

Then and Now: Pre-Proclamation Controversies in National and Local Elections

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I. INTRODUCTION

A pre-proclamation controversy is defined in Section 241, Batas Pambansa Bilang 881¹ (Omnibus Election Code) as any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission on Elections (COMELEC) or any matter raised under Sections 233,² 234,³ 235,⁴ and 236⁵

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Cite as 54 ATENEO L.J. 1045 (2010).

1. Omnibus Election Code of the Philippines [OMNIBUS ELECTION CODE], Batas Pambansa Bilang 881, § 241 (1985).
2. *Id.* § 233. This section provides:

When the election returns are delayed, lost or destroyed. — In case its copy of the election returns is missing, the board of canvassers shall, by messenger or otherwise, obtain such missing election returns from the board of election inspectors concerned, or if said returns have been lost or destroyed, the board of canvassers may use any of the authorized copies of said election returns or a certified copy of said election return issued by the Commission.

3. *Id.* § 234. This section provides:

Material defects in the election returns. — If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction: Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials: Provided, further, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and thereafter complete the returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.

4. *Id.* § 235. This section provides:

When election returns appear to be tampered with or falsified. — If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with § 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, order the opening of the ballot box and, likewise after

in relation to the preparation, transmission, receipt, custody, and appreciation of election returns.

The transition into the Automated Election System raises questions as to the possibility of dealing with all the pre-proclamation issues frequently encountered in manual elections. It is asked whether the Automated Election System is able to do away with problems endemic to paper-based elections.

This Article discusses how the Automated Election System cures the ills associated with paper-based transactions and redefines pre-proclamation controversies both in local and national elections.

II. DEVELOPMENTS IN PRE-PROCLAMATION FOR THE AUTOMATED ELECTION SYSTEM

Under Section 243 of the Omnibus Election Code, the following are the only issues that may be raised in a pre-proclamation contest:

- (a) Illegal composition or proceedings of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and

satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass.

5. *Id.* § 236. This section provides:

Discrepancies in election returns. — In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.

(d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.⁶

With the Automated Election System, will people still encounter paragraphs (b) to (d) of Section 243? Are the same problems relevant in the light of Republic Act No. 9369 (R.A. No. 9369),⁷ which authorizes the automation of the forthcoming May 2010 elections? Concededly, the legality of the composition and/or proceedings of the Board of Election Inspectors remains a matter for pre-proclamation controversies. How about the rest, which were expected to arise in manual elections where ballots are transmitted and counted by hand? Will they still be relevant considering the safeguards of automation?

This Article posits that the same problems will no longer be encountered with the adoption of an Automated Election System. This is so because pre-proclamation controversies are based on one document alone: the election return. Under the new rule, the election returns shall be transmitted electronically and digitally signed. Hence, it shall not pass from hand to hand and shall be immune from incompleteness, defects, tampering, falsification, and indications of duress, threats, intimidation, fabrication, or fraud. The electronic transmission of election returns makes impossible the occurrence of paragraphs (b) to (d), Section 243 of the Omnibus Election Code.

As such, pre-proclamation controversies may arise only because of the Random Manual Audit⁸ under R.A. No. 9369. Under this provision, there shall be a random manual audit in one precinct per congressional district randomly chosen by the Commission in each province and city.⁹ If there is any discrepancy, then the same shall be a ground for investigation of the cause of the discrepancy and a manual count shall be conducted as a result.¹⁰ Otherwise, paragraphs (b) to (d) of Section 243 of the Omnibus Election Code shall no longer be relevant. This is because the machine, known as the

6. *Id.* § 243.

7. An Act Amending Republic Act No. 8436, Entitled “An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes,” Republic Act No. 9369 (2007).

8. *Id.* § 29. This section provides:

Random Manual Audit. — Where the AES is used, there shall be a random manual audit in one precinct per congressional district randomly chosen by the Commission in each province and city. Any difference between the automated and manual count will result in the determination of root cause and initiate a manual count for those precincts affected by the computer or procedural error.

