

EN BANC

**G.R. No. 207264 – REGINA ONGSIAKO REYES, *Petitioner*, versus COMMISSION ON ELECTIONS and JOSEPH SOCORRO B. TAN, *Respondents*.**

Promulgated:  
OCTOBER 22, 2013

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**DISSENTING OPINION**

**CARPIO, J.:**

I dissent. Based on existing jurisprudence, jurisdiction over any election contest involving House Members is vested by the Constitution in the House of Representatives Electoral Tribunal (HRET) upon proclamation of the winning candidate. Any allegation that the proclamation is void does not divest the HRET of its jurisdiction. It is the HRET that has jurisdiction to resolve the validity of the proclamation as the “sole judge of all contests relating to the election, returns, and qualifications”<sup>1</sup> of House Members. To hold otherwise will result in a clash of jurisdiction between constitutional bodies.

***HRET’s jurisdiction vests upon proclamation alone***

We must correct the error in the Court’s 25 June 2013 Resolution that “to be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office.”<sup>2</sup> The 25 June 2013 Resolution amends the 1987 Constitution, overturns established jurisprudence, and results in absurdities.

To recall, Reyes was proclaimed on 18 May 2013. Reyes’ term of office began, under the 1987 Constitution, at noon of 30 June 2013.<sup>3</sup> Reyes took her oath of office on 5 June 2013 before Speaker Feliciano Belmonte. Reyes again took her oath of office on 27 June 2013 before President Benigno S. Aquino III. Reyes then took her oath of office before Speaker Belmonte in open session on 22 July 2013.

<sup>1</sup> 1987 PHILIPPINE CONSTITUTION, Art. VI, Sec. 17.

<sup>2</sup> Resolution (G.R. No. 207264), 25 June 2013, p. 7.

<sup>3</sup> 1987 PHILIPPINE CONSTITUTION, Art. VI, Sec. 7.

Under the 25 June 2013 Resolution of the Court, Reyes could assume office only upon taking her oath before the Speaker in open session – an event that usually happens only after new House Members elect their Speaker sometime in mid-July. The 25 June 2013 Resolution effectively cuts short Reyes’ constitutional term of office by a little less than one month, thereby amending the Constitution. In the meantime, new House Members, and their employees, cannot draw their salaries until the members take their oath of office before the Speaker. The Resolution of 25 June 2013 also requires that every new House Member should take his or her oath of office before the Speaker in open session – a requirement not found in the Constitution. While the Speaker is authorized to administer oaths,<sup>4</sup> the Constitution does not distinguish between an oath before officers authorized by law to administer oaths and an oath before the Speaker in open session. Members of this Court have been administering the oaths of Senators and House Members for the longest time.

We have consistently ruled that proclamation **alone** of a winning congressional candidate following the elections divests COMELEC of its jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representative in favor of the HRET.<sup>5</sup> Proclamation alone of a winning congressional candidate is sufficient, and is the only essential act to vest jurisdiction upon the HRET. Taking of the oath and assumption of office are merely descriptive of what necessarily comes after proclamation. In *Jalosjos v. COMELEC*,<sup>6</sup> the most recent decision on the matter, the *ponente* Justice Roberto A. Abad wrote:

The Court has already settled the question of when the jurisdiction of the COMELEC ends and when that of the HRET begins. **The proclamation of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representatives in favor of the HRET.** (Emphasis supplied.)


Section 17, Article VI of the Constitution provides that the HRET is the “sole judge of all contests relating to the election, returns, and qualifications” of the House Members. *Certiorari* will not lie considering

<sup>4</sup> Section 41, Book I of the 1987 Administrative Code reads as follows:

Sec. 41. *Officers Authorized to Administer Oath.* - The following officers have general authority to administer oaths: President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; provincial governors and lieutenant-governors; city mayors; municipal mayors; bureau directors; regional directors; clerks of courts; registrars of deeds; other civilian officers in the public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public.

