

Pre-Proclamation Controversies

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I. INTRODUCTION.....	1060
II. ISSUES.....	1061
A. Grounds	
B. Correction of Manifest Errors in the Tabulation	
C. Jurisprudence	
III. JURISDICTION	1075
A. Composition and Proceedings of the Board of Canvassers	
B. Election Returns and Certificates of Canvass	
C. Correction of Manifest Errors in the Tabulation	
IV. PROCEDURE	1075
A. Composition and Proceedings of the Board of Canvassers	
B. Authenticity of the Election Returns	

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C. *Correction of Manifest Errors in the Tabulation*

V. TERMINATION OF PRE-PROCLAMATION CONTROVERSIES 1081

A. *Proclamation of Winning Candidates*

B. *Filing of Election Contest or Petition for Quo Warranto*

C. *Commencement of the Term of the Office*

VI. CONCLUSION 1084

I. INTRODUCTION

With his usual inimitable language, Justice Jose Laurel described the electoral process with the following ringing words:

As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common weal. Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority.¹

Honest elections constitute the bedrock of democracy. The Supreme Court aptly explained this recently: "Our people express their mighty sovereignty mainly thru the election ballot where they decide, free from any fetter, who will represent them in government. In a representative government, the choice by the people of who will be their voice is nothing less than sacred, hence, its discretion is unpardonable."²

Unfortunately, in the real world of politics, there are candidates who, in their quest for power, resort to fraud and violence. While a candidate who lost because his unscrupulous opponent resorted to such means can file an election protest, election contests tend to drag. Meanwhile, the unworthy winner remains in office and relishes the fruits of his ill-gotten victory. There is, therefore, a need for instant relief in certain cases before proclamation.

As the Supreme Court has pointed out:

But to be accentuated is the cornerstone tenet in elections of public officers that the choice of the people[,] expressed at the polls[,] should not be frustrated by wrongful acts which can be remedied. And amongst these is falsification of returns resorted to by the unscrupulous. It is correct to say that these acts are punishable. It is not as easy, however, to pinpoint the guilt therefor. Emboldened, malefactors falsify returns in the hope that the

1. *Moya v. del Fierro*, 69 Phil. 199, 204 (1939).

2. *People v. Hernandez*, 499 SCRA 688, 717 (2006).

board of canvassers may take them for the genuine. A defeated candidate may grab proclamation, take his seat, while he keeps the victim out by a long drawn expensive election protest — if protest the latter can afford.³

Because of this, law and jurisprudence have crafted pre-proclamation controversies as a remedy against the resort to fraud and violence in certain cases.

II. ISSUES

A. *Grounds*

1. Regional, Provincial, City, and Municipal Officials

Section 241 of the Omnibus Election Code⁴ defines a pre-proclamation controversy as follows:

A pre-proclamation controversy refers to 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, or any matter raised under Sections 233, 234, 235[,] and 236 in relation to the preparation, transmission, receipt, custody[,] and appreciation of the election returns.⁵

Section 243 of the Omnibus Election Code enumerates the issues that may be raised in pre-proclamation controversies involving regional, provincial, city, and municipal officials as follows:

The following shall be proper issues that may be raised in a pre-proclamation controversy:

- (a) Illegal composition or proceedings of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered 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

3. *Ong v. Commission on Elections*, 22 SCRA 241, 252-53 (1968).

4. Omnibus Election Code of the Philippines [OMNIBUS ELECTION CODE], Batas Pambansa Blg. 881 (1985).

5. *Id.* § 241.

- (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

Section 235 of the Omnibus Election Code provides:

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 person other than the members 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 Section 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 indicates that its identity and integrity have been violated, order the opening of the ballot box and, likewise after 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 canvassers.⁷

Section 236 of the Omnibus Election Code reads:

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 the votes of the candidates concerned.⁸

Thus, the first issue mentioned in Section 243 of the Omnibus Election Code involves irregularities in the composition or proceedings of the Board of Canvassers, while the rest of the issues refer to the authenticity of the election returns.

6. *Id.* § 243.

7. *Id.* § 235.

8. *Id.* § 236.

Section 5 (a) (1) of the Commission on Elections (COMELEC) Rules of Procedure⁹ explains when the composition and the proceedings of the Board of Canvassers are illegal:

When the issue involves the illegal composition or proceedings of the Board of Canvassers as when a majority or all of the members do not hold legal appointments or are in fact usurpers; or when the canvassing has been a mere ceremony that was predetermined and manipulated to result in nothing but a sham canvassing as where there was convergence of circumstances of precipitate canvassing, terrorism, lack of sufficient notice to the members of the Board of Canvassers and disregard of manifest irregularities on the face of the questioned returns or certificates of canvass.¹⁰

2. President, Vice President, Senators, and Congressmen

Section 15 of Republic Act No. 7166,¹¹ as amended by Section 38 of Republic Act No. 9369,¹² provides in part:

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.¹³

In *Pangilinan v. Commission on Elections*,¹⁴ the constitutionality of this provision was challenged on the ground that Section 3, Article IX-C of the

9. Commission on Elections, COMELEC Rules of Procedure, Resolution No. 2105 (Feb. 15, 1993).

10. *Id.* rule 27, § 5 (a) (1).

11. 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).

12. 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, To Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, As Amended, Republic Act No. 7166 and other Related Elections Laws, Providing Funds Therefor and For Other Purposes," Republic Act No. 9369 (2007).

13. *Id.* § 15.

Constitution¹⁵ grants the COMELEC the power to decide pre-proclamation controversies.

The Supreme Court, however, upheld the constitutionality of Section 15 of Republic Act No. 7166 on the ground that it should be interpreted to refer to pre-proclamation controversies involving regional, provincial, and city officials, as it is election contests involving these officials that fall within the exclusive jurisdiction of the COMELEC under Section 2 (2), Article IX-C of the Constitution.¹⁶

The Supreme Court explained:

It [the COMELEC] has no jurisdiction over contests relating to the election, returns, and qualifications of Members of the House of Representatives. On the other hand, under Sec. 17, Article VI of the 1987 Constitution, the Electoral Tribunal of the House of Representatives is the 'sole judge of all contests relating to the election, returns, and qualifications of its members.' Consequently, the phrase 'including pre-proclamations controversies' used in Sec. 3, Article IX-C of the Constitution should be construed as referring only to 'pre-proclamation controversies' in election cases that fall within the exclusive original jurisdiction of the COMELEC, i.e., election cases pertaining to the election of regional, provincial[,] and city officials.¹⁷

However, Congress, as the National Board of Canvassers of the elections for President and Vice President, can pass upon the authenticity of the certificates of canvass as mandated by Section 4, Article VII of the Constitution.¹⁸

14. *Pangilinan v. Commission on Elections*, 228 SCRA 36 (1993).

