>
- iv. The allegation of insinuation of an alleged improper meeting is completely false and untrue, and is clearly based on an unverified, if not irresponsible, statement by a stranger to the electoral process.<sup>41</sup>

7.23. On 16 October 2023, pursuant to the COMELEC's *Order* dated 5 October 2023, the evidence of both Private Respondents and Smartmatic were marked before the Office of the Clerk of the COMELEC. Notably, none of the evidence presented by either party had any relation to the criminal case against former Chairman Bautista.

7.24. Thereafter, on 17 October 2023, a hearing was held before the COMELEC to clarify the arguments and defenses raised in the Petitions and the Comment.

7.25. During the said hearing, the COMELEC, despite having the authority to ask questions beyond those alleged in the Petitions, the COMELEC conveniently confined its questions and discussions only to the issues raised therein, particularly the following:

- i. Alleged consistency in the ratio of transmitted results which Private Respondents claim to be an indication of irregularity of the conduct of the 2022 NLE;<sup>42</sup>
- ii. The use of single IP address, which Private Respondents claim to be proof that an illegal Local Area Network ("LAN") was utilized to clone the IP addresses of thousands of VCMs, in response to which Smartmatic explained that this was the manufacturer's design and further clarified that regardless of thousands of modems

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<sup>39</sup> See Smartmatic's Comment attached as Annex "F" hereof, pp. 12-20, par. 32-46.

<sup>40</sup> See Smartmatic's Comment attached as Annex "F" hereof, pp. 20-24, par. 33-65.

<sup>41</sup> See Smartmatic's Comment attached as Annex "F" hereof, pp. 24-25, par. 66-70.

<sup>42</sup> See Transcript of Stenographic Notes of the hearing dated 17 October 2023 ("TSN" of 17 October Hearing") attached hereto Annex "L" and made an integral part hereof, pp. 23-24.

having the same IP addresses, the VCM from which the transmission was sourced could still be traced from the Precinct ID; and<sup>43</sup>

- iii. Private Respondents' assertion that the transparency server was receiving more election returns than what the Vote Counting Machines ("VCMs") were transmitting in the first two hours after voting closed at 7:00 p.m. on May 9, 2022, which Smartmatic refuted by presenting the Private Respondents' Comparative Graph allegedly showing that the VCM transmission peaked in the second hour and the VCM reception logs peaked in the first hour, and pointing out that Private Respondents manipulated the starting points (the Accumulated VCM Transmissions started of the transmission of election results at 7:08 p.m. while the Reception Logs started at 7:19 p.m.) to create the apparent discrepancy. Thus, Private Respondents clearly misrepresented and modified the data to fit their narrative.<sup>44</sup>

7.26. Before concluding the hearing, the COMELEC directed the parties to simultaneously file their respective memoranda and formal offer of evidence within five (5) therefrom, and their respective reply memoranda within three (3) days from receipt of the other party's memorandum.

7.27. Pursuant to the COMELEC'S directive, on 23 October 2023, the parties submitted their respective memoranda and formal offer of evidence.

7.28. In Private Respondents' *Memorandum* dated 23 October 2023 ("Private Respondents' Memorandum"),<sup>45</sup> they raised substantially the same allegations found in the Petitions, as follows:

- i. The Petitioners' claims are supported and based upon information, data, and documents coming from the COMELEC itself.<sup>46</sup>

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<sup>43</sup> See TSN of 17 October Hearing attached as Annex "L" hereof, pp. 4-6 and pp.10-13.

<sup>44</sup> See TSN of 17 October Hearing attached as Annex "L" hereof, pp.4-6 and pp. 9-11.

<sup>45</sup> A copy of Private Respondents' Memorandum dated 23 October 2023 is attached as Annex "M" and made an integral part hereof.

<sup>46</sup> See Private Respondent's Memorandum attached as Annex "M" hereof, pp. 15-16.

- ii. The Election Returns (“ER”) were transmitted by the Vote Counting Machines (“VCM”) only once using a Telco Exchange and Private IP Addresses, deviating from the end-to-end transmission path shown by the COMELEC on 23 March 2022 and the provisions of Republic Act No. 9369.<sup>47</sup>
- iii. During the first two hours after the closing of the polls, the Transparency Server was counting votes faster than what were being transmitted by the VCMs.<sup>48</sup>
- iv. It is highly improbable for the TS to have started receiving results at 7:08 P.M. on 9 May 2022.<sup>49</sup>
- v. The ERs in certain precincts appear to have been received by the TS before the same had actually been sent by the VCMs.<sup>50</sup>
- vi. The Constant Vote Ratios across the Presidential Candidates is statistically improbable.<sup>51</sup>
- vii. The Affidavit of Glenn Chong speaks for itself.<sup>52</sup>

7.29. Smartmatic, on the other hand, raised the following arguments in its *Memorandum with Formal Offer of Evidence* dated 23 October 2023:<sup>53</sup>

- i. The Petitions are improper as they do not raise legitimate issues worthy of consideration by the COMELEC. The Petitions are based on mere conjecture and speculation, amounting to nothing more than an unsanctionable fishing expedition which merely seeks to revive an issue, the remedy for which they failed to avail and had long prescribed.<sup>54</sup>

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<sup>47</sup> See Private Respondent’s Memorandum attached as Annex “M” hereof, pp. 16-19.

<sup>48</sup> See Private Respondent’s Memorandum attached as Annex “M” hereof, p. 20.

<sup>49</sup> See Private Respondent’s Memorandum attached as Annex “M” hereof, pp. 20-21.

<sup>50</sup> See Private Respondent’s Memorandum attached as Annex “M” hereof, pp. 21-22.

<sup>51</sup> See Private Respondent’s Memorandum attached as Annex “M” hereof, p. 22, par. 50.

<sup>52</sup> See Private Respondent’s Memorandum attached as Annex “M” hereof, pp. 22-23.

<sup>53</sup> A copy of Smartmatic’s Memorandum with Formal Offer of Evidence dated 23 October 2023 (“Smartmatic’s Memorandum with FOE”) is attached hereto as Annex “N” and made an integral part hereof.

<sup>54</sup> See Smartmatic’s Memorandum with FOE attached as Annex “N” hereof, pp. 11-17, par. 25-46.

- ii. Contrary to the allegations in the Petitions, the records clearly show that there is no variance between the data received by the national board of canvassers and the transparency server. The law of large numbers applies. There is no “magic ratio” or “constant ratio.”<sup>55</sup>
- iii. The fact that some transmissions reflect a private IP address is not a violation of any rule of law, nor an indication of any wrongdoing or fraud. The use of 4G modems, the logging behavior of which reflects a single private IP address, was duly approved by the COMELEC and in no way compromises the outcome of the elections.<sup>56</sup>
- iv. The allegation or insinuation of an improper meeting is completely false and untrue, and is clearly based on an unverified, if not irresponsible, statement by a stranger to the electoral process.<sup>57</sup>

7.30. To prove the foregoing assertions, Smartmatic formally offered into evidence its Exhibits “1” to “44.”<sup>58</sup>

7.31. In Private Respondents’ *Formal Offer of Evidence* dated 23 October 2023 (“Private Respondents’ FOE”),<sup>59</sup> they offered into evidence their Exhibits “A” to “I.”<sup>60</sup> Notably, none of these exhibits were offered for the purpose of proving, nor do they pertain to, the alleged involvement of Smartmatic in the criminal case against former Chairman Bautista.

7.32. On 26 October 2023, Smartmatic filed its *Comment (On Petitioners’ Memorandum dated 23 October 2023)* of even date (“Smartmatic’s Reply Memorandum”),<sup>61</sup> opposing the Private Respondents’ *Memorandum* dated 23 October 2023 and limiting the

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<sup>55</sup> See Smartmatic’s Memorandum with FOE attached as Annex “N” hereof, pp. 17-33, par. 47-83.

<sup>56</sup> See Smartmatic’s Memorandum with FOE attached as Annex “N” hereof, pp. 33-51, par. 84-130.

<sup>57</sup> See Smartmatic’s Memorandum with FOE attached as Annex “N” hereof, pp. 51-53, par. 131-138.

<sup>58</sup> See Exhibits “1” to “44” of Smartmatic’s Memorandum with FOE attached as Annex “N” hereof.

<sup>59</sup> A copy of Private Respondents’ Formal Offer of Evidence dated 23 October 2023 (“Private Respondents’ FOE”) is attached hereto as Annex “O” and made an integral part hereof.

<sup>60</sup> See Exhibits “A” to “I” of Private Respondents’ FOE attached as Annex “O” hereof.

<sup>61</sup> Smartmatic’s *Comment (On Petitioners’ Memorandum dated 23 October 2023)* dated 26 October 2023 (“Smartmatic’s Comment on Memorandum”) is attached hereto as Annex “P” and made an integral part hereof.

arguments therein to merely respond to the arguments in Private Respondents' Memorandum.

7.33. On the same date, Private Respondents also filed their *Reply Memorandum* of even date ("Private Respondents' Reply Memorandum").<sup>62</sup> In Private Respondents' Reply Memorandum, they merely raised arguments in response to the Petitioners' Memorandum.

7.34. During the 17 October Hearing, and in all its submissions before the COMELEC, Smartmatic extensively and emphatically denied each and every allegation in the Petitions.

7.35. On 29 November 2023, Smartmatic received the Assailed Resolution, wherein the COMELEC categorically held that "no irregularities attended the conduct of the 2022 NLE."<sup>63</sup> It ruled that the "allegations of the Petitioners pertaining to the alleged consistency in the ratio of transmitted results, the use of single IP address, and alleged discrepancies in the transmission and election returns have been sufficiently addressed by [the COMELEC] at length."<sup>64</sup>

7.36. Further, the Assailed Resolution pointed out the procedural infirmities of the Petitions filed before it, which are apparent from a plain reading of the Petitions. The COMELEC explained that the "blacklisting of Smartmatic cannot be insisted on xxx because of Petitioners' non-compliance with the procedural rules for blacklisting laid down under the 2016 [IRR of R.A. 9184]."<sup>65</sup> The COMELEC further stated that "[a]t this stage of the procurement process for the 2025 AES, [the COMELEC], as head of the procuring entity, cannot review the qualifications of Smartmatic."<sup>66</sup>

7.37. However, the COMELEC then took a position diametrically opposed to the foregoing pronouncements when it nevertheless resolved to disqualify and blacklist Smartmatic from participating in the bidding process for the elections, including the 2025 AES, as follows:<sup>67</sup>

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<sup>62</sup> A copy of Private Respondents' Reply Memorandum dated 26 October 2023 is attached as Annex "Q" and made an integral part hereof.

<sup>63</sup> Assailed Resolution attached as Annex "A" hereof, p. 15.

<sup>64</sup> *Ibid.*

<sup>65</sup> Assailed Resolution attached as Annex "A" hereof, p. 12.

<sup>66</sup> Assailed Resolution attached as Annex "A" hereof, p. 9.

<sup>67</sup> Assailed Resolution attached as Annex "A" hereof, p. 16.

**“WHEREFORE, premises considered, the Commission (*En Banc*) hereby RESOLVED to GRANT the Petition. SMARTMATIC PHILIPPINES, INC. is DISQUALIFIED AND DISALLOWED from participating in any public bidding process for elections, in the exercise of its administrative power to decide all matters affecting election and in pursuit of its constitutional mandate.”**

7.38. From a plain reading of the Assailed Resolution, it bears noting, again, that the entity disqualified and disallowed by the COMELEC in the Assailed Resolution is Smartmatic PH, and not Smartmatic TIM which is the entity that entered into the SETS Contract.

7.39. In the Assailed Resolution, the COMELEC resolved to disqualify and blacklist Smartmatic from the bidding process for the 2025 AES and all other elections, based solely on allegations made against it in a foreign jurisdiction, thus:<sup>68</sup>

**“Given the gravity of allegations related to bribery and compromised procurement process, as independently determined by foreign bodies, the Commission recognizes the imminent threat to the strength and integrity of our democratic processes. In light of these findings, the Commission acknowledges the imminent peril to the integrity and robustness of our democratic institutions. These allegations, not only undermine and cast a shadow over the procurement protocols, but also threaten to erode the public’s confidence in the electoral system. Consequently, pursuant to administrative powers which cover all aspects of election, the Commission is compelled to take decisive action to disallow Smartmatic from participating in the procurement process forthwith.**

**Moreover, the Commission finds it imperative to refer the matter to the SBAC for possible permanent disqualification and blacklisting of Smartmatic from all government procurement proceedings, not just in relation to elections.** This critical step reflects the

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<sup>68</sup> Assailed Resolution attached as Annex “A” hereof, pp. 14 and 16.



Commission's unwavering dedication to maintaining the sanctity of our elections and ensuring that each component of the electoral process, especially its partnerships, upholds the highest standards of transparency and integrity."<sup>69</sup>

7.40. The COMELEC supposedly took judicial notice of an ongoing investigation by the United States Government against former Chairman Bautista and other individuals and entities for violation of U.S. criminal laws:<sup>70</sup>

"As early as October 2022, the Commission (*En Banc*), through the Department of Justice received requests for official documents relative to an ongoing investigation from the United States government against former COMELEC Chairman Juan Andres D. Bautista (Bautista) and other individuals and entities for violation of U.S. criminal laws.

xxx

It is noteworthy that Bautista, who served as the Chairman of the Commission, was formally charged in September 2023, in connection with allegations of receiving bribes in exchange for awarding a contract for election machines to Smartmatic Corp. Bautista and others are alleged to have laundered the bribe money through multiple entities. It was revealed that Bautista established a foreign shell company, which was used to receive bribe payments from Smartmatic. The charges against Smartmatic and former Chairman Bautista are of public knowledge and tend to cause speculation and distrust of the electoral process."<sup>71</sup>

7.41. The COMELEC thus admittedly had notice, as early as October 2022, of the alleged bribery charges against former Chairman Bautista. It had possession of such information **almost one (1) year** prior to the filing of the Petitions. However, as discussed, **the COMELEC did not, in any manner, allude to such serious allegations against Smartmatic at any stage of the proceedings *a quo*.**

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<sup>69</sup> Emphasis and underscoring supplied.

