LITIGATED DEMOCRACY: JUDICIAL DISENFRANCHISEMENT OF VOTERS THROUGH ANNULMENT OF ELECTIONS*

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ABSTRACT

The increasing number of election contests in the country, including no less than that of the vice-presidency, accentuates the role of the courts, the electoral tribunals, and the Commission on Elections (COMELEC) in ascertaining the true sovereign will of the electorate when challenged with claims of fraud, terrorism, and other irregularities. While the law devises modes by which such contests may be lodged, the Supreme Court's recent pronouncements made it possible for other remedies so extreme such as that of annulment of elections to be availed of. This Note explores the history of this power granted upon electoral tribunals, the procedure by which it may be lodged, and the consequences of the grant of such remedy concomitant with the existing power of the COMELEC to declare failure of elections. In so doing, the analysis in this Note hopes to contribute to a more structured and nuanced discussion of this remedy in order to lay down the framework, the conditions, and the procedure before courts may be allowed to disenfranchise *en masse* the sovereign will of the electorate, the very essence of our democracy, if allowed at all.

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I. INTRODUCTION

It has been an unfortunate adage in the Philippines that no candidate for elective office ever loses; he or she is only cheated.[1] This has become the sad refrain of many politicians so much so that questioning the results of an election before the courts has become a common theme in the country. Since 2019 or the last general elections except for the positions of President, Vice-President and 12 Senators who were elected in 2016, there have been at least 464 cases filed with the various courts and electoral tribunals in the country,[2] which could attest to the pervasiveness of post-election actions.

Generally, there are two ways to contest an election: either through the institution of an election protest, or through a petition for *quo warranto*.[3] The former pertains to a contest strictly between the defeated (protestant) and winning (protestee) candidates exactly to determine who between them is the real winner because there occurred fraud or other irregularities in the conduct of the elections, while the latter is concerned about the eligibility of the winning candidate to hold office.[4] The difference between the two

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[1] *See*, *e.g.*, *In re* Interview with Atty. Lorna Kapunan on Corruption in the Judiciary, A.M. No. 13-11-09-SC, Aug. 12, 2014.

[2] As of March 9, 2021, there are 167 election protest cases filed with the Commission on Elections (COMELEC) in the exercise of its exclusive original jurisdiction (regional, provincial and city officials), and 258 election appeals cases (municipal officials). *See* CONST. art. IX-C, § 2(2); *COMELEC Case Updates*, COMM'N ON ELECTIONS WEBSITE, *at* https://comelec.gov.ph/?r=References/ComelecCases (last visited Apr. 28, 2021).

In the House of Representatives Electoral Tribunal ("HRET"), there have been 36 election contest cases filed since 2019. *See Status Report of Cases*, H. ELECTORAL TRIBUNAL WEBSITE, Mar. 10, 2021, *at* https://drive.google.com/file/d/1mtWHdIH-Xx5K3l8YP4TUg1dQ5EsdFNQR/view.

For the Senate Electoral Tribunal ("SET"), there were only two *quo warranto* proceedings filed for the 2019 – 2022 term, which have been finally resolved by the Tribunal. *See SET Case Nos. 001-19, Mansilungan vs. Pimentel III and 002-19, Adan vs. Pimentel III*, S. ELECTORAL TRIBUNAL, *at* https://www.set.gov.ph/set-cases/set-case-nos-001-19-and-002-19/ (last visited Apr. 28, 2021).

The Presidential Electoral Tribunal ("PET") has heard just one case since 2016, and there have only been four cases since 1992, the year when the first presidential election under the 1987 Constitution was conducted. *See* Michael Bueza, *Presidential Electoral Tribunal: What happens to a protest*, RAPPLER, Jan. 7, 2017, *at* https://www.rappler.com/newsbreak/iq/explainer-election-protest-presidential-electoral-tribunal

Thus, there are at least a total of 464 cases, excluding those filed with the Regional Trial Courts and Municipal Trial Courts in the exercise of their exclusive original jurisdiction (municipal and barangay positions, respectively).

[3] MUN. OFF. ELECT. CONTESTS RULE, Rule 1, § 3(t), (v); HRET RULES, Rule 16; SET RULES, Rule 16; PET RULES, Rule 14.

[4] Luison v. Garcia, 103 Phil. 453, 457 (1958).

proceedings in the manner and matter of their institution ends, however, by their common objective—to oust the winning candidate from office.

A candidate is proclaimed a winner in an election based on the election returns submitted to the board of canvassers.[5] In an election protest, the defeated candidate seeks to set aside the count of votes as contained in the election returns and prays for the revision and recount of the ballots to determine the true will and intent of the electorate, as the ballot is considered the "best and most conclusive evidence" of the vote.[6] Revision of ballots is a logical and reasonable remedy to show who the real winner of the election is, based primarily on a recount and appreciation of the ballots, not just through a vote counting machine but by observation of a group of persons called "revisors," to ascertain whether the ballot captures the voters' true intent—*vox populi*.

Aside from revision, however, there is an extraordinary remedy that a defeated candidate may seek before the court or tribunal. This power is so extreme that it goes to the heart of the democratic system enshrined in the Constitution.[7] In praying for the annulment of elections, a protestant is requesting the court to throw away all votes in a given precinct because the manner in which the elections were conducted was tainted with fraud, terrorism, or such similar grounds, that the true will and intent of the electorate is not captured in the ballot. It is an extreme remedy because the court or tribunal is being asked to invalidate an election that may contain untainted votes, thereby disenfranchising Filipinos who exercised their most "sacred right of suffrage."[8] Thus, *vox populi tacet*.

The issue of annulment of elections has recently become the talk in legal circles because of the filing of the election protest of defeated vice-presidential candidate Ferdinand "Bongbong" Marcos, Jr., the son of the late dictator from whom he was named, against Maria Leonor "Leni" Robredo. Aside from the recount of votes in certain pilot provinces, Marcos' third cause of action in his protest prayed for the annulment of elections in three provinces in the Bangsamoro Autonomous Region, namely: Basilan, Lanao

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[5] Rosal v. Comm'n on Elections, G.R. No. 168253, 518 SCRA 473, 487, Mar. 16, 2007.

[6] *Id.* at 488.

[7] CONST. art. II, § 1.

[8] Guingona v. Comm'n on Elections, G.R. No. 191846, 620 SCRA 448, 462, May 6, 2010.

del Sur, and Maguindanao.[9] Even without the Commission on Elections (COMELEC) declaring a failure of elections in these areas, Marcos insisted that fraud, intimidation, harassment of voters, and pre-shading of ballots were so rampant as to warrant the invalidation of the elections conducted in the said provinces.[10] By raising this novel legal issue, even the Supreme Court *en banc*, acting as the Presidential Electoral Tribunal ("PET"),[11] had to order not just the parties,[12] but also the COMELEC and the Office of the Solicitor General,[13] to give their views on this critical issue of whether the tribunals and courts, the unelected branch of the republican government, can validly overturn the most fundamental of all democratic exercises.

Indeed, the concept of annulment of elections poses many questions not just to the legal framework of contesting elections, but also to the larger political and democratic space provided for by the Constitution. The questions put forth by the PET in *Marcos v. Robredo*[14] may be adopted for the purpose of guiding the discussion in this Note:

1. Do the courts and electoral tribunals have the competence to resolve questions pertaining to annulment of elections?

2. If the courts and electoral tribunals have such competence, how should annulment of elections be decided, *viz.*:

    a. What are the filing rules and requirements that a party must observe if he or she seeks the relief of annulment of elections?

    b. What is the threshold of evidence that is required to prove failure or annulment of elections?

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[9] Mike Navallo, *Failure of elections petitions in 3 provinces Marcos is contesting were junked - Comelec*, ABS-CBN NEWS, Nov. 4, 2020, *at* https://news.abs-cbn.com/news/11/04/20/failure-of-elections-petitions-in-3-mindanao-provinces-marcos-is-contesting-were-junked-comelec.

[10] *Id.*

[11] CONST. art. IV, § 4.

[12] [Hereinafter "*Marcos Resolution*"], PET Case No. 005 (res.), Oct. 15, 2019.

[13] Supreme Court Public Information Office, *Press Briefer*, SUPREME COURT WEBSITE, Sept. 30, 2020, *at* https://sc.judiciary.gov.ph/files/PET-005/media-releases/PET.005.09.20.20.pdf

[14] *Marcos Resolution*, at 54–55. This pinpoint citation refers to a copy of the decision uploaded on the Supreme Court website.

c. Will evidence listed other than those listed by the parties during the preliminary conference be considered?

d. What percentage of votes/precincts needs to be proven as having been affected by the grounds for failure or annulment of elections?

e. Should a similar "pilot testing" rule, applicable to revision of ballots, be equally applied in annulment of election cases?

3. Assuming there is merit in support of the argument to annul elections, what are the effects of such annulment, *viz.*:

a. Will the elections for all the elective positions in the ballot be nullified with all its attendant consequences?

b. Can a declaration by the Supreme Court *en banc*, sitting as the PET, be a bar for any question relative to any present and future electoral protest involving the same area and for any position?

c. Will it be necessary to call for special elections for the position being contested? If so, which body has the competence to call for such an election?

d. Will annulment of the election be considered a recovery of votes for any protestant, which will, in turn, mean revision for all his or her contested precincts?

e. What are the effects of annulment of elections to a protestee's counter-protest, if any?

Though jurisprudence has provided for some answers to the above-listed questions, there are still gaps both in statutory and case law that are ripe for discussion, with the end in view of assisting not just the various courts and electoral tribunals but also Congress in formulating rules on how a party can appropriately seek the extraordinary relief of annulment of elections. This is the primary purpose of this Note.

Part II describes the overview of post-election remedies currently available in the Philippines, and how any of these remedies may be considered a procedural vehicle in praying for the annulment of elections. Part III is concerned about the concept and history of how annulment of elections was introduced in the Philippine legal system, with analysis of the jurisprudence which has recognized this remedy, the grounds for its invocation, the evidentiary threshold necessary to sustain such relief, the identification of precincts or areas to be invalidated, and its distinction from the related concept of *failure of elections*. Part IV is a discussion of the effects of annulment of elections, particularly the effects of its declaration with respect to other positions not in question, the issue of whether there is a need to conduct a special election, and the treatment of annulled elections as recovery of votes. Part V offers recommendations to the policymakers—the COMELEC, the electoral tribunals, and the Supreme Court—for possible amendments to their respective rules of procedure to fully capture the remedy of annulment of elections and its legal effects when granted. Lastly, Part VI synthesizes the whole discussion in this Note.

II. POST-ELECTION REMEDIES

There are several remedies available to a candidate to legally question the qualifications of other candidates, such as by filing a petition for disqualification[15] or a petition to deny due course to or cancel certificate of candidacy.[16] A candidate may also question how an election is conducted by filing for failure of elections.[17] There are also pre-proclamation petitions to question the composition or proceedings of the board of canvassers.[18] All of these, however, are only available to the candidate who garnered the plurality of votes prior to his or her proclamation as the winner. Once the election has been conducted and the winning candidate proclaimed, there are, generally, two ways to contest the results of the election: by filing an election protest or a petition for *quo warranto* before the proper court or tribunal which has jurisdiction.

For barangay officials, election contests shall first be brought to the proper Municipal Trial Court (MTC) or Metropolitan Trial Court (MeTC) and

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[15] ELECT. CODE, § 68.

[16] § 78.

[17] § 6.

[18] Rep. Act No. 7166 (1991), § 16. An Act Providing for Synchronized National and Local Elections and for Electoral reforms, Authorizing Appropriations Therefor, and for Other Purposes.

may be appealed to the proper Regional Trial Court (RTC).[19] Municipal election contests, on the other hand, fall under the exclusive original jurisdiction of the RTC.[20] The decisions of the RTC in the exercise of both its appellate and original jurisdiction over election contests may be brought to the COMELEC.[21] The COMELEC, meanwhile, exercises exclusive original jurisdiction over election contests of regional, provincial, and city officials.[22] The COMELEC's decisions are then appealable to the Supreme Court via *certiorari*.[23]

For national elective positions, the Constitution provides for the electoral tribunals which act as the sole judge of all contests relating to election, returns, and qualifications of the following positions: for Members of the House of Representatives, either elected from legislative districts or through the party-list system, the House of Representatives Electoral Tribunal ("HRET");[24] for Senators, the Senate Electoral Tribunal ("SET");[25] and for President and Vice-President, the Supreme Court *en banc*,[26] acting as the PET.[27]

A. Quo Warranto

One of the two post-election remedies provided for by law and the rules is the filing of a petition for *quo warranto*. Under the Omnibus Election Code,[28] a petition for *quo warranto* may be filed within 10 days from the proclamation of the results of the election on the grounds of "ineligibility" or "disloyalty to the Republic of the Philippines" of the winning candidate.[29] The Rules of the HRET, SET, and PET likewise provide for similar grounds for the filing of a *quo warranto* petition, albeit prescribing different periods and reckoning dates on when such petition may be filed.[30]

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[19] ELECT. CODE, § 252.