<sup>5</sup> The latest case with this pronouncement is that of *Jalosjos v. Commission on Elections*, G.R. No. 192474, 26 June 2012. See also the cases of *Gonzalez v. Commission on Elections*, G.R. No. 192856, 8 March 2011, 644 SCRA 761; *Limkaichong v. Commission on Elections*, G.R. Nos. 178831-32, 1 April 2009, 583 SCRA 1; *Planas v. Commission on Elections*, 519 Phil. 506 (2006); *Perez v. Commission on Elections*, 375 Phil. 1106 (1999).

<sup>6</sup> G.R. No. 192474, 26 June 2012.



that there is an available and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceedings before the COMELEC.<sup>7</sup> Indeed, even if Joseph Socorro B. Tan alleged, as he did allege in his Comment<sup>8</sup> to Reyes' Motion for Reconsideration, that Reyes' proclamation is "null, void and without legal force and effect,"<sup>9</sup> such allegation does not divest the HRET of its jurisdiction.<sup>10</sup>

Upon proclamation of the winning candidate as House Member and **despite any allegation of invalidity of his or her proclamation**, the HRET alone is vested with jurisdiction to hear the election contest. The COMELEC's jurisdiction ends where the HRET's jurisdiction begins. We previously ruled in *Lazatin v. Commission on Elections*<sup>11</sup> that:

The petition is impressed with merit because the petitioner has been proclaimed winner of the Congressional elections in the first district of Pampanga, has taken his oath of office as such, and assumed his duties as Congressman. **For this Court to take cognizance of the electoral protest against him would be to usurp the functions of the House Electoral Tribunal. The alleged invalidity of the proclamation** (which has been previously ordered by the COMELEC itself) **despite alleged irregularities in connection therewith, and despite the pendency of the protests of the rival candidates, is a matter that is also addressed, considering the premises, to the sound judgment of the Electoral Tribunal.** (Emphasis supplied)

We underscored the purpose for the mutually exclusive jurisdictions of the COMELEC and the HRET in *Guerrero v. Commission on Elections*,<sup>12</sup> where we stated that:

(I)n an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as Congressman is raised, that issue is best addressed to the HRET. The reason for this ruling is self-evident, for **it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate.** (Emphasis supplied)

Upon proclamation, jurisdiction over any election contest against the proclaimed candidate is vested in the HRET by operation of the Constitution. Any challenge to the validity of the proclamation falls under the HRET's jurisdiction as "sole judge of all contests relating to the election, returns, and qualifications" of House Members. To hold that the HRET does not have jurisdiction over a challenge to the validity of a proclamation is to hold that while jurisdiction vests in the HRET upon proclamation, the HRET loses such jurisdiction if a challenge is filed assailing the validity of

<sup>7</sup> *Aggabao v. COMELEC*, 490 Phil. 285, 291 (2005).

<sup>8</sup> *Rollo*, pp. 380-408.

<sup>9</sup> *Id.* at 391.

<sup>10</sup> *Aggabao v. COMELEC*, *supra* note 6 at 285.

<sup>11</sup> 241 Phil. 343, 345 (1988).

<sup>12</sup> 391 Phil. 344, 354 (2000).

the proclamation. If so, a party then exercises the power to terminate HRET's jurisdiction that is vested by the Constitution. This is an absurdity.

It may also happen that one losing candidate may assail the validity of the proclamation before the Supreme Court while another losing candidate will file an election protest before the HRET within 15 days from the proclamation. In such a situation, there will be a direct clash of jurisdiction between the Supreme Court and the HRET. The case in the Supreme Court can remain pending even after the House Members have assumed their office, making the anomaly even more absurd.

