Chapter 22

The HRET at Work

In *Leveling the Playing Field,* I wrote that I enjoyed my role as chairperson of the House of Representatives Electoral Tribunal (HRET).[1] I saluted, in particular, "my brethren-lawmakers who have demonstrated admirable legal wisdom, judicial detachment and speedy (but not hasty) inclination in resolving all matters before the Tribunal." I have thus written the present chapter, pursuant to my commitment to report more extensively on the HRET.

Earlier this year, on July 15, 2005, I commemorated my first anniversary as HRET[2] chairperson, a position I concurrently hold. Under Section 17 of Article VI of the Constitution, the HRET is the sole judge of all contests relating to "the election, returns and qualifications" of members of the House of Representatives.[3] It is composed of 9 members, 3 of whom are justices of the Supreme Court designated by the Chief Justice, with the senior justice serving as chairperson; and six are members of the House of Representatives, elected by the House "on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein."

As of press time (October 10, 2005), the other members of the Tribunal are as follows: Justices Consuelo Ynares-Santiago and Antonio T. Carpio; and Representatives Douglas R.A. Cagas, Salacnib F. Baterina, Laurence B. Wacnang, Mauricio G. Domogan, Romualdo T.

Vicencio, and Joseph A. Santiago.

A Short Discussion of the Proceedings at the HRET

As earlier stated, the Constitution gives the HRET sole jurisdiction over contests involving the election, qualification and returns of representatives. An "election protest" is filed to challenge the election of incumbents; a "*quo warranto* petition," to assail their qualifications.

The HRET Rules do not have express provisions on how a challenge to a representative's "returns" may be done. This type of contest had not been tested prior to my term. During my watch as chairperson, however, the HRET has had the occasion to exercise its jurisdiction over a Petition for the re-canvassing of election returns, in *Angping v. Roces.* [4] The facts and the legal novelty of this case will be discussed later.

As already stated, an election contest against an incumbent member of the House of Representatives (HOR) is usually initiated by the filing of an election protest or a *quo warranto* petition within ten days from the proclamation of the winning candidate. An **election protest** is filed by a defeated candidate against the proclaimed winner on the grounds of fraud and/or irregularities in the casting and counting of the ballots or in the preparation of the election returns. It raises the question of who actually obtained the highest number of votes during the election and is thus entitled to hold office.

On the other hand, a ***quo warranto*** **petition** is one filed by any voter of the congressional district concerned, in order to unseat the incumbent representative from office, on the ground of *disloyalty* to the Republic of the Philippines or *ineligibility* to hold the position.

In accordance with the provisions of its Rule 21, the HRET may summarily dismiss an election protest or a petition for *quo warranto,* without requiring an answer from the so-called "protestee" or respondent, as the case may be. The summary dismissal may be founded on any of the following grounds: (1) the petition is insufficient in form and substance; (2) the petition has been filed beyond the period provided in HRET Rules 16 and 17; (3) the filing fee has not been paid within the period provided for filing the protest or petition for *quo warranto;* (4) in case of a protest for which a cash deposit is required, the deposit -- or the first ₱150,000 of it -- has not been paid within ten days after the filing of the protest; and (5) the illegibility of the petition -- or copies of it -- and its Annexes filed with the Tribunal.

If the case is not summarily dismissed, the secretary of the HRET issues the corresponding *summons* to the protestee or respondent, as the case may be, pursuant to its Rule 22. The summons will require the party concerned to file an answer within ten days from receipt of notice. In the case of an election protest, the protestee's answer may include a counter-protest, which the other party must answer within ten days from receipt of a copy.

After the issues in each case are joined in accordance with Rule 54, the HRET conducts a preliminary conference for purposes of (1) the simplification of issues; (2) the possibility of

obtaining stipulations or admissions of facts and documents; (3) the limitation on the number of witnesses; (4) a consideration of the nature of the testimonies of the witnesses, and whether or not they relate to evidence *aliunde* -- the ballots; (5) the withdrawal of some contested or counter-protested precincts;[5] (6) the fixing of the dates for the reception of evidence; and (7) such other matters as may aid in the prompt disposition of the protest, counter-protest or cross-contest.

Upon termination of the preliminary conference in each case, the HRET issues a preliminary conference resolution stating, among others, the stipulations made by the parties, the issues, and the evidence to be presented by each party.

After the issues are joined in the case of a *quo warranto* proceeding, the Tribunal designates a hearing commissioner for the reception of evidence. After the presentation and formal offer of evidence by both parties -- each within a period of twenty days -- and the submission of the parties' respective memoranda, the *quo warranto* case is deemed submitted for decision.

In the case of an election protest, the HRET orders the collection of the ballot boxes and election documents from the congressional district concerned. Afterwards, it conducts a "revision" of ballots in the pilot[6] precincts or in all contested precincts, as the case may be, in accordance with Rule 88 of the HRET Rules. During the proceedings, the parties register their objections to the ballots of the other and their claims of stray ballots, if any. Evidence is then received before the designated hearing commissioner. Each party presents and formally

offers evidence within a period not exceeding ten days in case the revision of ballots involves only 25 percent of the contested or "pilot" precincts, or twenty days in case it covers *all* of them. The HRET subsequently conducts an "appreciation" of ballots in the contested precincts. On the basis of its appreciation of ballots and the evidence presented by the parties involved, the Tribunal decides the protest case.