[20] § 251.

[21] CONST. art. IX-C, § 2(2).

[22] Art. IX-C, § 2(2).

[23] Art. IX-A, § 7. *See also* RULES OF COURT, Rule 64.

[24] Art. VI, § 17.

[25] Art. VI, § 17.

[26] Art. VII, § 4.

[27] *See* Macalintal v. Pres. Electoral Tribunal, G.R. No. 191618, 635 SCRA 783, Nov. 10, 2010.

[28] Batas Blg. 881 (1985). Omnibus Election Code of the Philippines.

[29] ELECT. CODE, § 253; MUN. OFF. ELECT. CONTESTS RULE, Rule 2, § 7; Comm'n on Elections Res. 8804 (2010), Rule 6, § 3.

[30] HRET RULES, Rule 18; SET RULES, Rule 18; PET RULES, Rule 16.

Ineligibility, as a cause for the filing of *quo warranto*, pertains to non-compliance by the winning candidate of the required qualifications as prescribed by law. A candidate is "eligible" when he or she possesses the "right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office."[31] For local elective officials, such qualifications are prescribed by the Local Government Code[32] and the Organic Law for the Bangsamoro Autonomous Region,[33] while for national elective officials, it is the Constitution[34] which governs and no other.[35]

It must be noted that the petition for *quo warranto* with respect to elections is different from the *quo warranto* provided in the Rules of Court. Though in general they pertain to an action that questions the qualifications of a public officer to hold office, the procedure on how they are instituted varies. *First*, *quo warranto* under election laws may be filed by any registered voter,[36] while *quo warranto* under the Rules of Court may only be filed by a person claiming entitlement to the office,[37] or by the Solicitor General or a public prosecutor.[38] *Second*, *quo warranto* under elections laws may only be brought before the proper court or tribunal which has jurisdiction, as discussed above, while *quo warranto* under the Rules of Court may be brought before the Supreme Court, Court of Appeals, or RTC which all exercise concurrent jurisdiction.[39] *Third*, *quo warranto* under election laws may only be filed against the winning candidate in an election, while *quo warranto* under the Rules of Court may be filed against any and all public officers, and even against corporations or associations which have been illegally incorporated.[40] *Lastly*, when judgment is rendered in a *quo warranto* action under election laws, the effect is that the position being questioned is declared vacant,[41] while in *quo*

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[31] Tagolino v. H. Electoral Tribunal, G.R. No. 202202, 693 SCRA 574, 602, Mar. 19, 2013.

[32] LOCAL GOV'T CODE, § 39. The Local Government Code of the Philippines or Rep. Act No. 7160 (1991).

[33] Rep. Act No. 11054 (2018), § 12. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao.

[34] CONST. art. VI, §§ 3, 6; art. VII, §§ 2–3.

[35] *See* Soc. Justice Soc'y v. Dangerous Drugs Bd., G.R. No. 157870, 570 SCRA 410, 422, Nov. 3, 2008. "The Congress cannot validly amend or otherwise modify these qualification standards, as it cannot disregard, evade, or weaken the force of a constitutional mandate, or alter or enlarge the Constitution."

[36] ELECT. CODE, § 253; HRET RULES, Rule 18; SET RULES, Rule 18; PET RULES, Rule 16.

[37] RULES OF COURT, Rule 66, § 5.

[38] Rule 66, § 2.

[39] Rule 66, § 7.

[40] Rule 66, § 1.

[41] Llamoso v. Ferrer, 84 Phil. 489 (1949).

warranto under the Rules of Court, the person claiming entitlement to the office may be declared as the lawful holder thereof.[42]

Although *quo warranto* is an important remedy against a winning candidate, it is not one where the conduct of the elections is being questioned, but is only concerned with the requisite qualification of the winning candidate to hold office. Thus, there is no revision or recount of ballots in a *quo warranto* petition, and the party who filed the petition cannot pray that the elections be annulled precisely because it is incompatible with any of the grounds for the filing of *quo warranto*. Therefore, the other remedy—an election protest—is the proper vehicle for which a party may request the extraordinary relief of annulment of elections.

B. Election Protest

Under the 2010 Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials, an election protest is defined as:

> [A]n election contest involving the election and returns of […] elective officials, grounded on fraud or irregularities committed in the conduct of the elections, i.e., in the casting and the counting of the ballots, in the consolidation of votes and in the canvassing of returns, not otherwise classified as a pre-proclamation controversy cognizable by the COMELEC. The issue is who obtained the plurality of valid votes cast.[43]

An election protest is strictly a proceeding between the winning and defeated candidates (the protestee and protestant, respectively), the latter proposing to unseat the former.[44] In such a protest, the protestant shall raise such grounds, i.e., frauds, irregularities, or anomalies during the election, to justify the need for the revision and recount of the ballots, and to determine who between them obtained the plurality of valid votes cast and is entitled to the office.[45] Generally, a protest, when granted, results in the protestant assuming the position, and the protestee being ousted from office.[46]

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[42] RULES OF COURT, Rule 66, §§ 9–10.

[43] MUN. OFF. ELECT. CONTESTS RULE, Rule 1, § 3(u).

[44] Lokin v. Comm'n on Elections, G.R. No. 179431, 621 SCRA 385, 399, June 22, 2010.

[45] Torres-Gomez v. Codilla [hereinafter "*Torres-Gomez*"], G.R. No. 195191, 668 SCRA 600, 613, Mar. 20, 2012.

[46] Topacio v. Paredes, 23 Phil. 238, 254 (1912). "In [an election protest], the court, after an examination of the ballots may find that some other person than the candidate

As compared with *quo warranto* which is concerned with the qualification of the winning candidate, the grounds for the filing of an election protest involve the election itself, such as when there is fraud or irregularity in the conduct of the election itself or how the votes were counted. If the purpose of *quo warranto* is to ascertain the eligibility of the winning candidate to hold office, the purpose of an election protest, on the other hand, is to ascertain whether the candidate proclaimed by the Board of Canvassers is the true and lawful choice of the electorate.[47] Finally, while the respondent in a *quo warranto* may be unseated, the petitioner will not necessarily be seated, in contrast with an election protest where the protestant may be seated in the office vacated by the protestee.[48]

Depending on the position being contested and the court or tribunal that has jurisdiction to hear the case, the election protest must observe the form and contain the substance necessary for the respective court or tribunal to hear the case. This is especially true since all courts and tribunals are empowered to summarily dismiss an election protest that does not comply with the form and substance as required under their respective rules.[49]

III. SUBSTANCE AND PROCEDURE FOR ANNULMENT

A. Concept and History

In general, election contests are "inherently destabilizing to the democratic process"[50] because of the uncertainty they bring to the administration of the nation, particularly when the rights of people occupying the highest offices of the land are in question. An election protest, in particular, is an action clothed with public interest since it "involves not only the adjudication of private and pecuniary interests of rival candidates but paramount to their claims is the deep public concern involved and the need of dispelling the uncertainty over the real choice of the electorate."[51]

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declared to have received a plurality by the board of canvassers actually received the greater number of votes, in which case the court issues its *mandamus* to the board of canvassers to correct the returns accordingly."

[47] De Castro v. Ginete, G.R. No. 30058, 27 SCRA 623, 629, Mar. 28, 1969.

[48] *Lokin*, 621 SCRA at 399.

[49] MUN. OFF. ELECT. CONTESTS RULE, Rule 2, § 12; Comm'n on Elections Res. No. 8804 (2010), Rule 6, § 9; HRET RULES, Rule 23; SET RULES, Rule 23; PET RULES, Rule 21.

[50] Steven F. Huefner, *Remedying Election Wrongs*, 44 HARV. J. ON LEGIS. 265, 316 (2007).

[51] Violago v. Comm'n on Elections, G.R. No. 194143, 658 SCRA 516, 524, Oct. 4, 2011, *citing* Pacanan v. Comm'n on Elections, G.R. No. 186224, 597 SCRA 189, Aug. 25, 2009.

In the United States, from where the Philippines patterned its republican system of government, the common law started with no provision for contesting elections, except for the remedy of *quo warranto*.[52] However, it developed with the help of subsequent jurisprudence providing that "invalidation" of an election was recognized as one of the remedies that a court may grant in the exercise of its equity jurisdiction.[53] Invalidating an election and ordering the conduct of a new one are concepts that "cut quite as deeply to the core"[54] of republican government, such that it is considered "drastic, if not staggering,"[55] "extraordinary,"[56] and "undesirable at best."[57]

The concept of annulment of elections first came up in the Philippines as early as 1918 in the case of *Garchitorena v. Crescini*,[58] wherein the Supreme Court upheld the decision of the Court of First Instance (now the RTC) of the then-Province of Ambos Camarines annulling the election for governor in certain municipalities of the province. Though there is no discussion of the concept of annulment of elections, the Court nonetheless acknowledged that such power is thus vested in the courts, but the exercise of such power should not be rushed, declaring that:

> Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts, and they should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which does actually and in fact defeat the true expression of the opinion of the voters of said precinct or municipality.[59]

The Supreme Court, thus, for the first time, acknowledged that judicial power includes the power to nullify an election, and applied it in this case.

Then came *Nacionalista Party v. Commission on Elections*.[60] Here, the Nacionalista Party and its eight senatorial candidates in the 1949 elections filed a petition for *mandamus* with the Supreme Court to compel the COMELEC

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[52] Kenneth W. Starr, *Federal Judicial Invalidation as a Remedy for Irregularities in State Elections*, 49 N.Y.U. L. REV. 1092, 1096–97 (1974).

[53] *Id.* at 1099.

[54] *Id.* at 1095.

[55] *Id.* (Citation omitted.)

[56] *Id.* (Citation omitted.)

[57] *Id.* at 1096. (Citation omitted.)

[58] 39 Phil. 258 (1918).

[59] *Id.* at 261.

[60] [Hereinafter "*Nacionalista Party*"], 85 Phil. 149 (1949).

to exclude the votes for senator in Negros Occidental and Lanao due to terrorism and irregularities in the conduct of elections in those provinces. In ruling against the petitioners, the Court held that the COMELEC, under the 1935 Constitution and the election laws then prevailing, exercises no power to annul an election after it has been concluded. What the COMELEC has authority to do is only to recommend to the President the postponement of the election,[61] which power the Court described as "preventive only and not curative."[62] The Court ruled that the question of annulment of elections should have been brought before the SET since it is the "sole judge of all contests relating to the election, returns and qualifications" of senators,[63] and neither the COMELEC nor the Court is empowered to intervene. Thus, in essence, the Court skirted away from categorically ruling that there exists a remedy for the annulment of elections, but decided the case based on plain jurisdictional grounds.

Thereafter, in the case of *Abes v. Commission on Elections*,[64] petitioners who were candidates of the Liberal Party, the Nacionalista Reform Party and the Quezon City Citizens League for Good Government filed a petition before the COMELEC praying for the declaration of failure of elections upon the claim that more than 50% of the registered voters were not able to vote during the 1967 elections and further claims of fraud, terrorism, and other illegal practices committed before and during the elections. The COMELEC denied the petition, and so petitioners went to the Supreme Court on an action for *certiorari*. The Court ruled that, just like in *Nacionalista Party*, there is nothing in the 1935 Constitution that empowers the COMELEC to annul an election. The *Abes* ruling was categorical. In the absence of a positive law, the implications of the power vested in the COMELEC by the 1935 Constitution to enforce and administer all laws relative to the conduct of elections and to insure free, orderly, and honest elections do not include the power to annul an election which may not have been free, orderly, and honest. The Court then stated that the remedy of the petitioners was not to seek a declaration of failure of elections, but to file an election protest to ventilate all issues of fraud, terrorism, and other illegal practices allegedly committed during the election before the proper court.[65] Reiterating *Nacionalista Party*, the power to decide election contests necessarily includes the power to determine the validity or

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[61] Rep. Act No. 180 (1947), § 8. The Revised Election Code.