9. *Id.*

10. *Id.*

PCOS or Precinct Count Optical Scan, is equipped to address paragraphs (b) to (d) of Section 243 of the Omnibus Election Code.¹¹ Furthermore, the electronic transmission of election returns under R.A. No. 9369¹² forecloses the possibility of any pre-proclamation issue because the electronically transmitted returns are considered as the official election results and the bases for proclamation. Simply stated, since pre-proclamation issues are anchored on the election returns, which are electronically transmitted, pre-proclamation issues under paragraphs (b) to (d) would no longer be applicable.

Pre-proclamation controversies have two tiers: the ones relating to election of candidates for the House of Representatives, Provincial, City and Municipal positions, and the ones relating to the election of Senators, the Vice-President, and the President. The local tier shall be looked at first.

III. PRE-PROCLAMATION FOR CANDIDATES FOR THE HOUSE OF REPRESENTATIVES, PROVINCIAL, CITY AND MUNICIPAL POSITIONS BEFORE R.A. NO. 9369

Under Republic Act No. 7166,¹³ the following are the rules in pre-proclamation cases involving provincial, city, and municipal offices:

Section 16. *Pre-proclamation Cases Involving Provincial, City and Municipal Offices.* — Pre-proclamation cases involving provincial, city and municipal offices shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof.

All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determined that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari.¹⁴

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11. The minimum system capabilities of the PCOS enumerated in § 7 of R.A. No. 9369 show that it can maintain the integrity of the ballots and that it can remedy the ills of a paper-based election.
 12. R.A. No. 9369, § 19. The penultimate paragraph provides:
The election returns transmitted electronically and digitally signed shall be considered as official election results and shall be used as the basis for the canvassing of votes and the proclamation of a candidate.
 13. An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes, Republic Act No. 7166 (1991).
 14. *Id.* § 16.

Section 17. *Pre-proclamation Controversies: How Commenced.* — Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission. However, matters raised under Sections 233, 234, 235 and 236 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody and appreciation of the election returns, and the certificates of canvass shall be brought in the first instance before the board of canvassers only.¹⁵

Section 18. *Summary Disposition of Pre-proclamation Controversies.* — All pre-proclamation controversies on election returns or certificates of canvass shall, on the basis of the records and evidence elevated to it by the board of canvassers, be disposed of summarily by the Commission within seven (7) days from receipt thereof. Its decisions shall be executory after the lapse of seven (7) days for receipts by the losing party of the decision of the Commission.¹⁶

Section 19. *Consented Composition or Proceedings of the Board: Period to Appeal: Decision by the Commission.* — Parties adversely affected by a ruling of the board of canvassers on questions affecting the composition or proceedings of the board may appeal the matter to the Commission within three (3) days from a ruling thereon. The Commission shall summarily decide the case within five (5) days from the filing thereof.¹⁷

Section 20. *Procedure in Disposition of Contested Election Returns.* —

(a) Any candidate, political party or coalition of political parties contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under Article XX or Sections 234, 235 and 236 of Article XIX of the Omnibus Election Code shall submit their oral objection to the chairman of the board of canvassers at the time the questioned return is presented for inclusion in the canvass. Such objection shall be recorded in the minutes of the canvass.

(b) Upon receipt of any such objection, the board of canvassers shall automatically defer the canvass of the contested returns and shall proceed to canvass the returns which are not contested by any party.

(c) Simultaneous with the oral objection, the objecting party shall also enter his objection in the form for written objections to be prescribed by the Commission. Within twenty-four (24) hours from and after the presentation of such an objection, the objecting party shall submit the evidence in support of the objection, which shall be attached to the form for written objections. Within the same period of twenty-four (24) hours after presentation of the objection, any party may file a written and verified opposition to the objection in the form also to be prescribed by the Commission, attaching thereto supporting evidence, if any. The board shall not entertain any objection or opposition unless reduced to writing in the prescribed forms.