<sup>70</sup> Assailed Resolution attached as Annex "A" hereof, pp. 14 and 16.

<sup>71</sup> Emphasis and underscoring supplied.

7.42. To emphasize, the allegations regarding Smartmatic's involvement in the issues surrounding former Chairman Bautista's alleged indictment were never raised by Private Respondents, whether in their pleadings or during 17 October Hearing.

7.43. To note, during the 17 October Hearing, the COMELEC clarified the issues raised in the Petitions, the evidence in support thereof, and how the same can be resolved. The COMELEC likewise inquired from Smartmatic its responses to the allegations in the Petitions. As mentioned by the COMELEC during the said hearing, the questions of the Commission are not limited to the matters raised in the Petitions. It has the authority to inquire into any matter which it deems relevant to the Petitions. Hence, it would have been the perfect opportunity for the COMELEC to directly ask Smartmatic about its alleged involvement in the issues concerning former Chairman Bautista. However, no questions in relation thereto were asked by the COMELEC. As such, Smartmatic, was made to believe that only issues under consideration in the proceedings *a quo* are those raised in the Petitions.

7.44. Likewise, no evidence in relation to issues of former Chairman Bautista was offered by Private Respondents. While this matter was alluded to in the prefatory statement in Petitioners' *Memorandum* dated 23 October 2023, **it was never cited as an argument or raised as a ground in support of the relief prayed for in the Petitions.**

7.45. Notwithstanding these, the COMELEC, acting on such unverified information, invoked *motu proprio* its purported authority under Section 2(1) of Article IX-C of the 1987 Constitution to "[e]nforce and administer all laws and regulations relative to the conduct of an election" and issued the Assailed Resolution on 29 November 2023, wherein it declared Smartmatic unqualified to bid for the 2025 NLE. In rendering the Assailed Resolution, the COMELEC deemed Smartmatic an "imminent threat to the strength and integrity of our democratic processes,"<sup>72</sup> thus contradicting its own categorical finding that no irregularities attended the 2022 NLE.<sup>73</sup> Smartmatic received a copy of the Assailed Resolution on 29 November 2023.

7.46. Upon receiving the Assailed Resolution, Smartmatic was utterly surprised, as it was completely blindsided, by its disqualification based on the unverified rumors of its involvement in

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<sup>72</sup> Assailed Resolution attached as Annex "A" hereof, p. 14.

<sup>73</sup> Assailed Resolution attached as Annex "A" hereof, p. 15.

the issues concerning former Chairman Bautista. Worse, the Assailed Resolution was released just days before the scheduled submission of bids on 12 December 2023, which the COMELEC perfectly knows that Smartmatic will be participating in.

7.47. Under Section 1, Rule 13 of the COMELEC Rules of Procedure, a motion for reconsideration of the Assailed Resolution, which was rendered by the Commission sitting *en banc* as the HoPE, is a prohibited pleading.

7.48. Hence, this Petition under Rule 65 of the Rules of Court.

## VII.

### GROUNDS

#### A.

**THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RULING ON THE DISQUALIFICATION AND BLACKLISTING OF SMARTMATIC.**

- i. **THE COMELEC WHIMSICALLY AND ARBITRARILY DISQUALIFIED AND BLACKLISTED SMARTMATIC PH DESPITE THE FACT THAT IT WAS WRONGLY IMPEADED AS A PARTY IN THE FIRST PLACE. SMARTMATIC PH IS BEING PENALIZED FOR ACTS IT WAS NEVER INVOLVED IN, AND THROUGH PROCEEDINGS IN WHICH IT NEVER PARTICIPATED, IN GROSS VIOLATION OF ITS RIGHT TO DUE PROCESS.**
- ii. **SMARTMATIC WAS WHIMSICALLY AND ARBITRARILY DISQUALIFIED AND BLACKLISTED BASED ON ALLEGATIONS THAT WERE NEVER RAISED IN THE PETITIONS, AND WHICH SMARTMATIC WAS NEVER GIVEN THE OPPORTUNITY TO REFUTE, IN CLEAR VIOLATION OF ITS RIGHT TO DUE PROCESS.**

B.

THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT WRONGFULLY INVOKED, AND IRONICALLY VIOLATED, SECTION 2(1), ARTICLE IX-C OF THE CONSTITUTION TO DISQUALIFY AND BLACKLIST SMARTMATIC.

C.

THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN WHIMSICALLY AND ARBITRARILY DISREGARDING THE PROCEDURE FOR DISQUALIFICATION AND BLACKLISTING UNDER R.A. 9184 AND ITS IRR AND ABDICATING FROM ITS MANDATE TO ENFORCE AND ADMINISTER R.A. 9184 PURSUANT TO SECTION 2(1) ARTICLE IX-C OF THE 1987 CONSTITUTION.

IX.

DISCUSSION

A.

THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RULING ON THE DISQUALIFICATION AND BLACKLISTING OF SMARTMATIC.

9.12. Grave abuse of discretion implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction or whether the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law. When there is a capricious, arbitrary and whimsical exercise of

power,<sup>74</sup> 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,<sup>75</sup> certiorari will lie.

9.13. This Honorable Court laid down the “unyielding yardstick” in *San Miguel Corporation, et al., v. Sandiganbayan, et al.*, thus:<sup>76</sup>

“To justify the issuance of the writ of certiorari, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction. This is the unyielding yardstick.”

9.14. Instructively, in *Heirs of Jugalbot v. Court of Appeals*,<sup>77</sup> this Honorable Court held that there was no proper notice given to the private respondent by the Department of Agriculture (“DAR”). Neither did the DAR conduct an ocular inspection and investigation. Hence, this Honorable Court held that any act committed by agencies that results from its failure to comply with the proper procedure is a violation of constitutional due process and should be deemed arbitrary, capricious, whimsical, and tainted with grave abuse of discretion.

9.15. More importantly, in the landmark case of *Ang Tibay v. Court of Industrial Relations*,<sup>78</sup> this Honorable Court laid down the cardinal rights in administrative proceedings, which must be observed, lest a party-litigant’s right to due process be violated, thus:

“The fact, however, that the Court of Industrial Relations may be said to be free from the rigidity of certain procedural requirements does not mean that it can, in justifiable cases before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.

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<sup>74</sup> Toyota Motor Phils. Corp. Workers’ Assn. v. Court of Appeals, G.R. No. 148924, 24 September 2003.

<sup>75</sup> Eastern Assurance & Surety Corporation (EASCO) v. Land Transportation Franchising and Regulatory Board (LTFRB), G.R. No. 149717, 7 October 2003.

<sup>76</sup> G.R. Nos. 104637-38, 14 September 2000.

<sup>77</sup> G.R. No. 170346, 12 March 2007.

<sup>78</sup> G.R. No. L-46496, 27 February 1940.

There are primary rights which must be respected even in proceedings of this character:

(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Hughes, in *Morgan v. U.S.*, 304 U.S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129, "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. (Chief Justice Hughes in *Morgan v. U.S.* 298 U.S. 468, 56 S. Ct. 906, 80 law. ed. 1288.) In the language of this court in *Edwards vs. McCoy*, 22 Phil., 598, "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."

(3) "While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support it is a nullity, a place when directly attached." (*Edwards vs. McCoy*, supra.) This principle emanates from the more fundamental is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) Not only must there be some evidence to support a finding or conclusion (*City of Manila vs. Agustin*, G.R. No. 45844, promulgated November 29, 1937, XXXVI O. G. 1335), but the evidence must be "substantial." (*Washington, Virginia and Maryland Coach Co. v. National Labor Relations Board*, 301 U.S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) It means such relevant evidence as a reasonable mind accept as adequate to support a conclusion." (*Appalachian Electric Power v. National Labor Relations Board*, 4 Cir., 93 F. 2d 985, 989; *National Labor Relations Board v. Thompson*

Products, 6 Cir., 97 F. 2d 13, 15; *Ballston-Stillwater Knitting Co. v. National Labor Relations Board*, 2 Cir., 98 F. 2d 758, 760.) . . . The statute provides that "the rules of evidence prevailing in courts of law and equity shall not be controlling." The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. (*Interstate Commerce Commission v. Baird*, 194 U.S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; *Interstate Commerce Commission v. Louisville and Nashville R. Co.*, 227 U.S. 88, 93 33 S. Ct. 185, 187, 57 Law. ed. 431; *United States v. Abilene and Southern Ry. Co.* S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (*Consolidated Edison Co. v. National Labor Relations Board*, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.)"

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. (*Interstate Commerce Commission vs. L. & N. R. Co.*, 227 U.S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal, a justice of the peace or any public official in any part

of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers. (Section 10, *ibid.*)

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with the right to appeal to board or commission, but in our case there is no such statutory authority.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it."

9.16. As will be shown in the succeeding discussions, the action of the COMELEC is a quintessential example of a grave abuse of discretion as its Assailed Decision was a capricious, arbitrary and whimsical exercise of power.<sup>79</sup>

i.

**THE COMELEC WHIMSICALLY AND ARBITRARILY DISQUALIFIED AND BLACKLISTED SMARTMATIC PH DESPITE THE FACT THAT IT WAS WRONGLY IMPEADED AS PARTY IN THE FIRST PLACE. SMARTMATIC PH IS BEING PENALIZED FOR ACTS IT WAS NEVER INVOLVED IN, AND THROUGH A**

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<sup>79</sup> Toyota Motor Phils. Corp. Workers' Assn. v. Court of Appeals, G.R. No. 148924, 24 September 2003.



PROCEEDINGS IN WHICH IT NEVER PARTICIPATED, IN GROSS VIOLATION OF ITS RIGHT TO DUE PROCESS THE COMELEC WHIMSICALLY AND ARBITRARILY DISQUALIFIED AND BLACKLISTED SMARTMATIC PH DESPITE THE FACT THAT IT WAS WRONGLY IMPEADED AS A PARTY IN THE FIRST PLACE. SMARTMATIC PH IS BEING PENALIZED FOR ACTS IT WAS NEVER INVOLVED IN, AND THROUGH PROCEEDINGS IN WHICH IT NEVER PARTICIPATED, IN GROSS VIOLATION OF ITS RIGHT TO DUE PROCESS.

9.17. As discussed, both the Petitions<sup>80</sup> and the Notice of the Order erroneously referred to Smartmatic PH and not Smartmatic TIM.<sup>81</sup>

9.18. To rectify this apparent mistake, Smartmatic TIM, in all its submissions,<sup>82</sup> clarified that the Petitions incorrectly refer to Smartmatic PH considering that the entity that entered into the SETS Contract was **Smartmatic TIM Corporation**.

9.19. In fact, a plain reading of the SETS Contract would clearly show that the service provider for the 2022 NLE was Smartmatic TIM, and not Smartmatic PH.<sup>83</sup>

9.20. Thus, considering the numerous submissions as well as the conduct of the 17 October Hearing, and the clear and unmistakable fact that Smartmatic PH was not the service provider for the 2022 NLE SETS Contract, it was made abundantly clear to the COMELEC, and it has undoubtedly recognized, that Smartmatic TIM is the proper party to the proceedings before it.

9.21. Further, the COMELEC had every opportunity to question Smartmatic TIM regarding its personality during the 17 October Hearing. However, the COMELEC curiously opted not to do so. The COMELEC only focused on the allegations raised by Private

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<sup>80</sup> See Petition attached as Annex "C" hereof, p. 1.

<sup>81</sup> See Order attached as Annex "J" hereof, p. 3.

<sup>82</sup> See Entry of Appearance, Smartmatic's Comment, Smartmatic's Memorandum with FOE and Smartmatic's Comment on Memorandum attached as Annexes "K", "F", "N", and "P", respectively, hereof.

<sup>83</sup> See SETS Contract attached as Annex "G" hereof, p. 1.

Respondents regarding the irregularities that allegedly attended the 2022 NLE.

9.22. In blatant disregard of the submissions of Smartmatic TIM, the conduct of the 17 October Hearing, and the unmistakable fact that Smartmatic PH was never involved in the 2022 NLE SETS Contract, the Assailed Resolution still pertains to Smartmatic PH as the entity supposedly disqualified and disallowed from participating in the bidding for all elections:<sup>84</sup>

“WHEREFORE, premises considered, the Commission (*En Banc*) hereby **RESOLVED** to **GRANT** the Petition. **SMARTMATIC PHILIPPINES, INC.** is **DISQUALIFIED AND DISALLOWED** from participating in any public bidding process for elections, in the exercise of its administrative power to decide all matters affecting election and in pursuit of its constitutional mandate.”

9.23. It is a basic rule in law that parties must have the opportunity to be heard. Notwithstanding the fact that the proceedings before the COMELEC *En Banc* were administrative in nature, Smartmatic PH is nevertheless afforded with the right to due process following *Ang Tibay*. As further explained in *Vivo v. Philippine Amusement and Game Corporation (PAGCOR)*:

“Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one’s side, or an opportunity to seek a reconsideration of the action or ruling complained of.”

9.24. In this case, it is clear that Smartmatic PH could not possibly be able to defend itself against allegations that it had no knowledge of or participation in the first place. Smartmatic PH is thus being penalized for an alleged act which it has been wrongly attributed to.

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<sup>84</sup> Assailed Resolution attached as Annex “A” hereof, p. 16.

9.25. Based on the foregoing, the disqualification and blacklisting of Smartmatic PH arising from the Petitions assailing the conduct of the 2022 NLE, to which it was never involved in or even a part of, is an apparent violation of its right to due process and an exercise of a serious and grave abuse of discretion. To reiterate, the submissions of Smartmatic TIM and the SETS Contract have made it crystal clear that the proper party to the proceedings is Smartmatic TIM, and not Smartmatic PH. It is thus an inexcusable and grave abuse of discretion on the part of the COMELEC to even include Smartmatic PH in the Assailed Resolution. Such a capricious disregard of Smartmatic PH's basic right to due process should not be countenanced.

ii.

