

REPUBLIC OF THE PHILIPPINES
HOUSE OF REPRESENTATIVES
Fourteenth (14th) Congress
Batasang Pambansa, Quezon City

**IN THE MATTER OF THE
IMPEACHMENT OF
BENJAMIN S. ABALOS,
SR., CHAIRMAN OF THE
COMMISSION ON
ELECTIONS,**

ROLEX T. SUPLICO,
Complainant.

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IMPEACHMENT COMPLAINT

Complainant Rolex T. Suplico respectfully states:

Prefatory

The right to be removed from public office only by impeachment has been said to be the Constitution's strongest guarantee of security of tenure. Only a select few – the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, including the Civil Service Commission, the Commission on Elections, and the Commission on Audit, and the Ombudsman – have been accorded by the Constitution this supreme protection.

Their tenure is so guaranteed so as to protect the independence and integrity of such offices, to ensure the continuity of the

performance of their vital duties, functions, and roles in the management of the State, and to insulate such offices from frivolous attacks. Such is the importance and significance of these offices.

It sometimes happens, however, that the individuals sitting in such offices commit unforgivable acts that reflect adversely on the sanctity reposed by the Constitution upon said offices, or which render these individuals incapable of further performing the duties and responsibilities imposed upon them by virtue of their position. The People whom these officers have sworn to serve are not deprived of a remedy, and that remedy is by impeachment.

Nature of the Complaint

1. This is a verified Complaint, in the name of the Filipino people and for the Filipino people, to impeach and bring to trial Benjamin S. Abalos, Sr., Chairman of the Commission on Elections, for his Betrayal of Public Trust, Culpable Violations of the Constitution, Bribery, and Graft and Corruption. It is being filed in accordance with the provisions of § 2 and § 3, Article XI (on the Accountability of Public Officers), of the 1987 Constitution.¹

¹CONSTITUTION, Art XI, § 2 and § 3, respectively state:

Section. 2. The President, Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment...

The Parties

2. Complainant Rolex T. Suplico is a Filipino of legal age, presently holding office as the Vice-Governor of the Province of Iloilo, with address at the 5th Floor, Provincial Capitol Building, Iloilo City, where he may be served with legal process.

3. Pursuant to the cited provisions of the 1987 Constitution, the present complaint is being endorsed by Rodolfo G. Plaza, representative of the lone

Section 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment according to law.

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

Congressional District of Agusan del Sur, and by Carlos M. Padilla, representative of the lone Congressional District of Nueva Vizcaya, holding office at the Batasang Pambansa Complex, Quezon City.

4. Respondent Benjamin S. Abalos, Sr. is the chairman of the Commission on Elections, with offices at 8/F Palacio del Gobernador, Gen. Luna St., Intramuros, Manila 1002.

Statement of Facts

5. Benjamin S. Abalos, Sr. (“Abalos, Sr.” or “respondent”) was appointed to the Commission on Elections (COMELEC) on 5 June 2002 as its Chairman, after the Commission on Appointments did not confirm President Gloria Macapagal-Arroyo’s appointment of Alfredo Benipayo to said position.
6. Abalos, Sr. thus continues to hold office as Chairman of the COMELEC, pursuant to Article IX-C, Section 1, Subparagraph (2) of the Constitution, which provides for a term of seven (7) years without reappointment, and removable only through impeachment.²

² *Ibid.*, Sec. 2.

7. The factual antecedents relevant to the present complaint relate to the Three Hundred Twenty-nine Million Five Hundred Thousand United States Dollar (US\$329,500,000.00) supply contract for the establishment of a national broadband network (“the NBN Project”).

(a) In an Official News Release (Release No. 5) dated 21 April 2007, issued by the Presidential News Desk/Office of the Press Secretary, the Philippine National Government announced the signing of five (5) key economic agreements between the Philippines and China, including the supply contract for the NBN project. According to said Official News Release, the contract was signed by Secretary Leandro Mendoza of the Department of Transportation and Communications (DOTC) and Vice President Yu Yong of Zhong Xing Telecommunications Equipment Company Limited (ZTE).

A copy of said Official News Release is attached as

Annex A.

(b) Prior to the signing of the contract, Amsterdam Holdings, Inc. (AHI), a Philippine company which had expressed its interest in bidding for the project,

actively and publicly sought for transparency in the procurement process for the NBN project, and fairness in the conduct thereof.

Printouts of news reports appearing at <http://www.inquirer.net> on March 28, 2007³ and April 19, 2007,⁴ reflecting such calls for transparency and fairness, are attached as **Annexes B** and **C**.

(c) Picking up from these news reports as well as the minor press coverage, at that time, of the anomalous NBN deal, Senate Minority leader Aquilino Q. Pimentel, Jr. initially sought an explanation from Malacañan and the DOTC why the government entered into the NBN contract in question, in the face of apparent irregularities, and subsequently, the scrapping of the flawed deal to pave the way for the rebidding of the project. These calls were reported in two (2) separate Press Releases from the Philippine Senate website.

Printouts of the Senate Official Press Releases, appearing on the Senate's Official Website (www.senate.gov.ph) dated

³ See <http://www.inquirer.net/specialreports/nbndeal/view.php?db=1&article=20070328-57477> last viewed on 5 September 2007.

⁴ See <http://www.inquirer.net/specialreports/nbndeal/view.php?db=1&article=20070419-61257> last viewed on 5 September 2007.

June 26, 2007⁵ and July 3, 2007⁶ are attached as **Annexes D and E**.

(d) Despite calls for transparency, the DOTC further muddled the already anomalous circumstances surrounding the NBN deal by claiming that copies of the contract were “lost” or “stolen” from Emmanuel Nino Wee Ang, commercial attaché of the Philippine Consulate in Guangzhou.

A printout of a news report of the alleged theft of the contract, dated June 26, 2007⁷ is attached as **Annex F**.

(e) Notwithstanding the obvious anomaly surrounding the transaction, the DOTC failed to produce a copy of the “reconstituted” contract, which they claimed was rebuilt shortly after the alleged theft of the original. In so doing, the concerned officials continued to keep the general public in the dark as to the specific details and provisos thereof, which prompted herein petitioner to file, on 01 August 2007, a petition before the Supreme Court, seeking, among others, the production of the NBN contract entered into between Secretary Mendoza and ZTE, and its subsequent

⁵ See http://www.senate.gov.ph/press_release/2007/0626_pimentel1.asp last viewed on 05 September 2007.

⁶ See http://www.senate.gov.ph/press_release/2007/0703_pimentel2.asp last viewed on 05 September 2007.

⁷ See <http://www.inquirer.net/specialreports/nbndeal/view.php?db=1&article=2007626-73245> last viewed on 5 September 2007.

nullification, on Constitutional as well as statutory grounds.

A copy of the petition, entitled *Rolex Suplico vs. National Economic and Development Authority, et al.*, and docketed as G.R. No. 178830 is attached as **Annex G**.

(f) Subsequent to the filing of the petition before the Supreme Court, various government officials publicly spoke on the matter, albeit issuing conflicting statements thereon. On 6 August 2007, Department of Trade and Industry (DTI) Secretary Peter Favila, in an interview, claimed that the controversy generated by the NBN deal was “*much ado over nothing*,” given that no contract ever existed between Philippines and China. Likewise, Presidential Legal Adviser Sergio Apostol claimed that the NBN contract was nonexistent, and asked “*How can we implement? There are no papers. Show me the contract.*”

Copies of printouts of two articles attesting to the statements made by Favila⁸ and Apostol⁹ are attached as **Annex H and I**.

⁸ See <http://www.inquirer.net/specialreports/nbndeal/view.php?db=1&article=20070807-81180> last viewed on 05 September 2007.

⁹ See <http://www.inquirer.net/specialreports/nbndeal/view.php?db=1&article=20070807-80963> last viewed on 05 September 2007.

(g) In a complete turnaround, DOTC Secretary Leandro Mendoza, on 09 August 2007, confirmed that the government signed a supply contract with ZTE for the setting up of the NBN. Mendoza claimed that copies of the said reconstituted contract were likewise sent to the Department of Finance (DoF), the National Economic and Development Authority (NEDA), and the Department of Justice (DoJ).

(h) In view of the apparent irregularities surrounding the NBN deal, herein endorser Congressman Carlos Padilla, on 28 August 2007, filed before the Office of the Ombudsman a complaint for violation of the Anti-Graft and Corrupt Practices Act against Secretary Leandro Mendoza, DOTC Assistant Secretary Lorenzo Formoso, DOTC Assistant Secretary Elmer Soneja, and ZTE officials Hou Wei Gui, Yu Yong, George Zhou Ying, Fan Yang, and other unnamed and/or unidentified government officials and employees as well as private individuals who had a hand in the anomalous transaction.

A copy of the complaint filed before the Office of the Ombudsman is attached as **Annex J**.