15. *Id.* § 17.

16. *Id.* § 18.

17. *Id.* § 19.

The evidence attached to the objection or opposition, submitted by the parties, shall be immediately and formally admitted into the records of the board by the chairman affixing his signature at the back of each every page thereof.

(d) Upon receipt of the evidence, the board shall keep up the contested returns, consider the written objections thereto and opposition, if any, and summarily and immediately rules thereon. The board shall enter its ruling on the prescribed form and authenticate the same by the signatures of its members.

(e) Any part adversely affected by the ruling of the board shall immediately inform the board if he intends to appeal said ruling. The board shall enter said information in the minutes of the canvass, set aside the returns and proceed to consider the other returns.

(f) After all the uncontested returns have been canvassed and the contested return ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter an appeal may be taken to the Commission.

(g) Immediately upon receipt of the notice of appeal, the board shall make an appropriate report to the Commission, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report.

(h) On the basis of the record and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of said record and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed.

The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party.

(i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the object brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election.¹⁸

Section 21. *Partial Proclamation.* — Notwithstanding the pendency of any pre-proclamation controversy, the Commission may summarily order the proclamation of other winning candidates whose election will not be affected by the outcome of the controversy.¹⁹

Section 22. *Election Contests for Municipal Offices.* — All election contests involving municipal offices filed with the Regional Trial Court shall be

18. *Id.* § 20.

19. R.A. No. 7166, § 21.

decided expeditiously. The decision may be appealed to the Commission within five (5) days from promulgation or receipt of a copy thereof by the aggrieved party. The Commission shall decide the appeal within sixty (60) days after it is submitted for decision, but not later than six (6) months after the filing of the appeal, which decision shall be final, unappealable and executory.²⁰

As can be gleaned from the foregoing, pre-proclamation controversies in manual elections are summarily disposed of and winners partially proclaimed. This shows the law's avoidance of vacuum and instability. How about in the Automated Election System?

IV. PRE-PROCLAMATION FOR LOCAL ELECTIONS AFTER R.A. NO. 9369

In order to determine whether the same issues will still be encountered, it is important to know which are the official election results and the basis of proclamation in the Automated Election System.

Under Section 19 of R.A. No. 9369, “[t]he election returns transmitted electronically and digitally signed shall be considered as official election results and shall be used as the basis for the canvassing of votes and the proclamation of a candidate.”²¹

This proceeds from the nature of the Automated Election System, which is defined as “a system using appropriate technology which has been demonstrated in the voting, counting, consolidating, canvassing, and transmission of election result, and other electoral process.”²²

These election returns are “in electronic and printed form directly produced by the counting or voting machine, showing the date of the election, the province, municipality, and the precinct in which it is held and the votes in figures for each candidate in a precinct in areas where AES [Automated Election System] is utilized.”²³

Each of these electronic returns bears “appropriate control marks to determine the time and place of printing. Each copy shall be signed and thumbmarked by all the members of the board of election inspectors and the watchers present.”²⁴

Clearly, the PCOS itself will do the counting, consolidating, canvassing, and transmission of election results. Tests have already been conducted

20. *Id.* § 22.

21. R.A. No. 9369, § 19 (emphasis supplied).

22. *Id.* § 2 (1).

23. *Id.* § 2 (4).

24. An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, R.A. No. 8436, § 22 (1997).

showing the capabilities of the PCOS to accurately generate the actual votes cast. Checks are also in place to ensure that the machine will read only bar-coded ballots. There will also be no more need for appreciation because the slots in the ballots need only to be shaded and voters are not anymore required to write the names of the candidates. In effect, controversies under paragraphs (b) to (d) of Section 243 of the Omnibus Election Code are foreclosed. If there should be any issues of fraud, the same would be considered blatant fraud not falling under paragraph (d) of Section 243 of the Omnibus Election Code but in the nature of failure of elections.