**SMARTMATIC WAS WHIMSICALLY AND ARBITRARILY DISQUALIFIED AND BLACKLISTED BASED ON ALLEGATIONS THAT WERE NEVER RAISED IN THE PETITIONS, AND WHICH SMARTMATIC WAS NEVER GIVEN THE OPPORTUNITY TO REFUTE, IN CLEAR VIOLATION OF ITS RIGHT TO DUE PROCESS.**

9.26. Public Respondent clearly violated Petitioner's fundamental right to due process, which is enshrined and protected by our Constitution. Art. III, Sec. 1 of the 1987 Constitution provides:

**"Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."**<sup>85</sup>

9.27. In this case, ironically, the COMELEC already categorically ruled that no irregularities attended the conduct of the 2022 NLE.<sup>86</sup> The relevant portions of Smartmatic's submissions before the COMELEC and arguments during the 17 October Hearing, as referenced in the Assailed Resolution,<sup>87</sup> would clearly show that Private Respondents' allegations of irregularities were extensively refuted. In fact, finding Smartmatic's explanations sufficient and credible, the COMELEC cited its Law Department's *Compliance* which states:<sup>88</sup>

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<sup>85</sup> Emphasis and underscoring supplied.

<sup>86</sup> Assailed Resolution attached as Annex "A" hereof, p. 15.

<sup>87</sup> Assailed Resolution attached as Annex "A" hereof, pp. 7-9.

<sup>88</sup> Assailed Resolution attached as Annex "A" hereof, p. 7.

“With regard to the other issues raised by the Petitioners, the Law Department contends that the Petitioners failed to substantiate the serious and material irregularities. Petitioners merely allege the existence of serious and material irregularities, and readily conclude that these violate the minimum system capabilities required under Section 6 of RA No. 8436, as amended by Republic Act No. 9369.”<sup>89</sup>

9.28. Curiously, the COMELEC merely stated in the Assailed Resolution that Private Respondents’ claims regarding the alleged consistency in the ratio of transmitted results, the use of single IP address, and alleged discrepancies in the transmission and election returns have been sufficiently to *wit*:<sup>90</sup>

“To be clear, the Commission (*En Banc*) categorically states that no irregularities attended the conduct of the 2022 NLE. The allegations of Petitioners pertaining to the alleged consistency in the ratio of transmitted results, the use of single IP address, and alleged discrepancies in the transmission and election returns have been sufficiently addressed by the Commission at length.

In fact, apart from the successful conduct of the Random Manual Audit attended by independent observers and accredited political parties showing consistency in the results, and the observations by accredited citizens’ arms. Petitioners themselves admitted that the parallel count conducted by the Parish Pastoral Council for Responsible Voting (PPRCV) matched the transmitted results. Nevertheless, the Commission is cognizant that issues casting doubt on the veracity of the 2022 NLE results undermine our democracy by eroding public trust and confidence in our electoral processes. The Commission will do everything necessary and within its power to demonstrate its commitment to electoral integrity and full transparency.”

9.29. Notwithstanding this categorical ruling, the COMELEC proceeded to disqualify and blacklist Smartmatic. The basis of the COMELEC in disqualifying and blacklisting Smartmatic is merely the latter’s alleged connection to the investigation being conducted by the

<sup>89</sup> Emphasis and underscoring supplied.

<sup>90</sup> Assailed Resolution attached as Annex “A” hereof, p. 15

US Government against former Chairman Bautista. In the Assailed Resolution, the COMELEC held:<sup>91</sup>

“...The U.S. prosecutor sought assistance in obtaining records from the Commission as part of the efforts to establish a case.

**...It is noteworthy that Bautista, who served as the Chairman of the Commission, was formally charged in September 2023, in connection with allegations of receiving bribes in exchange for awarding a contract for election machines to Smartmatic Corp. Bautista and others are alleged to have laundered the bribe money through multiple entities. It was revealed that Bautista established a foreign shell company, which was used to receive bribe payments from Smartmatic. The charges against Smartmatic and former Chairman Bautista are of public knowledge and tend to cause speculation and distrust of the electoral process.**

Given the gravity of allegations related to bribery and compromised procurement processes, as independently determined by foreign bodies, the Commission recognizes the imminent threat to the strength and integrity of our democratic processes. In light of these findings, the Commission acknowledges the imminent peril to the integrity and robustness of our democratic institutions. These allegations, not only undermine and cast a shadow over the procurement protocols, but also threaten to erode the public's confidence in the electoral system. Consequently, pursuant to administrative powers which cover all aspects of election, the Commission is compelled to take decisive action to disallow Smartmatic from participating in the procurement process forthwith.”<sup>92</sup>

9.30. It should be emphasized that the issue relating to former Chairman Bautista was never alleged or raised in the Petitions. As records will show, the Petitions only raised the following issues:

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<sup>91</sup> Assailed Resolution attached as Annex “A” hereof, p. 14.

<sup>92</sup> Emphasis and underscoring supplied.

- a. The serious irregularities in automated election system which Smartmatic had provided and deployed during 09 May 2022 elections;<sup>93</sup>
- b. The discrepancy in the Transmission and Reception Logs for the Transparency Server;<sup>94</sup>
- c. The discrepancy between “Accumulated VCM Transmissions” graph of 18 October 2022 and Reception logs uploaded 23 March 2023;<sup>95</sup>
- d. The receipt of Transparency Server of more ERs than what the VCMs were transmitting in the first two hours after voting closed at 7:00 p.m. of May 9, 2022;<sup>96</sup>
- e. The change in the protocols made by Smartmatic;<sup>97</sup>
- f. The non-compliance of Smartmatic with the minimum system capabilities required by law;<sup>98</sup>
- g. The meeting of representative of Smartmatic with representatives of a presidential candidate the details of which were disclosed by Glenn A. Chong<sup>99</sup>; and
- h. The sending of the election results from the VCMs to the TS through private IP addresses.<sup>100</sup>

9.31. No allegation regarding the said issue was made known to Smartmatic, much less was there any evidence presented during the hearings or in the submissions of the parties. In fact, during the 17 October Hearing, only the following matters were tackled by the COMELEC:

- a. The prematurity of the Petitions as a petition to blacklist;<sup>101</sup>
- b. The propriety of the Petitions as an election protest in disguise;<sup>102</sup>
- c. The COMELEC’s administrative authority to hear the matter and decide whether to disqualify and blacklist Smartmatic for the 2025 AES;<sup>103</sup>

<sup>93</sup> See Petition attached as Annex “C” hereof, p. 3, par. 7.

<sup>94</sup> See Petition attached as Annex “C” hereof, p. 3, par. 8.

<sup>95</sup> See Petition attached as Annex “C” hereof, p. 4, par. 12.

<sup>96</sup> *Id.*

<sup>97</sup> See Petition attached as Annex “C” hereof, p. 6, par. 16.

<sup>98</sup> See Petition attached as Annex “C” hereof, p. 8, par. 19.

<sup>99</sup> See Second Supplemental Petition attached as Annex “E” hereof, p. 2, par. 4.

<sup>100</sup> See Supplemental Petition attached as Annex “D” hereof, p. 4, par. 11.

<sup>101</sup> TSN of the 17 October Hearing attached as Annex “L” hereof, p. 74.

<sup>102</sup> TSN of the 17 October Hearing attached as Annex “L” hereof, p. 61.

<sup>103</sup> TSN of the 17 October Hearing attached as Annex “L” hereof, pp. 30, 32, 37, 38 and 42.

- d. The alleged variance between the data received by the national board of canvassers and the transparency server;<sup>104</sup>
- e. The alleged discrepancy in the Accumulated VCM Transmissions of 18 October 2022 *vis-à-vis* Accumulated Received VCM Transmission of 23 March 2023;<sup>105</sup>
- f. The alleged illegal LAN utilized to clone the IP addresses of thousands of VCMs;<sup>106</sup>
- g. The propriety and legality of using a single *private* IP address in the transmission;<sup>107</sup>
- h. The statistical improbability of a constant vote ratio across presidential candidates;<sup>108</sup> and
- i. The propriety and validity of Atty. Christian Robert Lim's representation of Smartmatic as counsel despite being a former commissioner of the COMELEC.<sup>109</sup>

9.32. The first and only time the matter regarding Smartmatic's alleged involvement in former Chairman Bautista's case was mentioned was in *Petitioners' Motion for Early Resolution* dated 3 October 2023<sup>110</sup> and in a single paragraph found in the prefatory statement in *Private Respondents' Memorandum*. However, no discussion regarding the issue was made, nor evidence properly cited, in the memorandum. Hence, Smartmatic was caught off-guard when the COMELEC blindsided it by anchoring the decision to disqualify and blacklist Smartmatic on the unfounded allegations that Smartmatic is somehow involved in the issue concerning former Chairman Bautista.

9.33. Clearly, the COMELEC, in disqualifying and blacklisting Smartmatic based on such unfounded allegations (which are essentially mere rumors), and which were never raised as an issue in the proceedings *a quo*, grossly violated Smartmatic's right to due process. It bears to recall that Chairman Garcia already publicly stated

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<sup>104</sup> TSN of the 17 October Hearing attached as Annex "L" hereof, pp. 8, 52 and 60.

<sup>105</sup> TSN of the 17 October Hearing attached as Annex "L" hereof, pp. 5, 9, 10, 60, 62, 70, 72 and 73.

<sup>106</sup> TSN of the 17 October Hearing attached as Annex "L" hereof, pp. 8, 11, 16, 17, 74 and 83.

<sup>107</sup> TSN of the 17 October Hearing attached as Annex "L" hereof, pp. 5, 6, 11, 12, 16, 17, 19, 22, 25, 26, 27, 53 and 76.

<sup>108</sup> TSN of the 17 October Hearing attached as Annex "L" hereof, pp. 18, 21, 23, 24, 52, 57, 58, 59, 60 and 71.

<sup>109</sup> TSN of the 17 October Hearing attached as Annex "L" hereof, pp. 64-65.

<sup>110</sup> Separate Opinion attached as Annex "A-1" hereof, p. 3.

that it was “premature to bar [Smartmatic] from the bidding” amid allegations that the company bribed one of [his] predecessors.<sup>111</sup>

9.34. While stating that the COMELEC would monitor developments with respect to the bribery allegations, Chairman Garcia stressed the importance of having the “nature and weight of evidence to be presented in court.”<sup>112</sup> Adding that the “presumption of innocence stands.”<sup>113</sup> In contravention of the Commissioner’s own declarations, however, these pieces of evidence were never presented in court, leaving no opportunity for Smartmatic to defend its innocence.

9.35. In fact, Chairman Garcia has also publicly stated that the COMELEC was contacted by the “US Government” to seek the former’s assistance in a supposed money laundering case filed by the latter against Former Commissioner Bautista.<sup>114</sup> Chairman Garcia disclosed that the COMELEC was asked to produce some documents, and interviews with COMELEC personnel.<sup>115</sup> Chairman Garcia, himself, confirmed that the COMELEC “fully participated” and “gave everything” as it wanted to be “transparent as far as possible.”<sup>116</sup>

9.36. Assuming that the claims of Commissioner Garcia are truthful, it begs to inquire why these “documents” and “interviews” were never presented in court, nor was Smartmatic ever given an opportunity to address the allegations supposedly contained therein. These “documents” and “interviews” are also glaringly absent from the Assailed Resolution. Notably, no specific department, bureau, or agency of the US Government was named by Commissioner Garcia with respect to the alleged formal request from the COMELEC.

9.37. As mentioned, the allegation that Smartmatic is involved in investigation being conducted by the US Government against former Chairman Bautista, on account of bribery and corruption

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<sup>111</sup> Inquirer.net, Kathleen de Villa, Bautista: Smartmatic rap an eye-opener - Comelec, available at <https://newsinfo.inquirer.net/1835665/bautista-smartmatic-rap-an-eye-opener-comelec> (last accessed 2 December 2023), a printout of which is attached hereto as Annex “R” and made an integral part hereof.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Id.*

<sup>114</sup> ABS-CBN News, Comelec cooperating in US money laundering case vs. Andy Bautista, available at ABS-CBN News, <https://news.abs-cbn.com/news/10/04/23/comelec-cooperating-in-us-money-laundering-case-vs-andy-bautista> (last accessed 2 December 2023), a printout of which is attached hereto as Annex “S” and made an integral part hereof.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Id.*



charges, were never raised in the Petitions or in any of Private Respondents' submissions before the COMELEC.

9.38. Neither was this allegation raised during the 17 October Hearing, despite the fact that the COMELEC was not precluded from asking matters foreign to the issues raised in the Petitions. In this regard, it must be stressed that the **COMELEC had notice of the ongoing investigation against former Chairman Bautista as early as October 2022.**<sup>117</sup> Curiously, despite such notice long before the hearing on the Petitions, the COMELEC did not address the issue during the 17 October Hearing and provide Smartmatic the avenue to refute such serious allegation.

9.39. At all times during the said hearing, the COMELEC had the opportunity to raise factual questions to arrive at a comprehensive discussion that would grant it more information to decide fairly and justly. It would have also allowed Smartmatic to be apprised of suspicions that the COMELEC may have. Yet, the COMELEC seems to have deliberately failed to do so.

9.40. This glaring failure on the part of COMELEC cannot be ignored as it amounts to an arbitrary disregard of Smartmatic's opportunity to be informed of the charges against it and its defense to be heard. It likewise reeks of bad faith on the part of the COMELEC.

9.41. The mere fact that Smartmatic was given an opportunity to explain its position does not satisfy the requirement of administrative due process, as the proceedings were limited only to the matters raised in Private Respondents' Petitions. The COMELEC's silence on the issue concerning the indictment of former Chairman Bautista during the said hearing, despite its previous notice as early as October 2022 and its authority to ask questions beyond those alleged by Private Respondents, reveals its malicious intent to disqualify Smartmatic at all costs.

9.42. Relatedly, the existence of a rumor or unverified allegation of an alleged charge against a bidder is not a ground for either disqualification or blacklisting under R.A. 9184 and its IRR. Thus, Smartmatic could not have known or anticipated that such a foreign and unrelated allegation will be considered by the COMELEC in rendering the Assailed Resolution.

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<sup>117</sup> Assailed Resolution, p. 13.

