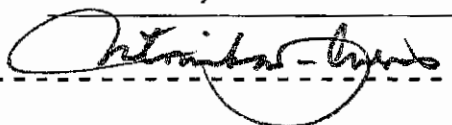


EN BANC

G.R. No. 259354 – NATIONAL PRESS CLUB OF THE PHILIPPINES, AUTOMATED ELECTION SYSTEM WATCH, and GUARDIANS BROTHERHOOD, INC., *petitioners*, versus COMMISSION ON ELECTIONS, *respondent*.

Promulgated:

June 13, 2023



X ----- X

SEPARATE CONCURRING OPINION

CAGUIOA, J.:

Petitioners pray for the Court to compel respondent Commission on Elections (COMELEC) to implement the use of digital signature for the 2022 National and Local Elections (NLE), to disclose critical information, and to allow access to various documents, activities, and stations of the COMELEC for the 2022 NLE. The *ponencia* rules on these prayers for relief as follows:

PRAYER FOR WRIT OF MANDAMUS TO COMPEL THE COMELEC TO:	RULING IN THE PONENCIA
a. implement Section 22 of Republic Act (R.A.) No. 8436, <sup>1</sup> or the Automated Election System (AES) Law, as amended by R.A. No. 9369 <sup>2</sup> which mandates that the electronic election returns be digitally signed by the members of the Board of Election Inspectors (BEI).	<p><b>Petitioners are not entitled to a Writ of <i>Mandamus</i> to compel the COMELEC to implement the use of digital signatures since it is not a ministerial duty of the COMELEC.</b></p> <p>In <i>Capalla v. COMELEC</i>,<sup>3</sup> the Court already ruled on the issue raised by petitioners and declared that the COMELEC is not required to have the election returns digitally</p>

<sup>1</sup> An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes, approved on December 22, 1997.

<sup>2</sup> An Act Amending Republic Act No. 8436, entitled "An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, as amended, Republic Act No. 7166 and Other Related Election Laws, Providing Funds Therefor and for Other Purposes," approved on January 23, 2007.

<sup>3</sup> 687 Phil. 617 (2012).



	<p>signed by the BEI because the digital signatures generated by the Vote Counting Machines (VCMs) are sufficient compliance to the AES Law.<sup>4</sup></p>
<p>b. disclose critical information and allow access and inspection of the following to political parties, candidates, accredited media, and other organizations:</p>	
<p>i. printing of ballots at the National Printing Office, including the examination of the ballots already printed without the presence of observers, as well as the publication of deployment destination of these ballots without the presence of observers;</p>	<p><b>The COMELEC may be compelled to allow the witnessing of the printing of ballots but the issue has become moot and academic.</b></p> <p>The COMELEC is duty-bound under Section 187 of the Omnibus Election Code to allow designated watchers to witness the printing of the ballots. Its initial refusal of the request of various parties relating to this activity cannot be excused on the basis of the claimed security and health reasons of the COMELEC as the language of Section 187 is mandatory. It could still have allowed a limited number of watchers to comply with health protocols.</p>
<p>ii. the reported 5.2 million defective ballots and allow public scrutiny of their disposition or destruction;</p>	<p>Nevertheless, records show that on March 17, 2022, the COMELEC began livestreaming the printing of the ballots which shows the printing area and the quarantine room which is dedicated for rechecking defective ballots. The COMELEC had likewise conducted ballot checking in the presence of representatives from stakeholders. Thus, this issue had become moot.<sup>5</sup></p>
<p>iii. configuration and preparation of the Secure Digital (SD) cards to be used in the VCMs through COMELEC-accredited</p>	<p><b>The COMELEC may not be compelled to allow the witnessing of the configuration and preparation of SD cards and</b></p>

<sup>4</sup> See ponencia, pp. 6–8.

<sup>5</sup> See id. at 9–11.