In the present case, the issue of the validity of Reyes' proclamation was never raised as an issue before the COMELEC. Reyes herself mentioned her proclamation as a statement of fact, and used it to support her claim that the HRET already has jurisdiction over her case. As the petitioner before this Court, Reyes will not question the validity of her own proclamation. In any event, the determination of the validity of Reyes' proclamation allegedly on the ground of bad faith on the part of the Board of Canvassers is a factual matter not within the jurisdiction of this Court.


Moreover, Rules 16 and 17 of the 2011 HRET Rules require a verified election protest or a verified petition for *quo warranto* to be filed within 15 days after the proclamation of the winner, thus:

**RULE 16. Election Protest. – A verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within fifteen (15) days after the proclamation of the winner.** The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee.

No joint election protest shall be admitted, but the Tribunal, for good and sufficient reasons, may consolidate individual protests and hear and decide them jointly. Thus, where there are two or more protests involving the same protestee and common principal causes of action, the subsequent protests shall be consolidated with the earlier case to avoid unnecessary costs or delay. In case of objection to the consolidation, the Tribunal shall resolve the same. An order resolving a motion for or objection to the consolidation shall be unappealable.

The protest is verified by an affidavit that the affiant has read it and that the allegations therein are true and correct of his knowledge and belief or based on verifiable information or authentic records. A verification based on "information and belief," or upon "knowledge, information and belief," is not a sufficient verification.

An unverified election protest shall not suspend the running of the reglementary period to file the protest.



**An election protest shall state:**

1. **The date of proclamation of the winner** and the number of votes obtained by the parties per proclamation;
2. The total number of contested individual and clustered precincts per municipality or city;
3. The individual and clustered precinct numbers and location of the contested precincts; and
4. The specific acts or omissions complained of constituting the electoral frauds, anomalies or irregularities in the contested precincts.


**RULE 17. *Quo Warranto*. – A verified petition for *quo warranto* contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned within fifteen (15) days from the date of the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.**

The provisions of the preceding paragraph to the contrary notwithstanding, **a petition for *quo warranto* may be filed by any registered voter of the district concerned against a member of the House of Representatives, on the ground of citizenship, at any time during his tenure.**

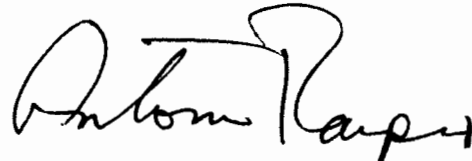
The rule on verification and consolidation provided in Section 16 hereof shall apply to petitions for *quo warranto*. (Emphasis supplied)

If we follow the 25 June 2013 Resolution's strict application of the concurrence of the three requisites and use the pertinent dates in the present case, any election protest filed against Reyes within 15 days from her proclamation in accordance with the present HRET Rules will be dismissed outright by the HRET for being premature. Under the 25 June 2013 Resolution, jurisdiction vests in the HRET only when the House Members take their oath of office before the Speaker in open session, an event that happens only sometime in mid-July following the elections. Thus, the earliest that any election contest arising from the May 2013 elections can be filed with the HRET is 22 July 2013, the day the House Members took their oath of office before the Speaker in open session. This amends the HRET Rules, and changes well-established jurisprudence, without any justifiable reason whatsoever.

The Court's ruling today is a **double flip-flop**: (1) it reverses the well-settled doctrine that upon proclamation of a winning congressional candidate, the HRET acquires sole jurisdiction over any contest relating to the "election, returns and qualifications" of House Members; and (2) it also reverses the well-settled doctrine that any question on the validity of such proclamation falls under the sole jurisdiction of the HRET.



I vote to **DENY** petitioner Regina Ongsiako Reyes' Manifestation and Notice of Withdrawal. I also vote to **GRANT** Reyes' Motion for Reconsideration to **DISMISS** her petition since jurisdiction over her petition had vested in the House of Representatives Electoral Tribunal upon her proclamation.

A handwritten signature in black ink, appearing to read "Antonio T. Carpio", with a stylized flourish at the end.

**ANTONIO T. CARPIO**

Associate Justice