Republic of the Philippines
Supreme Court
Manila

EN BANC

EMILIO RAMON "E.R." P. EJERCITO, Petitioner,	**G.R. No. 212398**
	Present:
- *versus* -	SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION,* PERALTA, BERSAMIN, DEL CASTILLO, VILLARAMA, JR., PEREZ, MENDOZA, REYES, PERLAS-BERNABE,** LEONEN, and JARDELEZA,* *JJ.*
HON. COMMISSION ON ELECTIONS and EDGAR "EGAY" S. SAN LUIS, Respondents.	**Promulgated:**
	NOVEMBER 25, 2014

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DECISION

PERALTA, *J.*:

Contested in this petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court (*Rules*), is the May 21, 2014 Resolution[1] of the Commission on Elections (*COMELEC*) *En Banc* in SPA No. 13-306

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* No part.
** On official leave.
1 *Rollo*, pp. 29-49.

(DC), which affirmed the September 26, 2013 Resolution[2] of the COMELEC First Division granting the petition for disqualification filed by private respondent Edgar "Egay" S. San Luis (*San Luis*) against petitioner Emilio Ramon "E.R." P. Ejercito (*Ejercito*).

Three days prior to the May 13, 2013 National and Local Elections, a petition for disqualification was filed by San Luis before the Office of the COMELEC Clerk in Manila against Ejercito, who was a fellow gubernatorial candidate and, at the time, the incumbent Governor of the Province of Laguna.[3] Alleged in his *Petition* are as follows:

> FIRST CAUSE OF ACTION
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> 5. [Ejercito], during the campaign period for 2013 local election, distributed to the electorates of the province of Laguna the so-called "Orange Card" with an intent to influence, induce or corrupt the voters in voting for his favor. Copy thereof is hereto attached and marked as Annex "C" and made as an integral part hereof;
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> 6. In furtherance of his candidacy for the position of Provincial Governor of Laguna, [Ejercito] and his cohorts claimed that the said "Orange Card" could be used in any public hospital within the Province of Laguna for their medical needs as declared by the statements of witnesses which are hereto attached and marked as Annex "D" as integral part hereof;
>
> 7. The so-called "Orange Card" is considered a material consideration in convincing the voters to cast their votes for [Ejercito's] favor in clear violation of the provision of the Omnibus Election Code which provides and I quote:
>
> > "Sec. 68. Disqualifications. – Any candidate who, in an action or protest in which he is a party is declared by final decision by a competent court guilty of, or found by the Commission of having (a) <u>given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions;</u> (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86, and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws." (*emphasis ours*)

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[2] The COMELEC First Division was composed of Commissioners Lucenito N. Tagle, Christian Robert S. Lim and Al A. Parreño; *rollo*, pp. 49A-61.

[3] Records, p. 1.

8. Thus, pursuant to the mandate of the aforesaid law, [Ejercito] should be disqualified;

SECOND CAUSE OF ACTION

9. Based on the records of the Provincial COMELEC, the Province of Laguna has a total of 1,525,522 registered electorate. A certification issued by the Provincial Election Supervisor is hereto attached and marked as Annex "E" as an integral part hereof;

10. In this regard, par. (a), Section 5 of COMELEC Resolution No. 9615, otherwise known as the Rules and Regulations Implementing FAIR ELECTION ACT provides and I quote:

> "*Authorized Expenses of Candidates and Parties.* – The aggregate amount that a candidate or party may spent for election campaign shall be as follows:
>
> a. For candidates – Three pesos (P3.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy.
> b. For other candidates without any political party and without any support from any political party – Five pesos (P5.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy.
> c. For Political Parties and party-list groups – Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates. (*underscoring mine for emphasis*)

11. Accordingly, a candidate for the position of Provincial Governor of Laguna is only authorized to incur an election expense amounting to FOUR MILLION FIVE HUNDRED SEVENTY-SIX THOUSAND FIVE HUNDRED SIXTY-SIX (₱4,576,566.00) PESOS.

12. However, in total disregard and violation of the afore-quoted provision of law, [Ejercito] exceeded his expenditures in relation to his campaign for the 2013 election. For television campaign commercials alone, [Ejercito] already spent the sum of PhP23,730.784 based on our party's official monitoring on the following dates[:] April 28, May 4 & May 5, 2013.

Network	Date	Program	Time	Duration	Amount*
ABS-CBN	April 28, 2013	TV Patrol	5:58 p.m.	4 minutes (approximately)	₱3,297,496
ABS-CBN	April 28, 2013	Sundays Best (local specials)	10:40 p.m.	4 minutes (approximately)	₱3,297,496
GMA	April 28, 2013	Sunday Night Box Office	10:46 p.m.	3 minutes (approximately)	₱2,635,200
GMA	April 28, 2013	Sunday Night Box Office	11:06 p.m.	4 minutes (approximately)	₱2,635,200
GMA	April 28, 2013	Sunday Night Box Office	11:18 p.m.	4 minutes (approximately)	₱2,635,200
GMA	April 28, 2013	Sunday Night Box Office	11:47 p.m.	4 minutes (approximately)	₱2,635,200
ABS-CBN	May 4, 2013	TODA MAX	11:26 p.m.	4 minutes (approximately)	₱3,297,496
ABS-CBN	May 5, 2013	Rated K	8:06 p.m.	4 minutes	₱3,297,496

				(approximately)	
				Total	₱23,730.784

* Total cost based on published rate card;

13. Even assuming that [Ejercito] was given 30% discount as prescribed under the Fair Election Act, he still exceeded in the total allowable expenditures for which he paid the sum of ₱16,611,549;

14. In view of the foregoing disquisitions, it is evident that [Ejercito] committed an election offense as provided for under Section 35 of COMELEC Resolution No. 9615, which provides and I quote:

> "Election Offense. – Any violation of R.A. No. 9006 and these Rules shall constitute an election offense punishable under the first and second paragraph of Section 264 of the Omnibus Election Code in addition to administrative liability, whenever applicable. x x x"

15. Moreover, it is crystal clear that [Ejercito] violated Sec. 68 of the Omnibus Election Code which provides and I quote:

> "Sec. 68. Disqualifications. – Any candidate who, in an action or protest in which he is a party is declared by final decision by a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86, and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws." (*emphasis ours*)

16. On the other hand, the effect of disqualification is provided under Sec. 6 of Republic Act No. 6646, which states and I quote:

> "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." (*emphasis mine*)
>
> PRAYER
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> WHEREFORE, premises considered, it is respectfully prayed that:
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> 1. Upon filing of this petition, a declaration by the Honorable Commission of the existence of probable cause be made against [Ejercito] for violating the afore-quoted provisions of laws;
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> 2. In the event that [Ejercito] will be able to get a majority vote of the electorate of the Province of Laguna on May 13, 2013, his proclamation be suspended until further order of the Honorable Commission pursuant to Sec. 6 of Republic Act No. 6646;
>
> 3. Lastly, a criminal case for VIOLATION OF ELECTION LAWS be filed against [Ejercito] before the proper court[;] [and]
>
> 4. Other relief, just and equitable under the premises, are also prayed for.[4]

Subsequently, on May 16, 2013, San Luis filed a *Very Urgent Ex-Parte Motion to Issue Suspension of Possible Proclamation of Respondent* and *Supplemental to the Very Urgent Ex-Parte Motion to Issue Suspension of Possible Proclamation of Respondent*.[5] However, these were not acted upon by the COMELEC. The next day, Ejercito and Ramil L. Hernandez were proclaimed by the Provincial Board of Canvassers as the duly-elected Governor and Vice-Governor, respectively, of Laguna.[6] Based on the Provincial/District Certificate of Canvass, Ejercito obtained 549,310 votes compared with San Luis' 471,209 votes.[7]

The COMELEC First Division issued a *Summons with Notice of Conference* on June 4, 2013.[8] Ejercito then filed his *Verified Answer* on June 13, 2013 that prayed for the dismissal of the petition due to procedural and substantive irregularities and taking into account his proclamation as Provincial Governor.[9] He countered that the petition was improperly filed because, based on the averments and relief prayed for, it is in reality a complaint for election offenses; thus, the case should have been filed before the COMELEC Law Department, or the election registrar, provincial election supervisor or regional election director, or the state, provincial or city prosecutor in accordance with *Laurel v. Presiding Judge, RTC, Manila, Br. 10*.[10] Assuming that the petition could be given due course, Ejercito

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4 *Rollo*, pp. 91-96.
5 Records, pp. 16-28.
6 *Id*. at 49.
7 *Id*. at 47-48.
8 *Id*. at 30-32.
9 *Id*. at 33-49.
10 380 Phil. 745 (2000).

argued that San Luis failed to show, conformably with *Codilla, Sr. v. Hon. De Venecia*,[11] that he (Ejercito) was previously convicted or declared by final judgment of a competent court for being guilty of, or found by the COMELEC of having committed, the punishable acts under Section 68 of Batas Pambansa (*B.P.*) Bilang 881, or the Omnibus Election Code of the Philippines, as amended (*OEC*).[12]

As to the acts he allegedly committed, Ejercito claimed that the same are baseless, unfounded, and totally speculative. He stated that the Health Access Program or the E.R. "Orange Card" was a priority project of his administration as incumbent Governor of Laguna and was never intended to influence the electorate during the May 2013 elections. He added that the "Orange Card," which addressed the increasing need for and the high cost of quality health services, provides the Laguneños not only access to medical services but also the privilege to avail free livelihood seminars to help them find alternative sources of income. With respect to the charge of having exceeded the total allowable election expenditures, Ejercito submitted that the accusation deserves no consideration for being speculative, self-serving, and uncorroborated by any other substantial evidence.

Citing *Sinaca v. Mula*,[13] Ejercito asserted that the petition questioning his qualification was rendered moot and academic by his proclamation as the duly-elected Provincial Governor of Laguna for the term 2013-2016. He perceived that his successful electoral bid substantiates the fact that he was an eligible candidate and that his victory is a testament that he is more than qualified and competent to hold public office.

Lastly, Ejercito considered San Luis' petition for disqualification as purely frivolous and with no plain and clear purpose but to harass and cause undue hardship. According to him, the fact that it was filed only a few days before the May 13, 2013 elections evidently shows that it was lodged as a last-ditch effort to baselessly derail and obstruct his assumption of office and function as the duly-elected Laguna Governor.

The scheduled case conference between the parties on June 13, 2013 was reset to June 27, 2013.[14] In the latter date, all the documentary exhibits were marked in evidence and the parties agreed to file their respective memorandum within ten (10) days.[15]

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11 442 Phil. 139 (2002).
12 Approved on December 3, 1985.
13 373 Phil. 896 (1999).
14 Records, pp. 50, 56; *rollo*, p. 135.
15 Records, pp. 57, 59.

San Luis substantially reiterated the content of the *Petition* in his *Memorandum*.[16] Additionally, he alleged that:

> 15. After the election, [San Luis] was able to secure documents from the Information and Education Department of the Commission on Elections showing that [Ejercito] have incurred advertising expenses with ABS-CBN in the amount of [P20,197,170.25] not to mention his advertisement with GMA 7. Copies of the summary report, media purchase order, advertising contract[,] and official receipt are marked as **EXHS. "B-1", "B-2", "B-3",** and **"B-4"** (Annexes "A", "B", "C", and "D", supplemental to the very urgent ex-parte motion)[.][17]

It was stressed that the case is a "Special Action for Disqualification" seeking to disqualify Ejercito as gubernatorial candidate for violation of Section 68 (a) (c) of the OEC. He prayed that "[t]he Petition BE GRANTED [and] x x x [Ejercito] BE DISQUALIFIED, and PREVENTED from further holding office as Governor of Laguna."[18] In refutation of Ejercito's defenses, San Luis argued that it is precisely because of the commission of the election offenses under Section 68 of the OEC that he (Ejercito) should be disqualified. Also, citing Section 6 of Republic Act (*R.A.*) No. 6646,[19] San Luis contended that Ejercito's proclamation and assumption of office do not affect the COMELEC's jurisdiction to continue with the trial and hearing of the action until it is finally resolved.

For his part, Ejercito filed a *Manifestation (In Lieu of Memorandum)*[20] restating all the arguments set forth in his *Verified Answer*.

On September 26, 2013, the COMELEC First Division promulgated a Resolution, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, the Commission (*First Division*) **RESOLVED**, as it hereby **RESOLVES**, to:
>
> (1) **GRANT** the *Petition for Disqualification* filed against respondent Emilio Ramon "E.R." P. Ejercito;
>
> (2) **DISQUALIFY** respondent Ejercito from holding the Office of the Provincial Governor of Laguna, pursuant to Section 68 of the Omnibus Election Code;
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> (3) **ORDER** respondent Ejercito to **CEASE** and **DESIST** from performing the functions of the Office of the Provincial Governor of Laguna;

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16 *Rollo*, p. 153-161.
17 *Id.* at 157.
18 *Id.* at 160.
19 Otherwise known as "The Electoral Reforms Law of 1987."
20 *Rollo*, pp. 140-152.

> (4) **DECLARE** a permanent **VACANCY** in the Office of the Provincial Governor of Laguna;
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> (5) **DIRECT** the duly elected Vice Governor of Laguna to assume the Office of the Provincial Governor by virtue of succession as provided in Section 44 of the Local Government Code; and
>
> (6) **DIRECT** the Campaign Finance Unit to coordinate with the Law Department of this Commission for the conduct of a preliminary investigation into the alleged violations of campaign finance laws, rules and regulations committed by respondent Ejercito.
>
> **SO ORDERED.**[21]

On procedural matters, the COMELEC First Division held that the title of San Luis' petition and its reliance on Section 68 (a) (c) of the OEC as grounds for his causes of action clearly show that the case was brought under Rule 25 of the COMELEC Rules of Procedure,[22] as amended by COMELEC Resolution No. 9523,[23] which allows petitions for disqualification to be filed "any day after the last day for filing of certificates of candidacy, but not later than the date of proclamation." No credence was given to Ejercito's contention that the petition was mooted by his proclamation as Governor of Laguna. The COMELEC First Division opined that the case of *Sinaca* is inapplicable, because it was not about Sinaca's eligibility or whether he committed any of the acts enumerated in Section 68 of the OEC. Consistent with *Maquiling v. Commission on Elections*,[24] it was declared that Ejercito's garnering of more votes than San Luis in the May 2013 elections is not tantamount to condonation of any act or acts that he committed which may be found to be a ground for disqualification or election offense.

The COMELEC First Division settled the substantive issues put forth in the petition for disqualification in this wise:

> Anent [San Luis'] first cause of action, [San Luis] presented the *Sworn Statement dated [May 7, 2013]* of a certain Mrs. Daisy A. Cornelio, together with the "Orange Card" issued to Mrs. Cornelio, marked respectively as Exhibits "A-4" and "A-3" as per [San Luis'] *Summary of Exhibits* – to prove that [Ejercito] committed the act described in Section 68 (a) of the OEC. After reviewing Mrs. Cornelio's *Sworn Statement*, we

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21 *Id.* at 60-61.