15. PHIL CONST. art. IX-C, § 3. This section provides:

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

16. PHIL. CONST. art. IX-C, § 2 (2). This section provides:

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

17. *Pangilinan*, 228 SCRA at 42.

18. PHIL CONST. art. VII, § 4. This provision provides in part:

Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all

The amendment of Section 30 of Republic Act No. 7166 by Section 37 of Republic Act No. 9369¹⁹ imposed the duty to determine the authenticity

the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress upon determination of the authenticity and due execution thereof in the manner provided by law, shall canvass the votes.

19. Republic Act No. 9369, § 37. This section provides:

Congress and the Commission *en banc* shall determine the authenticity and due execution of the certificate of canvass 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 thumb marked by the chairman and members 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 in figures; (3) there exists no discrepancy in other authentic copies of the certificates of canvass or in any of its supporting documents 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 exists no discrepancy in the votes of any candidate in words and figures in the certificate 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 canvassers 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 alterations which may cast doubt as to the veracity of the number of votes stated herein and may affect the result of the election, upon request 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 number of votes cast for President and Vice President or [S]enator, count the votes as they appear in the copies of the election returns submitted to it.

In case of any discrepancy, incompleteness, erasure or alteration as mentioned above, the procedure on pre-proclamation controversies

and due execution of certificates of canvass upon Congress acting as the National Board of Canvassers for the election for President and Vice President and upon the Commission on Elections *en banc* acting as the National Board of Canvassers for Senators.²⁰ However, Congress and the Commission on Elections have the duty to determine the authenticity and due execution only of the certificates of canvass submitted to them, which are the certificates of canvass of Provincial Board of Canvassers, City Board of Canvassers of highly urbanized cities, and the District Board of Canvassers for Manila. Congress and the Commission on Elections cannot determine the authenticity and due execution of the certificates of canvass submitted by the Municipal Boards of Canvassers and the City Boards of Canvassers of component cities to the Provincial Boards of Canvassers.

B. Correction of Manifest Errors in the Tabulation

Section 15 of Republic Act No. 7166, as amended by Section 38 of Republic Act No. 9369, which prohibits the filing of pre-proclamation controversies involving the authenticity of election returns and certificates of canvass in the elections for President, Vice President, Senators, and Congressmen, nevertheless provides that “[h]owever, 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 certificates of canvass or election returns before it.”²¹

Section 5 (2), Rule 27 of the COMELEC Rules of Procedure explained the meaning of manifest errors in the tabulation as follows:

When the issue involves the correction of manifest errors in the tabulation or tallying of the results during the canvassing as where: (1) a copy of the election returns or certificate of canvass was tabulated more than once; (2) two or more copies of the election returns of one precinct, or two or more copies of certificate of canvass were tabulated separately; (3) there had been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass; or (4) so-called returns from non-existent precincts were included in the canvass, and such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the winning candidates had already been made.²²

C. Jurisprudence

1. Illegality of the Composition or Proceedings of the Board of Canvassers

shall be adopted and applied as provided in Sections 17, 18, 19[,] and 20.

20. See *Pimentel III v. Commission on Elections*, 548 SCRA 169, 186-88 (2008).

21. Republic Act No. 9369, § 38.

22. COMELEC Rules of Procedure, § 5 (2).

Where a Municipal Election Registrar took over as chairman of the Municipal Board of Canvassers, without having been designated by the Election Supervisor, and relieved the previous chairman, the composition of the Municipal Board of Canvassers was illegal.²³

Similarly, since it is the school principal who should replace the district school supervisor if he is disqualified to be a member of the Municipal Board of Canvassers because of his relationship to some candidates, his replacement by an ordinary school teacher was void.²⁴

The transfer of the place for the canvassing of the election returns without the knowledge of the watchers and the canvass of the election returns without the presence of the watchers rendered the canvass illegal.²⁵

2. Authenticity of the Election Returns

a. Incomplete, Tampered and Falsified, Election Returns and Discrepancies in the Election Returns

If some requisites in form or data have been omitted in the election returns, the Board of Canvassers shall call for all the members of the Board of Election Inspectors for them to correct the omission.²⁶ In case of omission in the election returns of the name of a candidate or his votes, the Board of Canvassers shall require the Board of Election Inspectors to complete the necessary data in the election returns and to affix their initials in the returns.²⁷

If the votes omitted cannot be ascertained by other means except by recounting the ballots, the election return should not be excluded.²⁸ Instead, the Commission on Elections, 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, after satisfying itself that the integrity of the ballots has been duly preserved, order the Board of Election Inspectors to count the votes for the candidate whose votes had been omitted with notice to all candidates for the position involved, and complete the election return.²⁹

23. *Pimentel III*, 548 SCRA at 196.

24. *Salic v. Commission on Elections*, 425 SCRA 735, 747-48 (2004).

25. *Soliva v. Commission on Elections*, 357 SCRA 336, 345 (2001).

26. OMNIBUS ELECTION CODE, § 234.

27. *Id.* See *Lee v. Commission on Elections*, 405 SCRA 363, 374 (2003).

28. OMNIBUS ELECTION CODE, § 234.

29. *Id.* See *Patoray v. Commission on Elections*, 249 SCRA 440, 446 (1995).

On the other hand, if upon opening the ballot box, it should appear that the integrity of the ballots has been violated, the ballots shall not be recounted.³⁰

If the copy of the election return submitted to the Board of Canvassers appears to be tampered with, altered or falsified, or not authentic, the Board of Canvassers shall use the other copies of the election return and if necessary, the copy inside the ballot box, which upon previous authority given by the Commission on Elections, may be retrieved.³¹

If the other copies of the election return are likewise tampered with, altered, falsified, or not authentic, the same procedure as in the case of omissions in the election return shall be followed.³² Erasures, however, which were merely corrections, do not constitute tampering.³³

Administrative lapses in the preparation of an election return, which do not affect its authenticity, cannot serve as basis for annulling it.³⁴ The voters should not be disenfranchised through no fault of their own because of the mere oversight of the Board of Election Inspectors.