8. At this point, the participation of respondent Benjamin

S. Abalos, Sr. in the anomalous transaction had not been revealed to the general public. It was on 27 August 2007, when mention was made of a “high Comelec official” who “lobbied for the ZTE deal for sex and money,” in *Gotcha!*, an opinion column authored by Jarius Bondoc, appearing in *The Philippine Star*. In said column, entitled *What Really Happened Behind the Scenes*, the “high Comelec official” remained unnamed.

A printout of said column,¹⁰ appearing in www.philstar.com and dated 27 August 2007, is attached as **Annex K**.

- (a) On 29 August 2007, in a privilege speech delivered before the House of Representatives, Congressman Carlos Padilla picked up on Bondoc’s column and proceeded to name respondent Abalos, Sr. as the “high COMELEC official” who brokered the NBN deal. Congressman Padilla claimed that Abalos, Sr. made several “unofficial trips to China courtesy of ZTE” and that his “golf games with the officers of ZTE can hardly be characterized as just friendly and totally innocuous.”

A copy of the privilege speech is attached as **Annex L**.

¹⁰ See <http://www.philstar.com/index.php?Opinion&p=49&type=2&sec=25&aid=20070826167> last viewed on 05 September 2007.

(b) Abalos, Sr., hastily denied the allegation, stating that
“I feel flattered. I didn’t know I am that influential.”
Newspaper reports further narrated Abalos, Sr.’s
response, thus:

Abalos laughed off the allegation that he was the Comelec official who acted as a conduit between the government and ZTE to seal the NBN deal.

On the phone, he was full of mirth as he said: “I feel flattered. I didn’t know I am that influential.”

Abalos said he could not imagine himself as someone who could influence members of the Cabinet like Transportation Secretary Leandro Mendoza, Trade Secretary Peter Favila, and Justice Secretary Raul Gonzales.

Abalos also heartily laughed when he said he “wished” he could be the person, who was mentioned in the newspaper column as someone with the “sexual prowess” to handle two women in one day.

“That would make my wife very happy. You know, I am not at all affected by these allegations. It’s really laughable. One [partner] in the morning, and another in the evening?” he said, chuckling.

“At my age, I am already 73, why would I do that?” he added.

A printout of said report¹¹ stating Abalos, Sr.’s reaction is attached as **Annex M**.

(c) Consistent with the Cabinet secretaries stance on the

¹¹ See <http://www.inquirer.net/specialreports/nbndeal/view.php?db=1&article=20070830-85476> last viewed on 05 September 2007.

existence of the supply contract, the following day, Abalos, Sr. made a complete turn-around, and in place of his blanket denial, he admitted to having met, on several occasions, with officials of ZTE in China, and that such trips were paid for by ZTE. Nonetheless, he claimed that he never helped ZTE to win the NBN deal with the government, saying he did not have the power to broker a government-to-government deal. Abalos, Sr. further admitted that ZTE officials invited him several times to China for “social visits” and to play golf, which golfing games were sponsored by said ZTE officials: “I am not denying that I went to China. I am not denying that they footed the bills. I foot their bills when they came here. Golfers are like that.”

A printout of the news report¹² is attached as **Annex N**.

(d) On 31 August 2007, Finance Secretary Margarito Teves confirmed that he was introduced to officials of ZTE during a meeting with DOTC Secretary Mendoza and respondent Abalos, Sr., and that during this meeting, the NBN project was discussed. Secretary Teves refuted Abalos Sr.’s earlier claims that the latter’s interest in ZTE was with respect to

¹² See <http://www.inquirer.net/specialreports/nbndeal/view/php?db=1&article=20070831-85686> last viewed on 05 September 2007.

the Davao Special Economic Zone, as the former stated that the meeting was only about the broadband project.

A printout of a news report¹³ on the foregoing is attached as **Annex O**.

(e) It was on 03 September 2007 when the details of Abalos, Sr.'s participation in brokering the NBN deal finally came to light, from a (then) unidentified businessman, who granted an interview to the *Philippine Daily Inquirer*, elaborating matters within his personal knowledge relating to Abalos Sr.'s acts. For ease of reference, the report, written by *Inquirer* staff writers Juliet Labog-Javellana, Riza T. Olchondra, and Beverly T. Natividad, on the interview is quoted as follows:

Trader to testify against Abalos

MANILA, Philippines – A businessman is willing to testify in any investigation that Commission on Elections Chair Benjamin Abalos Sr. offered a rival firm of China's ZTE Corp. \$10 million to withdraw from the national broadband network (NBN) project.

"I'm willing to testify before the Ombudsman, the Supreme Court or any congressional investigation. There is nothing to hide," the businessman told the *Inquirer*.

¹³ See <http://www.inquirer.net/specialreports/nbndeal/view.php?db=1&article=20070901-85939> last viewed on 05 September 2007.

But the businessman declined to be named in the meantime, saying he did not want to be cited in contempt by the high court, which has been asked to nullify the ZTE contract.

The businessman said Abalos had attempted to bribe Jose “Joey” de Venecia III, cofounder of Amsterdam Holdings, Inc. (AHI) and son of Speaker Jose de Venecia, Jr.

Abalos refused to comment on the allegation that he tried to bribe de Venecia so AHI would withdraw its bid for the NBN project.

“I think I have said enough. How can I comment on something I don’t know?” Abalos said on the phone.

AHI and US-based Arescom had protested the ZTE contract, which was signed during President Gloria Macapagal-Arroyo’s trip to Boao, China, on April 21.

The NBN is envisioned to establish a seamless connectivity of landline, cellular and Internet services among all national government agencies and offices.

The House of Representatives is set to investigate the ZTE deal after Rep. Carlos Padilla claimed that Abalos helped ZTE bag the \$329-million NBN deal, which he said was overpriced.

Padilla also claimed that the Department of Transportation and Communications (DOTC) “discriminated against and deliberately refused to act on the proposal” of AHI.

ZTE on Monday said it did not enjoy undue advantage over AHI and Arescom in winning the NBN contract.

“Since March of this year, ZTE’s participation in the proposed NBN project has been subjected to malicious and unjustified attacks by other parties. We have been quiet because we know these are all baseless accusations,” ZTE said in a statement.

“The time has come, however, to let the public know the truth. There was complete transparency in the proposal,

evaluation and approval of ZTE's application for the Philippines' NBN contract," the Chinese company said.

ZTE remained mum on allegations that it bribed Philippine government officials to bag the contract.

Last Hurrah

The businessman said De Venecia was having breakfast with Abalos and some of his friends at the Wack Wack Golf and Country Club in Mandaluyong City sometime in December last year when the Comelec chair invited the Speaker's son to his private office at the golf club, of which Abalos is president.

The businessman said that this was what Abalos told De Venecia:

"Joey, this is my last hurrah. I have nothing to do after I retire. I really want this contract. I'm willing to give you \$10 million." Abalos is due to retire in February 2008.

The businessman said the bribe would come from the overprice of the ZTE deal.

AHI and Arescom offers

The businessman said De Venecia turned down the offer, insisting that his firm's offer was better because it does not require a sovereign guarantee.

AHI offered \$240 million, and Arescom, \$130 million.

The businessman said ZTE had proposed \$262 million for the project, including \$130 million for the cost of the actual equipment.

Upon Abalos' suggestion, the ZTE contract was upgraded to \$329 million, according to the source.

The NBN project is one of the target beneficiaries of the \$1.8-billion loan agreement between the Philippines and China.

The Philippine government and the Chinese Export-Import Bank signed the deal without fanfare on Aug. 25 on the sidelines

of the ASEAN Economic Ministers meeting at the Shangri-La Hotel in Makati.

In response to Abalos' concern about being jobless after his retirement, De Venecia offered him a seat on the AHI board or even to be its chair emeritus, according to the source.

After De Venecia turned down Abalos' offer, the Comelec chair asked the former to see him again in his Wack Wack office to convince him to give way, according to the source.

Trip to Shenzen

Apart from the six meetings in Wack Wack, Abalos invited De Venecia to join him in Shenzen, China, to meet with ZTE officials.

De Venecia agreed, and met with Abalos and the ZTE officials in a hotel in Shenzen on Dec. 27 last year.

The source said Abalos presented De Venecia as "my partner and the son of the Speaker."

De Venecia flew separately with Abalos, who went to Shenzen two days ahead.

Most powerful man

At the hotel meeting, the businessman said Abalos bragged before De Venecia and the ZTE officials that he could secure the contract because of his powers as chair of the Comelec.

"I'll be the most powerful man in the Philippines starting Jan. 15 because I'm the Comelec chair," the businessman quoted Abalos as saying.

The Comelec chair meant to say that no politician could challenge his decisions during the campaign period for the 2007 midterm elections.

Asked why De Venecia agreed to the Wack Wack and Shenzen meetings with Abalos, the businessman said it was in deference to the Comelec chair's position.

First proponent

In the ZTE statement, sales director Zhang Shumin said the company was the first proponent of the NBN project, contrary to allegations by competitors.

He said ZTE submitted its original proposal to the CICT (Commission on Information and Telecommunications), the original shepherd of the NBN project, in April 2006.

AHI claims to have started pitching its idea for NBN around this time before submitting a formal proposal in December 2006.

