



Republic of the Philippines
Supreme Court
Manila

EN BANC

ELISEO MIJARES RIO, JR.,
AUGUSTO CADELIÑA
LAGMAN, and FRANKLIN
FAYLOGA YSAAC,

Petitioners,

-versus-

COMMISSION ON
ELECTIONS *EN BANC*,
Respondent.

G.R. No. 273136

Present:

GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, JJ.

Promulgated:

August 20, 2024

X-----X

DECISION

MARQUEZ, J.:

The Commission on Elections (COMELEC) may not be compelled by *mandamus* to exercise its discretion in a certain way, i.e., to grant or deny the opening and recounting of ballot boxes. However, it has a clear legal duty to expeditiously resolve motions pending before it, following its own rules of procedure.

Before the Court is a Petition for *Mandamus*¹ under Rule 65 of the Rules of Court filed by petitioners Eliseo Mijares Rio, Jr., Augusto Cadelina Lagman, and Franklin Fayloga Ysaac (Rio, Jr. et al.) praying that the Court issue a writ of *mandamus* to compel respondent COMELEC to implement its November 29, 2023 Resolution² which stated that it will “recount the ballots to settle once and for all the substantive issues raised by petitioners, as prayed for in petitioners’ Motion dated January 19, 2024 and Reiterative Motion dated February 12, 2024 in EM Case No. [2]3-003.”³

The present controversy stemmed from the same factual background as *Smartmatic TIM Corporation and Smartmatic Philippines, Inc. v. Commission on Elections En Banc*.⁴ In 2023, Rio, Jr. et al. and Leonardo Olivera Odoño filed a Petition,⁵ Supplemental Petition,⁶ and Second Supplemental Petition⁷ before the COMELEC *En Banc*. Among other reliefs, Rio, Jr. et al. prayed that “[t]he qualifications of [Smartmatic Philippines, Inc. (Smartmatic)] be reviewed by the [Bids and Awards Committee (BAC)] in view of the serious and material irregularities in the transmission and reception of election results in the system which Smartmatic developed and provided for the [May 9, 2022] Elections,”⁸ and that the COMELEC *En Banc* order the BAC to “disqualify or declare ineligible Smartmatic from participating in the procurement for the 2025 Automated Election System” if the “serious and grave irregularities” are not satisfactorily explained.⁹

On August 10, 2023, the COMELEC *En Banc* directed its law department to review and submit a recommendation on the petitions filed by Rio, Jr. et al.¹⁰ On August 31, 2023, the COMELEC Law Department submitted its Compliance, opining that there is no legal basis to prohibit Smartmatic from participating in the bidding process.¹¹

On October 5, 2023, the COMELEC *En Banc* set the case for hearing on October 17, 2023.¹² It also required Smartmatic to comment on the Petitions.¹³

On November 29, 2023, the COMELEC *En Banc* ruled in favor of Rio, Jr. et al. The dispositive portion of its Resolution reads:

¹ *Rollo*, pp. 3–11.

² *Id.* at 114–130. The November 29, 2023 Resolution in EM Case No. 23-003 was signed by [Chairperson] George Erwin M. Garcia and Commissioners Socorro B. Inting, Marlon S. Casquejo, Aimee P. Ferolino, Rey E. Bulay, Ernesto Ferdinand P. Maceda, Jr., and Nelson J. Celis of the Commission on Elections *En Banc*. Commissioner Aimee P. Ferolino filed a Separate Opinion. *See rollo*, pp. 131–133.

³ *Id.* at 9.

⁴ G.R. No. 270564, April 16, 2024 [Per J. Marquez, *En Banc*].

⁵ *Rollo*, pp. 12–22.

⁶ *Id.* at 55–61.

⁷ *Id.* at 67–74.

⁸ *Id.* at 20.

⁹ *Id.*

¹⁰ *Id.* at 117.

¹¹ *Id.* at 118.

¹² *Id.* at 120.