The failure to close the entries in the election return with the signatures of the Board of Election Inspectors; the lack of seals; the absence of the date and time of the receipt of the election return by the Board of Canvassers; the absence of the signatures of the watchers; and the lack of authority of the person who received the election return do not affect its authenticity.³⁵ The absence of the signature of the Chairman of the Board of Election Inspectors on the voter's affidavits, the list of voters, and the voting records and the absence or excess of detachable coupons cannot be used as basis to annul an election return.³⁶ The lack of an inner paper seal in the election return is not a ground for questioning the authenticity of an election return.³⁷

In the absence of proof that the transmitted election returns, which were placed in empty ballot boxes which were not locked were tampered with, they should not be excluded from the canvass.³⁸

30. OMNIBUS ELECTION CODE, § 237.

31. *Id.* § 235. See *Mastura v. Commission on Elections*, 285 SCRA 493, 498 (1998).

32. OMNIBUS ELECTION CODE, § 235; *Lee*, 405 SCRA at 374-75.

33. *Sarangani v. Commission on Elections*, 415 SCRA 614, 620 (2003).

34. *Ocampo v. Commission on Elections*, 325 SCRA 636, 650 (2000).

35. *Baterina v. Commission on Elections*, 205 SCRA 1, 9 (1992).

36. *Arroyo v. House of Representatives Electoral Tribunal*, 246 SCRA 384, 406 (1995).

37. *Bandala v. Commission on Elections*, 424 SCRA 267, 273 (2004).

38. *Navarro v. Commission on Elections*, 396 SCRA 620, 625 (2003).

The Supreme Court, however, held that the alleged tampering or falsification of election returns cannot be raised as an issue in a pre-proclamation case if a resolution of it will require going beyond the face of the election returns because pre-proclamation controversies should be decided summarily.³⁹ Therefore, a party seeking to raise issues, resolution of which would compel or necessitate COMELEC to pierce the veil of election returns which appear *prima facie* regular on their face, has his proper remedy in a regular election protest. Given the obvious public interest in the speedy determination of the results of elections and by its very nature, pre-proclamation controversies are to be resolved in summary proceedings without the need to present evidence *aliunde* and without having to go through voluminous documents and subjecting them to meticulous technical examinations which take up considerable time.⁴⁰

It should be noted that the certificate of votes issued by the Board of Election Inspectors to the poll watchers, when authenticated by testimonial or documentary evidence presented by at least two members of the Board of Election Inspectors which issued it, or any other evidence, can be used to impugn the authenticity of an election return.⁴¹

In a later case, the Supreme Court *en banc* ruled that in a pre-proclamation controversy, the Commission on Elections can exclude a falsified election return during the canvass.⁴²

Further, the aforesaid doctrine that 'as long as the returns appear to be authentic, and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting and counting of the votes,' is not applicable in this case due to the following reasons:

- (1) The COMELEC has the authority to review the rulings of the Board of Canvassers in a pre-proclamation controversy under paragraphs (e) to (f) of section 20 (Procedure in disposition of Contested Election Returns) of Republic Act No. 7166;
- (2) The COMELEC *en banc* found that the nine election returns are fraudulent in the manner of their preparation which is a pre-proclamation issue under Sections 241 and 243 of the Omnibus Election Code;
- (3) The allegations of irregularity is not in the casting and counting of votes, but in the preparation of the election returns (i.e., the election returns from Precinct Nos. 31A, 31B, 32A/32B, 33A and 33B were

39. *Belac v. Commission on Elections*, 356 SCRA 394, 405-07 (2001).

40. *Id.* at 406 (citing *Dipatuan v. Commission on Elections*, 185 SCRA 86 (1990)).

41. An Act Introducing Additional Reforms in the Electoral System and For Other Purposes, Republic Act No. 6646, § 17 (1987). See *Patoray*, 249 SCRA at 445.

42. *Dagloc v. Commission on Elections*, 417 SCRA 574, 595-96 (2003).

tampered or falsified and were prepared under duress, threats, coercion and intimidation).⁴³

Where the total votes cast for the candidates exceeded the number of registered voters, the election return should be considered as a tampered return.⁴⁴

If there are discrepancies in the other authentic copies of an election return or in the number of the votes of a candidate in words and figures, and the difference affects the result of the election, the same procedure as in the case of an omission in the election return should be followed.⁴⁵

b. Election Returns Prepared under Duress and Statistically Improbable Election Returns

The Supreme Court held twice that duress in the preparation of an election return cannot be raised as an issue in a pre-proclamation controversy, because a pre-proclamation controversy should be decided summarily and resolution of the issue will require the presentation of evidence.⁴⁶ However, in both cases what happened was that the Supreme Court found that the evidence presented to prove the duress was insufficient.⁴⁷

In *Sebastian v. Commission on Elections*,⁴⁸ the Supreme Court first stated that "to require the COMELEC to examine the circumstances surrounding the preparation of election returns would run counter to the rule that a pre-proclamation controversy should be summarily decided."⁴⁹ The Supreme Court went on to rule that "[t]he COMELEC found, however, that the evidence presented by petitioners failed to prove convincingly that the assailed returns were tainted by duress."⁵⁰

This is also what happened in *Dumayas v. Commission on Elections*,⁵¹ in which the Supreme Court ruled:

43. *Id.* at 592-93.

44. *Cambe v. Commission on Elections*, 543 SCRA 157, 171 (2008).

45. OMNIBUS ELECTION CODE, § 236. *See Olondriz v. Commission on Elections*, 313 SCRA 128, 132-33 (1999).

46. *See Sebastian v. Commission on Elections*, 327 SCRA 406 (2000); *Dumayas, Jr. v. Commission on Elections*, 357 SCRA 358 (2001).

47. *See Sebastian*, 327 SCRA at 413; *Dumayas, Jr.*, 357 SCRA at 371.

48. *Sebastian v. Commission on Elections*, 327 SCRA 406 (2000).

49. *Id.* at 412.

50. *Id.* at 413.

