

REPUBLIC OF THE PHILIPPINES
COMMISSION ON ELECTIONS
Intramuros, Manila

**IN THE MATTER OF THE PETITION
FOR ACCREDITATION AS CITIZENS'
ARM OF THE COMMISSION ON
ELECTIONS TO CONDUCT THE OPERATION
QUICK COUNT (OQC) IN CONNECTION WITH
THE ELECTION ON MAY 14, 2007**

SPP 07- 001

NATIONAL CITIZENS' MOVEMENT
FOR FREE ELECTION

Petitioner,

X-----x

**MANIFESTATION
AND
REQUEST FOR RE-EXAMINATION**

Petitioner **NATIONAL CITIZENS' MOVEMENT FOR FREE ELECTION**

(NAMFREL), by counsel, most respectfully manifests:

1. On 04 April 2007, Namfrel received the Honorable Commission's Resolution dated 02 April 2007 which granted the Namfrel's Petition for Accreditation.
2. The resolution subjects the effectivity of Namfrel's accreditation upon the removal of Chairman Jose Concepcion both as a member and overall chairman of the said organization.
3. The resolution provides that said condition was derived from COMELEC Resolution No. 7798 which was promulgated on 05

January 2007, the same date when the Namfrel's Petition was filed.

The Pertinent portion of COMELEC Resolution No. 7798 reads:

Whereas, Section 3 of Executive Order No. 94 dated March 2, 1987, provides as follows :

Sec 3. Prohibition on barangay officials.-

“No barangay official shall be appointed as a member of the Board of Election Inspectors or as official watcher of each duly registered major political party or any socio-civic, religious, professional or any similar organization of which they may be members “

xxx xxx.

***NOW THEREFORE**, to insure that the election are peaceful, orderly, regular and credible, the Commission on Elections, by virtue of the powers vested in it by the Constitution, the Omnibus Election Code, Executive Order No. 94, and other election laws, RESOLVED to prohibit :*

1. The appointment of barangay officials which includes the Punong Barangay, Barangay Kagawad, Barangay Secretary, Barangay Treasurer, and Barangay Tanod as Chairman / person and / or Member of the BEIs or as official watcher of any candidate, duly registered major political party, or any similar organization, or any socio-civic , religious , professional, in the May 14.2007 National and Local Elections. The prohibition extends to the barangay officials, employees and tanods, who are members of the accredited citizens, arms”

xxx xxx.

4. Comelec Resolution 7798 was derived from Executive Order 94, issued by former President Corazon Aquino on 17 December 1986. The said Executive Order imposed a prohibition on the appointment of barangay officials as members of BEIs or as official watcher of each duly registered major political party or any socio-civic, religious, professional or any similar organization.

5. Executive Order 94 applies solely to the February 2, 1987 plebiscite. This is clear from the title “AMENDING CERTAIN PROVISIONS OF THE OMNIBUS ELECTION CODE OF THE PHILIPPINES FOR PURPOSES OF THE FEBRUARY 2, 1987 PLEBISCITE AND FOR OTHER PURPOSES”. Moreover, the said law is premised as follows:

“WHEREAS, in the interest of free, orderly and honest conduct of the plebiscite, there is an immediate need to amend Section 52, paragraph (c) of the Omnibus Election Code of the Philippines so as to empower the Commission on Elections to promulgate expeditiously rules and regulations for the plebiscite on February 2, 1987, considering the time element involved.”

6. Executive Order 94 therefore does not apply to other plebiscites or to future elections, whether national or local. Thus, Petitioner respectfully submits that the prohibition contained in Section 3 finds no application in the forthcoming May 2007 elections since its tenor is confined only to the February 2, 1987 plebiscite.

7. Further, the terms of the prohibition contained in the Executive Order 94 are clear: “ No barangay official shall be appointed as members of BEIs or as official watcher of each duly registered major political party or any socio-civic, religious, professional or any similar organization of which they may be members”. The chairman of Namfrel is not and will not be appointed as a member or the BEI nor as a poll watcher of any political party. Accordingly, the prohibition under Executive Order 94 does not apply to him.

8. It is worth emphasizing that Executive Order 94 is a law where no similar prohibition was imposed on barangay officials, employees and tanods, who are members of the accredited citizens’ arms. Thus,

Comelec Resolution 7798 cannot derive its existence from Executive Order 94 because the law itself was never intended to apply to future elections as contained in the Comelec Resolution No.7798.