“It (ZTE proposal) went through a six-month evaluation from CICT, NEDA [National Economic Development Authority] had the proposal for six months as well, and for four months the papers were with the DOTC for evaluation and comparison to the other proposals which were incidentally, were late in submission,” Shumin said.

* * *

A printout of the quoted article¹⁴ is attached as **Annex P**.

(f) A similar article by Paolo Romero of the *Philippine Star* appeared on the ABS-CBN news website, where Jose “Joey” De Venecia III was quoted as having refused to back off “even for \$1 million because our (the AHI) proposal is better.” Moreover, a number of statements were attributed to Abalos, Sr., thus:

* * *

The source revealed that during the meeting, the ZTE officials initially proposed \$262 million for the deal.

De Venecia III checked with the Manila office of the ZTE and his own

¹⁴ See <http://www.inquirer.net/specialreports/nbndeal/view.php?db=1&article=20070904-86470> last viewed on 05 September 2007.

company experts on whether the amount was warranted.

The response was that the proposal should cost only around \$130 million since the specifications in the ZTE proposal were not enough to cover the requirements of the NBN deal.

The AHI official told Abalos, while they were in Shenzhen, that unless ZTE upgrades its proposal, the Chinese firm is proposing a stiff price for the NBN.

De Venecia III, the source said, offered to Abalos to renegotiate with the ZTE to get a lower cost for the Philippine government.

Abalos however suggested the difference in the contract, which later was priced at \$330 million by ZTE, be charged as “consultancy fees” and other charges in which the paper work would be done through his law firm.

“This is my last hurrah, let me have the contract,” Abalos told de Venecia in Filipino.

During the meeting, the source said, Abalos reportedly told ZTE officials that “we want our funds now.”

ZTE officials, however, asked for an assurance to bag the deal. A ZTE official also replied that “what about the funds we gave you?” the source said.

Sometime in January, an angry Abalos called up de Venecia III and began ranting and cursing him.

Abalos was complaining about the AHI official’s comments to his colleagues in the company about him.

“Do you want me to send transcripts of your conversations?” Abalos told the AHI official, the source said.

* * *

A printout of the above-quoted article¹⁵ is attached as

¹⁵ See <http://www.abs-cbnnews.com/storypage.aspx?StoryId=90869> last viewed on 05 September 2007.

Annex Q.

9. On 06 September 2007, another Cabinet Secretary, Romulo Neri of the National Economic Development Authority (NEDA) came out in the open and contradicted Abalos Sr.'s claims that he had no inkling whatsoever of the NBN contract awarded to ZTE. Neri admitted that Abalos, Sr. had approached him to talk about the multi-billion peso broadband deal with ZTE.

A printout of the news report¹⁶ is attached as **Annex R.**

10. Due to the conflicting reports and the shroud of mystery propagated by various government officials, all that the public could rely upon, up until this point, were said news reports and the public admissions made by Abalos, Sr. (and by other government officials) in his interviews with reporters, quoted and cited above. The truth, however, is finally confirmed and fully laid out in the affidavit of Jose "Joey" de Venecia III, as follows:

- (a) Sometime shortly after AHI's unsolicited proposal was submitted to the DOTC, Abalos, Sr. took steps to

¹⁶ See <http://www.abs-cbnnews.com/topofthehour.aspx?StoryId=91392> last viewed on 06 September 2007.

contact de Venecia III, through the latter's father, House of Representatives Speaker Jose de Venecia, Jr. De Venecia III states that he did not know Abalos, Sr., and had no idea why the COMELEC Chairman wanted to talk to him. De Venecia III, however, was out of the country at the time Abalos, Sr. first requested for a meeting.

(b) When De Venecia III returned from his trip abroad, he found out from his father that Abalos, Sr. was still insisting on a meeting. Speaker de Venecia, Jr. invited his son and Abalos, Sr. to a breakfast meeting at the former's residence.

(c) At the said breakfast, Abalos, Sr. apparently wanted to discuss the NBN project, and expressed his desire to cooperate with AHI in building the network. His proposal was to cover the lower-class municipalities, and augment the Orion Network which was being proposed by AHI.

(d) Another meeting was thus scheduled to further discuss details of Abalos, Sr.'s proposal. The same took place at the Wack Wack Golf and Country Club, with Abalos, Sr., de Venecia III, Ruben Reyes, Leo San Miguel, Jimmy Paz, and Retired Police General

Quirino dela Torre in attendance.

(e) Abalos, Sr. informed de Venecia III: “Joey, I want to do something when I retire, I want to pursue something in the telecommunications industry.” In the course of the meeting, it became apparent to de Venecia III that Abalos, Sr. was backing ZTE’s effort to undertake the NBN project.

(f) De Venecia states that Abalos, Sr. found out about AHI’s recently submitted unsolicited proposal for the NBN project. De Venecia states under oath that Abalos, Sr. offered him Ten Million United States Dollars (US\$10,000,000.00), in exchange for AHI’s backing off and withdrawing completely from the NBN project. Abalos Sr. asked de Venecia III to let him be, as the project would be, in the former’s exact words, his “last hurrah.”

(g) De Venecia III politely declined Abalos Sr.’s offer, because AHI’s proposal was beyond his control, as he had other partners, both foreign and local, in the project. De Venecia III offered Abalos, Sr. a stake in AHI, for the latter to be a Director or its Chairman, but he did not agree to the same.

(h) Subsequently, Abalos, Sr. again invited De Venecia III to his office at the COMELEC. In one meeting, he saw in Abalos Sr.'s office DOTC Assistant Secretary Lorenzo Formoso III. Abalos, Sr. introduced De Venecia III to ASec Formoso, thus: "you see, Joey is here, as my partner [in the NBN project]."

(i) Because De Venecia III refused to pull out AHI's proposal, Abalos, Sr. broached the idea of a partnership between AHI and ZTE instead. De Venecia III did not expressly agree to the suggestion, but kept an open mind. Neither did he explicitly refuse the suggestion outright because "of [Abalos, Sr.'s] stature in the upcoming mid-term elections."

(j) Abalos, Sr. consistently requested for meetings with De Venecia III during the latter half of December 2006, so that he could convince the latter to either back off from the project, or be his "partner." They had about five or six meetings during the said period.

(k) One of these meetings took place in Shenzhen, China. Upon Abalos, Sr.'s invitation and insistence, they met with ZTE officials in Shenzhen. De Venecia III initially begged off, explaining that it was not

necessary, considering that he already knew the ZTE officials from previous dealings with said company, at the time when he was Chairman of Broadband Philippines.

(l) Abalos, Sr., however, was very insistent, and De Venecia III deferred to his seniority. Thus, on 27 December 2006, Abalos, Sr., De Venecia III, and the ZTE officials met at the Kempinski Hotel in Shenzhen, China.

(m) Before the meeting was held, Abalos, Sr. showed to De Venecia III the proposal of ZTE for the NBN project, with a cost of Two Hundred Sixty-two Million Dollars (\$262,000,000.00), under which the network would cover thirty percent (30%) of the country.

(n) De Venecia III sent this “Abalos Proposal” to the technical personnel of AHI and technical country representative of ZTE in Manila via facsimile. De Venecia III discovered that the Abalos Proposal was overpriced by One Hundred Thirty-two Million Dollars (\$132,000,000.00), considering that the value of the equipment is only One Hundred Thirty Million Dollars (\$130,000,000.00). De Venecia III informed

Abalos, Sr. of the apparent overprice, and told him that it “simply cannot be,” and that “you cannot expect to book an asset at \$262 million when its actual value is only half of that.”

(o) De Venecia III requested for the evaluation of the Abalos Proposal preparatory to the meeting with ZTE officials at the Kempinski Hotel. The meeting was attended by ZTE President Yu Yung, Director Fan Yang, and other officials, as well as members of Abalos, Sr.’s core group, namely Ruben Reyes, Leo San Miguel, General Dela Torre, and Jimmy Paz.

(p) Abalos, Sr. again introduced De Venecia III as his partner to the ZTE officials. Abalos, Sr. demanded from said officials the money promised him, because he claimed that “the President and the Speaker” were expecting it. When Abalos, Sr. mentioned these names, De Venecia III asked to confer with him in private, and told him off, that “it was highly inappropriate and wrong to mention the names of my President and the Speaker,” and that they are “well-respected in China, and that his words to the ZTE officials were simply unacceptable, and asked him not to drag my president and my father into this.”

- (q) When they returned to the meeting, Abalos, Sr. continued to insist on the money promised him. ZTE officials however refused to budge, stating that they would release the money only after the “loan documents” were finalized.
- (r) When ZTE officials refused to hand over the money that Abalos, Sr. was asking for, the latter started banging his fists on the table and shouting at the ZTE officials. He bragged about his position as the “most powerful man in the Philippines” starting January 15 (2007), being the Chairman of the COMELEC, in view of the then approaching 14 May 2007 elections.
- (s) ZTE Director Fan Yang countered with a question – “What about the money we already advanced, Mr. Chairman?” to which Abalos, Sr. could offer no response.
- (t) The meeting abruptly ended on that note, and transferred to the nearby Ocean Pearl Restaurant, where Chairman Ho of ZTE was already waiting.
- (u) Sometime in January 2007, Abalos, Sr. again invited De Venecia III to meet ZTE officials at the Diamond Hotel in Manila, and insisted that the contract for the

project be signed in the presence of then visiting Chinese Premier Wen Jiabao.