Electoral Cases in
the Present Term

I became the chairperson of the HRET on July 15, 2005 -- about two months after the last national elections held on May 10, 2004. All the cases brought before the Tribunal were thus new and at their nascent stage. There were 15 election protests,[7] 3 *quo warranto* Petitions[8] and 1 Petition to re-canvass election returns.[9]

To date,[10] 8 electoral protests and all 3 *quo warranto* Petitions – more than 50 percent of the total number of cases filed -- have been disposed. The cases dismissed are as follows:

1. HRET Case No. 04-006, *Roco v. Villafuerte,* 2nd District, Camarines Sur

Protestant Sulpicio Roco, in a Manifestation filed on November 30, 2004, moved to withdraw his election protest. The Motion was granted by the Tribunal in Resolution No. 04-310, promulgated on December 2, 2004. On December 29, 2004, Protestee Luis Villafuerte manifested that he was likewise withdrawing his Counter-protest, but that he was still pursuing his claim for damages against the protestant. In Resolution No. 05-090 dated March

10, 2005, the Tribunal granted the protestee's withdrawal of his Counter-protest, but denied his Motion to present evidence and to pursue his claim for damages, in the light of the withdrawal of the protest and the Counter-protest. Since Resolution No. 04-310 had attained finality on April 1, 2005, entry of judgment was made on April 27, 2005. The Secretariat returned the ballot boxes and the election documents collected in this case from May 16, 2005, up to May 19, 2005.

2. HRET Case No. 04-007, *San Juan v. Cerilles,* 2nd District, Zamboanga del Sur

The Election Protest was dismissed by the Tribunal in Resolution No. 05-060 promulgated on February 17, 2005, for being insufficient in form and substance and for lack of jurisdiction. The Petition of protest failed to allege either the fact or the date of proclamation of the protestee as the winning candidate for the contested congressional seat. The Resolution attained finality on March 1, 2005; entry of judgment was made on March 8, 2005.

3. HRET Case No. 04-008, *Cerbo Jr. v. Mangudadatu,* Lone District, Sultan Kudarat

In Resolution No. 04-202 promulgated on September 30, 2004, the Tribunal dismissed this Election Protest for failure of the protestant to comply with the HRET Resolution requiring him to file a reply to the protestee's Answer. Resolution No. 04-202 attained finality on November 2, 2004; entry of judgment was made on December 8, 2004.

4. HRET Case No. 04-012, *Calizo v. Miraflores,* Lone District, Aklan

The Election Protest and Counter-protest were both dismissed by the Tribunal in Resolution No. 04-216 promulgated on October 7, 2004, in view of (1) the Manifestation of the protestant that she was no longer interested in pursuing the protest and (2) her failure to pay the cash deposit required by the HRET pursuant to its Rules. Resolution No. 04-216 attained finality on November 1, 2004; entry of judgment was made on December 8, 2004.

5. HRET Case No.04-013, *Kho v. Seachon,* 3rd District, Masbate

The Electoral Protest was dismissed in Resolution No. 04-154 promulgated on September 2, 2004, while the Counter-protest was dismissed in Resolution No. 04-164 promulgated on September 9, 2004. These Resolutions attained finality on September 27, 2004; entry of judgment was made on October 8, 2004.

6. HRET Case No. 04-016, *Hussin v. Amin,* 1st District, Sulu

This Election Protest was dismissed in Resolution No. 04-167 promulgated on September 9, 2004, because the Petition was insufficient in form and substance, under Rule 21 of the 2004 HRET Rules. The protestant failed to comply with Resolution No. 04-100, which had directed him to show cause -- within a non-extendible period of five days from notice -- why the Protest should not be dismissed for failure to state the precincts being protested. Resolution No. 04-167 attained finality on September 30, 2004; entry of judgment was made on October 8, 2004.

7. HRET Case No. 04-018, *Liwag v. Cruz,* ALAGAD Party List

This *quo warranto* case was dismissed in Resolution No. 04-333 promulgated on December 16, 2004, for failure of the parties to comply with Resolution No. 02-288 requiring them to submit written arguments on respondent's special and affirmative defenses. Resolution No. 04-333 attained finality on January 1, 2005; entry of judgment was made on January 25, 2005.

8. HRET Case No. 04-019, *Andueza v. Bravo*, 1st District, Masbate

The Election Protest was dismissed in Resolution No. 04-229 promulgated on October 14, 2004, because it had been filed beyond the period provided in the 2004 HRET Rule 16. The Resolution attained finality on November 2, 2004; entry of judgment was made on December 8, 2004.

9. HRET Case No. 04-00, *San Miguel v. Dy,* Lone District, Pasay City

The Tribunal resolved on August 18, 2005, the *quo warranto* Petition against Rep. Consuelo A. Dy of the Lone District of Pasay City. Petitioner Rolando E. San Miguel challenged Dy's residence in the legislative district she had sought to represent. Allegedly, the address she indicated in her Certificate of Candidacy was actually a cockpit arena. Petitioner also submitted evidence to prove that she owned a house and lot in Greenhills, San Juan, where she and her family supposedly resided.

On the other hand, to prove that she had been a resident of Pasay City since her childhood, respondent presented several witnesses and documents: among others, neighbors of her family since the 1960s; and -- from schools she had attended from elementary to college -- Certifications indicating Pasay City as her residence. She also showed that the second floor of the residence (which the petitioner had alleged to be a cockpit stadium) had rooms and amenities that served as a residential area, and that she also used it to receive visitors and conduct official business.

In the light of the foregoing evidence, the Tribunal deduced that the respondent's domicile of origin was Pasay City. In previous cases, the Supreme Court had ruled that *residence* as used in election law was synonymous with *domicile*, which imported an intention to reside in a fixed place. Pursuant to those rulings, it became incumbent upon the petitioner to prove that the respondent had abandoned her domicile of origin and acquired a new one of choice. The petitioner failed, however, to convince the Tribunal that she had.

Citing *Romualdez-Marcos v. Comelec*, the HRET held that "an individual did not lose domicile even if he has lived and maintained residences in different places."[11] A change of residence requires an actual and deliberate abandonment of the previous one.[12]

The Tribunal further noted that respondent had established her political career in Pasay City as a councilor in 1998, as representative in Congress in 2001, and again as second-term representative in 2004. Coupled with the other evidence she presented, her uninterrupted terms of public office in Pasay City constituted sufficient proof that she had never intended to

abandon her domicile in that city. The HRET thus concluded that the presence of *animus revertendi,* as manifested in her acts, negated any claim that she had abandoned her domicile of origin.

Hence, it upheld her stance that she was a resident of Pasay City and was eligible to run for and be elected as its congressional representative. Accordingly, it dismissed the Petition in its Decision promulgated on August 18, 2005.