<p>observers in its Sta. Rosa, Laguna warehouse, including access to and examination of the SD cards that have already been configured and prepared without the presence of observers and allow the public and/or parties to observe the Pre-Logic and Accuracy Test (Pre-LAT) and other tests to be conducted;</p>	<p><b>VCMs, but it may be compelled to allow the examination and testing thereof.</b></p>
<p>iv. preparation, testing, and deployment of the VCMs and all [their] parts, attachments, and tools through COMELEC-accredited observers;</p>	<p>The AES Law does not specifically enjoin the COMELEC to allow access to and inspection of the configuration and preparation of the VCMs and SD cards. The law's mandate is only with respect to their examination and testing, which evidently takes place after the configuration of the devices.</p> <p>Nevertheless, the records reveal that the COMELEC had scheduled a walkthrough of its warehouse in response to requests therefor by certain parties. Moreover, there was no formal coordination for entry into the COMELEC's Sta. Rosa, Laguna facility. While the COMELEC is mandated to ensure transparency of the elections, it is also required that the same be orderly and peaceful.</p> <p>Finally, the COMELEC had called upon the public to witness the final testing and sealing of the VCMs before the elections. It also opened for public viewing its warehouse in Sta. Rosa, Laguna where the SD cards were being configured. Thus, this issue had become moot.<sup>6</sup></p>
<p>v. National Technical Support Center, technical hubs, including data centers, provincial and regional hubs; and</p>	<p><b>The COMELEC may be compelled to disclose certain transmission documents but the issue had become moot and academic.</b></p>
<p>vi. transmission diagram or data/communications network architecture including all details of the transmission of the transmission router server</p>	<p>The COMELEC failed to discharge its burden of showing that the information sought by petitioners are not matters of public concern or that they are exempted by law from the constitutional guarantee of right</p>

<sup>6</sup> See *id.* at 11-16.

and/or the “Meet-Me Room” and all devices and equipment that will be used to transmit election results. <sup>8</sup>	to information. However, the prayer is now moot because the information sought has already been divulged and the credibility of the transmission router has been confirmed by the Technical Evaluation Committee. <sup>7</sup>
--	--

I concur in the dispositions and, ultimately, in the dismissal of the Petition. I write to stress the importance of assessing the prayers to compel access to information, documents, and sites used for the 2022 NLE *vis-à-vis* the constitutional right to information on matters of public concern or interest, as well as of the proper construction of laws which limit this right, such as R.A. No. 9369.

***It is crucial to include a discussion of the reliefs prayed for vis-à-vis the constitutional right to information on matters of public concern or interest***

The people’s right to information on matters of public concern is articulated in Section 7, Article III of the 1987 Constitution:

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

Complementing the right to information is another constitutional provision enunciating the policy of full disclosure and transparency in government. Section 28, Article II provides:

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

As early as in *Legaspi v. Civil Service Commission*<sup>9</sup> (*Legaspi*), the Court already held that these provisions of the Constitution concerning the people’s right to information are self-executing. They supply the rules by means of which the right may be enjoyed, by guaranteeing the right and mandating the duty to afford access to sources of information. As such, these constitutional provisions, can, of and by themselves, be invoked in a *mandamus* case, without need for an enabling statute.<sup>10</sup>

<sup>7</sup> See *id.* at 16–19.

<sup>8</sup> See *id.* at 2–3.

<sup>9</sup> G.R. No. L-72119, May 29, 1987, 150 SCRA 530.

<sup>10</sup> See *id.* at 534–535.

In this regard, Congress still found it fitting to statutorily express the State's policy of transparency in R.A. 6713,<sup>11</sup> otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, which provides:

SEC. 4. *Norms of Conduct of Public Officials and Employees.* – (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

....

(e) *Responsiveness to the public.* – Public officials and employees shall extend prompt, courteous, and adequate service to the public. Unless otherwise provided by law or when required by the public interest, public officials and employees shall provide information of their policies and procedures in clear and understandable language, ensure openness of information, public consultations and hearings whenever appropriate, encourage suggestions, simplify and systematize policy, rules and procedures, avoid red tape and develop an understanding and appreciation of the socio-economic conditions prevailing in the country, especially in the depressed rural and urban areas.

