

EN BANC

G.R. No. 216572 (*Feliciano P. Legaspi v. Commission on Elections, Alfredo D. Germar, and Rogelio P. Santos, Jr.*)

Promulgated:

September 1, 2015

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DISSENTING OPINION

VELASCO, JR., J.:

Nature of the Case

For resolution is a Petition for Certiorari under Rule 64 of the Rules of Court assailing the January 28, 2015 Order¹ of public respondent Commission on Elections (COMELEC) in SPA No. 13-353 (DC). Said Order dismissed petitioner Feliciano Legaspi's Petition for Disqualification lodged against private respondents.

The Facts

Petitioner and private respondent Alfredo D. Germar (Germar) both ran as mayoralty candidates in Norzagaray, Bulacan in the May 13, 2013 elections. Meanwhile, private respondent Rogelio Santos (Santos) was a candidate for councilor in that electoral exercise of the same local government unit.

Petitioner averred that respondents' political leaders engaged in massive vote-buying from May 11, 2013 until election day. According to his witnesses' accounts, said political leaders, while camped inside the North Hills Village Homeowners Association Office in the locality, were distributing to voters envelopes containing Five Hundred Pesos (P500) each and a sample ballot containing the names of respondents. Through military efforts, so petitioner alleged, the vote-buying was foiled and the office, which served as the venue for distribution, padlocked. In spite of an attempt by the newly-minted Chief of Police, P/Supt. Dale Soliba, and his subordinates to force open the office and retrieve from inside four (4) boxes containing the remaining undistributed envelopes with an estimated aggregate amount of Eight Hundred Thousand Pesos (P800,000), a group of concerned citizens were able to thwart their plan in *flagrante delicto* and intercept the said evidence of vote-buying.²

¹ *Rollo*, p. 99 – 103.

² *Id.* at 60.

Because the widespread vote-buying was discovered only on May 11, 2013 and continued up to the day of the elections, petitioner urgently moved for the Municipal Board of Canvassers (MBOC) to suspend the proclamation of the election results. Despite the motion, however, private respondents Germar and Santos were nevertheless proclaimed as the duly-elected mayor and 2nd councilor of Norzagaray, Bulacan on May 14, 2013, the day after the elections.³ On even date, petitioner filed the Petition for Disqualification⁴ against private respondents, docketed as SPA No. 13-353 (DC).⁵

In answer, private respondents denied the allegations of vote-buying and raised the alibi that, from 3:00 o'clock to 11:00 o'clock in the evening of May 11, 2013, they attended the Liberal Party's meeting *de avance* at the San Andres Parish church grounds, and that they did not go to or visit the office of the Homeowners Association of North Hills Village, Brgy. Bitungol, Norzagaray at the time the election offenses were allegedly committed.⁶ They likewise raised the following procedural defenses: that the petition had been filed out of time; that the petitioner allegedly failed to incorporate a proper certification against forum-shopping in his petition; and that there must be prior conviction by final judgment in a criminal case for the election offense of vote-buying before they can be disqualified to run.⁷

Ruling of the COMELEC Special First Division

By a 2-1 vote, the COMELEC Special First Division⁸ granted the Petition for Disqualification through its October 3, 2013 Resolution⁹ in SPA No. 13-353 (DC), the dispositive portion of which reads:

WHEREFORE, premises considered, the Commission RESOLVED as it hereby RESOLVES to:

- (1) DISQUALIFY Respondents Alfredo M. [Germar] and Rogelio C. Santos, Jr. for the positions of Mayor and Councilor of Norzagaray, Bulacan;
- (2) REFER the criminal aspect of this case against [Germar], Roberto Esquivel, Rogelio Santos, Jr., Dale Soliba, Dominador Rayo, Marivic Nunez, Adelaida Auza, Amelia Cruz, and Leonardo Ignacio to the Law Department for preliminary investigation; and
- (3) ORDER the Regional Election Director of COMELEC Region III to implement this Resolution, following the rules on succession as provided in R.A. 7160.

³ Id. at 60-61.

⁴ Id. at 178-181.

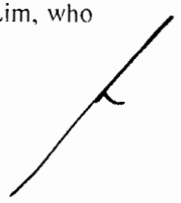
⁵ Entitled "*Feliciano Legaspi v. Alfredo M. Germar, Roberto C. Esquivel, and Rogelio Santos, Jr.*" The case against Esquivel was mooted by his loss in the vice-mayoralty race.

⁶ Supra note 1 at 61.

⁷ *Rollo*, p. 61.

⁸ With Chairman Sixto S. Brillantes, Jr. substituting Commissioner Christian Robert S. Lim, who was absent, via an Order dated October 1, 2013.

⁹ Supra note 1 at 59-73.



SO ORDERED.

In first disposing the procedural issues raised by private respondents, the COMELEC division held:

[I]t must be noted that the instant petition was filed on the very date of the proclamation of respondents on May 14, 2013. Prior to that and towards the end of the canvassing, however, petitioner had already filed an Urgent Motion to Suspend Proclamation before the MBOC, in the light of the vote-buying activities which were being perpetrated earlier but discovered only two days before the elections and continued up to the election day itself.

Under such circumstance, therefore, we cannot simply brush aside the overwhelming evidence and dismiss this petition outright on mere procedural grounds. For, it has previously been held in *Nolasco vs. Comelec* that where the evidence of guilt for violation of Section 68 of the Omnibus Election Code committed immediately before the election as a ground for disqualification filed after the election but before proclamation is overwhelming, the COMELEC in the exercise of its sound discretion may assume jurisdiction, suspend the proclamation and disqualify the winning candidate, for the COMELEC cannot always be straitjacketed by procedural rule.