10. HRET Case No. 04-010, *Samson v. Crisologo*, 1st District, Quezon City

This was another quo warranto Petition, in which Moises Samson claimed that Rep. Vincent Crisologo was "ineligible or disqualified to hold elective public office." The relevant facts are as follows:

In 1972, Respondent Crisologo was convicted of arson and arson with homicide. He was given a conditional pardon on January 14, 1981. On January 24, 1986, he was granted by then President Ferdinand E. Marcos an "absolute and unconditional pardon," restoring the respondent's "full civil and political rights." In 1998 and again in 2001, Crisologo ran for and won as councilor of the 1st District of Quezon City. When he filed his Certificate of Candidacy for congressman of the same district in the last 2004 elections, Petitioner Moises Samson sought the former's disqualification. Allegedly, absolute pardon did not explicitly restore the respondent's right "to hold public office or to run for elective office," in accordance with Article 36 of the Revised Penal Code. [13]

On May 15, 2004, Comelec dismissed Samson's Petition for Disqualification.[14] On the same day, it proclaimed Crisologo as the winner in the election for representative of the 1st District of Quezon City. Nevertheless, Samson filed on May 24, 2004, a Motion for Reconsideration before the Comelec. Three days later, he also filed a Petition for *quo warranto* before the HRET.

The main issues presented in the HRET Petition are the following: "(1) Whether the present *quo warranto* case is barred by the resolution of the COMELEC that ruled on the eligibility of respondent Crisologo, and (2) Whether respondent is eligible to hold the office of Representative of the First District of Quezon City."

On the first issue, the Tribunal ruled that "the usual application of the doctrine of *res judicata* cannot apply when the statutes and the Constitution set forth the forum where the issues should be entertained prior to the time of proclamation and the forum where the same issues should be adjudicated after proclamation. This is the case when what is being challenged involves an office of a member of Congress."

Prior to proclamation, the jurisdiction over any question relating to the eligibility and the qualifications of the congressional candidate lies with the Comelec. After proclamation, by constitutional fiat, the body that has jurisdiction over questions involving the winning representative's assumption of office is the HRET.

Thus, on May 15, 2004, the proclamation of the respondent as the winning candidate ousted the Comelec of its jurisdiction over the subject matter of the disqualification petition.

After proclamation, any question relating to his election, returns and qualifications must be brought before the HRET. Petitioner Samson correctly, timely and properly did so when he filed the *quo warranto* Petition within the period allowed by law, according to the Tribunal.

With respect to the second issue, the HRET adhered to the settled pronouncements of the Supreme Court. The Court ruled that the grant of absolute pardon, which restored to the pardoned convict "full civil and political rights," effectively removed all legal disabilities and disqualifications resulting from conviction.[15] The obliteration restored the following rights: to vote, to be voted for and to hold public office.

The Tribunal noted that in the cases decided by the Supreme Court, the terms of the pardon granted to the respondent were practically the same as those of the pardons that had been extended by former Presidents in favor of the subjects. Accordingly, it held that the plain terms of the absolute pardon granted to Crisologo left "no room for doubt that the disqualification to hold public office and the deprivation of the rights to vote and be voted for were both removed." Those rights were subsumed under the term *political rights*.[16]

Thus, the HRET unanimously dismissed the Petition for *quo warranto* and declared Vincent P. Crisologo eligible to be the representative of the 1st District of Quezon City in the House of Representatives.[17]

11. HRET Case No. 04-005, *Roman v. Garcia,* 2nd District, Bataan

On May 15, 2004, the Provincial Board of Canvassers of Bataan proclaimed Albert S. Garcia the duly elected representative of the 2nd District of Bataan, with **76,321** votes, as against Leonardo B. Roman's **75,518 votes --** a margin of **803** votes.

On May 24, 2004, Roman filed an election protest before the HRET, impugning the results of the election in 479 out of the 995 precincts in the District, because of alleged massive fraud and illegal electoral practices[18] committed during the registration of voters, on the voting day, and during the counting of votes by the Boards of Election Inspectors. He prayed for the annulment of the proclamation of Garcia as 2nd District representative of Bataan, as well as for actual damages or attorney's fees in the amount of ₱500,000.

The protestee, for his part, counter-protested 881 precincts on the following grounds, among several others: the non-recording or non-tallying in the election returns of valid votes for him; the erroneous counting and tallying in the election returns of his votes as votes for the protestant; the erroneous consideration of the votes legally cast in his favor as stray votes; the illegal reading and counting, in favor of the protestant, of groups of ballots prepared and written by one and the same person; and the illegal reading and counting, again in favor of the protestant, of individual ballots prepared by two persons.

The designation of the protestant's 25 percent pilot precincts was dispensed with in Resolution No. 04-188 dated September 23, 2004; instead, the Tribunal directed the holding of the revision and appreciation of ballots in all 881 precincts.

Based on the election returns (ERs) -- or tally boards (TBs) when the ERs were missing or unreadable -- prior to revision, the votes for the protestant and for the protestee were 64,507 and 68,923, respectively.[19] After revision, the protestant's votes totaled 63,868; the protestee's, 67,207. During the revision, however, the protestant claimed 2,320 votes; the protestee, 4,592 votes.

First Issue:
Alleged "Massive Frauds and Illegal Electoral Practices"

In election cases, the protestant has the burden of proof to establish the grounds for the protest, while the protestee bears the burden as regards the grounds for the counter-protest. The parties have the duty to present evidence before the HRET to support their respective allegations. Where the cause of action is not supported by any evidence and is not referred to at all by the Memorandum, the Tribunal may dismiss that cause of action accordingly.[20]

In this case, neither the protestant nor the protestee presented any evidence in support of their respective allegations of "massive frauds and illegal electoral practices." Thus, the HRET had no basis with which to determine whether their allegations were true. Consequently, the resolution of the election protest and counter-protest focused simply on the results of the Tribunal's revision and appreciation of ballots.

Second Issue:
Effect of the Recount and the Revision of Ballots

The parties cited the following grounds for objecting to the ballots: (1) multiple ballots written by only one person, (2) ballots each written by two or more persons, (3) marked ballots, (4) substituted/spurious ballots, (5) combination of the foregoing, and (6) other miscellaneous objections.