(v) Sometime in February 2007, Abalos, Sr. again invited De Venecia III to attend a meeting at the Wack Wack Golf and Country Club. De Venecia came to the meeting with AHI's technical resource personnel, Richard Pratte. At the meeting, attended by DOTC Assistant Secretary Elmer Soñeja, Abalos, Sr. represented to him that "you see, Asec Soñeja, Joey and I are partners now." De Venecia III did not refute the introduction, in view of the coalescing compromise deal between ZTE and AHI.

(w) A few days after the meeting, things turned sour between Abalos, Sr. and De Venecia III. Abalos, Sr. called up De Venecia III and started shouting invectives at him. Specifically, according to De Venecia III:

A few days later, however, Chairman Abalos called me up and started screaming shouting invectives at me. He said, "*Salbahe kang bata ka. Putang ina mo, kung alam lang ng tatay mo ang ginagawa mo, putang ina mo.*" I was bewildered where all of this was coming from, until in the middle of his ranting, he said that "I tapped your telephone." I responded, "Isn't that illegal" He said, "*gusto mo ng transcript?*" and I said I certainly would like to have a copy. Apparently, he got angry at me because he found out from my phone

calls that I had mentioned to several AHI personnel, as well as AHI's partners, that we were having difficulty with the NBN contract because he (Chairman Abalos) wanted a \$130 million dollar kickback from the project. While this was extant from Chairman Abalos' foul language while we talked, I never received a copy of the alleged transcript of the conversation which Chairman Abalos said he would send.

- (x) Thereafter, sometime in mid-March 2007, De Venecia III visited his father at the latter's residence, where DOTC Secretary Leandro Mendoza happened to be, requesting for my father's support and endorsement of his son, who was running for an elective position in Batangas. De Venecia III approached Secretary Mendoza and inquired as to the status of AHI's unsolicited proposal with the DOTC for the NBN project. Secretary Mendoza replied, "your project, Joey, is a big problem as Chairman Abalos is so angry at you and wants the NBN project for himself."
- (y) Secretary Mendoza then insisted that De Venecia III and Abalos, Sr. patch things up, and offered to broker a reconciliation meeting.
- (z) The reconciliation meeting pushed through, but was inconclusive.

A copy of Joey de Venecia's affidavit is attached as **Annex S**.

11. Thereafter, shortly after the so-called “reconciliation” meeting, Malacañan issued Official News Release (Release No. 5) announcing the signing of various agreements with the Chinese, including the supply contract for the NBN project, in favor of ZTE. At this point, the events that took place are narrated above in paragraph 7, *et seq.*, finally leading to the disclosure of information regarding Abalos, Sr.’s participation in and brokering of the NBN deal between the government and ZTE.

12. Subsequently, the Senate invited Joey de Venecia and a handful of resource persons to an investigation in aid of legislation.¹⁷ De Venecia III in testifying, under oath, before the Senate, affirmed his affidavit, and made additional relevant allegations and responses to the questions of the Senators.

(a) De Venecia III confirmed the attendance of First Gentleman Mike Arroyo in the “reconciliation” meeting, a fact not previously disclosed by him in his

¹⁷ The same were under Senate Resolutions Nos. 127 and 129. Senate Resolution No. 127, sponsored by Senator Aquilino Q. Pimentel, Jr., is entitled “Resolution directing the Blue Ribbon Committee and the Committee on Trade and Industry to investigate, in aid of legislation, the circumstances leading to the approval of the broadband contract with the ZTE and the role played by the officials concerned in getting it consummated, and to make recommendations to hale to the courts of law, the persons responsible for any anomaly in connection therewith and to plug loopholes, if any, in the BOT law and other pertinent legislations.” Senate Resolution No. 129, sponsored by Senator Panfilo M. Lacson, is entitled “Resolution directing the Committee on National Defense and Security to conduct an inquiry in aid of legislation into the national broadband network contract to the Chinese firm Zhong Xing Telecommunications Equipment Company Limited (ZTE Corporation), with the end in view of providing remedial legislation that will further protect our national sovereignty and territorial integrity.”

affidavit. De Venecia testified that he felt that the First Gentleman was called in by Abalos, Sr. to bully him into pulling out of the project. Indeed, based on De Venecia III's testimony given before the Senate, the First Gentleman spoke only two words – "BACK OFF" – menacingly uttered, and with the First Gentleman poking a threatening index finger, barely two (2) inches away from De Venecia III's face.

(b) Abalos, Sr., De Venecia III testified, is a known ally and close friend and golfing buddy of the First Gentleman.

(c) It was likewise revealed that in China, President Gloria Macapagal-Arroyo, who was then with Speaker De Venecia, Jr., met with Abalos, Sr., who was with a ZTE official at an unnamed golf course. It was said that in said encounter, President Arroyo asked Abalos, Sr. to instead emulate De Venecia III's (or AHI's) proposal for the NBN project, which did not require a sovereign guarantee, or the incursion of foreign indebtedness.

(d) De Venecia III and Jarius Bondoc, a columnist of the *Philippine Star* who was likewise invited to the hearing as a resource speaker, confirmed that Abalos,

Sr. threatened to kill them. Abalos, Sr., after his participation was exposed to the public, had stormed to the residence of Speaker De Venecia, Jr. and there said that, “I will kill Jarius, I will kill Joey.”

(e) Speaker de Venecia, Jr. calmly suggested to Abalos, Sr. to consider letting go of or dropping the NBN contract, but the latter responded: “But that would make Joey the winner.”

(f) In sum, De Venecia III withstood the probing questions of the Senators, bolstering his credibility as a witness to the impeachable acts of Abalos, Sr.

Copies of the transcript of the proceedings before the Joint Senate Committees on Accountability of Public Officers (Blue Ribbon), Trade and Commerce, and Defense, are attached as **Annex T** (18 September 2007) and **U** (20 September 2007).

A copy of De Venecia III’s opening statement before the Senate, which was likewise made under oath, is attached as **Annex V**.

13. In the Senate hearing of 20 September 2007, a number of members of the Cabinet – the President’s Official Family, and her *alter egos* – attended, and made their statements under oath, belying Abalos, Sr.’s blanket denial of his participation and/or knowledge of the

NBN deal with ZTE.

- (a) The first confirmation that Abalos Sr. was present in a meeting regarding the NBN project was made by no less than DOTC Secretary Leandro Mendoza himself. After making evasive responses, he testified before the Joint Senate Committees:

SEN. MADRIGAL : No, that's not my question. I said, "Secretary Mendoza, **Chairman Abalos**, Ruben Reyes, Jimmy Paz, Leo San Miguel, General Dela Torre, and First Gentleman. Do you categorically deny being in their presence?"

MR. MENDOZA : Not categorically, Your Honor, but there was...

SEN. MADRIGAL : Or is it yes, no I do not remember?

MR. MENDOZA : No, no, I cannot say that also. But I need some explanation, Your Honor.

SEN. MADRIGAL : I beg you, Mr...

SEN. ESTRADA : Chairman, with all due respect to Senator Madrigal, can I just modify your question.

Secretary Mendoza, ang itinatanong po ni Senadora Madrigal kung mayroong araw po kayo sa Wack-Wack na nagkita kayo ni First Gentleman, ni **Chairman Abalos**, sila Ruben Reyes, Miguel del

SEN. MADRIGAL : Jimmy dela Paz, Leo San Miguel, General Dela Torre, and, the First Gentleman,

Mister ni Ma'am.

MR. MENDOZA : **Opo.** Mayroon pong araw nagkita kami ni First Gentleman at saka ni Joey de Venecia. Iyon pong ibang sinasabi natin ay ire-recall ko muna kung nandodoon sila lahat. Dahil ang Wack-Wack po kasi is a golf course eh, napakaraming tao d'yan.¹⁸

(b) Subsequently, this was followed by a confirmation by DOTC Assistant Secretary Lorenzo Formoso III, notwithstanding his earlier denial under oath that he never talked with Abalos, Sr. regarding the NBN project.¹⁹ Formoso III admitted:

SEN. MADRIGAL : * * *

Mr. De Venecia, when did you meet Asec. Formoso? Where and when did you meet Asec. Formoso?

MR. DE VENECIA : I met Asec. Formoso in the office of the Chairman/Commissioner Benjamin Abalos at the Comelec, Your Honor.

SEN. MADRIGAL : Were you a bit surprised as to why the – I think he's part of the technical working group wherein Asec of the DOTC would be meeting you at the Comelec?

