

REPUBLIC OF THE PHILIPPINES  
**SUPREME COURT**  
MANILA

**AUGUSTO “GUS” LAGMAN,  
NELSON CELIS, DR. PABLO R.  
MANALASTAS, JR., BISHOP  
BRODERICK PABILLO, D.D., SR.  
MARY JOHN, MANANZAN, O.S.B.,  
FR. JOSE DIZON, ENGR.  
RODOLFO LOZADA, JR., MA.  
CORAZON AKOL, EVITA  
JIMENEZ, ANGEL S. AVERIA, JR.,  
MELCHOR MAGDAMO, GREG  
FABROS, ANALEAH ESCRESA-  
COLINA, H. HARRY L. ROQUE,  
JR.**

*Petitioners,*

-versus-

G.R. No. \_\_\_\_\_  
**For: Issuance of the  
Writ of Habeas Data**

**COMELEC CHAIRPERSON SIXTO  
SERRANO BRILLANTES;  
COMELEC COMMISSIONER  
LUCENITO NOLASCO TAGLE;  
COMELEC COMMISSIONER ELIAS  
R. YUSOPH; COMELEC  
COMMISSIONER CHRISTIAN  
ROBERT S. LIM; COMELEC  
COMMISSIONER LUIE TITO F.  
GUIA; COMELEC COMMISSIONER  
MA. GRACIA CIELO M. PADACA;  
COMELEC COMMISSIONER AL A.  
PARREÑO; COMELEC FINANCE  
DIRECTOR EDUARDO DULAY  
MEJOS, EXECUTIVE  
SECRETARY PAQUITO OCHOA  
JR., and DEPUTY PRESIDENTIAL  
SPOKESPERSON ABIGAIL VALTE,**

*Respondents.*

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## **PETITION FOR THE ISSUANCE OF THE WRIT OF HABEAS DATA**

AGGRIEVED PARTIES, through counsel, and unto this Honorable Court, respectfully state that:

### **PREFATORY STATEMENT**

This petition for the issuance of a writ of habeas data is of first impression, inasmuch as it seeks this Honorable Court's protection over well-oiled program by key members of a constitutional body – the Commission on Elections (COMELEC) – to place under surveillance or spy on, its perceived “enemies,” who are actually no more than ordinary citizens concerned about electoral reforms in the country.

Such a program, by their own admission supported by a P30-million intelligence fund, is not only unconstitutional because it stems from a misalignment of public funds by the Office of the President to a supposedly independent constitutional commission, but above all because it violates the right of citizens to free expression and the right of citizens to privacy.

### **I. PARTIES**

#### **A. Aggrieved Parties**

1) The Aggrieved Parties in this case are various individuals from policy research, concerned citizens, academic, religious and professional organizations that make up the umbrella organization, Automated Election System Watch or AES Watch. The Aggrieved Parties, who may all be served with the processes of this Honorable Court through their counsel, the *Roque and Butuyan Law Offices*, with address at Unit 1904, Antel Corporate Center, 121 Valero Street, Salcedo Village, Makati City Metro Manila 1277, are the following:

- i. AGGRIEVED PARTY AUGUSTO “GUS” LAGMAN is of legal age, Filipino, a former Commissioner of the COMELEC, a well-

known information technology executive who was one of the founders of STI College and a four-termer President of the Philippine Computer Society, lead convenor of TransparentElections.org.ph, and for many years head of the Systems Committee of the National Movement for Free Elections (NAMFREL) Operation Quick Count;

- ii. AGGRIEVED PARTY NELSON CELIS is of legal age, Filipino, spokesperson of AES Watch and past President of the Philippine Computer Society;
- iii. AGGRIEVED PARTY DR. PABLO R. MANALASTAS JR., is of legal age, Filipino, a lecturer at the Ateneo De Manila University Department of Information Systems and Computer Science and at the University of the Philippines Department of Computer Science, and IT Fellow for automated elections of the Center for People Empowerment in Governance (CenPEG);
- iv. AGGRIEVED PARTY BISHOP BRODERICK PABILLO, D.D., is Filipino, of legal age, an Auxiliary Bishop of the Roman Catholic Archdiocese of Manila, co-chairperson of the Bishop and Businessmen's Conference Committee on Social Justice, and Chairperson of the Catholic Bishop's Conference of the Philippines (CBCP)-Episcopal Commission on Social Action-Justice and Peace;
- v. AGGRIEVED PARTY SR. MARY JOHN MANANZAN, O.S.B., is of legal age, Filipino, former President of St. Scholastica's College, Prioress of the Missionary Benedictine Sisters in the Manila Priory and a member of the AES Watch;

- vi. AGGRIEVED PARTY FR. JOSE DIZON is of legal age, Filipino, an ordained Roman Catholic priest, director of the labor ministry of the Diocese of Cavite, spokesperson of the election reforms group KONTRA DAYA and a member of AES Watch;
- vii. AGGRIEVED PARTY ANGEL S. AVERIA, JR., is of legal age, Filipino, and a convenor of AES Watch and IT security consultant for the European Union-CenPEG Project 3030;
- viii. AGGRIEVED PARTY MA. CORAZON AKOL, is of legal age, Filipino, President of the Philippine National Information Technology Standards Foundation (PHILNITS) and a co-convenor of Tansparentelections.org.ph and of AES Watch;
- ix. AGGRIEVED PARTY ENGR. RODOLFO “JUN” LOZADA JR, is of legal age, Filipino an electronic communications engineer, past President and CEO of PhilFOREST and a member of AES Watch;
- x. AGGRIEVED PARTY EVITA JIMENEZ is of legal age, Filipino, Convenor of AES Watch and Executive Director of CenPEG;
- xi. viii. AGGRIEVED PARTY MELCHOR MAGDAMO, is of legal age, Filipino, a lawyer, former legal consultant to the COMELEC and a member of AES Watch;
- xii. AGGRIEVED PARTY GREG FABROS, is of legal age, Filipino, a lawyer and member of the National Union of Peoples’ Lawyers (NUPL) and a convenor of AES Watch;

- xiii. AGGRIEVED PARTY ANALEAH ESCRESA-COLINA, is Filipino, of legal age, Executive Director of the Ecumenical Institute for Labor Education and Research (EILER), and a member of AES Watch;
- xiv. AGGRIEVED PARTY H. HARRY L. ROQUE JR., is of legal age, Filipino, a professor of international law and constitutional law at the University of the Philippines College of Law, convenor of the Concerned Citizens Movement and of AES Watch;

**B. Respondents**

2) The Respondents are the following:

A. COMELEC Commissioners and Officers, with address at the COMELEC’s national office at Palacio del Gobernador Bldg., Gen. Luna St. cor. Andres Soriano Jr. Ave, Intramuros, Manila 1002, where they may be served with processes of this Honorable Court:

- i. RESPONDENT SIXTO SERRANO BRILLANTES is the incumbent COMELEC Chairperson;
- ii. RESPONDENT LUCENITO NOLASCO TAGLE is an incumbent COMELEC COMMISSIONER;
- iii. RESPONDENT ELIAS R. YUSOPH is an incumbent COMELEC COMMISSIONER;
- iv. RESPONDENT CHRISTIAN ROBERT S. LIM is an incumbent COMELEC COMMISSIONER;
- v. RESPONDENT LUIE TITO F. GUIA is an incumbent COMELEC COMMISSIONER;
- vi. RESPONDENT MA. GRACIA CIELO PADACA is an incumbent COMELEC COMMISSIONER;

- vii. RESPONDENT AL PARREÑO is an incumbent COMELEC COMMISSIONER;
- viii. RESPONDENT DIRECTOR EDUARDO DULAY MEJOS, is the incumbent Finance Director of the COMELEC.