Ballots were claimed by the parties on the basis of the following grounds: (1) Neighborhood Rule, (2) Intent Rule, (3) *Idem Sonans* Rule, and (4) miscellaneous grounds.

In ruling on the validity or the invalidity of ballots objected to or claimed by the parties, the Tribunal adhered to the basic principle that the cardinal objective of ballot appreciation was to discover and give effect to, rather than frustrate, the intention of the voters. Thus, every ballot was presumed valid, unless clear and good reasons justified its rejection.[21] Specific objections raised by either party with respect to ballots claimed by the other were passed upon in accordance with existing rules on the appreciation of votes, among which were the following:

1. Pairs or groups of ballots clearly prepared by only one person were invalid, except when the Minutes of Voting showed that illiterate or physically disabled persons voted with the aid of assistors.

2. Any ballot that clearly appeared to have been filled up by two (2) distinct persons before it was deposited in the ballot box during the voting was totally null and void.[22] This rule applied in the absence of evidence *aliunde* that the

second handwriting was placed on the ballot after it had been deposited in the ballot box.

3. Ballots on which the name of a candidate had been written three (3) or more times on the same ballot were considered marked ballots. Also considered marked were ballots on which the name of a non-candidate was written three or more times on the same ballot or on three (3) or more ballots in the same precinct.

Moreover, to give effect to the intention of the voter, the Tribunal admitted ballots even if the party-claimant's name was found on a space other than that for "Representative" or "Congressman," provided the votes fell within the contemplation of the "Neighborhood" and the "Intent" Rules.

The Neighborhood Rule is an exception to the general rule that the vote should be deemed stray when the name of a candidate is not written on the space/line provided for "Representative." It is presumed that the voter clearly intended to vote for the candidate whose name was written, not on the space intended for "Representative," but somewhere else. In all probability, that occurrence was due to the confusion of the voter, who had to vote for a large number of positions during the synchronized elections.

Under the Intent Rule, when the name of a candidate for representative was written on any line other than that for "Representative," but (1) was preceded or followed by the word "Congressman" or "Representative" or (2) was with an arrow pointing to the space for

Representative, the ballot was admitted under certain conditions. Those conditions were as follows: (1) the space for "Representative" had been left blank; (2) no other name of a candidate for representative was written on the ballot; and (3) the misplaced vote had not been intended as a mark.[23]

Under the application of a combination of the neighborhood and the intent rules, claimed stray ballots were likewise admitted when the iclaimant's name was physically proximate to the line/space for "Congressman," provided that the line or space was blank, and no other name of a congressional candidate was written on the ballot.

After considering the results of the revision and the appreciation of ballots, as well as the evidence presented by the parties; and applying the prevailing relevant statutory rules, the Tribunal held that the final votes for Protestee Garcia totaled **75,833**; and those for Protestant Roman, **74,416**. In other words, the winning margin of the protestee increased to 1,417, from 803 during the proclamation on May 15, 2004.

Thus, on September 22, 2005, the Tribunal unanimously **DISMISSED** the Election Protest and the Counter-protest.[24]

Petition for the Re-canvassing of Election Returns

I think the most controversial case before the Tribunal, in terms of novelty of issue, is *Angping v. Roces*.[25] Protestant Zenaida Angping did not ask for a "revision" of ballots,

which was the usual proceeding in an election protest; neither did she challenge the "qualifications" of the incumbent. Rather, she asked for a re-canvassing of "election returns" only. Allegedly, the returns were not canvassed by the City Board of Canvassers of Manila after the Comelec had resolved not give due course to her candidacy.

Let me first give a brief factual background of this controversy. For purposes of the May 10, 2004 elections, then incumbent Rep. Harry Angping of the Third Legislative District of Manila filed his Certificate of Candidacy for reelection to the same position. A certain Alejandro B. Gomez filed before the Commission on Elections (Comelec) a Petition to deny due course or cancel the Certificate of Candidacy of Angping, who was allegedly not a natural-born citizen of the Philippines and was therefore "ineligible" for the position. On April 30, 2004, the Comelec First Division issued an Order scheduling the promulgation of its Resolution on the Petition for May 5, 2004.

On May 3, 2004, Harry Angping filed a Sworn Declaration of Withdrawal of his candidacy. On the same day, herein Protestant Zenaida Angping filed her Certificate of Candidacy in substitution of her husband, Harry.

The date scheduled for the promulgation of the Resolution on the Petition to deny due course to or cancel Angping's Certificate of Candidacy was May 5, 2004. Instead, the Comelec First Division issued an Order declaring that the Resolution "was deemed promulgated on April 30, 2004." That Resolution denied due course to and canceled the Certificate of Candidacy of Harry Angping.

On May 9, 2004, Harry filed a Motion for Reconsideration. Before it could be resolved, the Comelec en banc issued **Resolution No. 6823** on May 10, 2004. In that Resolution, his withdrawal as candidate for representative of the Third District of Manila was declared moot, and Zenaida's substitute Certificate of Candidacy was denied due course. The Comelec also directed that the name of Harry Angping be deleted from the Certified List of Candidates for the position.

In her Petition before the Tribunal, Zenaida Angping alleged that her name had remained in the List of Candidates on election day, and that she had been voted for and her votes counted and duly recorded in the election returns in all precincts in the district. But the City Board of Canvassers of Manila did not canvass her votes or those of her husband, in view of Comelec **Resolution No. 6823**. Thus, her prayer before the HRET for a re-canvassing of election returns only.

In his Answer with Motion to Dismiss the Petition, the protestee raised the following as special and affirmative defenses and as grounds for dismissal: (1) the HRET lacked jurisdiction, as the Protest was not filed by a candidate who had duly filed a Certificate of Candidacy; (2) the wrong remedy was resorted to at the wrong forum, as the protestant -- who was questioning the proceedings before the City Board of Canvassers of Manila -- should have appealed to the Comelec; (3) granting *arguendo* that the protestant was a candidate, her Protest could not be resolved by a mere canvass of election returns; (4) the Petition was insufficient in form and substance for failing to specify the contested precincts; and (5) the protestant was guilty of forum shopping, as he had also filed before the Supreme Court a Petition for Certiorari involving essentially the same issues raised in the present Election

Protest.