While it may be true that respondents Germar and Santos were already proclaimed, we should not lose sight of the fact that this instant petition for disqualification was filed on the very date of their proclamation. Even before that, an Urgent Motion to Suspend Proclamation was already instituted before the MBOC.¹⁰

The division likewise did not give credence to private respondents' argument on the need for a final conviction before they can be disqualified from holding public office. It emphasized that the electoral aspect of a disqualification case is separate and distinct from the criminal aspect, and that as an administrative proceeding that is summary in character, the quantum of proof required to be overcome for a petition for disqualification to prosper is substantial evidence.¹¹

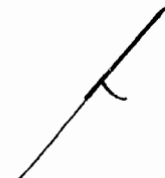
In the case at bar, the pieces of evidence submitted to the COMELEC consisted of the following:¹²

- 1) Sinumpaang Salaysay of Kagawad Helen Viola, Ma. Joanna Abesamis, Jaimenito Magat, Danny Mendoza and Teodorico Tuazon who witnessed the vote-buying activities during the morning of May 11, 2013, the forced opening of the HOA office around 12:00 A.M. of May 12, 2013 by P/Supt. Soliba and subsequent interception of the latter by the affiants, who seized the plastic bag containing 4 boxes of money and sample ballots of respondents;

¹⁰ *Rollo*, p. 62.

¹¹ *Id.* at 63.

¹² *Id.* at 64-65.



- 2) Report of the Turn-over of Confiscated/Recovered Items by P/Supt. Soliba to the Municipal Treasurer of Norzagaray, Bulacan, detailing the number of envelopes and sample ballots of Germar-Esquivel Team (FB Team) and amounts of money found inside each of the 4 boxes;
- 3) Pictures during the opening of the seized items before the Norzagaray Municipal Police Station and photos taken during the vote-buying incident at the HOA office where respondent Esquivel was seen going out of the premises in the morning of May 11, 2013;
- 4) Certified True Copies of the Police Blotter Entries regarding the vote-buying incidents which happened on May 12-13, 2013, as reported to the police by Retired Col. Bruno Paler Viola, Jr. and Alma Rulida;
- 5) Sworn Statements of 194 voters who testified that they were offered and/or given the amount ranging from PhP250.00 - PhP500.00 each in exchange of their votes for the respondents, and were thus issued yellow stubs that they received such amount;
- 6) Sworn Statements of several witnesses, attesting that during election day, respondents' team promised them to pay PhP500.00 - PhP1,000.00 each on condition that they will not vote and their right point fingers will be marked with ink; and
- 7) Minutes of Voting of the Board of Election Inspectors of Cluster Precinct No. 60, allowing three voters to cast their vote upon verifying that the ink marked on their fingers was not that of the Comelec's indelible ink and that they have not yet voted.

The COMELEC Special First Division ruled that the totality of the evidence petitioner thus presented was sufficient to disqualify private respondents from holding office.¹³


Ruling of the COMELEC En Banc

Private respondents timely moved for reconsideration, but the COMELEC *en banc* denied the motion through its July 10, 2014 Resolution,¹⁴ thus:

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES to DENY this Motion for Reconsideration for LACK OF MERIT. Consequently, the October 3, 2013 Resolution of the Special First Division (1) disqualifying respondents Alfredo M. Germar and Rogelio C. Santos, Jr. for the positions of Mayor and Councilor of Norzagaray, Bulacan; (2) referring the criminal aspect of this case against Alfredo M. Germar, Roberto Esquivel, Rogelio Santos, Jr., Dale Soliba, Dominador Rayo, Marivic Nunez, Adelaida Auza, Amelia Cruz and Leonardo Ignacio to the Law Department for preliminary investigation and (3) ordering the Regional Election Director of COMELEC Region III to implement this Resolution.

¹³ Id. at 66.

¹⁴ Id. at 84 - 92.



following the Rules on Succession as provided under R.A. 7160 is hereby AFFIRMED.

SO ORDERED.

The adverted *en banc* Resolution had a vote of **3-2-1-1**, as follows: three (3) commissioners, namely Chairman Sixto S. Brillantes, Jr. and commissioners Lucenito N. Tagle and Elias R. Yusoph, voted for the denial of the motion, while two (2) commissioners, Christian Robert S. Lim and Luie Tito F. Guia, dissented. Commissioner Al A. Parreño took no part in the deliberations and Commissioner Maria Grace Cielo M. Padaca did not vote as her *ad interim* appointment had already expired, vacating a seat in the electoral tribunal.¹⁵

Because the Resolution was not concurred in by a majority of all the members of the COMELEC, a re-deliberation of the administrative aspect of the case was conducted pursuant to Section 6, Rule 18 of the COMELEC Rules of Procedure. The re-deliberation resulted in the issuance of the assailed Order dated January 28, 2015 with a vote of **3-2-2** whereby new Commissioner Arthur D. Lim took no part in the deliberations and abstained from voting. Citing the same above-quoted rule, the Comelec *en banc* dismissed the original Petition for Disqualification filed by Legaspi. The dispositive portion of the challenged Order reads:

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES to DISMISS the administrative aspect of this Petition for Disqualification for FAILURE TO OBTAIN THE NECESSARY MAJORITY VOTES AFTER RE-DELIBERATION/REHEARING by the members of the Commission *en banc*.