[62] *Nacionalista Party*, 85 Phil. at 156.

[63] CONST. (1935, amend.), art. VI, § 11.

[64] [Hereinafter "*Abes*"], G.R. No. 28348, 21 SCRA 1252, Dec. 15, 1967.

[65] *Id.* at 1258, *citing* City Bd. of Canvassers v. Moscoso, G.R. No. 16365, 9 SCRA 91, 95, Sept. 30, 1963. *See also* Rep. Act No. 180 (1947), § 174. "A petition contesting the election of a provincial or municipal officer-elect shall be filed with the Court of First Instance of the province[.]"

nullity of the votes; thus, the Court stated, albeit implicitly, that annulment of elections may be raised in an election protest.

Then, in *Borromeo v. Commission on Elections*,[66] petitioner Cesar Borromeo filed a "petition for the annulment of elections" before what was then the Court of First Instance of Rizal to annul the 1967 elections held in Quezon City on the ground of fraud, irregularities, and flagrant violations of election laws. The trial court dismissed the petition by relying on the *Abes* ruling. The difference between *Borromeo* and the cases of *Nacionalista Party* and *Abes* is that here, the petition praying for the annulment of elections was not filed with the COMELEC but with the court. However, the Supreme Court ruled primarily on procedural grounds that: (1) there is no independent "petition for annulment of elections" since annulment is only a remedy incidental to an election protest; and (2) the petitioner had no standing to sue. The ruling in *Borromeo* crystallized what the Court impliedly held in *Abes*: that annulment of elections is a remedy which may be raised in an election protest.

The Supreme Court, however, seemed to have deviated from the *Nacionalista Party* and *Abes* rulings in the later case of *Sanchez v. Commission on Elections*[67] promulgated in 1982, where the Court ruled that the COMELEC had the power to annul the 1980 local elections held in San Fernando, Pampanga due to post-election terrorism. Here, Virgilio Sanchez, mayoral candidate of the Nacionalista Party for the 1980 local elections in the Municipality of San Fernando, Pampanga, filed a petition before the COMELEC to declare null and void the said elections due to alleged large-scale terrorism. The COMELEC docketed the petition as a pre-proclamation case. After hearing, the COMELEC finally ruled for Sanchez, and ordered the annulment of the questioned elections. The COMELEC, however, likewise resolved to certify to the President and the *Batasang Pambansa* the failure of elections in the said municipality so that remedial legislation may be enacted, and for the President to appoint the municipal officials due to the vacancy. This second order of the COMELEC was questioned by Sanchez in the Supreme Court.

The Supreme Court's apparent departure from the *Nacionalista Party* and *Abes* rulings is based mainly on the difference in the powers vested in the COMELEC. The Court ruled that *Abes* was decided under the aegis of the 1935 Constitution and the former Revised Election Code,[68] while the COMELEC's power to declare an annulment of elections in *Sanchez* was

[66] G.R. No. 29369, 28 SCRA 775, July 24, 1969.
[67] G.R. No. 55513, 114 SCRA 454, June 19, 1982.
[68] Rep. Act No. 180 (1947).

based on the 1973 Constitution and the 1978 Election Code. The Court reasoned that under the 1973 Constitution and the 1978 Election Code, the COMELEC had the power to "enforce and administer all laws relative to the conduct of elections"[69] and it had the "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of insuring free, orderly and honest elections."[70] Examination shows, however, that the legal bases invoked by the Court in *Sanchez* are somewhat specious, as these same powers were already vested in the COMELEC created under the 1935 Constitution. It is necessary to dissect the aforementioned legal bases, as follows:

TABLE 1. Comparison Between the Legal Bases Used by the Supreme Court in *Abes* and *Sanchez*

Abes v. Commission on Elections	***Sanchez v. Commission on Elections***
1935 Constitution Article X	**1973 Constitution Article IX-C**
SECTION 2. The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections[.]	SECTION 2. The Commission on Elections shall have the following powers and functions: (1) Enforce and administer all laws relative to the conduct of elections.
Revised Election Code (1941)	**1978 Election Code**
SECTION 2. The Commission on Elections shall, in addition to the powers and functions conferred upon it by the Constitution, have direct and immediate supervision over the provincial, municipal, and city officials designated by law to perform duties relative to the conduct of elections.	SECTION 185. The Commission shall, in addition to the powers and functions conferred upon it by the Constitution, have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of insuring free, orderly and honest elections[.]

The legal bases cited by the Court in *Sanchez* are essentially the same iterations of the powers granted to the COMELEC under the 1935 Constitution and the Revised Election Code. The mere fact that the COMELEC's powers are now granted by new sources of law, albeit substantially the same as the former sources of law, is not a reason to have

[69] CONST. (1973), art. XII1-C, § 2(1).
[70] Pres. Dec. No. 1296 (1978), § 185. The 1978 Election Code.

different rulings. The doctrine of *stare decisis et non quieta movere*[71] was therefore applicable.

Another basis for the Supreme Court's decision that the COMELEC had the power to annul an election is Section 2(2), Article XII-C of the 1973 Constitution, which provides that the COMELEC is "the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the *Batasang Pambansa* and elective provincial and city officials," similar to the jurisdiction of the electoral tribunals. This reasoning may be in accord with the *Nacionalista Party* and *Abes* rulings in that the electoral tribunals, which hear election protests, are empowered to decide on the issue of annulment of elections. There is, however, one problem—the position being contested by Sanchez involved the mayoral post in the Municipality of San Fernando. Again, the COMELEC's exclusive original jurisdiction under Section 2(2), Article XII-C of the 1973 Constitution was only limited to Members of the then *Batasang Pambansa*, and elective *regional* and *city* officials, not *municipal* officials. In fact, under the 1978 Election Code, it is the courts of first instance (RTC) which have jurisdiction over election contests involving elective municipal officials.[72] How the Court therefore ruled that the COMELEC had power to annul a concluded election involving municipal officials even though it did not exercise exclusive original jurisdiction over such officials is legally astounding.

Finally, another seeming departure by the Court, in *Sanchez*, from its earlier rulings is that it allowed the petition with the COMELEC to push through even though it was not raised as an election protest. To reiterate, *Borromeo* was categorical in holding that annulment of elections is only a remedy that must be raised in an election protest. In *Sanchez*, petitioner's action filed with the COMELEC was actually docketed as a pre-proclamation case, the remedies of which are limited to suspension of the proclamation of the candidate-elect or annulment of the proclamation, not of the election itself.[73]

Three decades later, the Supreme Court would settle with definiteness whether the COMELEC indeed had the power to annul elections, and whether the electoral tribunals likewise possess such authority in line with the rulings laid down in *Nacionalista Party* and *Abes*. In *Abayon v. House of*

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[71] *See* Lazatin v. Desierto, G.R. No. 147097, 588 SCRA 285, 294, June 5, 2009. "The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument." (Citation omitted.)

[72] Pres. Dec. No. 1296 (1978), § 190.

[73] § 175.

Representatives Electoral Tribunal,[74] the Court ruled that the COMELEC has, under the law, the power to declare a failure of elections which is separate and distinct from annulment, and that the electoral tribunals, specifically the HRET, have such power to annul elections.

Harlin Abayon, a contender for the position of Representative of the First Legislative District of Northern Samar during the 2013 elections, argued that the HRET did not have the power to annul elections. Abayon contended that the nullification of the election results was not within the jurisdiction of the HRET. He explained that the annulment of election results on the ground of terrorism is akin to a declaration of failure of elections, which is under the exclusive jurisdiction of the COMELEC *en banc*.[75] The case first sprung from an election protest filed by Raul Daza, who placed second to Abayon in the 2013 elections, and who challenged the validity of the election results in certain identified precincts and praying for the nullification of the same on the grounds of massive fraud, vote-buying, intimidation, employment of illegal and fraudulent devices and schemes before, during, and after the elections, as well as terrorism allegedly committed by Abayon and his unidentified cohorts, agents, and supporters.

The HRET, after considering the evidence adduced by both parties, found merit in the allegations of terrorism and annulled the election results in five clustered precincts in certain municipalities. As a result of nullifying the election results in the said precincts, the HRET deducted the votes received by the parties in the concerned clustered precincts and concluded that Daza obtained the plurality of votes against Abayon, thereby deciding the election protest in Daza's favor and declared him as the winning candidate.

Thus, the Supreme Court ultimately ruled that the HRET possesses the power to annul elections not on the basis of any express provision of the Constitution or statute, but as an implied power derived from the constitutional mandate of the HRET as the "sole judge of all contests relating to the elections, returns and qualifications" of the Members of the House of Representatives.[76]

With the ruling in *Abayon*, the Court thus confirmed, concluding more than 60 years of suspended animation, that annulment of elections is indeed a remedy existing in the Philippines' statute books, as a consequence of an

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[74] [Hereinafter "*Abayon*"], G.R. No. 222236, 791 SCRA 242, May 3, 2016.
[75] *See* Rep. Act No. 7166 (1991), § 4.
[76] CONST. art. VI, § 17.

electoral protest. The decision of the PET in the *Marcos* case would again bolster this idea.

The necessary progeny of this ruling, therefore, is that the courts, electoral tribunals, and the COMELEC, in the exercise of their judicial or quasi-judicial powers to decide election protests, depending on the jurisdiction over the contested office of the protestant, may annul elections when such prayer is raised in the election protest.

B. Difference with Failure of Elections

Elections in the Philippines, in general, are under the broad powers of the COMELEC. This is by virtue of the mandate conferred to it by no less than the Constitution to enforce and administer all laws and regulations relative to the conduct of elections, plebiscites, initiatives, referenda, and recalls.[77] Corollary to this far-reaching power are both the exclusive original and appellate jurisdictions—depending on the elective official concerned—over all contests relating to elections, returns, and such officers' qualifications,[78] as well as the authority to decide all questions affecting elections,[79] and, where appropriate, to prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.[80]

Legislation has also further delineated the functions of the COMELEC and provided it even more specific powers, as now enshrined in the Omnibus Election Code, as amended. This includes the power to postpone elections and to declare a failure of election on specific grounds, as follows:

> If, on account of *force majeure*, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not

[77] Art. IX-C, § 2(1).
[78] Art. IX-C, § 2(2).
[79] Art. IX-C, § 2(3).
[80] Art. IX-C, § 2(6).

> held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.[81]

The above-quoted power to declare failure of election is not new to the COMELEC under the Omnibus Election Code but a reiteration and improvement of a similar provision found in the 1978 Election Code.[82] The law provides stringent requirements before such failure is declared. *First*, it should be based on specific grounds, such as *force majeure*, violence, terrorism, fraud, or other analogous causes. *Second*, it shall be on instances such as (1) when no election is held, (2) when the election is suspended, or (3) when an election is held, but after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect. *Lastly*, in any of such cases, the failure would affect the result of the election.

The overwhelming function of administering all elections in the country as vested by the Constitution makes the COMELEC a constitutional body charged with functions that are, by nature, executive (i.e., to enforce all laws relative to the conduct of elections), quasi-judicial (i.e., to exercise exclusive original jurisdiction over all election contests involving regional, provincial and city officials, and appellate jurisdiction over all election contests involving municipal and barangay officials), and quasi-legislative (i.e., rulemaking power on all election matters).[83] However, when the COMELEC declares a failure of election and calls for the conduct of special elections, the COMELEC is not exercising its quasi-judicial power since it is not adjudicating a controversy defining the rights and duties of certain parties, nor is it exercising its quasi-legislative power since it is not promulgating rules, but it is exercising its administrative power of ascertaining the existence of the grounds for failure of election, and thereafter setting the conduct of new elections.[84]

As compared with failure of elections, annulment of elections is not sourced from administrative power, but is an incident of judicial or quasi-judicial power. As held by the Supreme Court in *Abayon*, the jurisdiction to

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[81] ELECT. CODE, § 6.

[82] Pres. Dec. No. 1296 (1978), § 7.

[83] Mendoza v. Comm'n on Elections, G.R. No. 188308, 603 SCRA 692, 709, Oct. 15, 2009.