Prior to the preliminary conference in the HRET, the protestee further submitted eight[26] allegedly prejudicial questions for its disposition.[27] In a Resolution promulgated on March 3, 2005, the Tribunal resolved two principal issues: (1) "the propriety for the [p]rotestant to institute the instant election protest and (2) the jurisdiction of this Tribunal."

Protestee Roces alleged that Zenaida was not a proper party, because she could not be considered a candidate who had duly filed a Certificate of Candidacy, as provided under HRET Rule 16. Relying on *Miranda v. Abaya,*[28] he argued that Harry could not be substituted as a candidate after the latter's Certificate of Candidacy had been denied due course and cancelled.

In his *ponencia*, Representative Mauricio G. Domogan (Lone District, Baguio City) held that *Miranda* did not apply. In that case, the Comelec Resolution denying and canceling the substituted Certificate of Candidacy was already final at the time Petitioner Joel Miranda, in lieu of his disqualified father, filed his substitute Certificate of Candidacy. Thus, the Supreme Court ruled that there was no valid substitution.

In the present case, however, Harry's withdrawal of his candidacy and Zenaida's substitution were filed prior to the actual issuance of the Resolution denying and cancelling the protestee's Certificate of Candidacy. Besides, the Motion for Reconsideration he had filed was never finally resolved by the Comelec en banc. Resolution No. 6823 issued on May 8,

2004, could not be considered as a Resolution disposing of his Motion and Supplemental Motion for Reconsideration, because the entire records of the case had not yet been elevated to the Comelec en banc at the time.[29] In other words, the banc had not yet acquired jurisdiction over the Motions when it rendered the questionable Resolution, in which his withdrawal of his candidacy was deemed moot; and the substitute candidacy of Zenaida, denied due course. Therefore, her substitute candidacy was undoubtedly allowed under Section 77 of the Omnibus Election Code (OEC).

The Tribunal held that Comelec Resolution No. 6823 was merely an administrative issuance, in which the cancellation or denial of a certificate of candidacy could not be done by the poll body. Under Section 78 of the OEC, such disposition required the exercise of the Comelec's quasi-judicial power, which in turn required prior notice and hearing. In previous cases, the Supreme Court had ruled that decisions and resolutions issued in the exercise of judicial or quasi-judicial power, in violation of the requirements of prior notice and hearing, were tainted with grave abuse of discretion and therefore void.[30] Thus, Resolution No. 6823 could not have validly cancelled or denied due course to the Certificate of Candidacy of Harry Angping or the substitute Certificate of Candidacy of herein Protestant Zenaida Angping.

The Tribunal, by a vote of 6-2-1,[31] concluded that the protestant was, to "all legal intents and purposes, qualified and a proper party to file this election protest."

On the question of whether the HRET had jurisdiction over the subject matter of the

case, it ruled in the affirmative on the basis of the fact that Zenaida's election protest or Petition was sufficient in form and substance. While the Petition might have alleged the illegality of certain Comelec Resolutions, it likewise raised questions on the qualifications, returns and election of the protestee -- questions over which the Tribunal clearly had exclusive jurisdiction.[32]

On the issue of forum shopping, the HRET found that the cases filed by the protestant before the Comelec and the Supreme Court involved questions that were "distinct and different from the issues raised in this instant election protest."

In the light of the foregoing facts, the HRET held that it was proper to proceed to ascertain the true results of the May 10, 2004 elections in the 3rd District of Manila, particularly considering that the protestee had been "proclaimed on a mere 6,347 votes amidst the high voting population in the district." Thus, the Tribunal denied his Motion to Dismiss, which was incorporated in his Answer and in his Omnibus Motion.[33]

My Separate Opinion. I voted to deny the protestee's Motion to Dismiss for the following reasons:

1. The allegations in the election protest were sufficient to confer jurisdiction upon the HRET.
2. The "prejudicial questions" submitted by the protestee in his Omnibus Motion were not grounds for the immediate dismissal of the protest prior to the hearing of the main

case.

3. At the time, a review of Comelec Resolution No. 6823 was not dispositive of the election protest.
4. The primordial duty of the Tribunal was to ascertain the true winner in the election.

To enable the HRET to exercise jurisdiction, the following facts must be *alleged* in a petition of protest:

1. The protestant was a candidate who had duly filed a Certificate of Candidacy and was voted for in the election.
2. The protestee was proclaimed as the winner in the election.
3. The Petition was filed within the reglementary period (10 days after proclamation) prescribed by law.[34]

Unrefuted was the fact that the present Petition stated that Protestee Roces had been proclaimed on May 15, 2004. It was also undeniably filed on May 24, 2004, well within the 10-day reglementary period.

Protestant Zenaida Angping claimed to have duly filed on May 4, 2004, her Certificate of Candidacy for the position of representative of the Third District of Manila, in substitution of then incumbent Representative Harry Angping who, on even date, filed his Sworn Affidavit of Withdrawal of Candidacy for the same elective post.

The basic rule is that jurisdiction over the subject matter of a case is determined by the

allegations of the complaint or petition, regardless of whether the plaintiff or petitioner is entitled to the relief asserted.[35] Thus, my Separate Opinion argued that Zenaida's Petition had sufficiently alleged all the essential jurisdictional facts for the HRET to assume and exercise its jurisdiction. Whether the protestant's claims were truthful and meritorious, and whether she was entitled to the relief she sought, were matters that should more properly be addressed in the regular course of the proceedings, after the Tribunal had assumed jurisdiction.

Based only on the averments of the parties, I believed, too, that forum shopping did not exist. The certiorari Petition before the Supreme Court had assailed Comelec Resolution No. 6823, on the ground of grave abuse of discretion by the poll body. The relief sought was the nullification of the Resolution. Even assuming *arguendo* that the Court had not dismissed the Petition and had instead annulled the Resolution, the Court could not have thereby declared who the winning candidate was.