....

SEC. 5. *Duties of Public Officials and Employees.* – In the performance of their duties, all public officials and employees are under obligation to:

....

(e) *Make documents accessible to the public.* – All public documents must be made accessible to, and readily available for inspection by, the public within reasonable working hours.

*Legaspi*, citing American jurisprudence, laid down the reason behind the incorporation in the Constitution of the guarantee of access to matters of public concern: that it is a recognition of the essentiality of the free flow of ideas and information in a democracy and that access to information aids the people in democratic decision-making by giving them a better perspective of the vital issues confronting the nation.<sup>12</sup>

However, the constitutional guarantee to information is not absolute, as it is circumscribed by: 1) the nature of the information sought, *i.e.*, it must be of public concern or one that involves public interest, and 2) reasonable conditions and limitations prescribed by law.<sup>13</sup>

In the present case, there is no doubt that the information and data sought to be accessed by petitioners, all of which relate to the conduct of the 2022 NLE, satisfy the first requisite, concerning as they do the exercise by the people of their fundamental right to suffrage. The issue, it appears, lies in the presence of the second requisite.

<sup>11</sup> An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes, approved on February 20, 1989.

<sup>12</sup> See *Legaspi v. Civil Service Commission*, *supra* note 9, at 540.

<sup>13</sup> See *Bantay Republic Act or BA-RA 7941 v. COMELEC*, G.R. No. 177271, May 4, 2007, 523 SCRA 1, citing *Legaspi v. Civil Service Commission*, *id.*

The *mandamus* to compel access to the subject election-related documents and activities is sought by petitioners mainly on the basis of statutory provisions allegedly commanding the COMELEC to allow such access. However, in truth, because the information and data sought in the present case are doubtlessly imbued with public interest or concern, what is crucial is that petitioners' right to demand access thereto is gauged through the lens of the constitutional right to information and the State's policy of transparency in its dealings.

Indeed, I submit that in all *mandamus* cases concerning access to information from the State, the threshold analysis should be whether such access is guaranteed under the Constitution *i.e.*, whether the information sought is imbued with public interest or concern. There is no need to search for statutory footing. Resort to statutes is necessary only to determine the existence of limitations to, or reasonable exceptions from, the guaranteed right of access.

***R.A. No. 9369 must be narrowly construed as it impinges on the fundamental right to information under the Constitution***

During the deliberations of the case, it was submitted that petitioners failed to establish their legal right to access transparency documents and inspect the COMELEC's hubs because there is no law guaranteeing access to "election, consolidation, and transmission" documents, as the State aims to protect the secrecy and sanctity of these documents, based on Section 1 of R.A. 9369 in relation to the prohibition under Section 35(c) of the same law. Allegedly, the policy of transparency extends only to the "election process in general" and does not cover transmission documents and, by analogy, election and consolidation documents.

Sections 1 and 35(c) of R.A. 9369 provide:

SEC. 1. *Declaration of Policy.* – It is policy of the State to ensure free, orderly, honest, peaceful, credible and informed elections, plebiscites, referenda, recall and other similar electoral exercises by improving on the election process and adopting systems, which shall involve the use of an automated election system that will ensure the secrecy and sanctity of the ballot and all election, consolidation and transmission documents in order that the process shall be transparent and credible and that the results shall be fast, accurate and reflective of the genuine will of the people.

....

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

....



(c) Gaining or causing access to, using, altering, destroying or disclosing any computer data, program, system software, network, or any computer-related devices, facilities, hardware or equipment, whether classified or declassified.

As shown by a reading of the law, the stance that transmission documents need not be transparent may set a dangerous precedent for cases involving the constitutional right of the people to information *vis-à-vis* not only transmission documents during elections, but likewise consolidation and election documents in general, which are lumped with “transition documents” in Section 1. The sweeping declaration that these documents need not be disclosed to the public as they are not covered by the transparency policy declared under R.A. 9369 can have dire consequences far beyond the corners of the present case.