9.43. In ruling against Smartmatic based on an allegation never properly raised, Smartmatic was deprived of its due process rights to know the allegations against it and meet the same. In *Ochoa, Jr. v. Buco*,<sup>118</sup> this Honorable Court had the occasion to expound on a party's right to be heard during an administrative investigation, to wit:

**“Due process is complied with if the party [which] is properly notified of the allegations and the nature of the charges against [it] is given an opportunity to defend [itself] against those allegations...”**<sup>119</sup>

9.44. Indeed, it is imperative for an administrative body conducting an investigation to adequately inform the parties at the onset of the investigation about its subject matter and its parameters. Thus, in *Globe Telecom, Inc. v. National Telecommunications Commission (“NTC”)*,<sup>120</sup> this Honorable Court, in no uncertain terms, held that **an administrative agency's act of imposing punitive measures without informing the concerned party of the reason therefor is a clear violation of the latter's due process**, thus:

**“[As] an agency of the government, [the] NTC should, at all times, maintain a due regard for the constitutional rights of party litigants. In this case, [the] NTC blindsided Globe with a punitive measure for a reason Globe was not made aware of, and in a manner that contravened express provisions of law.”**<sup>121</sup>

9.45. Undoubtedly, a party's right to know the allegations against it is an important aspect of administrative due process, designed to give such party the opportunity to defend itself against such allegations.

9.46. Here, Smartmatic's right to due process, particularly its right to confront the allegations against it, was grossly violated, as it was not even made aware that the allegations relating to former Chairman Bautista would be considered by the COMELEC in deciding the Petitions. This was further acknowledged in the Separate Opinion of Chairman Aimee P. Ferolino (“Commissioner Ferolino”), thus:

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<sup>118</sup> G.R. No. 216634, 14 October 2020.

<sup>119</sup> Emphasis and underscoring supplied.

<sup>120</sup> G.R. No. 143964, 26 July 2004.

<sup>121</sup> Emphasis and underscoring supplied.

**“In ruling against Smartmatic based on an issue never properly raised, Respondent Smartmatic was deprived of its right to be properly notified of the allegations against it and was not given an opportunity to defend itself against those allegations.”**<sup>122</sup>

9.47. Further, following *Ang Tibay*, Smartmatic’s right that a decision be based on evidence presented was grossly violated.

9.48. In defining the basic due process safeguards in administrative proceedings, this Honorable Court in *Uy v. Office of the Ombudsman*,<sup>123</sup> explained that **the decision by an administrative body must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.** The Court stressed that only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them.<sup>124</sup>

9.49. To stress, as mentioned, no evidence was ever presented with respect to the issue involving former Chairman Bautista. The said allegation cannot be deduced from the documentary evidence offered by Private Respondents in support of their Petitions. Thus, it is evident that the COMELEC, even prior to the hearing conducted on 17 October 2023, already had its own preconceived basis for disqualifying Smartmatic. Verily, it is inconceivable how the COMELEC arrived at the decision to disqualify Smartmatic, which should have been based on the evidence presented in the proceedings *a quo*.

9.50. Finally, Smartmatic’s right to a decision rendered pursuant to the quantum of evidence in administrative cases, *i.e.* substantial evidence, was grossly violated.

9.51. *Ang Tibay* provides that “mere uncorroborated hearsay or rumor does not constitute substantial evidence.” Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.<sup>125</sup>

9.52. In *Navarro v. Office of the Ombudsman*, this Honorable Court held that without concrete corroborating evidence to substantiate a

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<sup>122</sup> Separate Opinion attached as Annex “A-1” hereof, p. 3.

<sup>123</sup> G.R. Nos. 156399-400, 27 June 2008.

<sup>124</sup> *Id.*

<sup>125</sup> National Bureau of Investigation v. Najera, G.R. No. 237522, 30 June 2020.

charge, a court cannot simply rely on surmises as these are not equivalent to proof.<sup>126</sup>

“[They] cannot help but observe that the charges filed by the DOF-RIPS against Navarro, that his SALNs bore misdeclarations, over-declarations and nondeclarations, are based on mere speculations and conjectures. Without concrete corroborating evidence to substantiate the charges, the Court cannot simply rely on such surmises as they are ‘not equivalent to proof; they have little, if any, probative value and, surely, cannot be the basis of a sound judgment.’ The Court's decision must be based upon competent proof ‘for the truth must have to be determined by the hard rules of admissibility and proof.’”<sup>127</sup>

9.53. The case of *NBI v. Najera*<sup>128</sup> is also instructive. Here, this Honorable Court held that the quantum of proof in administrative proceedings necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The burden to establish the charges rests upon the complainant. The case should be dismissed for lack of merit if the complainant fails to show in a satisfactory manner the facts upon which his accusations are based.<sup>129</sup>

9.54. The allegations relating to Smartmatic's involvement with former Chairman Bautista are just that - mere allegation which has not been proven. In fact, a mere public online search would reveal the Smartmatic has not be indicted, contrary to the erroneous claim of the COMELEC.

9.55. The speculative nature of the COMELEC's basis was even admitted in the Assailed Resolution when it stated that “although these allegations, stemming from incidents potentially spanning at least three election cycles, have not been proven their gravity and potential to damage public trust warrant the Commission (*En Banc's*) proactive measures to safeguard the integrity of elections and democratic institutions.”<sup>130</sup>

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<sup>126</sup> G.R. No. 210128, 17 August 2016.

<sup>127</sup> Emphasis and underscoring supplied.

<sup>128</sup> G.R. No. 237522, 30 June 2020.

<sup>129</sup> Emphasis and underscoring supplied.

<sup>130</sup> Assailed Resolution attached as Annex “A” hereof, pp. 14-15.

9.56. Further, Commissioner Ferolino in her Separate Opinion that correctly stated that the COMELEC failed to show proof or evidence on record that would support its decision, *viz.*<sup>131</sup>

“It may be proper to take into consideration the criminal case filed in the United States against Chairman Bautista on the alleged bribery relating to the contract with Smartmatic for the election machines. **This circumstance alone, however, does not warrant an outright condemnation of persons or entities involved in the said foreign criminal case. This case is still pending investigation, and there is no supporting evidence on record.**”<sup>132</sup>

9.57. Based on the foregoing, it is clear that Smartmatic was deprived of its due process to confront the allegations on which the Assailed Resolution is based. The COMELEC gravely abused its discretion in its appreciation and sole reliance on an unrelated and unverified claim. The COMELEC’s grave abuse of discretion has thus resulted in a direct and serious violation of Smartmatic’s right to due process.

9.58. Such capricious disregard of Smartmatic’s basic right to administrative due process should not be countenanced. Certainly, the Constitution did not envision an arbitrary application of Section 2 (1) of Article IX-C of the 1987 Constitution, based on which the COMELEC supposedly acted. The Constitution did not grant the COMELEC, in all its wisdom and expertise, an all-encompassing power that may trample on due process rights.

#### B.

**THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT WRONGFULLY INVOKED, AND IRONICALLY VIOLATED, SECTION 2(1), ARTICLE IX-C OF THE CONSTITUTION TO DISQUALIFY AND BLACKLIST SMARTMATIC.**

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<sup>131</sup> Separate Opinion attached as Annex “A-1” hereof, p. 3.

<sup>132</sup> Emphasis and underscoring supplied.

9.59. It must be underscored that the COMELEC exercises administrative and quasi-judicial powers under Section 2, Article IX-C of the 1987 Constitution. In *Baytan v. COMELEC*,<sup>133</sup> this Honorable Court clarified that the COMELEC's administrative powers stem from Sections 2(1), (3) - (9) of Article IX-C while its quasi-judicial powers are found in Section 2(2) of the same article.

9.60. Here, COMELEC anchors its disqualification of Smartmatic on its perceived administrative authority under Section 2(1), Article IX-C of the 1987 Constitution, which refers to its authority to "enforce and administer all laws and regulations relative to the conduct of an election," to wit:

"Section 2. The Commission on Elections shall exercise the following powers and functions:

- (1) **Enforce and administer all laws and regulations** relative to the conduct of an election, plebiscite, initiative, referendum, and recall."

9.61. Ironically, in the same breath, the COMELEC refused to enforce and administer the applicable law or regulation in disqualifying Smartmatic - R.A. 9184 and its IRR. Relying solely on its misplaced and broad interpretation of the aforementioned provision, the COMELEC arbitrarily, whimsically, and capriciously disqualified Smartmatic, effectively rendering nugatory the mandatory provisions of R.A. 9184 and its IRR on the grounds for disqualification of bidders.

9.62. It is axiomatic that there is grave abuse of discretion when an act is (1) done contrary to the Constitution, the law or jurisprudence or (2) executed whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias.<sup>134</sup> Hence, any act of the COMELEC that contravenes the law or any right or duty inferable therefrom must be considered grave abuse of discretion.

9.63. For reasons hereunder, the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it anchored the disqualification and blacklisting of Smartmatic on Section 2(1), Article IX-C of the Constitution, ironically in gross violation thereof.

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<sup>133</sup> G.R. No. 153945, 4 February 2003.

<sup>134</sup> *Ocampo v. Enriquez*, G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120 & 226294, 8 November 2016

9.64. Acting purely on unverified information on the investigation conducted by the United States Government against former Chairman Bautista, which it had known even prior to the filing of the Petitions, the COMELEC invoked its authority under Section 2(1) of Article IX-C of the 1987 Constitution to disqualify Smartmatic, thus:<sup>135</sup>

“Separately, however, to the power granted to the Commission (En Banc) as the Procuring Entity under relevant procurement laws, Sec. 2 (1) of Article IX of the 1987 Constitution grants upon the Commission the broad power to ‘enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.’”

9.65. However, a plain reading of Section 2(1) of Article IX-C of the 1987 Constitution shows that the COMELEC’s authority thereunder is limited to “enforcing and administering” the laws promulgated by the legislature, as well as regulations issued pursuant to such laws, relative to the conduct of an election, plebiscite, initiative, referendum, and recall. The COMELEC cannot conveniently isolate or detach its authority to “enforce and administer” election laws from the very law which it is mandated to “enforce and administer.”

9.66. In this regard, this Honorable Court has defined the administrative adjudicatory power of the Commission as the power to hear and determine questions of **fact to which the legislative policy is to apply, and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same.**<sup>136</sup> Hence, the COMELEC, in the exercise of its power under Section 2(1), Article IX-C of the Constitution, cannot arbitrarily rule on all election matters without any basis in law.

9.67. As correctly opined by Commissioner Ferolino in her Separate Opinion, in order for Section 2(1), Article IX-C of the Constitution “to be validly invoked, there must be an election law to ‘enforce’ or ‘administer,’” to wit:<sup>137</sup>

“It should be emphasized that the Commission’s administrative power under Section 2(1), Article IX-C of the 1987 Constitution, as stated therein, refers only to the

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<sup>135</sup> Assailed Resolution attached as Annex “A” hereof, p. 13.

<sup>136</sup> *Bedol v. COMELEC*, G.R. No. 179830, 3 December 2009.

<sup>137</sup> Separate Opinion attached as Annex “A-1” hereof, p. 4.

enforcement and administration of election laws. For this constitutional provision to be validly invoked, there must be an election law to “enforce” or “administer.” Hence, the Commission, in the exercise of such power, cannot whimsically rule on any and all election matters without any basis in law or its own prescribed rules. This is consistent with the definition of its administrative adjudication, which is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide under the standards laid down by the law itself in enforcing and administering the same.”

9.68. Case law lays down the rule that a constitutional provision is not self-executing where it merely announces a policy and its language prescribes another means by which the policy shall be carried into effect.<sup>138</sup>

9.69. In *Ang Bagong Bayani-OFW Labor Party v. COMELEC*,<sup>139</sup> this Honorable Court construed the constitutional provisions on the party-list system and held that the phrases “in accordance with law” and “as may be provided by law” authorized Congress “to sculpt in granite the lofty objective of the Constitution.” Thus, applying the foregoing to the instant case, the phrase “[e]nforce and administer all laws and regulations” found in Section 2 (1), Article IX-C of the 1987 Constitution clearly places upon the Legislature the duty to craft the laws which the COMELEC, in the exercise of its administrative authority, shall put into effect.

9.70. Put simply, the COMELEC, in its far-reaching interpretation of Section 2 (1) of Article IX of the 1987 Constitution, cannot supplant the legal rules and procedures provided under R.A. 9184 and its IRR on the disqualification of bidders in government procurement projects with its own manufactured rules and procedures.

9.71. As mentioned, this Honorable Court, in *Pabillo v. COMELEC*,<sup>140</sup> emphatically held that the “existing laws” referred to in the provision is none other than R.A. 9184, the law designed to govern all cases of procurement of the national government, its departments, bureaus, offices and agencies, including state universities and colleges,

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<sup>138</sup> Manila Prince Hotel v. GSIS, G.R. No. 122156, 3 February 1997.

<sup>139</sup> G.R. No. 147589, 25 June 2003.

<sup>140</sup> G.R. Nos. 216098 & 216562, 21 April 2015.



government-owned and/or-controlled corporations, government financial institutions and local government units.

9.72. In view of the foregoing, absent any enforcement or administration of the mandatory provisions of R.A. 9184 and its IRR, the COMELEC cannot properly invoke its authority under Section 2(1), Article IX-C of the 1987 Constitution for the purpose of disqualifying and blacklisting Smartmatic.

9.73. In support of its decision, the COMELEC claims that jurisprudence "has repeatedly held that there can hardly be any doubt that the text and intent of [Section 2(1), Article IX-C of the 1987 Constitution] is to give the Commission all the necessary and incidental powers for it to achieve the holding of free, orderly, honest, peaceful and credible elections."<sup>141</sup> In support thereof, the COMELEC cites the case of *Bedol v. COMELEC*.<sup>142</sup>

9.74. However, a mere perusal of the aforementioned case would reveal that it belies the COMELEC's own assertions.

9.75. In *Bedol*, the petitioner who was Chair of the Provincial Board of Canvassers for the province of Maguindanao failed to submit the canvass of votes for twenty-two (22) cities of the said province, which was supposed to be transmitted to the COMELEC on 22 May 2007, eight (8) days after the 14 May 2007 elections. The COMELEC conducted a fact-finding activity to further investigate the matter, during which the petitioner explained that the election returns and other paraphernalia were stolen while in his custody. The petitioner did not attend the hearings and investigations, but appeared on newspapers and interviews challenging those that want to sue him. This forced the COMELEC to file a warrant of arrest against the petitioner and charge him with Contempt. Petitioner questioned the COMELEC's legal basis for arresting him and challenged the commission's jurisdiction to charge him with contempt, especially since no complaint was filed against him. The issue thus raised before this Honorable Court was whether the COMELEC's initiation and issuance of a contempt order is within its constitutional powers.