B. RESPONDENT PAQUITO OCHOA JR, is an incumbent EXECUTIVE SECRETARY, representing the Office of the President, with address at Malacanang Palace, 1000 Jose P Laurel Sr., San Miguel, where he may be served with processes of this Court;

C. RESPONDENT ABIGAIL VALTE, is an incumbent DEPUTY PRESIDENTIAL SPOKESPERSON, with address at 1000 Jose P Laurel Sr., San Miguel, Manila, where he may be served with processes of this Court.

#### **STATEMENT OF MATERIAL FACTS**

3) On 22 December 1997, the Philippine Congress enacted Republic Act No. 8436 (RA 8436) which authorizes COMELEC to use an automated election system (AES) for the process of voting, counting of votes and canvassing/consolidating the results of the national and local elections. RA 8436 also directed the COMELEC to acquire automated counting machines (ACMs), computer equipment, devices and materials; and to adopt new electoral reforms and printing materials.

4) On 23 January 2007, Congress passed Republic Act No. 9369, amending RA 8436. The pertinent provisions of RA 9369 provides:

*SEC. 6. Section 6 of Republic Act No. 8436 is hereby amended to read as follows:*

*"SEC. 5 Authority to Use an Automated Election System. - To carry out the above-stated policy, the Commission on Elections, herein referred to as the Commission, is hereby authorized to use an automated election system or systems in the same election in different provinces, whether paper-*

*based or a direct recording electronic election system as it may deem appropriate and practical for the process of voting, counting of votes and canvassing/consolidation and transmittal of results of electoral exercises: Provided, that for the regular national and local election, which shall be held immediately after effectivity of this Act, the AES shall be used in at least two highly urbanized cities and two provinces each in Luzon, Visayas and Mindanao, to be chosen by the Commission: Provided, further, That local government units whose officials have been the subject of administrative charges within sixteen (16) month prior to the May 14, 2007 election shall not be chosen: Provided, finally, That no area shall be chosen without the consent of the Sanggunian of the local government unit concerned. The term local government unit as used in this provision shall refer to a highly urbanized city or province. In succeeding regular national or local elections, the AES shall be implemented nationwide."*

*SEC. 10. Section 8 of Republic Act No. 8436 is hereby amended to read as follow:*

*"SEC.12. Procurement of Equipment and Materials. - To achieve the purpose of this Act, the Commission is authorized to procure, in accordance with existing laws, by purchase, lease, rent or other forms of acquisition, supplies, equipment, materials, software, facilities, and other service, from local or foreign sources free from taxes and import duties, subject to accounting and auditing rules and regulation. With respect to the May 10, 2010 election and succeeding electoral exercises, the system procured must have demonstrated capability and been successfully used in a prior electoral exercise here or board. Participation in the 2007 pilot exercise shall not be conclusive of the system's fitness.*

*"In determining the amount of any bid from a technology, software or equipment supplier, the cost to the government of its deployment and implementation shall be added to the bid price as integral thereto. The value of any alternative use to which such technology, software or equipment can be put for public use shall not be deducted from the original face value of the said bid."*

5) On 07 January 2009, COMELEC submitted to the Department of Budget and Management a P13.9 Billion-budget for the automation of the 2010 elections.

6) On 05 March 2009, the Philippine Senate passed the P11.3 Billion supplemental budget for the automation of the 2010 elections.

7) On 19 March 2009, eleven (11) prospective bidders obtained bid documents from COMELEC for the automation of the 2010 elections. Only seven (7) bidders passed the bidding requirements.

8) On 24 March 2009, then Pres. Gloria Macapagal-Arroyo signed into law Republic Act No. 9525 which allocates funds for the automation of the 2010 elections.

9) On 30 March 2009, COMELEC held a pre-bidding conference.

10) On 04 May 2009, COMELEC conducted the public bidding, originally set on April 27. The bidding was moved to another date due to the request of four bidders which needed additional time to modify their respective proposals.

11) COMELEC-SBAC disqualified Avante and Indra Systems Consortium for failure to comply with bid requirements. IndraSistemas S.A, Hart Intercivic and Strategic Alliance Holdings Inc. did not submit an ISO certification. Avante was stricken out of the list after it failed to submit documents proving that it has engaged in three similar projects.

12) On 08 May 2009, COMELEC disqualified all seven (7) bidders for failing to meet bid requirements.

13) On 14 May 2009, COMELEC-SBAC reconsidered four bidders: IndraSistemas (Strategic Holdings, Inc./Hart Intercivic); Smartmatic/Total Information Management Corp.(Smartmatic-TIM); AMA group of companies/Election System and Software and Gilat/F.F. Cruz and Company, Inc./Filipinas Systems.

14) On 9 June 2009, the COMELEC approved Resolution No. 8608 which resolved to:

- 1. Approve the report/recommendation of the SBAC dated June 3, 2009, confirming TIM/Smartmatic as the bidder with the "Lowest Calculated Bid" and to award the contract for the automation of the elections on May 10, 2010 to said joint venture;*



2. *To direct the SBAC to issue the Notice of Award to TIM/Smartmatic, with instructions to post a performance security in an amount no less than five percent (5%) of the contract price and to issue the Notice to Proceed after the posting of said performance security and approval of the contract; and,*

3. *To authorize Chairman Jose A.R. Melo, as Head of the procuring agency to sign the contract with TIM/Smartmatic.*

15) On 10 June 2009, COMELEC awarded the contract to Smartmatic-TIM to supply the 82,000 precinct count optical scan (PCOS) machines to be used in the 2010 elections with its bid offer of P7.2 Billion.

16) Meanwhile, about the same time as the COMELEC was preparing to automate the 2010 National and Local elections, key personalities, including some of the Aggrieved Parties in this case, and under the auspices of the Center for People Empowerment in Governance (CenPEG) as a lead convenor, banded themselves together to form the Automated Election System Watch or AES Watch, for the following purposes:

- a. studying the automated election system chosen by the COMELEC;
- b. watching, monitoring, and assessing the preparations being undertaken by the COMELEC for the 2010 National and Local Elections;
- c. watching, monitoring, and assessing the actual conduct of the 2010 National and Local Elections;

17) AES Watch brought together many groups and individuals from various backgrounds – academics, IT experts and professionals, activists, policy think-tanks, clergy and the like – under a common advocacy for electoral reforms and electoral integrity.

18) They include the following:

- a. The University of the Philippines Alumni Association (UPAA);
- b. The National Secretariat for Social Action – Catholic Bishops Conference of the Philippines (Nassa-CBCP)

- c. The Ecumenical Bishops Forum
- d. The Association of Schools of Public Administrators
- e. The Concerned Citizens Movement
- f. The De La Salle University –College of Computer Studies- Caucus
- g. The Transparentelections.org.ph
- h. The Movement for Good Governance
- i. The Solidarity Philippines
- j. The Coordinating Council for People’s Development
- k. The Sisters in Mindanao (SAMIN)
- l. The Agri-Watch
- m. The Computer Professionals Union
- n. The Association of Major Religious Superiors in the Philippines
- o. The Philippine Computer Society Foundation
- p. The Philippine Computer Emergency Response Team
- q. The Council for Health & Development
- r. Its Honorary Convenor and President Emeritus, Hon. Teofisto Guingona, Jr., former Vice President of the Republic of the Philippines
- s. Various individual IT and social science academics from leading Philippine universities, including the Ateneo De Manila University, the De la Salle University, and the University of the Philippines.

(For more information on AES Watch, see its 2010 promotional brochure, attached as **ANNEX A**)

19) In fact, AES Watch member organizations and individuals are also free to issue their own declarations and opinions about the automated election system, although they may also sign on to a common research agenda for the protection of the citizens’ right to vote.

20) From the time an automated electoral system for the 2010 elections was proposed, AES Watch and its member organizations had been active in research and advocacy work for electoral reforms.

21) For instance, on 26 May 2009, an -member group, its lead convenor, the CenPEG, sent a request letter to COMELEC, specifically requesting a copy of the source code of the following:

- (a) Precinct Count Optical Scan (PCOS) programs;
- (b) the Board of Canvassers Consolidation/Canvassing System (BOC CCS) programs for the municipal, provincial, national, and congressional canvass;
- (c) the COMELEC server programs; and
- (d) the source code of the in-house COMELEC programs called the Data Capturing System (DCS) utilities.

22) In sending its request letter to COMELEC, CenPEG invoked the following pertinent portion of Section 12 of RA 9369:

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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.

23) On 24 June 2009, COMELEC granted CenPEG's request for the source code of the PCOS and the CCS. Nevertheless, COMELEC denied CenPEG's request for the source code of the DCS. COMELEC reasoned that 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."

24) Further, COMELEC said that 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.<sup>1</sup>

25) Subsequent to this however, the COMELEC would refuse access to the PCOS Source Code as well, for a variety of unjustifiable reasons.

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<sup>1</sup>Please see CenPEG v. COMELEC, Philippine Supreme Court case G.R. No. 189546, September 21, 2010.

26) Meanwhile, on 9 July 2009, a group of Petitioners, namely H. Harry L. Roque, Jr., Joel R. Butuyan, Romel R. Bagares, Gilbert T. Andres, Allan Jones F. Lardizabal, Immaculada D. Garcia, Erlinda T. Mercado, Ma. Azucena P. Maceda, Alvin A. Peters and Francisco A. Alcuaz, who are members of the civil society group Concerned Citizens Movement, and five (5) other persons<sup>2</sup>--- filed before this Honorable Court a “Petition for Certiorari, Prohibition and Mandamus,” versus the Philippine Commission on Elections (COMELEC), the Commission on Elections-Special Bids and Awards Committee (COMELEC-SBAC), the Department of Budget and Management, Smartmatic, and TIM. Their case was docketed as G.R. No. 188456, and was entitled “Roque, Jr. et al. vs. COMELEC-COMELEC, et al.”<sup>3</sup>

27) Some of the Petitioners in the said case, among them lawyers Roque, Butuyan, Bagares, Andres and Lardizabal, are also associated with AES Watch, providing the latter with legal advice on electoral reform issues.

28) The aim of their Supreme Court petition was to enjoin the signing and/or the implementation of the contract for the first ever nationwide automation of a Philippine election. This automated election was to be conducted during the 10 May 2010 national and local elections. *Roque, et al.* argued that the automation contract violated Philippine laws, and jurisprudence.

29) On 10 September 2009, the Supreme Court promulgated its Decision in “*Roque, Jr. et al. vs. COMELEC, et al.*,” docketed as G.R. No. 188456, denying the petition of Complainants Roque et al.<sup>4</sup>

30) On 28 September 2009, Complainants Roque et al. filed a Motion for Reconsideration to the 10 September 2009 Decision of the Supreme Court in G.R. No. 188456.<sup>5</sup>

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<sup>3</sup>Please see “*Roque, et al. v. COMELEC, et al.*,” Philippine Supreme Court case G.R. No. 188456, September 10, 2009. The Philippine Supreme Court Decision on this case can be accessed online at <http://sc.judiciary.gov.ph/jurisprudence/2009/september2009/188456.htm>.<http://sc.judiciary.gov.ph/jurisprudence/2009/september2009/188456.htm>.

<sup>4</sup>Please see “*Roque, et al. v. COMELEC, et al.*,” Philippine Supreme Court case G.R. No. 188456, September 10, 2009. The Philippine Supreme Court Decision on this case can be accessed online at <http://sc.judiciary.gov.ph/jurisprudence/2009/september2009/188456.htm>.<http://sc.judiciary.gov.ph/jurisprudence/2009/september2009/188456.htm>.

<sup>5</sup>Please see “*Roque, et al. v. COMELEC, et al.*,” Philippine Supreme Court case G.R. No. 188456, September 10, 2009. The Philippine Supreme Court Decision on this case can be accessed online at <http://sc.judiciary.gov.ph/jurisprudence/2009/september2009/188456.htm>.<http://sc.judiciary.gov.ph/jurisprudence/2009/september2009/188456.htm>.

31) On 5 October 2009, CenPEG filed before the Philippine Supreme Court a petition for *Mandamus* against COMELEC, seeking to compel COMELEC to immediately make its source codes available to CenPEG and other interested parties.<sup>6</sup>CenPEG’s petition was docketed as G.R. No. 189546 and entitled “*CenPEG v. COMELEC.*”

32) On 10 February 2010, the Philippine Supreme Court promulgated its Resolution denying Complainants Roque et al.’s Motion for Reconsideration to the 10 September 2009 Decision in “*Roque, et al. v. COMELEC, et al.*”<sup>7</sup>

33) Meanwhile, for its part, CenPEG on 5 October 2009 filed before the Philippine Supreme Court a “*Petition for Mandamus*” against COMELEC, seeking to compel COMELEC to immediately make the source codes to be used in the May 2010 automated Philippine elections available to CenPEG and other interested parties.<sup>8</sup>CenPEG’s petition was docketed as G.R. No. 189546 and entitled “*CenPEG v. COMELEC.*”

34) On 21 June 2010, CenPEG filed a manifestation and omnibus motion before the Supreme Court, and reiterated its prayer for the issuance of a writ of *mandamus* in their case despite the fact that the May 10, 2010 Philippine elections for which the subject source code was to be used had already been held. CenPEG 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.”<sup>9</sup>

35) On 21 September 2010—or four (4) months after the May 10, 2010 automated Philippine elections, this Honorable Court issued a Resolution in “*CenPEG v. COMELEC,*”<sup>10</sup>directing the COMELEC to make the source codes, for the AES technologies selected, immediately available to CenPEG and all other interested political parties or groups for independent review. As held by the Supreme Court in its 21 September 2010 Resolution:

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

<sup>7</sup> The 10 February 2012 Resolution of the Philippine Supreme Court in “*Roque, et al. v. COMELEC, et al.*,” can be accessed online at <http://sc.judiciary.gov.ph/jurisprudence/2010/february2010/188456.htm><http://sc.judiciary.gov.ph/jurisprudence/2010/february2010/188456.htm>.

<sup>8</sup>*Id.*

<sup>9</sup> *Please see* CenPEG v. COMELEC, Philippine Supreme Court case G.R. No. 189546, September 21, 2010.

<sup>10</sup>G.R. No. 189546, Sept. 21, 2010.

*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.*<sup>11</sup>

36) On 23 April 2010, another personality associated with AES Watch, Teofisto Guingona, Jr., former Vice-President of the Philippines and its President Emeritus, filed before the Philippine Supreme Court, AES Watcha "*Petition for Mandamus*" against COMELEC. He was joined in this suit by five other personalities, some of whom are also AES Watch members<sup>12</sup>

37) The said petition was entitled "*Guingona, Jr., et al. v. COMELEC*," and docketed as G.R. No. 191846. Author Guingona asked the Philippine Supreme Court to compel COMELEC to explain fully the complete details of its preparations for the 10 May 2010 automated Philippine elections. Guingona's petition was due to the unraveling of alarming events leading to the May 2010 automated Philippine elections.

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<sup>11</sup>*Please see* CENPEG v. COMELEC, Philippine Supreme Court case G.R. No. 189546, September 21, 2010.

<sup>12</sup>Namely, Bishop Leo A. Soriano, Quintin S. Doromal, Fe Maria Arriola and Engr. Rodolfo Lozada.

38) On 06 May 2010, or four (4) days before the 10 May 2010 automated Philippine elections, the Supreme Court promulgated its Decision in “*Guingona, Jr., et al. vs. COMELEC*” granting Guingona, et al.’s petition for mandamus. The dispositive portion of the 06 May 2010 Supreme Court Decision states:

*WHEREFORE, we GRANT the petition in part. Respondent Commission on Elections is ORDERED, within two (2) days from receipt of this Resolution, to disclose to petitioners and the public the following:*

*1. The nature and security of all equipment and devices, including their hardware and software components, to be used in the 10 May 2010 automated elections, as provided for in Section 7 of Republic Act No. 9369;*

*2. The source code for review by interested parties as mandated by Section 12 of Republic Act No. 9369;*

*3. The terms and protocols of the random manual audit, as mandated by Section 24 of Republic Act No. 9369;*

*4. A certification from the Technical Evaluation Committee that the entire Automated Election System is fully functional and that a continuity plan is already in place, as mandated by Sections 9 and 11 of Republic Act No. 9369; and*

*5. The certification protocol and the actual certification issued by the Department of Science and Technology that the 240,000 Board of Election Inspectors all over the country are trained to use the Automated Election System, as required by Section 3 of Republic Act No. 9369.*

*This Resolution is immediately executory.*

*SO ORDERED.*<sup>13</sup>

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<sup>13</sup>*Please see* “*Guingona, et al. v. COMELEC*,” Philippine Supreme Court case G.R. No. 191846. The Philippine Supreme Court 06 May 2010 Decision can be accessed online at

39) Further, the Philippine Supreme Court in “*Guingona, Jr. v. COMELEC*,”<sup>14</sup> noted that just days before the 10 May 2010 automated Philippine elections, COMELEC still failed to disclose the source code for the PCOS to interested parties as mandated by Section 12, of R.A. 9369. As noted by the Supreme Court:

Petitioners in *Roque v. COMELEC*<sup>11</sup> in fact pressed COMELEC for a source code review. **To this day, however, COMELEC has yet to disclose the source code as mandated by law.** In any case, considering the lack of material time, the Court in the exercise of its equity jurisdiction may even dispense with the requirement of proof of a prior demand in this case.<sup>15</sup> (*Emphasis and underscoring supplied*)

40) Too, in “*Guingona, Jr. v. COMELEC*,”<sup>16</sup> the Supreme Court took judicial notice of an alarming event specifically the recall of 76,000 compact flash cards, to wit:

The Court further takes judicial notice of the fact, as widely reported in print and broadcast media, that with just six days to go before the 10 May 2010 elections, COMELEC recalled 76,000 compact flash cards following widespread failure of the PCOS machines to read and tally the votes during the machine test conducted by COMELEC and Smartmatic. COMELEC spokesman James Jimenez was quoted as saying, “Right now we are assuming that all of the machines were affected. We have stopped the testing and are pulling out all memory cards for reconfiguration.”<sup>17</sup>

41) On 10 May 2010, a National and Local Elections were conducted using PCOS machines for the very first time,

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<http://sc.judiciary.gov.ph/jurisprudence/2010/may2010/191846.htm>. <http://sc.judiciary.gov.ph/jurisprudence/2010/may2010/191846.htm>.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

<sup>16</sup>G.R. No. 191846, May 6, 2010.

<sup>17</sup>*Id.*



and without the benefit of an honest-to-goodness Source Code review.as required by law.

42) Shortly after the elections, an AES Watch assessment of its conduct found that the automated election system selected and implemented by COMELEC and used in the 2010 National and Local Elections alarmingly did not comply with the requirements for ballot security mandated under RA9369.

43) The study, among other things, established that the COMELEC and SMARTMATIC-TIM removed many safeguards against electoral fraud in the PCOS, including voter verifiability, secure digital signatures, ultraviolet scanners, satellite transmission facilities, source code review, ballot reading accuracy.

44) AES Watchpublished its extensive assessment of the 10 May 2010 elections, which it then disseminated to the public, including to members of the Committee on Suffrage and Electoral Reforms, House of Representatives and the Joint Congressional Oversight Committee (JCOC) tasked to assess the automated election system, and the Commission on Elections, the Office of the President and other state and non-state election stakeholders.

45) The study is also available online through CenPEG's website.<sup>18</sup> (See the attached copy of the comprehensive assessment, attached as **ANNEX B** of the Petition)

46) AES Watch continued to pursue its objectives after the 2010 National and Local Elections and committed itself to monitoring and assessing the preparations for and the conduct of the 2013 Midterm Elections as well as monitoring the performance and assessing the automated election systems.

Moreover, since June 2010, AES Watch and CenPEG had been calling on the JCOC to convene to assess the May 2010 automated elections as mandated, and also sat with the Technical Working Group of the Senate Committee on Suffrage to address the problems of the automated election system. AES Watch had also submitted to Congress a list of 20

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<sup>18</sup> See [http://www.CenPEG.org/The%20CenPEG%20Report/The\\_CenPEG\\_Report.html](http://www.CenPEG.org/The%20CenPEG%20Report/The_CenPEG_Report.html) , also attached as ANNEX B to this Petition.

proposed legislations and amendments to enhance RA 9369 and its implementation.

47) Following the appointment of Respondent Brillantes to the COMELEC, AESWatch communicated its concerns about the automated election systems used in the 2010 National and Local elections to COMELEC and submitted a copy of its findings to the Chairman.

48) However on March 30, 2012 , under the leadership of Respondent Brillantes exercised the “Option to Purchase” the PCOS machines used in the 2010 National and Local Elections.

49) As COMELEC prepared for the 2013 Midterm Elections, and its member organizations continued to pursue their objectives and attended hearings conducted at the House of Representatives and the Senate and aired their concerns, pointing out the deficiencies and problems encountered with the PCOS machine, in particular, and the whole automated election system, in general.

50) Respondent Brillantes has not taken kindly to the critique AES Watch and allied groups had been raising against the PCOS automated poll technology.

51) Consider the following:

- (a) In a hearing conducted at the Senate in early February this year, Respondent Brillantes nearly walked out after stating that he was tired of listening to the issues raised by AES Watch since he has heard the same issues over a hundred times.<sup>19</sup>

(See ANNEX C)

- (b) Respondent Brillantes, without fail, sought to discredit his critics by resorting to name-calling; saying that the questions on PCOS are no longer technical but purely legal, critics who are non-lawyers have no business speaking out against the technology, because they are ignorant of the legal issues involved.

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<sup>19</sup> See Angie Rosales, Poll chief refuses to explain glitches, The Daily Tribune, February 7, 2013, available at <http://www.tribuneonline.org/index.php/headlines/item/10200-poll-chief-refuses-to-explain-glitches>(a copy attached as ANNEX C)

He singled out herein Aggrieved Parties Akol and Jimenez in the process.<sup>20</sup>

(See ANNEX D)

- (c) On his own twitter account, Respondent Brillantes has likewise attacked AES Watch, saying the organization was out to “sow public mistrust & sabotage the upcoming elections.”<sup>21</sup>

(See ANNEX E)

- (d) This was after AES Watch questioned COMELEC’s decision to re-use the PCOS technology in the mid-term elections, saying it was now using a “pirated “ technology following a proprietary dispute between SMARTMATIC and the technology’s owner DOMINION VOTING SYSTEMS, which has revoked the license it earlier gave to the former to sell the technology to interested parties.<sup>22</sup>

(See ANNEX F)

52) Just before the 13 May 2013 mid-term elections, or on February 13, 2013, AES Watch issued an evaluation of the over-all readiness and worthiness of the PCOS technology, using its STAR Card (System Trustworthiness, Accountability, and Readiness Card), which it had first deployed to evaluate the 10 May 2010 National and Local Elections.

53) The STAR CARD is the framework for assessing the AES’ adherence to key technical and management requirements which AES Watch considers as crucial in making the system credible and reliable.

54) These requirements were based mainly on the amended election automation law (RA 9369) and related laws,

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<sup>20</sup> Watchdogs seek minimum info on election day, The Daily Tribune, February 13, 2013, available at <http://www.tribune.net.ph/headlines/item/10697-watchdogs-seek-minimum-info-on-election-day.html> (a copy is attached as ANNEX D)

<sup>21</sup> Shiela Crisostomo, Brillantes slams PCOS critics, cries sabotage, The Philippine Star, February 19, 2013, available at <http://www.philstar.com/headlines/2013/02/19/910506/brillantes-slams-pcos-critics-cries-sabotage>. (a copy is attached as ANNEX E)

<sup>22</sup>J. M. Tuazon, Poll watchdog insists: PCOS software for 2013 elections ‘pirated’, InterAksyon.com, February 19, 2013, <http://www.interaksyon.com/infotech/poll-watchdog-insists-pcos-software-for-2013-elections-pirated> (a copy is attached as ANNEX F)

and the COMELEC calendar of activities. They were also grounded on established standards and best practices for system implementation.

55) The second STAR Card listed 27 items of concerns according to the following key requirements:

- 1) System set-up (will the AES be ready for full implementation?);
- 2) Internal security (will the AES have the necessary safeguards to prevent fraud?);
- 3) Personnel training and voters' education (will the teachers and the voters know exactly what to do on election day?); and
- 4) Contingency planning (will COMELEC and other involved personnel know what to do when things go wrong?)

56) The items of concerns were rated as: PASS (4 points), QUALIFIED PASS (3), WARNING (2); DANGER (1); and FAIL (0).

57) As before, AES Watch convened a committee to conduct the assessment and come up with the appropriate ratings. The committee was composed of IT practitioners (experts and specialists in programming and security) coming from the multi-disciplinary fields of IT, mathematics, business management, public administration, and social sciences.

58) Based on the parameters set in the STAR CARD, AES Watch gave the COMELEC a failing rate of only 0.29 percent

(See ANNEX G, the Executive Summary of the STAR CARD Report 2013).

9) Again, this did not sit well with Respondent Brillantes, who repeatedly his claim that critics of the SMARTMATIC-TIM-peddled PCOS machines are "election saboteurs;" he also threatened to sue the individuals behind the organizations that make up AES Watch.

59) On May 18, 2013 AES Watch issued its initial assessment of the 2013 mid-term elections based on its nationwide monitoring and poll watch from May 2 – 17.

60) According to the AES Watch assessment, it was COMELEC in 2013 committing unpardonable blunder in a

scale bigger than 2010's: safeguards set in law providing for voter verifiability, source code review, valid digital signature, secured CF cards, and other minimum protections summarily set aside without an apology.

(See **ANNEX G-1**)

61) Indeed, from the point of view of the AES Watch assessment, the biggest casualty in the stubborn and inexplicable insistence by Respondents - impeachable COMELEC Commissioners and non-impeachable COMELEC officers - to use the highly-problematic PCOS technology in the May 13, 2013 mid-term elections is the sanctity and integrity of the ballot.

62) On or around 23 May 2013, a former COMELEC Commissioner, an IT practitioner, herein AGGRIEVED PARTY Gus Lagman, bared that during his time at the Commission, he had returned to the COMELEC the P1.25-million fund Respondent Brillantes gave him a few months before, purportedly for "intelligence" purposes.<sup>23</sup>

(See **ANNEX H**)

63) Respondent Brillantes not only admitted to the existence of the intelligence fund; he even confirmed that he received the P30-million fund from the Office of the President and justified it by saying the fund was needed to monitor the activities of alleged elections saboteurs.<sup>24</sup>

(See **ANNEXES I and J**)

64) He admitted himself receiving P30 million in February this year, and distributed half of it to commissioners: P5 million to his office, P2 million to each of the four senior

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<sup>23</sup>Mikha Flores, Former Comelec COMELEC exec bares intel funds , Verafiles, May 22, 2013, available at <http://verafiles.org/former-comelec-COMELEC-exec-bares-intel-funds/> (A copy is attached as ANNEX H)

<sup>24</sup>Ernie Reyes, Brillantes admits getting P30-M intel funds from PNoy, InterAksyon.com, May 24, 2013 available at <http://www.interaksyon.com/article/62480/brillantes-admits-getting-p30-m-intel-funds-from-pnoy>; (A copy is attached as ANNEX I) and Interaksiyon, Comelec needs intel funds, Brillantes insists; P30M was released February, May 26, 2013, available at <http://www.interaksyon.com/article/62591/comelec-COMELEC-needs-intel-funds-brillantes-insists-p30m-was-released-february> (A copy is attached as ANNEX J)

commissioners, and P1 million each to the new commissioners.<sup>25</sup>

65) Respondent Brillantes broadly hinted that groups like AES Watch are under surveillance, saying:” Bakit sila matatakot kung wala silang ginawang masama? Talaga namang ginagamit ang intel fund sa mga nagsasabotahe ng election” or only to those out to sabotage the polls. “Kapag natatakot sila, ibig sabihin meron sila sigurong ginagawang masama.”<sup>26</sup>

66) In another news item, Respondent Brillantes was quoted in the press as threatening his critics with these words:“They made our life difficult. Now, they should watch out how I get payback.”<sup>27</sup>

(See **ANNEX K**)

67) Not to be outdone, the Office of the President, through Respondent, Deputy Presidential Spokesperson Abigail Valte, confirmed what Respondent Brillantes said, remarking thus: “The justification is supposed to be utilized for intelligence, counter intelligence activities and gathering of information relative to the activities of certain groups, individuals and technology experts suspected of conducting overt and covert operations to sabotage the results of the elections”<sup>28</sup>

(See **ANNEX L**)

68) All the threats unleashed by Respondents Brillantes and Valte against it is a surprise to AES Watch.

69) The records bear the fact that AES Watch has been transparent in its engagements with COMELEC and other concerned government instrumentalities - publicizing and

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<sup>25</sup>Interaksiyon, Comelec needs intel funds, Brillantes insists; P30M was released February, May 26, 2013, available at <http://www.interaksiyon.com/article/62591/comelec-COMELEC-needs-intel-funds-brillantes-insists-p30m-was-released-february> (A copy is attached as ANNEX J)

<sup>26</sup>*Id.*

<sup>27</sup>Mayen Jaymalin, Brillantes to critics of auto polls: It's payback time, The Philippine Star, May 20, 2013, cross-posted and available at <http://www.abs-cbnnews.com/nation/05/19/13/brillantes-critics-auto-polls-its-payback-time> (A copy is attached as ANNEX K)

<sup>28</sup>Delon Porcalla, Palace justifies Comelec's intel funds, The Philippine Star, May 24, 2013 available at <http://www.philstar.com/headlines/2013/05/24/945644/palace-justifies-comelecs-intel-funds> (A copy is attached as ANNEX L)

circulating its studies, critiques and observations of electoral processes for a reasoned exchange of views and opinions.

70) Indeed AES Watch was not only an issue or problem-identifier but also a solutions-seeker and policy proponent, with a publicly-circulated list of proposed legislative measures for electoral reforms.

71) In engaging with COMELEC, it has gone through the institutional procedures of official letters, communications (duly received by Comelec) and dialogues; where it became necessary, AES Watch took the legal tact and filed various suits in court,

72) At no point has AES Watch resorted to personal attacks against COMELEC officials or engaged them in unprincipled debates.

73) But COMELEC avoided responding to AES Watch's studies and critiques and instead resorted to threats and offensive remarks – highly unprofessional and even degrading to nationally-known IT professionals and academics.)

(See **ANNEX M**, a public statement dated February 19, 2013 issued by AES Watch on COMELEC's unresponsiveness to the issues raised against the PCOS technology)

74) Too, to clear matters up in regard to the surveillance question, AES Watch issued a public statement asking Respondent Brillantes to publicly declare that the P30-million intelligence fund was not meant to spy on critics of the PCOS technology.

(See attached as **ANNEX M-1**, a copy of the said public statement dated May 25, 2013).

75) Respondent Brillantes however chose to keep silent on the challenge to come clean on the issue foisted at him by AES Watch.

**76)** Respondents Brillantes and Valte are being impleaded in this suit because from their public statements, it would appear that they are the most informed about the information-gathering and/or surveillance activities being conducted by intelligence assets tapped by the COMELEC and funded through the P30-million largesse from the Office of the

President against Aggrieved Parties and other members of AES Watch.

**77)** They have also issued public statements assailing or at least hinting that, the Aggrieved Parties and other members of AES Watch and/or critics of the PCOS technology are among the targets of information-gathering and/or surveillance activities on suspicions of election sabotage.

78) The other incumbent COMELEC Commissioners are also being impleaded in this suit because, by Respondent Brillantes' admission, they are in part, also recipients of the P30-million intelligence fund intended to be used to spy on alleged election saboteurs, including the Aggrieved Parties and other members of AES Watch and their allied organizations.

79) RESPONDENT MEJOS is being impleaded in this suit because as FINANCE DIRECTOR of the COMELEC, he would be in the position to know who the recipients are of the intelligence funds and how these funds were disbursed/are being disbursed and for whatever purpose.

80) RESPONDENT EXECUTIVE SECRETARY OCHOA is being impleaded as a representative of the Office of the President, which is the source of the P30 million intelligence fund provided to the COMELEC to spy on or otherwise place under surveillance, and gather information from, critics of the PCOS automated elections technology suite.

#### **GROUND FOR THE ISSUANCE OF THE WRIT OF HABEAS DATA**

81) Evidently, there are serious grounds for the issuance of the Writ of Habeas Data in favor of the Aggrieved Parties in this case because of violations by Respondents of their right to privacy in life, liberty and or security through the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved parties.



**DESPITE ITS PATENT ILLEGALITY AND UNCONSTITUTIONALITY, RESPONDENTS FROM COMELEC OBTAINED P30 MILLION IN INTELLIGENCE FUNDS FROM THE OFFICE OF THE CHIEF EXECUTIVE WITH WHICH THEY NOW THREATEN AGGRIEVED PARTIES WITH SURVEILLANCE AND THE EVENTUAL FILING OF CHARGES FOR ALLEGED ELECTION SABOTAGE.**

82) To begin with, Respondent COMELEC Commissioners violated the Constitution when they granted themselves P30 million in “intelligence funds,” purportedly realigned from the COMELEC’s 2012 savings, and intended for ,among other things, spying on civil society election watchdogs whom he called “troublemakers.”

83) The realignment violates the express provisions of the General Appropriations Act (GAA) of 2012, which specifically prohibits the Commission from having or otherwise using intelligence funds.

84) It also violates the Constitution’s Article VI (The Legislative Department), Section 25-(5), which states: “No law shall be passed authorizing the transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.”

85) This is because no law has been passed allowing the COMELEC chairperson to augment the intelligence budgeting of his constitutional commission.

86) In fact in 2011, Senator Franklin Drilon then, chairperson of the Senate finance committee, explained that under the proposed 2012 budget intelligence funds will only be made available to military and law enforcement agencies.

87) He said that agencies like the Presidential Commission on Good Government (PCGG), Office of Solicitor General (OSG), Public Attorney's Office (PAO), National

Security Council (NSC), National Telecommunications Commission (NTC), Commission on Elections (Comelec), and Office of the Presidential Adviser on the Peace Process, and the judiciary would not be granted intelligence funds in 2012.

88) This, according to him, is consistent with the policy that intelligence funds should be limited only to agencies involved in intelligence gathering for security and law enforcement purposes.<sup>29</sup>

(See the attached **ANNEX N**).

89) Worse, Respondent COMELEC Commissioners have utilized the same unconstitutionally-obtained public funds to place under surveillance, gather information about, or otherwise threaten the, including the Aggrieved parties, with prosecution for allegedly sabotaging the 13 May 2013 elections.

**RESPONDENTS' THREATS OF AND/OR ACTUAL SURVEILLANCE, INFORMATION-GATHERING AND PROSECUTION FOR ALLEGED ELECTION SABOTAGE OF CRITICS OF THE DEEPLY-FLAWED PCOS TECHNOLOGY USED BY THE COMELEC IN THE LAST TWO ELECTIONS SMACK OF PRIOR RESTRAINT, WHICH THREATENS THEIR RIGHT TO PRIVACY AND TO BE SECURE IN THEIR PERSONS, AND TO FREELY EXPRESS THEIR OPINION ON AN URGENT MATTER OF GRAVE PUBLIC INTEREST – THE SANCTITY OF THE BALLOT AND ELECTORAL REFORMS.**

90) Public Respondents' admissions about an on-going surveillance by their assets and/or personnel of critics of the COMELEC's handling of the automation of the last two nationwide elections coupled with the threats of prosecution they issued against the same critics –including herein

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<sup>29</sup>Kimberly JaneTan, Safeguards vs abuse of intel funds in place in 2012 budget — Drilon, GMA NewsAugust 9, 2011, <http://www.gmanetwork.com/news/story/228857/news/nation/safeguards-vs-abuse-of-intel-funds-in-place-in-2012-budget-drilon>(ANNEX N)

Aggrieved Parties – constitute acts held to be in prior restraint with chilling effect on free speech and free expression under the Constitution.

91) In *Chavez v. Gonzales*,<sup>30</sup> the Supreme Court ruled that even mere press statements made by government officials in their official functions constitute “content-based prior restrained” that violates the constitutional protection granted to free speech and expression.