On the other hand, the election protest or Petition sought a re-canvassing of election returns, allegedly because the votes in favor of the protestant had not been tallied and tabulated by the City Board of Canvassers of Manila, a task supposedly ministerial on its part. The ultimate objective of the Protest was to find out who was the true and lawful winner in the election. Thus, the reliefs sought in the separate actions were not identical.

Also lacking in merit was the protestee's claim that in assuming jurisdiction over the protest, the Tribunal would in effect be overturning Comelec Resolution No. 6823. Again, the

Petition of Zenaida was complete as to its allegations of the essential facts, and jurisdiction was thus vested in the HRET. Whether the Tribunal would have to review, revise or reverse Comelec Resolution No. 6823 was a *matter of defense for the protestee* and had to be threshed out in the main proceedings.

This matter was only a sub-issue with respect to the larger role of the HRET in determining who really won in the election for representative of the Third District of Manila. In the process, the Comelec Resolution might not even have to be subjected to scrutiny, as the parties -- the protestant in particular -- might be able to present convincing evidence that would indubitably prove her claim to the position.

Subsequent Proceedings

Subsequently, the Tribunal ordered the simultaneous revision of ballots and the re-canvassing of election returns, on the basis that its jurisdiction under the Constitution encompassed "all contests relating to the election, *returns* and qualifications of Members of the House of Representatives."[36]

During the second day of the revision of ballots, however, the protestee moved for the withdrawal of the revision and recounting of ballots from the remaining unrevised precincts. His Motion was granted in the HRET Order dated June 22, 2005. The re-canvassing of the election returns continued, but was later suspended in view of a Temporary Restraining Order (TRO) issued by the Supreme Court on June 28, 2005. The TRO was issued by the Court in

connection with the Petition for Certiorari[37] brought before it by Protestee Roces, assailing the HRET Resolution dated March 3, 2005.

In a Decision promulgated on September 15, 2005, and by a vote of 8-4-3,[38] the Supreme Court sustained the HRET and lifted the TRO. Thus, per its Resolution dated September 22, 2005, the Tribunal directed its hearing officer to continue with the proceedings in this case.

The Pending Unresolved Cases

To date, the remaining seven protest cases[39] have undergone revisions of ballots. As earlier mentioned, the HRET may direct the initial revision of ballots in only 25 percent of the protested and counter-protested precincts. But in some cases in which the margin of votes between the contesting parties was very slim, or in which the contested precincts comprised a small number only, the Tribunal may order the revision of ballots in 100 percent of the protested and counter-protested precincts.

In the present term, the Tribunal ordered the revision of ballots in all or 100 percent of the protested and counter-protested precincts in the following cases: *Candazo v. De Guzman* (Lone District, Marikina City); *Roman v. Garcia* (2nd District, Bataan); *Gatchalian v. Carlos* (1st District, Valenzuela City); *Tiquia v. Serapio* (2nd District, Valenzuela City); and *Jaafar v. Abubakar* (Lone District, Tawi-Tawi).

The remaining proceedings before the HRET are in the stages of the parties' presentation of their respective sets of evidence and the Tribunal's appreciation of ballots.

Conclusion

As I said at the beginning of this chapter, the HRET has been diligent in its work. Its members have shown admirable doggedness, prudence and speed in going about their work. Given our pace, and barring unforeseen events like a TRO from the Supreme Court, I believe that the HRET would be able to decide *all* its cases within the first two years of its current three-year term.

I must commend not only the Tribunal members -- both the justices and the representatives -- but also the staff. The Secretariat is composed of the Tribunal secretary, Atty. Daisy B. Panga-Vega, assisted by the deputy secretary, Atty. Marie Grace T. Javier-Ibay; and the eight services heads as follows: Atty. Josefina Santos-Olais (Director III, Legal Service); Remigio V. Mangundayao (officer-in-charge, Canvass Board Service); Atty. Henry R. Solomon (officer-in-charge, Information System and Judicial Records Management Service); Atty. Michael D. Villaret (officer-in-charge, Human Resource Management Service); Ms. Luz D. Tanjuakio (Director II, Accounting Service and Finance and Budget Service); Ms Ma. Corazon P. Villanueva (Director II, Cash Management Service); and Ms Rosalina de Guzman-Torres (Director II, General Service.)

I am impressed by the dedication and the passion for work demonstrated by the staff. On a personal note, I was pleasantly surprised to receive a poem entitled "AVP" from Atty.

Noel Mapili, HRET Attorney VI. Presented to me privately on August 25, 2005, it was encased in a petite wooden frame. By way of appreciation for his kind thoughts, I am reproducing the poem verbatim:

A.V.P.

__A__n SC Justice of top caliber
__R__emarkable and great campus leader
__T__his 1960 bar sixth top placer
__E__stablished a well-known law firm further
__M__ade a name in other fields thereafter
__I__s likewise a Catholic lay server
__O__ne of the icons of the male gender

__P__resident then of Daily Inquirer
__A__-one prolific author and writer
__N__ot to mention human rights defender
__G__reat all-season friend and not fair-weather
__A__ sincere one, never a pretender
__N__ot just an ordinary house master
__I__deal husband and doting father
__B__usinessman and media practitioner
__A__ll-around man not only a lawyer

__N__eed I say more to make him look better?

- Atty. Noel Mapili

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[1] In the Preface of that book (published in 2004 by PRINTOWN), pp. xxv to xxvi, I wrote:

"***A Few Words on the HRET.*** The Constitution (Section 17, Article VI) mandates the Tribunal to be 'the sole judge of all contests relating to the election, returns, and qualifications' of members of the bigger House of Congress. It is 'composed of nine members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the x x x House of Representatives x x x, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.'

"Though a majority of the jurists who compose it are nonprofessional, the Tribunal is in every sense a constitutional court that hears and decides electoral disputes. The six members of the House were chosen on the basis of their party affiliations, but to their credit they serve the Tribunal as objectively, fairly and independently as they possibly can.

