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FAX NO. : 7233841

Sep. 24 2010 01:06PM P1

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| TO: <i>CEN PEG</i>  | FROM: <i>ATTY. FRANCISCO JOMBIVIN</i>          |
| COMPANY:  | DATE: <i>SEPT. 24, 2010</i>                    |
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Sep. 24 2010 01:06PM P2

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Republic of the Philippines  
 Supreme Court  
 Manila

EN BANC

CENTER FOR PEOPLE EMPOWERMENT IN  
 GOVERNANCE,  
 Petitioner,

- versus -

G.R. No. 189546

COMMISSION ON ELECTIONS,  
 Respondent.

X----- / September 23, 2010  
 3:04 p.m.

NOTICE OF JUDGMENT

Sir/Madam:

Please take notice that on September 21, 2010 a  
 Decision/Resolution, copy attached herewith, was rendered by the Supreme  
 Court in the above-entitled case(s), the original of which is now on file in this  
 Office.

Very truly yours,

*Felipa Borlongan-Anama*  
 FELIPA BORLONGAN-ANAMA  
 Assistant Clerk of Court

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THE SOLICITOR GENERAL (x)  
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 Unit: 1702 Atlanta Center,  
 31 Annapolis St., San Juan,  
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THE HON. CHAIRMAN (x)  
 Commission on Elections  
 Palacio del Gobernador  
 Intramuros, 1002 Manila

Jp/ab

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FAX NO. : 7233841

Sep. 24 2010 01:07PM P3



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

CENTER FOR PEOPLE  
EMPOWERMENT IN  
GOVERNANCE,  
Petitioner,

G.R. No. 189546

Present:

- versus -

CORONA, C.J.,  
CARPIO,  
CARPIO MORALES,  
VELASCO, JR.,  
NACHURA,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,\* and  
SERENO,\*\* JJ.

COMMISSION ON ELECTIONS,  
Respondent.

Promulgated:

SEPTEMBER 21, 2010

x

*[Handwritten signature]*

DECISION

ABAD, J.:

This case concerns the duty of the Commission on Elections (COMELEC) to disclose the source code for the Automated Election System (AES) technologies it used in the 2010 national and local elections.

\* On official leave.  
\*\* On leave.

*[Handwritten mark]*

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Sep. 24 2010 01:07PM P4

Decision

2

G.R. No. 189546

On May 26, 2009 petitioner Center for People Empowerment in Governance (CenPEG), a non-government organization,<sup>1</sup> wrote respondent COMELEC, requesting a copy of the source code of the Precinct Count Optical Scan (PCOS) programs, the Board of Canvassers Consolidation/Canvassing System (BOC CCS) programs for the municipal, provincial, national, and congressional canvass, the COMELEC server programs, and the source code of the in-house COMELEC programs called the Data Capturing System (DCS) utilities.

CenPEG invoked the following pertinent portion of Section 12 of Republic Act (R.A.) 9369, which provides:

x x x x

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

Section 2(12) of R.A. 9369 describes the source code as the "human readable instructions that define what the computer equipment will do." This has been explained in an article:

Source code is the human readable representation of the instructions that control the operation of a computer. Computers are composed of hardware (the physical devices themselves) and software (which controls the operation of the hardware). The software instructs the computer how to operate; without software, the computer is useless. Source code is the human readable form in which software is written by computer programmers. Source code is usually written in a programming language that is arcane and incomprehensible to non-specialists but, to a computer programmer, the source code is the master blueprint that reveals and determines how the machine will behave.

Source code could be compared to a recipe: just as a cook follows the instructions in a recipe step-by-step, so a computer executes the sequence of instructions found in the software source code. This is a reasonable analogy, but it is also imperfect. While a good cook will use her discretion and common sense in following a recipe, a computer follows the instructions in the source code in a

<sup>1</sup> Rollo, p. 6.



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FAX NO. : 7233841

Sep. 24 2210 01:08PM P5

Decision

3

G.R. No. 189546

mechanical and unfailingly literal way; thus, while errors in a recipe might be noticed and corrected by the cook, errors in source code can be disastrous, because the code is executed by the computer exactly as written, whether that was what the programmer intended or not x x x.

The source code in voting machines is in some ways analogous to the procedures provided to election workers. Procedures are instructions that are provided to people; for instance, the procedures provided to poll workers list a sequence of steps that poll workers should follow to open the polls on election morning. Source code contains instructions, not for people, but for the computers running the election; for instance, the source code for a voting machine determines the steps the machine will take when the polls are opened on election morning.<sup>2</sup> (Underscoring supplied)

On June 24, 2009 the COMELEC granted the request<sup>3</sup> for the source code of the PCOS and the CCS, but denied that for the DCS, since the DCS was a "system used in processing the Lists of Voters which is not part of the voting, counting and canvassing systems contemplated by R.A. 9369." According to COMELEC, if the source code for the DCS were to be divulged, unscrupulous individuals might change the program and pass off an illicit one that could benefit certain candidates or parties.

Still, the COMELEC apparently did not release even the kinds of source code that it said it was approving for release. Consequently, on July 13, 2009, CenPEG once more asked COMELEC for the source code of the PCOS, together with other documents, programs, and diagrams related to the AES. CenPEG sent follow-up letters on July 17 and 20 and on August 24, 2009.

