

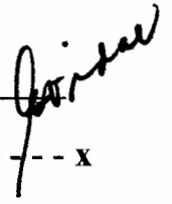
EN BANC

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

Promulgated:

OCTOBER 22, 2013

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SEPARATE CONCURRING OPINION

SERENO, *CJ*:

Certain views, distinctly different from the *ponencia* and from the Concurring and Dissenting Opinions, prompt me to write this Separate Opinion.

Guided by consistency in the interpretation of constitutional language, it is my view that the 1987 Constitution “intended to give [the electoral tribunals] full authority to hear and decide these cases from beginning to end and on all matters related thereto, including those arising before the proclamation of the winners.”<sup>1</sup>

*Javier v. COMELEC*<sup>2</sup>, decided under the auspices of the 1973 Constitution, is instructive and sheds light on the extent of the constitutional grant of jurisdiction to the electoral tribunal as the sole judge of all contests relating to the elections, returns, and qualifications of their respective members.

Under the 1973 Constitution, COMELEC was given the power to “be the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials.”<sup>3</sup>

The Court, speaking through Justice Isagani Cruz, interpreted this constitutional grant of jurisdiction as follows:

<sup>1</sup> *Javier v. COMELEC*, G.R. No. L-68379-81, 22 September 1986, substituting “electoral tribunals” for “it,” referring to the COMELEC.

<sup>2</sup> *Op. cit.*

<sup>3</sup> 1973 Constitution, Art. XII.C.2(2)



We believe that in making the Commission on Elections the sole judge of all contests involving the election, returns and qualifications of the members of the Batasang Pambansa and elective provincial and city officials, the Constitution intended to give it full authority to hear and decide these cases from beginning to end and on all matters related thereto, including those arising before the proclamation of the winners.<sup>4</sup>

The 1987 Constitution transferred the jurisdiction of the COMELEC to the electoral tribunals of the Senate and the House of Representatives to “be the sole judge[s] of all contests relating to the election, returns, and qualifications of their respective Members,”<sup>5</sup> but the constitutional language has not changed. The jurisdiction granted was similar to that of the COMELEC under the 1973 Constitution, which the Court interpreted to mean “full authority to hear and decide these cases from beginning to end and on all matters related thereto, including those arising before the proclamation of the winners.”<sup>6</sup>

When the same language was adopted in the 1987 Constitution, it must be interpreted in the same way. Thus, petitions to deny due course or to cancel the certificate of candidacy of those aspiring to be members of the Senate or the House of Representatives under Section 78 of the Omnibus Election Code<sup>7</sup> should be under the jurisdiction of the electoral tribunals and not of the COMELEC.

Be that as it may, this view cannot be applied to petitioner’s cause, as she has never questioned the jurisdiction of the COMELEC to take cognizance of and rule on Section 78 petitions. Petitioner came to this Court to assail both the Resolution of the COMELEC First Division dated 27 March 2013 and the Resolution of the COMELEC *En Banc* dated 14 May 2013 based on grave abuse of discretion, and not on patent lack of jurisdiction on constitutional grounds.

As will be discussed, there is nothing on record to show any grave abuse of discretion on the part of the COMELEC, either the First Division or *En Banc*, in promulgating the assailed Resolutions.

Petitioner reiterates in her Motion for Reconsideration the imputation of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC in the following manner:

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<sup>4</sup> *Supra*, Note 1.

<sup>5</sup> CONSTITUTION, Art. VI, Sec. 17, 1987

<sup>6</sup> *Id.*

<sup>7</sup> **Sec. 78. Petition to deny due course to or cancel a certificate of candidacy.** - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

- 1) By denying her right to due process
  - a. when the COMELEC First Division admitted evidence without granting her opportunity to present controverting evidence;
  - b. when the COMELEC *En Banc* denied her motion for a hearing;
- 2) By declaring her not to be a Filipino citizen and not to have met the residency requirement; and
- 3) By imposing additional qualifications when it enforced the provisions of Republic Act No. 9225.

The right of petitioner to due process was never violated, as she was given every opportunity to present her side during the reception of evidence at the Division level. She was furnished a copy of the Manifestation with Motion to Admit Newly Discovered Evidence and Amended List of Exhibits.<sup>8</sup> She had all the right to interpose her objections to the documentary evidence offered against her, but she failed to exercise that right.

The COMELEC First Division, therefore, did not commit any grave abuse of discretion when it admitted in evidence the documents offered, even if the printed Internet article showing that petitioner had used a U.S. passport might have been hearsay, and even if the copy of the Bureau of Immigration Certification was merely a photocopy and not even a certified true copy of the original.