92) In this case, the Supreme Court held the following acts of Justice Secretary Gonzales as unconstitutional:

3. On June 8, 2005, Defendant Department of Justice (DOJ) Secretary Raul Gonzales warned reporters that those who had copies of the compact disc (CD) and those broadcasting or publishing its contents could be held liable under the Anti-Wiretapping Act. These persons included Secretary Bunye and Atty. Pagua. He also stated that persons possessing or airing said tapes were committing a continuing offense, subject to arrest by anybody who had personal knowledge if the crime was committed or was being committed in their presence.

4. On June 9, 2005, in another press briefing, Secretary Gonzales ordered the National Bureau of Investigation (NBI) to go after media organizations “found to have caused the spread, the playing and the printing of the contents of a tape” of an alleged wire-tapped conversation involving the President about fixing votes in the 2004 national elections. Gonzales said that he was going to start with Inq7.net, a joint venture between the Philippine Daily Inquirer and GMA7 television network, because by the very nature of the Internet medium, it was able to disseminate the contents of the tape more widely. He then expressed his intention of inviting the editors and managers of Inq7.net and GMA7 to a probe, and supposedly declared, “I [have] asked the NBI to conduct a tactical interrogation of all concerned.”

93) In the case of the NTC, the Supreme Court struck down as prior restraint a press statement issued by the Commission on June 11, 2005, which reads at length in this wise:

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<sup>30</sup>G.R. No. 168338, Feb. 15, 2008.

NTC GIVES FAIR WARNING TO RADIO AND TELEVISION OWNERS/OPERATORS TO OBSERVE ANTI-WIRETAPPING LAW AND PERTINENT CIRCULARS ON PROGRAM STANDARDS

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Taking into consideration the country's unusual situation, and in order not to unnecessarily aggravate the same, the NTC warns all radio stations and television network owners/operators that the conditions of the authorization and permits issued to them by Government like the Provisional Authority and/or Certificate of Authority explicitly provides that said companies shall not use [their] stations for the broadcasting or telecasting of false information or willful misrepresentation. Relative thereto, it has come to the attention of the [NTC] that certain personalities are in possession of alleged taped conversations which they claim involve the President of the Philippines and a Commissioner of the COMELEC regarding supposed violation of election laws.

These personalities have admitted that the taped conversations are products of illegal wiretapping operations.

Considering that these taped conversations have not been duly authenticated nor could it be said at this time that the tapes contain an accurate or truthful representation of what was recorded there-in, it is the position of the [NTC] that the continuous airing or broadcast of the said taped conversations by radio and television stations is a continuing violation of the Anti-Wiretapping Law and the conditions of the Provisional Authority and/or Certificate of Authority issued to these radio and television stations. It has been subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation, the concerned radio and television companies are hereby warned that their broadcast/airing of such false information and/or willful misrepresentation shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies.

In addition to the above, the [NTC] reiterates the pertinent NTC circulars on program standards to be

observed by radio and television stations. NTC Memorandum Circular 111-12-85 explicitly states, among others, that “all radio broadcasting and television stations shall, during any broadcast or telecast, cut off from the air the speech, play, act or scene or other matters being broadcast or telecast the tendency thereof is to disseminate false information or such other willful misrepresentation, or to propose and/or incite treason, rebellion or sedition.” The foregoing directive had been reiterated by NTC Memorandum Circular No. 22-89, which, in addition thereto, prohibited radio, broadcasting and television stations from using their stations to broadcast or telecast any speech, language or scene disseminating false information or willful misrepresentation, or inciting, encouraging or assisting in subversive or treasonable acts.

The [NTC] will not hesitate, after observing the requirements of due process, to apply with full force the provisions of said Circulars and their accompanying sanctions on erring radio and television stations and their owners/operators.

94) That what were primarily at issue in *Chavez v. Gonzales* were mere press statements did not stop the Supreme Court from holding that such acts constituted content-based prior restraint. It declared thus:

in resolving this issue, we hold that it is not decisive that the press statements made by Defendants-Appellees were not reduced in or followed up with formal orders or circulars. It is sufficient that the press statements were made by Defendants-Appellees while in the exercise of their official functions. Undoubtedly, Defendant Gonzales made his statements as Secretary of Justice, while the NTC issued its statement as the regulatory body of media.

95) Also, an important point is that the Supreme Court laid down a criterion to determine whether the act of an Executive official is tantamount to prior restraint: “Any act done, such as a speech uttered, for and on behalf of the government in an official capacity is covered by the rule on prior restraint.”

96) The Supreme Court arrived at this holding without seeing the need to thresh out the factual and legal contexts

involved in the assailed acts of Sec. Gonzales and of the NTC. As Justice Dante Tinga's separate opinion would put it:

It should be stressed that there are critical differences between the factual and legal milieu of the assailed act of the DOJ Secretary, on one hand, and that of the questioned conduct of the NTC, on the other. The act complained of the NTC consists in the issuance of a Press Release, while that of the DOJ Secretary is not encapsulated in a piece of paper but comprised in utterances which nonetheless were well documented by the news reports at that time. There is an element of caution raised in the Press Release in that it does not precisely sanction or threaten to immediately sanction the broad-cast media for airing the Garci tapes, but it raises that possibility on the condition that "it has been subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation." No such suspensive condition is embodied in the assailed acts of the DOJ Secretary.

And most critical in my view is the distinction between the NTC and the DOJ Secretary with respect to the breadth and reach of their ability to infringe upon the right to free expression. The NTC is a quasi-judicial regulatory body attached to the Department of Transportation and Communications exercising regulatory jurisdiction over a limited set of subjects: the broadcast media, telecommunications companies, etc. In the scope of its regulatory jurisdiction, it concededly has some capacity to impose sanctions or otherwise perform acts that could impinge on the right of its subjects of regulation to free expression, although the precise parameters of its legal authority to exercise such actions have not yet been fully defined by this Court.

In contrast, the ability of the DOJ Secretary and the office that he heads to infringe on the right to free expression is quite capacious. Unlike the NTC whose power of injunction and sanction is limited to its subjects of regulation, the DOJ Secretary heads the department of government which has the premier faculty to initiate and litigate the prosecution of just about anybody.

97) The majority opinion now proffered an expanded understanding of an “act” as a legal concept in relation to free speech and free press issues:

The concept of an “act” does not limit itself to acts already converted to a formal order or official circular. Otherwise, the non formalization of an act into an official order or circular will result in the easy circumvention of the prohibition on prior restraint. The press statements at bar are acts that should be struck down as they constitute impermissible forms of prior restraints on the right to free speech and press.

98) Why is this so? The import of the majority’s rationale comes to sharper focus when viewed in relation to this finding that the assailed acts of the public officials actually created a chilling effect on media:

There is enough evidence of chilling effect of the complained acts on record. The warnings given to media came from no less than the NTC, a regulatory agency that can cancel the Certificate of Authority of the radio and broadcast media. They also came from the Secretary of Justice, the alter ego of the Executive, who wields the awesome power to prosecute those perceived to be violating the laws of the land. After the warnings, the KBP inexplicably joined the NTC in issuing an ambivalent Joint Press Statement. After the warnings, petitioner Chavez was left alone to fight this battle for freedom of speech and of the press. This silence on the sidelines on the part of some media practitioners is too deafening to be the subject of misinterpretation.