9.76. In deciding in favor of the COMELEC, this Honorable Court explained that the commission's administrative function refers to the enforcement and administration of election laws. This Honorable Court thus examined the pertinent provisions of the

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<sup>141</sup> Assailed Resolution attached as Annex "A" hereof, p. 13.

<sup>142</sup> G.R. No. 179830, 3 December 2009.

Omnibus Election Code and found that Section 52 (e), Article VII thereof grants the COMELEC the power to “[p]unish contempts provided for in the Rules of Court in the same procedure and with the same penalties provided therein.” This Honorable Court also found that the aforementioned provision of law was implemented by Rule 29 of the COMELEC Rules of Procedure. Therefore, when the COMELEC issued the Contempt Charge against petitioner, it complied with the Section 4, Rule 71 of the Rules of Court pursuant to the requirement under the said provision of the Omnibus Election Code. Similarly, it also complied with the requirements set by Rule 29 of the COMELEC own Rules of Procedure.

9.77. Hence, when this Honorable Court cited *Loong v. COMELEC*<sup>143</sup> in *Bedol*, stating that the “text and intent of Section 2(1), Article IX-C of the Constitution is to give COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections,” it did not, under any circumstance, intend to grant the COMELEC the arbitrary power to act beyond the standards laid down by the law it is mandated to enforce and administer. This is evident from this Honorable Court’s meticulous examination of the Omnibus Election Code as well as the COMELEC’s own rules of procedure to justify the latter’s act of issuing a contempt order.

9.78. On the contrary, this Honorable Court, in citing the case of *Loong*, merely sought to justify the COMELEC’s issuance of the said contempt order notwithstanding the absence of any complaint filed by a private party. In response thereto, this Honorable Court stated that the COMELEC possesses the power to conduct investigations as an adjunct to its constitutional duty to enforce and administer all election laws, by virtue of Section 2(6) Article IX-C of the 1987 Constitution. Hence, “the necessary and incidental powers” referred to by this Honorable Court in its citation of *Loong* specifically pertains to the COMELEC’s power to issue the contempt order pursuant to its power to investigate.

9.79. Thus, the case of *Bedol* in fact only strengthens Smartmatic’s position that the COMELEC’s invocation of Section 2(1) Article IX-C of the 1987 Constitution cannot be made without any concomitant law or regulation setting the standards for its enforcement and administration.

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<sup>143</sup> G.R. No. 93986, 22 December 1992.

9.80. All told, the COMELEC committed grave abuse of discretion when it disqualified Smartmatic not on the basis of the relevant and mandatory provisions of R.A. 9184 and its IRR which it is mandated by Section 2(1), Article IX-C of the 1987 Constitution to enforce and administer, but solely on mere conjecture and speculation and without basis in any existing law. This becomes even more apparent given the basis offered by the COMELEC for the disqualification – that Smartmatic’s mere participation in the bidding process might tarnish the integrity of the elections.

C.

**COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN WHIMSICALLY AND ARBITRARILY DISREGARDING THE PROCEDURE FOR DISQUALIFICATION AND BLACKLISTING UNDER R.A. 9184 AND ITS IRR AND ABDICATING FROM ITS MANDATE TO ENFORCE AND ADMINISTER R.A. 9184 PURSUANT TO SECTION 2(1) ARTICLE IX-C OF THE 1987 CONSTITUTION.**

9.81. As discussed, the Assailed Resolution deals with the procurement activities of the COMELEC as the HoPE, as defined under R.A. 9184.

9.82. Government procurements are governed by the principles of transparency, competitiveness, streamlined procurement process, accountability and public monitoring.<sup>144</sup> In violation of these very principles, the COMELEC refused to apply the applicable procedures.

9.83. Under the Uniform Guidelines for Blacklisting (“Uniform Guidelines”), the procedure for blacklisting during the competitive bidding stage arises only upon the submission of bids. In taking cognizance of the Petitions before the competitive bidding stage, the COMELEC prematurely initiated the entire process. Even assuming that the blacklisting procedure was timely, the procedure itself was not followed:<sup>145</sup>

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<sup>144</sup> Section 3, 2016 R-IRR.

<sup>145</sup> GPPB Resolution No. 09-2004, 20 August 2004.

- i. A petition by a bidder/prospective bidder should have been filed before the BAC or the BAC may *motu proprio* commence the proceedings.
- ii. The BAC must then notify the subject contractor and providing the same with an opportunity to show cause why it should not be suspended.
- iii. The BAC must, upon manifestation and motion of the contractor, conduct hearings, where documentary evidence and verbal testimony may be presented. The contractor is also given the explicit right to cross-examination.
- iv. The hearings must be terminated within five (5) days. After which, the BAC must, on the basis of the complaint, answer, documentary evidence submitted, and facts verified render a resolution and recommendation to the head of the Procuring Entity.
- v. The head of the Procuring Entity must, within fifteen (15) days from receipt of the BAC resolution, determine if blacklisting is warranted.
- vi. The decision shall clearly and distinctly state the facts, evidence and the law on which it is based, as well as the date of effectivity of the penalty.
- vii. The contractor then has a period of seven (7) days within which to file a motion for reconsideration.
- viii. If the decision on the motion for reconsideration is adverse, the contractor may then file a protest under Section 55 of R.A. 9184.
- ix. If the decision on the protest is still adverse, the contractor may avail of Section 58 of R.A. 9184 and file a petition for certiorari before the Regional Trial Court.

9.84. On the other hand, if the COMELEC's claim is that Smartmatic's bid for the 2022 NLE is still at the Contract Implementation Stage, the COMELEC should have followed the procedure for blacklisting during the contract implementation stage under the Uniform Guidelines, to wit:<sup>146</sup>

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<sup>146</sup> *Ibid.*

- i. The COMELEC must first initiate termination before proceeding to blacklist the contractor.
- ii. The COMELEC shall issue a written Notice to Terminate which must include (i) grounds for termination; (ii) statement of the acts that constitute the ground; (iii) extent of the termination; (iv) instruction for the provider to show cause why the contract should not be terminated; (v) special instructions by the Procuring Entity, if any.
- iii. The Notice to Terminate must be accompanied by a Verification Report conducted by the Implementing Unit.
- iv. If served with a Notice to Terminate, the contractor then has a period of seven (7) days to respond to the show cause notice through a verified position paper stating why termination is not warranted.
- v. On the basis of the verified position paper, the COMELEC must decide within a non-extendible period of ten (10) whether to terminate the contract.
- vi. It is only when termination by default has been completed that the COMELEC may proceed to issue a Blacklisting Order.

9.85. Based on the requirements above, the COMELEC must commence and finalize the termination process outlined in the 2016 IRR before a Blacklisting Order can be issued. The records of the case, however, is clear that none of the foregoing procedures were followed, in violation of R.A. 9184 and its IRR, as well as its mandate under Section 2(1), Article IX-C of the 1987 Constitution.

9.86. Meanwhile, Smartmatic's eligibility as a bidder for the 2025 AES, as well as for future biddings, cannot be validly ruled upon at this juncture, as the same will be contingent upon its provision of eligibility documents enumerated Section 23.1 of the 2016 IRR to the RA 9184. Consequently, the assessment of Smartmatic's submission of comprehensive and verified eligibility documents, employing "non-discretionary" test with a "pass/fail criterion," is imperative prior to considering Smartmatic as disqualified from the bidding process.

9.87. Lamentably, however, the COMELEC blatantly disregarded this process when it decided on Smartmatic's eligibility based on allegations of bribery in a foreign jurisdiction. To stress, R.A.

9184, its IRR and the Uniform Guidelines provide the grounds for ineligibility and blacklisting. The existence of mere rumors and unverified allegations of bribery are not grounds therein.

9.88. In *Abutin v. San Juan*,<sup>147</sup> citing *Comilang v. Belen*,<sup>148</sup> this Honorable Court held that manifest disregard of the basic rules and procedures constitutes a grave abuse of discretion, thus:

“Obstinate disregard of basic and established rule of law or procedure is not mere error of judgment. It amounts to evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. It is grave abuse of discretion correctible by certiorari.”

9.89. Evidently, the COMELEC whimsically and arbitrarily disregarded R.A. 9184, its IRR and the Uniform Guidelines for Blacklisting and imposed the sanction of disqualification and blacklisting without following the proper procedure. In rendering the Assailed Resolution, the COMELEC gravely abused its discretion, and violated its mandate under Section 2(1), Article IX-C of the 1987 Constitution, to the prejudice of Smartmatic.

### ALLEGATIONS IN SUPPORT OF THE APPLICATION FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION

10.1. The foregoing allegations are pleaded herein by reference in support of Petitioner’s application for the issuance of a Temporary Restraining Order (“TRO”) and/or Writ of Preliminary Injunction (“WPI”) to enjoin the COMELEC from implementing the Assailed Resolution.

10.2. In *Philippine National Bank v. RJ Ventures Realty and Development Corporation*,<sup>149</sup> this Honorable Court held that “[a] preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party’s substantive rights or interests pending the final judgment in the principal action.”

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<sup>147</sup> G.R. No. 247345, 6 July 2020.

<sup>148</sup> A.M. No. RTJ-10-2216, 26 June 2012.

<sup>149</sup> G.R. No. 164548, 27 September 2006.

10.3. In *Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.*, this Honorable Court elucidated on the general principles in issuing a writ of preliminary injunction, to wit:

“At times referred to as the “Strong Arm of Equity,” we have consistently ruled that there is no power the exercise of which is more delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages; “in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant’s favor; where there is a willful and unlawful invasion of plaintiff’s right against his protest and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation.”

10.4. Section 3, Rule 58 of the Rules of Court enumerates the grounds for issuance of preliminary injunction:

- a. That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
- b. That the commission, continuance or nonperformance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- c. That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

10.5. In *DPWH v. City Advertising Ventures Corporation*,<sup>150</sup> citing *Marquez v. Sanchez*,<sup>151</sup> this Honorable Court laid down the requisites which must be proven by the applicant for the issuance of a writ of preliminary injunction, whether prohibitive or mandatory:

- a. The applicant must have a clear and unmistakable right, that is, a right in *esse*;
- b. There is a material and substantial invasion of such right;
- c. There is an urgent need for the writ to prevent irreparable injury to the applicant; and
- d. No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

10.6. As will be discussed below, all the foregoing requirements obtain in this case.

*Smartmatic has a clear and unmistakable right to participate in the bid for the 2025 NLE.*

10.7. As discussed, the COMELEC's decision to disqualify Smartmatic from participating in the procurement process for the 2025 NLE is grounded on mere suspicions from uncited proceedings in a foreign jurisdiction.<sup>152</sup> The disqualification Smartmatic does not come from its failure to comply with bidding requirements as stated in R.A. 9184 and its IRR. The Assailed Resolution does not even mention of any positive act from Smartmatic which would disqualify it from bidding pursuant to R.A. 9184 and its IRR.

10.8. Consequently, Smartmatic cannot be prevented from participating in the bid when it has never been shown to be non-compliant with the bidding requirements. This is especially true in light of Smartmatic's purchase of bid documents on 31 October 2023 which shows its genuine intention to participate in the bidding for the 2025 AES.

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<sup>150</sup> G.R. No. 182944, 9 November 2016.

<sup>151</sup> G.R. No. 141849, 13 February 2007.

<sup>152</sup> Assailed Resolution attached as Annex "A" hereof, pp. 14-15.



10.9. As defined under R.A. 9184, “Competitive Bidding” refers to a method of procurement which is open to participation by any interested party and which consist of the following processes: advertisement, pre-bid conference, eligibility screening of bids, evaluations of bids, post-qualification, and award of contract.<sup>153</sup> As can be further gleaned from the law, all procurement shall “in all cases, be governed by: ...[c]ompetitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.”<sup>154</sup>

10.10. It is clear from the foregoing that all public biddings should be open to any interested party without bias or prejudice in favor of or against a single bidder. Especially since the COMELEC in its Resolution has admitted that the SBAC has yet to determine the eligibility of each bidder,<sup>155</sup> Smartmatic has a clear legal right to participate in the procurement process for the 2025 NLE.

10.11. In this regard, the rules outlined under R.A. 9184 and its IRR are clear. It is only upon the submission and receipt of the bid documents that SBAC shall be able to examine the technical components of the bids using “non-discretionary” “pass/fail” criteria to determine whether all required documents are present.<sup>156</sup>

10.12. It is likewise clear from the cited provision that the SBAC cannot choose which bids to examine or consider. If, upon an examination of the bids, a bidder has all the required documents, the SBAC has the ministerial duty to deem the bidder as qualified to participate in the next stage of the bidding process. As a rule, the duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment, thus:<sup>157</sup>

“A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done.”

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<sup>153</sup> Rep. Act. No. 9184, Sec. 5(e).

<sup>154</sup> Rep. Act. No. 9184, Sec. 3.

<sup>155</sup> Assailed Resolution attached as Annex “A” hereof, p. 5.

<sup>156</sup> Rep. Act. No. 9184, Sec. 30. *See also* 2016 IRR, Rule IX, Sec. 30.1.

<sup>157</sup> *Mallari v. Banco Filipino Savings & Mortgage Bank*, G.R. No. 157660, 29 August 2008.

10.13. Hence, Smartmatic may only be disqualified once the SBAC determines that it has failed the criteria specified in R.A. 9184 and its IRR.

10.14. As it stands, however, the examination of the bidding documents has yet to happen considering that the bidding process is still at the stage of bid submission. Even the COMELEC expressly recognized that there is no basis or avenue to review the eligibility of Smartmatic or any other bidder.<sup>158</sup> Hence, there exists no grounds or any other basis to disqualify, more so blacklist Smartmatic from participating in the 2025 AES bid.