Further, election, transmission, and consolidation of the votes cast during an election virtually comprise the entire election process. Thus, there appears to be no good reason in distinguishing “the election process in general” from the “election, transmission, and canvassing” in terms of the application of the State’s policy of transparency and the people’s right to information.

Anent the proper reading of R.A. 9369, it must be done *in relation to* the right to information under Article II, Section 28 and Article III, Section 7 of the Constitution, mandating full disclosure of matters of public concern or interest. Again, these provisions are self-executing. Further, they establish the general rule that such matters must be accessible to the public, and the exceptions are only those clearly provided in statutes. In fine, I submit that it is imperative to construe Sections 1 and 35(c) of R.A. 9369 *in the context of them being exceptions or limitations to the constitutional right to information*. Without any such proper interpretation, the non-disclosure of information carries a weighty presumption of invalidity as it impinges on a fundamental right.<sup>14</sup>

Here, I submit that, properly interpreted, Section 1 and Section 35(c) of R.A. 9369 do not sweepingly exempt “election, transmission, and canvassing” documents from the ambit of the policy of transparency. A sweeping construction of the law renders it unreasonably broad as it will already cover practically the entirety of the election process. *Legaspi* commanded that “what may be provided for by the Legislature are **reasonable** conditions and limitations upon the access to be afforded which must, of necessity, be consistent with the declared State policy of full public disclosure of all transactions involving public interest.”<sup>15</sup>

As such, R.A. 9369 must be narrowly construed in such a way that its objectives of preserving the sanctity of the ballots and, purportedly, of the

<sup>14</sup> See *Bantay Republic Act or BA-RA 7941 v. COMELEC*, *id.* at 16.

<sup>15</sup> *Legaspi v. Civil Service Commission*, *supra* note 9, at 535.

election documents, align with the commands of the Constitution for State transparency.

*First*, Section 1 is a mere declaration of a general policy. It does not categorically and clearly prohibit access to all election, consolidation, and transmission documents. In the interpretation of restrictions on constitutional rights, doubts must be resolved in favor of upholding the latter.

*Second*, Section 1 must be read in relation to the fundamental election principle of the secrecy of the ballots. Thus, the “election, transmission, and consolidation” documents which can be exempted from the scope of the right to information are only those where access thereto would run the risk of violating this principle by the disclosure of information relating to the voters.

*Third*, in addition to ballot secrecy, the recognized restrictions of the right to information must likewise be considered. Hence, those documents which may entail the following information may be kept confidential and classified: 1) national security matters and intelligence information, 2) trade secrets and banking transactions, 3) criminal matters, and 4) other confidential information, including those under the Ethical Standards Act, diplomatic correspondence, closed door Cabinet meetings and executive sessions of the Congress, as well as internal deliberations of the Supreme Court.<sup>16</sup>

*Finally*, Section 1 must be read in relation to its own declaration that “the [election] process shall be transparent and credible and that the results shall be fast, accurate and reflective of the genuine will of the people.” To my mind, this last sentence of the first paragraph of Section 1 reflects the overall policy of transparency of the State in matters relating to the conduct of elections in general — a policy that mirrors the mandate of the provisions on the right to information in the Constitution.

The same considerations must likewise be employed in the construction of the prohibition under Section 35(c) of R.A. 9369, especially since it not only bears on the right to information but likewise makes the acts stated therein criminal. An overly broad interpretation renders inutile the people’s right to access information relating to the exercise of their right to suffrage.

In *Bantay Republic Act or BA-RA 7941 v. COMELEC*<sup>17</sup> (*Bantay Republic*), a law was likewise claimed by the COMELEC as basis for refusing to disclose election-related information. Therein, a *mandamus* case was filed with the Court seeking the disclosure by the COMELEC of the names of party-list nominees for the 2007 elections. The COMELEC earlier refused such request on the basis, among others, of Section 7 of R.A. 7941,<sup>18</sup> otherwise known as the Party-List System Act, which commands that the

<sup>16</sup> See *Chavez v. Presidential Commission on Good Government*, G.R. No. 130716, December 9, 1998, 299 SCRA 744, 764-765.

