



SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
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SENATE
P.S. Resolution No. 374

RECEIVED BY: _____

[Handwritten Signature]

Introduced by **Senator Richard J. Gordon**

RESOLUTION
DIRECTING THE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND
INVESTIGATIONS (BLUE RIBBON) TO CONDUCT AN INQUIRY IN AID OF
LEGISLATION ON THE POSSIBLE MALFEASANCE, MISFEASANCE, AND
NONFEASANCE OF THE COMMISSION ON ELECTIONS IN THE
IMPLEMENTATION OF ELECTION LAWS

WHEREAS, Section 2, Article V of the Constitution states that Congress shall pass laws providing for a system for securing, among other things, the sanctity of the ballot;

WHEREAS, Section 2 (1), Article IX C. of the Constitution empowers the Commission on Elections (COMELEC) to enforce and administer all laws and regulations relative to the conduct of an election;

WHEREAS, pursuant to these constitutional mandates, Congress passed Republic Act No. 8436, as amended by Republic Act No. 9369, or the Automated Election Law of the Philippines, where it provides in Section 1 of the said law, that the policy of the State is to ensure free, orderly, honest, peaceful and credible elections, and assure the secrecy and sanctity of the ballot in order that the results of the elections, plebiscites, referenda, and other electoral exercises shall be fast, accurate and reflective of the genuine will of the people;

WHEREAS, in the implementation of both the constitutional and legislative commands, several safeguards were put in place to ensure free, orderly, honest, peaceful and credible automated elections, and to assure the secrecy and sanctity of the ballot, including, but not limited to: (i) a source code review; (ii) the use of digital signatures in the transmission of election returns; (iii) a voter verified paper audit trail; (iv) the use of ultra-violet scanners to detect and prevent the use of spurious ballots; and, (v) random manual audits of select precincts immediately after the voting.

WHEREAS, based on the previous hearing conducted by the Joint Congressional Oversight Committee on the Automated Election System at the Philippine Senate on December 4, 2014, it was found that there was no source code review for the 2010 elections, and the source code review for the 2013 elections happened only after the said elections;

WHEREAS, it has also come to the attention of this Committee that the source code reviews of the: (i) Vote Counting Machine (VCM); (ii) Consolidation and Canvassing System (CCS); and, the (iii) Election Management System (EMS) for the

2016 elections were inadequate, and that the requirement for the deposit of a completely reviewed source code three (3) months before the elections was not complied with;

WHEREAS, while the law mandates that the "election returns transmitted electronically" must be "digitally signed" in order to be "considered as official election results" and "used as the basis for the canvassing of votes and the proclamation of a candidate, the COMELEC issued Resolutions Nos. 8786 and 9640 for the 2010 and 2013 elections, respectively, which totally removed the use of digital signatures by specifically instructing the BEIs not to digitally sign the transmission files with a BEI signature key, thus, causing the system to be wide open to possibilities of "tampering," "hacking" or "unauthorized network intrusion";

WHEREAS, in the 2016 elections, the COMELEC passed Resolution No. 10057 which prescribed the use of only two (2) digital signatures and one (1) machine signature for the transmission of votes, instead of the required three (3) digital signatures for all the members of the Board of Election Inspectors (BEI), even as IT experts in the past had categorically stated that there is no such thing as a machine signature;

WHEREAS, the rationale for the use of authenticated digital signatures of the members of the BEI is to mirror the actual manual signatures placed by the members of the BEI in the election returns to ensure accountability in case of fraud, which cannot be done in the case of machine signatures;

WHEREAS, by necessary implication, "election returns transmitted electronically" but not "digitally signed" cannot be "considered as official election results", nor "used as the basis for the canvassing of votes and the proclamation of a candidate;"

WHEREAS, the COMELEC, in the 2010, 2013 and 2016 elections, removed or deactivated the vote counting machines (VCMs)' voter verified paper audit trails (VVPAT) or voter receipts evidencing the names of the candidates voted for;

WHEREAS, the undersigned filed a Petition for Mandamus before the Supreme Court on February 22, 2016 to compel the COMELEC to activate the VVPAT features of the VCMs, which Petition the Supreme Court granted by a vote of 14-0 in its Resolution dated March 8, 2016, and which the Supreme Court reiterated in denying the COMELEC's Motion for Reconsideration by a vote of 13-0 in another Resolution dated March 17, 2016;

WHEREAS, the COMELEC likewise failed to faithfully implement the Random Manual Audit for the 2010 and 2013 elections, as the precincts subject to audit were already known days before the elections, thus removing the randomness or utility of such ballot audit;

WHEREAS, in the recently concluded 2016 elections, the COMELEC failed to comply with Section 11 of Republic Act No. 9369 requiring a certification from the Technical Evaluation Committee no less than three (3) months before the elections, categorically stating that the automated election system, including its hardware and software components, are operating properly, securely, and accurately, and that in

case of failure to secure such certification, it must explain to the Joint Congressional Oversight Committee in writing within 30 days before the elections; instead it submitted the certification only 12 days before the elections or on April 27, 2016, and without any written explanation, thus casting doubt on the accuracy, functionality, transparency and integrity of the entire automated election system;

WHEREAS, personnel of SMARTMATIC, the COMELEC's service provider for the 2010, 2013 and 2016 elections were reportedly caught tampering with the election results packet data; thus, changing its hash code, spurring a frenzy of accusations and casting doubt on how the same may have adversely affected the sanctity and integrity of the electoral process, and raising concerns from both winning and defeated candidates, that the election results were tampered in certain areas;

WHEREAS, SMARTMATIC received a mere "slap on the wrist" from the COMELEC for its violation of protocols, resulting in the tampering of the election results packet data in the middle of the transmission of votes;

WHEREAS, the COMELEC has adamantly refused, to date, to grant the requests of several parties for an independent system and platforms audit to determine the real extent of the tampering and breach of protocols; and

WHEREAS, these numerous violations, coupled with the COMELEC's disregard of the provisions of the law necessitate an investigation, in aid of legislation, by the Senate Blue Ribbon Committee; Now, therefore, be it

Resolved by the Senate, as it is hereby resolved, to conduct an inquiry in aid of legislation into the possible malfeasance, misfeasance, and nonfeasance of the Commission on Elections in the implementation of election laws.

Adopted,



RICHARD J. GORDON
Senator