SO ORDERED.¹⁶


The Issues

Confounded by the dismissal of his petition despite having secured a favorable vote from majority of the members of the COMELEC Special First Division and, subsequently, from three (3) out of the five (5) participating and voting Commissioners from the COMELEC *en banc*, Legaspi interposed the instant recourse ascribing grave abuse of discretion on the part of the COMELEC arising from the following acts:

- a. When it deliberately misapplied Section 6, Rule 18 of the Comelec Rules of Procedure;
- b. When it construed the “NO PART” positions of the two commissioners as votes together with the dissenting commissioners resulting in the dismissal, not of the Motion for Reconsideration, but

¹⁵ Id. at 32-33.

¹⁶ Supra note 1 at 102 – 103.



the dismissal of the entire administrative case of disqualification case against respondents;

- c. When it finally decided to favor the respondents despite only two (2) votes favoring them, contrary to what is required under Section 5(a), Rule 3 in relation to Section 4, Rule 18 of the Comelec Rules where four (4) votes are actually required.¹⁷

Petitioner's main postulation is that on private respondents rest the burden to prove that the COMELEC Special First Division committed reversible error in granting the petition for disqualification, and that since majority of the COMELEC *en banc* remained unconvinced by the private respondents' motion, the division ruling should be deemed affirmed. To rule as the COMELEC herein did – that the entire case, not just the motion for reconsideration, should be dismissed – would be tantamount to reversing the division ruling without obtaining the necessary majority vote required by the Constitution to overturn the same.

In their Comment,¹⁸ private respondents assert that the COMELEC *en banc*'s ruling is in line with Sec. 7, Article IX-A of the 1987 Constitution, which requires an absolute majority vote of four (4) members.¹⁹ And citing *Mendoza v. COMELEC (Mendoza)*,²⁰ private respondents claim that failure of the *en banc* to muster the required majority vote of four (4) would result in the dismissal of the election protest originally filed with the COMELEC.²¹

For its part, public respondent COMELEC, represented by the Office of the Solicitor General (OSG), through its Comment,²² countered that petitioner does not have the legal standing to file the instant petition since he does not stand to be injured or benefited by the outcome of the case because under Sec. 44 of Republic Act No. (RA) 7160,²³ otherwise known as the Local Government Code, it is the duly-elected vice-mayor who will succeed the mayoralty post in case of permanent vacancy.²⁴ Additionally, the OSG argued that the COMELEC properly applied Sec. 6, Rule 18 of its rules, in line with the ruling in *Mendoza*.

Evidently, the crux of the controversy revolves around the interpretation of Sec. 7, Article IX-A of the 1987 Constitution and the

¹⁷ Id. at 37-38.

¹⁸ Id. at 145-174.

¹⁹ Id. at 157; citing *Sevilla, Jr. v. COMELEC*, G.R. No. 203833, March 19, 2013, 693 SCRA 622.

²⁰ G.R. No. 191084, March 25, 2010, 616 SCRA 443, 458.

²¹ Supra note 1 at 158.

²² *Rollo*, pp. 121-139.

²³ **Section 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.** – (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

²⁴ Supra note 1 at 130.

complementary Sec. 6, Rule 18 of the COMELEC Rules of Procedure, to wit:

ARTICLE IX
Constitutional Commissions

A. COMMON PROVISIONS

x x x

Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

Sec.6, Rule 18 of the COMELEC Rules of Procedure provides:

Section 6. Procedure if Opinion is Equally Divided. – When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgement or order appealed from shall stand affirmed; and all incidental matters, the petition or motion shall be denied.

In essence, the Court is asked to determine (1) the number of votes necessary for the COMELEC *en banc* to resolve a case, and (2) the effect of the *en banc*'s failure to muster the required number of votes.

The Dissent

The petition is impressed with merit.

An absolute majority is required for the COMELEC en banc to decide a case

Anent the first issue, it is clear from the literal wording of Sec. 7, Article IX-A of the 1987 Constitution that “a majority vote of all its Members” is required for the COMELEC *en banc* to issue a decision or resolution of a case or matter brought before it. Consistently, Sec. 5 (a), Rule 3 of the COMELEC Rules of Procedure reads:

Section 5. Quorum; Votes Required. - (a) When sitting *en banc*, four (4) Members of the Commission shall constitute a quorum for the purpose of transacting business. **The concurrence of a majority of the Members of**

the Commission shall be necessary for the pronouncement of a decision, resolution, order or ruling. (emphasis and underscoring added)

As can be gleaned, both the adverted constitutional and COMELEC rule provisions, as couched, require **not a simple majority** of the participating members constituting a quorum, **but an absolute majority**. In the concrete, of the seven-man commission, as held in *Sevilla, Jr. v. COMELEC (Sevilla)*, the vote of four (4) members must always be attained to render a decision, irrespective of the number of commissioners in actual attendance.²⁵

The 1935 and 1973 Constitutions contained no provision similar to Sec. 7, Article IX-A of the 1987 version. Jurisprudence on the construction of the contested provision, therefore, only came into view after the 1987 Constitution was ratified. Thus, prior to *Sevilla*, the Court, at first, in the December 1987 case of *Cua v. COMELEC (Cua)*, ruled that only a simple majority of those voting on the pending incident is necessary for a valid ruling, so long as those who deliberated on the same constituted a quorum.²⁶ As held:

After considering the issues and the arguments raised by the parties, the Court holds that the 2-1 decision rendered by the First Division was a valid decision under Article IX-A, Section 7 of the Constitution. **Furthermore, the three members who voted to affirm the First Division constituted a majority of the five members who deliberated and voted thereon *en banc* and their decision is also valid under the aforecited constitutional provision.** Hence, the proclamation of Cua on the basis of the two aforecited decisions was a valid act that entitles him now to assume his seat in the House of Representatives.²⁷ (emphasis added)