"The service of the lawmakers must be specially difficult and challenging. Justices and judges are able to shed completely their political affiliations and personal biases when they join the judiciary. But these solon-jurists must concurrently remain regular members of a highly political – if not partisan – lawmaking

body, even while they sit as members of the HRET. Note that at least one of the litigants in every HRET controversy is almost always a sitting member of Congress and, thus, coequal to them. How the lawmaker-members are able to shed their party loyalties and congressional camaraderie when they deliberate and vote in the Tribunal is always a source of wonder and admiration.

"The new SC component (Justices Santiago, Carpio and I) joined the HRET on July 15, 2004, while the House contingent (Reps. Cagas, Baterina, Wacnang, Domogan, Vicencio and Santiago) started work on August 18, 2004. May I say, however, that on the basis of the composure, conduct and qualities shown by the members, our people can look forward to an HRET that is independent, fair and competent.

"Thus far, the hearings and deliberations have been conducted with a deliberate similarity to and, I dare add, approximation of those held in the highest court of the land. I am particularly impressed with the comportment and demeanor of the lawmaker-members who have demonstrated admirable legal wisdom, judicial detachment and speedy (but not hasty) inclination in resolving all matters before the Tribunal.

"Indeed, they have easily adjusted to the rather somber environment of the HRET. They have even adapted themselves to the judicial labyrinths that I, as presiding officer, have used in navigating our sessions and deliberations. They speak judicial legalese and quote the Rules of Court in their discussions with the SC justices. For this I salute my lawmaker-brethren in the HRET. I look forward to many intellectually stimulating, logic-driven, and disciplined cerebral calisthenics with them. In my next book, I shall be pleased to report more extensively on the HRET."

[2] The House of Representatives Electoral Tribunal (HRET) finds its origin in the first Philippine Constitution (Section 4, Art. VI), ratified on May 14, 1935, which also established the Commonwealth Government that became operative on November 15, 1935. It was first called the Electoral Commission, an innovation created to respond to the "long-felt need of determining legislative contests devoid of partisan consideration x x x."*(Angara v. Electoral Commission,* 63 Phil. 139, July 15, 1936).

On April 11, 1940, the 1935 Constitution was amended to provide a bicameral legislature. An Electoral Tribunal for each of the Senate and the House of Representatives was also created under Section 11 of that Constitution, as follows:

> "The Senate and the House of Representatives shall have an Electoral Tribunal which shall be the sole judge of all contests relating to the elections, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes herein. The senior Justice in each Electoral Tribunal shall be its Chairman."

The HRET was effectively abolished by the 1973 Constitution, which no longer provided for an "Electoral Tribunal" for the legislative body (the then Batasang Pambansa). Instead, the 1973 Constitution lodged in the Commission on Elections the power to judge election cases involving members of the legislature.

On August 27, 1987, after the organization of the bicameral Congress under the 1987 Constitution, the former ETHR was reconstituted as the House of Representatives Electoral Tribunal (HRET).

[3] §17, Article VI of the 1987 Constitution reads:

> "Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the elections, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, elected by each House on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman."

[4] HRET Case No. 04-004.

[5] Especially those where the ballots are unavailable due to the existence of protests concerning other positions involving those ballots, or are missing and cannot be located or destroyed due to natural disasters or calamities.

[6] Pursuant to Rule 88 of the HRET Rules, the Tribunal may direct and require the protestant and

counter-protestant, in case the protest or counter-protest involves more than 50% of the total number of precincts in the district, to state and designate at most twenty-five percent (25%) of the total number involved in the protest or counter-protest, as the case may be -- precincts deemed as best exemplifying the electoral irregularities or frauds pleaded by the party.

[7] HRET Case Nos. 004-001, *Cabalan v. Banaag;* 04-002, *Candazo v. De Guzman;* 04-003, *Cruz v. Fuentebella;* 04-005, *Roman v. Garcia;* 04-006, *Roco v. Villafuerte;* 04-007, *San Juan v. Cerilles;* 04-008, *Cerbo Jr. v. Mangudadatu;* 04-011, *Mathay v. Susano;* 04-012, *Calizo v. Miraflores;* 04-013, *Kho v. Seachon;* 04-014, *Gatchalian v. Carlos;* 04-015, *Tiquia v. Serapio;* 04-016, *Hussin v. Amin;* 04-017, *Jaafar v. Abubakar;* and 04-019, *Andueza v. Bravo.*

[8] HRET Case Nos. 04-009, *San Miguel v. Dy (Lone District, Pasay City)*; 04-010, *Samson v. Crisologo (1st District, Quezon City)*; and 004-018, *Liwag v. Cruz* (ALAGAD Party-List Representative).

[9] HRET Case No. 04-004, *Angping v. Roces (3rd District, Manila).*

[10] As of October 10, 2005.

[11] 248 SCRA 300, 328, September 18, 1995.

[12] *Nuval v. Guray*, 52 Phil. 645, December 29, 1928.

[13] Under Art. 36 of the Revised Penal Code, a "pardon shall not work the restoration of the right to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon."

[14] SPA No. 04-269 [Case SPA (NCR-RED) No.C04-005].

[15] Citing *Juan G. Mijares v. Ciriaco Custorio,* 73 Phil. 507, December 3, 1941; *Cristobal v. Labrador,* 40 O.G. Suppl., 9, 298, GR No. 47941, December 7, 1940; *Pelobello v. Palatino,* 72 Phil. 441, June 20, 1941; *Lacuna v. Abes,* 24 SCRA 780, August 27, 1968; and *Monsanto v. Factoran, Jr.,* 170 SCRA 190, February 9, 1989.

[16] Citing *Vera v. Avelino,* 77 Phil. 192, August 31, 1946 (which had in turn cited Anderson, *Law Dictionary; Bouvier's Law Dictionary,* and *Black's Law Dictionary.*)

[17] Decision promulgated on September 22, 2005. The vote was 8-0; Rep. Joseph A. Santiago was on sick leave.