¹³ *Id.*

WHEREFORE, premises considered, the Commission (*En Banc*) hereby **RESOLVED** to **GRANT** the Petition. **SMARTMATIC PHILIPPINES, INC. is DISQUALIFIED AND DISALLOWED** from participating in any public bidding process for elections, in the exercise of its administrative power to decide all matters affecting election [sic] and in pursuit of its constitutional mandate.

FURTHER, the Commission (*En Banc*) hereby **RESOLVES** that in the exercise of its administrative power, it may, upon Petitioner's instance, order the conduct of the recount of ballots in areas in every region in the country, the procedure and extent of which to be determined, and at no cost to Petitioner.

SO ORDERED.¹⁴ (Emphasis in the original)

In *Smartmatic TIM Corporation and Smartmatic Philippines, Inc. v. Commission on Elections En Banc*,¹⁵ the Court granted the petition filed by Smartmatic and Smartmatic TIM Corporation and held that the COMELEC *En Banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it disqualified and disallowed Smartmatic from participating in the public bidding process for the elections.¹⁶

On January 19, 2024, Rio, Jr. et al. filed a Motion¹⁷ seeking the opening and recount of at least 30 sealed ballot boxes in the Municipality of Sto. Tomas, Province of Batangas, which are the subject of a pending election protest, pursuant to the COMELEC's November 29, 2023 Resolution.¹⁸ Rio, Jr. et al. also recommended that the procedure for the manual ballot counting under Article XVIII, Section 206 of the Omnibus Election Code¹⁹ be generally followed in the recount, subject to the following:

¹⁴ *Id.* at 129–130.

¹⁵ G.R. No. 270564, April 16, 2024 [Per J. Marquez, *En Banc*].

¹⁶ *Id.* at 20–25. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

¹⁷ *Rollo*, pp. 227–230.

¹⁸ *Id.* at 228.

¹⁹ The cited provision reads:

SECTION 206. *Counting to be public and without interruption.* – As soon as the voting is finished, the board of election inspectors shall publicly count in the polling place the votes cast and ascertain the results. The Board may rearrange the physical set up of the polling place for the counting or perform any other activity with respect to the transition from voting counting. However, it may do so only in the presence of the watchers and within close view of the public. At all times, the ballot boxes and all election documents and paraphernalia shall be within close view of the watchers and the public.

The board of election inspectors shall not adjourn or postpone or delay the count until it has been fully completed, unless otherwise ordered by the Commission.

The Commission, in the interest of free, orderly, and honest elections, may authorize the board of election inspectors to count the votes and to accomplish the election returns and other forms prescribed under this Code in any other place within a public building in the same municipality or city on account of imminent danger of widespread violence or similar causes of comparable magnitude: *Provided*, That the transfer shall have been recommended in writing by the board of election inspectors by unanimous vote and endorsed in writing by the majority of watchers present: *Provided*, further, That the said public building shall not be located within the perimeter of or inside a military or police

X

- 4.1. Only one ballot box shall be opened at a time.
- 4.2. The manual counting of the ballots shall be conducted by an Electoral Board, or a similar body, to be appointed by the [COMELEC], in the presence of watchers appointed by the parties.
- 4.3. The manual counting of votes shall include all candidates for national and local positions.
- 4.4. The manual counting of ballots shall be held in a venue to be designated by the [COMELEC], preferably at the same location where the ballot boxes are being stored.
- 4.5. The manual counting of ballots shall start on [January 25, 2024], or as soon thereafter as the [COMELEC] can make the necessary preparations, and shall continue from day to day until the ballots in all the [30] designated ballot boxes have been counted, unless the manual counting is sooner terminated by the parties.
- 4.6. To ensure that the ballots to be counted are the original ballots that were used in the 2022 elections for the particular precinct, the ballots should first be inserted into the [Vote Counting Machine (VCM)] to see if they would pass through the machine before said ballots are counted.
- 4.7. The recount of the ballots shall include a forensic analysis of the contents and thermal age of the Voter Verifiable Paper Audit Trail (VVPAT) which is the “best source of raw data for votes” according to the Supreme Court’s ruling in [*Bagumbayan Volunteers for a New Philippines v. COMELEC*].²⁰