Another safeguard of the Automated Election System is that there are 30 copies of the election returns and one electronically transmitted copy compared to only seven copies before.²⁵

V. PRE-PROCLAMATION FOR NATIONAL ELECTIONS BEFORE R.A. NO. 9369

Pre-proclamation cases were expressly prohibited in elections for President, Vice-President, Senators, and Members of the House of Representative. This is clear from Section 15 of R.A. No. 7166, which provides:

Section 15. *Pre-proclamation Cases Not Allowed in Elections for President Vice-President, Senator, and Member of the House of Representatives.* — For purposes of the elections for President, Vice-President, Senator and Member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns or the certificates of canvass, as the case may be. However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it.

Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission in accordance with Section 19 hereof.

Any objection on the election returns before the city or municipal board of canvassers, or on the municipal certificates of canvass before the provincial board of canvassers or district boards of canvassers in Metro Manila Area, shall be specifically noticed in the minutes of their respective proceedings.²⁶

The rule that has always been followed is that there is no pre-proclamation controversy in the election of national officials except for manifest errors in the certificate of canvass or election returns and questions affecting the composition or proceedings of the board of canvassers.²⁷ Is the

25. R.A. No. 9369, § 19.

26. R.A. No. 7166, § 15.

27. *Id.* § 15.

same rule to be adhered to with the advent of the Automated Election System?

VI. PRE-PROCLAMATION FOR NATIONAL ELECTIONS AFTER
R.A. NO. 9369

R.A. No. 9369 has paved the way for pre-proclamation controversies in elections for President and Vice-President. It now admits that problems can arise with regard to the due execution and authenticity of certificates of canvass. The new Section 15 of R.A. No. 7166, which previously admitted no exceptions, now provides:

SEC.15. *Pre-proclamation Cases in Elections for President, Vice-President, Senator, and Member of the House of Representatives.* — For purposes of the elections for President, Vice-President, Senator, and Member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of election returns or the certificates of canvass, as the case may be, except as provided for in Section 30 hereof. However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election before it.

Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission in accordance with Section 19 hereof.

Any objection on the election return before the city or municipal board of canvassers, or the municipal certificates of canvass before the provincial board of canvassers or district board of canvassers in Metro Manila Area, shall specifically notice in the minutes of their respective proceeding.²⁸

We now ask: what is this exception made by the law? Section 30 of R.A. No. 7166,²⁹ as amended by R.A. 9369, provides:

Congress as the National Board of Canvassers for the Election of President and Vice President: The Commission en banc as the National Board of Canvassers for the election of Senators: Determination of Authenticity and Due Execution of Certificates of Canvass. — Congress and the Commission en banc shall determine the authenticity and due execution of the certificate of canvas for president and vice-president and senators, respectively, as accomplished and transmitted to it by the local boards of canvassers, on a showing that: (1) each certificate of canvass was executed, signed and thumbmarked by the chairman and member of the board of canvassers and transmitted or caused to be transmitted to Congress by them; (2) each certificate of canvass contains the names of all of the candidates for president and vice-president or senator, as the case may be, and their corresponding votes in words and

28. *Id.*

29. R.A. No. 9369, § 37.

their corresponding votes in words and in figures; (3) there exists no discrepancy in other authentic copies of the document such as statement of votes of any of its supporting document such as statement of votes by city/municipality/by precinct or discrepancy in the votes of any candidate in words and figures in the certificate; and (4) there exist no discrepancy in the votes of any candidate in words and figures in the certificates of canvass against the aggregate number of votes appearing in the election returns of precincts covered by the certificate of canvass: Provided, That certified print copies of election returns or certificates of canvass may be used for the purpose of verifying the existence of the discrepancy.

