Republic of the Philippines
Supreme Court
Manila

EN BANC

FR. CHRISTIAN B. BUENAFE, FIDES M. LIM, MA. EDELIZA P. HERNANDEZ, CELIA LAGMAN SEVILLA, ROLAND C. VIBAL, AND JOSEPHINE LASCANO,

Petitioners,

- versus -

COMMISSION ON ELECTIONS, FERDINAND ROMUALDEZ MARCOS, JR., THE SENATE OF THE PHILIPPINES, represented by the Senate President, THE HOUSE OF REPRESENTATIVES, represented by the Speaker of the House of Representatives,

Respondents.

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BONIFACIO PARABUAC ILAGAN, SATURNINO CUNANAN OCAMPO, MARIA CAROLINA PAGADUAN ARAULLO, TRINIDAD GERILLA REPUNO, JOANNA KINTANAR CARIÑO, ELISA TITA PEREZ LUBI, LIZA LARGOZA MAZA, DANILO MALLARI DELA FUENTE,

G.R. No. 260374

G.R. No. 260426

CARMENCITA MENDOZA FLORENTINO, DOROTEO CUBACUB ABAYA, JR., ERLINDA NABLE SENTURIAS, SR. ARABELLA CAMMAGAY BALINGAO, SR. CHERRY M. IBARDOLAZA, CSSJB, SR. SUSAN SANTOS ESMILE, SFIC, HOMAR RUBERT ROCA DISTAJO, POLYNNE ESPINEDA DIRA, JAMES CARWYN CANDILA, and JONAS ANGELO LOPENA ABADILLA ,	Present:
Petitioners,	GESMUNDO, *C.J.*, LEONEN, CAGUIOA,* HERNANDO, LAZARO-JAVIER, INTING,** ZALAMEDA, LOPEZ, M. V., GAERLAN, ROSARIO, LOPEZ, J. Y., DIMAAMPAO, MARQUEZ, KHO, JR.*** and SINGH, *JJ.*
- versus -	
COMMISSION ON ELECTIONS, FERDINAND ROMUALDEZ MARCOS, JR., THE SENATE OF THE PHILIPPINES, represented by the Senate President, THE HOUSE OF REPRESENTATIVES, represented by the Speaker of the House of Representatives,	
Respondents.	Promulgated: June 28, 2022

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DECISION

ZALAMEDA, *J.*:

* On Official Leave.

** J. Inting took no part due to the prior participation of Commissioner Socorro B. Inting in the assailed Resolutions of the Commission on Elections.

*** J. Kho, Jr. took no part due to his prior participation as a former Commissioner of the Commission on Elections.

> *After all, we must submit to this idea, that the true principle of a republic is, that the people should choose whom they please to govern them. Representation is imperfect, in proportion as the current of popular favor is checked. This great source of free government, popular election, should be perfectly pure, and the most unbounded liberty allowed.*[1]

The words of Alexander Hamilton, in his speech before the New York Ratifying Convention on 21 June 1788, may have been spoken in another country and in another century, but the same sentiments still ring true for us today.

Even as we acknowledge that elections are the cornerstone of democracy, we also recognize that an overwhelming mandate, as reflected in the votes cast for one candidate cannot, by itself, be the sole basis, nor is it the most compelling reason, to declare one fit for public office.

In every election, citizens put the fate of the nation on their shoulders and carry the burden of establishing a functioning government. The outcome of an election, in turn, endows the elected officials with authority to lead.

The 31,629,783 votes, or 58.77% of the votes cast, do, however, lend more gravity to the Court's exercise of its constitutional power to settle the present controversy. And in situations such as this case, where there is opposition or doubt on the fitness of a candidate to run for the highest political office in the land, it is the Court's duty to step in and be the final arbiter on the matter. The Court must tread with deliberate care in its resolution: any misstep may unravel the very expression of the people's will. Consequently, it is in the interest of our democracy that any doubts on the outcome of the elections be dispelled with a proper and definitive ruling.

Thus, it is not enough for the candidate to obtain the highest number of votes, said candidate must hold the requisite qualifications and abide by the required standards set by law to file for candidacy. In the same vein, to undo an election, there must be compelling and unequivocal evidence of the candidate's disqualification or failure to meet the requirements for filing a certificate of candidacy.

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[1] 2 JOHN C. HAMILTON, ed., THE WORKS OF ALEXANDER HAMILTON 444 (1850). <https://books.google.com.ph/books?id=OENMAAAAcAAJ&lpg=PA444&dq=alexander%20hamilton%2C%20%22people%20should%20choose%20whom%20they%20please%20to%20govern%20them%22&pg=PA444#v=onepage&q=alexander%20hamilton,%20%22people%20should%20choose%20whom%20they%20please%20to%20govern%20them%22&f=false> (visited 13 June 2022).

Upon a careful and deliberate study of the issues raised, the Court resolves to dismiss the consolidated petitions. Respondent Ferdinand Marcos, Jr. (respondent Marcos, Jr.) possesses all the qualifications and none of the disqualifications to run for president. Furthermore, his Certificate of Candidacy (COC) contains no false material representation and is, therefore, valid.