Section 1, Rule 41 of the COMELEC Rules of Procedure<sup>9</sup> provides for the suppletory application of the Rules of Court. The third paragraph of Section 36, Rule 132 of the Revised Rules of Evidence provides that “an offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.”

Petitioner failed to raise any objection to the offer of evidence on time. It is now too late for her to question its admissibility. The rule is that evidence not objected to may be deemed admitted and validly considered by the court in arriving at its judgment.<sup>10</sup> As a corollary point, the COMELEC *En Banc* committed no grave abuse of discretion when it did not set petitioner’s Motion for Reconsideration for hearing. Setting a case for hearing is discretionary on its part. In fact, in summary proceedings like the special action of filing a petition to deny due course or to cancel a certificate of candidacy, oral testimony is dispensed with and, instead, parties are

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<sup>8</sup> Rollo, p. 129, see Registry Receipt & Explanation on 3<sup>rd</sup> page of the Manifestation.

<sup>9</sup> Section 1. The Rules of Court. - In the absence of any applicable provisions in these Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect.

<sup>10</sup> *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio*, G.R. No. 186027, 27 December 2007, 541 SCRA 479; *People v. Pansensoy*, G.R. No. 140634, 12 September 2002, 388 SCRA 669, 689; *People v. Barellano*, G.R. No. 121204, 2 December 1999, 319 SCRA 567, 590.

required to submit their position paper together with affidavits, counter affidavits and other pieces of documentary evidence.<sup>11</sup>

There was no grave abuse of discretion when, based on the records, the COMELEC cancelled the Certificate of Candidacy of petitioner after finding that she had committed false material misrepresentation with respect to her citizenship and residency. It thereafter declared that she should have complied with the requirements of renouncing her foreign citizenship and taking the oath of allegiance under R. A. 9225 before she could qualify to run for any elective office.

It bears stressing that when the petition to deny due course or to cancel her Certificate of Candidacy was filed alleging that she possessed American citizenship, petitioner denied the allegation, claiming that no evidence whatsoever was presented to support the claim.<sup>12</sup> When herein private respondent filed her Manifestation with Motion to Admit Newly Discovered Evidence and Amended List of Exhibits, petitioner did not object to the documentary evidence offered to support the allegation that the latter possessed American citizenship.

In her Motion for Reconsideration of the COMELEC First Division Resolution dated 27 March 2013, petitioner, without providing any basis, claimed that she had not lost her Filipino citizenship. Yet, she attached an Affidavit of Renunciation of Foreign Citizenship. She claimed that even if it was a superfluity, she was attaching her duly accomplished personal and sworn renunciation of any and all foreign citizenships in compliance with the requirements under R.A. 9225, "if only to show [her] desire and zeal to serve the people and comply with rules."<sup>13</sup>

In her original Petition before this Court, petitioner contends that "even granting for the sake of argument but without conceding that the 'newly discovered evidence' of Respondent Tan were admissible, it merely established the fact that Petitioner is an American citizen which does not translate to her not being a Filipino."<sup>14</sup> Yet, in her present Motion for Reconsideration, petitioner begs the indulgence of this Court for the belated submission of her Identification Certificate recognizing her as a citizen of the Philippines pursuant to the provisions and implementing regulations of R.A. 9225.<sup>15</sup>

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<sup>11</sup> Sec. 3, Rule 17, COMELEC Rules of Procedure:

**Sec. 3. Oral Testimony Dispensed with Where Proceedings are Summary.** - When the proceedings are authorized to be summary, in lieu of oral testimonies, the parties may, after due notice, be required to submit their position paper together with affidavits, counter-affidavits and other documentary evidence; and when there is a need for clarification of certain matters, at the discretion of the Commission or the Division, the parties may be allowed to cross-examine the affiants.

This provision shall likewise apply to cases where the hearing and reception of evidence are delegated by the Commission or the Division to any of its officials; and when there is a need for clarification of certain matters, the hearing officer may schedule a hearing to propound clarificatory questions, observing for that purpose Section 6 of Rule 34 of these Rules.

<sup>12</sup> Rollo, p. 94, Answer filed by Reyes dated 9 November 2012.

<sup>13</sup> Id. p. 149, Motion for Reconsideration filed by Reyes on 8 April 2013.

<sup>14</sup> Id. p. 26.

<sup>15</sup> Id. p. 311.