[84] Sambrani v. Comm'n on Elections, G.R. No. 160427, 438 SCRA 319, 326, Sept. 15, 2004.

decide contests relating to elections, returns, and qualifications "necessarily includes those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections."[85] This is especially true of the electoral tribunals whose power is "intended to be as complete and unimpaired."[86]

Another distinction provided by the Court in *Abayon* concerns the procedural vehicle by which failure of election and annulment of elections are brought. The former is initiated by the filing of a verified petition before the COMELEC for as long as two conditions are met: (1) no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect; and (2) the votes not cast would have affected the result of the elections, on account of *force majeure*, violence, terrorism, fraud, or other analogous causes.[87] Thus, a petition to declare failure of elections is filed immediately before or after the scheduled elections based on causes provided for by law. On the other hand, there is no independent action to annul elections. As held in *Borromeo*, it is only through an election protest, which is filed after the conduct of the elections and the proclamation of the winning candidate, that an annulment of election may be sought.

Moreover, as to the effects of the two, failure of election relates to the entire election in the concerned precinct or political unit, thus affecting all elective positions up for grabs in the said election, while annulment of election is only limited to the results in the elective position subject of the election protest and to none other.[88] Annulling an election only affects the counting in votes for the purpose of ascertaining the true winner in an election.[89]

Thus, the variances between failure of election and annulment of elections may be summarized as follows:

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[85] *Abayon*, 791 SCRA 242, 258.

[86] Locsin v. H. Electoral Tribunal, G.R. No. 204123, 693 SCRA 635, 642, Mar. 19, 2013, *citing* Lazatin v. H. Electoral Tribunal, G.R. No. 84297, 168 SCRA 391, Dec. 8, 1988.

[87] Dibaratun v. Comm'n on Elections, G.R. No. 170365, 611 SCRA 367, 374, Feb. 2, 2010.

[88] *Abayon*, 791 SCRA 242, 262.

[89] *Id.*

TABLE 2. Summary of Variances Between Failure of Elections and Annulment of Elections

	Failure of election	Annulment of elections
Grounds	*Force majeure*, violence, terrorism, fraud, or other analogous causes[90]	Fraud, terrorism or other electoral irregularities existed to warrant the annulment[91]
Nature	Administrative	Judicial/quasi-judicial
Exercised by	COMELEC in the exercise of administrative function	Electoral tribunals, courts, or the COMELEC in the exercise of quasi-judicial function
How initiated	Filing a verified petition with the COMELEC	Filing an election protest
Effect of grant	Continue interrupted elections or conduct a new one	Votes in the annulled elections shall not be counted

C. Filing Rules

Since annulment of elections is a remedy in an election protest, the procedural requirements in filing a protest must first be met, as failure to comply with the form and substance required of the same is cause for its summary dismissal.[92]

Under Section 10, Rule 2 of the 2010 Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials,[93] an election protest must contain the following:

1. The position involved;

2. The date of proclamation;

3. The number of votes credited to the parties per the proclamation;

[90] ELECT. CODE, § 6.

[91] *Abayon*, 791 SCRA 242, 258.

[92] MUN. OFF. ELECT. CONTESTS RULE, Rule 2, § 12; Comm'n on Elections Res. No. 8804 (2010), Rule 6, § 9; HRET RULES, Rule 23; SET RULES, Rule 23; PET RULES, Rule 21.

[93] MUN. OFF. ELECT. CONTESTS RULE, Rule 2, § 10.

4. That the protestant was a candidate who had duly filed a certificate of candidacy and had been voted for the same office;

5. The total number of precincts in the municipality;

6. The protested precincts and votes of the parties in the protested precincts per the Statement of Votes by Precinct or, if the votes of the parties are not specified, an explanation why the votes are not specified; and

7. A detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts.

Section 7, Rule 6 of COMELEC Resolution No. 8804 or the COMELEC Rules of Procedure on Disputes in an Automated Election System provides that an election protest shall specifically state the following:

1. The position involved;

2. That the protestant was a candidate who has duly filed a certificate of candidacy and has been voted for the same office;

3. The date of proclamation;

4. The number of votes credited to the parties per proclamation;

5. The total number of precincts of the region, province, or city concerned;

6. The protested precincts and votes of the parties in the protested precincts per the Statement of Votes by Precinct or, if the votes of the parties are not specified an explanation why the votes are not specified; and

7. A detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts.

An election protest, over which the trial courts or the COMELEC has jurisdiction, may be filed by any of the losing candidates in the contested position within 10 days after the proclamation of the results of the election.[94]

The electoral tribunals, however, provide for their own rules on how election protests are filed. In the HRET, an election protest may only be filed by the candidates who obtained the second or third highest number of votes within a non-extendible period of 15 days from June 30 of the election year, if the winning candidate was proclaimed on or before the said date, but if the winning candidate was proclaimed after June 30 of the election year, the protest shall be filed within a non-extendible period of 15 days from the date of proclamation.[95] The election protest shall state:

1. The date of proclamation of the winner and the number of votes obtained by the parties per proclamation;

2. The total number of contested individual and clustered precincts per municipality or city;

3. The individual and clustered precinct numbers and location of the contested precincts;

4. The specific acts or omissions complained of constituting the electoral frauds, anomalies, or irregularities in the contested precincts; and

5. A statement as to whether or not there is a need for a revision of ballots.[96]

In the SET, an election protest may be filed by any candidate for senator within a non-extendible period of 30 days after assumption of office of the protestee.[97] It shall state the following:

1. The position involved;

2. The number of votes credited to the parties per the proclamation;

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[94] ELECT. CODE, §§ 250–52.
[95] HRET RULES, Rules 17, 21.
[96] Rule 17.
[97] SET RULES, Rules 17, 19.

3. The ranking of the parties per *COMELEC Senatorial Canvass Report by Rank*;

4. The date of assumption of office of the protestee;

5. The total number of contested clustered precincts per city or municipality;

6. The precinct numbers and locations of the contested clustered precincts in accordance with the *COMELEC Project of Precincts*; and

7. The specific acts or omissions constituting the electoral fraud, anomaly, or irregularity in the contested precincts.[98]

Finally, in the PET, an election protest may only be filed by the candidate for President or Vice-President who received the second or third highest number of votes within a non-extendible period of 30 days after the proclamation of the winner.[99] The election protest shall state the following:

1. The position involved;

2. The date of proclamation;

3. The number of votes credited to the parties per the proclamation;

4. That the protestant was a candidate who had duly filed a certificate of candidacy and had been voted for the same office;

5. The total number of precincts of the region, province, or city concerned;

6. The protested precincts and votes of the parties to the protest in such precincts per the Statement of Votes By Precinct or, if the votes of the parties are not specified, an explanation why the votes are not specified; and

[98] Rule 20.
[99] PET RULES, Rules 15, 18.

7. A detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies, or irregularities in the protested precincts.[100]

Common in all of these rules is the requirement for the protest to provide with specificity the acts or omissions showing the frauds, anomalies, or irregularities in the election. As ruled by the PET in *Marcos*, a protest must provide a detailed specification of the acts or omissions constituting frauds, anomalies, or irregularities.[101] The PET observed that this is not a rule required only by the same tribunal, but by others as well such as the lower courts, COMELEC, HRET, and SET.[102] The purpose of particularity or specificity in stipulating the circumstances of frauds, anomalies, or irregularities in the conduct of the elections serves to deter fishing expeditions by losing candidates who request to revise ballots and in the process discover, by chance, irregularities in the election, and to screen protests before proceeding with the cumbersome and expensive procedure of revision, recount, and appreciation of ballots.[103] Failure of the protestant to comply with the specificity requirement is a ground to declare the protest insufficient in form and substance, which is cause for its summary dismissal.[104]

An election protest usually contains, as one of the reliefs being prayed for, a request for the revision and recount of the ballots to determine the true will and intent of the voters. As held by the PET, the primary objective of the revision proceedings is to "conduct a physical recount of the ballots and provide the parties with an opportunity to register their objections and claims thereon, the validity of which will later be ruled upon by the [court or] [t]ribunal during the appreciation stage."[105] After revision, the ballots shall be appreciated, which means that the court or tribunal "validates and verifies the physical count of the ballots during the revision stage and rules on the parties' respective claims and objections thereon."[106] Based on the appreciation of ballots by the court or tribunal, a decision may then be rendered determining who between the parties garnered the plurality of votes, and who is entitled to the office.

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[100] Rule 17.

[101] [Hereinafter "*Marcos Decision*"], PET Case No. 005 (dec.), Feb. 16, 2021, at 30–35. This pinpoint citation refers to a copy of the decision uploaded on the Supreme Court website.

[102] *Id.* at 27–30.

[103] *Id.* at 30–31.

[104] *Id.* at 31.

[105] *Marcos Resolution*, at 30.

[106] *Id.* at 39.

However, before there can be a revision or recount of all ballots in a contested election, there is a need for the identification by the protestant of a number of "pilot precincts" or "pilot provinces" where revision of ballots shall initially be conducted.[107] The purpose of the initial determination through the revision in the pilot areas is to "weed out protests that have no basis, most especially for a protest involving a national position."[108] It is the protestant who identifies the pilot areas for revision to best exemplify to the court or tribunal's satisfaction that there were indeed circumstances of frauds, irregularities, and anomalies in the conduct of the election; hence, the identification of the pilot areas is the protestant's "own legal gamble."[109] Probable failure to make out the protestant's case after revision of ballots in the pilot areas is cause for dismissal of the protest without further consideration of the other areas being contested. Thus, the identification of pilot areas is an important "litmus test" of the allegations in election protests.[110]

As shown in the *Marcos* case, however, a protestant's prayer for the annulment of elections is covered by the initial determination of the court or tribunal of whether the protestant was able to make out a case based on his or her pilot areas. In the identification of the precincts the election therein is being prayed to be annulled, the protestant is still bound to follow the "pilot testing" rule.[111] If a protestant is convinced that the areas chosen best exemplify the frauds or irregularities that occurred during the election, then he or she should have identified them as the pilot areas where the elections conducted therein should be annulled, and the evidence, documentary, testimonial or otherwise, should be presented based on the identified pilot areas. A protestant is not permitted to cherry-pick which areas are to be subject of revision and recount, and other areas subject to annulment of elections. If indeed the ground is so grave that the elections should be annulled, then there is minimal reason why revision and recount of the ballots are needed when the majority of such ballots are tainted with irregularities and anomalies.

Thus, an election protest that contains a prayer for the annulment of elections is also covered by the "pilot testing" rule so that the protest may show, at the onset, that it can make out a case on why the extreme remedy of annulment is to be granted. However, the contours of how a court or tribunal

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[107] MUN. OFF. ELECT. CONTESTS RULE, Rule 10, §§ 10–11; COMELEC Res. 9720 (2013), § 6; HRET RULES, Rule 40; SET RULES, Rule 82; PET RULES, Rule 65.

[108] *Marcos Resolution*, at 6 (Caguioa, *J., dissenting*).

[109] *Id.*

[110] *Marcos Decision*, at 46.

[111] *Id.* at 49.

is authorized to exercise such power is limited not only by the formal and substantive requirements of the rules but also by jurisprudence.

D. Grounds for Invocation

As discussed, the grounds for declaration of failure of elections are provided for in Section 6 of the Omnibus Election Code. Annulment of elections, however, is not provided for in any statute; it is only implied in exercise of judicial or quasi-judicial power as held in *Abayon*. Thus, it is jurisprudence that provides for the grounds for annulment of elections.

Abayon provides that annulment of elections is warranted when there is "fraud, terrorism or other electoral irregularities."[112] A cursory reading of these grounds show that, unlike in failure of election, *force majeure* is not a ground for annulment of elections. *Force majeure*, or a fortuitous event, may either be an "act of God," i.e., natural occurrences such as floods, earthquakes, volcanic eruptions or typhoons, or an "act of man," i.e., riots, strikes or wars.[113] This is readily so because such events do not affect the results of an election but rather the conduct of the election itself, and they do not occur for the benefit of a certain candidate unlike acts of fraud or terrorism.

The Omnibus Election Code does not provide for a definition of *fraud* in relation to elections. Generally, fraud is:

> [T]he voluntary execution of a wrongful act or a wilful omission, while knowing and intending the effects that naturally and necessarily arise from that act or omission. In its general sense, fraud is deemed to comprise anything calculated to deceive—including all acts and omission[s] and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed—resulting in damage to or in undue advantage over another. Fraud is also described as embracing all multifarious means that human ingenuity can device, and is resorted to for the purpose of securing an advantage over another by false suggestions or by suppression of truth; and it includes all surprise, trick, cunning, dissembling, and any other unfair way by which another is cheated.[114]

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[112] *Abayon*, 791 SCRA 242, 259.