51. *Dumayas, Jr. v. Commission on Elections*, 357 SCRA 358 (2001).

Where a party seeks to raise issues the resolution of which would necessitate the COMELEC to pierce the veil of election returns which are *prima facie* regular, the proper remedy is a regular election protest, not a pre-proclamation controversy.

In the present case, petitioner barely alleged that the preparation of said returns was attended by threats, duress, intimidation or coercion without offering any proof, other than the affidavits mentioned above, that these had affected the regularity or genuineness of the contested returns.⁵²

In the landmark decision of *Lagumbay v. Climaco*,⁵³ all the registered voters in 50 precincts located in three provinces turned out to vote, and they all voted for the eight candidates for Senators of one political party, each receiving exactly the same number of votes while all the eight candidates for Senators of the opposing party got nothing.⁵⁴ The Supreme Court ordered the exclusion of the election returns from these precincts on the ground that they were statistically improbable and manifestly fabricated.⁵⁵

The Supreme Court pointed out that "[h]ere, all the eight candidates of one party garnered *all the votes each* of them receiving *exactly the same number*, whereas *all the eight candidates* of the other party got precisely *nothing*."⁵⁶

The Supreme Court applied this ruling in a subsequent case which involved 22 precincts.⁵⁷ Later decisions, however, introduced limitations and refinements to the application of this doctrine.

First, the doctrine of statistical improbability does not apply where only one candidate of a political party for an elective office received all the votes in some precincts while his opponent received none; the other candidates of the other political party for other elective offices received votes; and not all the registered voters turned out to vote.⁵⁸ Thus, the mere fact that a candidate for public office received all the votes in three precincts while his opponent received nothing does not justify the application of the doctrine of statistical improbability.⁵⁹

52. *Id.* at 371.

53. *Lagumbay v. Climaco*, 16 SCRA 175 (1966).

54. *Id.* at 176.

55. *Id.* at 178.

56. *Id.* at 177.

57. *Sinsuat v. Pendatun*, 33 SCRA 630, 649 (1970).

58. *Sangki v. Commission on Elections*, 21 SCRA 1392, 1395-96 (1967); *Ocampo*, 325 SCRA at 649-50.

59. *Velayo v. Commission on Elections*, 327 SCRA 713, 743 (2000).

Second, the mere fact that a candidate received an overwhelming majority over another candidate in numerous precincts does not render the election returns from those precincts statistically improbable.⁶⁰

Third, the mere fact that the percentage of the turnout of voters in some precincts was high does not make the election returns from those precincts statistically improbable.⁶¹

c. Fraudulent Election Returns

An election return prepared without counting the ballots is a fabrication.⁶² It should not be included and a count of the ballots should be ordered.⁶³

3. Irregularities in the Casting or the Counting of the Ballots

Irregularities in the casting or the counting of the ballots cannot be raised in a pre-proclamation controversy, because they do not involve the authenticity of the election returns.

The resort to illegal election propaganda is not a proper issue in a pre-proclamation controversy.⁶⁴

Questions of appreciation of the ballots cannot be raised in a pre-proclamation controversy.⁶⁵ Thus, the claim that a candidate was not credited with votes casted for him because his name was similar to that of another candidate, who had already been disqualified, cannot be ventilated in a pre-proclamation controversy.⁶⁶

In *Sanchez v. Commission on Elections*,⁶⁷ the Supreme Court rejected the contention that the error involved incompleteness of the election returns and illegality in the proceedings of the COMELEC as the Board of Canvassers:

Here, the election returns are complete and indicate the name of Sanchez as well as the total number of votes that were counted and appreciated as

60. *Ilarde v. Commission on Elections*, 31 SCRA 72, 77 (1970).

61. *Doruelo v. Commission on Elections*, 133 SCRA 376, 383 (1984).

62. *Lucero v. Commission on Elections*, 234 SCRA 280, 293 (1994).

63. *Id.*

64. *Villegas v. Commission on Elections*, 99 SCRA 582, 588 (1980).

65. *Allarde v. Commission on Elections*, 159 SCRA 632, 634 (1988); *Bautista v. Commission on Elections*, 159 SCRA 641, 644 (1988); *Abella v. Larrazabal*, 180 SCRA 509, 515 (1989); *Alfonso v. Commission on Elections*, 492 SCRA 391, 400 (2006).

66. *Sanchez v. Commission on Elections*, 153 SCRA 67, 75 (1987); *Chavez v. Commission on Elections*, 211 SCRA 315, 324 (1992).

67. *Sanchez v. Commission on Elections*, 153 SCRA 67 (1987).

votes in his favor by the boards of inspectors. The fact that some votes written solely as 'Sanchez' were declared stray votes because of the inspectors' erroneous belief that Gil Sanchez had not been disqualified as a candidate, involves an erroneous appreciation of the ballots. It is established by the law as well as jurisprudence (the cited section being a substantial reproduction of Section 172 of the 1978 Election Code and previous election laws) that errors in the appreciation of ballots by the board of inspectors are proper subject[s] for election protest and not for recount or re-appreciation of the ballots.

The appreciation of the ballots cast in the precincts is not a 'proceeding of the board of canvassers' for purposes of pre-proclamation proceedings under section 241, Omnibus Election Code, but of the boards of election inspectors who are called upon to count and appreciate the votes in accordance with the rules of appreciation provided in section 211, Omnibus Election Code. Otherwise stated, the appreciation of ballots is not part of the proceedings of the board of canvassers. The function of ballots appreciation is performed by the boards of election inspectors at the precinct level.⁶⁸

Likewise, the claim that some ballots were marked, spurious, or invalid cannot be raised in a pre-proclamation controversy.⁶⁹

The terrorism of voters, voting by flying voters, the disenfranchisement of registered voters, and vote-buying cannot be raised as issues in a pre-proclamation case.⁷⁰

The lack of secrecy in the preparation of the ballots is not a proper ground for a pre-proclamation controversy.⁷¹

The allegations that voters were allowed to vote without verifying their identities; that there were discrepancies between the signatures in the affidavits of the voters and in their voting records; and that third persons voted for voters who did not cast their votes are not proper issues in a pre-proclamation controversy.⁷²

68. *Id.* at 74.

69. *Patoray*, 249 SCRA at 480.