On February 12, 2024, Rio, Jr. et al. filed a Reiterative Motion²¹ stating that more than two weeks after they filed the Motion, they had yet to receive any notice of any action on the part of the COMELEC.²² Rio, Jr. et al. also repeated their prayer for a recount as detailed in their Motion.²³

On April 30, 2024, Rio, Jr. et al. filed the instant Petition before the Court, alleging that the COMELEC did not act on their Motion and Reiterative Motion and praying that the Court issue a writ of *mandamus* to compel the COMELEC to fulfill its ministerial duty to implement its November 29, 2023 Resolution.²⁴ According to Rio, Jr. et al., “all the requisites for the issuance of a writ of [*mandamus*] are present in the instant case,” and:

camp, reservation, headquarters, detachment or field office nor within the premises of a prison or detention bureau or any law enforcement or investigation agency.

Any violation of this section, or its pertinent portion, shall constitute an election offense and shall be penalized in accordance with Batas Pambansa Blg. 881.

²⁰ *Rollo*, pp. 228–229; 782 Phil. 1306 (2016) [Per J. Leonen, *En Banc*].

²¹ *Id.* at 258–263.

²² *Id.* at 259.

²³ *Id.* at 259–260.

²⁴ *Id.* at 7–8.

8

18. The importance of reopening the ballot boxes and recounting the ballots cannot be overemphasized since these proceedings would have far reaching consequences on the country's political and electoral system. Even respondent [COMELEC] itself recognized that "the best evidence in an election are always the ballots."

19. Should it turn out during the recount of the ballots that the results of the physical count differ from the results printed in the election returns generated by the Vote Counting Machines that were electronically transmitted and canvassed, the reliability and integrity of the results of the entire 2022 National and Local Elections (NLE) would be put into serious question. In the realm of information technology, when it is established that one part of an integrated system is tainted with errors, the result generated by the entire system become highly questionable.²⁵

On July 16, 2024, Rio, Jr. et al. filed a Motion for Leave to File and Admit Attached Supplemental Petition²⁶ dated July 12, 2024 and the Supplemental Petition²⁷ also dated July 12, 2024. In their Supplemental Petition, Rio, Jr. et al. state that the COMELEC *En Banc* issued an Order²⁸ dated July 3, 2024, denying the Motion dated January 19, 2024 and Reiterative Motion dated February 12, 2024 in EM Case No. 23-003.²⁹ Rio, Jr. et al. maintain its original prayer for this Court to issue a writ of *mandamus* and add that the "Supplemental Petition and the original Petition be treated as and converted into a Petition for [*Certiorari*] and respondent [COMELEC]'s Order dated [July 3, 2024] in E.M. Case No[.] 23-003 be reversed and set aside for being issued with grave abuse of discretion" in the event that the Court should consider the Petition for *Mandamus* to have been rendered moot and academic due to the issuance of COMELEC Order dated July 3, 2024.³⁰

We first resolve the Petition for *Mandamus*.

A writ of *mandamus* has the following requisites: (1) the plaintiff has a clear legal right to the act demanded; (2) it must be the duty of the defendant to perform the act because it is mandated by law; (3) the defendant unlawfully neglects the performance of the duty enjoined by law; (4) the act to be performed is ministerial, not discretionary; and (5) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.³¹

In *National Press Club of the Philippines v. Commission on Elections*,³² the Court described *mandamus* and defined "ministerial duty" as follows:

²⁵ *Id.* at 8.

²⁶ *Id.* at 270–271.

²⁷ *Id.* at 272–278.

²⁸ *Id.* at 279–283. The July 3, 2024 Order in EM Case No. 23-003 was signed by [Chairperson] George Erwin M. Garcia and Commissioners Socorro B. Inting, Marlon S. Casquejo, Aimee P. Ferolino, Rey E. Bulay, Ernesto Ferdinand P. Maceda, Jr., and Nelson J. Celis of the Commission on Elections *En Banc*.

²⁹ *Id.* at 282.