MR. DE VENECIA : I did not expect meeting him because I was invited personally by Chairman Abalos to his office. So I was

¹⁸ Transcript of Stenographic Notes, Committees on Accountability of Public Officers and Investigations (Blue Ribbon), Trade and Commerce, and National Defense and Security ("The Joint Committees"), September 20, 2007, 5:03 p.m., pp. 2-3. *Emphasis supplied.*

¹⁹ *Ibid.*, September 20, 2007, 4:23 p.m., pp. 3-4.

very surprised to see Asec. Formoso there because I've been trying to call him prior to that and he would never answer my calls.

And I distinctly remember in that meeting, Chairman Abalos served us – if you remember, Asec. Formoso his favorite “ensaymada”, he let us taste it, and then he introduced me to all the commissioners of the Comelec after our meeting. I hope you remember that meeting.

SEN. MADRIGAL : May we ask Asec. Formoso if he suffers from the same memory debilitation or..

MR. FORMOSO : As I stated a while ago, Your Honor...

SEN. MADRIGAL : A simple “yes” or “no” if you remember that meeting.

MR. FORMOSO : Yes.²⁰

(c) Finally, it was Department of Finance Secretary Margarito Teves who destroyed Abalos, Sr.'s blanket denial over the whole NBN-ZTE deal:

SEN. PANGILINAN : Just one question, answerable by yes or no, Secretary Teves. Yes, please, just to complete the picture that I earlier was trying to put in place.

Thank you, Secretary Teves.

Secretary Teves, I recalled that you were interviewed on television saying that Chairman Abalos approached you on the NBN deal. So did

²⁰ *Ibid.*, September 20, 2007, 5:03 p.m., pp. 3-4. *Emphasis supplied.*

he approach you or see you regarding the NBN deal?

MR. TEVES : Can I relate to you what happened? Because it is difficult to say yes or no without relating to the events.

SEN. PANGILINAN : Yes, please.

MR. TEVES : The first time Chairman Abalos called me was probably more than a year ago. And when I was asked by Ricky Carandang about that particular incident, I said I could not recall because there were instances when I would accept visitors on a weekend. But on further reflection, I did recall that **Chairman Abalos actually asked me if he could invite some Chinese businessmen** and they were in a bit of a hurry because they were leaving the following Monday and it was a weekend. So I said, “Ben, is it all right for them to see m(e) in my residence?” because I believe I was playing golf in the morning and I normally entertain visitors in the afternoon either Saturday and/or Sunday. So I had no inkling that, you know, who these businessmen were and at that time, I could not recall any discussions related to broadband. What I did recall after further contemplation was projects related to Mindanao, but perhaps I just attributed it is – to maybe Ben who asked me to see them because maybe he thought that as Secretary of Finance I would have something to do with projects.

And then what I did recall was my **meeting with Chairman Abalos and Secretary Mendoza in Wack-Wack. That was what I did recall that the meeting was on**

broadband. And as a secretary involved later on on the loan agreement, I thought that it was something that would be important or necessary for me to get more information about this project. That was the only occasion when I did recall about this particular project.²¹

(d) Clearly, no less than senior members of the Executive Department – Cabinet secretaries, *alter egos* of the President herself – controverted Abalos Sr.’s blanket denial of his knowledge of and participation in the NBN deal.

14. In the Senate hearing of 26 September 2007, in addition to the Cabinet members who attended the 20 September hearing, then National Economic Development Authority Secretary General (now Commission on Higher Education Chairman) Romulo Neri, as well as Abalos, Sr. himself appeared and testified under oath. Secretary Neri gave the most damning testimony against Abalos, Sr., when he asserted, under oath, that Abalos Sr. offered him, in the course of a golf game, a bribe of **Two Hundred Million Pesos** (₱200,000,000.00). According to Secretary Neri, Abalos, Sr.’s exact words to him were: “*Sec., may two hundred ka dito,*” in an unmistakable reference to the ZTE supply contract for the NBN

²¹ *Ibid.*, September 20, 2007, 8:33 p.m., pp. 2-3.

project.²²

15. Thus, the acts of Abalos, Sr., which substantiate this present complaint for impeachment may be summarized as follows:

(a) Abalos, Sr., lied to the public, on several occasions.

He first denied having known ZTE officials, but later on retracted his denial and claimed that he knew these officials and in fact regularly played golf with them.

(b) Abalos, Sr. denied having knowledge of the NBN contract, then in the works between the government and ZTE. This denial was revealed to be a lie by no less than Finance Secretary Margarito Teves, who stated (initially, in a television interview) that it was Abalos, Sr. who introduced him to ZTE officials in a meeting, where the topic for discussion was the broadband contract. Subsequently, Abalos Sr.'s feigned ignorance of the NBN deal was shattered with the execution of a sworn statement by De Venecia III, who gave a detailed narrative of how Abalos, Sr. strived to broker said deal.

(c) Abalos, Sr.'s disclaimers were further belied by at

²² As of this writing, transcripts of the proceedings before the Joint Senate Committees were unavailable. Petitioner makes the reservation to submit said transcripts as soon as they become available.

least four (4) senior Cabinet officials, namely, DOTC Secretary Leandro Mendoza, DOTC Assistant Secretary Lorenzo Formoso III, DoF Secretary Margarito Teves, and then NEDA Secretary-General Romulo Neri, who all gave their respective statements under oath.

(d) Abalos, Sr. claimed that he could not have been privy to the negotiations and subsequent execution of the NBN contract, claiming that he held no influence over the matter, but eventually admitted that his unique position as COMELEC Chairman, through whom all government contracts for public works must pass for approval during the election period, gave him such power and influence. The NBN deal between the Philippine Government and ZTE was consummated on 21 April 2007, well within the election period, which officially began forty-five (45) days before the elections last 14 May 2007, or on 30 March 2007.

(e) Abalos, Sr., by his own admission, received gifts and gratuities from ZTE and its officials, including transportation to and from China, and expenses during such trips, including golfing expenses.

(f) Abalos, Sr. received bribes from ZTE officials. Not satisfied with the “commission” he already received, he had the temerity to ask for more.

(g) Abalos, Sr., in order to profit therefrom, not only endorsed but also promoted the overprice amount of the NBN deal, and in fact offered Jose de Venecia III \$10 million in exchange for the withdrawal of the latter’s company, AHI, of its proposal for the NBN project.

(h) Abalos, Sr. solicited money from ZTE officials in exchange for this influence-peddling to ensure that said company would be awarded the NBN project.

16. Thus, based on the foregoing facts, complainant charges respondent Benjamin S. Abalos, Sr., and seeks his impeachment upon the following grounds:

**I. BENJAMIN S. ABALOS, SR.
COMMITTED CULPABLE VIOLATIONS
OF THE PHILIPPINE CONSTITUTION.**

**A. THE ACTS OF ABALOS SR.
CONSTITUTE A DIRECT
VIOLATION OF ARTICLE IX-A,
SECTION 2 OF THE
CONSTITUTION.**

**B. ABALOS SR. FAILED TO
PERFORM HIS
CONSTITUTIONAL DUTIES
UNDER ARTICLE IX-C,**

SECTION 2 OF THE
CONSTITUTION.

II. **BENJAMIN S. ABALOS, SR. BREACHED
THE PUBLIC TRUST.**

A. ABALOS SR., IN ORDER
TO DECEIVE THE
FILIPINO PEOPLE,
PUBLICLY MADE
CONFLICTING
STATEMENTS
REGARDING HIS
PARTICIPATION IN THE
NBN DEAL, WHICH
WERE STATEMENTS
LIKEWISE
ULTIMATELY
CONTRADICTED BY
SWORN AFFIDAVITS
OF COMPETENT AND
INDEPENDENT
WITNESSES.

B. ABALOS, SR.
VIOLATED
CONSTITUTIONAL AND
STATUTORY NORMS
PRESCRIBED FOR THE
CONDUCT OF PUBLIC
OFFICIALS.

III. **BENJAMIN S. ABALOS, SR. MUST BE
IMPEACHED AS A RESULT OF HIS
ACTS WHICH ARE TANTAMOUNT TO
GRAFT AND CORRUPTION, AND
BRIBERY.**

A. THE ACTS OF ABALOS, SR.
CONSTITUTE SPECIFIC ACTS
OF GRAFT AND CORRUPTION
AS DEFINED BY SECTION 3
OF REPUBLIC ACT NO. 3019.

B. THE ACTS OF ABALOS, SR.
CONSTITUTE BRIBERY, AS
DEFINED AND PUNISHED BY
SECTION 210 OF THE

Arguments and Discussion

I. Culpable Violation of the Constitution

Abalos, Sr. must be impeached for his financial interest and direct and indispensable participation in the facilitation of the NBN contract between the government and ZTE Corporation.