[113] Phil. Comm'cs Satellite Corp. v. Globe Telecom, Inc., G.R. No. 147324, 429 SCRA 153, 163, May 25, 2004.

[114] Tsuneishi Heavy Indus. (Cebu), Inc. v. MIS Maritime Corp., G.R. No. 193572, 860 SCRA 259, 278, Apr. 4, 2018, *citing* Republic v. Mega Pacific eSolutions, G.R. No. 184666, 784 SCRA 414, June 27, 2016.

As succinctly stated by the Supreme Court, the fraud contemplated must be the kind of fraud that "must prevent or suspend the holding of an election, or mar fatally the preparation, transmission, custody and canvass of the election returns."[115] Prior to the automation of elections in 2010, fraud in elections came in the usual forms of ballot stuffing, miscounting of votes in polling places, and mis-tabulation of votes by the board of canvassers[116] or what is colloquially called "*dagdag-bawas,*" a form of vote-padding and vote-shedding to favor a candidate.[117] However, since the automation of elections, vote-buying and vote-selling, which are themselves prohibited acts under the Omnibus Election Code,[118] have become a massive go-to cheating technique of perpetrators of cheating in elections.[119]

Although terrorism has a technical definition under the Anti-Terrorism Act of 2020,[120] terrorism in relation to annulment of elections is a different concept altogether. For terrorism in elections to exist, it is not necessary to meet the requirements under the Anti-Terrorism Act, but the acts constituting terrorism must be committed for the purpose of "destroy[ing] the integrity of election returns"[121] which may "defeat the will of the majority"[122] and "undermine the foundation of our democracy."[123]

As to failure of elections, the Supreme Court held that the conditions for its declaration are "stringent[,] [o]therwise elections will never be over for the losing candidates who will cry fraud and terrorism."[124] The same must hold true for annulment of elections, as the specific grounds for its invocation

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[115] Pasandalan v. Comm'n on Elections, G.R. No. 150312, 384 SCRA 695, 702, July 18, 2002.

[116] Benjamin Crost, Joseph Felter, Hani Mansour, & Daniel Rees, Election Fraud and Post-Election Conflict: Evidence from the Philippines, 3–42 (June 2013) (unpublished discussion paper), *available at* http://ftp.iza.org/dp7469.pdf

[117] *Id. See* Alejandro v. Comm'n on Elections, G.R. No. 167101, 481 SCRA 427, 432, Jan. 31, 2006.

[118] ELECT. CODE, § 261(a).

[119] Gilbert P. Felongco, *Philippine elections: Allegations of fraud, widespread vote buying emerge*, GULF NEWS, May 12, 2019, *at* https://gulfnews.com/world/asia/philippines/philippine-elections-allegations-of-fraud-widespread-vote-buying-emerge-1.63897798

[120] Rep. Act No. 11479 (2020). The Anti-Terrorism Act of 2020.

[121] Sinsuat v. Pendatun, G.R. No. 31501, 33 SCRA 630, 705, June 30, 1970 (Barredo, *J., dissenting*), *citing* Pacis v. Comm'n on Elections, G.R. No. 29026, 25 SCRA 377, Sept. 28, 1968. (Citations omitted.)

[122] *Id.*

[123] *Id.*

[124] Pasandalan v. Comm'n on Elections, G.R. No. 150312, 384 SCRA 695, 702, July 18, 2002.

should be strictly complied with since the effect of such annulment is a total invalidation of votes in a certain precinct or local government unit (LGU).

E. Evidentiary Threshold

To prove the existence of "fraud, terrorism or other election irregularities to warrant the annulment of elections,"[125] the Supreme Court in *Abayon* ruled that an election protest must establish such fact with "clear and convincing" evidence.[126] "Clear and convincing" evidence is less than proof beyond reasonable doubt (for criminal cases) but greater than preponderance of evidence (for civil cases)."[127] This degree of proof required in annulment of election cases is understandable considering not just the gravity of the allegations being set forth in the protest, i.e., fraud, terrorism, which by themselves are violations of the law, but as well as the pervasiveness of the effect of annulment that goes into the heart of the country's democratic system.

The high degree of proof required in annulment of election cases is further operationalized by the strict standards set by the Court in *Abayon*, which was adopted from the dissent of then-Associate Justice Diosdado M. Peralta in the original HRET case.[128] As the Court held, two requisites must be met to warrant the annulment of elections, *viz.*:

> (1) The illegality of the ballots must affect more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein; and
> (2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots.[129]

The Court in *Marcos* highlighted a third requisite in addition to the above enumeration in *Abayon*, i.e., it must be proven that the protestee is the one responsible for the unlawful acts complained of.[130]

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[125] *Abayon*, 791 SCRA 242, 259.

[126] *Id.* at 263.

[127] Riguer v. Mateo, G.R. No. 222538, 828 SCRA 109, 119, June 21, 2017, *citing* Tankeh v. Dev. Bank of the Phil., G.R. No. 171428, 709 SCRA 19, Nov. 11, 2013.

[128] Daza v. Abayon, HRET Case No. 13-023 (dec.), Feb. 3, 2016, at 17 (Peralta, *J.*, *dissenting*). This pinpoint citation refers to a copy of the decision uploaded on the House of Representatives Electoral Tribunal Website.

[129] *Abayon*, 791 SCRA at 264.

[130] *Id.* at 267; *Marcos Decision*, at 86. (Citations omitted.)

Practically speaking, the threshold provided by the Court in *Abayon* is a steep hill to climb. First, the protestant has the burden to prove that majority of the votes cast in a certain precinct or LGU was tainted by any of the grounds for annulment, i.e., that such votes were procured through fraud, terrorism, or other analogous causes. Thus, for example, in a municipality where there are 10,000 votes cast, the protestant must prove that at least 5,001 of said votes were tainted by fraud, terrorism, or other irregularities to warrant the annulment of all 10,000 votes. There is no hard and fast rule on how this is proved. Jurisprudence has, however, provided for some guidelines, as follows:

1. Mere affidavits are insufficient to prove fraud, terrorism, or other irregularities, more so when all the affidavits were executed by the protestant's own poll watchers;[131]

2. Testimonies of a "minute portion" of the registered voters in the affected precincts is insufficient;[132]

3. Testimonies must be specific as to the details of the fraud, terrorism or other irregularities committed during the election;[133]

4. Credence is given to statements made by the deputized officers of the COMELEC, such as the Philippine National Police or the Armed Forces of the Philippines, stating that the elections were generally peaceful and orderly; and[134]

5. Respect is likewise given to decisions made by the COMELEC with regard to failure of elections in the areas whose elections are sought to be annulled.[135]

With regard to the second requirement, it must be proved by the protestant that there is physical impossibility of segregating the unlawful votes, or those votes tainted by fraud, terrorism, or irregularity, from the lawful ones. This is so because if it is possible to segregate such unlawful votes, then the court or tribunal can annul only those votes found to be unlawful, and let the lawful votes be counted. The court or tribunal can still respect the

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[131] Pasandalan v. Comm'n on Elections, G.R. No. 150312, 384 SCRA 695, 703, July 18, 2002.

[132] *Abayon*, 791 SCRA at 268.

[133] *Marcos Decision*, at 75.

[134] *Abayon,* 791 SCRA at 267–68.

[135] *Marcos Decision*, at 64–66.

choice of the electorate whose votes are considered valid. The impossibility of distinguishing the unlawful votes from the lawful ones attests to the pervasiveness of the fraud, terrorism, or irregularity perpetrated by the protestee resulting in the majority of the votes being tainted, which is a reasonable basis for the court or tribunal to postulate that the entire election that was conducted was a farce, and therefore should be annulled. This requirement is likewise similar in failure of election where the Supreme Court stated that:

> The power to declare a failure of elections should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the law has been so fundamental or so persistent and continuous that *it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever*; or that the great body of voters have been prevented by violence, intimidation and threats from exercising their franchise.[136]

Annulment of elections is the last and final step to be taken in an election protest. "[T]he power to annul an election should be exercised […] only in extreme cases of fraud and under circumstances which demonstrate to the fullest degree a fundamental and wanton disregard of the law that elections are annulled, and then only when it becomes impossible to take any other step."[137] The Supreme Court ruled that annulment of election is only warranted in exceptional circumstances. It is not a remedy to be taken lightly by any party, nor is it a convenient course of action for the courts and tribunals to take in deciding election protests. That exceptional circumstance is reinforced by the high evidentiary standard to be used, i.e., clear and convincing evidence, and operationalized by the "50%+1" test as formulated by Former Chief Justice Peralta in *Abayon* and applied in *Marcos*.

IV. CONSEQUENCES OF ANNULMENT

Abayon and *Marcos* are two landmark cases that have definitely put *finis* on the issue on whether the courts and tribunals are empowered to annul elections as an incident to their judicial or quasi-judicial power. Such is a remedy existing in the Philippines' electoral statute books. However, even with such recognition, questions still abound on its lingering effects on the overall democratic system.

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[136] Batabor v. Comm'n on Elections, G.R. No. 160428, 434 SCRA 630, 631, July 21, 2004. (Emphasis supplied.)

[137] Peña v. H. Electoral Tribunal, G.R. No. 123037, 270 SCRA 340, 349, Mar. 21, 1997.

A. Effect on Other Positions in the Ballot

Abayon stated that annulment of elections, compared to a declaration of failure of elections, affects only the position being contested.[138] Thus, only the votes in the precinct or LGU affected by the fraud, terrorism, or other irregularity committed by the protestee shall be invalidated. However, this scenario practically puts the *entire* election conducted in the affected precinct or LGU in doubt and affects the legitimacy of other officials elected from the same ballot as the candidate whose election was annulled.

For example, in Province X composed of Municipalities A, B, and C, an election protest was filed by Juan against Pedro, who was proclaimed winner in the election for Member of the House of Representatives representing the whole province constituting as a lone legislative district. In the protest, Juan alleged that Pedro committed acts of fraud, terrorism, and other irregularities in Municipality A, ultimately praying that the elections in said locality be annulled. The HRET found the protest sufficient in form and substance, and Juan was able to meet the evidentiary threshold required for annulment. Thus, the HRET declared the elections in Municipality A null and void. This decision by the HRET was appealed by Pedro before the Supreme Court, which found the annulment proper. With the elections in Municipality A annulled, the margin of victory shifted, and Juan was declared the winner.

Under the law,[139] elections for national and local positions are synchronized every three years, meaning that the elections are to be held exactly on the same day, time, and manner, and the votes of the electorate are contained in one and the same ballot.[140] Moreover, under the automated election system implemented in the country, the official ballot used in the elections is prescribed by the COMELEC.[141] Since the 2010 elections when the first nationwide automated elections were held, the official ballot has practically remained the same for use in the same vote-counting machines sourced from the same firm, and where the various positions are included in one or two pages of the same ballot.[142]

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[138] *Abayon*, 791 SCRA at 262.

[139] Rep. Act No. 7166 (1991). An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

[140] § 2.

[141] Rep. Act No. 8436 (1997), *amended by* Rep. Act No. 9369 (2007), § 15. An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor, and for Other Purposes.

[142] For a history of the Philippines' automated election system, *see* Pabillo v. Comm'n on Elections, G.R. No. 216098, 756 SCRA 606, Apr. 21, 2015.

In the example, the elections in Municipality A were validly annulled by the HRET. However, the decision was only limited to the position of congressperson. Even if there was proof that there was widespread fraud, terrorism, or other irregularities in the conduct of elections in Municipality A, such finding did not affect the other officials who were elected in the same ballot as Pedro. Basically, the mayor, vice-mayor, and members of the *Sangguniang Bayan* of Municipality A, as well as the votes for president, vice-president, senator, party-list, governor, vice governor, and members of the *Sangguniang Panlalawigan*[143] all coming from Municipality A were left untouched. This is the incongruity posed by annulment of elections. Imagine having municipal officials whose elections were declared void by a court or tribunal because there was a finding of massive fraud, terrorism, or other irregularity but such officials get to stay in their positions because of the mere fact that the election protest did not cover them.

Unlike in failure of election where the entire election is merely moved to a later date as fixed by the COMELEC and which affects all the positions in the said election, annulment of elections is limited only to the position subject of the election protest. A declaration of failure of election affords another opportunity for the people to exercise their franchise, but annulment of elections does not. Thus, even if the HRET finds and the Supreme Court subsequently affirms, that there was widespread fraud, terrorism, or other irregularities in the conduct of elections in Municipality A, the other elective officials, particularly those municipal officials who were elected on the same ballot, would remain in office as if their election was valid and proper.