**99)** The questioned acts in the instant case are no different from those invalidated by the Supreme Court in *Chavez v. Gonzales*. The pronouncements by Respondent Brillantes and Respondent Valte about an on-going surveillance program aimed at alleged election saboteurs – supported no less by the Office of the President of the Philippines – were clearly meant to intimidate, cow and muzzle critics of the deeply-flawed PCOS technology used in the last two nationwide elections.

**100)** The sanctity of the ballot and electoral reforms are matters of grave public interest because they are at the heart of what it means to be a democratic state founded on Republican principles.

101) How the government discharges with its duties to safeguard and enhance the sanctity of the ballot through electoral process and electoral reforms is best served by robust public discussion and participation, without which democratic governance and deliberative democracy lose their very meaning.

102) Without such discussion and participation or when such democratic practices are stifled by the very government itself, public trust – the foundation of a free, honest and virtuous elections, is lost.

103) Moreover, the use of the intelligence funds for the purpose of spying on critics of the PCOS technology violates the right to privacy of Aggrieved Parties.

104) 107) Obviously, the surveillance is being done without the requisite court order, thus subjecting them to unreasonable searches and seizures in violation of Sec 2, Art. III of the 1987 charter, which states that “the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable.”

105) This also violates Section 3(1) of Art. III of the 1987 Charter which states that the “privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.”

106) It is for this constitutionally-enshrined right that the Supreme Court enacted the Rule on the Writ of Habeas Data. As explained by Chief Justice Puno, “the writ of habeas data finds its justification on the right to privacy,” adding that “the writ of habeas data was promulgated to protect the right to informational privacy.”<sup>31</sup>

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<sup>31</sup>Chief Justice Reynato Puno, *The Common Right to Privacy*, speech before the forum on The Writ of Habeas Data and Human Rights, sponsored by the National Union of People’s Lawyers, March 12, 2008 at the Innotech Seminar Hall, Commonwealth Ave. Quezon City.



107) By the pronouncements of Respondents Brillantes and Valte, it appears that COMELEC has been given *carte blanche* authority to sneak into the private lives of Aggrieved Parties, other members of AES Watch and its allied organizations.

108) This cannot be countenanced by our constitutional system, founded as it is on a deep respect for such a fundamental right as the right to privacy and to be secure in one's person against any undue threats.

**109)** Aggrieved Parties, while they do not have personal knowledge about the repository of information gathered by COMELEC and its cohorts about them, considering that intelligence funds are being used to run the surveillance program, they nevertheless believe the admissions made by Respondents Brillantes and Valte are more than enough to establish the existence of such program, and the fact that it has been running since the P30-million fund was released by the Office of the President to the COMELEC in February this year.

### **RELIEF PRAYED FOR**

**WHEREFORE, PREMISES CONSIDERED,** Aggrieved Parties pray that this Honorable Court issue a Writ of Habeas Data against Respondents and after due hearing:

- (a) Issue an Order directing Respondents to permanently cease and desist from further gathering information about the Aggrieved Parties, other members of AES Watch and its allied organization using the P30-million intelligence fund provided by the Office of the President and by other sources to the COMELEC;
- (b) Issue an Order directing Respondents to disclose to the Court and to the AGGRIEVED PARTIES whatever information has already been gathered about Aggrieved Parties and other members of AES Watch and its allied organizations, and to subsequently permanently suppress, destroy or permanent seal the same information to protect the right to privacy of Aggrieved Parties and other members of AES Watch

and its allied organizations and to prevent COMELEC from using these illegally-gathered information to prosecute critics of the PCOS automated elections technology suite for election sabotage and other applicable offenses or crimes;

- (c) Issue an Order directing Respondents Brillantes and Valte to permanently cease and desist from issuing any further threats of surveillance, information-gathering or prosecution against herein Aggrieved Parties, members of AES Watch and allied organizations, as such constitute prior restraint with chilling effect to the right of free expression and free speech;
- (d) Issue an Order directing the Office of the President, through the Executive Secretary, to permanently cease and desist from providing the COMELEC with intelligence funds, considering the rank unconstitutionality and illegality of such provision of funds and the questionable use of such funds to stifle free speech and free expression as well as threaten the right of citizens to be secure in their persons;
- (e) Issue an order directing Respondents who are Commissioners or Officers of the COMELEC (i) to disclose who among them received the proceeds from the intelligence fund in question and in what amounts for which periods (ii) to account in detail for the intelligence funds used in spying on or otherwise placing under surveillance AES Watch and its partner individuals and organizations, and disclose the same to the public.

**In the meantime that this case is being heard, Aggrieved Parties pray that this Honorable Court issue an Order against Respondents, directing them to:**

- (f) Refrain from any further information-gathering or surveillance activities against Aggrieved Parties and other members of AES Watch and its allied organizations;
- (g) Refrain from making any further statements that threaten Aggrieved Parties and other members of AES Watch and its allied organizations with surveillance as well as prosecution for alleged election sabotage;

(h) Refrain from further disbursements of the intelligence funds for purposes of placing under surveillance or otherwise threatening the right to privacy of Aggrieved Parties and other members of AES Watch and its allied organizations;

Other relief just and equitable are also prayed for.

Makati City for the City of Manila, 2 July 2013.

*Respectfully submitted.*

*By the counsel for Aggrieved Parties:*

**By:**

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ROLL No. 36976

MCLE COMPLIANCE No. IV-000513

(ISSUED ON FEBRUARY 15, 2013)

**ROMEL REGALADO BAGARES**

PTR No. 3692460/JAN 18, 2013/MAKATI CITY  
IBP No. 924439/JAN 10, 2013/SOCSARGEN  
ROLL No. 49518  
MCLE COMPLIANCE No. IV-001822  
(ISSUED ON JANUARY 25, 2013)

**GEEPEE ACERON GONZALES**

Roll No. 59686  
PTR No. 3692464/Jan. 18, 2013/  
Makati City  
IBP No. 924436 /Jan. 10, 2013/Oriental  
Mindoro  
MCLE Compliance No. IV-0005346  
(issued on 28 March 2012)

**COPY FURNISHED:**

***A. By registered mail, to each of the following,***

at the COMELEC headquarters, Palacio del Gobernador Bldg.,  
Gen. Luna St. cor. Andres Soriano Jr. Ave, Intramuros, Manila  
1002

RESPONDENT SIXTO SERRANO BRILLANTES

RESPONDENT LUCENITO NOLASTO TAGLE

RESPONDENT ELIAS R. YUSOPH

RESPONDENT CHRISTIAN ROBERT S. LIM

RESPONDENT LUIE TITOF. GUIA

RESPONDENT MA. GRACIA CIELO PADACA

RESPONDENT AL A. PARREÑO

RESPONDENT DIRECTOR EDUARDO DULAY MEJOS

***B. By registered mail, to each of the following,***

at the Malacanang Palace, 1000 Jose P Laurel Sr, San Miguel,  
Manila

EXECUTIVE SECRETARY PAQUITO OCHOA JR.,  
OFFICE OF THE EXECUTIVE SECRETARY

DEPUTY PRESIDENTIAL SPOKESPERSON ABIGAIL VALTE  
OFFICE OF THE PRESIDENTIAL SPOKESPERSON

***C. By Registered mail to:***

The Office of the Solicitor General  
134 Amorsolo St., Lagaspi Vill. 1229

**EXPLANATION**

Due to the shortage of messengerial services and lack of material time, this Petition is being served by registered mail, in accordance with Section 11, Rule 13 of the Revised Rules of Court.

**GEEPPE ACERON GONZALES**