The Cases

G.R. No. 260374 is a Petition for *Certiorari*[2] with prayer for the issuance of a Temporary Restraining Order (TRO) (Buenafe Petition). Petitioners Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, Celia Lagman Sevilla, Ronald C. Vibal, and Josephine Lascano (petitioners Buenafe, *et al.*) seek to annul and set aside the Resolution[3] dated 17 January 2022 of the Commission on Elections (COMELEC) Second Division and the Resolution[4] dated 10 May 2022 of the COMELEC *En Banc* in SPA No. 21-156 (DC) entitled, *Fr. Christian B. Buenafe, et al. v. Ferdinand Romualdez Marcos, Jr.*

G.R. No. 260426 is a Petition for *Certiorari*[5] with prayer for the issuance of a TRO and/or Preliminary Injunction (Ilagan Petition). Filed by petitioners Bonifacio Parabuac Ilagan, Saturnino Cunanan Ocampo, Maria Carolina Pagaduan Araullo, Trinidad Gerlita Repuno, Joanna Kintanar Cariño, Elisa Tita Perez Lubi, Liza Largoza Maza, Danilo Mallari dela Fuente, Carmencita Mendoza Florentino, Doroteo Cubacub Abaya, Jr., Erlinda Nable Santurias, Sr. Arabella Cammagay Balingao, Sr. Cherry M. Ibardaloza, CSSJB, Sr. Susan Santos Esmile, SFIC, Homar Rubert Roca Distajo, Polynne Espineda Dira, James Carwyn Candila, and Jonas Angelo Lopena Abadilla (petitioners Ilagan, *et al.*), the petition assails the Resolution[6] dated 10 February 2022 of the COMELEC Former First Division and Resolution[7] dated 10 May 2022 of the COMELEC *En Banc* in SPA No. 21-212 (DC).

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2 *Rollo* (G.R. No. 260374), pp. 3-71.

3 Id. at 94-125; signed by Presiding Commissioner Socorro B. Inting, Commissioner – Senior Member Antonio T. Kho, Jr. (now a Member of this Court), and Commissioner – Junior Member Rey E. Bulay. Then Commissioner Kho, Jr. had a Separate Opinion.

4 *Rollo* (G.R. No. 260374), pp. 72-82; signed by Chairman Saidamen B. Pangarungan, Commissioners Marlon S. Casquejo, Socorro B. Inting, Aimee P. Ferolino, Rey E. Bulay, and Aimee S. Torrefranca-Neri. Commissioner George Erwin M. Garcia took no part. Commissioners Casquejo and Inting had Separate Concurring Opinions.

5 *Rollo* (G.R. No. 260426), pp. 3-57.

6 Id. at 198-238; signed by Presiding Commissioner Marlon S. Casquejo and Commissioner Aimee P. Ferolino. Presiding Commissioner Casquejo had a Separate Opinion.

7 Id. at 285-299; signed by Chairman Saidamen B. Pangarungan, Commissioners Marlon S. Casquejo, Socorro B. Inting, Aimee P. Ferolino, Rey E. Bulay, and Aimee Torrefranca-Neri. Commissioner George Erwin M. Garcia took no part. Commissioner Casquejo had a Separate Concurring Opinion.

The Facts

On 2 November 2021, petitioners Buenafe, *et al.* filed before the COMELEC a Petition to Deny Due Course to or Cancel the COC of respondent Marcos, Jr. under Section 78, in relation to Section 74, Article IX of Batas Pambansa Blg. (BP) 881, or the Omnibus Election Code (OEC).[8] Petitioners Buenafe, *et al.* identified themselves as Filipinos of legal age, registered voters, and officers of various non-government organizations and civic groups.[9] They claim that respondent Marcos, Jr. made false material representations under oath when he filed his COC for President in the 2022 National Elections with the COMELEC.[10]

Subsequently, on 20 November 2021, petitioners Ilagan, *et al.* filed before the COMELEC a Petition for Disqualification of respondent Marcos, Jr. under Section 12, Article I of the OEC.[11] Petitioners Ilagan, *et al.* identified themselves as Filipinos of legal age who are martial law victims and rights advocates.[12]

Petitioners Buenafe, *et al.* and Ilagan, *et al.* referred to the same set of criminal cases for the violation of the National Internal Revenue Code of 1977, as amended (1977 NIRC), involving respondent Marcos, Jr.[13]

On 27 June 1990, the Special Tax Audit Team (audit team) created by then Commissioner of Internal Revenue Jose U. Ong (Commissioner Ong) commenced an investigation of the internal revenue tax and estate tax liabilities of the late President Ferdinand E. Marcos, his immediate family,

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8 *Rollo* (G.R. No. 260374), pp. 133-185.