70. *Robes v. Commission on Elections*, 123 SCRA 193, 200 (1983); *Allarde*, 159 SCRA at 634; *Lucman v. Commission on Elections*, 462 SCRA 299, 307 (2005).

71. *Villegas*, 99 SCRA at 589; *Salazar, Jr. v. Commission on Elections*, 184 SCRA 433, 439 (1990).

72. *Ampatuan v. Commission on Elections*, 185 SCRA 86, 93 (1990); *Dimaporo v. Commission on Elections*, 186 SCRA 769, 786 (1990).

The padding of the list of voters cannot be raised in a pre-proclamation controversy, since it does not involve the integrity of the election returns but of the list of voters.⁷³

The fact that the voting was a sham or minimal is not a ground for filing a pre-proclamation controversy, since this is properly cognizable in an election protest.⁷⁴

The fact that no election was held and that the counting of the ballot was not completed cannot be raised in a pre-proclamation controversy, as these irregularities do not appear on the face of the election returns.⁷⁵

The seizure of a voter, the killing of a political leader, the prevention of political rallies by the use of threats, vote-buying, intimidation of voters, and loss of a certificate of canvass cannot be raised as grounds for a pre-proclamation controversy.⁷⁶

4. Correction of Manifest Errors in the Tabulation

Errors in the addition of votes in the certificate of canvass may be corrected.⁷⁷ However, the alleged error in the addition of votes in the certificate of canvass which was committed because 7,000 votes, which represented the sub-total of the votes from one hundred precincts, was carried forward, is not a manifest error where the petition for correction did not specify the precincts the 7,000 votes came from, because it is not apparent on the face of the certificate of canvass.⁷⁸

Likewise, the manifest errors in the tabulation, which can be the subject of a petition for correction, must involve errors in the posting of the votes entered in the election returns, statement of votes, and certificate of canvass themselves. If what is sought to be corrected is the addition of the votes entered in each of these documents, the petition that should be filed is a petition for the declaration of nullity of the proclamation of the winner.⁷⁹

73. *Ututalum v. Commission on Elections*, 181 SCRA 335, 341 (1990).

74. *Salih v. Commission on Elections*, 279 SCRA 19, 32 (1997).

75. *Matalam v. Commission on Elections*, 271 SCRA 733, 746 (1997).

76. *Abayon v. Commission on Elections*, 583 SCRA 472, 485 (2009).

77. *Ong, Jr. v. Commission on Elections*, 221 SCRA 475, 483 (1993); *Lucero*, 234 SCRA at 294; *Baddiri v. Commission on Elections*, 459 SCRA 808, 814 (2005).

78. *O'Hara v. Commission on Elections*, 379 SCRA 247, 259 (2002).

79. *Mentang v. Commission on Elections*, 229 SCRA 666, 673 (1994); *Alejandro v. Commission on Elections*, 481 SCRA 427, 440 (2006).

III. JURISDICTION

A. Composition and Proceedings of the Board of Canvassers

Questions affecting the legality of the composition or the proceedings of the Board of Canvassers may be raised initially in the Board of Canvassers or directly with the COMELEC.⁸⁰

B. Election Returns and Certificates of Canvass

Questions regarding the election returns and the certificates of canvass should be brought in the first instance before the Board of Canvassers.⁸¹

C. Correction of Manifest Errors in the Tabulation

Questions involving correction of manifest errors in the tabulation may be raised initially in the Board of Canvassers or directly with the COMELEC.⁸² The petition can be decided by the COMELEC *en banc* in the first instance, since it does not invoke an election protest and a pre-proclamation controversy.⁸³

The COMELEC can entertain a petition for correction of manifest errors in the tabulation in election for Congressmen if no winner has been proclaimed.⁸⁴ However, once a winner has been proclaimed, it loses jurisdiction over the petition. Under Section 17, Article VI of the Constitution, the House of Representatives Electoral Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of Members of the House of Representatives.⁸⁵

IV. PROCEDURE

A. Composition and Proceedings of the Board of Canvassers

When the issue involves the legal composition or proceedings of the Board of Canvassers, the pre-proclamation controversy must be filed immediately when the Board of Canvassers begins to act as such, or when the member

80. Republic Act No. 7166, §§ 15 & 17.

81. *Id.* § 17.

82. COMELEC Rules of Procedure, rule 27, § 2. See *Tamayo-Reyes v. Commission on Elections*, 524 SCRA 577, 589 (2007); *Abainzo v. Commission on Elections*, 573 SCRA 332, 336-37 (2008).

83. *Ramirez v. Commission on Elections*, 270 SCRA 590, 597 (1997).

84. *Dimaporo*, 186 SCRA at 782-83.

85. *Aggabao v. Commission on Election*, 449 SCRA 400, 404-05 (2005); *Cerbo, Jr. v. Commission on Elections*, 516 SCRA 51, 58 (2007); *Vinzons-Chato v. Commission on Elections*, 520 SCRA 166, 178 (2007).

whose capacity to sit as such is objected to is appointed, or immediately when the proceedings are or begin to be illegal.⁸⁶ Thus, these issues can no longer be raised after the proclamation of the winning candidate.⁸⁷

The Board of Canvassers shall make a ruling within 24 hours with notice to the petitioner.⁸⁸

If the ruling is adverse, the petitioner may appeal to the COMELEC within three days with notice to the Board of Canvassers.⁸⁹

The COMELEC *en banc* shall summarily decide the case within five days from the filing of the appeal.⁹⁰

The decision of the COMELEC may be brought to the Supreme Court by a petition for certiorari within 30 days from receipt of a copy of it.⁹¹

B. Authenticity of the Election Returns

Objections to the inclusion of any election return shall be presented orally to the Chairman of the Board of Canvassers, when the election return is opened or presented for inclusion. The objections shall state the grounds thereof.⁹² Thus, objections made after the canvass are late.⁹³

The objections must be faithfully recorded, noted, and entered in the minutes of the canvass. The date and the hour when the objections were made shall be indicated.⁹⁴

The Board of Canvassers shall automatically defer the canvass of the contested returns and shall proceed to canvass the uncontested returns.⁹⁵

86. COMELEC Rules of Procedure, rule 27, § 5 (b).

87. *Laodenio v. Commission on Elections*, 276 SCRA 705, 710 (1997); *Villamor v. Commission on Elections*, 496 SCRA 334, 341 (2006).