[18] For instance, the registration of flying voters; the use of *"lansadera";* the false reading of votes for the protestant; the counting of illegal, stray and marked ballots for the protestee; the tampering of ballots for the protestant so as to annul them; the writing by two or more persons on the ballots for the protestee; the writing by only one person on groups of ballots for the protestee.

[19] Votes in Precinct 120-A/B, Orion, were not included, as the ballots and other election documents in the ballot box were wet and unreadable.

[20] *Libanan v. Ramirez,* 10 HRET Reports 1 (citing *Martinez v. Beltran Jr.,* 1 HRET Reports 467; *Agbayani v. Bengson III,* 2 HRET Reports 448).

[21] *Ecleo v. Navarro*, HRET Case No. 98-010 (1998); *Vicencio v. Lucero*, HRET Case No. 95-023 (1998); *Flores v. Garin*, HRET Case No. 95-006 (1998).

[22] Rule 23, Section 211 of OEC.

[23] *Biron v. Monfort*; HRET Case No. 01-021, February 19, 2004; *Balindong v. Macarambon Jr.,* HRET Case No. 01-039, April 22, 2004; *Sangki v. Matalam*; HRET Case No.01-042, March 18,2004.

[24] The vote was actually 8-0. Representative Joseph A. Santiago was on sick leave.

[25] HRET Case No. 04-005.

[26] "1. Whether the Tribunal has jurisdiction to review, revise or annul Comelec Resolution No. 6823 dated May 8, 2004 denying due course to the certificate of candidacy of protestant Zenaida

Angping in view of the denial of due course and cancellation of the certificate of candidacy of Harry Angping whom protestant allegedly substituted;

"2. Whether protestant is validly married to Harry Angping. In the negative, even granting that she validly substituted for the latter, may she use Angping as her surname? Can she claim all Angping votes in her favor?

"3. Whether protestant was a member of the Nationalist People's Coalition Party, the political party which nominated Harry Angping. Granting that Harry Angping could be validly substituted, could the protestant be a substitute even if she was not a member of the said political party?

"4. Whether the instant case may be resolved by mere canvass of election returns. Granting that protestant was a valid substitute for Harry Angping, and granting further that she is not married to the former, would she still be entitled to "Angping" votes? Thus, is there a need for revision and recount of ballots and not mere election returns;

"5. Whether the instant petition can be considered a protest since it is actually questioning the proceedings of the City Board of Canvassers of Manila. Hence, granting that protestant is a valid substitute, is the remedy of protestant to appeal to the Comelec and not to this Tribunal?

"6. Whether protestant can claim any right to any ballot cast in the election contested herein, considering that she was never listed in the certified list of candidates of the Comelec;

"7. Whether the instant petition is sufficient in form and substance considering that protestant failed to state the specific precincts she is protesting;

"8. Whether the instant case should be dismissed on the ground of forum shopping considering protestant did not disclose in her Verification and Certification that she filed a petition for certiorari before the Supreme Court which was then still pending."

[27] The protestee's Omnibus Motion dated September 21, 2004.

[28] 311 SCRA 617, July 28, 1999.

[29] It was only in an Order dated May 10, 2004, that the Comelec (First Division) referred Harry Angping's Motion for Reconsideration to the Comelec en banc "for proper disposition."

[30] Citing *Cipriano v. Comelec,* GR No. 158830, August 10, 2004.

[31] Justice Consuelo Yñares-Santiago, Representatives Douglas RA. Cagas, Salacnib F. Baterina, Romualdo T. Vicencio and Joseph A. Santiago concurred in full. Representative Laurence B. Wacnang, joined in by Justice Antonio T. Carpio, wrote a Dissenting Opinion. For my part, I wrote a Separate Opinion, in which I concurred in the Resolution, insofar as it held that the Tribunal had jurisdiction over the protest. With respect to the question on whether the protestant was a proper party, as well as the other "prejudicial questions" raised by the protestee, I opined that the merits of such substantive issues should be passed upon after the presentation of evidence in the main proceedings of the case.

[32] Citing *Rasul v. Comelec,* GR No. 134142, August 24, 1999; *Abaya v. Aggabao,* HRET Case 03-00, August 7, 2003; *Abante Jr. v. Jimenez* and *Ocampo v. Crespo,* HRET Case Nos. 01-020 & 01-023, March 6, 2003.

[33] After the denial of his Motion for Reconsideration, the protestee elevated this incident to the Supreme Court via a Petition for Certiorari and Prohibition, docketed as GR No. 167499.

[34] *Miro v. Comelec,* 121 SCRA 467, April 20, 1983. Gonzales, *Administrative Law, Law on Public Officers and Election Law,* (2nd ed.), pp. 498-99.

[35] *Santiago v. Guingona Jr.,* 298 SCRA 757, November 18, 1998; *Tomas Claudio Memorial College v. Court of Appeals,* 316 SCRA 502, October 12, 1999.

[36] §17 of Article VI of the Constitution. Italics supplied.

[37] GR No. 167499 (*Miles Andrew Mari Roces v. HRET and Maria Zenaida B. Angping*).

[38] Voting to sustain the HRET were Justices Reynato S. Puno, Leonardo A. Quisumbing, Consuelo Ynares-Santiago, Angelina Sandoval-Gutierrez, Romeo J. Callejo Sr., Dante O. Tinga, Minita V. Chico-

Nazario and Cancio C. Garcia. Dissenting were Chief Justice Hilario G. Davide Jr. and Justices Ma. Alicia Austria-Martinez, Conchita Carpio Morales and Adolfo S. Azcuna. Being HRET members, Justices Consuelo Ynares-Santiago, Antonio T. Carpio and I did not take part in this SC Decision.

[39] *Tiquia v. Serapio* (2nd District, Valenzuela City), *Cabalan v. Banaag* (1st District, Agusan del Norte), *Candazo v. De Guzman* (Lone District, Marikina), *Cruz v. Fuentebella* (3rd District, Camarines Sur), *Mathay v. Susano* (2nd District, Quezon City), *Gatchalian v. Carlos* (1st District, Valenzuela City), and *Jaafar v. Abubakar* (Lone District, Tawi-Tawi).