This submission of the Affidavit of Renunciation of Foreign Citizenship and the Identification Certificate issued by the Bureau of Immigration confirms the acquisition of foreign citizenship by petitioner and the applicability of R.A. 9225 to her. Thus, the COMELEC was correct in ruling that she was no longer a Filipino citizen when she filed her Certificate of Candidacy and that without complying with the requirements of R.A. 9225, she was not qualified to run for public office. Since these two documents were not submitted to the COMELEC, there can be no grave abuse of discretion either on the part of the COMELEC First Division when it cancelled her Certificate of Candidacy, or on the part of the COMELEC *En Banc* when it affirmed the cancellation.

Petitioner also imputes grave abuse to the COMELEC for enforcing and applying R.A. 9225 to her, claiming that by doing so, the Commission added a requirement to the qualifications set to become a member of the House of Representatives as set by the Constitution. Petitioner must be reminded that it was the legislature that added the requirement of renunciation of foreign citizenship by those who have lost their citizenship and who seek elective office. COMELEC has the constitutional duty to enforce this law.

Let me now proceed to an explanation why — despite my view that under the 1987 Constitution, the HRET is given the power to be the “sole judge of all contests relating to the [x x x] qualifications of its Members” — the present case cannot be the basis for declaring the unconstitutionality of the COMELEC’s action of exercising jurisdiction over Section 78 petitions involving candidates for Member of the House of Representatives or the Senate.


It must be pointed out that the jurisdiction of the COMELEC to entertain and rule on the Petition to Deny Due Course or to Cancel the Certificate of Candidacy in the instant case was never questioned. In fact, petitioner fully participated in the action, by filing her Answer and Memorandum before the First Division and subsequently filing a Motion for Reconsideration before the COMELEC after the First Division cancelled her Certificate of Candidacy on 27 March 2013. The COMELEC had the legal duty to decide on the matter and, in fact, the COMELEC *En Banc* resolved to affirm the cancellation of the Certificate of Candidacy on 14 May 2013.

This Court has held in *Tajonera v. Lamaroza*:<sup>16</sup>

The rule is that jurisdiction is conferred by law and the objection to the authority of the tribunal to take cognizance of a case may be raised at any stage of the proceedings. However, considering the attendant circumstances in the cases at bar, petitioners are now barred from claiming lack of jurisdiction at this stage with their active participation.

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<sup>16</sup> G.R. Nos. L-48907 & 49035. 19 December 1981.



[...] They never mentioned lack of jurisdiction in their memorandum of appeal, in their motion for reconsideration or in their position paper. They are now estopped from raising such objection. It has been held that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and after failing to obtain such relief, repudiate or question that same jurisdiction. (citing the case of *Tijam v. Sibunghanoy*, 23 SCRA 35).

In the instant Petition, petitioner questioned the jurisdiction of the COMELEC after it cancelled the Certificate of Candidacy, and after the proclamation was made by the Provincial Board of Canvassers. Contending that her proclamation as winner in the congressional race in the Province of Marinduque effectively ousted COMELEC of any jurisdiction, she claimed “that its disqualification of the Petitioner should be declared to have no legal force and effect and may not be made the basis to annul petitioner’s proclamation or to unseat her from office.”<sup>17</sup>

It was this prayer of petitioner in her original Petition before this Court that prompted this Court to declare:

More importantly, we cannot disregard a fact basic in this controversy - that before the proclamation of petitioner on 18 May 2013, the COMELEC *En Banc* had already finally disposed of the issue of petitioner’s lack of Filipino citizenship and residency via its Resolution dated 14 May 2013. After 14 May 2013, there was, before the COMELEC, no longer any pending case on petitioner’s qualifications to run for the position of Member of the House of Representatives. We will inexcusably disregard this fact if we accept the argument of the petitioner that the COMELEC was ousted of jurisdiction when she was proclaimed, which was four days after the COMELEC *En Banc* decision. The Board of Canvassers which proclaimed petitioner cannot by such act be allowed to render nugatory a decision of the COMELEC *en Banc* which affirmed a decision of the COMELEC First Division.<sup>18</sup>

Petitioner now states in her Motion for Reconsideration that her proclamation is not and has never been an issue in her Petition. She must be reminded that she is anchoring her claim that COMELEC has been ousted of any jurisdiction, to even enforce its final decision by virtue of her proclamation.

Petitioner’s contention necessarily raises the following questions:

1. Can the proclamation of a candidate by the Provincial Board of Canvassers (PBOC) negate a COMELEC *En Banc* Resolution cancelling the certificate of candidacy?

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<sup>17</sup> Rollo, p. 36.

<sup>18</sup> Resolution, p. 9, June 25, 2013; *Rollo*, p. 180.

2. Can the PBOC proclaim a candidate whose certificate of candidacy has already been cancelled?

These questions compel us to look into the set of circumstances surrounding petitioner's proclamation.