When the certificate of canvass, duly certified by the board of canvass of each province, city or district, appears to be incomplete, the Senate President or the Chairman of the Commission, as the case may be, shall require the board of canvassers concerned to transmit by personal delivery, the election returns from polling places that were not included in the certificate of canvass and supporting statements. Said election returns shall be submitted by personal delivery within two (2) days from receipt of notice.

When it appears that any certification of canvass or supporting statement of each province, city or district, appears to be incomplete, the Senate President or the Chairman of the Commission, as the case may be, shall require the board of canvassers concerned to transmit by personal delivery, the election returns from polling places that were not included in the certificate of canvass and supporting statements. Said election returns shall be submitted by personal delivery within two (2) days from receipt of notice.

When it appears that any certificate of canvass or supporting statement of votes by city/municipality or by precinct bears erasures or alteration which may cast doubt as to the veracity of the number of votes stated herein and may affect the result of the election, upon requested of the presidential, vice - presidential or senatorial candidate concerned or his party, Congress or the Commission en banc, as the case may be shall , for the sole purpose of verifying the actual the votes as they appear in the copies if the election returns submitted to it.

In case of any discrepancy, incompleteness, erasure or alteration as mentioned above, the procedure on pre-proclamation controversies shall be adopted and applied as provided in §§ 17,18,19, and 20.

Any person who presents in evidence a simulated copy of an election return, certificate of canvass or statement of votes, or a printed copy of an election return, certificate of canvass or statement of votes bearing a simulated certification or a simulated image, shall be guilty of an election offense shall be penalized in accordance with Batas Pambansa Blg. 881.³⁰

In effect, the above quoted Section 30 speaks of paragraphs (b) to (d) of Section 243 of the Omnibus Election Code because it makes reference to

30. *Id.*

the due execution of each certificate of canvass;³¹ to the completeness of the certificates of canvass and lack of defects or signs of tampering,³² and to discrepancy in the returns. It seems that the lawmakers have learned from history and now abhor repeating its follies by adopting the issues for pre-proclamation controversies for the local elections in the national elections.

Notice, however, that while Section 15 speaks of pre-proclamation cases in elections for President, Vice-President, Senators, and Members of the House of Representatives, only Congress and the COMELEC en banc shall have the opportunity to determine the due execution and authenticity of the Certificates of Canvass under Section 30 of R.A. No. 7166. This means that only the authenticity of the Certificates of Canvass for President, Vice-President, and Senators may be determined. Hence, while the law provides that there are no pre-proclamation cases for Members of the House of Representatives and the party-list, the law did not authorize the local board of canvassers to determine the due execution and authenticity of the Certificates of Canvass for the Members of the House of Representatives and party-list. Did the law intend to allow pre-proclamation cases in elections for Members of the House of Representatives and party-list as well? Or was it in haste that the Local Board of Canvassers was not given the authority to determine the authenticity and due execution of the Certificates of Canvass?

This matter opens the room for the amendment of the law. It should provide for the determination of the authenticity of the Certificates of Canvass for the Members of the House of Representatives and the party-list as well. It should not have lumped together pre-proclamation cases for President, Vice-President, Senators, and Members of the House of Representatives in one provision to avoid misinterpretation.

VII. VARIATIONS IN R.A. NO. 9369 FOR PRESIDENT, VICE-PRESIDENT, SENATORS, AND MEMBERS OF THE HOUSE OF REPRESENTATIVES

R.A. No. 9369 now allows questions on manifest errors, signs of tampering, and defects in the certificates of canvass. It will be recalled that during the 2004 elections, while only R.A. No. 7166 was in effect, only manifest errors in the certificates of canvass for President, Vice-President, Senators, and Members of the House of Representatives could be raised as a pre-proclamation controversy. Hence, evidence of alleged ballot-tampering and fraudulent vote tabulation were dismissed and disregarded. The political situation of the country became volatile amidst doubts regarding the legitimacy of the proclaimed president. Majority of the people considered their will to have been undermined and caused their faith in the proclaimed winner to dissipate. It became a case of the high priest keeping his job even though the faith of the people had been lost. R.A. No. 9369 seeks to

31. R.A. No. 9369, § 30 (1).

32. *Id.* § 30 (2).

foreclose another of such instance by opening the door to questions related not only to manifest errors but also to ballot-tampering and vote tabulation.