³⁰ *Id.* at 275–276.

³¹ *Province of Maguindanao Del Norte v. Bureau of Local Government Finance*, G.R. No. 265373, November 13, 2023 [Per J. Lazaro-Javier, Second Division] at 12. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

³² G.R. No. 259354, June 13, 2023 [Per J. Rosario, *En Banc*].

Mandamus is an extraordinary writ commanding a person, tribunal, corporation, board, or officer to do an act required to be done, as when they/it unlawfully neglects the performance of an act which the law specifically enjoins as a duty, and there is no other plain, speedy, and adequate remedy in the ordinary course of law. *The duty is ministerial only when its discharge requires neither the exercise of official discretion nor judgment. Mandamus can be awarded only when the petitioner's legal right to the performance of the particular act, which is sought to be compelled, is clear and complete.*³³ (Emphasis supplied, citations omitted)

In *Subrabas v. Abas*,³⁴ the Court explained the distinction between ministerial and discretionary acts, thus:

An act is considered ministerial if “an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard for the exercise of his or its own judgment, upon the propriety or impropriety of the act done.” In contrast, *an act is considered discretionary “[i]f the law imposes a duty upon a public officer, and gives him [or her] the right to decide how or when the duty shall be performed.”* The writ will lie if the tribunal, corporation, board, officer[,] or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust[,] or station. *The writ of mandamus, however, will not issue to compel an official to do anything which is not his [or her] duty to do, or to give to the applicant anything to which he [or she] is not entitled by law.*³⁵ (Emphasis supplied, citations omitted)

The Court has also held that only specific legal rights are enforceable by *mandamus*, which requires that the right sought to be enforced must be certain and clear, and the writ will not issue in cases where the right is doubtful.³⁶

In the case at bar, Rio, Jr. et al. simply generalize that “[a]ll the requisites for the issuance of a writ of *mandamus* are present in the instant case”³⁷ yet they fail to identify, much less substantiate, these requisites. Rio, Jr. et al. do not point to any law specifically requiring the conduct of a recount of the physical ballots in the 2022 National and Local Elections, much less prescribing the manner of the recount such that no discretion is left to the COMELEC. Moreover, the dispositive portion of the COMELEC’s November 29, 2023 Resolution expressly states that the COMELEC “*may, upon Petitioner’s instance, order the conduct of the recount of ballots in areas in every region in the country,*”³⁸ the “*procedure and extent of which [are] to be determined[.]*”³⁹ Thus, contrary to Rio, Jr. et al.’s protestations, the present controversy does not involve a ministerial act on the part of the COMELEC

³³ *Id.* at 5–6. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

³⁴ G.R. No. 253103, October 6, 2020 [Unsigned Resolution, *En Banc*].

³⁵ *Id.*

³⁶ *Province of Maguindanao Del Norte v. Bureau of Local Government Finance*, G.R. No. 265373, November 13, 2023 [Per J. Lazaro-Javier, Second Division] at 12. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

³⁷ *Rollo*, p. 8.

³⁸ *Id.* at 129. Emphasis supplied.

³⁹ *Id.*

as the recount of physical ballots prayed for by Rio, Jr. et al. requires the exercise of the COMELEC's discretion and judgment.

Rio, Jr. et al. having failed to establish any ministerial duty on the part of the COMELEC and any clear, complete, and specific legal right to a recount as prayed for in their Motion and Reiterative Motion before the COMELEC, their prayer for a writ of *mandamus* lacks merit.

It bears stressing that the COMELEC *En Banc* already acted on the Motion and Reiterative Motion on July 3, 2024. Nonetheless, the Court shares the view of Associate Justice Amy C. Lazaro-Javier that the COMELEC was guilty of official inaction when it decided the said Motions way beyond the period prescribed by its own rule that "any case or matter submitted to or heard by the Commission *en banc* shall be decided within [30] days from the date it is deemed submitted for decision or resolution."⁴⁰ From the filing of the Motion and Reiterative Motion on January 19, 2024, and February 12, 2024, it took the COMELEC 166 and 142 days, respectively, to resolve the Motions.