On 14 May 2013, the COMELEC *En Banc* had already resolved the Amended Petition to Deny Due Course or to Cancel the Certificate of Candidacy filed against Reyes. Based on Sec. 3, Rule 37 of the COMELEC Rules of Procedure,<sup>19</sup> this Resolution was already final and should have become executory five days after its promulgation. But despite this unrestrained ruling of the COMELEC *En Banc*, the PBOC still proclaimed Reyes as the winning candidate on 18 May 2013.

On 16 May 2013, petitioner had already received the judgment cancelling her Certificate of Candidacy. As mentioned, two days thereafter, the PBOC still proclaimed her as the winner. Obviously, the proclamation took place notwithstanding that petitioner herself already knew of the COMELEC *En Banc* Resolution.

It must also be pointed out that even the PBOC already knew of the cancellation of the Certificate of Candidacy of petitioner when it proclaimed her. The COMELEC *En Banc* Resolution dated 9 July 2013 and submitted to this Court through the Manifestation of private respondent, quoted the averments in the Verified Petition of petitioner therein as follows:

xxx While the proceedings of the PBOC is suspended or in recess, the process server of this Honorable Commission, who identified himself as PEDRO P. STA. ROSA II ("Sta. Rosa," for brevity), arrived at the session hall of the Sangguniang Panlalawigan of Marinduque where the provincial canvassing is being held.


xxx The process server, Sta. Rosa, was in possession of certified true copies of the *Resolution* promulgated by the Commission on Elections *En Banc* on 14 May 2013 in SPA No. 13-053 (DC) entitled "Joseph Socorro B. Tan vs. Atty. Regina Ongsiako Reyes" and an *Order* dated 15 May 2013 to deliver the same to the Provincial Election Supervisor of Marinduque. The said *Order* was signed by no less than the Chairman of the Commission on Elections, the Honorable Sixto S. Brillantes, Jr.

xxx Process Server Pedro Sta. Rosa II immediately approached Atty. Edwin Villa, the Provincial Election Supervisor (PES) of Marinduque, upon his arrival to serve a copy of the aforementioned *Resolution* dated 14 May 2013 in SPA No. 13-053 (DC). Despite his proper

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<sup>19</sup> Sec. 13. Finality of Decisions or Resolutions. –

(b) In Special Actions and Special Cases a decision or resolutions of the Commission en banc shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.



identification that he is a process server from the COMELEC Main Office, the PES totally ignored Process Server Pedro Sta. Rosa II.

xxx Interestingly, the PES likewise refused to receive the copy of the Commission on Elections En Banc Resolution dated 14 May 2013 in SPA No. 13-053 (DC) despite several attempts to do so.

xxx Instead, the PES immediately declared the resumption of the proceedings of the PBOC and instructed the Board Secretary to immediately read its Order proclaiming Regina Ongsiako Reyes as winner for the position of Congressman for the Lone District of Marinduque.<sup>20</sup>

This narration of the events shows that the proclamation was in contravention of a COMELEC *En Banc* Resolution cancelling the candidate's Certificate of Candidacy.

The PBOC, a subordinate body under the direct control and supervision of the COMELEC,<sup>21</sup> cannot simply disregard a COMELEC *En Banc* Resolution brought before its attention and hastily proceed with the proclamation by reasoning that it has not officially received the resolution or order.

The relevance of Secs. 6 and 7 of R.A. 6646 is brought to the fore. These provisions read:

**Sec. 6. Effect of Disqualification Case.** - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.


**Sec. 7. Petition to Deny Due Course To or Cancel a Certificate of Candidacy.** - The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

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<sup>20</sup> COMELEC En Banc Resolution dated 19 July 2013, pp. 4-5, attached to the Manifestation filed before this Court on 16 August 2013.

<sup>21</sup> Omnibus Election Code, Sec. 227. Supervision and control over board of canvassers. - The Commission shall have direct control and supervision over the board of canvassers.

Any member of the board of canvassers may, at any time, be relieved for cause and substituted *motu proprio* by the Commission.





The law provides for the suspension of a proclamation whenever there are pending disqualification cases or petitions to deny due course to or cancel a certificate of candidacy, and the evidence of guilt is strong. This provision points to the legislative intent to be cautious in proceeding with the proclamation of candidates against whom pending disqualification cases or petitions for cancellation of certificate of candidacy are filed. When the petition for cancellation of the certificate of candidacy is no longer pending as when the COMELEC *En Banc* had, in fact, affirmed the cancellation of the certificate of candidacy, the need for the suspension of the proclamation becomes more apparent.