10.15. It should be borne in mind that ensuring that public bidding processes are fair and open to all is essential to promote transparency, competition, and equal opportunity. A competitive public bidding seeks to safeguard public interest by maximizing advantages through open competition. This mechanism allows government agencies to prevent or address anomalies in public contract execution. The strict adherence to bidding process rules, regulations, and guidelines serves as the primary safeguard, ensuring a fair, honest, and competitive public bidding environment.<sup>159</sup>

10.16. It has been held that the three principles in public bidding are: (1) the offer to the public; (2) an opportunity for competition; and (3) a basis for the exact comparison of bids. A regulation of the matter which excludes any of these factors destroys the distinctive character of the system and thwarts the purpose of its adoption.<sup>160</sup>

10.17. Based on these, not only does Smartmatic have the right to participate in the bidding process, as it possesses all the qualifications and none of the disqualifications as a bidder, but the COMELEC likewise has a concomitant duty to admit the participation of Smartmatic as bidder in pursuit of the principles in public bidding.

*The Assailed Resolution disqualifying and blacklisting Smartmatic would be in clear violation of Smartmatic's right to participate in the 2025 AES bid and of the established*

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<sup>158</sup> Assailed Resolution attached as Annex "A" hereof, p. 5.

<sup>159</sup> Felicitas v. Yunting, G.R. No. 232252 (Notice), 8 March 2022.

<sup>160</sup> Power Sector Assets and Liabilities Management Corp. v. Pozzolanic Philippines, Inc., G.R. No. 183789, 24 August 2011.

*procedure outlined in R.A. 9184  
and its IRR.*

10.18. In the Assailed Resolution, the COMELEC expressly recognized that the disqualification and blacklisting of Smartmatic is premature and that there is “simply no basis to review Smartmatic’s or any other bidder’s eligibility.”<sup>161</sup> Despite this express recognition, however, the COMELEC arbitrarily rendered the Assailed Resolution, disqualifying and blacklisting Smartmatic from the 2025 AES bid based on grounds other than those listed in R.A. 9184 and its IRR.

10.19. Considering this serious disregard of the established procedure under R.A. No. 9814 and its IRR, the right of Smartmatic to participate in the 2025 AES bid, and to have its eligibility determined by the SBAC through an examination of its bidding documents, have been clearly violated.

10.20. To stress, the determination by the SBAC of a bidder’s eligibility shall be non-discretionary based on an examination the technical components of the bid.<sup>162</sup> Hence, there is even more reason that the determination of who can participate in the bidding at the initial stages should likewise be non-discretionary. The HoPE, much less the SBAC, cannot choose who can and cannot bid.

10.21. The Assailed Resolution is in clear disregard of the ministerial duty of the SBAC to determine who are eligible to bid for the 2025 AES. Verily, the Assailed Resolution recognizes that there is no legal basis to prohibit Smartmatic from participating in the procurement process of the 2025 AES.<sup>163</sup> Thus, in giving effect to the Assailed Resolution, thereby disqualifying and prohibiting Smartmatic from the 2025 AES bid, the COMELEC not only violated R.A. 9184 and its IRR, but also Smartmatic’s right to participate in the bidding process.

*Smartmatic will suffer grave  
and irreparable injury  
following the implementation  
and execution of the Assailed  
Resolution.*

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<sup>161</sup> Assailed Resolution attached as Annex “A” hereof, p. 5.

<sup>162</sup> Rep. Act. No. 9184, Sec. 30. See also 2016 IRR, Rule IX, Sec. 30.1.

<sup>163</sup> Assailed Resolution attached as Annex “A” hereof, p. 6.

10.22. An injunctive remedy may be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation.<sup>164</sup> An injury, to be considered “irreparable” must be “of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy.”<sup>165</sup>

10.23. This Honorable Court held in *Evy Construction and Development Corp. v. Valiant Roll Forming Sales Corp.*, that, as a rule, injunctive relief could be granted to prevent grave and irreparable damage to a business entity’s goodwill and business reputation:<sup>166</sup>

“Injury is considered irreparable if ‘there is no standard by which [its] amount can be measured with reasonable accuracy.’ The injury must be such that its pecuniary value cannot be estimated, and thus, cannot fairly compensate for the loss. **For this reason, the loss of goodwill and business reputation, being unquantifiable, would be considered as grave and irreparable damage.**”

10.24. To reiterate, Smartmatic was disqualified and blacklisted from the 2025 AES bid even prior to the SBAC’s examination of its bidding documents and without compliance with the procedure outlined in R.A. 9184 and its IRR.<sup>167</sup> Worse, the sole basis for Smartmatic’s disqualification and blacklisting of the COMELEC is an unrelated and foreign issue which is clearly not a ground under R.A. 9184 and its IRR.<sup>168</sup> Smartmatic has thus been deprived of its right to participate in the 2025 AES bid based on an unresolved and unsubstantiated issue and following an extralegal procedure outside of R.A. 9184 and its IRR.

10.25. Thereafter, as soon as the Assailed Resolution was issued, media reports started spreading false imputations against Smartmatic.

10.26. To illustrate, COMELEC’s specific targeting of Smartmatic becomes more apparent through Chairman Garcia public denunciations of Smartmatic’s integrity to participate in the 2025 AES. Chairman Garcia described the move to disqualify Smartmatic as a

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<sup>164</sup> Philippine National Bank v. Rittrato Group Inc., G.R. No. 142616, 28 July 2001.

<sup>165</sup> Philippine National Bank v. Castallo Technology Corp, G.R. No. 178367, 19 March 2012.

<sup>166</sup> G.R. No. 207938, 11 October 2017.

<sup>167</sup> Assailed Resolution attached as Annex “A” hereof, p. 10.

<sup>168</sup> Assailed Resolution attached as Annex “A” hereof, pp. 10-11 and 13-14.

decision to “maintain the integrity of our electoral process.”<sup>169</sup> Chairman Garcia clothed the move to disqualify Smartmatic in patriotic undertones, stating that the disqualification was “*Para sa Bayan*.”<sup>170</sup> Undoubtedly, the disqualification of Smartmatic, together with the statements of the Chairman of the COMELEC, sends the message to the public that Smartmatic had been engaging in irregular activities that affected the results of the previous NLE, to the extreme prejudice of Smartmatic as a company.

10.27. Further, the COMELEC, in issuing the Assailed Resolution and blacklisting Smartmatic from participating in the bidding for the 2025 AES, placed credibility on the unsubstantiated and unresolved allegation of bribery charges against Smartmatic and deemed the same true, or at least worthy of consideration to be deemed truthful. Such an acknowledgment by the COMELEC, being a constitutional body, would naturally be given great weight not only by the public but also by other government bodies with whom Smartmatic may have dealings with, whether presently or in the future. Hence, such a serious imputation, acknowledged by the COMELEC as somehow truthful, causes grave injury to Smartmatic’s goodwill and reputation.

10.28. It bears stressing that since 2010, Smartmatic has been a trusted provider in the conduct of elections in the Philippines. Throughout the years, and particularly for the NLEs in 2010, 2013, 2016 and 2019, Smartmatic has consistently qualified as a service provider for the automated elections and electronic transmission services. In these elections, Smartmatic has undoubtedly proven its eligibility, in compliance with the technical specifications of the COMELEC.<sup>171</sup>

10.29. In fact, the success of the 2022 NLE was widely publicized, having the fastest transmission of election returns since the country adopted the AES in 2010.<sup>172</sup>

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<sup>169</sup> George Erwin G. Garcia, @ChairGEGarcia, “We disqualified smartmatic to participate in all COMELEC procurement.” 29 November 2023, 12:17PM, <https://twitter.com/ChairGEGarcia/status/1729716254728999334>; George Erwin G. Garcia, @ChairGEGarcia, “We have to maintain the integrity of our electoral processes. Para sa Bayan”, 29 November 2023, 12:30PM, <https://twitter.com/ChairGEGarcia/status/1729719473907585522>, printouts of which are attached hereto as Annexes “T” and “U” and made integral parts hereof.

<sup>170</sup> *Id.*

<sup>171</sup> See Roque v. COMELEC, G.R. No. 188456, 10 September 2009, Capalla v. COMELEC, G.R. No. 201112, 13 June 2012, and Querubin v. COMELEC, G.R. No. 218787, 8 December 2015.

<sup>172</sup> Inquirer.net, Tina G. Santos, Fastest results, highest turnout, says Comelec of 2022 polls, available at <https://newsinfo.inquirer.net/1595907/fastest-results-highest-turnout-says-comelec-of-2022-polls> (last accessed on 11 October 2023), a printout of which is attached as Annex “V” hereof.

10.30. However, all the efforts and success of Smartmatic in the past decade have been rendered inutile in view of the Assailed Resolution, effectively tarnishing the reputation and credibility of Smartmatic as a service provider. Hence, pursuant to *Evy Construction and Development Corp.*, Smartmatic is entitled to protection through an injunctive writ.

*Smartmatic has no other ordinary, speedy, and adequate remedy.*

10.31. Assuming that the COMELEC Rules of Procedure apply, the rule is clear that a motion for reconsideration against a ruling of the COMELEC *En Banc* is a prohibited pleading.<sup>173</sup>

10.32. Thus, considering that Smartmatic can no longer defend itself by way of a motion for reconsideration and the COMELEC refused to comply with the proper procedure outlined in R.A. 9184, Smartmatic has no other available remedy to protect its rights under the law.

10.33. Furthermore, considering that the start of the bidding for the 2025 AES is scheduled on 12 December 2023, or only six (6) days away, an injunctive writ is necessary so as to allow Smartmatic to participate therein. This Honorable Court laid down the rationale for granting the issuance of an injunctive writ in cases of extraordinary situation, in the case of *Cahambing v. Espinosa* as follows:

“Foremost, we reiterate that the sole object of a preliminary injunction is to maintain the *status quo* until the merits can be heard. A preliminary injunction is an order granted at any stage of an action prior to judgment or final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party’s substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned.”<sup>174</sup>

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<sup>173</sup> COMELEC Rules of Procedure, Rule 13, Sec. 1(d).

<sup>174</sup> *Cahambing v. Espinosa*, G.R. No. 215807, 25 January 2017.

10.34. Following the COMELEC's issuance of the Assailed Resolution, **Chairman Garcia** opined that its decision is immediately executory unless restrained by this Honorable Court.<sup>175</sup> Moreover, assuming *arguendo* that the COMELEC Rules of Procedure apply, the decision or resolutions of the COMELEC *En Banc* shall become final and executory after five (5) days from its promulgation or by 4 December 2023.<sup>176</sup>

10.35. In this connection, it is important to note again that **the opening of bids for the 2025 AES is scheduled to be conducted on 12 December 2023** which is only six (6) days away.

10.36. To recall, under the IRR of R.A. No. 9184, bids shall be received by the BAC on the date, time, and place specified in the Invitation to Bid/Request for Expression of Interest. The following periods from the last day of posting of the Invitation to Bid/Request for Expression of Interest up to the submission and receipt of bids shall be observed:<sup>177</sup>

- a. For Goods, a maximum period of forty-five (45) calendar days.
- b. For Infrastructure Projects, the following maximum periods:

| ABC<br>(in Philippine currency) | Period           |
|---------------------------------|------------------|
| Fifty (50) million and below    | 50 calendar days |
| Above fifty (50) million        | 65 calendar days |

- c. For Consulting Services, a maximum period of seventy-five (75) calendar days.<sup>178</sup>

10.37. **Bids submitted after the deadline shall no longer be accepted by the BAC, thus:**

<sup>175</sup> Philstar, Mayen Jaymalin, Smartmatic barred from Philippines elections *available at* <https://www.philstar.com/headlines/2023/11/30/2315162/smartmatic-barred-philippines-elections> (last accessed 2 December 2023), a printout of which is attached hereto as Annex "V" and made an integral part hereof.

<sup>176</sup> COMELEC Rules of Procedure, Rule 18, Sec. 13.

<sup>177</sup> 2016 IRR, Rule VIII, Sec. 25.5.

<sup>178</sup> *Ibid.*

“Bids, including the eligibility requirements under Section 23.1 of this IRR, submitted after the deadline shall not be accepted by the BAC. The BAC shall record in the minutes of bid submission and opening, the bidder’s name, its representative and the time the late bid was submitted or in case of online or electronic bid submission, generate a Bid receipt page for the official time of late submission which can be saved or printed by the bidder.”<sup>179</sup>

10.38. Hence, if a TRO will not be issued in time for the opening of the bids for the 2025 AES on 12 December 2023, Smartmatic will no longer have the opportunity to, and may lose any possibility of participating, in the 2025 AES bidding as the Assailed Resolution effectively bars it to do so.

10.39. To stress, the Assailed Resolution disqualifies Smartmatic from participating in the bids for all elections, including the AES 2025 bid. In effect, the SBAC will not consider Smartmatic’s bid on 12 December 2023. As a result, there would be little to no remedy to rectify Smartmatic’s non-participation on said date, and even in the later stages following the opening of the bids, considering that the bidding process shall continue with or without Smartmatic.

10.40. Thus, considering the very limited period of time afforded to Smartmatic – from effectivity of the Assailed Resolution to the opening of bids on 12 December 2023 – it becomes apparent that the only way for Smartmatic to exercise its right to participate in the bid submission on 12 December 2023 is through a TRO issued by this Honorable Court.

10.41. For avoidance of any collateral issue, it should be clarified that the application for a TRO, as well as the writ of preliminary injunction that may be issued, is purely for the purpose of preventing and enjoining the Assailed Resolution from becoming final and executory thereby barring Smartmatic from participating in the opening of bids on 12 December 2023. The application of the TRO is not for purposes of suspending or delaying the bidding process for the 2025 AES.

10.42. In fact, on the contrary, the purpose of the injunction sought is so that the bidding for the 2025 AES is not hampered or delayed while this Honorable Court hears the present Petition.

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<sup>179</sup> *Id.* Sec. 25.6.



10.43. It is thus imperative that the COMELEC be enjoined from enforcing the Assailed Resolution, and that Smartmatic be accordingly allowed to exercise its right to participate in the 2025 AES bid.

10.44. Further, considering the aforementioned urgent nature of the relief sought, Smartmatic likewise respectfully moves that the case be submitted for special raffle.