22 Rule 25 of the COMELEC Rules of Procedure or the "Rules Governing Pleadings, Practice and Procedure before the COMELEC or any of its Offices," which was promulgated on February 15, 1993, pertains to disqualification of candidates.

23 In the Matter of the Amendment to Rules 23, 24, and 25 of the COMELEC Rules of Procedure for Purposes of the May 13, 2013 National, Local and ARMM Elections and Subsequent Elections (Promulgated on September 25, 2012).

24 G.R. No. 195649, April 16, 2013, 696 SCRA 420.

do not find any averment to the effect that the Orange Card was given to the affiant to influence or induce her to vote for [Ejercito]. Affiant only stated that she was given the Orange Card "last April of this year" and that she was "not able to use it during those times when [she] or one of [her] family members got sick and needed hospital assistance." Aside from Mrs. Cornelio's *Sworn Statement*, there is no other evidence to support [San Luis'] claim, leading us to reject [San Luis'] first cause of action.

With respect to the second cause of action, [San Luis] presented Exhibits "B-1" to "B-4", which are submissions made by the ABS-CBN Corporation as mandated by Section 6 of Republic Act No. 9006 ("RA 9006" or the "Fair Election Act"), implemented through Section 9 (a) of *Resolution No. 9615*. Exhibit "B-3" is an *Advertising Contract* between ABS-CBN Corporation and Scenema Concept International, Inc. ("SCI"). The details of the *Contract* are as follows:

Payor/Advertiser	Scenema Concept International, Inc.
Beneficiary	Jeorge "ER" Ejercito Estregan
Broadcast Schedule	April 27, 28, May 3, 4, 10 & 11, 2013
Number of Spots	6 spots of 3.5 minutes each
Unit Cost per Spot	PhP 3,366,195.04
Total Cost of Contract	PhP 20,197,170.25 plus VAT

The *Contract* contains the signature of [Ejercito] signifying his acceptance of the donation by SCI, the latter represented by its Executive Vice President, Ms. Maylyn Enriquez. In addition to the advertising contract, Exhibit "B-4" was submitted, which is a photocopy of an *Official Receipt* issued by ABS-CBN for the contract, with the following details:

Date of the Receipt	[April 26, 2013]
Received From	Scenema Concept International, Inc.
Amount Received	PhP 6,409,235.28
Official Receipt No.	278499

Upon verification of the submitted Exhibits "B-1" to "B-4" with this Commission's Education and Information Department (EID), the latter having custody of all advertising contracts submitted by broadcast stations and entities in relation to the [May 13, 2013] National and Local Elections, we find the said Exhibits to be faithful reproductions of our file copy of the same. A comparison of [Ejercito's] signature on the *Advertising Contract* and that on his *Certificate of Candidacy* show them to be identical to each other, leading us to the conclusion that [Ejercito] had indeed accepted the PhP 20,197,170.25 donation in the form of television advertisements to be aired on ABS-CBN's Channel 2. Even if we were to assume that only PhP 6,409,235.28 was actually paid out of PhP 20,197,170.25 advertising contract, this amount is still more than PhP 4,576,566.00, which is [Ejercito's] total authorized aggregate amount allowed for his election campaign, computed as follows:

Number of registered voters for the whole Province of Laguna	*x*	*Authorized expense per voter registered in the constituency*	=	*Total amount of spending allowed for election campaign*
1,525,522 registered	*x*	*PhP 3.00 per voter*	=	*PhP 4,576,566.00*

voters in Laguna

While not presented as evidence in this case, we cannot deny the existence of another *Advertising Contract dated [May 8, 2013]* for one (1) spot of a 3.5-minute advertisement scheduled for broadcast on [May 9, 2013], amounting to PhP 3,366,195.05. This *Contract* also contains the signature of [Ejercito] accepting the donation from SCI and is accompanied by an ABS-CBN-issued *Official Receipt No. 279513 dated [May 7, 2013]* in SCI's name for PhP 6,409,235.28. If we add the amounts from both contracts, we arrive at a total cost of PhP 23,563,365.29, which, coincidentally, is the product of:

Number of spots x Unit cost per spot = Total contract cost

Seven (7) spots x PhP 3,366,195.04 = PhP 23,563,365.28

This matches the data gathered by the Commission's EID from the reports and logs submitted by broadcast stations as required by the Fair Election Act. According to the 99-page *Daily Operations Log* for Channel 2 submitted by ABS-CBN covering the period of [April 27, 2013] to [May 11, 2013], [Ejercito's] 3.5-minute or 210-second advertisement was aired seven (7) times. The specific details on the dates of airing, program or time slot when the advertisements were aired, and the time when the advertisements as culled from the 99-page *Daily Operations Log* are summarized as thus:

Date aired	Program/Time Slot	Airtime
28 Apr 2013	TV Patrol Linggo/5:20-5:30 pm	05:54:40 PM
28 Apr 2013	Harapan: Senatorial Debate/9:30-11:30 pm	10:40:13 PM
04 May 2013	TODA MAX/10:30-11:15 pm	11:26:43 PM
05 May 2013	Rated K-Handa Na Ba Kayo/7:15-8:15 pm	08:06:42 PM
09 May 2013	TV Patrol/6:30-7:45 pm	07:35:56 PM
10 May 2013	TV Patrol/6:30-7:45 pm	07:44:50 PM
11 May 2013	TV Patrol Sabado/5:30-6:00 pm	06:12:30 PM

Source: Pages 6, 8, 43, 47, 75, 84, and 93 of ABS-CBN Channel 2 Daily Operations Log for [April 27, 2013] to [May 11, 2013].

Assuming *arguendo*, that the actual cost of both contracts only amounted to PhP 12,818,470.56 as substantiated by the two (2) *Official Receipts* issued by the ABS-CBN on [April 26] and [May 7, 2013], or even if we were only to consider Exhibit ["B-4"] or the Php 6,409,235.28 payment to ABS-CBN on [April 26, 2013], it nevertheless supports our finding that [Ejercito] exceeded his authorized expenditure limit of PhP 4,576,566.00 which is a ground for disqualification under Section 68 (c) and concurrently an election offense pursuant to Section 100 in relation to Section 262 of the Omnibus Election Code.[25]

Only Ejercito filed a *Verified Motion for Reconsideration* before the COMELEC *En Banc*.[26] After the parties' exchange of pleadings,[27] the

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25 *Rollo*, pp. 57-60.

26 *Id.* at 62-89A.

27 San Luis filed a *Comment/Opposition*, while Ejercito thereafter filed a *Reply* and *Supplement (To: September 30, 2013 Motion for Reconsideration)* (See *Rollo*, pp. 162-209).

Resolution of the COMELEC First Division was unanimously affirmed on May 21, 2014.

The COMELEC *En Banc* agreed with the findings of its First Division that San Luis' petition is an action to disqualify Ejercito, reasoning that:

> x x x First, the title of the petition indicating that it is a petition for disqualification clearly expresses the objective of the action. Second, it is manifest from the language of the petition that the causes of action have relied primarily on Section 68 (a) and (c) of the OEC[,] which are grounds for disqualification x x x. Third, notwithstanding that the relief portion of the petition sounded vague in its prayer for the disqualification of Ejercito, the allegations and arguments set forth therein are obviously geared towards seeking his disqualification for having committed acts listed as grounds for disqualification in Section 68 of OEC. Lastly, as correctly observed by the COMELEC First Division, San Luis' *Memorandum* addresses and clarifies the intention of the petition when it prayed for Ejercito to "be disqualified and prevented from holding office as Governor of Laguna." While there is a prayer seeking that Ejercito be held accountable for having committed election offenses, there can be no doubt that the petition was primarily for his disqualification.
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> Section 68 of the OEC expressly grants COMELEC the power to take cognizance of an action or protest seeking the disqualification of a candidate who has committed any of the acts listed therein from continuing as one, or if he or she has been elected, from holding office. One ground for disqualification listed in Section 68 is spending in an election campaign an amount in excess of that allowed by law. It is exactly on said ground that San Luis is seeking the disqualification of Ejercito. The jurisdiction of COMELEC over the petition, therefore, is clear.[28]

The alleged violation of Ejercito's constitutional right to due process was also not sustained:

> Ejercito insists that he was deprived of his right to notice and hearing and was not informed of the true nature of the case filed against him when San Luis was allegedly allowed in his memorandum to make as substantial amendment in the reliefs prayed for in his petition. San Luis was allegedly allowed to seek for Ejercito's disqualification instead of the filing of an election offense against him.
>
> As discussed above, the allegations in the petition, particularly the causes of action, clearly show that it is not merely a complaint for an election offense but a disqualification case against Ejercito as well. San Luis' memorandum merely amplified and clarified the allegations and arguments in his petition. There was no change in the cause or causes of action. Ejercito[,] therefore, cannot claim that he was not aware of the true nature of the petition filed against him.

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28 *Rollo*, pp. 33-35.

> Likewise, Ejercito cannot complain that he was deprived of his right to notice and hearing. He cannot feign ignorance that the COMELEC *First Division*, throughout the trial, was hearing the petition as a disqualification case and not as an election offense case. He was served with *Summons with Notice of Conference* on [June 4, 2013] and was given a copy of the petition. He likewise submitted to the jurisdiction of the Commission when he filed his *Verified Answer*. He also participated in the Preliminary Conference on [June 27, 2013] wherein he examined evidence on record and presented his own documentary exhibits. Lastly, he filed a *Manifestation (in lieu of Memorandum)* incorporating all his allegations and defenses.
>
> Ejercito contends that amending the reliefs prayed for is prohibited under Section 2, Rule 9 of the 1993 COMELEC Rules of Procedure. He asserts that the relief prayed for in the memorandum is not the same as that in the petition. However, a scrutiny of said amendment shows that no new issues were introduced. Moreover, there was no departure from the causes of action and no material alterations on the grounds of relief. The amendment[,] therefore[,] is not substantial as it merely rectifies or corrects the true nature of reliefs being prayed for as set forth in the petition.
>
> The records of the case will show that Ejercito has been afforded the opportunity to contest and rebut all the allegations against him. He was never deprived of his right to have access to the evidence against him. He was adequately aware of the nature and implication of the disqualification case against him. Thus, Ejercito cannot say that he was denied of his constitutional right to due process.
>
> It is important to note at this point that Ejercito, in his motion for reconsideration, deliberately did not tackle the merit and substance of the charges against him. He limited himself to raising procedural issues. This is despite all the opportunity that he was given to confront the evidence lodged against him. Therefore, there is no reason for the COMELEC *En Banc* to disturb the findings of the COMELEC First Division on whether Ejercito indeed over-spent in his campaign for governorship of Laguna in the [May 13, 2013] National and Local Elections.[29]

Anchoring on the case of *Lanot v. Commission on Elections*,[30] the COMELEC *En Banc* likewise debunked Ejercito's assertion that the petition was prematurely and improperly filed on the ground that the filing of an election offense and the factual determination on the existence of probable cause are required before a disqualification case based on Section 68 of the OEC may proceed. It held:

> As discussed in the case of *Lanot vs. Comelec*, each of the acts listed as ground for disqualification under Section 68 of the OEC has two aspects – electoral and criminal which may proceed independently from each other, to wit:

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29 *Id*. at 44-46.

30 537 Phil. 332 (2006).

> x x x The electoral aspect of a disqualification case determines whether the offender should be disqualified from being a candidate or from holding office. Proceedings are summary in character and require only clear preponderance of evidence. **An erring candidate may be disqualified even without prior determination of probable cause in a preliminary investigation. The electoral aspect may proceed independently of the criminal aspect, and vice-versa.**
>
> The criminal aspect of a disqualification case determines whether there is probable cause to charge a candidate for an election offense. The prosecutor is the COMELEC, through its Law Department, which determines whether probable cause exists. If there is probable cause, the COMELEC, through its Law Department, files the criminal information before the proper court. Proceedings before the proper court demand a full-blown hearing and require proof beyond reasonable doubt to convict. A criminal conviction shall result in the disqualification of the offender, which may even include disqualification from holding a future public office." (Emphasis supplied)[31]

> The petition for disqualification against Ejercito for campaign over-spending before the Commission is heard and resolved pursuant to the electoral aspect of Section 68 of the OEC. It is an administrative proceeding separate and distinct from the criminal proceeding through which Ejercito may be made to undergo in order to determine whether he can be held criminally liable for the same act of over-spending. It is through this administrative proceeding that this Commission, initially through its divisions, makes a factual determination on the veracity of the parties' respective allegations in a disqualification case. There is no need for a preliminary investigation finding on the criminal aspect of the offenses in Section 68 before the Commission can act on the administrative or electoral aspect of the offense. All that is needed is a complaint or a petition. As enunciated in *Lanot*, "(a)n erring candidate may be disqualified even without prior determination of probable cause in a preliminary investigation. The electoral aspect may proceed independently of the criminal aspect, and vice-versa."

Moreover, Ejercito's reliance on *Codilla* is misplaced. The COMELEC *En Banc* opined that the portion of the *Codilla* decision that referred to the necessity of the conduct of preliminary investigation pertains to cases where the offenders are charged with acts not covered by Section 68 of the OEC, and are, therefore, beyond the ambit of the COMELEC's jurisdiction. It said that the decision refers to this type of cases as criminal (not administrative) in nature, and, thus, should be handled through the criminal process.

Further rejected was Ejercito's argument that the COMELEC lost its jurisdiction over the petition for disqualification the moment he was

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31 *Rollo*, pp. 41-42.

proclaimed as the duly-elected Governor of Laguna. For the COMELEC *En Banc*, its First Division thoroughly and sufficiently addressed the matter when it relied on *Maquiling* instead of *Sinaca*. It maintained that Section 5 of COMELEC Resolution No. 9523, not COMELEC Resolution No. 2050,[32] is relevant to the instant case as it states that the COMELEC shall continue the trial and hearing of a pending disqualification case despite the proclamation of a winner. It was noted that the proper application of COMELEC Resolution No. 2050 was already clarified in *Sunga v. COMELEC*.[33]

Finally, the COMELEC *En Banc* ruled on one of San Luis' contentions in his *Comment/Opposition* to Ejercito's motion for reconsideration. He argued that he becomes the winner in the gubernatorial election upon the disqualification of Ejercito. Relying on *Maquiling*, San Luis declared that he was not the second placer as he obtained the highest number of valid votes cast from among the qualified candidates. In denying that *Maquiling* is on all fours with this case, the COMELEC *En Banc* said:

> In the instant case, Ejercito cannot be considered as a non-candidate by reason of his disqualification under Section 68 of the OEC. He was a candidate who filed a valid certificate of candidacy which was never cancelled.
>
> Ejercito was a bona fide candidate who was disqualified, not because of any ineligibility existing at the time of the filing of the certificate of candidacy, but because he violated the rules of candidacy. His disqualifying circumstance, that is, his having over-spent in his campaign, did not exist at the time of the filing of his certificate of candidacy. It did not affect the validity of the votes cast in his favor. Notwithstanding his disqualification, he remains the candidate who garnered the highest number of votes.
>
> Ejercito cannot be on the same footing with Arnado in the *Maquiling* case. Arnado was disqualified from running for Mayor of Kauswagan, Lanao Del Sur because he was a dual citizen not qualified to run for election. His disqualification existed at the time of the filing of the certificate of candidacy. The effect, pursuant to the *Maquiling* case, is that the votes he garnered are void, which in turn resulted in having considered the "second placer" – Maquiling – as the candidate who obtained the highest number of valid votes cast.
>
> San Luis is in a different circumstance. The votes for the disqualified winning candidate remained valid. Ergo, San Luis, being the second placer in the vote count, remains the second placer. He cannot[,] thus[,] be named the winner.