In this case, the technical requirement of Secs. 6 and 7 of R.A. 6646 — to suspend the proclamation in the face of the motion of a complainant or any intervenor to suspend the proclamation was, in fact, substantially complied with. The compliance was when the other candidate, through his counsel, moved for his proclamation in view of the affirmation by the COMELEC *En Banc* of the cancellation of petitioner's Certificate of Candidacy and actually provided a copy of the Resolution to the PBOC.<sup>22</sup> That Motion, together with a copy of the COMELEC *En Banc* Resolution, should have given enough notice to the PBOC that there was an incident analogous to a prejudicial question in criminal cases,<sup>23</sup> an incident that called for the suspension of the proclamation of the candidate whose Certificate of Candidacy had already been cancelled.

The elements of a prejudicial question in criminal actions as set forth in Sec. 7, Rule 111 of the Rules of Criminal Procedure, as follows:

- (a) The previously instituted civil action involves an issue similar or intimately related to that issue raised in the subsequent criminal action.
- (b) The resolution of this issue determines whether or not the criminal action may proceed.

Applying the elements of a prejudicial question to Secs. 6 and 7 of R.A. 6646 on the pendency of disqualification cases or of petitions filed under Sec. 78 call for the suspension of the proclamation of a candidate when the evidence of guilt or the likelihood of the cancellation of the certificate of candidacy is strong. The main issue in the disqualification case or the Petition to cancel the Certificate of Candidacy is directly related to and, is, in fact, the crucial element that must be decided before a proclamation can be had.

The PBOC denied the motion to proclaim candidate Velasco on the ground that neither the counsel of petitioner nor the PBOC was duly furnished or served an official copy of the COMELEC *En Banc* Resolution<sup>24</sup> dated 14 May 2013 and forthwith proceeded with the proclamation of herein

<sup>22</sup> Rollo, p. 438, COMELEC *En Banc* Resolution dated 9 July 2013, submitted as Exhibit A of the Manifestation filed before the Court on 16 Aug. 2013.

<sup>23</sup> Rules on Criminal Procedure, Rule 111, Sections 6 & 7.

<sup>24</sup> *Id.* p. 3.

petitioner, whose Certificate of Candidacy has already been cancelled, bespeaks *mala fide* on its part.

As early as 27 March 2013, when the COMELEC First Division cancelled petitioner's Certificate of Candidacy, the people of Marinduque, including the COMELEC officials in the province, were already aware of the impending disqualification of herein petitioner upon the finality of the cancellation of her Certificate of Candidacy. When the COMELEC *En Banc* affirmed the cancellation of the certificate of candidacy on the day of the elections, but before the proclamation of the winner, it had the effect of declaring that herein petitioner was not a candidate.

Thus, when the PBOC proclaimed herein petitioner, it proclaimed not a winner but a non-candidate.

The proclamation of a non-candidate cannot take away the power vested in the COMELEC to enforce and execute its decisions. It is a power that enjoys precedence over that emanating from any other authority, except the Supreme Court, and that which is issued in *habeas corpus* proceedings as provided in Sec. 52(f) of the Omnibus Election Code.<sup>25</sup>

On a final note, I respectfully take exception to my distinguished colleague's statement that "the novel argument from no less than the Chief Justice" regarding petitioner Reyes' bad faith was "(o)ut of the blue and without any previous circulated written opinion" considering that, from the very beginning of the deliberations of this case I, together with another colleague, had already clearly expressed my opinion that bad faith should never be rewarded. Furthermore, the argument of bad faith is neither "novel" nor "out of the blue," as it had been repeatedly raised in several deliberations on this matter. The bad faith element was further confirmed by the records through the antecedents cited in the Resolution of the COMELEC *En Banc* dated 09 July 2013.<sup>26</sup>

Be that as it may, it is unseemly to question the participation in the deliberations by a member of this Court for lack of a previously circulated written opinion. Indeed, given the nature of our collegial discussions on the matters presented to us, every member of the Court has the right to participate in the deliberations *En Banc*, with or without having previously circulated his or her opinion on the cases before us.


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<sup>25</sup> Sec. 52. Powers and functions of the Commission on Elections. - In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall:

x x x x

(f) Enforce and execute its decisions, directives, orders and instructions which shall have precedence over those emanating from any other authority, except the Supreme Court and those issued in habeas corpus proceedings.

<sup>26</sup> *Supra*, note 22.



I reiterate my view that the COMELEC Decision dated 14 May 2013 has already become final, and that the HRET has no jurisdiction over this electoral case.

For the foregoing reasons, I vote to **DENY** the Motion for Reconsideration.



**MARIA LOURDES P. A. SERENO**  
Chief Justice