### PRAYER

WHEREFORE, Petitioners **SMARTMATIC TIM CORPORATION** ("Smartmatic TIM") and **SMARTMATIC PHILIPPINES, INC.** ("Smartmatic PH") (collectively, the "Petitioners" or "Smartmatic"), respectfully pray that:

1. Pending consideration of the Petition, **CONDUCT** a special raffle for the cas *a quo*.

2. Pending consideration of the Petition, **ISSUE a TEMPORARY RESTRAINING ORDER and/or WRIT OF PRELIMINARY INJUNCTION**, effective from the date of its issuance until such time as the decision in this case attains finality, enjoining Public Respondent Commission on Elections (*En Banc*) and anyone acting for or under its authority, direction, control, or instruction, and any other entity, including the Special Bids and Awards Committee (SBAC) for the 2025 AES, from performing any act in connection with or pursuant to the *Resolution* dated 29 November 2023, in any form or manner, including, but not limited to:

- a. Prohibiting or disallowing Smartmatic from participating in the opening of bids on 12 December 2023;
- b. Preventing the examination of Smartmatic's eligibility and bidding documents;
- c. Failing and/or disqualifying Smartmatic as a potential bidder in the 2025 AES bid even prior examination of Smartmatic's eligibility and bidding documents;
- d. Prohibiting or disallowing Smartmatic from participating in the bidding process for the 2025 AES; and

e. Such other act in connection with, or pursuant to, the *Resolution* dated 29 November 2023.

3. **ISSUE** a **Writ of Certiorari ANNULING, REVERSING** and **SETTING ASIDE** the *Resolution* dated 29 November 2023 for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Smartmatic likewise prays for such further or other relief as may be deemed just or equitable.

Taguig City for Manila, 6 December 2023.

**ANGARA ABELLO CONCEPCION REGALA & CRUZ**

*Counsel for Petitioners Smartmatic TIM Corporation and*

*Smartmatic Philippines Inc.,*

22<sup>nd</sup> Floor, ACCRALAW Tower

2<sup>nd</sup> Avenue corner 30<sup>th</sup> Street, Crescent Park West

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[accra@accralaw.com](mailto:accra@accralaw.com)

By:



**GEORGE S.D. AQUINO**

PTR No. A-5801917; 01/11/2023; Taguig City

IBP No. 181495; 01/06/2023; Makati City

Roll No. 43840

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**LEO FREDERICK Z. CRUZ**


PTR No. 0162304; 01/05/2023; Pasig City;

IBP No. 272364; 01/05/2023; Manila City IV;

Roll No. 69737

MCLE Compliance No. VII - 0029581; 05/11/2023

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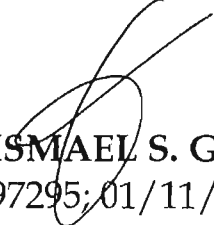
**MIGUEL RICO E. DE GUZMAN**

PTR No. A-5797621; 01/11/2023; Taguig City

IBP No. 249214; 01/06/2023; Makati City

Roll No. 75653

MCLE Compliance No. NA; (Admitted on July 2020)



**GINO ISMAEL S. GERODIAS**

PTR No. A-5797295; 01/11/2023; Taguig City

IBP No. 249226; 01/06/2023; Quezon City

Roll No. 77945

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[gsgerodias@accralaw.com](mailto:gsgerodias@accralaw.com)



**GE-AN KATHLEENA SALUD**

PTR No. A-5924528; 05/16/23; Taguig City

IBP No. 340670; 05/07/23; Makati City

Roll No. 87310

MCLE Compliance No. NA (Admitted on May 2023)

[gksalud@accralaw.com](mailto:gksalud@accralaw.com)

*Verification and Certification of Non-Forum Shopping follow...*

*Copy furnished:*

**COMMISSION ON ELECTIONS**

*Public Respondent*

Palacio del Gobernador Building,  
General Luna Street, Intramuros,  
Manila 1002

**ELISEO MIJARES RIO, JR.**

*Private Respondent*

#7 B11 Soldiers Hills Village,  
Barangay Putatan,  
Muntinlupa City

**AUGUSTO CADELIÑA LAGMAN**

*Private Respondent*

6053 Palma Street, Barangay Poblacion,  
Makati City

**FRANKLIN FAYLOGA YSAAC**

*Private Respondent*

28N Orchid Tower,  
Oriental Garden, Barangay PDP,  
Makati City

**LEONARDO OLIVERA ODOÑO**

*Private Respondent*

19871 Willow Street,  
Executive Heights, Bgy. Sun Valley,  
Paranaque City

**ATTY. JOSE M. JOSE**

*Counsel for the Private Respondents*

60 Rivera Street, Barangay Progreso,  
San Juan City,  
[jmjose64@yahoo.com](mailto:jmjose64@yahoo.com)

#### **EXPLANATION**

In compliance with Section 11, Rule 13 of the Rules of Court, counsel respectfully manifests that the foregoing **PETITION FOR CERTIORARI** will be served by private courier and registered mail because of time and distance constraints, as well as the limited number of office messengers, render personal service impracticable.

  
**GE-AN KATHLEENA SALUD**

**VERIFICATION AND CERTIFICATION**  
**OF NON-FORUM SHOPPING**

I, **BRENDA Q. BATALLA**, of legal age, office address at Unit 1002 One World Place, 32<sup>nd</sup> Street, Bonifacio Global City, Taguig City, Philippines, subscribing under oath, depose and state that:

1. I am the authorized representative of **SMARTMATIC TIM CORPORATION** ("Smartmatic"), as evidenced by the Secretary's Certificate dated 4 December 2023 attached to this Verification and Certification.

2. I, on behalf of Smartmatic, have caused the preparation and filing of this Petition, read and understood all of its contents, and attest that all the allegations contained herein are true and correct of my personal knowledge and/or based on authentic records and/or documents.

3. This Petition is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation, and its factual allegations have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

4. Smartmatic has not commenced any other action or proceeding or filed any claim involving the same issues in the Supreme Court, the Court of Appeals, or any other court, tribunal or agency, and to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other court, tribunal, or agency.

5. Should it come to Smartmatic's knowledge that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other court, tribunal or agency, Smartmatic undertakes to report that fact to the Honorable Court within five (5) calendar days therefrom.

6. Smartmatic manifests that, although not involving the same issues and reliefs in the present Petition, a (a) *Petition for Mandamus with Prayer for Temporary Restraining Order to Compel Preservation and/or Restrain Alteration/Erasure/Deletion of Subscriber and Cyber Traffic Data Integrity of Telecom Transmission of National Election Results from 7PM to at Least 9PM of 09May 2022 Philippine Time* dated 28 October 2022, (b) *Supplemental Petition* dated 3 April 2023, and (c)

Second Supplemental Petition dated 12 July 2023, all entitled "Eliseo Mijares Rio, Jr., Augusto Cadelina Lagman, and Franklin Fayloga Ysaac v. Commission on Elections (COMELEC), Smartmatic Total Information Management, Dito Telecommunity, Globe Telecom, and Smart Communications," and docketed as G.R. No. 263838, were filed by Private Respondents Eliseo Mijares Rio, Jr., Augusto Cadelina Lagman, and Franklin Fayloga Ysaac against Smartmatic before the Supreme Court.

I affix my signature herein to certify the truthfulness of the allegations in the Petition.

*Brenda Q. Batalla*  
**BRENDA Q. BATALLA**  
 Affiant

SUBSCRIBED AND SWORN TO before me this 06 DEC day of 2023 with affiant exhibiting to me the following:

| AFFIANT           | COMPETENT EVIDENCE OF IDENTITY |                        |   |
|-------------------|--------------------------------|------------------------|---|
|                   |                                | Type of ID             | ID Number and Expiry Date (if applicable) |
| BRENDA Q. BATALLA | 1                              | Social Security System | 08-1153518-8                              |
|                   | 2                              | Passport               | P1525567B<br>valid until 25 April 2029    |

Doc No. 373 ;  
 Page No. 76 ;  
 Book No. I ;  
 Series of 2023.



*Nepomuceno M. Mendoza III*  
**ATTY. NEPOMUCENO M. MENDOZA III**  
 Notary Public for Taguig City  
 Until December 31, 2023  
 PTR No. A-5797294; January 11, 2023 – Taguig City  
 IBP No. 210197; May 12, 2022 – CALMANA  
 Appointment / Commission No. 100 (2022-2023)  
 Roll No. 77820  
 Angara Abello Concepcion Regala & Cruz Law Offices  
 22/F ACCRALAW Tower  
 2nd Avenue corner 30th St., Crescent Park West,  
 Bonifacio Global City, 1635 Taguig, Metro Manila  
 MCLE Compliance: Admitted in May 2022

### SECRETARY'S CERTIFICATE

I, **RUBY ROSE J. YUSI**, of legal age, Filipino citizen, with office address at the 22<sup>nd</sup> Floor, ACCRALAW Tower, Second Avenue corner 30<sup>th</sup> Street, Crescent Park West, Bonifacio Global City, Taguig City, after having been sworn to in accordance with law, do hereby depose and state that:

1. I am the duly elected and incumbent Corporate of **SMARTMATIC TIM CORPORATION**, a corporation duly organized and existing under the laws of the Philippines, with principal Unit 1002 One World Place, 32<sup>nd</sup> Street, Bonifacio Global City, Taguig City, Philippines (the "Corporation").

2. At the Special Meeting of the Board of Directors of the Corporation held on 4 December 2023 at which a quorum was present and acting throughout, the following resolutions were unanimously approved:

**"RESOLVE, AS IT IS HEREBY RESOLVED**, that **SMARTMATIC TIM CORPORATION** ("Corporation") hereby constitutes and appoints **BRENDA Q. BATALLA**, with office address at Unit 1002 One World Place, 32<sup>nd</sup> Street, Bonifacio Global City, Taguig City, Philippines, as its true and lawful Attorney-in-Fact, with full power and authority to:

a) to represent, appear and/or act, for and in behalf of the Corporation in its name, place and stead, and be present in any and all proceedings before the relevant court, tribunal, or agency in relation to the issuance of the Commission on Election's Resolution dated 29 November 2023 ("Assailed Resolution") in the case entitled '*IN THE MATTER OF THE PETITION TO REVIEW THE QUALIFICATIONS OF SMARTMATIC PHILIPPINES, INC. AS A PROSPECTIVE BIDDER IN VIEW OF ITS FAILURE IN THE 2022 ELECTIONS TO COMPLY WITH THE MINIMUM SYSTEM CAPABILITIES THAT RESULTED IN SERIOUS AND GRAVE IRREGULARITIES IN THE TRANSMISSION AND RECEIPT OF ELECTIONS RETURNS AND, IF WARRANTED, TO DISQUALIFY SMARTMATIC FROM PARTICIPATING IN THE BIDDING FOR THE 2025 AUTOMATED ELECTION SYSTEM*' docketed as E.M. No. 23-003, or in any further or related proceedings before the appellate courts or any tribunal or agency, by doing any or all of the following acts and deeds in connection therewith;


b) to do all things necessary and proper to cause the preparation and filing of the appropriate documents, pleadings, petitions, appeals, motions, position papers, briefs, memoranda, certifications against forum shopping, verifications, affidavits, and other papers on behalf of the Corporation before the relevant court, tribunal, or agency, including all future documents, pleadings, petitions, appeals, motions, position papers, briefs, memoranda, certifications against forum shopping, verifications, affidavits, and other papers which may arise from or be connected with the issuance of the Assailed Resolution;

c) to execute, sign, subscribe, and/or swear on behalf of the Corporation, any and all documents, pleadings, petitions, appeals, motions, position papers, briefs, memoranda, certifications against forum shopping, verifications, affidavits, and other papers to be filed before the relevant court, tribunal, or agency in connection with any suit, action, or proceedings filed before any court (trial or appellate), tribunal, or agency on behalf of the Corporation in relation to the Assailed Resolution;

**"RESOLVED, FURTHER**, that the Attorney-in-Fact is hereby authorized to perform such further acts and deeds as may be necessary, convenient, or appropriate to give force and effect to the foregoing resolution."

**"RESOLVED, FURTHER**, that for the purpose of the preparation of the necessary documents in relation to the Appointment of Brenda Q. Batalla as Attorney-in-fact and in the interest of time, the Board of Directors hereby waives the requirement that all certifications, especially with respect to resolutions duly passed and issued by the Board of Directors, bear the signatures of both the Corporate and Assistant Corporate Secretaries to be valid, and hereby authorizes Atty. Ruby Rose J. Yusi, the Corporate Secretary, acting singly, to issue the necessary certifications in relation to the Appointment."

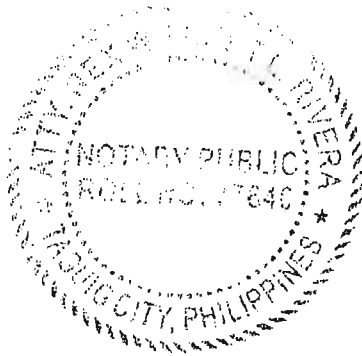
IN WITNESS WHEREOF, I have hereunto set my hand this 04 DEC 2023  
at Taguig City, Philippines.

  
**RUBY ROSE J. YUSI**  
Corporate Secretary

**SUBSCRIBED AND SWORN** to before me this 04 DEC 2023  
at Taguig City, Philippines, affiant who is personally known to me, exhibiting to me the following:

| Name              | Competent Evidence of Identity       |  |
|-------------------|--------------------------------------|--|
|                   | Type of ID                           | ID Number and Expiry Date<br>(if applicable) |
| RUBY ROSE J. YUSI | 1 Unified Multi-Purpose ID           | CRN 0111-4736608-8                           |
|                   | 2 BIR ID with Tax Identification No. | 102-089-058                                  |

Doc. No. 493 ;  
Page No. 100 ;  
Book No. 1 ;  
Series of 2023.