It is understandable that the HRET's jurisdiction, especially as shown in the example, is limited to the election and returns concerning the position of congressperson. This jurisdictional limitation poses an absurd effect in the overall democratic framework in the country. By the constitutional and statutory prescriptions on subject matter jurisdiction, a court or tribunal may only annul the elections concerning the questioned position in an electoral protest and may not cover all other positions. Thus, as was shown in the example and as stated in *Abayon*, when the HRET annuls an election as prayed for in a protest, it can only invalidate the votes with respect to a congressperson, and not all positions subject of the annulled election.

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[143] *See* LOCAL GOV'T CODE, § 41.

B. Probability of Inconsistent Decisions Between the COMELEC and the Court or Tribunal Hearing the Protest

To further illustrate the absurdity posed by the effect of annulment being only limited to the contested positions under the jurisdiction of the HRET, suppose following the previous example, Maria and Pablo were both mayoral candidates of Municipality A. Before proclamation of winners, Maria sought for the declaration of failure of election in the subject municipality alleging the same acts of fraud, terrorism, and other irregularities committed by Pedro who belongs to the same political party as Pablo, the other mayoral candidate. A verified petition for declaration of failure of election was filed before the COMELEC alleging specific acts of fraud and terrorism during the preparation, transmission, and canvass of the election returns. After investigation and conduct of technical examination of election documents to determine the veracity of the allegations, the COMELEC, sitting *en banc*,[144] dismissed the petition, finding no clear showing that the alleged acts of fraud and terrorism resulted in a failure to elect. Succinctly put, the COMELEC arrived at a different decision from that of the HRET.

Here created is a situation where two bodies exercising distinct functions—one administrative, and the other judicial—and vested with different jurisdictions—one with respect to the elections, returns and qualifications of members of the House of Representatives, and the other with respect to the conduct of the entire elections in the subject municipality—deciding differently upon the same set of facts.

While this inconsistency may possibly be resolved by the Supreme Court as both the COMELEC's decision on petitions for declaration of failure of election, in the exercise of its administrative power, and the HRET's decision annulling elections can be brought before it, it can only be done so on *certiorari*, meaning, the questions to be raised may not necessarily be factual, but only when there is grave abuse of discretion amounting to lack or excess of jurisdiction.[145]

On one hand, the Supreme Court recognizes the propriety of declaration of failure of election as a factual issue which it will not usually delve into considering that "the COMELEC, through its deputized officials

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[144] Rep. Act No. 7166 (1991), § 4.

[145] CONST. art. IX-A, § 7. *See* Fontanilla v. Comm'n on Audit, G.R. No. 209714, June 21, 2016. *See also* RULES OF COURT, Rule 64.

in the field, is in the best position to assess the actual conditions prevailing in that area."[146] As the Court held in an old but still relevant case:

> The [COMELEC], because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions.[147]

On the other hand, it also recognizes the HRET's independence and exclusive jurisdiction.[148] However, both are not without limits as the Court may determine whether or not there is grave abuse of discretion through the exercise of its power of judicial review.[149]

Though in *Abayon* and *Marcos*, the Court has taken into consideration the findings of the COMELEC that there was no declared failure of elections in the precincts in question, such findings were merely *suggestive* and not *conclusive* that fraud, terrorism, or irregularities were committed. Further, in *Marcos*, the PET mentioned that it accords respect to COMELEC rulings which have attained finality.[150] Still, absent any showing of grave abuse of discretion upon the decisions of the COMELEC and the HRET in the example, the Court may not disturb their findings at all. This risks the possibility of two differing findings upon the same ballot.

Recall also that one of the grounds for seeking a declaration of failure of election is on account of *force majeure*. It is worthy to note that this is not one of the grounds laid down by *Abayon* for which annulment of election is warranted.[151] This distinction results in the obverse of the previous example because in this case, while the COMELEC declares a failure of election in the subject precinct or LGU on account of *force majeure* thereby nullifying the votes for positions under its jurisdiction and calling for special elections for the same, the votes for the positions under the exclusive jurisdiction of the electoral tribunals shall remain valid and untouched. There is also no cause for annulment of election to be sought before such tribunals as *force majeure* is not a ground either by law or jurisprudence for its invocation.

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[146] Benito v. Comm'n on Elections, G.R. No. 134913, 349 SCRA 705, 718–19, Jan. 19, 2001, *citing* Pangandaman v. Comm' on Elections, G.R. No. 134340, 319 SCRA 283, Nov. 25, 1999.

[147] Sumulong v. Comm'n on Elections, 73 Phil. 288, 295 (1941).

[148] Tagolino v. H. Electoral Tribunal, G.R. No. 202202, 693 SCRA 574, 602, Mar. 19, 2013.

[149] *Id.* at 602–03.

[150] *Marcos Decision*, at 66.

[151] *Abayon*, 791 SCRA 242, 259.

This inconsistency is further highlighted by the requisite holding of a special election relative to the COMELEC's declaration of failure of elections.[152] Since the votes under the courts' or electoral tribunals' jurisdiction remain valid absent the annulment of said elections, such positions shall not anymore be included in the ballots for the special elections. This is despite the fact that the votes cast for all positions in the previous elections declared to be a failure were upon the same ballot and the same circumstances tainted with *force majeure*, violence, terrorism, fraud, or other analogous causes.

C. Disenfranchisement of Lawful Votes

Another issue with annulment of elections is its practical effect in disenfranchising voters. Remember that under *Abayon*, the evidentiary threshold is that "50%+1" of the votes should be tainted by fraud, terrorism, or other irregularities, and that there is impossibility in distinguishing with reasonable certainty the lawful from unlawful votes.

Now suppose in the same example, there are 1,000 total votes cast for Member of the House of Representatives in Municipality A. Juan, in his election protest against Pedro, must be able to prove that "50%+1" of the 1,000 votes were tainted with fraud, terrorism, or other irregularity. Juan does not need to prove that all 1,000 votes were cast illegally, but only 501 votes.

The burden of proof in election contests rests with the party who asserts the particular claim or defense.[153] The protestant carries that burden to prove the existence of fraud, terrorism, or irregularity that tainted the election. It must be noted, however, that Section 211 of the Omnibus Election Code states that, "[E]very ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection." Thus, in the example, the remaining 499 votes that were untainted by fraud, terrorism, or irregularity are presumed to be valid and lawful.

Now, when annulment of elections is decreed, the total votes in the precinct or LGU is invalidated. In the example, since 501 votes were tainted, the total of 1,000 votes shall be thrown out, including the 499 votes still presumed valid. Thus, annulment of elections does not merely affect the unlawful votes, but also takes as collateral damage the votes still presumed to be valid and lawful. This, in turn, leads to the disenfranchisement of the minority of voters in the municipality.

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[152] ELECT. CODE, § 6.

[153] MUN. OFF. ELECT. CONTESTS RULE, Rule 13, § 5.

If it was a failure of election that was declared by the COMELEC instead, then the electorate would have another chance to cast their ballots again, avoiding the wholesale disenfranchisement of all 1,000 voters. The will of the people may again be manifested in an election that shall be conducted in conformity of the law. That is not the case with annulment of elections.

D. Special Election as an Equitable Remedy

Section 6 of the Omnibus Election Code explicitly provides the holding or the continuation of the disrupted election when there is a declared failure of election. This, in essence, provides another opportunity for the people to cast their votes without the cloud of fraud, terrorism, or other anomalies. As ruled by the Supreme Court in *Abayon*, annulment of elections invalidates all the votes only in the concerned precinct or political unit. Thus the Court posed this question in the *Marcos* case:[154] is it necessary to call for special elections when annulment of elections is found to be proper?

Whether or not the courts and tribunals are empowered to call for special elections addresses the issue of disenfranchisement of voters. Giving the voters another chance to select their public officials would bode well in the overall democratic framework, instead of merely invalidating all the votes cast in a particular precinct or LGU. For one, these voters are merely victims of the fraud, terrorism and irregularities perpetrated by nefarious candidates. To invalidate votes without the fault of the electorate serves as a punishment to innocent voters, and an incentive for candidates to resort to illegal acts to taint the elections in precincts or LGUs not considered as bailiwick or *baluarte* of such candidates.[155]

As discussed, annulment of elections is an incident of the judicial or quasi-judicial power of the courts and tribunals. It is not statutory in nature as no provision of law explicitly mandates it, but is sourced from the constitutional prescription on subject matter jurisdiction of the courts and tribunals as the "sole judge of all contests relating to the election, returns and qualifications"[156] of the official concerned. So, does the absence of a positive provision of law preclude the courts and tribunals to call for a special election?

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[154] *Marcos Resolution*, at 55.

[155] In the so-called bailiwick or *baluarte* of candidates, "command votes" or the block of votes "gathered and delivered through traditional networks such as political machines" deliver the margin of victory for the dominant candidate in the said bailiwick or *baluarte*. Mark R. Thompson, *Populism and the Revival of Reform: Competing Political Narratives in the Philippines*, 32 CONTEMP. SE. ASIA 1, 5 (2010).

[156] CONST. art. VI, § 17.

The *calling* of an election, whether general or special, is an indispensable element of the validity of such election.[157] The call for an election is different from the holding of the election itself. The call acts as the notice to the public of the time and place of the upcoming election,[158] while the holding of the election includes the voting proper, which is under the purview of the COMELEC.[159] The call can be "made by the legislature directly or by the body with the duty to give such call[.]"[160] Thus, when the law provides for the automatic calling of a special election in case of vacancy in the office of Senator or Member of the House of Representatives, such as Republic Act No. 6645,[161] this is a call provided by the legislature itself, and the law "charges voters with knowledge and place of the election."[162] Thus, it can be said that if there is a positive provision in the law that empowers the courts and tribunals to order for a special election when annulment is deemed proper, then such acts as the call necessary to conduct new elections.

But as the Supreme Court ruled, special elections may still be held if it is called by a "body with the duty to give such call."[163] And it may be argued that the courts and tribunals are included in this classification.

Article 9 of the Civil Code provides that "No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws." This is the basis of the *equity jurisdiction* of the courts, which "aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction."[164] As the Court recognized in a previous case:

> [E]ven the legislator himself, through Article 9 of the New Civil Code, recognizes that in certain instances, the court, in the language of Justice Holmes, "do and must legislate" to fill in the gaps in the law; because the mind of the legislator, like all human beings, is finite and therefore cannot envisage all possible cases to which the

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[157] Tolentino v. Comm'n on Elections [hereinafter "*Tolentino*"], G.R. No. 148334, 420 SCRA 438, 456–57, Jan. 21, 2004.

[158] *Id.*

[159] CONST. art. IX-C, § 2(1).

[160] *Tolentino*, 420 SCRA at 456.

[161] Rep. Act No. 6645 (1987). An Act Prescribing the Manner of Filling a Vacancy in the Congress of the Philippines.

[162] *Tolentino*, 420 SCRA at 457.

[163] *Id.* at 456.

[164] Reyes v. Lim, G.R. No. 134241, 408 SCRA 560, 566–67, Aug. 11, 2003.

> law may apply. Nor has the human mind the infinite capacity to anticipate all situations.[165]

Thus, when the law is silent as to a certain matter, such silence shall not preclude the court or tribunal from rendering judgment based on the principles of logic, fairness, and substantial justice.

In the United States, elections for both state and federal public officers are governed by state law, but for federal officers, there may be limited exceptions for which federal law may apply.[166] The Elections Clause of the U.S. Constitution provides that "the [t]imes, [p]laces and [m]anner of holding [e]lections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by [l]aw make or alter such [r]egulations, except as to the [p]laces of ch[oo]sing Senators."[167] The U.S. Supreme Court has ruled that states, through their respective legislatures, are empowered to "provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns[.]"[168] Thus, for the most part, congressional elections in the United States vary per state, as each legislature thereof is given broad authority on how to conduct its own elections.

Yet even with the holding of elections devolved upon the states, this did not prevent the federal courts from ruling on state elections even if no federal or state law is involved. In cases such as *Hamer v. Campbell*[169] and *McGill v. Ryals*,[170] the federal courts sourced their authority to invalidate state elections from the broad equitable powers granted to the courts. Even in the controversial case of *Bush v. Gore*,[171] the Federal Supreme Court delved into a statewide recount of votes in the presidential elections and ruled the matter based primarily on the Equal Protection Clause[172] of the U.S. Constitution, and not on any federal or state-sanctioned standard in recount cases as provided for in any statute.

