

June 23, 2004

**MR. PRESIDENT, MR. SPEAKER:**

The Joint Committee, created by the Joint Public Session of the Congress on May 28, 2004, to which were referred the one hundred eighty (180) Certificates of Canvass from seventy-nine (79) provinces, twenty-two (22) highly urbanized cities, seventy-four (74) Overseas Absentee Voting countries and one (1) Local Absentee Voting and three (3) Certificates of Canvass from Northern Samar, Maguindanao and Lanao del Norte which held special elections, upon determination of the authenticity and due execution thereof in the manner provided by law, preliminarily canvassed the votes of the candidates for President and Vice-President in the May 10, 2004 elections. It convened on June 4, 2004 and adjourned on June 23, 2004.

The Joint Committee has the honor to submit this Final Report to the Joint Public Session with the recommendation that it be approved and its accompanying Resolution adopted.

**RAUL M. GONZALEZ**  
Chairman  
House of Representatives

**FRANCIS N. PANGILINAN**  
Chairman  
Senate

**REPORT OF THE JOINT COMMITTEE ON THE  
CANVASS OF VOTES FOR THE PRESIDENTIAL AND  
VICE-PRESIDENTIAL CANDIDATES IN THE  
MAY 10, 2004 ELECTIONS**

**Mandate**

The Constitution mandates the Congress to canvass the votes for President and Vice-President, and to proclaim as President and Vice-President the candidates who obtained the highest number of votes. Paragraphs 4, 5 and 6, Section 4, Article VII, read as follows:

“The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.”

## **Rules of the Canvass and the Joint Committee**

On May 28, 2004, the Joint Public Session of Congress adopted the “Rules of the Joint Public Session of Congress on Canvassing the Votes Cast for Presidential and Vice-Presidential candidates in the May 10, 2004 Elections.” The Joint Public Session, under the said Rules, constituted a Joint Committee of both Houses to canvass preliminarily the votes for President and Vice-President and to submit a final report to the Joint Public Session for its approval. (*Copy of the Rules on Canvassing is attached as Annex “A”*)

## **Composition of the Joint Committee**

The Joint Committee is composed of the following: Senate panel - Francis N. Pangilinan, Chairman, Juan M. Flavier, Vice-Chairman, and Ramon B. Magsaysay, Jr., Manuel B. Villar, Joker P. Arroyo, Ralph G. Recto, Aquilino Q. Pimentel, Jr., Edgardo J. Angara, Vicente C. Sotto III, Sergio R. Osmeña III and Teresa Aquino-Oreta, members; House panel – Raul M. Gonzalez, Chairman, Florencio B. Abad, Vice-Chairman, and Constancio G. Jaruala, Antonio Eduardo B. Nachura, Prospero C. Nograles, Arthur D. Defensor, Antonio V. Cuenco, Marcelino C. Libanan, Jacinto V. Paras, Agapito A. Aquino and Kim Bernardo-Lokin, members.

The following were appointed as alternates: Senate panel - Robert S. Jaworski, Sr., Ramon B. Revilla, Sr., Rodolfo G. Biazon, John Henry R. Osmeña and Luisa P. Ejercito-Estrada; House panel - Oscar S. Rodriguez,

Salacnib F. Baterina, Clavel A. Martinez, Eduardo K. Veloso, Prospero A. Pichay, Jr., Mauricio G. Domogan, Gerardo S. Espina, Sr., Satur C. Ocampo, Loreta Ann P. Rosales, Cho S. Roco, Rolex T. Suplico, Edgar Valdez, Noel M. Cariño, Francis G. Escudero, Rodolfo G. Plaza and Joaquin M. Chipeco.

The following were appointed as substitutes for the Senate panel - Antonino P. Roman, Aurelio M. Umali, Exequiel B. Javier, Fredenil H. Castro, Allan Peter S. Cayetano, Rolando G. Andaya, Jr., Oscar L. Gozos, Jose Virgilio Bautista and Celso L. Lobregat.