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32 Promulgated on November 3, 1988.

33 351 Phil. 310 (1998).

> Section 6, Rule 25 of the COMELEC Resolution No. 9523, which governs Section 68 petitions for disqualification, enunciates the rule succinctly, to wit:
>
> > Section 6. *Effect of Granting of Petition.* – In the event a Petition to disqualify a candidate is granted by final judgment as defined under Section 8 of Rule 23 and the disqualified candidate obtains the highest number of votes, the candidate with the second highest number of votes cannot be proclaimed and the rule of succession, if allowed by law, shall be observed. In the event the rule of succession is not allowed, a vacancy shall exist for such position.[34]

On May 23, 2014, Ejercito filed before this Court a Petition for *certiorari* with application for the issuance of a *status quo ante* order or temporary restraining order (*TRO*)/writ of preliminary injunction (*WPI*).[35] Without issuing a TRO/WPI, the Honorable Chief Justice, Maria Lourdes P. A. Sereno, issued on May 28, 2014 an order to respondents to comment on the petition within a non-extendible period of ten (10) days from notice.[36] Such order was confirmed *nunc pro tunc* by the Court *En Banc* on June 3, 2014.[37]

Meantime, on May 26, 2014, Ejercito filed before the COMELEC *En Banc* an Omnibus Motion to suspend proceedings and to defer the implementation of the May 21, 2014 Resolution.[38] On the same day, San Luis also filed an *Extremely Urgent Motion to Declare COMELEC En Banc Resolution of May 21, 2014 and First Division Resolution of September 26, 2013 Final and Executory and to Issue Forthwith Writ of Execution or Implementing Order*[39] invoking Paragraph 2, Section 8 of COMELEC Resolution No. 9523, in relation to Section 13 (b), Rule 18 of the COMELEC Rules of Procedure.[40] On May 27, 2014, the COMELEC *En Banc* issued an Order denying Ejercito's omnibus motion, granted San Luis' extremely urgent motion, and directed the Clerk of the Commission to issue

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34 *Rollo*, pp. 47-48.

35 *Id*. at 3.

36 *Id*. at 210-211.

37 *Id*. at 224-225.

38 Records, pp. 228-233.

39 *Id*. at 234-239.

40 Paragraph 2, Sec. 8 of COMELEC Resolution No. 9523 states:

Section 8. *Effect if Petition Unresolved*. – x x x

A Decision or Resolution is deemed final and executory if, in case of a Division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of rulings of the Commission *En Banc*, no restraining order is issued by the Supreme Court within five (5) days from receipt of the decision or resolution.

On the other hand, Sec. 13 (b) Rule 18 of the COMELEC Rules of Procedure provides:

Sec. 13. Finality of Decisions or Resolutions. -

x x x

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.

the corresponding writ of execution.[41] On even date, Vice-Governor Hernandez was sworn in as the Governor of Laguna at the COMELEC Main Office in Manila. The service of the writ was deemed completed and validly served upon Ejercito on May 28, 2014.[42]

In his petition before Us, Ejercito raised the following issues for resolution:

> THE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN THAT:
>
> (I) IT VIOLATED THE RIGHT OF PETITIONER TO DUE PROCESS WHEN IT RULED FOR THE DISQUALIFICATION OF PETITIONER EVEN IF IT WAS NEVER PRAYED FOR IN THE PETITION. WORSE, THERE IS YET NO FINDING OF GUILT BY A COMPETENT COURT OR A FINDING OF FACT STATING THAT PETITIONER ACTUALLY COMMITTED THE ALLEGED ELECTION OFFENSE OF OVERSPENDING;
>
> (II) IT RELIED ON A DOCUMENTARY EXHIBIT (ADVERTISING CONTRACT) WHICH WAS NOT EVEN FORMALLY OFFERED AS EVIDENCE; [AND]
>
> (III) IT DISQUALIFIED PETITIONER FOR AN ACT DONE BY A THIRD PARTY WHO SIMPLY EXERCISED ITS RIGHT TO FREE EXPRESSION WITHOUT THE KNOWLEDGE AND CONSENT OF PETITIONER[.][43]

The petition is unmeritorious.

A special civil action for *certiorari* under Rule 64, in relation to Rule 65, is an independent action that is available only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[44] It is a legal remedy that is limited to the resolution of jurisdictional issues and is not meant to correct simple errors of judgment.[45] More importantly, it will only prosper if grave abuse of discretion is alleged and is actually proved to exist.[46]

> Grave abuse of discretion arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence. It means such capricious and whimsical exercise of judgment as would amount to lack of jurisdiction; it contemplates a situation where the power is exercised in an

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41 Records, p. 242.
42 *Id*. at 249-250, 260-262.
43 *Rollo*, pp. 7-8.
44 *Hayudini v. Commission on Elections*, G.R. No. 207900, April 22, 2014.
45 *Juan v. Commission on Election*, 550 Phil. 294, 302 (2007).
46 *Hayudini v. Commission on Elections*, *supra* note 44.

> arbitrary or despotic manner by reason of passion or personal hostility, so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by law. x x x.[47]

Ejercito failed to prove that the COMELEC rendered its assailed Resolution with grave abuse of discretion.

We now explain.

The petition filed by San Luis against Ejercito is for the latter's disqualification and prosecution for election offense

Ejercito insists that his alleged acts of giving material consideration in the form of "Orange Cards" and election overspending are considered as election offenses under Section 35 of COMELEC Resolution No. 9615,[48] in relation to Section 13[49] of R.A. No. 9006, and punishable under Section 264[50] of the OEC. Considering that San Luis' petition partakes of the nature

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47 *Juan v. Commission on Election, supra* note 45.

48 Rules and Regulations Implementing Republic Act No. 9006, Otherwise Known as the "Fair Election Act", in Connection to the May 13, 2013 National and Local Elections, and Subsequent Elections (Promulgated on January 15, 2013). Sec. 35 of which states:

> SECTION 35. *Election Offense*. – Any violation of RA 9006 and these Rules shall constitute an election offense punishable under the first and second paragraph of Section 264 of the Omnibus Election Code in addition to administrative liability, whenever applicable. Any aggrieved party may file a verified complaint for violation of these Rules with the Law Department of the Commission.

49 Section 13. *Authority of the COMELEC to Promulgate Rules; Election Offenses*. – The COMELEC shall promulgate and furnish all political parties and candidates and the mass media entities the rules and regulations for the implementation of this Act, consistent with the criteria established in Article IX-C, Section 4 of the Constitution and Section 86 of the Omnibus Election Code (Batas Pambansa Bldg. 881).

Rules and regulations promulgated by the COMELEC under and by authority of this Section shall take effect on the seventh day after their publication in at least two (2) daily newspapers of general circulation. Prior to effectivity of said rules and regulations, no political advertisement or propaganda for or against any candidate or political party shall be published or broadcast through mass media.

Violation of this Act and the rules and regulations of the COMELEC issued to implement this Act shall be an election offense punishable under the first and second paragraphs of Section 264 of the Omnibus Election Code (Batas Pambansa Bldg. 881).

50 Sec. 264. *Penalties*. – Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty.

In case of prisoner or prisoners illegally released from any penitentiary or jail during the prohibited period as provided in Section 261, paragraph (n) of this Code, the director of prisons, provincial warden, keeper of the jail or prison, or persons who are required by law to keep said prisoner in their custody shall, if convicted by a competent court, be sentenced to suffer the penalty of *prision mayor* in its maximum period if the prisoner or prisoners so illegally released commit any act of intimidation, terrorism of interference in the election.

of a complaint for election offenses, the COMELEC First Division has no jurisdiction over the same based on COMELEC Resolution No. 9386[51] and Section 265[52] of the OEC.

Still, Ejercito contends that the COMELEC erroneously sanctioned a change in San Luis' cause of action by the mere expedient of changing the prayer in the latter's *Memorandum*. According to him, San Luis' additional prayer for disqualification in the *Memorandum* is a substantial amendment to the *Petition* as it constitutes a material deviation from the original cause of action – from a complaint for election offenses to a petition for disqualification. Since such substantial amendment was effected after the case was set for hearing, Ejercito maintains that the same should have been allowed only with prior leave of the COMELEC First Division pursuant to Section 2, Rule 9[53] of the COMELEC Rules of Procedure, which San Luis never did.

The arguments are untenable.

The purpose of a disqualification proceeding is to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws.[54] A petition to disqualify a candidate may be filed pursuant to Section 68 of the OEC, which states:

> SEC. 68. ***Disqualifications.*** -- Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having: (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k,

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Any person found guilty of the offense of failure to register or failure to vote shall, upon conviction, be fined one hundred pesos. In addition, he shall suffer disqualification to run for public office in the next succeeding election following his conviction or be appointed to a public office for a period of one year following his conviction.

[51] Rules of Procedures in the Investigation and Prosecution of Election Offense Cases in the Commission on Elections (Promulgated on April 13, 2012).

[52] Sec. 265. *Prosecution.* – The Commission shall, through its duly-authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.

[53] Sec. 2. *Amendments Only by Leave.* – After the case is set for hearing, substantial amendments may be made only upon leave of the Commission or the Division, as the case may be. Such leave may be refused if it appears to the Commission or the Division that the motion was made with intent to delay the action or that the cause of action or defense is substantially altered. Orders of the Commission or the Division upon the matters provided in this section shall be made upon motion duly filed, and after the adverse the party has been notified and afforded an opportunity to be heard.

[54] *Sunga v. COMELEC*, *supra* note 33 at 324, and *Abella v. Larrazabal*, 259 Phil. 992, 1000 (1989).

> v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

The prohibited acts covered by Section 68 (e) refer to election campaign or partisan political activity outside the campaign period (Section 80); removal, destruction or defacement of lawful election propaganda (Section 83); certain forms of election propaganda (Section 85); violation of rules and regulations on election propaganda through mass media; coercion of subordinates (Section 261 [d]); threats, intimidation, terrorism, use of fraudulent device or other forms of coercion (Section 261 [e]); unlawful electioneering (Section 261 [k]); release, disbursement or expenditure of public funds (Section 261 [v]); solicitation of votes or undertaking any propaganda on the day of the election within the restricted areas (Section 261 [cc], sub-par.6). All the offenses mentioned in Section 68 refer to election offenses under the OEC, not to violations of other penal laws. In other words, offenses that are punished in laws other than in the OEC cannot be a ground for a Section 68 petition. Thus, We have held:

> x x x [T]he jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the [OEC]. All other election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature. Pursuant to Sections 265 and 268 of the [OEC], the power of the COMELEC is confined to the conduct of preliminary investigation on the alleged election offenses for the purpose of prosecuting the alleged offenders before the regular courts of justice, *viz*:
>
> > "Section 265. *Prosecution.* – The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: *Provided, however*, That in the event that the Commission fails to act on any complaint within four months from its filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.
> >
> > x x x x x x x x x
> >
> > Section 268. *Jurisdiction.* – The regional trial court shall have the exclusive original jurisdiction to try and decide any criminal action or proceeding for violation of this Code, except those relating to the offense of failure to

> register or failure to vote which shall be under the jurisdictions of metropolitan or municipal trial courts. From the decision of the courts, appeal will lie as in other criminal cases."[55]

In the case at bar, the COMELEC First Division and COMELEC *En Banc* correctly ruled that the petition filed by San Luis against Ejercito is not just for prosecution of election offense but for disqualification as well. Indeed, the following are clear indications:

1. The title of San Luis' petition shows that the case was brought under Rule 25 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 9523.[56] This expresses the objective of the action since Rule 25 is the specific rule governing the disqualification of candidates.

2. The averments of San Luis' petition rely on Section 68 (a) and (c) of the OEC as grounds for its causes of action. Section 68 of the OEC precisely enumerates the grounds for the disqualification of a candidate for elective position and provides, as penalty, that the candidate shall be disqualified from continuing as such, or if he or she has been elected, from holding the office.

3. Paragraph 2 of San Luis' prayer in the petition states that "[in the event that [Ejercito] will be able to get a majority vote of the electorate of the Province of Laguna on May 13, 2013, his proclamation be suspended until further order of the Honorable Commission." San Luis reiterated this plea when he later filed a *Very Urgent Ex-Parte Motion to Issue Suspension of Possible Proclamation of Respondent* and *Supplemental to the Very Urgent Ex-Parte Motion to Issue Suspension of Possible Proclamation of Respondent*. The relief sought is actually pursuant to Section 6[57] of R.A. No. 6646 and Section 5 Rule 25[58] of COMELEC Resolution

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55 *Codilla, Sr. v. Hon. De Venecia, supra* note 11 at 177-178. See also *Aratea v. Commission on Elections*, G.R. No. 195229, October 9, 2012, 683 SCRA 105, 129, *Jalosjos v. Commission on Elections*, G.R. No. 193237, October 9, 2012, 683 SCRA 1, 29, and *Blanco v. COMELEC, et al.*, 577 Phil. 622, 633-634 (2008).

56 Sec. 3 Rule 25 of which provides:

Section 3. *Period to File Petition*. – The Petition shall be filed any day after the last day for filing of certificates of candidacy, but not later than the date of proclamation.

57 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.

58 Section 5. *Effect of Petition if Unresolved Before Completion of Canvass*. – If a Petition for Disqualification is unresolved by final judgment on the day of elections, the petitioner may file a motion with the Division or Commission *En Banc* where the case is pending, to suspend the proclamation of the candidate concerned, provided that the evidence for the grounds to disqualify is strong. For this purpose, at

No. 9523, both of which pertain to the effect of a disqualification case when the petition is unresolved by final judgment come election day.

4. San Luis' *Memorandum* emphasized that the case is a "Special Action for Disqualification," praying that "[t]he Petition BE GRANTED [and] x x x [Ejercito] BE DISQUALIFIED, and PREVENTED from further holding office as Governor of Laguna."

With the foregoing, Ejercito cannot feign ignorance of the true nature and intent of San Luis' petition. This considering, it is unnecessary for Us to discuss the applicability of Section 2, Rule 9 of the COMELEC Rules of Procedure, there being no substantial amendment to San Luis' petition that constitutes a material deviation from his original causes of action. Likewise, COMELEC Resolution No. 9386 and Section 265 of the OEC do not apply since both refer solely to the prosecution of election offenses. Specifically, COMELEC Resolution No. 9386 is an amendment to Rule 34 of the COMELEC Rules of Procedure on the prosecution of election offenses, while Section 265 of the OEC is found under Article XXII of said law pertaining also to election offenses.