9 Petitioners Buenafe, et al. identified themselves as officers of their respective organizations: (1) Fr. Christian B. Buenafe, Co-Chairperson of the Task Force Detainees of the Philippines (TFDP); (2) Fides Lim, Board Chairperson of the Kapatid-Families & Friends of Political Prisoners (KAPATID); (3) Ma. Edeliza P. Hernandez, Executive Director of the Medical Action Group, Inc. (MAG); (4) Celia Lagman Sevilla, Secretary General of the Families of Victims of Involuntary Disappearance Inc. (FIND); (5) Roland C. Vibal, Luzon Representative, Council of Leaders of the Philippine Alliance of Human Rights Advocates Inc. (PAHRA); and (6) Josephine Lascano, Executive Director of Balay Rehabilitation Center, Inc. (BALAY).

10 *Rollo* (G.R. No. 260374), pp. 163-164.

11 *Rollo* (G.R. No. 260426), pp. 58-117.

12 Id. at 61.

13 Petitioners Buenafe, et al. attached to their petition the following: (1) the 27 July 1995 Decision of the Regional Trial Court of Quezon City, Branch 105 (RTC) in Criminal Case Nos. Q-91-24390 and Q-91-24391, Q-92-29212 to Q-92-29217; (2) the 31 October 1997 Decision of the Court of Appeals in CA-G.R. CR No. 18569; (3) the 31 August 2001 Entry of Judgment by this Court in G.R. No. 148434; (4) the 02 December 2021 Certification issued by the RTC that there was no satisfaction of the decision; and (5) the 14 December 2021 Certification issued by the RTC that there was no record of payment. *Rollo* (G.R. No. 260374), pp. 217-245.

Petitioners Ilagan, et al. attached to their petition the following: (1) the 31 October 1997 Decision of the CA in in CA-G.R. CR No. 18569 and (2) the 02 December 2021 Certification issued by the RTC that there is no record on file of compliance of payment and entry in the criminal docket. *Rollo* (G.R. No. 260426), pp. 168-183.

as well as his alleged "associates and cronies."[14] The audit sought to determine whether the taxpayer: (1) earned income; (2) filed the required income tax; and (3) made the corresponding tax payment.[15] The audit team submitted its findings to Commissioner Ong, which prompted him to file a letter complaint dated 25 July 1991 with the Secretary of Justice.[16]

In Criminal Cases Nos. Q-91-24391, Q-92-29212, Q-92-29213, and Q-92-29217, respondent Marcos, Jr. was charged with violation of the 1977 NIRC for failure to file his income tax returns for the years 1982, 1983, 1984, and 1985.[17] In Criminal Cases Nos. Q-92-29216, Q-92-29215, Q-92-29214, and Q-91-24390, respondent Marcos, Jr. was charged with violation of the 1977 NIRC for failure to pay income taxes due, exclusive of surcharges and interests, in the amounts of ₱107.80 for 1982, ₱3,911.00 for 1983, ₱1,828.48 for 1984, and ₱2,656.95 for 1985.[18]

Respondent Marcos, Jr. entered a plea of not guilty during arraignment.[19] The eight cases were tried jointly.

The Regional Trial Court of Quezon City, Branch 105 (RTC) declared that respondent Marcos, Jr. was elected Vice-Governor, and later Governor, of the province of Ilocos Norte from 03 November 1982 up to 31 March 1986.[20] On 27 July 1995, after trial, the RTC ruled in this manner:

> In view of the foregoing, and after a thorough and careful examination of the evidence presented, this Court believes that the prosecution had successfully established the guilt of the accused beyond reasonable doubt.
>
> However, in Criminal Cases Nos. Q-92-29217, Q-92-29212, Q-92-29213, Q-92-29216, Q-92-29215 and Q-92-29214, the imposable penalty must be based on Section 73 since the violations occurred before the effectivity of PD 1994 and the former is favorable to the accused. In Criminal Cases Nos. Q-91-24391 and Q-91-folded page the imposable penalty as to imprisonment must be based on Section 288 per amendment under PD 1994 which renumbered Section 73 folded page since the violation occurred after the effectivity of the Presidential Decree.
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> WHEREFORE, the Court finds accused Ferdinand Romualdez Marcos II guilty beyond reasonable doubt [of violation of] the National Internal Revenue Code of 1977, as amended, and sentences him as follows:

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[14] *Rollo* (G.R. No. 260374), pp. 217-218.
[15] Id.
[16] Id.
[17] Id. at 217.
[18] Id. We refer to the cases collectively as the RTC Decision.
[19] Id.
[20] Id. at 219-220.

> 1. To serve imprisonment of six (6) months and pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212, and Q-92-29217 for failure to file income tax returns for the years 1982, 1983, and 1984;
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> 2. To serve imprisonment of six (6) months and pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29216, Q-92-29215, and Q-92-29214 for failure to pay income taxes for the years 1982, 1983, and 1984;
>
> 3. To serve imprisonment of three (3) years and pay a fine of P30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for the year 1985; and
>
> 4. To serve imprisonment of three (3) years and pay a fine of P30,000.00 in Criminal Case No. Q-91-24390 for failure to pay income tax for the year 1985; and,
>
> 5. To pay the Bureau of Internal Revenue the taxes due, including such other penalties, interests, and surcharges.
>
> SO ORDERED.[21]