88. COMELEC Rules of Procedure, rule 27, § 8.

89. Republic Act No. 7166, § 19; COMELEC Rules of Procedure, rule 27, § 8. See *Sema v. Commission on Elections*, 347 SCRA 633, 644 (2000).

90. Republic Act No. 7166, § 19; COMELEC Rules of Procedure, rule 27, § 8.

91. PHIL. CONST. art. IX-A, § 7; 1997 REVISED RULES OF CIVIL PROCEDURE, rule 64, § 3.

92. Republic Act No. 7166, § 20 (a); COMELEC Rules of Procedure, rule 27, § 9 (a).

93. *Guiao v. Commission on Elections*, 137 SCRA 356, 375 (1985); *Allarde*, 159 SCRA at 634; *Navarro v. Commission on Elections*, 228 SCRA 596, 601 (1993); *Siquian, Jr. v. Commission on Elections*, 320 SCRA 440, 443 (1999).

94. Republic Act No. 7166, § 20 (a); COMELEC Rules of Procedure, rule 27, § 9 (b).

Simultaneously with the oral objections, the objecting party shall also enter his objections in the form for written objections prescribed by the COMELEC.⁹⁶ The Board of Canvassers shall not entertain any objection unless it is reduced to writing in the prescribed form.⁹⁷ Within 24 hours after the presentation of the form for written objections, the objecting party shall submit the evidence in support of the objections and the evidence shall be attached to the form for written objections.⁹⁸ Within 24 hours after the presentation of the objections, the adverse party may file a written and verified opposition in the form prescribed by the COMELEC. The adverse party shall attach to it any supporting evidence.⁹⁹

However, the submission of an offer of evidence and the supporting affidavit within 24 hours is substantial compliance with the requirement, even if no written objections were submitted.¹⁰⁰

The evidence attached to the objections or the opposition shall be immediately and formally admitted into the records by the Chairman of the Board of Canvassers.¹⁰¹ The Chairman shall sign the back of every page of the evidence.¹⁰²

Upon receipt of the evidence, the Board of Canvassers shall take up the contested returns and shall consider the written objects and any opposition. It shall summarily and immediately rule on them.¹⁰³ The Board of Canvassers shall enter the ruling on the prescribed form and authenticate it by the signatures of the members.¹⁰⁴

Any party adversely affected by the ruling of the Board of Canvassers shall immediately inform it if he intends to appeal. The Board of Canvassers shall enter the information in the minutes of the canvass and shall set aside the contested returns.¹⁰⁵

95. Republic Act No. 7166, § 20 (b); COMELEC Rules of Procedure, rule 27, § 9 (c).

96. Republic Act No. 7166, § 20 (c).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Marabur v. Commission on Elections*, 516 SCRA 696, 707-08 (2007).

101. Republic Act No. 7166, § 20 (c).

102. *Id.*; COMELEC Rules of Procedure, rule 27, § 9 (d).

103. Republic Act No. 7166, § 20 (d); COMELEC Rules of Procedure, rule 27, § 9 (e).

104. *Id.*

105. Republic Act No. 7166, § 20 (e); COMELEC Rules of Procedure, rule 27, § 9 (f).

The Board of Canvassers shall then suspend the canvass.¹⁰⁶ Within 48 hours from it, the party adversely affected by the ruling may file with the Board of Canvassers a written and verified notice of appeal, and within an unextendible period of five days thereafter, take an appeal to the COMELEC.¹⁰⁷

The appeal brought before the COMELEC, without the accomplished forms and the evidence appended to them, shall be summarily dismissed.¹⁰⁸

Immediately upon receipt of the notice of appeal, the Board of Canvassers shall make a report to the COMELEC. It shall elevate the complete records and evidence submitted in the canvass and furnish the parties with copies of the report.¹⁰⁹

The COMELEC shall decide summarily the appeal on the basis of the records and the evidence within seven days from their receipt.¹¹⁰ However, if the contested election return will not change the result of the election, the pre-proclamation controversy should no longer be decided.¹¹¹

The Board of Canvassers shall not proclaim any candidate a winner unless it is authorized by the COMELEC after it has ruled on the appeal.¹¹² Any proclamation made in violation of this is void, unless the contested returns will not change the result of the election.¹¹³

The decision of the COMELEC shall be executory after seven days from its receipt by the losing party.¹¹⁴ The losing party, however, has 30 days from receipt of a copy of the decision within which to file a petition for certiorari in the Supreme Court.¹¹⁵

106. Republic Act No. 7166, § 20 (f); COMELEC Rules of Procedure, rule 27, § 9 (g).

107. *Id.*

108. Republic Act No. 7166, § 20 (h); COMELEC Rules of Procedure, rule 27, § 9 (h).

109. Republic Act No. 7166, § 20 (g); COMELEC Rules of Procedure, rule 27, § 9 (g).

110. Republic Act No. 7166, §§ 18 & 20 (h); COMELEC Rules of Procedure, rule 27, § 9 (h).

111. *Matalam*, 271 SCRA at 755.

112. Republic Act No. 7166, § 20 (i); COMELEC Rules of Procedure, rule 27, § 9 (i).

113. *Id.* See *Jamil v. Commission on Elections*, 283 SCRA 349, 369 (1997); *Utto v. Commission on Elections*, 375 SCRA 523, 536 (2002); *Muñoz v. Commission on Elections*, 495 SCRA 407, 415 (2006).