Even the COMELEC itself recognized in its Order⁴¹ dated July 3, 2024 that its own rules prescribe a period within which to resolve pending motions before it:

As defined in Section 1, Rule [11] of the COMELEC Rules of Procedure, a motion is an application for an order not included in a decision of the Commission or a Division. Thus, as applications, motions are addressed to sound discretion of the Commission, which discretion will not be interfered with unless it has been abused.

*It is important to note that the COMELEC Rules of Procedure did prescribe a period within which the Commission may resolve a motion. Hence, logic dictates that the same is also addressed to sound discretion of the Commission.*⁴² (Emphasis supplied)

In *Ampatuan Jr. v. De Lima*,⁴³ the Court explained:

Mandamus shall issue when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station. It is proper when the act against which it is directed is one addressed to the

⁴⁰ COMELEC RULES OF PROCEDURE (1993), Rule 18, secs. 7 and 9 provide:
Section 7. *Period to Decide by the Commission En Banc.* - Any case or matter submitted to or heard by the Commission *en banc* shall be decided within [30] days from the date it is deemed submitted for decision or resolution, except a motion for reconsideration of a decision or resolution of a Division in Special Actions and Special Cases which shall be decided within [15] days from the date the case or matter is deemed submitted for decision, unless otherwise provided by law.

.....
Section 9. *When Deemed Submitted for Decision.* - (a) A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief or memorandum as required in these Rules or by the Commission *en banc* or by a Division. (b) However, if the hearing and reception of evidence are delegated to any of its officials, the case or matter shall be deemed submitted for decision as of the date of the receipt of the findings, report and recommendation of the official so delegated.

⁴¹ *Id.* at 279–283.

⁴² *Id.* at 281–282.

⁴³ 708 Phil. 153 (2013) [Per J. Bersamin, First Division].

8

discretion of the tribunal or officer. In matters involving the exercise of judgment and discretion, *mandamus may only be resorted to in order to compel respondent tribunal, corporation, board, officer or person to take action, but it cannot be used to direct the manner or the particular way discretion is to be exercised*, or to compel the retraction or reversal of an action already taken in the exercise of judgment or discretion.⁴⁴ (Emphasis supplied)

Thus, the COMELEC is reminded that: (1) it has a clear legal duty to expeditiously resolve motions pending before it, following the COMELEC rules of procedure; and (2) should it fail to do so, it may be compelled by *mandamus* to resolve such motions, but it may not be compelled to exercise its discretion in a certain way, i.e., to grant or deny the opening and recounting of ballot boxes.

Just the same, as adverted to, the instant Petition for *Mandamus* lacks merit since Rio, Jr. et al. failed to show that the COMELEC had the ministerial duty or that Rio, Jr. et al. had a clear legal right to a recount. Accordingly, the Supplemental Petition based on the Petition for *Mandamus* ceases to have a leg to stand on.

In any case, the Supplemental Petition, which is prayed to be treated as a Petition for *Certiorari*, likewise fails, there being no grave abuse of discretion on the part of the COMELEC when it issued its Order dated July 3, 2024 holding that:

After a judicious review, the Commission (*En Banc*) takes judicial notice of the *Petition* and finds that the Petitioners abandoned their prayer in the *Motion* and *Reiterative Motion*.

....

Instead of allowing the Commission (*En Banc*) to exercise its sound discretion on the *Motion* and the *Reiterative Motion*, the Petitioners merely relied on its own “inescapable conclusion that the Commission *En Banc* is no longer interested in complying with its voluntary undertaking in Resolution dated [November 29, 2023] to open and recount ballot boxes,” and presumed “that the reason [. . .] is that the opening of the ballot boxes and recount of the ballots would finally confirm the electoral fraud and irregularities.”