### **Supreme Court Resolution**

This power of the Congress to promulgate its rules for the canvassing of the certificates and to create a Joint Committee to conduct the same was upheld in the case of *Cong. Ruy Elias C. Lopez v. Senate of the Philippines, House of Representatives, et al*, (G.R. No. 163556, June 8, 2004) where the Supreme Court, voting 14-0, ruled:

“Section 4, Article VII of the Constitution expressly empowers Congress “to promulgate its rules for the canvassing of the certificates.” In *Arroyo v. de Venecia* (277 SCRA 268, August 14, 1997), the Court ruled that it had no power to review the internal proceedings of Congress, unless there is a clear violation of the Constitution. Likewise, *Santiago v. Guingona*, (298 SCRA 756, November 18, 1998) held that the Court – under the doctrine of separation of powers – has “no authority to interfere” in the “exclusive realm” of a co-equal branch, absent a showing of grave abuse of discretion. The Court has no authority to restrict or limit the exercise of congressional prerogatives granted by the Constitution.

The creation of the Joint Committee does not constitute grave abuse and cannot be said to have deprived petitioner and the other members of Congress of their congressional prerogatives, because under the very Rules under attack, the decisions and final report of the said Committee shall be subject to the approval of the joint session of both Houses of Congress, voting separately.” (*Copy of the Supreme Court Resolution is attached as Annex “B”*)

**Legal Existence of the Joint Committee  
After Adjournment *Sine Die* of the 12<sup>th</sup> Congress**

The question was raised as to the authority of the Joint Committee to continue the canvassing of votes for President and Vice President, considering that the Congress had adjourned on June 11, 2004.

On June 22, 2004, the Supreme Court, in G.R. No. 163783, held that despite the adjournment *sine die* of Congress there is no legal impediment to the Joint Committee completing the task assigned to it and transmitting its report for the approval of Joint Public Session of both Houses of Congress which may reconvene without need of call by the President to a special session.

**Joint Committee Proceedings**

The Joint Committee, conscious of the constitutional mandate for Congress to proclaim before noon of June 30, 2004, the presidential and vice-presidential candidates garnering the highest number of votes, held meetings pursuant to the Rules on canvassing of votes. The Philippine Institute of Certified Public Accountants (PICPA) assisted the Joint Committee and the

internal auditors of the Senate and the House of Representatives in the canvass. The actual canvass of votes began at 8:00 o'clock in the evening of June 4, 2004 and ended at 8:19 o'clock in the evening of June 20, 2004. The Joint Committee met from Monday to Friday, working on a Saturday and a Sunday, often for more than eight hours a day.

The Joint Committee, guided by the provisions of the Constitution, the Omnibus Election Code, Republic Act No. 7166, the Rules of the Joint Public Session of Congress on canvassing, jurisprudence, and precedents, found all the one hundred eighty (180) certificates of canvass (COCs) from seventy-nine (79) provinces, twenty-two (22) highly urbanized cities, seventy-four (74) Overseas Absentee Voting (OAV) countries, and one (1) Local Absentee Voting (LAV), and three (3) certificates of canvass from Northern Samar, Maguindanao and Lanao del Norte covering special elections held in those provinces, authentic and duly executed. The certificate of canvass of the special elections which was held in three precincts in Nueva Vizcaya was not taken up as it will no longer affect the results of the elections. The COC from Cotabato City which was the last to be transmitted to the Congress was canvassed upon motion of Senator Aquilino Q. Pimentel, Jr.. The votes were read by Senate President Franklin M. Drilon and Speaker Jose C. de Venecia, Jr. upon the request of the Chairmen of the Joint Committee. *(The list of certificates of canvass in the order received by the Senate and the House of Representatives, and opened during the Joint Public Session is attached as Annex "C")*

The Joint Committee, publicly and in the presence of the candidates' counsels, representatives and watchers canvassed the said one hundred eighty (180) certificates of canvass, supported by the statements of votes (SOVs) by city/municipality/district or precinct, at the Session Hall of the House of Representatives.