9. Clearly, Comelec Resolution 7798 was not based on law and is therefore arbitrary and discriminatory. Neither can a Comelec Resolution supplant or go beyond the mandates of a law for the simple reason that Comelec has no law making powers.
10. In any case, on its face, the Resolution only refers to pollwatchers, and Mr. Concepcion is not and would not have been a poll watcher. It is also evident from the whereas clause of the Comelec Resolution that the underlying purpose for imposing the said prohibition was to avoid the possibility of barangay officials wielding their influence during the casting of votes and canvassing stage by entering poll places under the pretext of acting as “poll watchers”. The Namfrel Chairman however, from the nature of his work, does not in any way stay in the precincts as he needs to oversee the overall conduct of quick count. Thus there is no danger of the Namfrel chairman interfering in the proceedings of the BEIs, whether as a member thereof or as a poll watcher. Moreover, as chairman of barangay Forbes, the NAMFREL Chairman cannot be presumed to have such “influence” over all electoral precincts nationwide.
11. In the light of the foregoing, the prohibition expressed in the Executive Order 94, which was used by the Honorable Commission as its basis in issuing Resolution 7798, cannot be construed to extend the prohibition to the Namfrel chairman who is neither appointed as poll watcher or as chairman/ member of the Board of Election Inspectors. The

Chairman of NAMFREL does not perform poll watching duties and does not even enter the polling precincts. What the law seeks to prohibit is the presence of barangay officials in electoral precincts and such cannot be extended to prohibit their participation in civic action groups, if the participation does not result in their acting as poll watchers. Otherwise the prohibition shall violate the freedom to associate guaranteed by the Constitution. Surely, the Comelec also could not have intended the ridiculous scenario of prohibiting religious groups from entering the polling places to ensure peaceful and orderly elections.

12. The dissenting opinion of Commissioner Sarmiento was based solely on the letter from Nassa dated 23 March 2007, which letter has no evidentiary value and should not be taken in deciding the Petition of Namfrel. The said letter was never presented during the proceedings nor formally offered in evidence. Neither has it been admitted, and its author or presenter subjected to cross examination. The Commission has not even served notice on NAMFREL to comment on the letter. Finally, the transmitter or offeror of the letter has not been officially recognized and is not a party to this action. Thus, to take or use the letter against NAMFREL would deprive petitioner of due process to confront adverse or contrary evidence.

13. In a separate dissenting opinion, Commissioner Brawner characterized Namfrel's petition as defective because of the alleged "forgery" of Bishop Gutierrez' signature and the alleged disqualification of Mr. Concepcion. Commissioner Brawner opined that since the Bishop's signature was forged, it follows that the petition was defective since it

lacked the signature of a duly authorized signatory. Whether the signature of Bishop Gutierrez is a forgery is a question of fact which should have been litigated but was not litigated. Neither was the genuineness of the signature of Bishop Gutierrez raised as an issue. Besides, Bishop Gutierrez never disowned the said signature nor moved for the withdrawal of the Petition in the proper course in this action. The COMELEC cannot rely on evidence not admitted in deciding an issue that was not raised. To rule on an issue not in litigation and to rely on evidence not offered nor admitted to resolve an issue violates fundamental due process principles.

14. With respect to the alleged disqualification of Mr. Concepcion and the inability of his signature to effect the Petition, Petitioner respectfully reiterates its view that the Resolution should not affect Mr. Concepcion because he is not and will not be a poll watcher.
15. Petitioner submits in addition that even if the Resolution were to be considered in force, it can only have prospective effect at the earliest seven (7) days and at the latest fifteen (15) days after its publication, which at its earliest would have been seven (7) days after January 7, 2007, the day of its publication. The Petition was filed on January 5, 2007, curiously on the same date of the promulgation of the Resolution. The existence of the Resolution was only discovered by both Petitioner and Oppositor on January 25, 2007 when Commissioner Borra informed the parties of its existence on the first day of the hearing of this Petition.
16. Moreover, a facial examination and plain reading of the Resolution only reveals a prohibition against the appointment of barangay officials

as poll watchers. It does not reveal a prohibition against the appointment of barangay officials as NAMFREL'S chairman. On the first hearing date of this Petition, when the parties first became aware of the Resolution, undersigned counsel made this same manifestation and stated that NAMFREL would be guided by the interpretation of the Commission on whether the prohibition is not exclusive to poll watchers. Even the Commission was not prepared at that date to state its position on the prohibition and could not or did not state that the import Resolution could not be limited to its plain text. Accordingly, the Commission's later interpretation and ruling that the prohibition contained in the Resolution is not confined to poll watchers could not have and should not have been given retroactive effect, in a manner that would have disqualified NAMFREL's petition at the date of filing on January 5, 2007.