It would not be until 2004 when this doctrine in *Cua* would categorically be abandoned in *Estrella v. COMELEC (Estrella)*.²⁸ Speaking through former Associate Justice, now Ombudsman, Conchita Carpio-Morales (Carpio-Morales), the Court ratiocinated:

The provision of the Constitution [Sec. 7, Article IX-A] is clear that it should be the majority vote of **all its members** and not only those who participated and took part in the deliberations. Under the rules of statutory construction, it is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. Since the above-quoted constitutional provision states "all of its members," without any qualification, it should be interpreted as such.

x x x

Even former Constitutional Commissioner Fr. Joaquin Bernas, SJ, questions the Cua ruling in light of Section 7, which says "majority of all

²⁵ G.R. No. 203833, March 19, 2013, 693 SCRA 622, 630.

²⁶ Nos. L-80519-21, December 17, 1987, 156 SCRA 582.

²⁷ Id. at 584.

²⁸ G.R. No. 160465, May 27, 2004, 429 SCRA 789.

the Members." He thus concludes that "[t]hree is not the majority of seven."

Had the framers intended that it should be the majority of the members who *participated or deliberated*, it would have clearly phrased it that way as it did with respect to the Supreme Court in Section 4(2), Article VIII of the Constitution:

x x x

For the foregoing reasons then, this Court hereby abandons the doctrine laid down in *Cua* and holds that the COMELEC En Banc **shall decide a case or matter brought before it by a majority vote of "all its members," and NOT majority of the members who deliberated and voted thereon.**²⁹ (words in brackets added)

Justice Carpio-Morales would later on reiterate the ruling in *Estrella* in *Marcoleta v. COMELEC (Marcoleta)*, to wit:

From the 2-3 voting, it is readily discerned that the Comelec *En Banc* cannot overturn the First Division on mere two assenting votes. On the other hand, the same situation obtains in the case of the dissenters, there being a shortage of one vote to sustain the First Division's findings.

x x x x

Majority, in this case, means a vote of four members of the Comelec. The Court in *Estrella v. Comelec* pronounced that Section 5 (a) of Rule 3 of the Comelec Rules of Procedure and Section 7 of Article IX-A of the Constitution require that a majority vote of all the members of the Comelec, and not only those who participated and took part in the deliberations, is necessary for the pronouncement of a decision, resolution, order or ruling.³⁰

Verily, the four-vote requirement is the result of applying the plain-meaning rule or *verba legis* in interpreting Sec. 7, Article IX-A of the 1987 Constitution. This rule in statutory construction is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."³¹ As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.³²

Settled then is the rule that Sec. 7, Article IX-A of the 1987 Constitution, as couched, requires at least four (4) votes of the seven (7) members of the COMELEC *en banc* to rule on a pending incident before it. Failure to muster the threshold four (4) votes brings into play the application

²⁹ Id. 792-793.

³⁰ *Marcoleta v. Commission on Elections*, G.R. No. 181377, April 24, 2009, 586 SCRA 765, 773-774.

³¹ *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010, 634 SCRA 429, 437.

³² Id.

of Sec. 6, Rule 18 of the COMELEC Rules of Procedure, which calls for a rehearing of the case.

The Decision of the COMELEC division is affirmed by the failure to obtain the necessary majority vote from the COMELEC en banc

Recall that in dismissing the Petition for Disqualification, public respondent COMELEC applied *Mendoza*, wherein the Court ruled that the failure to secure the majority vote of all the members, despite rehearing, leads to the dismissal of the action, regardless of the ruling of the division, and despite obtaining the majority vote of those who participated in the deliberations. In *Mendoza*, therein petitioner Joselito R. Mendoza (Mendoza) was proclaimed winner of the 2007 gubernatorial election for the province of Bulacan, besting respondent Roberto M. Pagdanganan (Pagdanganan). On June 1, 2007, Pagdanganan filed an election protest that the COMELEC Second Division eventually granted, thereby annulling Mendoza's proclamation. Aggrieved, Mendoza moved for reconsideration with the *en banc*, but the COMELEC failed to reach a majority vote to either grant or deny the motion. Pursuant to its rules, the COMELEC *en banc* reheard the case but was, nevertheless, unsuccessful in obtaining the required majority vote for a ruling. Thus, in a 3-1 vote, with three votes denying the motion, the COMELEC *en banc* sustained the ruling of its Second Division.³³

On petition with the Court, Mendoza pointed out that because the necessary majority vote of four (4) was not obtained by the COMELEC *en banc*, respondent Pagdanganan's election protest ought to be dismissed. Agreeing, the Court, on March 25, 2010, ruled for Mendoza and explained that as an original action before the Commission, failure to muster the required majority vote would lead to the election protest's dismissal, not just of the motion for reconsideration.³⁴ As held:

There is a difference in the result of the exercise of jurisdiction by the COMELEC over election contests. The difference inheres in the kind of jurisdiction invoked, which in turn, is determined by the case brought before the COMELEC. When a decision of a trial court is brought before the COMELEC for it to exercise appellate jurisdiction, the division decides the appeal but, if there is a motion for reconsideration, the appeal proceeds to the *banc* where a majority is needed for a decision. If the process ends without the required majority at the *banc*, the appealed decision stands affirmed. Upon the other hand, and this is what happened in the instant case, **if what is brought before the COMELEC is an original protest invoking the original jurisdiction of the Commission, the protest, as one whole process, is first decided by the division, which process is continued in the *banc* if there is a motion for reconsideration of the division ruling. If no majority decision is reached in the *en banc*, the protest, which is an original action, shall**

³³ *Mendoza v. Commission on Elections*, G.R. No. 191084, March 25, 2010, 616 SCRA 443.