The counsels of candidates for President and Vice-President were accorded the opportunity to examine all the certificates of canvass and the supporting statements of votes. They articulated and registered, orally and in writing, their objections and manifestations. *(A summary of memoranda submitted by counsels is attached as Annex "D")*

The Joint Committee dealt with several issues raised by the members and the counsels of some of the candidates, to wit:

a) Counsels for candidates Fernando Poe, Jr., Eduardo Villanueva and Loren Legarda interposed continuing objection to the authenticity and due execution of the certificates of canvass because of the lack of specimen signatures and thumb marks of the vice-chairman, members and secretary of the Board of Canvassers (BOCs) and Special Board of Canvassers for Overseas and Local Absentee Voting. Thereafter, upon the request of the Joint Committee, the COMELEC furnished the latter with the requested specimen signatures and thumb marks which were subsequently given to the respective counsels of the candidates.

Counsels further manifested that in some COCs and SOVs, the signatures of poll watchers were missing and that there were no explanations as to their absence. The question was resolved citing the case of *Baterina v. COMELEC* (GR Nos. 95347-49 [1992]), where the Supreme Court ruled that the signature of any watcher present is not a mandatory requirement, and that while the signing of an election return by a watcher is a measure intended to discourage the preparation of a falsified return, the absence of said signature does not give rise to a presumption that the election returns are manufactured or spurious and should consequently be excluded in the canvass, otherwise a party's watcher can easily cause the nullification of election returns reflecting results unfavorable to his candidate by simply refusing to sign the returns.

Objections were likewise raised on the non-availability of security marks on the certificates of canvass. The COMELEC, in a letter dated June 18, 2004, declined the request of the Joint Committee to disclose the security marks on the COC, considering that the disclosure thereof will be inimical to the proper evaluation/examination of all relevant election forms that are subject of election protest cases, and will create a clear and present danger of some elements maliciously imitating these security marks for their selfish gains. (*The copy of the aforesaid letter is attached as Annex "E"*)

b) There were objections aimed to set aside or defer the consideration of the certificates of canvass due to the missing statements of votes or other supporting documents.

In response to the Senate President's directive, the Chairman of the Boards of Canvassers concerned transmitted to the Joint Committee by personal delivery the missing statements of votes and other supporting documents.

c) Objections were also raised with respect to missing precincts, number of votes cast, incomplete entries, and other formal requirements in the COCs and SOVs. Consequently, the Chairmen of the Boards of Canvassers concerned were summoned to appear and explain the inconsistencies before the Joint Committee. Thereafter, all the inconsistencies found in the certificates of canvass and/or statements of votes were satisfactorily explained by them before the Joint Committee. *(The list of provinces with inconsistencies on their COCs and SOVs together with explanations on the observations raised in the Joint Committee relative thereto is attached as Annex "F")*

d) There were also objections raised with respect to alleged erasures, alterations, superimpositions, "snopaking," and padding and shaving of votes in the SOVs. The Joint Committee instructed the objecting counsels to submit their respective memoranda with annexes in lieu of their proffer of evidence. After considering the provisions of Section 30, RA 7166 and Section 14 of the Rules of Canvass, the Joint Committee found no compelling reason or legal basis to exclude any COC from the canvass.

e) Vice-Presidential candidate Loren Legarda spoke and invoked her right under Section 17 of the Rules of Canvass manifesting that erasures and alterations were allegedly found in the SOVs for Barobo, Province of Surigao

del Sur; and for Sto. Tomas, Bolinao and Urbiztondo, all in the Province of Pangasinan. She asked that election returns pertaining thereto be examined.

Senator Aquilino Q. Pimentel, Jr. and Congresswoman Kim Bernardo-Lokin also read into the records a letter of presidential candidate Eduardo Villanueva requesting that at least three (3) election returns be opened to verify erasures and alterations therein.