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[165] Floresca v. Philex Mining Corp., G.R. No. 30642, 136 SCRA 141, 167, Apr. 30, 1985.

[166] Franita Tolson, *The Elections Clause and the Underenforcement of Federal Law*, 129 YALE L.J. FORUM 171, 174–75 (2019).

[167] U.S. CONST. art. I, § 4, cl. 1.

[168] Smiley v. Holm, 285 U.S. 355, 366 (1932).

[169] 358 F.2d 215 (5th Cir. 1966).

[170] 253 F. Supp. 374 (M.D. Ala. 1966).

[171] 531 U.S. 98 (2000).

[172] U.S. CONST. amend. XIV, § 1.

Courts in the United States have wrestled with the question of whether they have authority to call for new elections.[173] Some courts have found them to be a proper remedy instead of only annulling an election. In the case of *Rogers v. Holder*,[174] the Supreme Court of Mississippi ruled:

> If either (1) enough illegal votes were cast for the contestee to change the election result or (2) the amount of votes disqualified is substantial enough that it is impossible to discern the will of the voters, a special election is required. […] Otherwise, only the tainted votes are rendered void and the outcome of the election is determined by the legal votes cast.[175]

Observe that the disquisition in the said case is similar to the formulation of the evidentiary threshold needed in annulment of elections as stated in *Abayon*, yet the conclusion reached is different: a special election is needed to correct the tainted election. In another case decided by a state supreme court, it was held that the purpose of conducting a special election is:

> [T]o safeguard the purity of elections by sending the matter back to the people whenever so many illegal votes have been cast that their deduction from the winning side would affect the result, so that upon a new election it may be determined with certainty which candidate, or which side of the question, has received the greatest number of unquestionable votes.[176]

Then, in the case of *Gunaji v. Macias*,[177] decided by the Supreme Court of New Mexico, it was ruled that election laws do not provide for an exclusive list of remedies with regard to election contests, and the courts may fashion the applicable remedy that would sufficiently address the issue at hand. In line with this principle, it was earlier held by the Supreme Court of North Dakota that:

> [E]xperience tells us that neither a statute, rule, nor regulation can pragmatically cover every situation that may arise, and as a result the official body required to act or make a decision or fashion a remedy must fill the interstices in accordance with those legal concepts, principles, or objectives which may apply to the situation

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[173] Huefner, *supra* note 50, at 283.

[174] 636 So. 2d 645 (Miss. 1994).

[175] *Id.* at 647. (Citations omitted.)

[176] Creamer v. City of Anderson, 124 S.E.2d 788, 791 (1962). (Citations and punctuations omitted.)

[177] 31 P.3d 1008 (2001).

> and that are in harmony and legally compatible with the rule, regulation, or statute.
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> * * *
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> The very heart of our form of government depends upon the legal and moral principle that each valid vote should be counted. In this instance there was no evidence introduced that the voters committed the error, nor was the slightest hint presented that such evidence existed. The voters took the pain, time and effort to vote and should be given an opportunity to cast their vote if, through no fault of their own, the vote, as originally cast, cannot be counted. While the limited remedy provided by the trial court [of calling a special election] may not be the idealistic remedy because a voter may have changed his or her mind since then and may not cast the vote as before, nevertheless the practical remedy outweighs the penalty of failing to count a vote because of an error by someone other than the voter.[178]

Thus, the issue of disenfranchisement of voters under annulment of elections weighs heavily if looked into the overall democratic system. As the courts in the United States have found, they are not hamstrung by the silence of their election laws to create a remedy that would address the issue of widespread fraud, terrorism, or irregularities in the conduct of an election. The underlying virtue of a functioning democracy—that the right to vote is "the most powerful and precious right in the world"[179]—remains to be the primary force that shapes how the courts act in the absence of statutory law.

As applied in the Philippines, it may thus be said that courts and tribunals are included in the class of "bod[ies] with the duty to give such call"[180] to conduct a special election in the exercise of their equity jurisdiction, taking into account the primacy of the right to vote in a country considered to be a "democratic and republican State."[181]

E. Vacancy in Lieu of Replacement

If a court or tribunal is unconvinced of its power to call for a special election in the event annulment of elections is found to be appropriate,

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[178] State *ex rel.* Davis v. State Bd. of Canvassers, 329 N.W.2d 575, 580 (1983).

[179] John F. Kennedy, *Special Message to the Congress on Civil Rights*, AMERICAN PRESIDENCY PROJECT, *at* https://www.presidency.ucsb.edu/documents/special-message-the-congress-civil-rights.

[180] *Tolentino*, 420 SCRA 438, 456.

[181] CONST. art. II, § 1.

another legal effect that can be explored is the declaration of vacancy in the questioned position.

An example of this was the case of *Durkin v. Wyman*,[182] decided by the U.S. Senate, which under the U.S. Constitution is the "Judge of the Elections, Returns and Qualifications of its own Members."[183] When the U.S. Senate exercises such jurisdiction, it acts not in a legislative but in a judicial nature.[184] The U.S. Supreme Court has ruled that when the U.S. Senate decides on the elections, returns and qualifications of its members, "[i]t is fully empowered, and may determine such matters without the aid of the House of Representatives or the executive or judicial department."[185] The Philippines created the electoral tribunals to be the sole judge of contests relating to the elections, returns, and qualifications of members of Congress,[186] but this power originally pertained to the Congress itself, just like in the United States

In *Durkin*, the senatorial candidate of the Democratic Party for the State of New Hampshire, John Durkin, filed a "petition of contest" with the U.S. Senate challenging the election of Louis Wyman, the Republican candidate.[187] Initially, Wyman led in the results after the election, but Durkin requested for a recount, which led to Durkin being provisionally declared the winner with a margin of ten votes.[188] Undeterred, Wyman sought another recount resulting in Wyman leading with two votes. The state then issued a certificate of election to Wyman. Because of deep partisan divisions in the U.S. Senate, the body was deadlocked on the course to take on Wyman's protest, and eventually declared the seat vacant with a vote of 71 to 21.[189] With a vacant Senate seat, the State of New Hampshire scheduled a special election which was contested again by Wyman and Durkin, and which Durkin now won by a margin of 27,000 votes.[190]

The *Durkin* case showed that one of the remedies a court or tribunal may decree is to declare the seat legally vacant. This may be applicable

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[182] *See The Election Case of John A. Durkin v. Louis C. Wyman of New Hampshire (1975)*, U.S. SENATE WEBSITE, *at* https://www.senate.gov/about/origins-foundations/electing-appointing-senators/contested-senate-elections/137Durkin_Wyman.htm.

[183] U.S. CONST. art. I, § 5, cl.1.

[184] Barry v. United States *ex rel.* Cunningham, 279 U.S. 597, 613 (1929).

[185] Reed v. County Comm'rs, 277 U.S. 376, 388 (1926).

[186] *See* Angara v. Electoral Comm'n, 63 Phil. 139 (1936).

[187] ANNE M. BUTLER & WENDY WOLFF, UNITED STATES SENATE ELECTION, EXPULSION AND CENSURE CASES 1793-1990, 421–22 (1995).

[188] *Id.*

[189] *Id.* at 424.

[190] *Id.*

especially when it comes to annulment of elections where the votes to be annulled are determinative of who shall win the election.

For example, in Province X composed of Municipalities A, B, and C, Juan and Pedro are contesting the lone seat for Member of the House of Representatives. Pedro was proclaimed the winner, and Juan filed a protest before the HRET praying for the annulment of votes in Municipality A because of widespread fraud, terrorism, or other irregularities. Assume there are a total of 100,000 votes cast in Province X, divided as follows:

TABLE 3. Sample Showing the Distribution of Votes Cast in Province of X

	Province X			Total
	Municipality A	**Municipality B**	**Municipality C**	
Juan	15,000	15,000	15,000	45,000
Pedro	40,000	10,000	5,000	55,000
Total	55,000	25,000	20,000	100,000

As can be seen from the above example, the bulk of votes for Pedro came from Municipality A, which put him over the top of Juan. It would thus be understandable that the elections in Municipality A would be the target of Juan in his protest. If the total votes of Municipality A standing at 55,000 would be invalidated, that would mean Juan would be left with 30,000 votes and Pedro with just 15,000 votes. Thus, Juan would win the protest and occupy the seat.

The total votes of Municipality A are determinative of who will win the election. Moreover, Municipality A holds the majority of the total votes cast in the whole of Province X, 55% to be exact.[191] Thus, annulling the elections in Municipality A would be tantamount to annulling the majority of votes in the province. Annulling the votes in a given precinct or LGU that is determinative of who wins the protest casts doubt on the true winner of the election. Instead of merely declaring Juan as the winner, a court of tribunal may then declare the position vacant because it cannot rule, based on the remaining votes, that Juan has won the election if valid elections were held in Municipality A.

[191] Votes cast in Municipality A divided by the total votes cast in Province X (55,000 votes/100,000 votes = 55%)

The legal effect of declaring a vacancy varies with respect to the position being contested. If the vacancy happens in a local position, the provisions on succession in the Local Government Code will apply.[192] If a vacancy occurs in the House of Representatives or the Senate, a special election may be called to fill such a vacancy in the manner prescribed by law.[193] That enabling law is Republic Act No. 6645. If a vacancy occurs in the office of the Vice-President, the President shall nominate a Vice-President from among the Members of the Senate and the House of Representatives who shall assume office upon confirmation by a majority vote of all the Members of both Houses of the Congress, voting separately.[194] If it is the presidency that is vacant, the Vice-President shall succeed as President.[195]

Annulment of elections that results merely in a vacancy in the office being contested, and not the replacement by the protestant of the protestee in the contested position, would serve as a disincentive for candidates to seek for annulment. Instead of ousting the protestee and replacing him or her with the protestant as is usual in meritorious election protests,[196] the rules of succession to the office now operates in a declared vacancy. This would affirm that if there was really fraud, terrorism, or other irregularities in the election, then the first remedy to be filed by a candidate should have been failure of election. Annulment of elections should neither be a mere afterthought of losing candidates, nor should it be a convenient excuse to erase the margin of victory of the winning candidates.

Declaring a seat vacant due to the existence of widespread fraud, terrorism, or other irregularities is a reasonable position for any court of tribunal to take. This means that because there are so many votes that shall be annulled, it is improper for the court to declare a winner in an election which has not been held freely, honestly, orderly, peacefully, and credibly. To award the votes to another candidate when the choice of the majority of the people has not been reasonably ascertained would be a disservice to the electorate. Thus, to avoid any impropriety in declaring anyone a winner, it is prudent to declare the seat vacant and allow the law on succession to office to operate.

F. Res Judicata

The ruling in Marcos touched on the issue of *res judicata* with regard to failure of elections and an election protest that seeks to annul an election.

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[192] LOCAL GOV'T CODE, §§ 44–45.
[193] CONST. art. VI, § 9.
[194] Art. VII, § 9.
[195] Art. VII, § 8.
[196] *Torres-Gomez*, 668 SCRA 600, 613.

In said case, the Supreme Court ruled that, "The [COMELEC's] finding that there was no failure of elections in several cities and municipalities […] serves as *res judicata* by conclusiveness of judgment."[197]

Conclusiveness of judgment is an aspect of *res judicata*, which is usually compared with the other aspect, *bar by prior judgment*. The Court distinguished the two as follows:

> There is "bar by prior judgment" when, as between the first case where the judgment was rendered, and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. But where there is identity of parties and subject matter in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is "conclusiveness of judgment." Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action. The identity of causes of action is not required but merely identity of issues.[198]

In *Marcos*, the Court ruled that the COMELEC's finding that there was no failure of election in Marawi City and the Municipality of Marantao, Lanao del Sur acted as *res judicata* by conclusiveness of judgment to the election protest. Thus, even if there is no identity of parties (the petition to declare failure of elections in those areas was not filed by Marcos) and subject matter (failure of elections is different from an election protest), the Court liberally applied the concept to Marcos' protest primarily because the grounds between failure of elections and annulment of elections are the same.

If failure of elections acts as *res judicata* to annulment of elections, is there also the same connection between annulment of election and other election protests filed in the various courts or tribunals?