17. Article IX-A, Section 2 of the 1987 Constitution provides:

Section 2. No Member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, **nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government,** any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries. *(Emphasis supplied)*

18. Culpable violation of the Constitution must be understood to mean willful and intentional violation of the Constitution and not violations committed unintentionally or involuntarily or in good faith or through an honest mistake of judgment.²³

²³ Joaquin Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2003 ed.) at 1112, *citing* II Aruego, *The Framing of the Philippine Constitution* 590 (1939); Report of the Special Committee on the Impeachment of President Quirino, IV Congressional Record,

19. Under the above-quoted Constitutional provision, Abalos, Sr., being the Chairman of the COMELEC, is enjoined from being financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.
20. Unlike counterpart statutory provisions in Republic Act No. 6713 (The Code of Conduct and Ethical Standards for Public Officials and Employees) and Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act), this Constitutional proscription does not qualify or limit a public officer's prohibited participation in government contracts, franchises, privileges, or transactions to those "requiring the approval of their office"²⁴ or to those "in connection with which he intervenes or takes part in his official capacity."²⁵ The only limitation set forth by the Constitution is that the financial interest relates to a contract, franchise, or privilege, which is granted by the government, or any of its agencies or instrumentalities.

House of Representatives 1553 (1949).

²⁴ Republic Act No. 6713, Section 6 (a).

²⁵ Republic Act No. 3019, Section 3 (h).

21. Abalos, Sr. breached such Constitutional provision – a culpable, and not merely unintentional violation – by directly facilitating and participating in negotiations with ZTE officials, preparatory to entering into the final supply contract. In fact, it was Abalos, Sr. who prodded the ZTE officials into increasing the contract price to \$329 million (from the original \$130 million) to give way for “consultancy fees.”

22. The participation of Abalos, Sr. in the negotiations with ZTE officials was succinctly and sufficiently narrated by De Venecia III in his sworn affidavit, and in his testimony before the Senate. Moreover, statements made by four Cabinet secretaries, clearly belie Abalos Sr.’s general disavowal over the NBN ZTE deal.

Abalos, Sr., having been informed of the existence of the contract, as well as the negotiations leading to the eventual execution thereof, failed to perform his duties as Chairman of the Constitutional Commission on Elections.

23. Initially, Abalos, Sr. issued a blanket denial when confronted with the issue – his brokering of the NBN

deal amidst bribes of golf games and women, and unofficial junkets to China – raised by columnist Jarius Bondoc and Representative Padilla in his privilege speech. He was quoted as having responded “I feel flattered, I did not know I am that influential.”

24. The following day, Abalos, Sr. admitted to having met with officials of ZTE in China on various occasions, with the latter paying for his expenses; however, he maintained his stance that the trips had no relation to the NBN deal whatsoever.

25. No less than Finance Secretary Teves refuted Abalos’ allegation that he had no inkling of the ZTE NBN deal, when the former stated that he was introduced to ZTE officials by Abalos, Sr. and DOTC Secretary Mendoza in a meeting. While this refutation was initially made in a television interview with Ricky Carandang, Secretary Teves later on, speaking under oath before the Senate Joint Committees, confirmed that he discussed the matter of broadband with Abalos, Sr. and Secretary Mendoza.

26. At this point, it could not be doubted that based on the admission of Abalos, Sr., himself, as well as on the statement of no less than four Cabinet Secretaries,

respondent was well aware of, at the very least, the existence of the ZTE contract or the then on-going negotiations therefor. This, however, apparently was *not all* that Abalos, Sr. knew of the deal; De Venecia III subsequently came forward to detail his direct participation in contract negotiations, as well as his efforts to have a competing firm withdraw its proposal. Abalos, Sr. flexed his muscles by bragging before ZTE officials (as witnessed by de Venecia III) that he was to be “the most powerful man in the Philippines starting January 15 (2007) because I’m the Comelec chair.”

27. Indeed, Abalos, Sr. subsequently confirmed his authority over contracts for public works during the election period. In a press conference held on 31 August 2007 as reported in the *Philippine Daily Inquirer* (See Annex O):

* * *

At a press conference Friday, the embattled Abalos surmised that a Comelec official--largely suspected to be him--was being linked to the now controversial national broadband network deal because the contract is alleged to have been signed at a time when there was an election ban against the signing of government contracts.

“The suspicion is because allegedly this contract was signed during the election period. That is why the suspicion of a Comelec official act came in. I’m trying to study it, and allegedly that was the time of my visit there [China],” he said.

On April 21, 2007, at the height of the campaign for the May 14 midterm elections, Mendoza and Yu Yong, the ZTE vice president, signed the (\$)329-million deal in ceremonies witnessed by President Macapagal-Arroyo in Boao, China.

That same day, Trade Secretary Peter Favila signed on behalf of the Department of Education a \$460-million contract with Chinese authorities for a satellite-based backbone for the Philippines' cyber education project.

The Omnibus Election Code and a supporting Comelec resolution prohibit government agencies from entering into contracts for public works projects, the disbursement of government funds, and transfers and appointments of government personnel to avoid the possibility of these being used to influence the election campaign.

Exemptions may be made for contracts or disbursement of funds if these are to be used in response to a calamity or disaster, and these must be done with the consent of the Comelec.

Friday was the first time that Abalos acknowledged that the election ban on contracts could be a possible reason why a Comelec official was being linked to the controversial deal.

Abalos said the Comelec *en banc* had given him the authority to decide whether exemptions should be granted during the May electoral campaign. His decisions were later reviewed by the entire commission, he said.

But he stressed that the Comelec never issued any clearance for the ZTE Corp. contract as no request for an exemption was made by any government agency.

"That's why I'm being suspected. I am telling you now, we have not issued any clearance or any exemption for that matter," Abalos said.

28. Abalos, Sr.'s statements on the matter would seem to suggest that he had absolutely no knowledge of the existence of or negotiations leading to the NBN contract; this is however easily refuted by other public

admissions that he himself made regarding his relations with ZTE officials, admissions made by other government officials, including Trade Secretary Peter Favila, and by the affidavit of De Venecia III. Abalos, Sr. was then aware of the impending execution of the NBN contract between the government and ZTE, having brokered the same, and he was aware of the execution thereof on 21 April 2007, right in the thick of the election period. By his own admission, there was no exemption issued by his office for said contract.

29. Secretary Mendoza's act of entering into the NBN contract with ZTE on 21 April 2007 contravenes Batas Pambansa Blg. 881, as amended (The Omnibus Election Code) as well as COMELEC Resolution No. 7785 (Rules and Regulations Governing Public Works Ban and Release, Disbursement, and Expenditures of Public Funds in Connection with the May 14, 2007 Synchronized National and Local Elections) promulgated on 18 December 2006,²⁶ approved by Abalos, Sr., himself. Said regulations relevantly provide:

Sec. 261. *Prohibited Acts.* – The following

²⁶ See http://www.comelec.gov.ph/announcements/resolutions/2007/res_7785.html last viewed on 06 September 2007.

shall be guilty of an election offense:

* * *

(w) *Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices.* – During the period of forty-five days preceding a regular election and thirty days before a special election, any person who (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or (b) issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods, or other things of value chargeable against public funds.

30. Meantime, COMELEC Resolution No. 7785 specified:

Sec. 2. Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices. – Effective March 30, 2007 until May 14, 2007, no person shall:

1. Undertake the construction of public works, except for projects or works exempted in the preceding Section; or
2. Issue, use, or avail of treasury warrants or any device undertaking future delivery of money, goods, or other things of value chargeable against public funds.

31. It will be recalled that the NBN contract is “tied” to a loan – a Philippine Government loan from the Chinese Government for the purpose of funding the expenses of said deal with ZTE. Indeed, the Philippine Government, through Finance Secretary Margarito B. Teves secured a \$400 million credit facility from the China Export-Import Bank. Notwithstanding Abalos, Sr.’s knowledge of the NBN deal, however, he failed to perform his constitutional²⁷ duty to enforce election laws and regulations, and merely allowed the deal to push through.

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

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

* * *

²⁷ CONSTITUTION, Art. IX-C, Section 2 (a).

32. The fact that Abalos, Sr.'s failure to perform his duty constitutes a culpable violation of the Constitution is underscored by the fact that he himself reiterated the imposition of such duty upon all commissioners, by promulgating COMELEC Resolution No. 7785 on 18 December 2006.
33. Clearly, therefore, Abalos, Sr. committed *at least* two (2) culpable violations of the Constitution – the proscription against financial interest imposed upon members of Constitutional Commissions such as the Comelec, and the deliberate failure or refusal to perform a positive duty imposed by the Constitution, for him to enforce and administer all election laws and regulations – for which he must be impeached.

II. Betrayal of Public Trust

34. “Betrayal of public trust,” as a ground for impeachment, was elucidated upon by the noted Constitutional Law authority Fr. Joaquin Bernas, S.J., in his Commentary on the 1987 Constitution, thus:

* * * [T]he 1987 Constitution added the broad concept of “betrayal of public trust” [as a ground for impeachment]. The phrase was intended to be a catch-all phrase to cover any violation of the oath of office. Commissioner de los Reyes, who had been responsible for the insertion of the phrase, said that it referred to all acts, even if not punishable by statute as penal offenses, which would render the

officer unfit to continue in office. He enumerated “betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, etc. to the prejudice of the public interest and which tend to bring the office into disrepute.” To which Romulo added “obstruction of justice.”²⁸

35. At the heart of this particular ground for impeachment is the constitutional precept that public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.²⁹ The basic idea of government in the Philippines is that of a representative government, the officers being mere agents and not rulers of the people, one where no man or set of men has a proprietary or contractual right to an office, but where every officer accepts office pursuant to the provisions of law and holds office as a trust for the people whom he represents.³⁰
36. Abalos, Sr. is accused of having prioritized his private and pecuniary interests over those of the State and its citizens, who he is duty-bound to serve, when he lobbied for the ZTE proposal for the NBN deal, in exchange for monetary gain. Worse, Abalos, Sr.