The conduct of preliminary investigation is not required in the resolution of the electoral aspect of a disqualification case

Assuming, *arguendo*, that San Luis' petition was properly instituted as an action for disqualification, Ejercito asserts that the conduct of preliminary investigation to determine whether the acts enumerated under Section 68 of the OEC were indeed committed is a requirement prior to actual disqualification. He posits that Section 5, Rule 25 of COMELEC Resolution No. 9523 is silent on the matter of preliminary investigation; hence, the clear import of this is that the necessity of preliminary investigation provided for in COMELEC Resolution No. 2050 remains undisturbed and continues to be in full force and effect.

We are not persuaded.

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least three (3) days prior to any election, the Clerk of the Commission shall prepare a list of pending cases and furnish all Commissioners copies of said the list.

In the event that a candidate with an existing and pending Petition to disqualify is proclaimed winner, the Commission shall continue to resolve the said Petition.

Section 5, Rule 25 of COMELEC Resolution No. 9523 states:

> **Section 5. Effect of Petition if Unresolved Before Completion of Canvass.** – If a Petition for Disqualification is unresolved by final judgment on the day of elections, the petitioner may file a motion with the Division or Commission *En Banc* where the case is pending, to suspend the proclamation of the candidate concerned, provided that the evidence for the grounds to disqualify is strong. For this purpose, at least three (3) days prior to any election, the Clerk of the Commission shall prepare a list of pending cases and furnish all Commissioners copies of said the list.
>
> In the event that a candidate with an existing and pending Petition to disqualify is proclaimed winner, the Commission shall continue to resolve the said Petition.

It is expected that COMELEC Resolution No. 9523 is silent on the conduct of preliminary investigation because it merely amended, among others, Rule 25 of the COMELEC Rules of Procedure, which deals with disqualification of candidates. In disqualification cases, the COMELEC may designate any of its officials, who are members of the Philippine Bar, to hear the case and to receive evidence only in cases involving barangay officials.[59] As aforementioned, the present rules of procedure in the investigation and prosecution of election offenses in the COMELEC, which requires preliminary investigation, is governed by COMELEC Resolution No. 9386. Under said Resolution, all lawyers in the COMELEC who are Election Officers in the National Capital Region ("NCR"), Provincial Election Supervisors, Regional Election Attorneys, Assistant Regional Election Directors, Regional Election Directors and lawyers of the Law Department are authorized to conduct preliminary investigation of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the COMELEC.[60]

Similarly, Ejercito's reliance on COMELEC Resolution No. 2050 is misplaced. COMELEC Resolution No. 2050, which was adopted on November 3, 1988, reads:

> WHEREAS, there remain pending before the Commission, a number of cases of disqualification filed by virtue of the provisions of Section 68 of the Omnibus Election Code in relation to Section 6 of R.A. 6646, otherwise known as the Electoral Reforms Law of 1987;
>
> WHEREAS, opinions of the members of the Commission on matters of procedure in dealing with cases of this nature and the manner of disposing of the same have not been uniform;

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59 Sec.5, Rule 23 in relation to Sec. 4 Rule 25 of COMELEC Resolution No. 9523.

60 Sec. 2.

WHEREAS, in order to avoid conflicts of opinion in the disposition [of] disqualification cases contemplated under Section 68 of the Omnibus Election Code in relation to Section 6 of Rep. Act 6646, there is a strongly felt need to lay down a definite policy in the disposition of this specific class of disqualification cases;

NOW, THEREFORE, on motion duly seconded, the Commission *en banc*:

RESOLVED, as it hereby resolves, to formulate the following rules governing the disposition of cases of disqualification filed by virtue of Section 68 of the Omnibus Election Code in relation to Section 6 of R.A. No. 6646, otherwise known as the Electoral Reforms Law of 1987:

1. Any complaint for the disqualification of a duly registered candidate based upon any of the grounds specifically enumerated under Section 68 of the Omnibus Election Code, filed directly with the Commission before an election in which the respondent is a candidate, shall be inquired into by the Commission for the purpose of determining whether the acts complained of have in fact been committed. Where the inquiry by the Commission results in a finding before election, that the respondent candidate did in fact commit the acts complained, the Commission shall order the disqualification of the respondent candidate from continuing as such candidate.

In case such complaint was not resolved before the election, the Commission may *motu proprio*, or [on] motion of any of the parties, refer the complaint to the [Law] Department of the Commission as the instrument of the latter in the exercise of its exclusive power to conduct a preliminary investigation of all cases involving criminal infractions of the election laws. Such recourse may be availed of irrespective of whether the respondent has been elected or has lost in the election.

2. Any complaint for disqualification based on Section 68 of the Omnibus Election Code in relation to Section 6 of Rep. Act No. 6646 filed after the election against a candidate who has already been proclaimed as winner shall be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department of the Commission.

Where a similar complaint is filed after election but before proclamation of the respondent candidate, the complaint shall, nevertheless, be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department. If, before proclamation, the Law Department makes a *prima facie* finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the court before which the criminal case is pending and the said court may order the suspension of the proclamation if the evidence of guilt is strong.

3. The Law Department shall terminate the preliminary investigation within thirty (30) days from receipt of the referral and shall submit its study, report and recommendation to the Commission *en banc* within five (5) days from the conclusion of the preliminary

> investigation. If it makes a *prima facie* finding of guilt, it shall submit with such study the Information for filing with the appropriate court.[61]

In *Bagatsing v. COMELEC*,[62] the Court stated that the above-quoted resolution covers two (2) different scenarios:

> *First*, as contemplated in paragraph 1, a complaint for disqualification filed *before the election* which must be inquired into by the COMELEC for the purpose of determining whether the acts complained of have in fact been committed. Where the inquiry results in a finding before the election, the COMELEC shall order the candidate's disqualification. In case the complaint was not resolved before the election, the COMELEC may *motu propio* or on motion of any of the parties, refer the said complaint to the Law Department of the COMELEC for preliminary investigation.
>
> *Second*, as laid down in paragraph 2, a complaint for disqualification filed *after the election* against a candidate (a) who has not yet been proclaimed as winner, or (b) who has already been proclaimed as winner. In both cases, the complaint shall be dismissed as a disqualification case but shall be referred to the Law Department of the COMELEC for preliminary investigation. However, if before proclamation, the Law Department makes a *prima facie* finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the court before which the criminal case is pending and the said court may order the suspension of the proclamation if the evidence of guilt is strong.[63]

However, with respect to Paragraph 1 of COMELEC Resolution No. 2050, which is the situation in this case, We held in *Sunga*:

> x x x Resolution No. 2050 as interpreted in *Silvestre v. Duavit* infringes on Sec. 6 of RA No. 6646, which provides:
>
> SEC. 6. *Effects 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 *(italics supplied).*

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61 See *Bagatsing v. COMELEC*, 378 Phil. 585, 593-595 (1999).

62 378 Phil. 585 (1999).

63 *Bagatsing v. COMELEC, supra* note 61, at 595-596.

> Clearly, the legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, *i.e.*, until judgment is rendered thereon. The word "shall" signifies that this requirement of the law is mandatory, operating to impose a positive duty which must be enforced. The implication is that the COMELEC is left with no discretion but to proceed with the disqualification case even after the election. Thus, in providing for the outright dismissal of the disqualification case which remains unresolved after the election, *Silvestre v. Duavit* in effect disallows what RA No. 6646 imperatively requires. This amounts to a quasi-judicial legislation by the COMELEC which cannot be countenanced and is invalid for having been issued beyond the scope of its authority. Interpretative rulings of quasi-judicial bodies or administrative agencies must always be in perfect harmony with statutes and should be for the sole purpose of carrying their general provisions into effect. By such interpretative or administrative rulings, of course, the scope of the law itself cannot be limited. Indeed, a quasi-judicial body or an administrative agency for that matter cannot amend an act of Congress. Hence, in case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.
>
> Besides, the deleterious effect of the *Silvestre* ruling is not difficult to foresee. A candidate guilty of election offenses would be undeservedly rewarded, instead of punished, by the dismissal of the disqualification case against him simply because the investigating body was unable, for any reason caused upon it, to determine before the election if the offenses were indeed committed by the candidate sought to be disqualified. All that the erring aspirant would need to do is to employ delaying tactics so that the disqualification case based on the commission of election offenses would not be decided before the election. This scenario is productive of more fraud which certainly is not the main intent and purpose of the law.[64]

The "exclusive power [of the COMELEC] to conduct a preliminary investigation of all cases involving criminal infractions of the election laws" stated in Par. 1 of COMELEC Resolution No. 2050 pertains to the **criminal** aspect of a disqualification case. It has been repeatedly underscored that an election offense has its criminal and electoral aspects. While its criminal aspect to determine the guilt or innocence of the accused cannot be the subject of summary hearing, its electoral aspect to ascertain whether the offender should be disqualified from office can be determined in an administrative proceeding that is summary in character. This Court said in *Sunga*:

> It is worth to note that an election offense has criminal as well as electoral aspects. Its criminal aspect involves the ascertainment of the guilt or innocence of the accused candidate. Like in any other criminal case, it usually entails a full-blown hearing and the quantum of proof required to secure a conviction is beyond reasonable doubt. Its electoral aspect, on the other hand, is a determination of whether the offender should be disqualified from office. This is done through an administrative

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[64] *Sunga v. COMELEC, supra* note 33, at 322-324. See also *Lonzanida v. COMELEC*, 370 Phil. 625, 639-641 (1999) and *Bagatsing v. COMELEC, supra* note 61, at 596-597.

> proceeding which is summary in character and requires only a clear preponderance of evidence. Thus, under Sec. 4 of the COMELEC Rules of Procedure, petitions for disqualification "shall be heard summarily after due notice." It is the electoral aspect that we are more concerned with, under which an erring candidate may be disqualified even without prior criminal conviction.[65]

and equally in *Lanot*:

> x x x The electoral aspect of a disqualification case determines whether the offender should be disqualified from being a candidate or from holding office. Proceedings are summary in character and require only clear preponderance of evidence. An erring candidate may be disqualified even without prior determination of probable cause in a preliminary investigation. The electoral aspect may proceed independently of the criminal aspect, and vice-versa.
>
> The criminal aspect of a disqualification case determines whether there is probable cause to charge a candidate for an election offense. The prosecutor is the COMELEC, through its Law Department, which determines whether probable cause exists. If there is probable cause, the COMELEC, through its Law Department, files the criminal information before the proper court. Proceedings before the proper court demand a full-blown hearing and require proof beyond reasonable doubt to convict. A criminal conviction shall result in the disqualification of the offender, which may even include disqualification from holding a future public office.
>
> The two aspects account for the variance of the rules on disposition and resolution of disqualification cases filed before or after an election. When the disqualification case is filed before the elections, the question of disqualification is raised before the voting public. If the candidate is disqualified after the election, those who voted for him assume the risk that their votes may be declared stray or invalid. There is no such risk if the petition is filed after the elections. x x x.[66]

We cannot accept Ejercito's argument that *Lanot* did not categorically pronounce that the conduct of a preliminary investigation exclusively pertains to the criminal aspect of an action for disqualification or that a factual finding by the authorized legal officers of the COMELEC may be dispensed with in the proceedings for the administrative aspect of a disqualification case. According to him, a close reading of said case would reveal that upon filing of the petition for disqualification with the COMELEC Division, the latter referred the matter to the Regional Election Director for the purpose of preliminary investigation; therefore, *Lanot* contemplates two referrals for the conduct of investigation – *first*, to the Regional Election Director, prior to the issuance of the COMELEC First

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65 *Sunga v. COMELEC*, *supra* note 33, at 324.

66 *Lanot v. Commission on Elections*, *supra* note 30, at 360. See also *Bagatsing v. COMELEC*, *supra* note 61, at 600 and *Blanco v. COMELEC, et al.*, *supra* note 55, at 632.

Division's resolution, and *second*, to the Law Department, following the reversal by the COMELEC *En Banc*.

For easy reference, the factual antecedents of *Lanot* are as follows:

On March 19, 2004, a little less than two months before the May 10, 2004 elections, Henry P. Lanot, *et al*. filed a Petition for Disqualification under Sections 68 and 80 of the OEC against then incumbent Pasig City Mayor Vicente P. Eusebio. National Capital Region Director Esmeralda Amora-Ladra conducted hearings on the petition. On May 4, 2004, she recommended Eusebio's disqualification and the referral of the case to the COMELEC Law Department for the conduct of a preliminary investigation on the possible violation of Section 261 (a) of the OEC. When the COMELEC First Division issued a resolution adopting Director Ladra's recommendations on May 5, 2004, then COMELEC Chairman Benjamin S. Abalos informed the pertinent election officers through an Advisory dated May 8, 2004. Eusebio filed a Motion for Reconsideration on May 9, 2004. On election day, Chairman Abalos issued a memorandum to Director Ladra enjoining her from implementing the May 5, 2004 COMELEC First Division resolution. The petition for disqualification was not yet finally resolved at the time of the elections. Eusebio's votes were counted and canvassed. After which, Eusebio was proclaimed as the winning candidate for city mayor. On August 20, 2004, the COMELEC *En Banc* annulled the COMELEC First Division's order to disqualify Eusebio and referred the case to the COMELEC Law Department for preliminary investigation.

When the issue was elevated to Us, the Court agreed with Lanot that the COMELEC *En Banc* committed grave abuse of discretion when it ordered the dismissal of the disqualification case pending preliminary investigation of the COMELEC Law Department. Error was made when it ignored the electoral aspect of the disqualification case by setting aside the COMELEC First Division's resolution and referring the entire case to the COMELEC Law Department for the criminal aspect. We noted that COMELEC Resolution No. 2050, upon which the COMELEC *En Banc* based its ruling, is procedurally inconsistent with COMELEC Resolution No. 6452, which was the governing rule at the time. The latter resolution delegated to the COMELEC Field Officials the hearing and reception of evidence of the administrative aspect of disqualification cases in the May 10, 2004 National and Local Elections. In marked contrast, in the May 2013 elections, it was only in cases involving barangay officials that the COMELEC *may* designate any of its officials, who are members of the Philippine Bar, to hear the case and to receive evidence.[67]

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[67] Sec. 5 Rule 23 in relation to Sec. 4 Rule 25 of COMELEC Resolution No. 9523.

The COMELEC En Banc properly considered as evidence the Advertising Contract dated May 8, 2013

Ejercito likewise asserts that the Advertising Contract dated May 8, 2013 should not have been relied upon by the COMELEC. *First*, it was not formally offered in evidence pursuant to Section 34, Rule 132[68] of the Rules and he was not even furnished with a copy thereof, depriving him of the opportunity to examine its authenticity and due execution and object to its admissibility. *Second*, even if Section 34, Rule 132 does not apply, administrative bodies exercising quasi-judicial functions are nonetheless proscribed from rendering judgment based on evidence that was never presented and could not be controverted. There is a need to balance the relaxation of the rules of procedure with the demands of administrative due process, the tenets of which are laid down in the seminal case of *Ang Tibay v. Court of Industrial Relations*.[69] And *third*, the presentation of the advertising contracts, which are highly disputable and on which no hearing was held for the purpose of taking judicial notice in accordance with Section 3, Rule 129[70] of the Rules, cannot be dispensed with by COMELEC's claim that it could take judicial notice.