On August 26, 2009 COMELEC replied that the source code CenPEG wanted did not yet exist for the reasons: 1) that it had not yet received the baseline source code of the provider, Smartmatic, since payment to it had been withheld as a result of a pending suit; 2) its customization of the baseline source code was targeted for completion in November 2009 yet; 3) under Section 11 of R.A. 9369, the customized source code still had to be

<sup>2</sup> Wagner, David, *A Primer on Source Code and Its Role in Elections*, and his March 15, 2007 Testimony on Source Code Disclosure for the House Administration Elections Subcommittee of the United States Congress, [http://www.votetrustusa.org/index.php?option=com\\_content&task=view&id=2327&Itemid=26](http://www.votetrustusa.org/index.php?option=com_content&task=view&id=2327&Itemid=26).  
<sup>3</sup> Per COMELEC En Banc Minute Resolution 09-0366 dated June 16, 2009.

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FAX NO. : 7233841

Sep. 24 2010 01:09PM P6

Decision

4

G.R. No. 189546

reviewed by "an established international certification entity," which review was expected to be completed by the end of February 2010; and 4) only then would the AES be made available for review under a controlled environment.

Rejecting COMELEC's excuse, on October 5, 2009 CenPEG filed the present petition for *mandamus*, seeking to compel COMELEC to immediately make its source codes available to CenPEG and other interested parties.

COMELEC claimed in its comment that CenPEG did not have a clear, certain, and well-defined right that was enforceable by *mandamus* because COMELEC's duty to make the source code available presupposed that it already had the same. COMELEC restated the explanation it gave in its August 26, 2009 letter to CenPEG.

In its manifestation and omnibus motion, CenPEG did not believe that the source code was still unavailable considering that COMELEC had already awarded to an international certification entity the review of the same and that COMELEC had already been field testing its PCOS and CCS machines.

On February 10, 2010 COMELEC filed a manifestation, stating that it had already deposited on February 9, 2010 the source code to be used in the May 10, 2010 elections with the Bangko Sentral ng Pilipinas. Required to comment on this, CenPEG said on February 22, 2010 that the manifestation did not constitute compliance with Section 12 of R.A. 9369 but only with Section 11 of R.A. 8436.

In its earlier comment, COMELEC claimed, reiterating what it said in its August 26, 2009 letter to CenPEG, that it would make the source code available for review by the end of February 2010 "under a controlled

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FAX NO. : 7233841

Sep. 24 2010 01:10PM P7

Decision

5

G.R. No. 189546

environment." Apparently, this review had not taken place and was overtaken by the May 10, 2010 elections.

On June 21, 2010 CenPEG filed a manifestation and omnibus motion, reiterating its prayer for the issuance of a writ of *mandamus* in this case notwithstanding the fact that the elections for which the subject source code was to be used had already been held. It claimed that the source code remained important and relevant "not only for compliance with the law, and the purpose thereof, but especially in the backdrop of numerous admissions of errors and claims of fraud."

The Court finds the petition and this last manifestation meritorious.

The pertinent portion of Section 12 of R.A. 9369 is clear in that "once an AES technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof." The COMELEC has offered no reason not to comply with this requirement of the law. Indeed, its only excuse for not disclosing the source code was that it was not yet available when CenPEG asked for it and, subsequently, that the review had to be done, apparently for security reason, "under a controlled environment." The elections had passed and that reason is already stale.

**WHEREFORE**, the Court **GRANTS** the petition for *mandamus* and **DIRECTS** the COMELEC to make the source codes for the AES technologies it selected for implementation pursuant to R.A. 9369 immediately available to CenPEG and all other interested political parties or groups for independent review.

**SO ORDERED.**

  
**ROBERTO A. ABAD**  
Associate Justice

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FRK NO. : 7233241


Sep. 24 2010 01:10PM PB

Decision

6

G.R. No. 189546

WE CONCUR:

  
RENATO C. CORONA  
Chief Justice

  
ANTONIO T. CARPIO  
Associate Justice


  
CONCHITA CARPIO MORALES  
Associate Justice

(On Official Leave)  
PRESBITERO J. VELASCO, JR.  
Associate Justice


(On Official Leave)  
ANTONIO EDUARDO B. NACHURA  
Associate Justice

(On Official Leave)  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice

(On Official Leave)  
ARTURO D. BRION  
Associate Justice

  
DIOSDADO M. PERALTA  
Associate Justice

  
LUCAS P. BERSAMIN  
Associate Justice

  
MARIANO C. DEL CASTILLO  
Associate Justice

  
MARTIN S. VILLABAMA, JR.  
Associate Justice

  
JOSE PORTUGAL PEREZ  
Associate Justice

(On Official Leave)  
JOSE CATRAL MENDOZA  
Associate Justice

(On Leave)  
MARIA LOURDES P. A. SERENO  
Associate Justice



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Sep. 24 2010 01:11PM P9

Decision

7


G.R. No. 189546

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**RENATO C. CORONA**  
Chief Justice

**CERTIFIED XEROX COPY:**

  
**FELIPA B. ANAMA**  
ASSISTANT CLERK OF COURT  
SUPREME COURT