²⁸ Bernas at 1113, *citing* II RECORD OF THE CONSTITUTIONAL CONVENTION 272.

²⁹ CONSTITUTION, Article XI, Section 1.

³⁰ *Cornejo vs. Gabriel*, 41 Phil. 188 (1920) *cited in* Bernas at 1108.

lobbied for a contract overpriced by *at least* \$67 million (the difference between \$262 million originally proposed by ZTE and the eventual increase to \$329 million) to accommodate kickbacks for himself and other beneficiaries. Based on De Venecia III's testimony, it appears that the overprice amounts to almost One Hundred Million Dollars (\$100,000,000.00), based on the evaluation of AHI and ZTE technical personnel that the cost of the Abalos Proposal is only \$130 million.

37. Abalos, Sr. further betrayed the public trust in offering Jose de Venecia III and his company, AHI, \$10 million to walk away from the contract, which would have been his "last hurrah." Abalos, Sr. in effect admitted that he was in full, absolute, and unbridled control over how the "consultancy fees" would be distributed.
38. Similarly, Abalos, Sr. betrayed the public trust when he offered NEDA Secretary-General Romulo Neri Two Hundred Million Pesos in exchange for the latter's favorable endorsement of the ZTE proposal.
39. Likewise, as earlier established, Abalos, Sr. committed *inexcusable negligence (if not malicious breach) of*

duty, when he allowed the NBN contract to push through notwithstanding the then effectivity of the election ban on contracts for public works.

40. Compounding these high crimes are the brazen violation of laws and norms governing conduct of public officials and employees such as Abalos, Sr. – particularly those provided by Republic Act No. 6713, Republic Act No. 3019, and Batas Pambansa Blg. 881.

Abalos, Sr. demonstrated his betrayal of the public trust by his utter disregard of statutorily-prescribed norms of conduct imposed upon public officials.

41. **Republic Act No. 6713**, the Code of Conduct of Ethical Standards for Public Officials and employees, prescribes the norms of conduct expected of public officials, sets forth positive duties, and imposes prohibitions upon those in the public service. Relevant to the present complaint are the following provisions:

Sec. 4. Norms of Conduct of Public Officials and Employees. – (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

(a) *Commitment to public interest.* – Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly, and economically, particularly to avoid wastage in public funds and revenues.

(b) *Professionalism.* – Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence, and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

(c) *Justness and sincerity.* – Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety, and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are co-terminous with theirs.

* * *

(f) *Nationalism and patriotism.* – Public officials and employees shall at all times be loyal to the Republic and to the Filipino people, promote the use of locally-produced goods, resources, and technology and encourage appreciation and pride of country and people. They shall endeavor to maintain and defend Philippine sovereignty against foreign intrusion.

(g) *Commitment to democracy.* – Public officials and employees shall commit themselves to the democratic way of life and values, maintain the principle of public accountability, and manifest by deeds the supremacy of civilian authority over the military. They shall at all times uphold the constitution and put loyalty to country above loyalty to persons or party.

(h) *Simple living.* – Public officials and employees and their families shall lead modest lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious

display of wealth in any form. * * *

* * *

Sec. 7. *Prohibited Acts and Transactions.*

In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) *Financial and material interest.* – Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

* * *

(d) *Solicitation or acceptance of gifts.* – Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

As to gifts or grants from foreign government, the Congress consents to –

(i) The acceptance and retention by a public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy;

(ii) The acceptance by a public official or employee of a gift in the nature of a scholarship or fellowship grant or medical treatment; or

(iii) The acceptance by a public official or employee of travel grants or expenses for travel taking place entirely outside the Philippines (such as allowances, transportation, food and lodging) of more than nominal value if such acceptance is appropriate or consistent with the interest of the Philippines, and permitted by the head of office, branch, or agency to which he belongs.

* * *

42. Abalos, Sr.'s acts, summarized in paragraph 8, *et seq.* above, constitute severe violations of the above-cited precepts of ethical conduct expected of public officials.

Moreover, Abalos, Sr. flagrantly committed acts in wanton violation of the Anti-Graft and Corrupt Practices Act, which further establishes his betrayal of the public trust.

43. Furthermore, Section 3 of **Republic Act No. 3019**, or the Anti-Graft and Corrupt Practices Act makes it a criminal act for public officers to, among others:

* * *

(b) Directly or indirectly [request] or [receive] any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene;

(c) Directly or indirectly [request] or [receive] any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act;

* * *

(e) [Cause] any undue injury to any party, including the Government, or [give] any private party unwarranted benefits, advantage or preference in the discharge of his official or administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees

of offices of government corporations charged with the grant of licenses or permits or other concessions.

* * *

(h) Directly or indirectly [have] financial or pecuniary interest in any business, contract, or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

(i) Directly or indirectly [become] interested, for personal gain, or [have] a material interest in any transaction or act requiring the approval of a board, panel, or group of which he is a member, and which exercises discretion in such approval even if he votes against the same or does not participate in the action of the board, committee, panel, or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel, or group to which they belong.

* * *

44. As graft and corruption constitutes a distinct ground for impeachment under the Constitution, the same will be discussed in the immediately succeeding section.

Abalos, Sr. was enjoined by the law which he swore to uphold to comport himself in the same manner as a judge or justice would, but he utterly failed to live up to such standards.

45. Furthermore, specifically relating to the office of Abalos, Sr., Section 58 of the **Batas Pambansa Blg.**

881, as amended, or the Omnibus Election Code, as amended, mandates that “the chairman and members of the Commission [on Elections] **shall** be subject to the canons of judicial ethics in the discharge of their functions.” The rationale for the provision is quite apparent – COMELEC and its commissioners exercise quasi-judicial functions, and as such, their conduct must at all times be akin to those of justices and judges of regular courts of law.

46. Thus, in addition to the proscriptions of Republic Act No. 6713, *supra*, Abalos, Sr., as Chairman of the COMELEC, is enjoined to abide by the Code of Judicial Conduct, promulgated on 5 September 1989 and which took effect on 20 October 1989. However, Abalos, Sr. failed to live up to such standards, particularly the following:

Canon 1

A JUDGE SHOULD UPHOLD THE INTEGRITY
AND INDEPENDENCE OF THE JUDICIARY.

Rule 1.01. A judge should be the embodiment of competence, integrity, and independence.

* * *

Canon 2

A JUDGE SHOULD AVOID IMPROPRIETY
AND THE APPEARANCE OF IMPROPRIETY IN
ALL ACTIVITIES

Rule 2.01. A judge should so behave at all

times as to promote public confidence in the integrity and impartiality of the judiciary.

* * *

Canon 5

A JUDGE SHOULD REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES

* * *

FINANCIAL ACTIVITIES

Rule 5.02. A judge shall refrain from financial and business dealings that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities, or increase involvement with lawyers or persons likely to come before the court. A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualification.

* * *

Rule 5.04. A judge or any immediate member of the family shall not accept a gift, bequest, favor, or loan from anyone except as may be allowed by law.

* * *

47. The sum total of all these – Abalos, Sr.'s utter failure to comply with the standards set forth by the law and the Constitution upon his conduct – reveals his disloyalty and unfaithfulness to, and perfidy, upon the Filipino citizenry, and ultimately, his betrayal of the trust reposed upon him by the People. These acts do not only render Abalos, Sr. unfit to continue in office, but worse, tends to bring the already tarnished name of the COMELEC into further disrepute.

III. Graft and Corruption

48. Graft and Corruption, as a ground for impeachment, is to be understood within the context of its definition under Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act. As stated, Abalos, Sr.'s acts fall within the following offenses defined and penalized by said statute:

* * *

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene;

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act;

* * *

(e) Causing any undue injury to any party, including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his official or administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices of government corporations charged with the grant of licenses or permits or other concessions.

* * *

(h) Directly or indirectly having financial or pecuniary interest in any business, contract, or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from

having any interest.

(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel, or group of which he is a member, and which exercises discretion in such approval even if he votes against the same or does not participate in the action of the board, committee, panel, or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel, or group to which they belong.

* * *

49. Under Section 3 (b) above, the person liable is the public officer who, in his official capacity, has to intervene under the law in any contract or transaction between the Government and any other party.³¹ Undeniably, it was even Abalos, Sr. himself who bragged before ZTE officials words to the effect that he is above all others come election period, during which the NBN contract was executed. Abalos, Sr. further confirmed that all public works contracts to be entered into during the election period had to muster his approval; proponents or parties to a contract needed to seek his clearance or an exemption from his office, before such contract could be executed.
50. Under the same Section 3 (b), the act constituting the crime is directly or indirectly requesting or receiving

³¹ II Luis B. Reyes, The Revised Penal Code (2006 ed.) 373.

any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with such contract or transaction.³² Abalos, Sr. at the very least, admitted to allowing ZTE officials to “foot the bill” of his unofficial trips to China, and the expenses he incurred in these trips, including those for golf. Moreover, as has been shown, there is indubitable evidence that Abalos, Sr. haggled to bring the price of the NBN contract up to \$329 million, so that he and other persons could partake of the overprice.