Contrary to Ejercito's claim, Section 34, Rule 132 of the Rules is inapplicable. Section 4, Rule 1[71] of the Rules of Court is clear enough in stating that it shall not apply to election cases except by analogy or in a suppletory character and whenever practicable and convenient. In fact, nowhere from COMELEC Resolution No. 9523 requires that documentary evidence should be formally offered in evidence.[72] We remind again that the

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[68] **SEC. 34**. *Offer of evidence*. - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[69] 69 Phil. 635 (1940).

[70] Section 3. *Judicial notice, when hearing necessary.* – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative, or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

[71] Sec. 4. *In what cases not applicable.*

These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient.

[72] Sec. 4. Rule 25 of COMELEC Resolution No. 9523 states that, except in *motu proprio* cases, Sections 3, 4, 5, 6, 7, and 8 of Rule 23 shall apply in proceedings to disqualify a candidate. Sec. 4 of Rule 23, in turn, provides:

Section 4. Procedure to be observed. — Both parties shall observe the following procedure:

1. The petitioner shall, before filing of the Petition, furnish a copy of the Petition, through personal service to the respondent. In cases where personal service is not feasible, or the respondent refuses to receive the Petition, or the respondents' whereabouts cannot be ascertained, the petitioner shall execute an affidavit stating the reason or circumstances therefor and resort to registered mail as a mode of service. The proof of service or the affidavit shall be attached to the Petition to be filed;
2. The Petition intended for the Commission shall be in eleven (11) copies. Upon receipt of the Petition, payment of the filing fee of P10,000.00 and legal research fee of P100.00 and official

electoral aspect of a disqualification case is done through an administrative proceeding which is summary in character.

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receipt, the Office of the Clerk of the Commission shall docket the Petition and assign to it a docket number, which must be consecutive according to the order of receipt, and must bear the year and prefixed as SPA (DC);

3. The Petition shall contain the correct information as to the addresses, telephone numbers, facsimile numbers, and electronic mail of both parties and counsel, if known.
4. No Petition shall be docketed unless the requirements in the preceding paragraphs have been complied with;
5. Upon the proper filing and docketing of the Petition, the Clerk of the Commission shall, within three (3) days, issue summons with notice of conference through personal service, or in the event of impossibility or shortness of time, resort to telegram, facsimile, electronic mail, or through the fastest means of communication to the respondent and notice of conference to the petitioner;
6. Within a non-extendible period of five (5) days from receipt of summons, the respondent shall, personally or through his authorized representative, file his verified Answer to the Petition with the Office of the Clerk of the Commission in ten (10) legible copies, with proof of personal service of answer upon the petitioner. A motion to dismiss shall not be admitted, but grounds thereof may be raised as an affirmative defense. The failure of the respondent to file his verified Answer within the reglementary period shall bar the respondent from submitting controverting evidence or filing his memorandum.
7. The Clerk of the Commission or, in his/her absence, his/her duly authorized representative, shall preside during the conference. It shall be the duty of the parties or their duly-designated counsel, possessing a written authority under oath, to appear during the conference. Should the petitioner or his authorized counsel fail to appear, the Petition shall be dismissed. Should respondent or his authorized counsel fail to appear, the Petition shall be deemed submitted for resolution. If the petitioner or respondent is not present during the conference, the failure of the counsel to produce a written authority under oath shall have the effect of non-appearance unless the counsel has previously filed a pleading bearing the conformity of his client. The following matters shall be taken up during the conference:
    a. Production of a written authority under oath of counsel;
    b. Comparison between the original and/or certified true copies and copies of documentary and real evidence; and
    c. Setting of the period to file the parties' respective memorandum, which shall not be later than ten (10) days from the date of the conference.
8. Unless the Division or the Commission *En Banc* requires a clarificatory hearing, the case shall be deemed submitted for resolution upon the receipt of both parties' Memoranda or upon the expiration of the period to do so, whichever comes sooner.
9. The Memorandum of each party shall contain, in the above order herein indicated, the following:
    a. *"Statement of the Case"*, which is a clear and concise statement of the nature of the action, a summary of the documentary evidence, and other matters necessary to an understanding of the nature of the controversy;
    b. *"Statement of the Issues"*, which is a clear and concise statement of the issues;
    c. The *"Argument"* which is a clear and concise presentation of the argument in support of each issue;
    d. The "*Objections to Evidence*", which states the party's objections to the real and documentary evidence of the other party and stating the legal grounds for such objection;
    e. The "*Relief*" which is a specification of the judgment which the party seeks to obtain. The issues raised in his/its pleadings that are not included in the Memorandum shall be deemed waived or abandoned. The Commission may consider the memorandum alone in deciding or resolving the Petition, said memorandum being a summation of the parties' pleadings and documentary evidence; and
    f. Annexes — which may consist of the real and documentary evidence, including affidavits of witnesses in lieu of oral testimony, in support of the statements or claims made in the Memorandum.
10. Prior to promulgation of a decision or resolution, a Division or the Commission *En Banc* may, in its discretion, call for a hearing in the event it deems it necessary to propound clarificatory questions on factual issues.
11. No other pleadings seeking affirmative relief shall be allowed. If after termination of the Conference, but prior to promulgation of a decision or resolution, a supervening event occurs that produces evidence that could materially affect the determination of the grant or denial of the Petition, a party may submit the same to the Division or Commission *En Banc*, where applicable, through a Manifestation.

Granting, for argument's sake, that Section 4, Rule 1 of the Rules of Court applies, there have been instances when We suspended the strict application of the rule in the interest of substantial justice, fairness, and equity.[73] Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that the Court is empowered to suspend its rules or to exempt a particular case from the application of a general rule, when the rigid application thereof tends to frustrate rather than promote the ends of justice.[74] The fact is, even Sections 3 and 4, Rule 1 of the COMELEC Rules of Procedure fittingly declare that "[the] rules shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission" and that "[in] the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission." This Court said in *Hayudini v. Commission on Elections*:[75]

> Settled is the rule that the COMELEC Rules of Procedure are subject to liberal construction. The COMELEC has the power to liberally interpret or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before it. This liberality is for the purpose of promoting the effective and efficient implementation of its objectives – ensuring the holding of free, orderly, honest, peaceful, and credible elections, as well as achieving just, expeditious, and inexpensive determination and disposition of every action and proceeding brought before the COMELEC. Unlike an ordinary civil action, an election contest is imbued with public interest. It involves not only the adjudication of private and pecuniary interests of rival candidates, but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate. And the tribunal has the corresponding duty to ascertain, by all means within its command, whom the people truly chose as their rightful leader.[76]

Further, Ejercito's dependence on *Ang Tibay* is weak. The essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of.[77] Any seeming defect in its observance is cured by the filing of a motion for reconsideration and denial of due process cannot be successfully invoked

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73 See *Sps. Llanes v. Rep. of the Phils.*, 592 Phil. 623, 633-634 (2008) and *AB Leasing and Finance Corporation v. Comm. of Internal Revenue*, 453 Phil. 297, 308 (2003).

74 *Sps. Llanes v. Rep. of the Phils., supra*, at 633-634.

75 *Hayudini v. Commission on Elections*, *supra* note 44.

76 *Id.*

77 *Dycoco v. Court of Appeals*, G.R. No. 147257, July 31, 2013, 702 SCRA 566, 583 and *A.Z. Arnaiz Realty, Inc. v. Office of the President*, G.R. No. 170623, July 7, 2010, 624 SCRA 494, 503.

by a party who had the opportunity to be heard thereon.[78] In this case, it is undisputed that Ejercito filed a motion for reconsideration before the COMELEC *En Banc*. Despite this, he did not rebut the authenticity and due execution of the advertising contracts when he decided not to discuss the factual findings of the COMELEC First Division on the alleged ground that it may be construed as a waiver of the jurisdictional issues that he raised.[79]

We agree with San Luis and the Office of the Solicitor General that, pursuant to Section 2, Rule 129,[80] the COMELEC has the discretion to properly take judicial notice of the Advertising Contract dated May 8, 2013. In accordance with R.A. No. 9006, the COMELEC, through its Campaign Finance Unit, is empowered to:

> a. Monitor fund raising and spending activities;
> b. Receive and keep reports and statements of candidates, parties, contributors and election contractors, and advertising contracts of mass media entities;
> c. Compile and analyze the reports and statements as soon as they are received and make an initial determination of compliance;
> d. Develop and manage a recording system for all reports, statements, and contracts received by it and to digitize information contained therein;
> e. Publish the digitized information gathered from the reports, statements and contracts and make them available to the public;
> f. Develop a reportorial and monitoring system;
> g. Audit all reports, statements and contracts and determine compliance by the candidates, parties, contributors, and election contractors, including the inspection of Books and records of candidates, parties and mass media entities and issue subpoenas in relation thereto and submit its findings to the Commission En Banc;
> h. Coordinate with and/or assist other departments/offices of the Commission receiving related reports on Campaign Finance including prosecution of violators and collection of fines and/or imposition of perpetual disqualification; and
> i. Perform other functions as ordered by the Commission.[81]

The COMELEC may properly take and act on the advertising contracts without further proof from the parties herein. Aside from being considered as an admission[82] and presumed to be proper submissions from them, the COMELEC already has knowledge of the contracts for being ascertainable from its very own records. Said contracts are ought to be

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78 See *National Association of Electricity Consumers for Reforms, Inc. (NASECORE) v. Energy Regulatory Commission (ERB)*, G.R. No. 190795, July 6, 2011, 653 SCRA 642, and *A.Z. Arnaiz Realty, Inc. v. Office of the President*, *supra* note 77.

79 See page 26 of Ejercito's *Verified Motion for Reconsideration* (*Rollo*, p. 87).

80 Section 2. *Judicial notice, when discretionary*. – A court may take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions.

81 Sec. 1, Rule 2 of COMELEC Resolution No. 9476.

82 Sec. 26, Rule 130 of the Rules of Court states:

> Sec. 26. ***Admission of a party***. – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

known by the COMELEC because of its statutory function as the legal custodian of all advertising contracts promoting or opposing any candidate during the campaign period. As what transpired in this case, the COMELEC has the authority and discretion to compare the submitted advertising contracts with the certified true copies of the broadcast logs, certificates of performance or other analogous records which a broadcast station or entity is required to submit for the review and verification of the frequency, date, time and duration of advertisements aired.

To be precise, R.A. No. 9006 provides:

> Sec. 4. *Requirements for Published or Printed and Broadcast Election Propaganda*. –
>
> x x x x
>
> 4.3 Print, broadcast or outdoor advertisements donated to the candidate or political party shall not be printed, published, broadcast or exhibited without the written acceptance by the said candidate or political party. Such written acceptance shall be attached to the advertising contract and shall be submitted to the COMELEC as provided in Subsection 6.3 hereof.
>
> Sec. 6. *Equal Access to Media Time and Space*. – All registered parties and *bona fide* candidates shall have equal access to media time and space. The following guidelines may be amplified on by the COMELEC:
>
> x x x x
>
> 6.2
>
> x x x x
>
> (b.) Each *bona fide* candidate or registered political party for a locally elective office shall be entitled to not more than sixty (60) minutes of television advertisement and ninety (90) minutes of radio advertisement whether by purchase or donation.
>
> For this purpose, the COMELEC shall require any broadcast station or entity to submit to the COMELEC a copy of its broadcast logs and certificates of performance for the review and verification of the frequency, date, time and duration of advertisements broadcast for any candidate or political party.
>
> 6.3 All mass media entities shall furnish the COMELEC with a copy of all contracts for advertising, promoting or opposing any political party or the candidacy of any person for public office within five (5) days after its signing. x x x.

The implementing guidelines of the above-quoted provisions are found in Rule 5 of COMELEC Resolution No. 9476 –

> Section 2. ***Submission of Copies of Advertising Contracts***. – All media entities shall submit a copy of its advertising and or broadcast contracts, media purchase orders, booking orders, or other similar documents to the Commission through its Campaign Finance Unit, accompanied by a summary report in the prescribed form (Annex "**E**") together with official receipts issued for advertising, promoting or opposing a party, or the candidacy of any person for public office, within five (5) days after its signing, through:
>
> a. For Media Entities in the NCR
> The Education and Information Department (EID), which shall furnish copies thereof to the Campaign Finance Unit of the Commission.
>
> b. For Media Entities outside of the NCR
> The City/Municipal Election Officer (EO) concerned who shall furnish copies thereof to the Education and Information Department of the Commission within five (5) days after the campaign periods. The EID shall furnish copies thereof to the Campaign Finance Unit of the Commission.
>
> x x x x
>
> It shall be the duty of the EID to formally inform media entities that the latter's failure to comply with the mandatory provisions of this Section shall be considered an election offense punishable pursuant to Section 13 of Republic Act No. 9006. [RA 9006, Secs. 6.3 and 13]

and in COMELEC Resolution No. 9615 –

> **SECTION 9.** ***Requirements and/or Limitations on the Use of Election Propaganda through Mass Media***. – All parties and bona fide candidates shall have equal access to media time and space for their election propaganda during the campaign period subject to the following requirements and/or limitations:
>
> a. Broadcast Election Propaganda
>
> x x x
>
> Provided, further, that a copy of the broadcast advertisement contract be furnished to the Commission, thru the Education and Information Department, within five (5) days from contract signing.
>
> x x x

d. Common requirements/limitations:

x x x

(3) For the above purpose, each broadcast entity and website owner or administrator shall submit to the Commission a certified true copy of its broadcast logs, certificates of performance, or other analogous record, **including certificates of acceptance as required in Section 7(b) of these Guidelines,** for the review and verification of the frequency, date, time and duration of advertisements aired for any candidate or party through:

For Broadcast Entities in the NCR –
The Education and Information Department (EID) which in turn shall furnish copies thereof to the Campaign Finance Unit (CFU) of the Commission within five days from receipt thereof.

For Broadcast Entities outside of the NCR –
The City/Municipal Election Officer (EO) concerned, who in turn, shall furnish copies thereof to the Education and Information Department (EID) of the Commission which in turn shall furnish copies thereof to the Campaign Finance Unit (CFU) of the Commission within five (5) days from the receipt thereof.

For website owners or administrators –
The City/Municipal Election Officer (EO) concerned, who in turn, shall furnish copies thereof to the Education and Information Department (EID) of the Commission which in turn shall furnish copies thereof to the Campaign Finance Unit (CFU) of the Commission within five (5) days from the receipt thereof.

All broadcast entities shall preserve their broadcast logs for a period of five (5) years from the date of broadcast for submission to the Commission whenever required.