17. Commissioner Brawner stressed in his dissenting opinion that Namfrel's failure to secure all the Election Returns puts in question Namfrel's track record and its capability to fulfill the duties of an accredited citizens' arm. As pointed out in our Memorandum¹, this dilemma was brought about by some causes beyond the control of Namfrel. There were series of incidents in the past wherein some of the teachers and members of the Board of Election Inspectors refused to turn over election returns to Namfrel. In addition to this are the submission of unreadable election returns as well as material defects in the returns itself which cannot be possibly tabulated thereby preventing Namfrel from meeting its target of submitting a 100% tabulation. In fact, many cities and municipalities were unable to come

¹ See Par. 30, Petitioners's Memorandum

up with a complete count during the canvass which can be taken judicial notice of by the Honorable Commission.

18. Petitioner most respectfully manifests that there was never an election where the Honorable Commission has come up with 100% official tabulation. In 2004 elections, the Honorable Commission failed to tabulate 21 election returns in Pasay City representing at least 2,100 votes. Also in Manila, there were at least 11 election returns which were not tabulated. Thus, requiring the Petitioner to come up with a 100% tabulation is to require the accredited citizens' arm to perform an impossible undertaking.
19. Finally, NAMFREL respectfully submits that it is simply unfair of Commissioner Brawner to accuse NAMFREL of "trending" when he nor any one has placed a definition of it on record. While NAMFREL has never denied its inability to collect a copy of all election returns, the inability does not by itself lend itself to any conclusion that the inability was contrived or deliberate, or that the results reported from the collected returns are not "credible" or constitute "trending", whatever those terms used by Commissioner Brawner may mean. Indeed, and contrary to the dissent, the Oppositor's witness affirmed during cross examination that there was no basis to conclude or even assert that NAMFREL's report was inaccurate or in any manner inconsistent with the contents of the election returns collected.
20. Nevertheless, even if NAMFREL's opinion on the Resolution differs from the Commission, NAMFREL views the Commission's April 2, 2007 Resolution as mandatory and obliging of immediate compliance by the accredited citizens arm. Accordingly, Mr. Jose Concepcion has

stepped down as Chairman of NAMFREL, and NAMFREL has elected a new Chairman and manifests its current officers below:

Edward S. Go	Chairman
Vicente R. Jayme	Vice-Chairman
Justice Jose Y. Feria	Member
Atty. Ricardo J. Romulo	Member
Jose L. Cuisia, Jr.	Member
Senator Vicente T. Paterno	Member
Sr. Luz Emmanuel Soriano, RA	Member
Amb. Henrietta S. de Villa	Member
Bishop Efraim M. Tendero	Member
Atty. Ricardo P. Guevara	Treasurer
Atty. Jose A. Bernas	Legal Counsel
Damaso G. Magbual	Deputy Secretary General
Eric Jude Alvia	Secretary General

21. NAMFREL accepts the terms of its accreditation and further manifests that it has commenced full efforts into preparing for the performance of its duties and obligations as the Commission's citizens arm.

22. Without affecting its acceptance of the terms of its accreditation, NAMFREL however respectfully requests the Commission re-examine *motu proprio* , without further arguments from Petitioner, the Commission's interpretation of the import of Commission's Resolutions insofar as these prohibit Mr. Concepcion's participation or require Mr. Concepcion's removal as discussed in this Manifestation. While we understand the Commission's objective in arriving at its Resolutions, Petitioner respectfully submits that the specific conclusions in the Resolutions about NAMFREL'S former Chairman, Mr. Concepcion, do not rest on legal and practical bases.

Respectfully submitted. Makati City, 10 April 2007.

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