51. Section 3 (c) above-quoted, in the meantime, differs from Section 3 (b) in that the person held liable is the public officer who, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license for another person.³³ Abalos, Sr. is one such person, having promised ZTE officials that the NBN deal would push through, and by implication, all the necessary government approvals would be obtained, in exchange for pecuniary consideration.

52. In the meantime, Section 3 (e) likewise applies to the case of Abalos, Sr. ZTE was given preferential treatment by Abalos, Sr., resulting in undue injury to

³² *Ibid.*

³³ *Ibid.*

various third parties – particularly, other qualified proponents, such as AHI and Arrescom – as well as to the Government itself. All three (3) modes by which this offense is committed – manifest partiality, evident bad faith, and gross inexcusable negligence – are apparent from Abalos Sr.’s acts.

- (a) Manifest partiality in favor of ZTE is self-explanatory. Abalos, Sr. even went to the extent of attempting to dissuade another interested project proponent, AHI, by offering a \$10 million bribe to its officer, Jose de Venecia III.
- (b) Evident bad faith on the part of Abalos, Sr. is likewise readily apparent from the fact that he sought to exclude all other interested proponents from the NBN deal.
- (c) Abalos, Sr. committed gross and inexcusable negligence through his deliberate failure to subject the NBN contract to official scrutiny by the COMELEC, considering that it was his statutory and reglementary duty to review all contracts for public works executed during the election period, and ascertain whether an exemption from the election ban was in order.

53. There are two (2) possible classes of persons who may be held liable under Section 3 (h) of R.A. No. 3019, and Abalos, Sr., belongs to the second class – those who are prohibited by the Constitution from having interest in the contract or transaction in question. His financial interest in the NBN contract lay in his claim for “consultancy fees” from the amount in excess of the actual project cost.
54. Finally, under Section 3 (i), Abalos, Sr. was clearly interested, directly and for personal gain, in a transaction requiring the approval of a body of which he is a member – the Comelec. By Abalos Sr.’s own admission, he usurped and appropriated for himself the power to grant exemptions from the ban on undertaking of public works contracts for the forty-five (45) day period prior to the elections of 14 May 2007, which should have been subject to review by the Comelec *en banc*. As has been stated previously, the NBN contract was not even subjected to COMELEC scrutiny. This, however, is of no moment, considering that the provision in question specifically states that the person financially interested is held liable under the law even if he votes against the approval or does not participate in the deliberations or action of the

board.

55. The second paragraph of Section 3 (i) further strengthens the case for Graft and Corruption against Abalos, Sr., for the same provides for a *prima facie* presumption that he held an interest for personal gain in the NBN deal. Under said provision, the presumption arises where the transaction submitted for approval is manifestly unlawful, inequitable, or irregular – which is the case in the NBN contract entered into by and between the Government and ZTE.
56. Ineluctably, the NBN deal brokered by Abalos, Sr. is obscured and tainted by a shroud of graft and corruption, masterminded by Abalos, Sr. himself in order to assure that his “last hurrah” would be fruitful and that he could retire “in peace.” Abalos, Sr.’s golden parachute however is at the cost of the Filipino people and the hard-earned taxes they pay.

IV. Bribery

57. Bribery, as a ground for impeachment, is to be understood according to its meaning in the Revised Penal Code,³⁴ thus:

³⁴ BERNAS at 1112.

Art. 210. Direct bribery. -- Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift, or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods, and a fine of not less than the value of the gift and not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional* in its medium period and a fine of not less than twice the value of such gift.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period to *prision mayor* in its minimum period and a fine of not less than three times the value of such gift.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

Art. 211. Indirect bribery. – The penalties of *arresto mayor*, *suspension* in its minimum and medium periods, and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.

58. The elements of the crime of direct bribery are as follows:³⁵

- (a) The offender is a public officer;
- (b) The offender accepts an offer or a promise or receives a gift or present by himself or through another;
- (c) Such offer or promise be accepted, or gift or present received by the public officer –

³⁵ II REYES 358-359.

- (1) With a view to committing some crime; or
 - (2) In consideration of the execution of an act which does not constitute a crime, but the act must be unjust; or
 - (3) To refrain from doing something which it is his official duty to do.
- (d) The act which the offender agrees to perform or which he executes be connected with the performance of his official duties.

59. All of the elements of the crime of direct bribery, through the second mode – i.e., where the gift is received in consideration of the execution of an act which does not constitute a crime – are present in the case of Abalos, Sr.

- (a) Abalos, Sr. is indubitably a public officer.³⁶
- (b) Abalos, Sr. accepted and received a gift – in money, from ZTE officials.
- (c) Abalos, Sr. received such money in consideration of his ensuring that the NBN contract be awarded to ZTE, which is not *per se* a crime under Philippine law, but which is, nonetheless, unjust, considering that ZTE was unduly favored, to the detriment of other qualified proponents, namely AHI and

³⁶ Public officers, within the context of the crime of bribery, are those who “by direct provision of law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class.” *See* Article 203, Revised Penal Code.

Arrescom, whose proposals were not even considered.

(d) The act which he agreed to do in consideration of the gift includes the performance of an act in the course of his official duties – namely, the granting of exemption to the prohibition on execution of contracts for public works during the forty-five days leading to the elections.

60. Likewise, Abalos, Sr. may alternatively be held liable for indirect bribery, the elements of which are:³⁷

(a) The offender is a public officer.

(b) He accepts gifts.

(c) Said gifts are offered to him by reason of his office.

61. At the very least, Abalos, Sr. is clearly liable for indirect bribery. He presented himself before ZTE officials as a person with sufficient authority or influence to ensure that the NBN contract will be awarded to ZTE, and the monetary consideration was offered to him by reason of his position as COMELEC chairman.

³⁷ II REYES 365.

62. Regardless of whether Abalos Sr.'s actuations constitute direct or indirect bribery, or both, the inescapable conclusion is that bribery – as a ground for his impeachment – is present in this case. Furthermore, Abalos, Sr., likewise committed the crime punished by Article 212 of the Revised Penal Code, Corruption of Public Officials, which states:

Art. 212. Corruption of Public Officials. -- The same penalties imposed upon the officer corrupted, except those of disqualification and suspension, shall be imposed upon any person who shall have made the offers or promises or given the gifts or presents as described in the preceding articles.

63. This is the other side of bribery – which was succinctly testified to under oath by former NEDA Secretary Romulo Neri as having been committed by Abalos, Sr., when the latter offered the former Two Hundred Million Pesos, for Neri and/or his office to give a favorable recommendation or endorsement of the ZTE proposal for the NBN project.

64. The House of Representatives is vested with the exclusive power to initiate all cases of impeachment.³⁸ Admittedly, impeachment proceedings, being the political process that it is, favors the majority, of

³⁸ CONSTITUTION, Art. XI, Sec. 3 (1).

which Abalos, Sr. would ostensibly or expectedly belong (had his appointment not been to an “independent” Constitutional body), having been appointed by the incumbent President of the Republic of the Philippines. The President’s supporters in the Executive branch, while having been caught with a number of statements which directly refute Abalos Sr.’s lies, have nonetheless been very careful of their actuations in public. *Will the administration-allied Congressmen follow suit?*

65. The House of Representatives now faces a true test of character – whether or not the political majority will allow the impeachment of a Presidential appointee.

RELIEF

WHEREFORE, pursuant to the procedure laid down by Section 3, Article XI of the Constitution on Accountability of Public Officers, petitioner Rolex T. Suplico, with the endorsement of Representatives Carlos M. Padilla and Rodolfo G. Plaza, respectfully prays that the present complaint be included in the House of Representatives’ Order of Business within ten (10) session days and referred to the proper Committee(s) within three (3) session days thereafter.

Petitioner further prays that the Committee(s), after due hearing, submit a Report to the House recommending the adoption of

the present complaint as the Articles of Impeachment against COMELEC Commissioner Benjamin Abalos, Sr. or adopting its own Resolution of Impeachment.

Thereafter, petitioner prays that the Articles of Impeachment or Resolution of Impeachment be acted favorably by the House of Representatives through the affirmation by one-third of its membership, and said Articles transmitted to the Senate for trial.

Petitioner prays for other just or equitable relief.

Quezon City, 28 September 2007.

ROLEX T. SUPLICO
Petitioner

SUBSCRIBED AND SWORN to before me this ___ day of September 2007, affiant, being personally known to me, exhibited his Driver's License/Passport No. _____ issued at _____ and expiring on _____.

Doc. No. _____
Page No. _____
Book No. _____
Series of 2007.