Certified true copies of broadcast logs, certificates of performance, and certificates of acceptance, or other analogous record shall be submitted, as follows:

Candidates for National Positions	1st Report	*3 weeks after start of campaign period*	March 4 - 11
	2nd Report	*3 weeks after 1st filing week*	April 3 - 10
	3rd Report	*1 week before election day*	May 2 - 9
	Last Report	*Election week*	May 14 - 17
Candidates for Local Positions	1st Report	*1 week after start of campaign period*	April 15 - 22
	2nd Report	*1 week after 1st filing week*	April 30 - May 8
	3rd Report	*Election week*	May 9 - 15
	Last Report	*1 week after election day*	May 16 - 22

For subsequent elections, the schedule for the submission of reports shall be prescribed by the Commission.

Ejercito should be disqualified for spending in his election campaign an amount in excess of what is allowed by the OEC

Ejercito claims that the advertising contracts between ABS-CBN Corporation and Scenema Concept International, Inc. were executed by an identified supporter without his knowledge and consent as, in fact, his signature thereon was obviously forged. Even assuming that such contract benefited him, Ejercito alleges that he should not be penalized for the conduct of third parties who acted on their own without his consent. Citing *Citizens United v. Federal Election Commission*[83] decided by the US Supreme Court, he argues that every voter has the right to support a particular candidate in accordance with the free exercise of his or her rights of speech and of expression, which is guaranteed in Section 4, Article III of the 1987 Constitution.[84] He believes that an advertising contract paid for by a third party without the candidate's knowledge and consent must be considered a form of political speech that must prevail against the laws suppressing it, whether by design or inadvertence. Further, Ejercito advances the view that COMELEC Resolution No. 9476[85] distinguishes between "contribution" and "expenditure" and makes no proscription on the medium or amount of contribution.[86] He also stresses that it is clear from COMELEC Resolution No. 9615 that the limit set by law applies only to election expenditures of candidates and not to contributions made by third parties. For Ejercito, the fact that the legislature imposes no legal limitation on campaign donations is presumably because discussion of public issues and debate on the qualifications of candidates are integral to the operation of the government.

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83 558 U.S. 310 (2010)

84 Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

85 Rules and Regulations Governing Campaign Finance and Disclosure in Connection with the May 13, 2013 National and Local Elections and Subsequent Elections Thereafter (Promulgated on June 22, 2012).

86 Sec. 94 of the OEC states:

SECTION 94. *Definitions.* – As used in this Article:

(a) The term "contribution" includes a gift, donation, subscription, loan, advance or deposit of money or anything of value, or a contract, promise or agreement to contribute, whether or not legally enforceable, made for the purpose of influencing the results of the elections but shall not include services rendered without compensation by individuals volunteering a portion or all of their time in behalf of a candidate or political party. It shall also include the use of facilities voluntarily donated by other persons, the money value of which can be assessed based on the rates prevailing in the area.

(b) The term "expenditure" includes the payment or delivery of money or anything of value, or a contract, promise or agreement to make an expenditure, for the purpose of influencing the results of the election. It shall also include the use of facilities personally owned by the candidate, the money value of the use of which can be assessed based on the rates prevailing in the area.

x x x x x x x x x

We refuse to believe that the advertising contracts between ABS-CBN Corporation and Scenema Concept International, Inc. were executed without Ejercito's knowledge and consent. As found by the COMELEC First Division, the advertising contracts submitted in evidence by San Luis as well as those in legal custody of the COMELEC belie his hollow assertion. His express conformity to the advertising contracts is actually a must because non-compliance is considered as an election offense.[87]

Notably, R.A. No. 9006 explicitly directs that broadcast advertisements donated to the candidate shall not be broadcasted without the written acceptance of the candidate, which shall be attached to the advertising contract and shall be submitted to the COMELEC, and that, in every case, advertising contracts shall be signed by the donor, the candidate concerned or by the duly-authorized representative of the political party.[88] Conformably with the mandate of the law, COMELEC Resolution No. 9476 requires that election propaganda materials donated to a candidate shall not be broadcasted unless it is accompanied by the written acceptance of said candidate, which shall be in the form of an official receipt in the name of the candidate and must specify the description of the items donated, their quantity and value, and that, in every case, the advertising contracts, media purchase orders or booking orders shall be signed by the candidate concerned or by the duly authorized representative of the party and, in case of a donation, should be accompanied by a written acceptance of the candidate, party or their authorized representatives.[89] COMELEC Resolution No. 9615 also unambiguously states that it shall be unlawful to broadcast any election propaganda donated or given free of charge by any person or broadcast entity to a candidate without the written acceptance of the said candidate and unless they bear and be identified by the words "airtime for this broadcast was provided free of charge by" followed by the true and correct name and address of the donor.[90]

This Court cannot give weight to Ejercito's representation that his signature on the advertising contracts was a forgery. The issue is a belated claim, raised only for the first time in this petition for *certiorari*. It is a rudimentary principle of law that matters neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal before the Supreme Court.[91] It would be offensive to the basic rules of fair play and justice to allow Ejercito to raise an issue that was not brought up before the COMELEC.[92] While it is true that litigation is not a game of technicalities, it is equally true that elementary considerations of

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87 Sec. 13, R.A. No. 9006.
88 R.A. No. 9006, Sections 4.3 and 6.3.
89 Rule 5, Sections 1 and 2.
90 Sec. 7 (b).
91 *People v. Echegaray*, 335 Phil. 343, 349 (1997).
92 See *F. F. Mañacop Construction Co. Inc. v. CA*, 334 Phil. 208, 211-212 (1997).

due process require that a party be duly apprised of a claim against him before judgment may be rendered.[93]

Likewise, whether the advertising contracts were executed without Ejercito's knowledge and consent, and whether his signatures thereto were fraudulent, are issues of fact. Any factual challenge has no place in a Rule 65 petition. This Court is not a trier of facts and is not equipped to receive evidence and determine the truth of factual allegations.[94] Instead, the findings of fact made by the COMELEC, or by any other administrative agency exercising expertise in its particular field of competence, are binding on the Court. As enunciated in *Juan v. Commission on Election*:[95]

> Findings of facts of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed. The COMELEC, as an administrative agency and a specialized constitutional body charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall, has more than enough expertise in its field that its findings or conclusions are generally respected and even given finality. x x x.[96]

Having determined that the subject TV advertisements were done and broadcasted with Ejercito's consent, it follows that *Citizens United* does not apply. In said US case, a non-profit corporation sued the Federal Election Commission, assailing, among others, the constitutionality of a ban on corporate **independent** expenditures for electioneering communications under 2 U.S.C.S. § 441b. The corporation released a documentary film unfavorable of then-Senator Hillary Clinton, who was a candidate for the Democratic Party's Presidential nomination. It wanted to make the film available through video-on-demand within thirty (30) days of the primary elections, and it produced advertisements to promote the film. However, federal law prohibits all corporations – including non-profit advocacy corporations – from using their general treasury funds to make **independent** expenditures for speech that is an "electioneering communication"[97] or for

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[93] *Titan Construction Corporation v. David, Sr.*, G.R. No. 169548, March 15, 2010, 615 SCRA 362, 379.

[94] *Typoco v. Commission on Elections*, G.R. No. 186359, March 5, 2010, 614 SCRA 391, 393-394 and *V.C. Cadangen, et al. v. Commission on Elections*, 606 Phil. 752, 760 (2009).

[95] *Supra* note 45.

[96] *Juan v. Commission on Election*, *supra* note 45, at 303.

[97] An electioneering communication is "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary election, *§ 434(f)(3)(A)*, and that is "publicly distributed," *11 CFR § 100.29(a)(2)*, which in "the case of a candidate for nomination for President . . . means" that the communication "[c]an be received by 50,000 or more persons in a State where a primary election . . . is being held within 30 days." (See *Citizens United v. Federal Election Commission*, 558 U.S. 310 [2010])

speech that expressly advocates the election or defeat of a candidate within thirty (30) days of a primary election and sixty (60) days of a general election. The US Supreme Court held that the ban imposed under § 441b on corporate **independent** expenditures violated the First Amendment[98] because the Government could not suppress political speech on the basis of the speaker's identity as a non-profit or for-profit corporation. It was opined:

> *Section 441b*'s prohibition on corporate independent expenditures is thus a ban on speech. As a "restriction on the amount of money a person or group can spend on political communication during a campaign," that statute "necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." *Buckley v. Valeo, 424 U.S. 1, 19, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (per curiam).* Were the Court to uphold these restrictions, the Government could repress speech by silencing certain voices at any of the various points in the speech process. See *McConnell, supra, at 251, 124 S. Ct. 619, 517 L. Ed. 2d 491* (opinion of Scalia, J.) (Government could repress speech by "attacking all levels of the production and dissemination of ideas," for "effective public communication requires the speaker to make use of the services of others"). If *§ 441b* applied to individuals, no one would believe that it is merely a time, place, or manner restriction on speech. Its purpose and effect are to silence entities whose voices the Government deems to be suspect.
>
> Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. See *Buckley, supra, at 14-15, 96 S. Ct. 612, 46 L. Ed. 2d 659* ("In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential"). The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The *First Amendment* "'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu v. San Francisco County Democratic Central Comm., 489 U.S. 214, 223, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989)* (quoting *Monitor Patriot Co. v. Roy, 401 U.S. 265, 272, 91 S. Ct. 621, 28 L. Ed. 2d 35 (1971))*; see *Buckley, supra, at 14, 96 S. Ct. 612, 46 L. Ed. 2d 659* ("Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution").
>
> For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *WRTL, 551 U.S., at 464, 127 S. Ct. 2652, 168 L. Ed. 2d 329* (opinion of Roberts, C. J.). While it might be maintained that political speech simply cannot be banned or restricted as a categorical matter, see *Simon & Schuster, 502 U.S., at 124, 112 S. Ct. 501, 116 L. Ed. 2d 476* (Kennedy, J., concurring in judgment),

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[98] The *First Amendment* provides that "Congress shall make no law . . . abridging the freedom of speech."

the quoted language from *WRTL* provides a sufficient framework for protecting the relevant *First Amendment* interests in this case. We shall employ it here.

Premised on mistrust of governmental power, the *First Amendment* stands against attempts to disfavor certain subjects or viewpoints. See, *e.g., United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 813, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000)* (striking down content-based restriction). Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. See *First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 784, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978)*. As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content.

Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The *First Amendment* protects speech and speaker, and the ideas that flow from each.

The Court has upheld a narrow class of speech restrictions that operate to the disadvantage of certain persons, but these rulings were based on an interest in allowing governmental entities to perform their functions. See, *e.g., Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 683, 106 S. Ct. 3159, 92 L. Ed. 2d 549 (1986)* (protecting the "function of public school education"); *Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 129, 97 S. Ct. 2532, 53 L. Ed. 2d 629 (1977)* (furthering "the legitimate penological objectives of the corrections system" (internal quotation marks omitted)); *Parker v. Levy, 417 U.S. 733, 759, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974)* (ensuring "the capacity of the Government to discharge its [military] responsibilities" (internal quotation marks omitted)); *Civil Service Comm'n v. Letter Carriers, 413 U.S. 548, 557, 93 S. Ct. 2880, 37 L. Ed. 2d 796 (1973)* ("[F]ederal service should depend upon meritorious performance rather than political service"). The corporate independent expenditures at issue in this case, however, would not interfere with governmental functions, so these cases are inapposite. These precedents stand only for the proposition that there are certain governmental functions that cannot operate without some restrictions on particular kinds of speech. By contrast, it is inherent in the nature of the political process that voters must be free to obtain information from diverse sources in order to determine how to cast their votes. At least before *Austin*, the Court had not allowed the exclusion of a class of speakers from the general public dialogue.

We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead us to this conclusion.

The previous decisions of the US Supreme Court in *Austin v. Michigan Chamber of Commerce*[99] (which ruled that political speech may be banned based on the speaker's corporate identity) and the relevant portion of *McConnell v. Federal Election Commission*[100] (which upheld the limits on electioneering communications in a facial challenge) were, in effect, overruled by *Citizens United*.

Like *Citizens United* is the 1976 case of *Buckley v. Valeo*.[101] In this much earlier case, the US Supreme Court ruled, among other issues elevated to it for resolution, on a provision of the Federal Election Campaign Act of 1971, as amended, (FECA)[102] which limits **independent** political expenditures by an individual or group advocating the election or defeat of a clearly identified candidate for federal office to $1,000 per year. Majority of the US Supreme Court expressed the view that the challenged provision is unconstitutional as it impermissibly burdens the right of free expression under the First Amendment, and could not be sustained on the basis of governmental interests in preventing the actuality or appearance of corruption or in equalizing the resources of candidates.[103]

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99 494 U.S. 652 (1990).

100 540 U.S. 93 (2003).

101 424 U.S. 1(1976).

102 18 USCS 608 (e)(1).

103 The US Supreme Court ruled in *Buckley*:

The discussion in Part I-A, supra, explains why the Act's expenditure limitations impose far greater restraints on the freedom of speech and association than do its contribution limitations. The markedly greater burden on basic freedoms caused by *§ 608 (e)(1)* thus cannot be sustained simply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitations. Rather, the constitutionality of *§ 608 (e)(1)* turns on whether the governmental interests advanced in its support satisfy the exacting scrutiny applicable to limitations on core *First Amendment* rights of political expression.

We find that the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify *§ 608 (e)(1)*'s ceiling on independent expenditures. First, assuming, arguendo, that large independent expenditures pose the same dangers of actual or apparent quid pro quo arrangements as do large contributions, *§ 608 (e)(1)* does not provide an answer that sufficiently relates to the elimination of those dangers. Unlike the contribution limitations' total ban on the giving of large amounts of money to candidates, *§ 608 (e)(1)* prevents only some large expenditures. So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views. The exacting interpretation of the statutory language necessary to avoid unconstitutional vagueness thus undermines the limitation's effectiveness as a loophole-closing provision by facilitating circumvention by those seeking to exert improper influence upon a candidate or officeholder. It would naively underestimate the ingenuity and resourcefulness of persons and groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted the restriction on express advocacy of election or defeat but nevertheless benefited the candidate's campaign. Yet no substantial societal interest would be served by a loophole-closing provision designed to check corruption that permitted unscrupulous persons and organizations to expend unlimited sums of money in order to obtain improper influence over candidates for elective office. Cf. *Mills v. Alabama, 384 U.S. at 220*.

Second, quite apart from the shortcomings of *§ 608 (e)* (1) in preventing any abuses generated by large independent expenditures, the independent advocacy restricted by the provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions. The parties defending *§ 608 (e)(1)* contend that it is necessary to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of paying directly for media advertisements or for other portions of the candidate's campaign activities. They argue that expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. Yet such controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act. *Section 608*

Even so, the rulings in *Citizens United* and *Buckley* find bearing only on matters related to "**independent** expenditures," an election law concept which has no application in this jurisdiction. In the US context, **independent** expenditures for or against a particular candidate enjoy constitutional protection. They refer to those expenses made by an individual, a group or a legal entity which are not authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate; they are expenditures that are not placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate.[104] In contrast, there is no similar provision here in the Philippines. In fact, R.A.