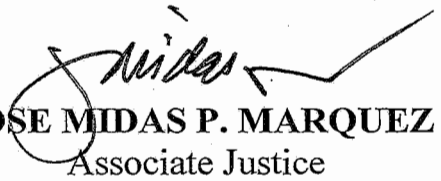
Having determined that “the transmitted results do not reflect the true will of the electorate resulting in a failure to elect,” the Petitioners opted to apply for the remedy of a petition for declaration of failure of elections. Thus, it is clear from the language thereof that it has abandoned its prayers in the *Motion* and *Reiterative Motion*.⁴⁵ (Emphasis in the original)

⁴⁴ *Id.* at 167–168.

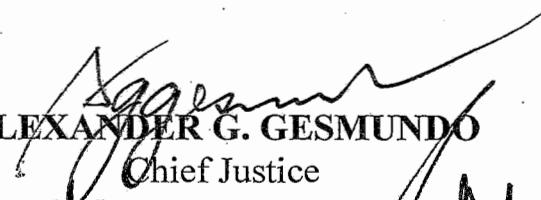
⁴⁵ *Rollo*, pp. 281–282.


ACCORDINGLY, the Petition for *Mandamus* is **DISMISSED**. The Motion for Leave to File and Admit Attached Supplemental Petition dated July 12, 2024 is **DENIED**, and the attached Supplemental Petition also dated July 12, 2024 is **NOTED WITHOUT ACTION**.

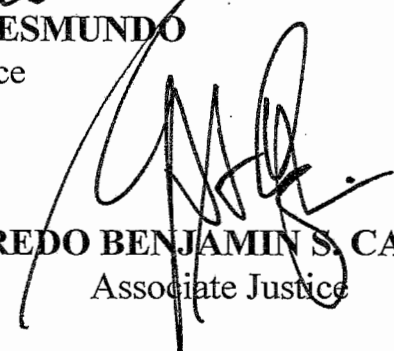
SO ORDERED.



JOSE MIDAS P. MARQUEZ
Associate Justice

WE CONCUR:

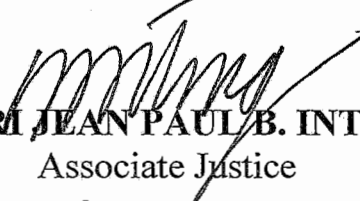

ALEXANDER G. GESMUNDO
Chief Justice

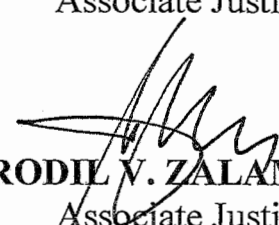

MARVIC M.V.F. LEONEN
Associate Justice

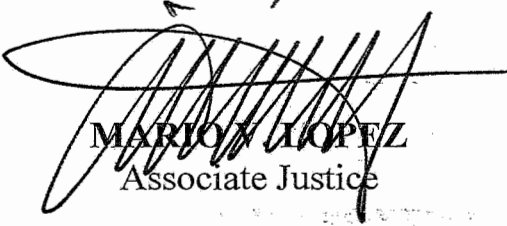

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

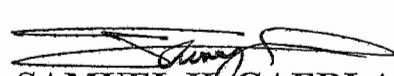

RAMON PAUL L. HERNANDO
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice

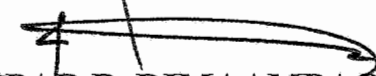

RODIL V. ZALAMEDA
Associate Justice



MARIO LOPEZ
Associate Justice

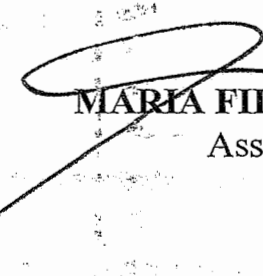

SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

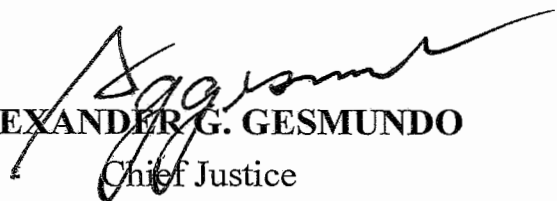

JAPAR B. DIMAAMPAO
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



ALEXANDER G. GESMUNDO
Chief Justice

