



REPUBLIC OF THE PHILIPPINES
 COMMISSION ON ELECTIONS
 Intramuros, Manila

MANIFESTATION OF THE COMMISSION ON ELECTIONS TO UNDERTAKE THE PRINTING OF VOTERS' RECEIPTS FOR THE 2016 NATIONAL AND LOCAL ELECTIONS, IN FULL COMPLIANCE WITH THE SUPREME COURT'S DECISION IN BAGUMBAYAN-VNP, INC. VS. COMMISSION ON ELECTIONS (G.R. NO. 222731, 08 MARCH 2016)

BAUTISTA, J. A. D.,	Chairman
LIM, C. R. S.,	Commissioner
PARREÑO, A. A.,	Commissioner
GUIA, L. T. F.,	Commissioner
LIM, A. D.,	Commissioner
GUANZON, M. R.A. V.,	Commissioner
ABAS, S. M.	Commissioner

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Promulgated : April 21, 2016 *[Signature]*

RESOLUTION NO. **10096** *[Signature]*

WHEREAS, Article IX(C), Section 2 of the 1987 Constitution empowers the Commission on Elections ("the Commission") to enforce and administer all laws and regulations relative to the conduct of elections;

WHEREAS, the Supreme Court, in the case of *Cauton vs. Commission on Elections* (G.R. No. L-25467, 27 April 1967), held that "[i]n the performance of its duties, the Commission must be given a considerable latitude in adopting means and methods that will ensure the accomplishment of the great objective for which it was created—to promote free, orderly, and honest elections," and that "[t]he choice of means taken by the Commission... unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with;" *[Signature]*

WHEREAS, Section 7 of Republic Act (“RA”) No. 9369, which amends Section 7 of Republic Act No. 8436, provides that an automated election system (“AES”) for Philippine elections must have certain minimum system capabilities, including a provision for a voter-verified paper audit trail (“VVPAT”);

WHEREAS, the Supreme Court, in the case of *Roque, Jr. vs. Commission on Elections* (G.R. No. 188456, 10 September 2009), noted that the precinct count optical scanner (PCOS) technology used for the AES, “being a paper-based technology, affords audit since the voter would be able, if need be, to verify if the machine had scanned, recorded and counted his vote properly,” and that the machine “contains an LCD screen, one that can be programmed or configured to display to the voter his votes as read by the machine;”

WHEREAS, the Supreme Court, in the resolution of the Motion for Reconsideration of *Roque, Jr. vs. Commission on Elections* dated 01 February 2010, noted that the AES procured by the Commission is a paper-based system which has a provision for system auditability, since voters would be able to, if need be, verify if the machines have scanned, recorded, and counted their votes properly, and all actions done on the machine can be printed out as an audit log;

WHEREAS, the present Commission, just like the Commissions that oversaw the 2010 and 2013 National and Local Elections (NLEs), unanimously resolved not to use the voters’ receipt functionality of the Vote-Counting Machines (VCMs) for the 2016 NLE through Minute Resolution No. 16-0057 dated 03 February 2016, based on the following reasons:

- 1) The AES for the 2016 NLE, which utilizes the VCMs, is paper-based system which can provide for system auditability through the VCMs’ audit logs;
- 2) The sheer number of registered voters that will participate in the 2016 NLE (approximately 54.3 million) is not conducive to the printing of voters’ receipts, due to the high voter density ratio of 800 voters per VCM unit;
- 3) The Commission, in coordination with Smartmatic, Inc., conducted a time-and-motion study on 05 January 2016, the results of which indicate that the printing of voters’ receipts will add thirteen (13) seconds per voter to the voting time, translating into an additional two (2) hours and ten (10) minutes per VCM with an additional two (2) hours and ten (10) per VCM with an average estimated turnout of 600 voters per VCM unit (75%), excluding additional time that will be needed for voters to read their receipts, and for the thermal paper rolls of the VCMs to be replenished, or to re-boot the VCMs if problems occur;

- 4) Long lines and queuing times in past elections have discouraged voters from exercising their right to suffrage;
- 5) The use of the voters' receipt functionality entails additional costs for the procurement of additional thermal paper stock and receptacles for the voters' receipts, both of which will necessitate the conduct of further public biddings; and
- 6) Voters' receipts may be used for vote buying and other illegal purposes.