(b)'s contribution ceilings rather than *§ 608 (e)(1)*'s independent expenditure limitation prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions. By contrast, *§ 608(e)(1)* limits expenditures for express advocacy of candidates made totally independently of the candidate and his campaign. Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate. Rather than preventing circumvention of the contribution limitations, *§ 608 (e)(1)* severely restricts all independent advocacy despite its substantially diminished potential for abuse.

While the independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process, it heavily burdens core *First Amendment* expression. For the *First Amendment* right to "'speak one's mind... on all public institutions'" includes the right to engage in "'vigorous advocacy' no less than 'abstract discussion.'" *New York Times Co. v. Sullivan, 376 U.S. at 269*, quoting *Bridges v. California, 314 U.S. 252, 270 (1941)*, and *NAACP v. Button, 371 U.S. at 429*. Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the *First Amendment* than the discussion of political policy generally or advocacy of the passage or defeat of legislation.

It is argued, however, that the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections serves to justify the limitation on express advocacy of the election or defeat of candidates imposed by *§ 608 (e)(1)*'s expenditure ceiling. But the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the *First Amendment*, which was designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources,'" and "'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *New York Times Co. v. Sullivan, supra, at 266, 269*, quoting *Associated Press v. United States, 326 U.S. 1, 20 (1945)*, and *Roth v. United States, 354 U.S. at 484*. The *First Amendment's* protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion. Cf. *Eastern R. Conf. v. Noerr Motors, 365 U.S. 127, 139 (1961)*.

The Court's decisions in *Mills v. Alabama, 384 U.S. 214 (1966)*, and *Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974)*, held that legislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the *First Amendment*. In Mills, the Court addressed the question whether "a State, consistently with the United States Constitution, can make it a crime for the editor of a daily newspaper to write and publish an editorial on election day urging people to vote a certain way on issues submitted to them." *384 U.S. at 215* (emphasis in original). We held that "no test of reasonableness can save [such] a state law from invalidation as a violation of the *First Amendment*." *Id., at 220*. Yet the prohibition of election-day editorials invalidated in Mills is clearly a lesser intrusion on constitutional freedom than a $ 1,000 limitation on the amount of money any person or association can spend during an entire election year in advocating the election or defeat of a candidate for public office. More recently in Tornillo, the Court held that Florida could not constitutionally require a newspaper to make space available for a political candidate to reply to its criticism. Yet under the Florida statute, every newspaper was free to criticize any candidate as much as it pleased so long as it undertook the modest burden of printing his reply. See *418 U.S. at 256-257*. The legislative restraint involved in Tornillo thus also pales in comparison to the limitations imposed by *§ 608 (e)(1)*.

For the reasons stated, we conclude that *§ 608 (e)(1)*'s independent expenditure limitation is unconstitutional under the *First Amendment*.

[104] See *Buckley v. Valeo*, *supra* note 101.

No. 9006[105] and its implementing rules and regulations[106] specifically make it unlawful to print, publish, broadcast or exhibit any print, broadcast or outdoor advertisements donated to the candidate without the written acceptance of said candidate.

If at all, another portion of the *Buckley* decision is significant to this case. One of the issues resolved therein is the validity of a provision of the FECA which imposes $1,000 limitation on political contributions by individuals and groups to candidates and authorized campaign committees.[107] Five justices of the nine-member US Supreme Court sustained the challenged provision on the grounds that it does not violate First Amendment speech and association rights or invidiously discriminate against non-incumbent candidates and minority party candidates but is supported by substantial governmental interests in limiting corruption and the appearance of corruption. It was held:

> As the general discussion in Part I-A, supra, indicated, the primary *First Amendment* problem raised by the Act's contribution limitations is their restriction of one aspect of the contributor's freedom of political association. The Court's decisions involving associational freedoms establish that the right of association is a "basic constitutional freedom," *Kusper v. Pontikes, 414 U.S. at 57*, that is "closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." *Shelton v. Tucker, 364 U.S. 479, 486 (1960)*. See, e.g., *Bates v. Little Rock, 361 U.S. 516, 522-523 (1960)*; *NAACP v. Alabama, supra at 460-461*; *NAACP v. Button, supra, at 452* (Harlan, J., dissenting). In view of the fundamental nature of the right to associate, governmental "action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *NAACP v. Alabama, supra, at 460-461*. Yet, it is clear that "[n]either the right to associate nor the right to participate in political activities is absolute." *CSC v. Letter Carriers, 413 U.S. 548, 567 (1973)*. Even a "significant interference' with protected rights of political association" may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms. *Cousins v. Wigoda, supra, at 488*; *NAACP v. Button, supra, at 438*; *Shelton v. Tucker, supra, at 488*.

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105 Sec. 4.3 in relation to Sec. 13.

106 Sections 1 and 2 Rule 5 of COMELEC Resolution No. 9476 and Sec. 7 (b) of COMELEC Resolution No. 9615.

107 *Buckley* explained: "*Section 608 (b)* provides, with certain limited exceptions, that 'no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $ 1,000.' The statute defines 'person' broadly to include 'an individual, partnership, committee, association, corporation or any other organization or group of persons.' *§ 591 (g)*. The limitation reaches a gift, subscription, loan, advance, deposit of anything of value, or promise to give a contribution, made for the purpose of influencing a primary election, a Presidential preference primary, or a general election for any federal office. *§§ 591 (e)(1), (2)*. The $ 1,000 ceiling applies regardless of whether the contribution is given to the candidate, to a committee authorized in writing by the candidate to accept contributions on his behalf, or indirectly via earmarked gifts passed through an intermediary to the candidate.*§§ 608 (b)(4), (6)*. The restriction applies to aggregate amounts contributed to the candidate for each election -- with primaries, run-off elections, and general elections counted separately and all Presidential primaries held in any calendar year treated together as a single election campaign. *§ 608 (b)(5)*."

Appellees argue that the Act's restrictions on large campaign contributions are justified by three governmental interests. **According to the parties and amici, the primary interest served by the limitations and, indeed, by the Act as a whole, is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office. Two "ancillary" interests underlying the Act are also allegedly furthered by the $ 1,000 limits on contributions. First, the limits serve to mute the voices of affluent persons and groups in the election process and thereby to equalize the relative ability of all citizens to affect the outcome of elections. Second, it is argued, the ceilings may to some extent act as a brake on the skyrocketing cost of political campaigns and thereby serve to open the political system more widely to candidates without access to sources of large amounts of money.**

It is unnecessary to look beyond the Act's primary purpose -- to limit the actuality and appearance of corruption resulting from large individual financial contributions -- in order to find a constitutionally sufficient justification for the $ 1,000 contribution limitation. Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign. The increasing importance of the communications media and sophisticated mass-mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy. **To the extent that large contributions are given to secure political *quid pro quo*'s from current and potential office holders, the integrity of our system of representative democracy is undermined.** Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one.

Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. In *CSC v. Letter Carriers, supra*, the Court found that the danger to "fair and effective government" posed by partisan political conduct on the part of federal employees charged with administering the law was a sufficiently important concern to justify broad restrictions on the employees' right of partisan political association. Here, as there, Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical... if confidence in the system of representative Government is not to be eroded to a disastrous extent." *413 U.S. at 565*.

Appellants contend that the contribution limitations must be invalidated because bribery laws and narrowly drawn disclosure requirements constitute a less restrictive means of dealing with "proven and suspected quid pro quo arrangements." But laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action. And while disclosure requirements serve the many salutary purposes discussed elsewhere in this opinion, Congress was surely entitled to conclude that

> disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.
>
> The Act's $ 1,000 contribution limitation focuses precisely on the problem of large campaign contributions -- the narrow aspect of political association where the actuality and potential for corruption have been identified -- while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources. Significantly, the Act's contribution limitations in themselves do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties.
>
> We find that, under the rigorous standard of review established by our prior decisions, the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon *First Amendment* freedoms caused by the $ 1,000 contribution ceiling. (Emphasis supplied)

Until now, the US Supreme Court has not overturned the ruling that, with respect to limiting political contributions by individuals and groups, the Government's interest in preventing *quid pro quo* corruption or its appearance was "sufficiently important" or "compelling" so that the interest would satisfy even strict scrutiny.[108]

In any event, this Court should accentuate that resort to foreign jurisprudence would be proper only if no law or jurisprudence is available locally to settle a controversy and that even in the absence of local statute and case law, foreign jurisprudence are merely persuasive authority at best since they furnish an uncertain guide.[109] We prompted in *Republic of the Philippines v. Manila Electric Company*:[110]

> x x x *American decisions and authorities are not per se controlling in this jurisdiction. At best, they are persuasive for no court holds a patent on correct decisions.* Our laws must be construed in accordance with the intention of our own lawmakers and such intent may be deduced from the language of each law and the context of other local legislation related thereto. More importantly, *they must be construed to serve our own public interest which is the be-all and the end-all of all our laws. And it need not be stressed that our public interest is distinct and different from others.*[111]

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108 See *McCutcheon, et al. v. Federal Election Commission*, 134 S. Ct. 1434 (2014).

109 See *VDA Fish Broker v. National Labor Relations Commission*, G.R. Nos. 76142-43, December 27, 1993, 228 SCRA 681 and *Philippine Airlines, Inc. v. Court of Appeals*, 263 Phil. 806, 817 (1990).

110 449 Phil. 118 (2003).

111 *Republic of the Philippines v. Manila Electric Company*, *supra*, at 127.

and once more in *Central Bank Employees Assoc., Inc. v. Bangko Sentral Ng Pilipinas*:[112]

> x x x [A]merican jurisprudence and authorities, much less the American Constitution, are of dubious application for these are no longer controlling within our jurisdiction and have only limited persuasive merit insofar as Philippine constitutional law is concerned.... [I]n resolving constitutional disputes, [this Court] should not be beguiled by foreign jurisprudence some of which are hardly applicable because they have been dictated by different constitutional settings and needs." Indeed, although the Philippine Constitution can trace its origins to that of the United States, their paths of development have long since diverged.[113]

Indeed, in *Osmeña v. COMELEC,*[114] this Court, in reaffirming its ruling in *National Press Club v. Commission on Elections*[115] that Section 11 (b) of R.A. No. 6646[116] does not invade and violate the constitutional guarantees comprising freedom of expression, remarked in response to the dissent of Justice Flerida Ruth P. Romero:

> On the other hand, the dissent of Justice Romero in the present case, in batting for an "uninhibited market place of ideas," quotes the following from *Buckley v. Valeo*:
>
> [T]he concept that the government may restrict the speech of some elements in our society in order to enhance the relative voice of the others is wholly foreign to the First Amendment which was designed to "secure the widest possible dissemination of information from diverse and antagonistic sources" and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."
>
> But do we really believe in that? That statement was made to justify striking down a limit on campaign expenditure on the theory that money is speech. Do those who endorse the view that government may not restrict the speech of some in order to enhance the relative voice of others also think that the campaign expenditure limitation found in our election laws is unconstitutional? How about the principle of one person, one vote, is this not based on the political equality of voters? Voting after all is

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112 487 Phil. 531 (2004).

113 *Central Bank Employees Assoc., Inc. v. Bangko Sentral Ng Pilipinas*, *supra* note 112 at 598, citing *Francisco, Jr. v. The House of Representatives*, 460 Phil 830, 889 (2003).

114 351 Phil. 692 (1998).

115 G.R. No. 102653, March 5, 1992, 207 SCRA 1.

116 Sec. 11. *Prohibited Forms of Election Propaganda*. – In addition to the forms of election propaganda prohibited under Section 85 of Batas Pambansa Blg. 881, it shall be unlawful:

x x x x x x x x x

b) for any newspapers, radio broadcasting or television station, other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Section 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcer or personality who is a candidate for any elective public office shall take a leave of absence from his work as such during the campaign period.

This so-called "political ad ban" under R.A. 6646 was later repealed by R.A. 9006.

> speech. We speak of it as the voice of the people – even of God. The notion that the government may restrict the speech of some in order to enhance the relative voice of others may be foreign to the American Constitution. It is not to the Philippine Constitution, being in fact an animating principle of that document.
>
> Indeed, Art. IX-C, §4 is not the only provision in the Constitution mandating political equality. Art. XIII, §1 requires Congress to give the "highest priority" to the enactment of measures designed to reduce political inequalities, while Art. II, §26 declares as a fundamental principle of our government "equal access to opportunities for public service." Access to public office will be denied to poor candidates if they cannot even have access to mass media in order to reach the electorate. What fortress principle trumps or overrides these provisions for political equality?
>
> Unless the idealism and hopes which fired the imagination of those who framed the Constitution now appear dim to us, how can the electoral reforms adopted by them to implement the Constitution, of which §11(b) of R.A. No. 6646, in relation to §§90 and 92 are part, be considered infringements on freedom of speech? That the framers contemplated regulation of political propaganda similar to §11(b) is clear from the following portion of the sponsorship speech of Commissioner Vicente B. Foz:
>
> MR. FOZ. . . . Regarding the regulation by the Commission of the enjoyment or utilization of franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges or concessions granted by the Government, there is a provision that during the election period, *the Commission may regulate, among other things, the rates, reasonable free space, and time allotments for public information campaigns and forums among candidates for the purpose of ensuring free, orderly, honest and peaceful elections*. This has to do with the media of communication or information.[117]

Proceeding from the above, the Court shall now rule on Ejercito's proposition that the legislature imposes no legal limitation on campaign donations. He vigorously asserts that COMELEC Resolution No. 9476 distinguishes between "contribution" and "expenditure" and makes no proscription on the medium or amount of contribution made by third parties in favor of the candidates, while the limit set by law, as appearing in COMELEC Resolution No. 9615, applies only to election expenditures of candidates.

We deny.

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117 *Osmeña v. COMELEC*, *supra* note 114, at 713-714.

Section 13 of R.A. No. 7166[118] sets the current allowable limit on expenses of candidates and political parties for election campaign, thus:

> SEC. 13. *Authorized Expenses of Candidates and Political Parties*. – The aggregate amount that a candidate or registered political party may spend for election campaign shall be as follows:
>
> (a) For candidates – Ten pesos (₱10.00) for President and Vice President; and for other candidates, Three pesos (₱3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy: *Provided*, That, a candidate without any political party and without support from any political party may be allowed to spend Five pesos (₱5.00) for every such voter; and
>
> (b) For political parties - Five pesos (₱5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.
>
> Any provision of law to the contrary notwithstanding, any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, duly reported to the Commission, shall not be subject to the payment of any gift tax.[119]

Sections 100, 101, and 103 of the OEC are not repealed by R.A. No. 7166.[120] These provisions, which are merely amended insofar as the allowable amount is concerned, read:

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118 Entitled "An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes" and was signed into law on November 26, 1991.