**ATTY. REN WILBERT L. RIVERA**  
Notary Public for Taguig City  
Until December 31, 2023  
PTR No. A-5797290; January 11, 2023 – Taguig City  
IBP No. 249253; January 06, 2023 – Tulae  
Appointment / Commission No. 69 (2022-2023)  
Roll No. 77646  
Angara Abello Concepcion Bonifacio Cruz Law Office  
22 FACILE LAW Tower  
2nd Avenue corner 30th St., Concepcion Park Area,  
Bonifacio Global City, 1631 Taguig, Metro Manila  
MCLR Exemption No. VII-00000000-00000000



**VERIFICATION AND CERTIFICATION  
OF NON-FORUM SHOPPING**

I, **BRENDA Q. BATALLA**, of legal age, office address at Unit 1002 One World Place, 32<sup>nd</sup> Street, Bonifacio Global City, Taguig City, Philippines, subscribing under oath, depose and state that:

1. I am the authorized representative of **SMARTMATIC PHILIPPINES, INC.** ("Smartmatic"), as evidenced by the Secretary's Certificate dated 4 December 2023 attached to this Verification and Certification.

2. I, on behalf of Smartmatic, have caused the preparation and filing of this Petition, read and understood all of its contents, and attest that all the allegations contained herein are true and correct of my personal knowledge and/or based on authentic records and/or documents.

3. This Petition is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation, and its factual allegations have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

4. Smartmatic has not commenced any other action or proceeding or filed any claim involving the same issues in the Supreme Court, the Court of Appeals, or any other court, tribunal or agency, and to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other court, tribunal, or agency.

5. Should it come to Smartmatic's knowledge that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other court, tribunal or agency, Smartmatic undertakes to report that fact to the Honorable Court within five (5) calendar days therefrom.

6. Smartmatic manifests that, although not involving the same issues and reliefs in the present Petition, a (a) *Petition for Mandamus with Prayer for Temporary Restraining Order to Compel Preservation and/or Restrain Alteration/Erasure/Deletion of Subscriber and Cyber Traffic Data Integrity of Telecom Transmission of National Election Results from 7PM to at Least 9PM of 09May 2022 Philippine Time* dated 28 October 2022, (b) *Supplemental Petition* dated 3 April 2023, and (c)

Second Supplemental Petition dated 12 July 2023, all entitled "Eliseo Mijares Rio, Jr., Augusto Cadelina Lagman, and Franklin Fayloga Ysaac v. Commission on Elections (COMELEC), Smartmatic Total Information Management, Dito Telecommunity, Globe Telecom, and Smart Communications," and docketed as G.R. No. 263838, were filed by Private Respondents Eliseo Mijares Rio, Jr., Augusto Cadelina Lagman, and Franklin Fayloga Ysaac against Smartmatic before the Supreme Court.

I affix my signature herein to certify the truthfulness of the allegations in the Petition.

*Brenda Q. Batalla*  
**BRENDA Q. BATALLA**  
*Affiant*

06 DEC 2023

**SUBSCRIBED AND SWORN TO** before me this \_\_\_ day of \_\_\_ 2023 with affiant exhibiting to me the following:

| AFFIANT           | COMPETENT EVIDENCE OF IDENTITY |                        |   |
|-------------------|--------------------------------|------------------------|---|
|                   |                                | Type of ID             | ID Number and Expiry Date (if applicable) |
| BRENDA Q. BATALLA | 1                              | Social Security System | 08-1153518-8                              |
|                   | 2                              | Passport               | P1525567B<br>valid until 25 April 2029    |

Doc No. 372 ;  
 Page No. 76 ;  
 Book No. 5 ;  
 Series of 2023.



*Nepomuceno M. Mendoza III*  
**ATTY. NEPOMUCENO M. MENDOZA III**  
 Notary Public for Taguig City  
 Until December 31, 2023  
 PTR No. A-5797294; January 11, 2023 – Taguig City  
 IBP No. 210197; May 12, 2022 – CALMANA  
 Appointment / Commission No. 100 (2022-2023)  
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 22/F ACCRALAW Tower  
 2nd Avenue corner 30th St., Crescent Park West,  
 Bonifacio Global City, 1635 Taguig, Metro Manila  
 MCLE Compliance: Admitted in May 2022

REPUBLIC OF THE PHILIPPINES )  
TAGUIG CITY ) S.S.

### SECRETARY'S CERTIFICATE

I, **RUBY ROSE J. YUSI**, of legal age, Filipino citizen, with office address at the 22<sup>nd</sup> Floor, ACCRALAW Tower, 2<sup>nd</sup> Avenue corner 30<sup>th</sup> Street, Crescent Park West, Bonifacio Global City, Taguig City, after having been duly sworn in accordance with law, hereby depose and state:

1. I am the duly elected Corporate Secretary of **SMARTMATIC PHILIPPINES, INC.** (the "Corporation"), a corporation duly organized and existing under the law of the Philippines with principal office address at Unit 1002 One World Place, 32<sup>nd</sup> Street, Bonifacio Global City, Taguig City.

2. At the Special Meeting of the Board of Directors of the Corporation held on 4 December 2023 at which a quorum was present, the following resolutions were unanimously approved:

**"RESOLVE, AS IT IS HEREBY RESOLVED**, that **SMARTMATIC PHILIPPINES, INC.** ("Corporation") hereby constitutes and appoints **BRENDA Q. BATALLA**, with office address at Unit 1002 One World Place, 32<sup>nd</sup> Street, Bonifacio Global City, Taguig City, Philippines, as its true and lawful Attorney-in-Fact, with full power and authority to:

a) to represent, appear and/or act, for and in behalf of the Corporation in its name, place and stead, and be present in any and all proceedings before the relevant court, tribunal, or agency in relation to the issuance of the Commission on Election's Resolution dated 29 November 2023 ("Assailed Resolution") in the case entitled '*IN THE MATTER OF THE PETITION TO REVIEW THE QUALIFICATIONS OF SMARTMATIC PHILIPPINES, INC. AS A PROSPECTIVE BIDDER IN VIEW OF ITS FAILURE IN THE 2022 ELECTIONS TO COMPLY WITH THE MINIMUM SYSTEM CAPABILITIES THAT RESULTED IN SERIOUS AND GRAVE IRREGULARITIES IN THE TRANSMISSION AND RECEIPT OF ELECTIONS RETURNS AND, IF WARRANTED, TO DISQUALIFY SMARTMATIC FROM PARTICIPATING IN THE BIDDING FOR THE 2025 AUTOMATED ELECTION SYSTEM*' docketed as E.M. No. 23-003, or in any further or related proceedings before the appellate courts or any tribunal or agency, by doing any or all of the following acts and deeds in connection therewith;

b) to do all things necessary and proper to cause the preparation and filing of the appropriate documents, pleadings, petitions, appeals, motions, position papers, briefs, memoranda, certifications against forum shopping, verifications, affidavits, and other papers on behalf of the Corporation before the relevant court, tribunal, or agency, including all future documents, pleadings, petitions, appeals, motions, position papers, briefs, memoranda, certifications against forum shopping, verifications, affidavits, and other papers which may arise from or be connected with the issuance of the Assailed Resolution;

c) to execute, sign, subscribe, and/or swear on behalf of the Corporation, any and all documents, pleadings, petitions, appeals, motions, position papers, briefs, memoranda, certifications against forum shopping, verifications, affidavits, and other papers to be filed before the relevant court, tribunal, or agency in connection with any suit, action, or proceedings filed before any court (trial or appellate), tribunal, or agency on behalf of the Corporation in relation to the Assailed Resolution;

**"RESOLVED, FURTHER**, that the Attorney-in-Fact is hereby authorized to perform such further acts and deeds as may be necessary, convenient, or appropriate to give force and effect to the foregoing resolution."

3. I hereby certify that the foregoing resolutions are in full force and effect and have neither been amended nor revoked.

IN WITNESS WHEREOF, I have hereunto set my hand this 04 DEC 2023  
at Taguig City, Philippines.

*Ruby*  
**RUBY ROSE J. YUSI**  
Corporate Secretary

**SUBSCRIBED AND SWORN** to before me this 04 DEC 2023  
at Taguig City, Philippines, affiant who is personally known to me, exhibiting to me the following:

| Name              | Competent Evidence of Identity       |  |
|-------------------|--------------------------------------|--|
|                   | Type of ID                           | ID Number and Expiry Date<br>(if applicable) |
| RUBY ROSE J. YUSI | 1 Unified Multi-Purpose ID           | CRN 0111-4736608-8                           |
|                   | 2 BIR ID with Tax Identification No. | 102-089-058                                  |

Doc. No. 246;  
Page No. 11;  
Book No. 1;  
Series of 2023.



*Kevin*  
**ATTY. KEVIN JOHN B. LUMBRE**  
Notary Public for Taguig City  
PTR No. A-10111111111111111111  
IBF No. N-10111111111111111111  
Approved by the Department of Justice  
Taguig City

**OFFICE COPY**

REPUBLIC OF THE PHILIPPINES)  
TAGUIG CITY )S.S.

**AFFIDAVIT OF SERVICE**

I, **JOY G. LORENZO**, Messenger Clerk of **ANGARA ABELLO CONCEPCION REGALA & CRUZ LAW OFFICES** with office address at the 22<sup>nd</sup> Floor ACCRALAW Tower, Second Avenue corner 30<sup>th</sup> Street, Crescent Park West, Bonifacio Global City, 1635 Taguig, Metro Manila, after being duly sworn, depose and say:

That on 6 and 7 December 2023, I served a copy of **PETITION FOR CERTIORARI (With Extremely Urgent Application for the Issuance of a Temporary Restraining Order, Temporary Restraining Order, and/or Writ of Preliminary Injunction with Urgent Motion for Raffle)** in the case entitled "**SMARTMATIC TIM CORPORATION, AND SMARTMATIC PHILIPPINES, INC. vs. COMMISSION ON ELECTIONS EN BANC, ELISEO MIJARES RIO JR, AUGUSTO CADELIÑA LAGMAN, FRANKLIN FAYLOGA YSAAC AND LEONARDO OLIVERO ODOÑO**", docketed as \_\_\_\_\_, Supreme Court, Manila pursuant to Sections 5, 7 and 17, Rule 13 of the Rules of Court as follows:

By Private Courier:

**COMMISSION ON ELECTIONS**

*Public Respondent*

Palacio del Gobernador Building,  
General Luna Street, Intramuros,  
Manila 1002

3212 863944 86

**ELISEO MIJARES RIO, JR.**

*Private Respondent*

#7 B11 Soldiers Hills Village,  
Barangay Putatan,  
Muntinlupa City

3212 8639 4476

**AUGUSTO CADELIÑA LAGMAN**

*Private Respondent*

6053 Palma Street, Barangay Poblacion,  
Makati City

3212 8585 3927

**FRANKLIN FAYLOGA YSAAC**

*Private Respondent*

28N Orchid Tower,  
Oriental Garden, Barangay PDP,  
Makati City

3212 8585 3997

**LEONARDO OLIVERA ODOÑO**

*Private Respondent*

19871 Willow Street,  
Executive Heights, Bgy. Sun Valley,  
Paranaque City

3212 8585 3987

**ATTY. JOSE M. JOSE**  
*Counsel for the Private Respondents*  
60 Rivera Street, Barangay Progreso,  
San Juan City  
[jmjose64@yahoo.com](mailto:jmjose64@yahoo.com)

3212 8651 7341

by depositing copies thereof on 6<sup>th</sup> day of December 2023, in the LBC a sealed envelope plainly addressed to them, with postage fully prepaid, as evidenced by Waybill No. \_\_\_\_\_, attached hereto after the name of the addressee, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered.

By Registered Mail:

**COMMISSION ON ELECTIONS** RE 854 383 591 22  
*Public Respondent* 588 22  
Palacio del Gobernador Building, 574 22  
General Luna Street, Intramuros,  
Manila 1002

**ELISEO MIJARES RIO, JR.** RE 854 383 565 22  
*Private Respondent* 557 22  
#7 B11 Soldiers Hills Village, 543 22  
Barangay Putatan,  
Muntinlupa City

**AUGUSTO CADELIÑA LAGMAN** RE 854 383 530 22  
*Private Respondent* 526 22  
6053 Palma Street, Barangay Poblacion, 512 22  
Makati City

**FRANKLIN FAYLOGA YSAAC** RE 854 383 509 22  
*Private Respondent* 490 22  
28N Orchid Tower, 486 22  
Oriental Garden, Barangay PDP,  
Makati City

**LEONARDO OLIVERA ODOÑO** RE 854 383 472 22  
*Private Respondent* 469 22  
19871 Willow Street, 455 22  
Executive Heights, Bgy. Sun Valley,  
Paranaque City

**ATTY. JOSE M. JOSE** RE 854 383 441 22  
*Counsel for the Private Respondents* 438 22  
60 Rivera Street, Barangay Progreso, 424 22  
San Juan City  
[jmjose64@yahoo.com](mailto:jmjose64@yahoo.com)

by depositing copies thereof on 7 December 2023 in the post office at MAKATI CITY in sealed envelope plainly addressed to them, with postage fully prepaid, as evidenced by Registry Receipt Nos. \_\_\_\_ attached hereto after the name of the addressees, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered.

7 December 2023, Taguig.

  
**JOY G. LORENZO**  
Affiant

**SUBSCRIBED AND SWORN** to before me this 7<sup>th</sup> day of December 2023, at Taguig City Philippines, affiant who is personally known to me, exhibiting to me the following:

| Affiant        | Competent Evidence of Identity |                    |
|----------------|--------------------------------|--------------------|
|                | Type                           | Details            |
| JOY G. LORENZO | SSS ID                         | No. 33-6030868-5   |
|                | PAG-IBIG                       | No. 1040-0205-6092 |

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Page No. 18;  
Book No. I;  
Series of 2023.



  
**ATTY. ANTONIO RAMON L. CASTILLO**

Notary Public for Taguig City  
Until December 31, 2024

PTR No. A-5797623; January 11, 2023 – Taguig City  
IBP No. 182616; March 23, 2023 – Makati City  
Appointment / Commission No. 168 (2023-2024)  
Roll No. 84155

Angara Abello Concepcion Regala & Cruz Law Offices  
22/F ACCRALAW Tower  
2nd Avenue corner 30th St., Crescent Park West,  
Bonifacio Global City, 1635 Taguig, Metro Manila  
MCLE Compliance No. N/A (Admitted on June 2022)