Will there not be instability if questions hound the due execution and authenticity of the certificates of canvass in the election of President, Vice-President, Senators, and Members of the House of Representative?

The summary nature of pre-proclamation controversies and the immediate joining of issues assure that should any vacancy result, the same will only be for a short period. Even then, if the discrepancy is not substantial, there can be partial proclamation³³ of the winning candidates.

VIII. PRE-PROCLAMATION IN THE AUTOMATED ELECTION SYSTEM

Aside from those mentioned above, will there still be pre-proclamation under the Automated Election System?

There could be pre-proclamation cases even under the Automated Election System because of Section 24 of R.A. No. 9369.³⁴ This provision requires random manual audit in each congressional district in each province and city. If there be any difference between the automated and manual count, then there shall be an inquiry into the origin of the problem and a manual recount for the affected precincts. Falsified returns shall give cause for declaration of failure of elections and not pre-proclamation controversy.

Two schools of thought prevail with regard to the conduct of random manual audit. Some regard it as pre-audit, meaning simultaneous with the canvassing while others regard it as post-audit. This Article proposes that random manual audit should be simultaneous with the automated canvassing by the machine and be done per municipality instead of per congressional district. Doing this will lessen manual audit and isolate and confine the problem.

To recapitulate, paragraphs (b) to (d) of Section 243 of the Omnibus Election Code have already been foreclosed by considering the electronically transmitted and digitally signed election returns as the official election results to be used in the canvassing of votes and the proclamation of a candidate. This is so because pre-proclamation controversies are based on one document alone, the election return. By ensuring the integrity of the election return and the manner of its transmission, the ills of paper-based elections enumerated in paragraphs (b) to (d) of Section 243 of the Omnibus Election Code are avoided.

The only instance when paragraphs (b) to (d) may find application in both local and national elections is when the random manual audit required under R.A. No. 9369 reveals discrepancies. In such case, the measures used

33. R.A. No. 7166, § 21.

34. R.A. No. 9369, § 24.

to cure the ills of paper-based elections shall again be applied, including pre-proclamation controversies.

R.A. No. 9369 makes a special exception for pre-proclamation of President and Vice-President, and Senators. Section 30 of R.A. No. 7166 now allows pre-proclamation issues on issues of due execution, completeness of the certificates of canvass, and faithfulness of all copies of the certificates of canvass to the original. This is a distinctive provision because elections for all other officials are not as stringently filtered. As a result, there is no system of authentication for local elections except that provided for in R.A. No. 8792³⁵ or the Electronic Commerce Act, which is adverted to in Section 25 of R.A. No. 9369.

In sum, it is clear that R.A. No. 9369 saw the ills of the 2004 elections and moved for the variations on national level. However, it failed to provide for the determination of authenticity and due execution of the Certificates of Canvass for the elections of the members of the House of Representatives, the party-list, and other local officials. There should be a system of authentication in local elections as well to ensure transparency and accuracy.

Pre-proclamation controversies are now based on accomplished election returns because R.A. No. 9369 provides that “the election returns transmitted electronically and digitally signed shall be considered as official election results and shall be used as the basis for the canvassing of votes and the proclamation of a candidate.”³⁶ Hard copies cannot be used as bases for pre-proclamation controversies but rather for an election protest. Pre-proclamation controversies are now on the national level. The local level is limited to issues on composition, proceedings, and possible random manual audit.

35. An Act Providing for the Recognition and Use of Electronic Commercial and Non-commercial Transactions and Documents, Penalties for Unlawful Use Thereof, and For Other Purposes [e-Commerce Act of 2000], Republic Act No. 8792 (2000).

36. R.A. No. 9369, § 19.