Counsels for candidates Fernando Poe, Jr., Eduardo Villanueva and Loren Legarda insisted on opening election returns of some provinces and cities.

The Joint Committee ruled that the opening of election returns can only be resorted to upon a showing of discrepancy in any of the six (6) other authentic copies of the COCs as provided for by law. *(The list of the objected COCs with request to resort to the election returns is attached as Annex "G")*

f) Counsels for candidates also invoked the Rules of Court in supplementary application. The Joint Committee, by a majority vote of all its members, the Senate and the House voting separately, found no cogent reason to apply the Rules of Court on Evidence or the Rules of the Senate and of the House, considering that the Rules of Canvass as approved in Joint Public Session of Congress are clear and unambiguous.

g) There were also manifestations on record for the need to review the Overseas Absentee Voting Law and for the COMELEC to ensure the active participation of absentee voters. It was observed that COMELEC may have failed to fully implement the law on absentee voting. The eleven (11) countries

which registered zero votes for all candidates were Afghanistan, Botswana, Mozambique, Norway, Paraguay, Senegal, Uganda, Iraq, Portugal, Mali and Yemen.

In a letter dated June 17, 2004, the COMELEC, through the Honorable Florentino A. Tuason, Jr. Chairman, Committee on Overseas Absentee Voting, explained the reasons thereof. Accordingly,

“x x x. We would like to inform this Honorable Joint Committee that the Commission did not actually conduct voting in these places and neither did we send any COMELEC representative or SBOC Chairpersons thereat, hence, there was no cost outlay involved. Evidently, there was absolutely no expense incurred in these countries. In all probability, these registrants might have indicated in their application to register and to vote *in absentia* that they would be in these countries during elections. Eventually however, these voters were not able to cast their votes as it would necessitate traveling to the embassy/Post which, as mentioned, is situated in another country. This explains the zero vote in the countries under the consular jurisdiction of other Posts.”

On June 18, 2004, Counsels for Fernando Poe, Jr. and Loren Legarda had announced that they may withdraw as counsels in the proceedings in view of the supposed case that was filed against Atty. Harriet Demetriou and Atty. Rufus Rodriguez, which they considered as harassment against the entire membership. The Joint Committee suspended the session to accommodate counsels' request to confer with their principals.

On the same date, at 11:58 o'clock in the evening, the Joint Committee received a formal letter of withdrawal from the counsels for presidential candidate Fernando Poe, Jr. and vice-presidential candidate Loren Legarda. The

Joint Committee, by a majority vote of all its members, the Senate and the House voting separately, proceeded with the canvass because it is impressed with public interest of the highest order, subject to the right of the counsel to examine the COCs and submit their respective memoranda within the canvassing period. *(A copy of said letter is attached as Annex "H").*

The lead counsel of presidential candidate Eduardo Villanueva asked the Joint Committee that he be excused on the same date in order to confer with his principal. Subsequently, his co-counsel appeared before the Joint Committee.

The Joint Committee took all necessary legal steps to clarify and resolve all contentious issues upon a vote of the majority of the members of the Senate and of the House, voting separately.

Upon completion of the preliminary canvass, the Joint Committee found the results of the May 10, 2004 Presidential and Vice-Presidential elections to be as follows:

For President:

1.	LACSON, Panfilo M. (Independent)	3,510,080
2.	MACAPAGAL-ARROYO, Gloria M. (LAKAS-CMD)	12,905,808
3.	POE, Fernando Jr. K. (Koalisyon ng Nagkakaisang Pilipino)	11,782,232
4.	ROCO, Raul S. (Alyansa ng Pagasa/Aksyon Demokratiko)	2,082,762
5.	VILLANUEVA, Eduardo C. (Bangon Pilipinas Movement)	1,988,218

For Vice-President:

- |    |   |            |
|----|---|------------|
| 1. | AQUINO, Herminio S.<br>(Alyansa ng Pagasa/Aksyon Demokratiko) | 981,500    |
| 2. | DE CASTRO, Noli L.<br>(Independent)                           | 15,100,431 |
| 3. | LEGARDA, Loren B.<br>(Koalisyon ng Nagkakaisang Pilipino)     | 14,218,709 |
| 4. | PAJO, Rodolfo T.<br>(Partido Isang Bansa, Isang Diwa)         | 22,244     |

The results of the preliminary canvass show that **Gloria M. Macapagal-Arroyo** and **Noli L. De Castro** received the highest number of votes for President and Vice-President, respectively. *(The duly Certified Tally Sheets of the certificates of canvass is attached as Annex "I")*

### **Recommendations**

In view thereof, the Joint Committee recommends that Congress, as the National Board of Canvassers, approve the Report of the Joint Committee and adopt Resolution of Both Houses No. 2 declaring the results of the National Elections held on May 10, 2004 for the Offices of President and Vice-President and proclaiming **Gloria Macapagal-Arroyo** and **Noli L. De Castro** as the duly elected President and Vice-President of the Republic of the Philippines, respectively.

## JOINT COMMITTEE

### HOUSE PANEL

**RAUL M. GONZALEZ**  
*Chairman*

**FLORENCIO B. ABAD**  
*Vice-Chairman*

**CONSTANCIO G. JARAULA**  
*Member*

**ANTONIO EDUARDO B. NACHURA**  
*Member*

**PROSPERO C. NOGRALES**  
*Member*

**ARTHUR D. DEFENSOR**  
*Member*

**ANTONIO V. CUENCO**  
*Member*

**MARCELINO C. LIBANAN**  
*Member*

**JACINTO V. PARAS**  
*Member*

**AGAPITO A. AQUINO**  
*Member*

**KIM BERNARDO-LOKIN**  
*Member*

### SENATE PANEL

**FRANCIS N. PANGILINAN**  
*Chairman*

**JUAN M. FLAVIER**  
*Vice-Chairman*

**RAMON B. MAGSAYSAY, JR.**  
*Member*

**MANUEL B. VILLAR**  
*Member*

**JOKER P. ARROYO**  
*Member*

**RALPH G. RECTO**  
*Member*

**AQUILINO Q. PIMENTEL, JR.**  
*Member*

**EDGARDO J. ANGARA**  
*Member*

**VICENTE C. SOTTO III**  
*Member*

**SERGIO R. OSMEÑA III**  
*Member*

**TERESA AQUINO-ORETA**  
*Member*

**ALTERNATES:**

**OSCAR S. RODRIGUEZ**

**ROBERT S. JAWORSKI, SR.**

**SALACNIB F. BATERINA**

**RAMON B. REVILLA, SR.**

**CLAVEL A. MARTINEZ**

**RODOLFO G. BIAZON**

**EDUARDO K. VELOSO**

**JOHN HENRY R. OSMEÑA**

**PROSPERO A. PICHAY, JR.**

**LUISA P. EJERCITO-ESTRADA**

**MAURICIO G. DOMOGAN**

**GERARDO S. ESPINA, SR.**

**SATUR C. OCAMPO**

**LORETTA ANN P. ROSALES**

**CHO S. ROCO**

**ROLEX T. SUPLICO**

**EDGAR VALDEZ**

**NOEL M. CARIÑO**

**FRANCIS G. ESCUDERO**

**RODOLFO G. PLAZA**

**JOAQUIN M. CHIPECO**

**SUBSTITUTES:**

**ANTONINO P. ROMAN**

**AURELIO M. UMALI**

**EXEQUIEL B. JAVIER**

**FREDENIL H. CASTRO**

**ALLAN PETER S. CAYETANO**

**ROLANDO G. ANDAYA, JR.**

**OSCAR L. GOZOS**

**JOSE VIRGILIO BAUTISTA**

**CELSO L. LOBREGAT**