Respondent Marcos, Jr. proceeded to appeal the RTC Decision before the Court of Appeals (CA). In a petition docketed as CA-G.R. CR No. 18569, he questioned the RTC's finding that the failure of the Bureau of Internal Revenue (BIR) to comply with existing laws,[22] which required prior notice to him, did not derogate the due process and equal protection clauses of the Constitution.[23]

In a Decision dated 31 October 1997 (CA Decision),[24] the CA agreed with respondent Marcos, Jr. that there was insufficient notice from the BIR. It further declared that respondent Marcos, Jr. should not have been held to answer for the criminal charges filed against him for non-payment of deficiency income tax liabilities.[25] On the other hand, even as the stipulation on deficiency income taxes between the BIR and respondent Marcos, Jr. should still be satisfied since his acquittal does not amount to extinction of the civil liability, the surcharges should not be imposed because these presuppose notice and demand.[26] Ultimately, respondent Marcos, Jr. was not able to prove that the charges for non-filing of the required income tax returns were incorrect.[27]

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[21] Id. at 223-224.; penned by Judge Benedicto B. Ulep.

[22] Respondent Marcos, Jr. referred to the NATIONAL INTERNAL REVENUE CODE OF 1997, Sec. 51(b), Memorandum Circular No. 12-85, and Revenue Memorandum Orders Nos. 28-83, 38-88, and 10-89.

[23] *Rollo* (G.R. No. 260374), p. 225.

[24] Id. at 225-239; penned by Associate Justice Gloria C. Paras and concurred in by Associate Justices Lourdes K. Tayao-Jaguros and Oswaldo D. Agcaoili.

[25] Id. at 234-236.

[26] Id. at 238.

[27] Id.

The CA ruled thus:

> WHEREFORE, the Decision of the trial court is hereby MODIFIED as follows:
>
> 1. ACQUITTING the accused-appellant of the charges for violation of Section 50 of the NIRC for non-payment of deficiency taxes for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-02-29216, Q-92-29215, Q-92-29214, and Q-91-24390; and FINDING him guilty beyond reasonable doubt of violation of Section 45 of the NIRC for failure to file income tax returns for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-91-24391, Q-92-29212, Q-92-29213, and Q-92-29217;
>
> 2. Ordering the appellant to pay to the BIR the deficiency income taxes with interest at the legal rate until fully paid;
>
> 3. Ordering the appellant to pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212 and Q-29217 for failure to file income tax returns for the years 1982, 1983, and 1984; and the fine of P30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, with surcharges.
>
> SO ORDERED.[28]

Respondent Marcos, Jr. intended to appeal the CA Decision before this Court. However, he later filed an Urgent Motion to Withdraw his Motion for Extension of Time to File a Petition for Review.[29] We granted his motion to withdraw in a Resolution dated 08 August 2001.[30] Our Entry of Judgment was made on 31 August 2001.[31] The CA made an Entry of Judgment on 10 November 1997.[32]

On 02 December 2021, the RTC released a certification stating that there is no record on file of respondent Marcos, Jr.'s compliance of payment or satisfaction of its Decision dated 27 July 1995 or that of the CA's Decision dated 31 October 1997.[33] Neither was there any entry in the criminal docket of the RTC Decision dated 27 July 1995 as affirmed and modified by the CA.[34]

Petitioners Buenafe, *et al.* also cited this Court's ruling in *Ferdinand R. Marcos, II v. Court of Appeals*.[35] In that case, We affirmed the Decision

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[28] *Rollo* (G.R. No. 260374), pp. 238-239; penned by Associate Justice Gloria C. Paras and concurred in by Associate Justices Lourdes K. Tayao-Jaguros and Oswaldo D. Agcaoili.
[29] Id. at 240.
[30] Id.
[31] Id. at 241.
[32] Id. at 242.
[33] Id. at 243.
[34] Id. at 243; signed by Officer-in-Charge Rowena Sto. Tomas-Bacud.
[35] 339 Phil. 253 (1997).

dated 29 November 1994 of the CA in CA-G.R. SP No. 31363, which stated that the deficiency income tax assessments and estate tax assessments, amounting to ₱23,292,607,638.00, are already final and unappealable. Further, We held that the levy of real properties is a tax remedy permitted by law.

The COMELEC Resolutions

In SPA No. 21-156 (DC), petitioners Buenafe, *et al.* argued before the COMELEC that respondent Marcos, Jr. committed false material representation when he stated in his COC that he is eligible to run for President.[36] They maintained that respondent Marcos, Jr.'s prior conviction carries with it the accessory penalty of perpetual disqualification from holding any public office, to vote, and to participate in any election.[37]

The COMELEC Second Division issued Summons with Notice of Preliminary Conference dated 11 November 2021 and directed respondent Marcos, Jr. to file a verified Answer within a non-extendible period of five days from receipt.[38] He filed a Motion for Extension of Time to File Answer on 16 November 2021, which the COMELEC Second Division granted on 18 November 2021.[39] The Answer was filed on 19 November 2021 and included a prayer for Face-to-Face Oral Arguments.[40] On the same date, petitioners Buenafe, *et al.* moved to reconsider the Order dated 18 November 2021 and insisted that the period to file an Answer was non-extendible.[41] Citing its authority to suspend the reglementary periods in the interest of justice, the COMELEC Second Division denied petitioners Buenafe, *et al.*'s motion for reconsideration.[42]

Prior to the preliminary conference scheduled on 26 November 2021, petitioners Buenafe, *et al.* filed the following: (1) Request for the Issuance of Subpoena *Duces Tecum* on 19 November 2021; (2) Compliance *Ex Abundanti Ad Cautelam* with Ex Parte Urgent Motion for Issuance of Subpoena *Duces Tecum* on 23 November 2021; (3) Summary of Documents, also on 23 November 2021; and (4) Bill of Exceptions on 24 November 2021.[43]

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[36] *Rollo* (G.R. No. 260374), pp. 133-185.
[37] Id.
[38] Id. at 246-248.
[39] Id. at 249-251, 248-259.
[40] Id. at 306-312.
[41] Id. at 260-269.
[42] Id. at 276-278.
[43] Id. at 279-305.

Both petitioners Buenafe, *et al.* and respondent Marcos, Jr. appeared through counsel during the preliminary conference on 26 November 2021.[44] Neither party offered any stipulation of facts.[45] In his Memorandum dated 17 December 2021, respondent Marcos, Jr. objected to petitioners Buenafe, *et al.*'s marking of exhibits.[46]

In its Order dated 13 December 2021,[47] the COMELEC Second Division denied the following: (1) petitioners Buenafe, *et al.*'s Request for the Issuance of Subpoena *Duces Tecum* and Urgent Motion for Issuance of Subpoena *Duces Tecum*; and (2) respondent Marcos, Jr.'s Prayer for Face-to-Face Oral Arguments.

Both parties submitted their Memoranda on 20 December 2021.[48] In its Resolution dated 17 January 2022,[49] the COMELEC Second Division denied the petition for lack of merit. It considered the issue of whether respondent Marcos, Jr.'s COC should be denied due course or canceled under Section 78 of the OEC on the ground that it contains false material representations.[50] It went on to discuss the merits of the case even as it declared that the petition should be summarily dismissed for invoking grounds of disqualification in a petition for cancellation and/or denial of due course of a COC.[51]

The COMELEC Second Division ruled that respondent Marcos, Jr.'s material representations are not false, *i.e.*, that he is eligible for the position of President and that he is not perpetually disqualified from public office.[52] It underscored that the CA Decision did not mete out the penalty of perpetual disqualification from holding public office.[53] It also found, as a matter of judicial notice, that respondent Marcos, Jr. ceased to be a public officer when he and his family were forced to leave the Philippines on 25 February 1986.[54] The penalty of perpetual disqualification from public office under Section 286 of Presidential Decree No. (PD) 1994, which amended Section 286(c) of the 1977 NIRC, thus cannot apply to respondent Marcos, Jr. since he was already a private individual when he failed to file his 1985 income tax return.[55] The COMELEC Second Division also concluded that

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44 Id. at 98.
45 Id.
46 Id.
47 Id. at 348-352; signed by Presiding Commissioner Socorro B. Inting.
48 Id. at 99.
49 Id. at 94-125.
50 Id. at 99.
51 Id. at 102.
52 Id. at 105-114.
53 Id.
54 Id. at 110-111.
55 Id.

respondent Marcos, Jr. had no intention to deceive the electorate about his qualifications for public office.[56]

The COMELEC Second Division reiterated this Court's declaration in *Republic v. Ferdinand Marcos II and Imelda R. Marcos*[57] that failure to file an income tax return is not a crime involving moral turpitude.[58] Moreover, failure to file income tax returns is not tax evasion.[59]

Commissioner (now a Member of this Court) Antonio T. Kho, Jr. filed a Separate Opinion[60] where he agreed with most of the points of the Resolution. However, he opined that, unlike its usage in the Revised Penal Code (RPC), the penalty of perpetual disqualification in the 1977 NIRC is a principal penalty, which must be expressly specified in the judgment of conviction. Thus, he concluded that there is no legal justification to deny due course to or cancel respondent Marcos, Jr.'s COC because his representations are not false.

On 20 January 2022, petitioners Buenafe, *et al.* filed a Motion for Partial Reconsideration with the COMELEC *En Banc*.[61] Respondent Marcos, Jr. filed a Motion for Leave to file Comment/Opposition with attached Comment/Opposition on 25 January 2022.[62]

In a Resolution dated 10 May 2022,[63] the COMELEC *En Banc* denied petitioners Buenafe, *et al.*'s Motion for Partial Reconsideration and affirmed the Resolution dated 17 January 2022 of the COMELEC Second Division. It held that the Motion for Partial Reconsideration failed to raise new matters or issues that warrant the reversal of the questioned Resolution.

Commissioners Socorro B. Inting (Commissioner Inting) and Marlon S. Casquejo (Commissioner Casquejo) wrote Separate Concurring Opinions. Commissioner Inting emphasized that petitioners Buenafe, *et al.* deliberately misquoted the applicable law, noting that the penalty of imposing both a fine and imprisonment only became mandatory on 11 December 1998 with the passage of Republic Act No. (RA) 8424, or the 1997 NIRC. Therefore, the CA cannot apply the penalty of imprisonment without violating the constitutional proscription on *ex post facto* laws.[64]

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56 Id. at 114-116.
57 612 Phil. 355 (2009).
58 *Rollo* (G.R. No. 260374), pp. 117-123.
59 Id.
60 Id. at 126-132.
61 Id. at 191-216.
62 Id. at 76.
63 Id. at 72-82.
64 Id. at 83-87.

On the other hand, Commissioner Casquejo maintained that the COMELEC does not have jurisdiction to determine whether the judgment handed down by a court of law on a tax-related case is void. As such, the COMELEC does not have the power to review nor amend decisions of the CA.[65]

Meanwhile, in the Resolution[66] dated 10 February 2022, the COMELEC Former First Division resolved the Petition for Disqualification filed by petitioners Ilagan, *et al.*, docketed as SPA No. 21-212 (DC), as well as the two other Petitions for Disqualification, that of Akbayan, et. al in SPA No. 21-232 (DC), and of Abubakar Mangelen (Mangelen) in SPA No. 21-233.

Petitioners Ilagan, *et al.* argued that the penalty of perpetual disqualification from public office should rightfully be imposed upon respondent Marcos, Jr. since he was a public official when he violated the 1977 NIRC.[67] Further assailing the validity of the CA Decision, they insisted that the unlawful deletion of the penalty of imprisonment rendered the judgment void and produced no legal effect.[68] They also alleged that respondent Marcos, Jr.'s conviction amounts to moral turpitude.[69] Finally, petitioners Ilagan, *et al.* asserted that respondent Marcos, Jr. made false material representation when he stated in Item No. 22 of his COC that "he has not been found liable for an offense which carries with it the accessory penalty of perpetual disqualification to hold public office, which has become final and executory."[70]

The COMELEC Former First Division issued the following on 20 December 2021: (1) Notices and Summons with Notice of Preliminary Conference and requested the City Election Officer of 1st District of Pasay City and Election Officer of Batac, Ilocos Norte to serve the Summons to respondent Marcos, Jr.; and (2) Notice and Order to inform the counsel of petitioners Ilagan, *et al.* to submit the requisite proof of service.[71] The following day, Notices and Summons were personally served to respondent Marcos, Jr. at his address in Pasay City.[72]

The parties marked their documentary exhibits during the preliminary conference on 07 January 2022.[73] They were then directed to submit their

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65 Id. at 88-93.
66 *Rollo* (G.R. No. 260426), pp. 198-238.
67 Id. at 204-207.
68 Id.
69 Id.
70 Id. at 207.
71 Id. at 209.
72 Id.
73 Id. at 214-215.

memoranda within forty-eight (48) hours.[74] Petitioners Ilagan, *et al.* submitted via email their Memoranda on 09 January 2022.[75]

At the scheduled preliminary conference on 06 January 2022, respondent Marcos, Jr. manifested that he would not be able to personally appear before the COMELEC.[76] He stated that he was in mandatory isolation after being in close contact with an individual who tested positive for Covid-19.[77] He confirmed this by submitting a medical certificate issued by his attending physician.[78]

On 11 January 2022, petitioners Ilagan, *et al.* filed an Opposition with Manifestation and Motion for Leave of Court to Admit Attached Opposition with Manifestation.[79] They alleged that the documents submitted by respondent Marcos, Jr. should be stricken off the records because his Memorandum lacked a formal offer of evidence.[80] Respondent Marcos, Jr. submitted a Consolidated Formal Offer of Evidence on 13 January 2021.[81]

The COMELEC Former First Division considered the following issues whether respondent Marcos, Jr.: (1) is perpetually disqualified from running for public office; (2) has been sentenced by final judgment to a penalty of more than eighteen months of imprisonment; (3) has been convicted by final judgment of a crime involving moral turpitude; and (4) is qualified to be elected President of the Philippines.[82]

In a Resolution dated 10 February 2022,[83] the COMELEC Former First Division dismissed all three petitions for lack of merit.

First, the COMELEC Former First Division held that the failure to file income tax returns was not originally penalized with perpetual disqualification under the 1977 NIRC.[84] It came into force only upon the effectivity of its amending law, Presidential Decree No. (PD) 1994, on 01 January 1986.[85] Moreover, the penalty of perpetual disqualification was never imposed by the RTC nor by the CA.[86] It is a principal penalty, not merely accessory, for violation of the 1977 NIRC.[87] Thus, the imposition of

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74 Id. at 216-217.
75 Id.
76 Id. at 213-214.
77 Id.
78 Id.
79 Id. at 216.
80 Id.
81 Id.
82 Id. at 217.
83 Id. at 198-238.
84 Id. at 217-222.
85 Id.
86 Id.
87 Id.

that particular penalty should be included in the dispositive portion of the decision.[88]

