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SUPREME COURT  
GUAM

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Attorneys for Real Parties in Interest  
Edward B. Calvo and Raymond Tenorio

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## IN THE SUPREME COURT OF GUAM

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CARL T.C. GUTIERREZ, FRANK  
AGUON, J.R., ,

Supreme Court Case No. WRM10-003

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Petitioners,

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vs.

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THE GUAM ELECTION  
COMMISSION, JOHN BLAS,  
JOSHUA TENORIO, JOSEPH MESA,  
ALICE TAIJERON, JOHN TERLAJE,  
ROBERT CRUZ, MARTHA RUTH,  
JOHN TAITANO,

**REAL PARTIES IN INTEREST  
ANSWER TO PETITIONERS'  
"VERIFIED PETITION"**

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Respondents,

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EDWARD B. CALVO, and  
RAYMOND TENORIO,

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Real Parties in Interest.

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Real Parties in Interest Edward B. Calvo and Raymond Tenorio ("Calvo and

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Tenorio"), through their attorneys of record, Phillips & Bordallo, P.C., by Michael

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F. Phillips and Ricardo D. Bordallo, hereby submit their Answer to Petitioners'

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20102956

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1 “Verified Petition” pursuant to this Court’s December 23, 2010 Order (“GEC and  
2 Calvo/Tenorio shall file and serve an Answer to the Petition ... no later than 8:30  
3 a.m. on Monday, December 27, 2010.”). While Petitioners’ cover page and  
4 verification both refer to a “Verified Petition,” Petitioners failed to file an actual  
5 petition accompanying their supporting brief and emergency motion. This may  
6 also explain this Court providing Petitioners a second opportunity to file an  
7 “Opening Brief” on issues that have not changed since Petitioners filed their first  
8 brief in support of their unfiled petition.  
9

- 10  
11  
12 1. Jurisdiction. Calvo and Tenorio admit this Court is vested with  
13 jurisdiction over petitions for extraordinary writs. Calvo and Tenorio  
14 deny Petitioners have demonstrated good cause for this Court to exercise  
15 such authority and assume jurisdiction in this particular case.  
16
- 17 2. Factual Allegations. This Court invited declarations, exhibits, and even a  
18 stipulated statement of facts. As this Court reminded counsel for Calvo  
19 and Tenorio during the status hearing, this past Friday was a legal  
20 holiday. Counsel received this Court’s Order after the close of business  
21 Thursday evening (December 23, 2010) mandating Calvo and Tenorio  
22 file their Answer and other pleadings no later than 8:30 a.m. Monday,  
23 December 27, 2010.  
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- 1 a. Calvo and Tenorio admit they are citizens and residents of Guam,  
2 and were the Republican Party candidates for Governor and  
3 Lieutenant Governor, respectively, in the 2010 General Election.  
4
- 5 b. Calvo and Tenorio admit the reports released by the Guam  
6 Election Commission during the early morning of November 3,  
7 2010, showed Gutierrez-Aguon garnering approximately 19,296  
8 votes and Calvo-Tenorio garnering approximately 19,879 votes,  
9 with 484 overvotes, 702 undervotes, 165 Republican write-in  
10 votes, and 120 Democrat write-in votes in the November 2, 2010  
11 General Election.  
12
- 13 c. Calvo and Tenorio admit that all Democrat, Republican, and  
14 Independent members present at the Guam Election Commission  
15 meeting of November 6, 2010 voted to certify the results of the  
16 General Election. Calvo and Tenorio further admit the recount  
17 conducted earlier on November 6, 2010 resulted in Calvo-Tenorio  
18 receiving approximately 20,066 votes again defeating Gutierrez-  
19 Aguon receiving only 19,579, with 164 Republican write-in votes,  
20 and 121 Democrat write-in votes.  
21
- 22 d. Calvo and Tenorio do not have sufficient information or time to  
23 obtain sufficient information to form a belief as to the truth of the  
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1 remainder of Petitioners' (Carlo Branch's) factual allegations and  
2 on this basis Calvo and Tenorio enter a general denial to all other  
3 allegations.  
4

5 3. Statement of Related Cases. Pursuant to an Order issued by the District  
6 Court of Guam December 22, 2010, Superior Court Civil Case No.  
7 CV1891-10 was remanded back to the Superior Court by the District  
8 Court of Guam, and District Court Civil Case No. 10-00031 was stayed  
9 by the District Court pending the outcome of proceedings before the  
10 Superior Court of Guam. See Order by United States District Judge John  
11 C. Coughenour, 12/22/10, CV10-00031; CV10-00033, p.4 ("Title 3 of  
12 the Annotated Guam Code, Chapter 12 provides a detailed framework for  
13 the Superior Court of Guam to conduct a special election, hold a trial to  
14 determine a contested election, conduct a recount, annul the prior  
15 certification of results, and declare a new winner.").