114. Republic Act No. 7166, §§ 18 & 20 (h).

115. PHIL. CONST. art IX-A, § 7; 1997 RULES OF CIVIL PROCEDURE, rule 64, § 3.

C. Correction of Manifest Errors in the Tabulation

For an error to be manifest, it must appear on the face of the certificate of canvass or election return sought to be corrected. A manifest error is one that is visible to the eye or obvious to the understanding; that which is open, palpable, and incontrovertible; and needing no evidence to make it more clear.¹¹⁶ Thus, errors in the addition in a certificate of canvass can be corrected.¹¹⁷

On the other hand, the alleged error in the certificate of canvass committed by carrying forward 7,000 votes is a manifest error where the petition did not specify the precincts where the alleged errors were committed, since they did not appear on the face of the certificate of canvass.¹¹⁸ Likewise, the claim that fabricated statements of votes and non-existing precincts were included in the tabulation could not be raised in a petition for correction of manifest errors, since they are not clerical errors apparent on the face of the documents.¹¹⁹

The Municipal Board of Canvassers can file a petition for the correction of manifest errors it committed.¹²⁰

A petition for correction of manifest errors in the tabulation during the canvass may be filed before the proclamation of the winning candidate, but must be filed not later than five days after the date of the proclamation of the winning candidate, and it must implead all the candidates who may be adversely affected by it.¹²¹

The COMELEC, however, can entertain the petition for correction of manifest error even if it was filed out of time because of its inherent power to suspend its rules.¹²²

116. *O'Hara*, 379 SCRA at 259; *Tamayo-Reyes*, 524 SCRA at 586; *Pimentel III*, 548 SCRA at 185; *Abainza v. Commission on Elections*, 573 SCRA 332, 337 (2008).

117. *Org, Jr.*, 221 SCRA at 483; *Lucero*, 234 SCRA at 299; *Baddiri*, 459 SCRA at 814.

118. *O'Hara*, 379 SCRA at 258.

119. *Tamayo-Reyes*, 524 SCRA at 586.

120. *Cumigad v. Commission on Elections*, 518 SCRA 551, 563 (2007).

121. COMELEC Rules of Procedure, rule 27, § 5 (b); *Barot v. Commission on Elections*, 404 SCRA 352, 359 (2003); *Trinidad v. Commission on Elections*, 320 SCRA 836, 843-44 (1999).

122. COMELEC Rules of Procedure, rule 1, § 4; *Barot*, 404 SCRA at 359; *Milla v. Balmores-Laxar*, 406 SCRA 679, 685 (2003); *Dela Llana v. Commission on Elections*, 416 SCRA 638, 649 (2003).

The five-day deadline for filing a petition for correction of manifest errors in the tabulation does not apply to a petition for the annulment of the proclamation of the winning candidate if it was his opponent who obtained the majority of the votes, because what was corrected were neither the entries in the election returns, the statement of votes, nor the certificate of canvass, but the computation of the votes.¹²³

A petition for correction of manifest error may be filed even before the proclamation of the winning candidate.¹²⁴ The respondent may file a counter-petition for correction of manifest errors.¹²⁵

The party adversely affected by the order for correction of the Board of Canvassers may appeal within 24 hours to the COMELEC.¹²⁶ Thus, the Regional Trial Court has no jurisdiction to review the order of the Board of Canvassers to correct a certificate of canvass.¹²⁷

The appeal must implead, as respondents, the Board of Canvassers and all parties who may be adversely affected by the appeal.¹²⁸ Once the appeal is made, the Board of Canvassers shall not proclaim the winning candidates, unless their votes are not affected by the appeal.¹²⁹ Upon receipt of the appeal by the COMELEC, summonses, together with a copy of the appeal, shall forthwith be issued to the respondents.¹³⁰ The appeal shall be set for hearing immediately.¹³¹ It shall be heard and decided by the COMELEC *en banc*.¹³²

The decision of the COMELEC may be brought to the Supreme Court by way of a petition for certiorari within 30 days from receipt of a copy of the decision.¹³³ The COMELEC cannot issue a regulation reducing the period for filing the petition for certiorari.¹³⁴

123. *Mentang*, 229 SCRA at 672-73.

124. *Bince v. Commission on Elections*, 242 SCRA 273, 285 (1995); *Baddini*, 459 SCRA at 817.

125. *Trinidad*, 320 SCRA at 847.

126. COMELEC Rules of Procedure, rule 27, § 7 (c).

127. *Cabanero v. Court of Appeals*, 232 SCRA xxv, xxvii (1994).

128. COMELEC Rules of Procedure, rule 27, § 7 (e).

129. *Id.* rule 27, § 7 (d).

130. *Id.* rule 27, § 7 (f).

131. *Id.* rule 27, § 7 (g).

132. *Id.* rule 27, § 7 (h).

133. PHIL CONST. art. IX-A, § 7; 1997 RULES OF CIVIL PROCEDURE, rule 64, § 3.

134. *Sardea v. Commission on Elections*, 225 SCRA 374, 380 (1993).

V. TERMINATION OF PRE-PROCLAMATION CONTROVERSIES

A. Proclamation of Winning Candidates

Once the winning candidate has been proclaimed, a pre-proclamation controversy is no longer viable. Thus, a pending pre-proclamation controversy should be dismissed without prejudice to the timely filing of an election contest.¹³⁵

This rule presupposes that the proclamation of the winning candidate was valid. It does not apply if the proclamation was based on an incomplete tabulation of the election returns, because the proclamation is void.¹³⁶ This rule applies also if the Board of Canvassers proclaimed the winning candidate without ruling on the objections to the inclusion of contested returns in the canvass.¹³⁷ The same holds true if the election returns, which served as the basis for the proclamation of the winning candidate, were fabricated.¹³⁸ The rule is the same if the proclamation of the winning candidate was based on an erroneous computation of the votes.¹³⁹

B. Filing of Election Contest or Petition for Quo Warranto

The filing of an election contest or a petition for *quo warranto* results in the abandonment of a pre-proclamation controversy which was filed earlier.¹⁴⁰ The reason for this ruling is that once the competent tribunal acquires jurisdiction over an election contest, all questions concerning the election should be decided in the election contest to prevent confusion and conflict of authority.¹⁴¹

135. *Mangca v. Commission on Elections*, 112 SCRA 273, 278 (1982); *Padilla v. Commission on Elections*, 137 SCRA 424, 438 (1985); *Casimiro v. Commission on Elections*, 171 SCRA 468, 480 (1989); *Sardea*, 225 SCRA at 381; *Siquian, Jr.*, 320 SCRA at 443-44; *Aggabao*, 449 SCRA at 405.

136. *Mutuc v. Commission on Elections*, 22 SCRA 662, 666 (1968); *Duremades v. Commission on Elections*, 178 SCRA 746, 757 (1989); *Castromayor v. Commission on Elections*, 250 SCRA 298, 304 (1995); *Matalam*, 271 SCRA at 733.

137. *Jamil*, 283 SCRA at 368; *Espidol v. Commission on Elections*, 472 SCRA 380, 406 (2005).