119 Rule 4 of COMELEC Resolution No. 9476 provides:

Section 1. ***Authorized expenses of candidates and parties***. – The aggregate amount that a candidate or party may spend for an election campaign shall be as follows:

a. President and Vice-President ---Ten Pesos (PhP 10.00) for every registered voter.
b. For other candidates --- Three Pesos (PhP 3.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy.
c. Candidate without any political party and without support from any political party -- Five Pesos (PhP 5.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy; and
d. Political parties and party-list groups --- Five Pesos (PhP 5.00) for every voter currently registered in the constituency or constituencies where it has official candidates. [RA 7166, Section 13, Paragraphs 2 and 3]

For the May 2013 elections, Sec. 5 of COMELEC Resolution No. 9615 reiterates:

SECTION 5. *Authorized Expenses of Candidates and Parties*. – The aggregate amount that a candidate or party may spend for election campaign shall be as follows:

a. For candidates - Three pesos (P3.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy;
b. For other candidates without any political party and without support from any political party – Five pesos (P5.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy.
c. For Political Parties and party-list groups – Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.

The exemption from donor's tax is stated in Sec. 3 Rule 3 of COMELEC Resolution No. 9476.

120 Sec. 39 of R.A. No. 7166 provides:

> SECTION 100. *Limitations upon expenses of candidates.* – No candidate shall spend for his election campaign an aggregate amount exceeding one peso and fifty centavos for every voter currently registered in the constituency where he filed his candidacy: ***Provided,*** **That the expenses herein referred to shall include those incurred or caused to be incurred by the candidate,** whether in cash or in kind, including the use, rental or hire of land, water or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign: *Provided,* further, That where the land, water or aircraft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.
>
> SECTION 101. *Limitations upon expenses of political parties.* – A duly accredited political party may spend for the election of its candidates in the constituency or constituencies where it has official candidates an aggregate amount not exceeding the equivalent of one peso and fifty centavos for every voter currently registered therein. Expenses incurred by branches, chapters, or committees of such political party shall be included in the computation of the total expenditures of the political party.
>
> Expenses incurred by other political parties shall be considered as expenses of their respective individual candidates and subject to limitation under Section 100 of this Code.
>
> SECTION 103. *Persons authorized to incur election expenditures.* – No person, **except the candidate, the treasurer of a political party or any person authorized by such candidate or treasurer**, shall make any expenditure in support of or in opposition to any candidate or political party. Expenditures duly authorized by the candidate or the treasurer of the party shall be considered as expenditures of such candidate or political party.
>
> The authority to incur expenditures shall be in writing, copy of which shall be furnished the Commission signed by the candidate or the treasurer of the party and showing the expenditures so authorized, and shall state the full name and exact address of the person so designated. (Emphasis supplied)[121]

SEC. 39. *Amending and Repealing Clause.* - Sections 107, 108 and 245 of the Omnibus Election Code are hereby repealed. Likewise, the inclusion in Section 262 of the Omnibus Election Code of the violations of Sections 105, 106, 107, 108, 109, 110, 111 and 112 as among election offenses is also hereby repealed. This repeal shall have retroactive effect.

Batas Pambansa Blg. 881, Republic Act No. 6646, Executive Order Nos. 144 and 157 and all other laws, orders, decrees, rules and regulations or other issuances, or any part thereof, inconsistent with the provisions of this Act are hereby amended or repealed accordingly.

[121] Pursuant to the law, Rule 4 of COMELEC Resolution No. 9476 in the same way states:

Section 2. ***Coverage of the Expenses***. – **The expenses herein referred to shall include those incurred or caused to be incurred by the candidate**, whether in cash or in kind, including the use, rental or hire of land, water or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign.

If the foregoing are owned by the candidate, his contributor or supporter, and the use of which are given free of charge to the candidate, the candidate shall assess and declare the amount commensurate with

The focal query is: How shall We interpret *"the expenses herein referred to shall include those incurred or caused to be incurred by the candidate"* and *"except the candidate, the treasurer of a political party or any person authorized by such candidate or treasurer"* found in Sections 100 and 103, respectively, of the OEC? Do these provisions exclude from the allowable election expenditures the contributions of third parties made with the consent of the candidate? The Court holds not.

When the intent of the law is not apparent as worded, or when the application of the law would lead to absurdity, impossibility or injustice, extrinsic aids of statutory construction may be resorted to such as the legislative history of the law for the purpose of solving doubt, and that courts may take judicial notice of the origin and history of the law, the deliberations during the enactment, as well as prior laws on the same subject matter in order to ascertain the true intent or spirit of the law.[122]

Looking back, it could be found that Sections 100, 101, and 103 of the OEC are substantially lifted from P.D. No. 1296,[123] as amended. Sections 51, 52 and 54 of which specifically provide:

> **Section 51.** *Limitations upon expenses of candidates.* No candidate shall spend for his election campaign an amount more than the salary or the equivalent of the total emoluments for one year attached to the office for which he is a candidate: Provided, **That the expenses herein referred to shall include those incurred by the candidate, his contributors and supporters,** whether in cash or in kind, including the use, rental or hire of land, water or air craft, equipment, facilities, apparatus and paraphernalia used in the campaign: Provided, further, That, where the land, water or air craft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.
>
> In the case of candidates for the interim Batasang Pambansa, they shall not spend more than sixty thousand pesos for their election campaign.

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the expenses for the use thereof, based on the prevailing rate in the locality and shall be included in the total expenses incurred by the candidate. [n]

The Commission shall have the power to determine if the assessment is based on the prevailing rates in the locality and effect the necessary correction. [OEC, Sec. 100]

x x x x x x x x x

Section 4. ***Persons authorized to incur election expenditures***. – No person, **except the candidate, the treasurer of the party, or any person authorized by such candidate or treasurer**, shall make any expenditure in support of or in opposition to any candidate or the party. Such expenditures, if duly authorized, shall be considered as expenditure of such candidate or party. [OEC, Sec. 103, Par. 1] (Emphasis supplied)

[122] See *Navarro v. Ermita*, G.R. No. 180050, April 12, 2011, 648 SCRA 400, 455; *Commissioner of Internal Revenue v. SM Prime Holdings, Inc.*, G.R. No. 183505, February 26, 2010, 613 SCRA 774, 778-779; and *League of Cities of the Phils., et al. (LCP) v. COMELEC, et al.*, 592 Phil. 1, 30 (2008).

[123] Otherwise known as "The 1978 Election Code."

> **Section 52.** *Limitation upon expenses of political parties, groups or aggrupations.* A political party, group or aggrupation may not spend for the election of its candidates in the constituency or constituencies where it has official candidates an aggregate amount more than the equivalent of fifty centavos for every voter currently registered therein: Provided, That expenses incurred by such political party, group or aggrupation not duly registered with the Commission and/or not presenting or supporting a complete list of candidates shall be considered as expenses of its candidates and subject to the limitation under Section 51 of this Code. Expenses incurred by branches, chapters or committees of a political party, group or aggrupation shall be included in the computation of the total expenditures of the political party, group or aggrupation. (Emphasis supplied)
>
> Section 54. *Persons authorized to incur election expenditures.* No person, **except the candidate or any person authorized by him or the treasurer of a political party, group or aggrupation**, shall make any expenditure in support of, or in opposition to any candidate or political party, group or aggrupation. Expenditures duly authorized by the candidate of the treasurer of the party, group or aggrupation shall be considered as expenditure of such candidate or political party, group or aggrupation.
>
> The authority to incur expenditures shall be in writing, copy of which shall be furnished the Commission, signed by the candidate or the treasurer of the party, group or aggrupation and showing the expenditure so authorized, and shall state the full name and exact address of the person so designated. (Emphasis supplied)

Prior to P.D. No. 1296, R.A. No. 6388 (otherwise known as the "Election Code of 1971") was enacted.[124] Sections 41 and 42 of which are relevant, to quote:

> **Section 41.** *Limitation Upon Expenses of Candidates.* – No candidate shall spend for his election campaign more than the total amount of salary for the full term attached to the office for which he is a candidate.
>
> **Section 42.** *Limitation Upon Expenses of Political Parties and Other Non-political Organizations.* – No political party as defined in this Code shall spend for the election of its candidates an aggregate amount more than the equivalent of one peso for every voter currently registered throughout the country in case of a regular election, or in the constituency in which the

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[124] R.A. No. 6388 was approved on September 2, 1971. It repealed, among others, Sections 48 and 49 of R.A. No. 180 that was approved on June 21, 1947. Sections 48 and 49 state:

> SEC. 48. *Limitation upon expenses of candidates*. – No candidate shall spend for his election campaign more than the total amount of the emoluments for one year attached to the office for which he is a candidate.
>
> SEC. 49. *Unlawful expenditures*. – It is unlawful for any person to make or offer to make an expenditure, or to cause an expenditure to be made or offered to any person to induce one either to vote or withhold his vote, or to vote for or against any candidate, or any aspirant for the nomination or selection of a candidate of a political party, and it is unlawful for any person to solicit or receive directly or indirectly any expenditure for any of the foregoing considerations.

In turn, the above provisions were lifted from Sections 42 and 43 of Commonwealth Act No. 357, which was approved on August 22, 1938.

> election shall be held in case of a special election which is not held in conjunction with a regular election. **Any other organization not connected with any political party, campaigning for or against a candidate, or for or against a political party shall not spend more than a total amount of five thousand pesos**. (Emphasis supplied)

Much earlier, Section 12 (G) of R.A. No. 6132,[125] which implemented the resolution of both Houses of Congress calling for a constitutional convention, explicitly stated:

> **Section 12.** *Regulations of Election Spending and Propaganda.* The following provisions shall govern election spending and propaganda in the election provided for in this Act:
>
> x x x
>
> (G) **All candidates and all other persons making or receiving expenditures, contributions or donations** which in their totality exceed fifty pesos, in order to further or oppose the candidacy of any candidate, shall file a statement of all such expenditures and contributions made or received on such dates and with such details as the Commission on Elections shall prescribe by rules. **The total expenditures made by a candidate, or by any other person with the knowledge and consent of the candidate, shall not exceed thirty-two thousand pesos**. (Emphasis supplied)

In tracing the legislative history of Sections 100, 101, and 103 of the OEC, it can be said, therefore, that the intent of our lawmakers has been consistent through the years: to regulate not just the election expenses of the candidate but also of his or her contributor/supporter/donor as well as by including in the aggregate limit of the former's election expenses those incurred by the latter. The phrase *"those incurred or caused to be incurred by the candidate"* is sufficiently adequate to cover those expenses which are contributed or donated in the candidate's behalf. By virtue of the legal requirement that a contribution or donation should bear the written conformity of the candidate, a contributor/supporter/donor certainly qualifies as *"any person authorized by such candidate or treasurer." Ubi lex non distinguit, nec nos distinguere debemus.*[126] (Where the law does not distinguish, neither should We.) There should be no distinction in the application of a law where none is indicated.

The inclusion of the amount contributed by a donor to the candidate's allowable limit of election expenses does not trample upon the free exercise

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125 Otherwise known as "The 1971 Constitutional Convention Act"(Approved on August 24, 1970).

126 *Plopenio v. Department of Agrarian Reform*, G.R. No. 161090, July 4, 2012, 675 SCRA 537, 543.

of the voters' rights of speech and of expression under Section 4, Artticle III of the Constitution. As a content-neutral regulation,[127] the law's concern is not to curtail the message or content of the advertisement promoting a particular candidate but to ensure equality between and among aspirants with "deep pockets" and those with less financial resources. Any restriction on speech or expression is only incidental and is no more than necessary to achieve the substantial governmental interest of promoting equality of opportunity in political advertising. It bears a clear and reasonable connection with the constitutional objectives set out in Section 26, Article II, Section 4, Article IX-C, and Section 1, Art. XIII of the Constitution.[128]

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[127] In *Chavez v. Gonzales, et al.* (569 Phil. 155 [2008]), the Court distinguished between content-based and content-neutral regulations:

Hence, it is not enough to determine whether the challenged act constitutes some form of restraint on freedom of speech. A distinction has to be made whether the restraint is (1) a **content-neutral** regulation, *i.e.*, merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well defined standards; or (2) a **content-based** restraint or censorship, *i.e.*, the restriction is based on the subject matter of the utterance or speech. The cast of the restriction determines the test by which the challenged act is assayed with.

When the speech restraints take the form of a **content-neutral regulation**, only a substantial governmental interest is required for its validity. Because regulations of this type are not designed to suppress any particular message, they are not subject to the strictest form of judicial scrutiny but an **intermediate approach** – somewhere between the mere rationality that is required of any other law and the compelling interest standard applied to content-based restrictions. The **test** is called **intermediate** because the Court will not merely rubberstamp the validity of a law but also require that the restrictions be narrowly-tailored to promote an important or significant governmental interest that is unrelated to the suppression of expression. The intermediate approach has been formulated in this manner:

A governmental regulation is sufficiently justified if it is within the constitutional power of the Government, if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incident restriction on alleged [freedom of speech & expression] is no greater than is essential to the furtherance of that interest.

On the other hand, a governmental action that restricts freedom of speech or of the press **based on content** is given the **strictest scrutiny** in light of its inherent and invasive impact. Only when the challenged act has overcome the **clear and present danger rule** will it pass constitutional muster, with the government having the burden of overcoming the presumed unconstitutionality.

Unless the government can overthrow this presumption, the **content-based** restraint will be struck down.

With respect to **content-based** restrictions, the government must also show the type of harm the speech sought to be restrained would bring about— especially the gravity and the imminence of the threatened harm – otherwise the prior restraint will be invalid. Prior restraint on speech based on its content cannot be justified by hypothetical fears, "but only by showing a substantive and imminent evil that has taken the life of a reality already on ground." As formulated, "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

The regulation which restricts the speech content must also serve an important or substantial government interest, which is unrelated to the suppression of free expression.

Also, the incidental restriction on speech must be no greater than what is essential to the furtherance of that interest. A restriction that is so broad that it encompasses more than what is required to satisfy the governmental interest will be invalidated. The regulation, therefore, must be reasonable and narrowly drawn to fit the regulatory purpose, with the least restrictive means undertaken.

Thus, when the prior restraint partakes of a **content-neutral regulation**, it is subjected to an intermediate review. A **content-based regulation**, however, bears a heavy presumption of invalidity and is measured against the **clear and present danger rule**. The latter will pass constitutional muster only if justified by a compelling reason, and the restrictions imposed are neither overbroad nor vague. (p. 204-208)

[128] Art. II, Sec. 26. The State shall guarantee equal access to opportunities for public service x x x.

Art. IX-C (4). The Commission may, may during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits from the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned

Indeed, to rule otherwise would practically result in an unlimited expenditure for political advertising, which skews the political process and subverts the essence of a truly democratic form of government.

WHEREFORE, the Petition is **DENIED**. The May 21, 2014 Resolution of the COMELEC *En Banc* in SPA No. 13-306 (DC), which upheld the September 26, 2013 Resolution of the COMELEC First Division, granting the petition for disqualification filed by private respondent Edgar "Egay" S. San Luis against petitioner Emilio Ramon "E.R." P. Ejercito, is hereby **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

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or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor for public information campaigns and forms among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.

Art. XIII, Sec. 1. The Congress shall give highest priority to the enactment of measures that x x x reduce x x x political inequalities x x x by equitably diffusing wealth and political power for the common good.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

No part
ARTURO D. BRION
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

On official leave
ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

No part
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice