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[G.R. No. 206719, April 10, 2019]

**BAGUMBAYAN-VNP MOVEMENT, INC., AND RICHARD J. GORDON,
ON HIS BEHALF AND ON BEHALF OF OTHER CITIZENS OF THE
REPUBLIC OF THE PHILIPPINES SIMILARLY SITUATED,
PETITIONERS, VS. COMMISSION ON ELECTIONS, RESPONDENT.**

[G.R. No. 206784]

**TANGGULANG DEMOKRASYA (TAN DEM), INC., EVELYN L.
KILAYKO, TERESITA D. BALTAZAR, PILAR L. CALDERON, ELITA T.
MONTILLA, AND ANDREA H. CEDO, PETITIONERS, VS.
COMMISSION ON ELECTIONS, RESPONDENT.**

[G.R. No. 207755]

**BAGUMBAYAN-VNP MOVEMENT, INC., AND RICHARD J. GORDON,
ON HIS BEHALF AND ON BEHALF OF OTHER CITIZENS OF THE
REPUBLIC OF THE PHILIPPINES SIMILARLY SITUATED,
PETITIONERS, VS. COMMISSION ON ELECTIONS AND HON.
SIXTO S. BRILLANTES, JR., RESPONDENTS.**

DECISION

REYES, A., JR., J.:

The Consolidated Case

Before this Court are three (3) separate petitions which this Court ordered consolidated in a Resolution^[1] dated August 12, 2014.

In **G.R. No. 206719**, Bagumbayan-VNP Movement, Inc. (Bagumbayan) and Senator Richard J. Gordon (Senator Gordon) filed a Special Civil Action for *Mandamus*^[2] lodged with the Court under Section 3, Rule 65 of the Rules of Court, for the purpose of compelling the Commission on Elections (COMELEC) to comply with the provisions of Section 14 of Republic Act (R.A.) No. 8436,^[3] as amended by R.A. No. 9369.^[4]

The Court notes that a petition to declare former Chairman of the COMELEC, Sixto S. Brillantes, Jr. (Chairman Brillantes) in contempt for presumably failing to comply with his commitments to this Court as manifested during oral arguments on May 8, 2013, in connection with the petition in **G.R. No. 206719**, was filed and docketed as **G.R. No. 207755**. While the petition was filed separately, under Section 4^[5] of Rule 71 of the Rules of Court, the Court exercised its discretion and ordered the consolidation of the contempt charge and the principal action for joint hearing and

decision. As such, the Court will, likewise, rule on the charge of contempt alongside ruling on the merits of the instant petition.

In **G.R. No. 206784**, the petitioners Tunggulang Demokrasya (Tan Dem), *et al.* filed a Special Civil Action for *Mandamus*^[6] lodged with the Court under Section 3, Rule 65 of the Rules of Court, for the purposes of compelling COMELEC to use digital signatures in the electronic election returns, and provide for the basic security safeguards, which include the source code review, vote verification, and the random audit, in compliance with R.A. No. 9369.

The Parties

Petitioner Bagumbayan is a non-stock, non-profit corporation that operates through Bagumbayan-Volunteers for a New Philippines, a national political party which has been duly registered with the COMELEC since 2010. Petitioner Senator Gordon is a Filipino citizen of legal age, a registered voter, a taxpayer, and a resident of Olongapo City. He is currently a Senator of the Republic of the Philippines.

Petitioner Tan Dem is a people's organization created for the purpose of defending democracy in the Philippines, while petitioners Evelyn L. Kilayko, Teresita D. Baltazar, Pilar L. Calderon, Elita T. Montilla, and Andrea H. Cedo, are Filipino citizens, and registered voters and taxpayers. They will be collectively referred to as petitioners Tan Dem, *et al.*

Respondent COMELEC is a government agency created under Section 1(1), Article IX-C of the 1987 Constitution. It is vested by the fundamental law and by statute with the power and the duty to enforce and administer all laws relative to the conduct of elections in the country. Respondent Chairman Brillantes is the former Chairman of the COMELEC, and held such post at the time of the filing of this petition.

The Antecedent Facts

For G.R. No. 206719 and G.R. No. 207755

On December 22, 1997, Congress enacted R.A. No. 8436, otherwise known as the ***Election Modernization Act of 1997***, which authorized the COMELEC to adopt an automated election system (AES) for the process of voting, counting of votes and canvassing/consolidation of results of the national and local elections.^[7]

On January 23, 2007, R.A. No. 9369 was signed into law, amending among others certain provisions of R.A. No. 8436, pertinently Section 10 of the latter, to read:

SEC. 12. Section 10 of Republic Act No. 8436 is hereby amended to read as follows:

SEC. 14. *Examination and Testing of Equipment or Device of the AES and Opening of the Source Code for Review.* - **The Commission shall allow the political parties and candidates or their representatives, citizens' arm or their representatives to examine and test** the equipment or device to be used in the voting and counting on the day of the electoral exercise, before voting start. Test ballots and test forms

shall be provided by the Commission.

Immediately after the examination and testing of the equipment or device, parties and candidates or their representatives, citizen's arms or their representatives, may submit a written comment to the election officer who shall immediately transmit it to the Commission for appropriate action.

The election officer shall keep minutes of the testing, a copy of which shall be submitted to the Commission together with the minute of voting.

Once an AES technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof. (Underscoring and emphasis Ours)

To facilitate the review process as mandated by the law, the COMELEC promulgated Minute Resolution No. 10-0138^[8] on February 10, 2010, adopting the guidelines recommended by the COMELEC Advisory Council and the Technical Evaluation Council (TEC). This resolution set the guidelines for the conduct of the source code review, and was done a month before the May 10, 2010 National and Local Elections.

Years later, this time for the 2013 National and Local elections, the TEC submitted to the COMELEC on February 12, 2013^[9] the former's resolution on the certification of the validity of AES for the 2013 elections. As required by Section 9 of R.A. No. 9369, SLI Global Solutions (SLI), certified and categorically stated that "the AES, including its hardware and software components, are operating properly, securely, and accurately, in accordance with the provisions of the Act,"^[10] and that the same could be used by the voters, board of election inspectors (BEI), local and national boards of canvassers, as well as the COMELEC in the aforementioned elections.

On March 1, 2013,^[11] the COMELEC promulgated Resolution No. 9651, the guidelines promulgated by COMELEC in order to fulfill its mandate to make the source code available. According to Resolution No. 9651, several requirements^[12] must be submitted by interested parties before they may be allowed to partake in the source code review.

Subsequently, on March 14, 2013, COMELEC likewise promulgated Resolution No. 9657, which stated that to afford the COMELEC enough time to evaluate the request for source code review, and the credentials of the reviewer, there is a need to set a deadline within which the request, together with the credentials of its reviewer, should be filed, and where to file the same. Resolution No. 9657 resolved that the request for the conduct of the source code review by the political parties and interested groups, together with the credentials of the reviewer, shall be filed no later than April 1, 2013.^[13]

As a result of the aforementioned issuances, several parties, Parti do Demokratiko Pilipino-Lakas Bayan, Pwersa ng Masang Pilipino, the Parish Pastoral Council for Responsible Voting and the Liberal Party, in separate letters to the COMELEC,

requested for participation in the source code review.^[14] From April 10 to 24, 2013, these parties conducted the source code review for the Consolidated Canvassing System and Elections Management System, but not for the Precinct Count Optical Scan (PCOS) source code, as the same had not yet been released due to negotiations between the COMELEC, Dominion Voting Systems (Dominion), and Smartmatic TIM (Smartmatic) over an issue involving a disagreement with the latter two institutions.

This disagreement started on September 6, 2012,^[15] when Smartmatic filed an action with the Court of Chancery in the State of Delaware in the United States against Dominion, to which the latter filed a counterclaim. According to COMELEC, this termination birthed two (2) consequences: *first*, Smartmatic lost its access to the program systems of Dominion, which signified that any counting error committed in the following elections could not be corrected; and *second*, Smartmatic failed to deliver to the COMELEC the source code, pursuant to Section 14 of R.A. No. 8436, a failure that meant the said source code would not be reviewable by any party or candidate participating in the 2013 elections.

The foregoing caused a delay in the availability of the source code, and thus, it was only on May 5, 2013 when a representative from SLI arrived in the Philippines with a copy of the PCOS source code that was subjected to the trusted build.^[16]

On May 3, 2013, ten (10) days before the start of the elections, the petitioners filed the instant Petition for *Mandamus* (With Extremely Urgent Prayer to Set Petition for Oral Arguments), to compel COMELEC to obtain the source code and to make the same available for review of the petitioners and other similarly situated parties. The Court, thus, set the case for oral arguments on May 8, 2013.

During the oral arguments, Chairman Brillantes manifested before the Court that first, the COMELEC had already acquired the PCOS source code, and second, that the same will be deposited in escrow at the Bangko Sentral ng Pilipinas (BSP), thus making it available for review,^[17] subject to compliance with certain requirements.

The pertinent submission is highlighted, to wit:

JUSTICE LEONEN: Lastly, Mr. Chair and counsel. When the parties registered to review the source code, the parties that you mentioned to review the source code, the source code was not there. And understandably there may have been other interested persons or parties that would've wanted to line up in order to review the source code. But they were confused as to the signals that they were getting from both the media and the COMELEC. Understandably because you had to keep a few things to yourself in terms of executive privilege in order to be able to come out with the result that you just did at 3:00PM this afternoon. So there are parties that perhaps were not too encouraged to actually register, have (heir credentials examined by the COMELEC. And therefore would the COMELEC consider this situation and therefore perhaps you could amend your COMELEC Resolution so that in the interest of full transparency and credibility of this election, more qualified technicians or experts from different standpoints will be able to help you assure that the elections is [sic] truly credible, free, fair, and honest.

C. BRILLANTES: We will consider very seriously, your Honor. In fact, if you would ask my own personal opinion as Chairman of the Commission on Elections, I will have no objection to opening it up to everybody else. Because I am not really worried about any malicious contents of the source code. We will even accommodate again Senator Gordon. I back out, maybe I'll just back out, personally I'll back out my statement that we will not allow him. I think we should invite him tomorrow so he can see and maybe he can see his friends in the UNA who are also reviewing it, **so that they can review the source code and we would give them all the chance after the elections because we are not in the process of winding up and finishing all of the electoral needs in order to somehow ensure that we shall have a very', very clean and honest elections this coming May 13. And after which we believe that anybody or everybody who would want to can review the source code as it will be made available by Dominion and it will be deposited in the Central Bank.**

JUSTICE LEONEN: Just to clarify...but you were saying that you were going to invite Senator Gordon?

C. BRILLANTES: Tomorrow.

JUSTICE LEONEN: Tomorrow[?] Thank you.

x x x x

JUSTICE PEREZ: Just one suggestion, Mr. Chair. Are you willing or will you be able to. reduce this manifestation which you just made, including the commitments that accompanied the manifestation? Can this be reduced to a unanimous resolution of the COMELEC because it's not only this Court which is interested with what you said. x x x.

C. BRILLANTES: Yes, your Honor. We would try insofar as the review of the 2010. Now opening it up to others who did not even apply to have the source code like Senator Gordon and his political party. And by the way, when we said his political party is not accredited, I am saying that it is not accredited to review the source code. It is an accredited political party but it is not accredited to review the source code because it did not apply. We're willing to put this on a writing but 1 will have to get the votes of my six (6) other commissioners. Your Honor, we have one already here. I hope Commissioner Lim will join me. We have five (5) other commissioners. We shall take it up tonight.

JUSTICE SERENO: But there is no separate accreditation procedure? C. BRILLANTES: No, your Honor.

JUSTICE SERENO: As long as you apply and comply with all the other requirements under the Resolution, the right to inspect would be automatic?

C. BRILLANTES: No, since the elections would be finished, your Honor by