Using the aforementioned example, assume that Province X is composed of Municipalities A, B, and C, for which Pedro won the lone congressional seat. Juan filed an election protest with the HRET alleging massive fraud, terrorism, and other irregularities during the election. Assume

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[197] *Marcos Decision*, at 80.

[198] Republic v. Yu, G.R. No. 157557, 484 SCRA 416, 422, Mar. 10, 2006. (Citations omitted.)

also that in the gubernatorial election between Pepe and Pilar which the latter won, Pepe filed an election protest with the COMELEC seeking to annul the election in Municipality A. The COMELEC ruled in favor of Pepe, annulled the election in Municipality A, and declared Pepe the winner. Pilar filed a petition for *certiorari* with the Supreme Court, which affirmed the decision of COMELEC. The Supreme Court's decision then became final and executory. Now the question comes: does the Supreme Court's decision affirming the annulment of elections in Municipality A in Pepe's protest act as *res judicata* by conclusiveness of judgment to Juan's election protest against Pedro pending in the HRET?

Imagine more if, for example, the PET acted the opposite way in the *Marcos* case, ultimately annulling the elections in the three provinces designated by the protestant. Would that mean that such a decision acts as *res judicata* by conclusiveness of judgment in any election protest affecting the three provinces, especially when it is the Supreme Court itself, acting as the PET, which found the annulment proper?

When a court or tribunal annuls an election, such decision has ripple effects not only on the contest at hand, but on all other protests that cover the annulled election. Because they are sourced from the same grounds, one can draw a clear legal line between failure of elections and annulment of elections, and between such annulled election and other election protests involving the same election. Thus, it is incumbent upon the courts and tribunals to consider the effect of annulment of elections not just on the protest at hand, but also on other election protests pending in the other courts and tribunals.

G. Effect on Revision and Appreciation of Ballots

Just like in the *Marcos* case, it is possible that a protestant in an election protest may raise different causes of action, some for revision of votes while others calling for annulment of the election altogether, for as long as it is first limited to the "pilot areas" provided for under the applicable Rules.[199] What then happens when there is a mixture of remedies sought by the protestant, i.e., what is the effect of annulment of elections on the revision process, and *vice versa*.

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[199] MUN. OFF. ELECT. CONTESTS RULE, Rule 10, §§ 10–11; COMELEC Res. 9720 (2013), § 6; HRET RULES, Rule 40; SET RULES, Rule 82; PET RULES, Rule 65. *See also Marcos Decision*, at 89.

Annulment of elections is incongruent with revision and recount of ballots. There is no point in sifting through the ballots if the protestant seeks to invalidate all the votes therein. However, it is possible that in an election protest, the protestant may request for revision and annulment but in different precincts or areas. In the same example, Jose's election protest may seek a recount of votes in Municipality A and an annulment of elections in Municipality B. In this case, what is the net effect of the annulment of elections in Municipality B to the overall counting of votes, after the revision of votes in Municipality A?

The Omnibus Election Code,[200] alongside established jurisprudence,[201] provides for the rules on the appreciation of ballots. There is nothing in the said rules that provides for any indication of how the total votes are counted when there is annulment of elections. As discussed in *Abayon*, the procedure is to plainly deduct *all* votes cast in the precinct or LGU whose elections were annulled. Thus, the simplistic formula when there is a mix of revision and annulment is:

> *Total valid votes of a candidate = Votes cast without issue + (Votes cast in all precincts subject of revision − Votes with objections found in revision and sustained in appreciation) − Total votes cast in annulled elections*

In the *Marcos* case, the Supreme Court illustrated this formula when it hypothetically computed the effect of annulment of elections in the three provinces identified by the protestant. *First*, the Court looked into the total number of votes cast or "[v]oter turnout"[202] in the province by examining the Statement of Votes issued by the COMELEC. *Second*, the Court deducted from the voter turnout those votes cast in the precincts or LGUs for which the COMELEC found no failure of election. The Court was of the view that since the COMELEC's decision finding no failure of election in Marawi City and the Municipality of Marantao acted as *res judicata* by conclusiveness of judgment to the protest, then the elections held in those areas were found to be valid, legal, and cannot be subject of annulment. *Third*, the Court, after ascertaining the adjusted voter turnout, considered such value as the "[v]otes deducted due to COMELEC's prior findings."[203] *Fourth*, the Court then identified the total number of actual voters in the province as found also in the Statement of Votes. *Fifth*, the court computed the "50%+1" threshold from the total number of actual voters in the province. If the combined votes

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[200] ELECT. CODE, § 211.

[201] *See, e.g.*, Neighborhood Rule, Evident Intent Rule, and Correct Sequence Rule. *See* Velasco v. Comm'n on Elections, G.R. No. 166931, 516 SCRA 447, 455–56 n.8, Feb. 22, 2007.

[202] *Marcos Decision*, at 81.

[203] *Id.* at 82.

garnered by the protestee and protestant are well below the "50%+1" threshold, then annulment is not proper for the province. But if the said combined votes meet the "50%+1" threshold, then annulment shall be granted. *Sixth*, the remaining votes subject to annulment is totaled. *Seventh*, the Court determined the total votes *after revision and appreciation*. *Last*, the total remaining votes subject to annulment is deducted from the total votes after revision and appreciation to come up with the total valid votes of the candidate.

The process illustrated by the Court in *Marcos* shows the burdensome layers of computation needed to ascertain the true intent of the voters. The problem with how annulment of votes is computed is exacerbated by the lack of clear rules and guidelines on how it is implemented. Former Chief Justice Diosdado Peralta, in his separate opinion in the Marcos decision, even observed that, "[I]ndeed, this case has brought to the fore the need for the [PET] to formulate new rules specific to the remedy of annulment of election results."[204]

V. RECOMMENDATIONS

A. To Congress

Consistent with the thrust to preserve the sovereign will to its fullest extent, the Legislature itself has placed safeguards in the law to protect the sanctity of the ballots. In instances where election returns are found to be spurious or falsified, their outright exclusion from the canvass on such ground is not justified because it disenfranchises the voters.[205] Instead, the COMELEC must follow the procedure laid out in Section 235 of the Omnibus Election Code to ascertain the true will of the electorate. In fact, the Code also defines the steps to be taken when the election returns contain material defects,[206] discrepancies,[207] or when such returns are delayed, lost or destroyed,[208] or when the integrity of the ballots is violated.[209]

In the same vein, with the categorical adoption of annulment of elections into our statute books, Congress may amend the Omnibus Election

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[204] *Marcos Decision*, at 5 (Peralta, *C.J.*, *separate*).

[205] Dagloc v. Comm'n on Elections, G.R. No. 154442, 417 SCRA 574, 595, Dec. 10, 2003.

[206] ELECT. CODE, § 234.

[207] § 236.

[208] § 233.

[209] § 237.

Code to include annulment as a remedy that can be prayed for in an election protest, to define which bodies may annul elections, to lay down the grounds for its invocation, to set out who may pray for such remedy, to define the procedure by which annulment should be executed, and to implement safeguards that address the issues raised by such annulment.

Specifically, courts and electoral tribunals should be given the power to call for special elections in order to address the disenfranchisement of the public will. As mentioned, if there is a positive provision in the law that empowers the courts and tribunals to order for a special election when annulment is deemed proper, then such acts as the call necessary to conduct new elections.

B. To COMELEC

As the body constitutionally mandated to enforce and administer all laws and regulations relative to the conduct of elections,[210] the COMELEC may provide for the procedure and the rules specifically governing failure of elections. This may affect how annulment of elections may be decided, especially since the Court in *Marcos* ruled that failure of election acts as *res judicata* by conclusiveness of judgment to a protest seeking to annul an election. Special provisions to unblur the lines between annulment and failure of elections should be laid out so protestants or petitioners may be guided as to the proper remedy to seek.

Since the power to annul elections is quasi-judicial in nature with respect to the COMELEC, it is also bound to comply with the requisites and evidentiary support demanded by this extreme measure in deciding election contests with such prayer. As such, the COMELEC may amend its existing rules on election contests embodied in COMELEC Resolution No. 8804 to include the procedure on annulment of elections.

C. To the Electoral Tribunals and the Courts

With the recognition in *Abayon* and *Marcos* that annulment of elections exists, the electoral tribunals (PET, SET, and HRET),[211] the trial courts

[210] CONST. art. IX-C, § 2(1).

[211] PET RULES (2010), Rule 8(g); SET RULES (2020), Rule 10(h); HRET RULES (2015), Rule 10(8).

through the Supreme Court,[212] and the COMELEC,[213] in the exercise of their rule-making powers, may amend their existing rules to address the effects of annulment of elections.

The electoral tribunals and the courts are also reminded to be more circumspect in the application of the requisites laid down in *Abayon* and *Marcos* before taking cognizance of an election protest with a prayer for annulment of elections. This is the first line of defense that safeguards this remedy from becoming a convenient vehicle for a defeated candidate who is not willing to risk losing a special election had he or she opted to seek declaration of failure of elections instead.

VI. CONCLUSION

While the Constitution and statutes are bereft of any allusion to annulment of elections as an extraordinary remedy for a defeated candidate, it is rife with support from jurisprudence. However, even though this power existed reaching as far back as the early 1900s, the Supreme Court took its time over the years to fully thresh the issues surrounding the entire gamut of this power. While the Court touched upon the matter of how this remedy may be sought in *Nacionalista Party* and *Abes*, it was only in *Borromeo* where it was categorically ruled that annulment of elections is not a direct action but a relief that may be sought through, or incident to, the filing of an election protest. It was also decades later in *Abayon*, as reiterated in *Marcos*, that this power was deemed possessed by electoral tribunals, implicit in their jurisdiction as the sole judge of all contests relating to election, returns, and qualifications of Members of the House of Representatives for the HRET, Senators for the SET, and the President and Vice-President for the Supreme Court *en banc*, acting as the PET. Correspondingly, the lower courts and the COMELEC may be allowed to annul elections in resolving election protests by protestants within their jurisdiction.

These recent developments reveal that there are still uncharted waters surrounding annulment of elections especially with regard to its effects. While there is a delineation of its differences from the COMELEC's power to

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[212] CONST. art. VIII, § 5(5).

[213] ELECT. CODE, § 52(c). *See* Bedol v. Comm'n on Elections, G.R. No. 179830, 606 SCRA 554, 569–70, Dec. 3, 2009. "The powers and functions of the COMELEC, conferred upon it by the 1987 Constitution and the Omnibus Election Code, may be classified into administrative, quasi-legislative and quasi-judicial. […] Its quasi-legislative power refers to the issuance of rules and regulations to implement laws and to exercise such legislative functions as may expressly be delegated to it by Congress."

declare failure of elections, it should still be outlined how this affects the validity of the other votes not otherwise under the jurisdiction of the body nullifying such elections but contained in the same ballot, as well as the inconsistencies in findings when the two powers overlap.

It bears repeating that such invocation should be exercised quite sparingly and only in the most extreme of cases, lest it become a vehicle for deplorable candidates to sow doubt and taint the legality of the sovereign will as enshrined in the ballots. The cementing of annulment of elections in our statute books calls for an even stricter application of the requisites laid down in *Abayon* and *Marcos* and compliance with the evidentiary requirements to support such relief, upon the grounds of fraud, terrorism, or other electoral irregularities. Otherwise, this remedy shall be susceptible to abuse merely by its invocation upon the whim of a defeated candidate who does not agree with the result.

The considerations brought to fore by this Note should drive the discourse towards addressing the disenfranchisement of legitimate votes brought by annulling elections. Other remedies such as the holding of special elections, declaration of a vacancy to trigger succession, or other safeguards that would deter whimsical prayers for annulment should be considered. In any case, the resolution should be to the effect that lawful votes should, to the utmost extent, be honored and given effect, and the impact of such annulment be limited to the illegal votes.

Sovereignty resides in the people.[214] As a constitutionally vested right to "freely select […] the [people] who shall make laws for them or govern in their name and behalf,"[215] "[t]he importance of the people's choice must be the paramount consideration in every election"[216] so that each vote is given the respect and importance it deserves. As Associate Justice Marvic M.V.F. Leonen puts it in *Marcos*, "Suffrage is at the heart of every democracy. Election results must not be tainted with unnecessary doubt by losing candidates who cannot accept defeat."[217]

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[214] CONST. art. II, § 1.

[215] Geronimo v. Ramos, G.R. No. L-60504, 136 SCRA 435, 446, May 14, 1985.

[216] *Id.*

[217] *Marcos Decision*, at 90. (Citations omitted.)