³⁴ *Id.*

be dismissed. There is no first instance decision that can be deemed affirmed.³⁵ (underscoring in the original; emphasis added)

It is this ruling in *Mendoza* that respondents urge Us to apply to sustain the COMELEC *en banc*'s dismissal of Legaspi's petition for disqualification. It bears stressing, however, that the Court in *Mendoza* was deeply divided insofar as this procedural aspect is concerned. The doctrine, therefore, commands further scrutiny.

a. Dismissal of the action or proceeding in original cases filed with the COMELEC

To begin with, Sec. 3, Art. IX-C of the Constitution pertinently provides:

Section 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. **All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.** (emphasis added)

Clearly then, the Constitution no less bestows on the COMELEC divisions the authority to decide election cases. Their decisions arrived are capable of attaining finality, without need of any affirmative or confirmatory action on the part of the COMELEC *en banc*. For instance, if no motion for reconsideration is filed by the aggrieved party within five (5) days from the promulgation of the decision, the ruling becomes final and executory.³⁶ In this sense, the process before the division should be deemed complete, although it can also be considered, in the bigger picture, as part of the integrated process of resolving an election case from start to finish, as when the case was originally initiated before the trial court.

The fact that the COMELEC division's decision may be referred to the *en banc* via a motion for reconsideration should in no way be considered as a diminution of its adjudicatory powers. Worth maintaining is this doctrine in *Mendoza*: **a motion for reconsideration is a constitutionally guaranteed remedial mechanism for parties aggrieved by a division decision or resolution, but not an appeal.**³⁷ In the same vein, it was held in *Apo Fruits Corporation v. Court of Appeals (Apo Fruits Corporation)* that "[t]he Supreme Court sitting *En Banc* is not an appellate court vis-a-vis its Divisions, and it exercises no appellate jurisdiction over the latter. Each division of the Court is considered not a body inferior to the Court *en banc*,

³⁵ Id. at 460-461.

³⁶ COMELEC Rules of Procedure, Rule 19, Sec. 2. Promulgated on February 15, 1993.

³⁷ *Mendoza v. Commission on Elections*, supra note at 486.

and sits veritably as the Court en banc itself.”³⁸ This particular doctrine in *Mendoza* and *Apo Fruits Corporation* should be understood to have strengthened, rather than rendered nugatory, the adjudicatory powers of the COMELEC’s and that of the Court’s divisions - **that the decision of a division virtually amounts to a decision of the en banc and, as such, is potentially binding and conclusive on the parties.**

The findings of the division can only be reversed and their impacts be undone by the COMELEC *en banc* on reconsideration.³⁹ The failure of the COMELEC *en banc* to attain the required number of votes to either reverse or affirm the ruling of its division would, in turn, call for the application of Sec. 6, Rule 18 of the COMELEC Rules of Procedure, to wit:

Section 6. Procedure if Opinion is Equally Divided. – When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the **action or proceeding shall be dismissed if originally commenced in the Commission**; in appealed cases, the judgement or order appealed from shall stand affirmed; and all incidental matters, the petition or motion shall be denied.” (emphasis added)

As can be gleaned, the result of the rule’s application would vary, depending on whether the pending case is an original action, an appealed case, or an incidental matter. It then behooves this Court to properly categorize the petition for disqualification filed by Legaspi under either of the three.

In distinguishing an action originally commenced with the COMELEC from an appealed case, reference should be made to Article IX-C, Sec. 2(2) of the Constitution.⁴⁰ According to the provision, the COMELEC is a constitutional commission vested with the exclusive **original** jurisdiction over election contests, involving regional, provincial and city officials, as well as **appellate** jurisdiction over election protests involving elective municipal and *barangay* officials.⁴¹ Thus, in the case at bar, the petition for disqualification filed by Legaspi was correctly categorized by the *ponencia* as an election case **originally commenced in the Commission** because (1) private respondents were candidates for posts in the city government, (2) there is no trial court ruling elevated to the

³⁸ *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, April 30, 2008, 553 SRA 237, citing *Firestone Ceramics, Inc. v. Court of Appeals*, 389 Phil. 810, 818 (2000). In accordance with Supreme Court Circular No. 2-89, providing *Guidelines and Rules in the Referral to the Court En Banc of Cases Assigned to A Division*.

³⁹ Thereafter, by the Supreme Court via a petition under Rule 64 of the Rules of Court.

⁴⁰ SECTION 2. The Commission on Elections shall exercise the following powers and functions:

x x x x

(2) Exercise exclusive **original** jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and **appellate** jurisdiction over all contests involving elective municipal officials **decided by trial courts of general jurisdiction**, or involving elective *barangay* officials decided by trial courts of **limited jurisdiction**. (emphasis added)

⁴¹ *Saludaga v. Commission on Elections*, G.R. Nos. 189431 and 191120, April 7, 2010, 617 SCRA 601, 621.

Commission to speak of, and (3) the motion for reconsideration filed by private respondents with the COMELEC *en banc*, as earlier stated, does not amount to an appeal.

Now on to the effect of Sec. 6, Rule 18 of the COMELEC Rules of Procedure.