WHEREAS, in compliance with RA 9369, the Commission promulgated Resolution No. 10057 on 11 February 2016, entitled the "General Instructions for the Boards of Election Inspectors (BEI) on the Testing and Sealing of VCMs, and Voting, Counting, and Transmission of Election Results in connection with the 09 May 2016 NLE;"

WHEREAS, Bagumbayan-VNP, Inc. and former Senator Richard J. Gordon filed a Petition for Mandamus before the Supreme Court on 22 February 2016 (*Bagumbayan-VNP, Inc., vs. Commission on Elections*, docketed as G.R. No. 222731), asking the Court to compel the Commission to print voters' receipts for the 2016 NLE;

WHEREAS, the Commission, through Resolution No. 10071 promulgated on 03 March 2016, decided to err on the side of transparency and resolved to enable the on-screen verification functionality of the VCMs for the 2016 NLE as a means of voter verification, notwithstanding the attendant risks similar to the activation of the VCMs' voters' receipt functionality;

WHEREAS, the Commission, through the Office of the Solicitor General ("OSG"), filed its Comment vis-à-vis the Petition for Mandamus on 07 March 2016, arguing as follows:

- 1) The paper ballots themselves satisfy the minimum standards set forth in RA 9369, along with other numerous audit trails available from the VCMs, such as the scanned images of the ballots in the storage media cards and the VCM's on-screen verification functionality;
- 2) RA 9369 does not create a statutory right to immediately tally votes scanned and interpreted by VCMs;
- 3) RA 9369 also provides for a mandatory random manual audit;
- 4) The on-screen verification functionality allows voters to immediately confirm whether the VCMs have correctly registered their chosen candidates;

- 5) Voters' receipts may facilitate vote-buying and trigger confusion with regard to the results of the elections;
- 6) Three (3) consecutive compositions of the Commission have unanimously decided against the use of the voters' receipt functionality; and
- 7) The voters' receipts are mere surplusage since the best evidence of how a voter expressed his or her choices is the ballot itself.

WHEREAS, the Supreme Court, voting 14-0, promulgated its Resolution granting the Petition for Mandamus on 08 March 2016, and ordering the Commission to enable the voters' receipt functionality of the VCMs, without prejudice to the issuance of guidelines to regulate the release and disposal of said receipts, on grounds that they see no reason why voters should be denied the opportunity to read the voters' receipt after casting their ballots;

WHEREAS, following the Commission's filing, through the OSG, of its Motion for Reconsideration, the Supreme Court set the case for oral arguments on 17 March 2016, during which the parties wereto discuss the issues of whether or not the 08 March 2016 Writ of Mandamus can be complied with in good faith considering the limited time left for preparations before the 2016 NLE, and whether or not there are sufficient standards that can meet the purpose of the statutory requirement of the VVPAT;

WHEREAS, Solicitor General Florin T. Hilbay, as the Commission's counsel, along with Chairman J. Andres D. Bautista and Commissioners Christian Robert S. Lim and Sheriff M. Abas, appeared before the Supreme Court for the said hearing, and apprised the Court of the Commission's grave concerns regarding the implementation of the 08 March 2016 Writ of Mandamus in a manner that would be consistent with the Commission's constitutional mandate to conduct clean, orderly, and credible elections, such as the following:

- 1) The need to procure more than one (1) million additional rolls of thermal paper and approximately 93,000 new receptacles for the voters' receipts;
- 2) The need to re-train close to 200,000 teachers assigned to serve as members of the BEIs due to the activation of the voters' receipt functionality of the VCMs;
- 3) Multiple interruptions in the voting process arising from the need to replace the VCMs' thermal paper rolls and reboot the VCMs in the

event of paper jams due to voters improperly tearing off their receipts and when the VCMs run out of thermal paper;

- 4) Significant degradation of the voter experience arising from polling place congestion due to the time and logistics needed to print the voters' receipts and see to their proper disposition;
- 5) Likely increase in instances of vote-buying and risks of other illegal activities such as deliberately jamming the VCMs' thermal paper printers and claiming fake discrepancies in their voting receipts so as to force BEI members to allot more time to address these issues; and
- 6) The need for a revised source code for the AES, and to probably postpone the elections to ensure proper preparation and testing of said revisions.

WHEREAS, despite the Commission's arguments and concerns, the Supreme Court denied with finality the former's Motion for Reconsideration on the same day by declaring the following:

- 1) Voters' receipts are necessary to fully comply with RA 9369, and that the paper ballots (and even their digitized images) cannot be a substitute for the same as the AES' VVPAT, since they are not voter-verified;
- 2) Nothing in the law states that the VVPAT requirement is only limited to direct recording AESs;
- 3) The true will of the electorate is better secured if the Commission generates the VVPAT, i.e., the VCMs' voters' receipts;
- 4) The Writ of Mandamus is substantially complied with when "simple" voters' receipts are printed, and that additional security features for said voters' receipts may be utilized in future elections;

WHEREAS, the Notice of Resolution of the Supreme Court's decision on the Commission's Motion for Reconsideration, dated 17 March 2016, states the following:

"The Commission on Elections has assured this Court that it is capable and has the competence to address all issues and problems that may arise before, during, and after the elections. These include paper jams or machine malfunctions, possible extension of the voting period, improvement of voter's experience, and training of officials and staff. The Commission on Elections has assured that it will perform its constitutionally and statutorily mandated tasks to

ensure a free, honest, peaceful, credible and automated elections on May 9, 2016, as constitutionally required.”

WHEREAS, the Commission would like to state for the record that it “did NOT assure the Supreme Court that it has the competence to address ALL issues and problems that may arise before, during, and after the elections” (emphases ours);

WHEREAS, the transcript of stenographic notes (“TSN”) taken during the 17 March 2016 oral arguments indicate that, in response to the queries of Associate Justice Marvic M.V.F. Leonen on whether the Commission “can meet the 09 May 2016 elections deadline with the printing of the receipts as is,”¹ and “is up to the challenge to make sure that even with the receipts, [it] can do all [it] can in order to meet all of these problems,” the Commission, through Chairman Bautista, stated that “as is, yes we can, physically. But... it will have a lot of attendant risks not only in respect of our preparations, but on the actual Election Day²... We will do all that we can, but the record will speak for itself as to the risks we identified. Let it be also very clear—I think I speak for the entire Commission when I say this—that regardless of what the decision of this Court will be, we will follow. But let me also just say that we will not only follow, but we will try our best to ensure that notwithstanding all these risks, we will still have credible elections;”³

WHEREAS, in compliance with the Supreme Court’s decision and writ of mandamus, the Commission has already been issuing receipts for the conduct of overseas Filipinos’ voting since its start last 09 April 2016, and has already promulgated Resolution No. 10088 on 12 April 2016, which incorporates the printing of voters’ receipts and the proper disposal thereof into the General Instructions for the BEIs on the Testing and Sealing of VCMs, and Voting, Counting, and Transmission of Election Results in connection with the 09 May 2016 NLE;

NOW THEREFORE, premises considered, and with deference to the ruling of the Supreme Court, the Commission on Elections RESOLVED, as it hereby RESOLVES, to:

- 1) **MANIFEST** its continuing compliance with the 08 March 2016 Writ of Mandamus issued and upheld with finality by the Supreme Court;

¹ TSN, pp. 66 & 67.

² TSN, p. 67.

³ TSN, p. 68.

- 2) MANIFEST once again for the record its concerns regarding the attendant risks of utilizing the voters' receipt functionality of the vote-counting machines for the 2016 National and Local Elections; and
- 3) MANIFEST its unswerving commitment to the conduct of orderly and credible elections on 09 May 2016 to the best of its ability, taking into consideration the current circumstances.

SO ORDERED.



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J. ANDRES D. BAUTISTA

Chairman



CHRISTIAN ROBERT S. LIM

Commissioner



AL A. PARRENO

Commissioner



LUITITO F. GUIA

Commissioner



ARTHUR D. LIM

Commissioner



MA. ROWENA AMELIA V. GUANZON

Commissioner



SHERIFF M. ABAS

Commissioner