138. *Agbayani v. Commission on Elections*, 186 SCRA 484, 487 (1990).

139. *Tatlonghari v. Commission on Elections*, 199 SCRA 849, 857-58 (1991); *Mentang*, 229 SCRA at 675.

140. *Samad v. Commission on Elections*, 224 SCRA 631, 638 (1993); *Dumayas, Jr.*, 357 SCRA at 367; *Villamor*, 496 SCRA at 339-40.

141. *Maruhom v. Commission on Elections*, 331 SCRA 473, 493 (2000); *Dumayas, Jr.*, 357 SCRA at 367; *Villamor*, 496 SCRA at 340.

However, there are several exceptions to this general rule. The following are the exceptions: (1) the Board of Canvassers was improperly constituted; (2) *quo warranto* was not the proper remedy; (3) what was filed was not really a petition for *quo warranto* or an election contest but a petition to annul the proclamation; (4) the filing of the election contest was made as a precautionary measure; and (5) the proclamation of the winning candidate was void.¹⁴²

An example of an instance wherein the Board of Canvassers was improperly constituted and which did not actually involve a petition for *quo warranto* or an election contest was a petition designated as a petition for *quo warranto*, which questioned the validity of the proclamation of the winning candidate, because the Municipal Treasurer took over the canvassing without having been designated.¹⁴³

An example of a case in which *quo warranto* was not the proper remedy involved a petition which was designated as a petition for *quo warranto* but which alleged that the assumption of office by the winning candidate was unlawful because his proclamation was illegal.¹⁴⁴

Where a losing candidate for governor, who filed a pre-proclamation controversy, filed an election protest so that the ballot boxes used during the election would not be emptied, used in the forthcoming election, and would be preserved, the election protest was filed merely as a precautionary measure.¹⁴⁵ However, the filing of an election contest resulted in the abandonment of the pre-proclamation controversy where the election protest alleged that it was being filed as a precautionary measure but did not explain why.¹⁴⁶

The proclamation of a winning candidate is void if it was based on an incomplete tabulation of the votes cast.¹⁴⁷

Similarly, the filing in the Regional Trial Court of a petition to annul the premature proclamation of the winning candidate does not result in the abandonment of the pre-proclamation controversy, because the Regional Trial Court has no jurisdiction over the case.¹⁴⁸

142. *Samad*, 224 SCRA at 638-39; *Manuhom*, 31 SCRA at 493; *Dumayas, Jr.*, 357 SCRA at 367-68 (citing *Laodenio*, 276 SCRA at 713-14).

143. *Samad*, 224 SCRA at 639.

144. *Dumayas, Jr.*, 357 SCRA at 368-69.

145. *Agbayani*, 186 SCRA at 486.

146. *Laodenio*, 276 SCRA at 714.

147. *Mutuc*, 22 SCRA at 666.

148. *Dumayas, Jr.*, 357 SCRA at 369-70.

C. Commencement of the Term of the Office

All pending pre-proclamation controversies, which are pending appeal, are deemed terminated at the beginning of the term of the offices concerned, and the rulings of the Board of Canvassers are deemed to have been affirmed, without prejudice to the right of the losing candidates to file a timely election contest.¹⁴⁹ However, if the pre-proclamation controversy appears meritorious on the basis of the evidence presented so far, the COMELEC or the Supreme Court may order the proceeding to continue.¹⁵⁰

The Supreme Court has laid down the following guidelines regarding the remedy available to a losing candidate who filed a pre-proclamation controversy:

- (1) If the pre-proclamation controversy was excluded from the list of cases allowed to continue by the omnibus resolution of dismissal issued by the Commission on Elections *en banc*, the remedy of the aggrieved party is to file a petition for certiorari with the Supreme Court, regardless of whether the Division of the Commission on Elections has not yet ruled on the case or the Commission on Election *en banc* has not yet ruled on the pending motion for reconsideration.
- (2) If the pre-proclamation controversy was dismissed by a Division of the Commission on Elections and on the same date of dismissal or within the period to file a motion for reconsideration, the Commission on Elections *en banc* excluded it from the list of cases allowed to continue by the omnibus resolution of dismissal issued by the Commission on Elections *en banc*, the remedy of aggrieved party is to file a petition for certiorari with the Supreme Court. The aggrieved party need not file a motion for reconsideration.
- (3) If the pre-proclamation controversy was dismissed by a Division of the Commission on Elections but on the same date of dismissal or within the period to file a motion for reconsideration, the Commission on Elections *en banc* included it in the list of cases annexed to the Omnibus Resolution of dismissal, the remedy of the aggrieved party is to file a motion for reconsideration with the Commission on Elections *en banc*.¹⁵¹

149. Republic Act No. 7166, § 16. See *Sarmiento v. Commission on Elections*, 212 SCRA 307, 315 (1992); *Verceles v. Commission on Elections*, 214 SCRA 159, 161 (1993); *Peñaflorida v. Commission on Elections*, 282 SCRA 241, 245 (1997); *Sison v. Commission on Elections*, 304 SCRA 170, 177 (1999).

150. Republic Act No. 7166, § 16.

151. *Patalinghug v. Commission on Elections*, 543 SCRA 175, 186-87 (2008); *Valino v. Vergara*, 581 SCRA 454, 470-71 (2009).

VI. CONCLUSION

Pre-proclamation controversies have been fashioned as a remedy to strike a balance between the resort by unscrupulous winning candidates to fraud and violence to grab political power and then to prolong the election protest, and the employment by disingenuous losing candidates of delay to paralyze the proclamation of the winner and prevent his assumption of office.

The Supreme Court summed this up when it said in *Alonto v. Commission on Elections*:¹⁵² "the [COMELEC] and the Courts should guard both against proclamation-grabbing through tampered returns as well as against attempts to paralyze canvassing and proclamation in order to prolong hold-overs by officials whose terms are officially ended."¹⁵³

As the experience of the nation regarding the conduct of elections accumulates, there is a continuing need to define the scope of pre-proclamation controversies and to refine the procedure for their resolution. In the performance of this task, Congress, the Supreme Court, and the COMELEC must remain joined in a partnership through legislation, adjudication, and regulation.

¹⁵². *Alonto v. Commission on Elections*, 22 SCRA 878 (1968).

¹⁵³. *Id.* at 886.