It is beyond cavil that for cases originally filed before it, the failure of the COMELEC to muster the required majority vote after rehearing would lead to the dismissal of the **action or proceeding** pending before it. The conjunctive word “or” clearly indicates that there is an intended distinction between the words “action” and “proceeding,” such that in not all instances would the “action” originally commenced before the COMELEC will be dismissed in their entirety. Otherwise, to treat them similarly would mean that the words are superfluous, which is not the case.

It is the considered view that the “action” to be dismissed in cases originally commenced before the COMELEC under Sec. 6, Rule 18 of the COMELEC Rules of Procedure pertains to those **originally and directly filed with the COMELEC division or *en banc***. As taught in *San Juan v. COMELEC*, the division has jurisdiction to hear and decide election cases, but as for motions for reconsideration of decisions rendered by the division, the COMELEC *en banc* has jurisdiction over the matter.⁴² On the other hand, the cases directly filed with the COMELEC *en banc* are those specifically provided in the COMELEC Rules of Procedure, such as petitions for postponement of elections under Sec. 1, Rule 26,⁴³ petitions for failure of election under Sec. 2, Rule 26,⁴⁴ complaints or charges for indirect contempt under Sec. 2, Rule 29,⁴⁵ preliminary investigation of election

⁴² G.R. No. 170908, August 24, 2007, 531 SCRA 178, 183.

⁴³ Section 1. *Postponement of Election*. - When for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, force majeure, and other analogous causes of such nature that the holding of a free, orderly, honest, peaceful and credible election should become impossible in any political subdivision, the Commission, *motu proprio*, or upon a verified petition by any interested party, and after due notice and hearing whereby all interested parties are afforded equal opportunity to be heard, may postpone the election therein to a date which should be reasonably close to the date of the election not held, suspended, or which resulted in a failure of election, but not later than thirty (30) days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

⁴⁴ Section. 2. *Failure of Election*. - If, on account of force majeure, violence, terrorism, fraud or other analogous causes the election in any precinct 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 of 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 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 (30) days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

⁴⁵ Sec. 2. Indirect Contempt. - After charge in writing has been filed with the Commission or Division, as the case may be, and an opportunity to the respondent to be heard by himself or counsel, a person guilty of the following acts may be punished for indirect contempt: xxx

offenses under Sec. 1, Rule 34,⁴⁶ and all other cases where the COMELEC division is not authorized to act.⁴⁷

Meanwhile “proceeding” refers to a procedural step that is part of a larger action or special proceeding.⁴⁸ This definition is broad enough to encompass the **motion for reconsideration challenging the rulings in the first set of cases above-described.** With this interpretation, the failure of the COMELEC *en banc* to reach four (4) votes would not necessarily result in the dismissal of the original cases for it may be, as it is here, that only a procedural step, a “proceeding,” the pending motion for reconsideration, ought to be disposed. Stated in the alternative, the failure of the COMELEC *en banc* to reach four (4) votes would result in the division ruling being sustained. This interpretation is consistent with the parallel procedure observed in the Court of Tax Appeals mandating that “[n]o decision of a Division of the Court may be reversed or modified except by the affirmative vote of four justices of the Court *en banc* acting on the case.”⁴⁹

The *ponencia*, however, counters that the “action or proceeding” referred to under Sec. 6, Rule 18 should be interpreted in relation to Part V of the COMELEC Rules of Procedure, covering Rules 20-34, entitled “*Particular Actions or Proceedings.*” The *ponencia* adds that the itemization therein does not include motions for reconsideration that fall under Rule 18. It could not then be claimed, according to the *ponencia*, that the motion for reconsideration is a “proceeding” within the contemplation of the COMELEC Rules of Procedure.

I respectfully disagree.

The strict construction offered by the *ponencia* offends the Constitution three times over: **(i) it circumvents the four-vote requirement under Sec. 7, Art. IX-A of the Constitution, (ii) it diminishes the adjudicatory powers of the COMELEC Divisions under Sec. 3, Article IX-C of the Constitution, and (iii) it unduly expands the jurisdiction of the COMELEC *en banc.***

First, recall that under Sec. 3, Article IX-C of the 1987 Constitution,⁵⁰ the COMELEC Divisions are granted adjudicatory powers to decide election

⁴⁶ Sec. 1. *Authority of the Commission to Prosecute Election Offenses.* - The Commission shall have the exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law.

⁴⁷ Sec. 2. *The Commission En Banc.* - The Commission shall sit *en banc* in cases hereinafter specifically provided, or in pre-proclamation cases upon a vote of a majority of the members of the Commission, or in all other cases where a division is not authorized to act, or where, upon a unanimous vote of all the Members of a Division, an interlocutory matter or issue relative to an action or proceeding before it is decided to be referred to the Commission *en banc.*

⁴⁸ J. Conchita Carpio-Morales, Separate Opinion, *Mendoza v. COMELEC*, supra note 33 at 475; citing Black’s Law Dictionary.

⁴⁹ A.M. No. 05-11-07-CTA, Rule 2, Sec. 3. Promulgated on November 22, 2005.

⁵⁰ Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation

cases. Recall further that under Sec. 7, Article IX-A of the Constitution,⁵¹ as interpreted in *Marcoleta* and *Estrella*, four (4) votes are necessary for the COMELEC *en banc* to decide a case. Naturally, the party moving for reconsideration, as the party seeking affirmative relief, has the burden of evidence in proving that the division committed reversible error.⁵² Additionally, he or she also bears the corollary burden of convincing four (4) Commissioners to grant his or her plea.