<sup>17</sup> *Supra* note 13.

<sup>18</sup> An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Therefor, approved on March 3, 1995.



names of the party-list nominees shall not be shown in the certified list of parties which the same law requires to be posted before elections. In granting the *mandamus* and ordering the immediate disclosure of the information sought, the Court narrowly construed R.A. 7941 and noted that the information sought do not concern national security and that there was no express prohibition in the law against the disclosure of the names of party-list nominees, thus:

As may be noted, no national security or like concerns is involved in the disclosure of the names of the nominees of the party-list groups in question. Doubtless, the Comelec committed grave abuse of discretion in refusing the legitimate demands of the petitioners for a list of the nominees of the party-list groups subject of their respective petitions. *Mandamus*, therefore, lies.

The last sentence of Section 7 of R.A. 7941 reading: “[T]he names of the party-list nominees shall not be shown on the certified list” is certainly not a justifying card for the Comelec to deny the requested disclosure. To us, the prohibition imposed on the Comelec under said Section 7 is limited in scope and duration, meaning, that it extends only to the **certified list** which the same provision requires to be posted in the polling places on election day. To stretch the coverage of the prohibition to the absolute is to read into the law something that is not intended. As it were, there is absolutely nothing in R.A. No. 7941 that prohibits the Comelec from disclosing or even publishing through mediums other than the “*Certified List*” the names of the party-list nominees. The Comelec obviously misread the limited non-disclosure aspect of the provision as an absolute bar to public disclosure before the May 2007 elections. The interpretation thus given by the Comelec virtually tacks an unconstitutional dimension on the last sentence of Section 7 of R.A. No. 7941.<sup>19</sup> (Emphasis supplied)

*Bantay Republic* likewise occasioned a discussion on the interplay between the fundamental rights to information and of suffrage, declaring that the people have the right to vote on the basis of an informed judgment. Hence, the Court, as far back as in the 1914 case of *Gardiner v. Romulo*,<sup>20</sup> has frowned upon interpretations of the law that would hinder in any way the free and intelligent casting of votes in an election.<sup>21</sup>

Similarly, the present case involves information which bears on the people’s right of suffrage. Suffrage is at the very heart of our republican democracy as it ensures that the State derives its power from the consent of the governed.<sup>22</sup> **Hence, the people have a right to ensure themselves that the election process faithfully upholds their right of suffrage and that the results of the elections are reflective of their true will.**

In sum, I concur that access to the information and documents sought by petitioners may be compelled by *mandamus* as they are imbued with public interest and concern, thus, covered by the constitutional right to information.

<sup>19</sup> *Bantay Republic Act or BA-RA 7941 v. COMELEC*, *supra* note 13, at 16.

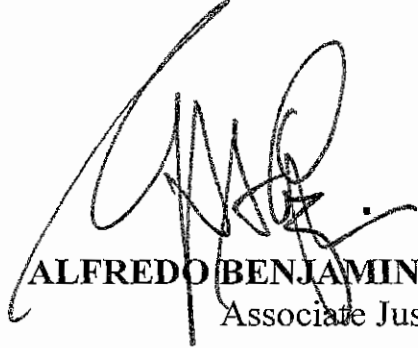
<sup>20</sup> 26 Phil. 521 (1914).

<sup>21</sup> *See Bantay Republic Act or BA-RA 7941 v. COMELEC*, *supra* note 13, at 17.

<sup>22</sup> *See Palatino v. COMELEC*, G.R. No. 189868, December 15, 2009, 608 SCRA 248, 253.

Nevertheless, as ruled in the *ponencia*, the prayer for such access by petitioners have been mostly rendered moot because the COMELEC had already disclosed the information in various occasions. Moreover, the election hubs and centers of the COMELEC are presumably already vacated as the 2022 NLE had long passed.

For the above reasons, I vote to **DISMISS** the Petition.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