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20 4. Statement of Interested Parties. As previously admitted by Petitioners, in  
21 addition to the individuals identified in Petitioners' Verified Petition, the  
22 following individuals have an interest in the outcome of this case:

- 23 a. Each candidate on the General Election ballot for the Guam  
24 Legislature;  
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- b. Each candidate on the General Election ballot for Delegate to the United States Congress;
- c. Each Judge of the Superior Court of Guam and Justice of the Supreme Court of Guam on the General Election ballot for purposes of retainment; and
- d. Each candidate on the General Election ballot for mayor or vice-mayor.

5. Affirmative Defenses.

- a. The de facto officer doctrine applies to the actions of all members of the Guam Election Commission.
- b. The actions of which Petitioners complain are exclusively ministerial thereby entitling Calvo and Tenorio to such performance and rendering moot the need for this Court to determine whether the terms of office expired for certain individuals occupying the positions of members of the Guam Election Commission.
- c. Courts cannot prohibit or enjoin the Guam Election Commission in the performance of its statutory duties pursuant to the Guam election contest laws.

- 1 d. Petitioners are prohibited from collaterally attacking the authority  
2 of the members of the Guam Election Commission.  
3  
4 e. The doctrine of estoppel prevents Petitioners from receiving their  
5 requested relief.  
6  
7 f. The doctrine of laches prevents Petitioners from receiving their  
8 requested relief.  
9  
10 g. The de facto officer doctrine and equity require this Court to grant  
11 only prospective relief and prohibit Petitioners from receiving  
12 retroactive cancelation of either the certification of election results  
13 or issuance of certificates of election.  
14  
15 h. The Petitioners fail to allege any facts demonstrating that  
16 Petitioners should have been victorious in the General Election, or  
17 that the will of the people have been thwarted.  
18  
19 i. Petitioners fail to state a legal cause of action or claim for relief.

20 PUES, Calvo and Tenorio pray for the following relief:

- 21 1. This Court dismiss the Petition and deny Petitioners' claims for relief;  
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23 2. This Court include each of the parties identified in Paragraph 4, above, as  
24 indispensable parties, or invite such parties to participate by filing  
25 Amicus Curaie briefs;  
26  
27 3. This Court award Calvo and Tenorio costs and attorneys fees;  
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1 4. This Court grant further relief as is necessary, fair and just.

2  
3 Respectfully submitted this 27<sup>th</sup> day of December, 2010.

4 **PHILLIPS & BORDALLO, P.C.**  
5 Attorneys for Calvo and Tenorio

6 By:

7   
8 MICHAEL F. PHILLIPS

9 By:

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11 RICARDO D. BORDALLO

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**CERTIFICATE OF SERVICE**


We, MICHAEL F. PHILLIPS and RICARDO D. BORDALLO, hereby certify that on Thursday, the 27<sup>th</sup> day of December, 2010, we will cause the foregoing Real Parties in Interest Answer (filed on December 27, 2010) to Petitioners' Verified Petition to be served on the parties hereto, by delivering and leaving a copy of same at the offices of their respective attorneys of record, as follows:

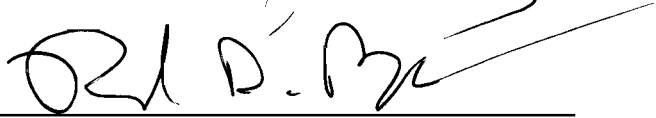
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**CARL T.C. GUTIERREZ, FRANK AGUON,  
JR. and JOHN and JANE DOE CITIZEN  
PLAINTIFFS 1-1000**

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Attorneys for Respondents **THE GUAM  
ELECTION COMMISSION,  
JOHN BLAS, JOSHUA TENORIO,  
JOSEPH MESA, ALICE TAIJERON,  
JOHN TERLAJE, ROBERT CRUZ,  
MARTHA RUTH, and JOHN TAITANO**

Dated this 27<sup>th</sup> day of December, 2010.

**PHILLIPS & BORDALLO, P.C.**  
**Attorneys for Real Parties in  
Interest EDWARD B. CALVO  
and RAY TENORIO**

BY:   
**MICHAEL F. PHILLIPS**

BY:   
**RICARDO D. BORDALLO**