This voting threshold, however, is easily rendered illusory by the application of the *Mendoza* ruling, which virtually allows the grant of a motion for reconsideration even though the movant fails to secure four votes in his or her favor. As in this case, **the ponencia suggests that in spite of securing only two (2) votes to grant the motion for reconsideration, the movants would nevertheless be declared the victors in this legal battle, in blatant violation of Sec. 7, Art. IX-A of the Constitution.**

Second, to exacerbate the situation, the circumvention of the four-vote requirement, in turn, trivializes the proceedings before the COMELEC divisions and presents rather paradoxical scenarios, to wit:

- i. The failure of the COMELEC *en banc* to muster the required majority vote only means that **it could not have validly decided the case. Yet curiously, it managed to reverse the ruling of a body that has properly exercised its adjudicatory powers;** and
- ii. A motion for reconsideration may be filed on the grounds that the evidence is insufficient to justify the decision, order or ruling; or that the said decision, order or ruling is contrary to law.⁵³ If the COMELEC *en banc* does not find that either ground exists, there would be no cogent reason to disturb the ruling of the COMELEC division. Otherwise stated, **failure to muster four votes to sustain the motion for reconsideration should be understood as tantamount to the COMELEC *en banc* finding no reversible error attributable to its division's ruling.** Said decision, therefore, ought to be affirmed, not reversed nor vacated.

These resultant paradoxes are patently absurd. Under the majority's interpretation of Sec. 6, Rule 18 of the COMELEC Rules of Procedure, a

controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*. (emphasis added)

⁵¹ Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof. (emphasis added)

⁵² *Lim v. Equitable PCI Bank, now known as the Banco de Oro Unibank, Inc.*, G.R. No. 183918, January 15, 2014, 713 SCRA 555.

⁵³ COMELEC Rules of Procedure, Rule 19, Sec. 1.



movant, in situations such as this, need not even rely on the strength of his or her arguments and evidence to win a case, and may, instead, choose to rest on inhibitions and abstentions of COMELEC members to produce the same result. To demonstrate herein, it is as though the *ponencia* counted the two (2) abstention votes in favor of the respondents for a total of four (4). This impedes and undermines the adjudicatory powers of the COMELEC divisions by allowing their rulings to be overruled by the *en banc* without the latter securing the necessary numbers to decide the case.

Third, to countenance the majority's interpretation of the rule would expand the jurisdiction of the COMELEC *en banc* beyond constitutional bounds. To illustrate, under Sec. 3, Article IX-C, **the jurisdiction of the COMELEC *en banc* in cases originally decided by the COMELEC divisions is limited to resolving the motions for reconsideration assailing the their rulings.** The dismissal by the COMELEC *en banc*, in applying Sec. 6, Rule 18 in election cases, should then be limited only to what it has jurisdiction over – that is the motion for reconsideration alone. To allow the COMELEC *en banc* to modify, if not reverse, the ruling of the division when the Commission itself admitted that it failed to muster the required number of votes to do so would then run afoul the Constitution for it goes beyond dismissing the motion for reconsideration, and extends to disposing the originally filed petition in its entirety.

As a more viable alternative, this dissent submits that when the petition for disqualification was elevated through a motion for reconsideration to the COMELEC *en banc*, the decision of the Special First Division could have only been set aside by four votes in the COMELEC *en banc* granting the motion for reconsideration.⁵⁴ And when no decision on the motion was reached by the COMELEC *en banc* even after rehearing, what remains is the decision of the division, which was validly rendered pursuant to the provisions of the Constitution and the COMELEC Rules of Procedure.⁵⁵ The ruling of the division should then be considered affirmed, not vacated. Modifying the *Mendoza* doctrine to produce such an effect does not require any far-fetched or strained interpretation of the COMELEC Rules of Procedure. As discussed, it simply requires construing the word “*proceeding*” in its plain meaning, beyond its alleged specialized use in Part V of the COMELEC Rules of Procedure as what the *ponencia* suggested, so as to include motions for reconsideration lodged with the COMELEC *en banc*.

This alternative interpretation follows the basic precept in statutory construction that a statute should be construed in harmony with the Constitution.⁵⁶ Indeed, the Court has not hesitated to declare unconstitutional and strike down enactments that are impossible to reconcile with

⁵⁴ J. Teresita J. Leonardo-De Castro, Dissenting Opinion, *Mendoza v. COMELEC*, supra note 33 at 515 – 516.

⁵⁵ Id. at 516.

⁵⁶ *Cagas vs. COMELEC*, G.R. No. 209185, October 25, 2013, 708 SCRA 672, 691.



Constitutional provisions. But when an interpretation is available allowing for the challenged enactment or its provisions to be salvaged, such alternative is more favored and is pursued, rather than resorting to creating legal vacuums. As in here, the interpretation offered in this dissent resolves the paradoxes and constitutional violations earlier outlined, without necessarily having to declare Sec. 6, Rule 18 of the COMELEC Rules of Procedure unconstitutional. Moreover, it gives meaning and strengthens the adjudicatory powers bestowed on the COMELEC divisions under Sec. 3, Article IX-C of the Constitution, and reinforces the fact that their rulings are potentially binding and conclusive upon the parties, as earlier discussed. Likewise, it guarantees observance to the long-standing jurisprudence on the majority vote requirement under Sec. 7, Article IX-A of the Constitution. And lastly, it ensures that the COMELEC *en banc* exercises its jurisdiction within constitutional bounds.

b. Pursuing the interpretation of Sec. 6, Rule 18 of the COMELEC Rules of Procedure in Mendoza would lead to absurd results


Further enlightening on this discussion is the Separate Opinion in *Mendoza* of former Justice Carpio-Morales, who coincidentally, if not ironically, also penned the cases *Mendoza* was mainly predicated on: *Estrella* and *Marcoleta*. While concurring in the result, the former justice, in *Mendoza*, wrote:

The bone of contention is the manner of disposition of a motion for reconsideration when in spite of rehearing, no decision is reached by the Comelec *en banc* which remains equally divided in opinion, or wherein the necessary majority still cannot be had. The rule states that "the action or proceeding shall be dismissed if originally commenced in the Commission."

I respectfully differ from the *ponencia*.

There are cases which may be initiated at the Comelec *en banc*, the voting in which could also result to a stalemate. The Comelec sits *en banc* in cases specifically provided by the Rules, pre-proclamation cases upon a vote of a majority of its members, all other cases where a Division is not authorized to act, *inter alia*. These matters include election offense cases, contempt proceedings, and postponement or declaration of failure of elections and the calling for a special elections. In such cases, when the necessary majority in the Comelec *en banc* cannot be had even after a rehearing of the action, the effect is dismissal of the action.

In an election protest originally commenced in the Comelec and a decision is reached by the Division, it is, as the *ponencia* correctly posits, the *banc* that shall effectively "complete the process," which position hews well with Justice Presbitero Velasco, Jr.'s view of "one integrated process," to which I also agree. A motion for reconsideration before the Comelec *en banc* is one



such proceeding that is a part of the entire procedural mechanism of election cases. Ergo, when the necessary majority in the Comelec en banc cannot be had even after a rehearing, the effect is dismissal of the proceeding. The motion for reconsideration should be dismissed.

As defined by Black, the term "proceeding" may refer to a procedural step that is part of a larger action or special proceeding. Black defines "process" as a series of actions, motions or occurrences.

The word "proceeding" could not have been used as an innocuous term. It was used to refer to matters requiring the resolution of the *banc* in cases originally commenced in the Comelec that pass through a two-tiered process, as differentiated from actions initiated and totally completed at the *banc* level. It is a universal rule of application that a construction of a statute is to be favored, and must be adopted if reasonably possible, which will give meaning to every word, clause, and sentence of the statute and operation and effect to every part and provision of it.

Following the position of the *ponencia*, it is observed that in such cases where a Comelec Division dismisses an election protest and the necessary majority is not reached after the rehearing of a motion for reconsideration, the Comelec en banc, in effect, affirms such decision by similarly dismissing the "action." Under my submission, the result is the same but what is dismissed is the "proceeding" which is the motion for reconsideration. There should be no declaration of affirmance since, as the *ponencia* concedes, there is "no conclusive result in the form of a majority vote." The Comelec en banc should dismiss the proceeding at hand but not the action, petition or case.

x x x

Since a majority vote was not attained after rehearing the Motion for Reconsideration, the *ponencia* states that the Comelec en banc should have dismissed the election protest itself or, in effect, vacated the decision of the Division. Again I submit that it is the Motion for Reconsideration that is the "proceeding" which should be dismissed. **First, it is absurd for a deliberating body which arrived at "no conclusive result in the form of a majority vote" to do something about a matter on the table, much less to overturn it. Second, the resulting tyranny of the minority is unjust for, in such cases where the Comelec en banc has a quorum of four, the protestee only needs to obtain the vote of just one Commissioner to frustrate the protestant's victory that was handed down by three Commissioners. Third, the *ponencia* incorrectly denotes that a body which *could not* pronounce a decision can effectively pronounce one and even one contrary to that of a body that *could* reach a decision. Otherwise stated, it downplays the significance of "the concurrence of a majority," which breathes life to any handiwork of the decision-making power of the Comelec. Certainly, that was not the purpose and principle envisioned by the Comelec Rules of Procedure.⁵⁷ (emphasis added)**

Echoing the sentiments of the esteemed Ombudsman, to dismiss the entire case - the petition for disqualification -because the majority vote at the


⁵⁷ J. Conchita Carpio-Morales, Separate Opinion, *Mendoza v. COMELEC*, supra note 33 at 474-477.

en banc level was not mustered is as absurd as it is illogical. As demonstrated in the extant case, petitioner won before the COMELEC's Special First Division, which ruled to disqualify private respondents in light of the overwhelming evidence of vote-buying, their followers having been caught in *flagrante delicto*. Accordingly, respondents moved for reconsideration before the *en banc*. Necessarily, therefore, it was incumbent upon the private respondents to have the ruling of the division overturned by the Commission as it is elementary that the burden to prove a claim rests on the party asserting it.⁵⁸ Here, since Germar and Santos failed to overcome such burden, the October 3, 2013 ruling of the COMELEC First Division should be deemed affirmed, binding and conclusive on the parties, lest private respondents be declared the victors in the case without themselves securing the required number of votes.

Applying the conclusions arrived at in the case at bar, there is no logical result other than to **modify the doctrine laid down in *Mendoza*** insofar as the effect of the failure to muster the required majority vote in the COMELEC *en banc* even after rehearing is concerned, and to grant the instant petition to set a new precedent to govern cases lodged with the electoral tribunal.

WHEREFORE, the petition is **GRANTED**. The January 28, 2015 Order of the COMELEC *en banc* in SPA No. 13-353 (DC) ought to be **REVERSED** and **SET ASIDE**, and the October 3, 2013 Resolution of the COMELEC First Division should, accordingly, be **REINSTATED AND AFFIRMED**.

SO ORDERED.


PRESBITERO J. VELASCO, JR.
Associate Justice

⁵⁸ Supra note 52.