Second, respondent Marcos, Jr. was not penalized with imprisonment of more than eighteen months.[89] The COMELEC First Division stressed that the CA correctly removed the penalty of imprisonment meted by the RTC and imposed only a fine of ₱2,000.00 for each charge of failure to file an income tax return. It held that such modification is best left to the sound discretion of the CA and is not within the power of the COMELEC to review.[90]

Third, failure to file an income tax return is not a crime that involves moral turpitude.[91] It is not inherently wrong in the absence of a law punishing it.[92] There is no fraud involved as it is a mere omission on the part of the taxpayer.[93] Failure to file an income tax return is not a form of tax evasion.[94] The COMELEC Former First Division found no evidence that respondent Marcos, Jr. voluntarily and intentionally violated the law.[95] It noted the BIR certification that stated the compliance by respondent Marcos, Jr. with the CA Decision and the payment of deficiency taxes and fines.[96]

Fourth, respondent Marcos, Jr. is qualified to be elected as President of the Philippines.[97] His sentence to pay fines does not fall under any of the instances when a person may be disqualified to hold public office as provided in Section 12 of the OEC, namely: (1) declared by competent authority insane or incompetent; (2) sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months; or (3) sentenced by final judgment for a crime involving moral turpitude.[98]

Commissioner Casquejo wrote a Separate Concurring Opinion,[99] underscoring petitioners' lack of standing to question the CA's judgment. He further averred that the COMELEC will not exercise its jurisdiction to modify a decision that has long been final.[100] Commissioner Casquejo also asserted that the amendment introduced by Section 252(c) of the 1997 NIRC

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88 Id.
89 Id. at 223-227.
90 Id.
91 Id. at 227-235.
92 Id.
93 Id.
94 Id.
95 Id.
96 Id.
97 Id. at 235-237.
98 Id.
99 Id. at 240-250.
100 Id.

shall not be retroactively applied to respondent Marcos, Jr. Finally, non-filing of income tax returns does not equate to moral turpitude.[101]

Petitioners Ilagan, *et al.*, along with the two other sets of petitioners, filed their respective motions for reconsideration.[102]

In its Resolution dated 10 May 2022, [103] the COMELEC *En Banc* denied the motions for reconsideration filed by petitioners Ilagan, *et al.*, as well as those filed by Akbayan, *et al.*, and Mangelen. The COMELEC *En Banc* held that all three motions failed to raise new matters that would warrant a reversal of the COMELEC Former First Division's Resolution.[104]

Commissioner Casquejo again wrote a Separate Concurring Opinion,[105] asserting that respondent Marcos, Jr. met the requirements for a candidate for President. Hence, there was no reason to disqualify respondent Marcos, Jr.[106] He likewise reminded the public that the COMELEC will not be used to declare as void a judgment that has long attained finality.[107]

The Elections and the Present Petitions

The National Elections proceeded on 09 May 2022, as scheduled. Respondent Marcos, Jr. garnered 31,629,783 votes, or 58.77% of the votes cast.[108]

The Buenafe Petition, which also sought the issuance of a TRO to enjoin Congress from canvassing the votes cast for President and from proclaiming respondent Marcos, Jr. as the duly elected President of the Philippines, was filed on 18 May 2022.[109] Respondent Marcos, Jr. filed a Manifestation to the Buenafe Petition the next day where he argued that canvassing of both Houses is mandatory.[110]

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[101] Id.
[102] Id. at 251-279.
[103] Id. at 285-299.
[104] Id.
[105] Id. at 300-311.
[106] Id.
[107] Id.
[108] *Rollo* (G.R. No. 260374), pp. 661-662.
[109] Id. at 3.
[110] Id. at 496-501.

This Court required respondent Marcos, Jr. to file his Comment to the Buenafe Petition on 19 May 2022.[111] The Comment was filed on 31 May 2022,[112] or before the deadline on 03 June 2022.

In the meantime, Congress convened as the National Board of Canvassers (NBOC) in a joint session on 24 May 2022.[113] Respondent Marcos, Jr. was proclaimed as the winning presidential candidate on 25 May 2022.[114]

The Ilagan Petition was also filed on 18 May 2022.[115] However, petitioners Ilagan, *et al.* were further required by this Court to comply with certain procedural requirements. In an Order dated 30 May 2022, We ordered the following to submit their respective comments: COMELEC; respondent Marcos, Jr.; Senate of the Philippines, represented by the Senate President; and House of Representatives, represented by the Speaker of the House.[116] The Court further directed the consolidation of the Buenafe and Ilagan Petitions.[117]

Respondent Marcos, Jr. filed his Comment on the Buenafe Petition on 19 May 2022.[118] Subsequently, he manifested that he was adopting said Comment to the Ilagan Petition insofar as the arguments therein are applicable, averring thus:

> x x x x
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> 5. The Buenafe Petition is a Petition to Cancel or to Deny Due Course [Respondent Marcos, Jr.'s] Certificate of Candidacy under Section 78 of the OEC while the Ilagan Petition is a Petition for Disqualification under Section 12. While there are stark differences between these two (2) kinds of election cases, viz, they have different grounds, different periods, and different effects, both the Buenafe and Ilagan Petitions are based on the Court of Appeals Decision in *People of the Philippines vs. Ferdinand R. Marcos, Jr.*, CA-G.R. CR No. 18569, October 31, 1997.[119]

Issues

Petitioners Buenafe, *et al.* raise the following issues:

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[111] Id. at 478-480.
[112] Id. at 526-576.
[113] Id. at 655.
[114] Id.
[115] *Rollo* (G.R. No. 260426), p. 3.
[116] Id. at 323-325.
[117] Id.
[118] *Rollo* (G.R. No. 260374), pp. 526-576.
[119] Id. at 830.

I. Whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to cancel the subject COC of Respondent Marcos, Jr. and ruling that:

A. The Petition to Cancel COC should be summarily dismissed for allegedly combining grounds for disqualification and cancellation of COC, supposedly in violation of the COMELEC Rules.

B. Respondent Marcos, Jr.'s material representations, i.e., that he is eligible for the position of President and that he has not been convicted of a crime punished with the penalty of perpetual disqualification from public office, are not false;

C. The accessory penalty of Perpetual Disqualification is not deemed imposed by operation of law in the judgment of conviction of respondent Marcos, Jr.;

D. Respondent Marcos, Jr.'s status as a public officer at the time of the commission of the offense he was convicted of is not a conclusive and incontrovertible fact, [and]

E. Respondent Marcos, Jr. did not deliberately attempt to mislead, misinform, or deceive the electorate.

II. Whether the subject COC of respondent Marcos, Jr. should be cancelled and the respondent declared as not having been a candidate in the 2022 National Elections.[120]

Meanwhile, petitioners Ilagan, *et al.* make the following assignment of errors:

[The] COMELEC (En Banc) acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction in denying the motion for reconsideration and affirming the COMELEC (Former First Division) Resolution:

A. xxx in ruling that petitioners failed to raise new matters that would warrant the reversal of the COMELEC (Former First Division) Resolution.

B. xxx in ruling that petitioners failed to raise issues and provide grounds to prove that the evidence is insufficient to justify the COMELEC (Former First Division) Resolution.

C. xxx in ruling that the petitioners failed to raise issues and provide grounds to prove that the COMELEC (Former First Division) Resolution is contrary to law:

1. Respondent convicted candidate Marcos, Jr. was perpetually disqualified from running for public office.

[120] Id. at 33.

> 2. Respondent convicted candidate Marcos, Jr. was meted a penalty of imprisonment of more than eighteen (18) months or for a crime involving moral turpitude.
>
> 3. Failure to file income tax returns for four (4) consecutive years is inherently wrong and constitutes moral turpitude.[121]

Respondent Marcos, Jr., for his part, asserts the following:

Issues

1. Whether the Supreme Court still has jurisdiction to rule upon the eligibility of [respondent Marcos, Jr.].

2. Whether the temporary restraining order sought for by petitioners [Buenafe, et al.] shall be issued.

3. Whether the [COMELEC] committed grave abuse of discretion in ruling that [respondent Marcos, Jr.] did not commit any material misrepresentation in his COC.

Arguments

I. The "Petition" must be dismissed for lack of jurisdiction. At this point, it is only the Presidential Electoral Tribunal which may inquire into the eligibility of [respondent].

II. The Honorable Court is without jurisdiction to issue the temporary restraining order ("TRO") and/or enjoin and restrain Congress from canvassing the votes cast for [respondent]. In addition, the request for a temporary restraining order has become moot.

III. Assuming without conceding that the Supreme Court still has jurisdiction, the Petition must still be dismissed for lack of merit.

> a. The Decision of the COMELEC Second Division and the COMELEC En Banc on the absence of any false material representation in the COC of [respondent] is a finding that is entitled to great weight and must be accorded full respect.
>
> b. [The] COMELEC correctly ruled that the petition for cancellation was subject to summary dismissal.
>
> c. [Respondent Marcos, Jr.] did not commit any material misrepresentation in his COC.
>
> 1. None of the grounds alleged by Petitioners is MATERIAL.

[121] *Rollo* (G.R. No. 260426), pp. 15-16.

2. [Respondent] did not commit any false representation in his COC because the penalty of perpetual absolute disqualification was never imposed against him.

    i. Section 252(c) of the 1977 National Internal Revenue Code, as amended, is not *ipso facto* imposed upon the mere fact of conviction.

    ii. *Jalosjos, Jr. v. COMELEC* finds no application in the case at bar.

    iii. The Court of Appeals did not impose the penalty of perpetual disqualification against [respondent Marcos, Jr.].

    iv. [Petitioner Buenafe, et al.'s] claim that the status of [respondent Marcos, Jr.] as a public officer at the time of the commission of the offense is a "conclusive and incontrovertible fact" is bereft of basis.

3. [Respondent Marcos, Jr.] had no intention to mislead, misinform, and deceive the electorate.[122]

The COMELEC, meanwhile, argues for the dismissal of both the Buenafe and Ilagan Petitions. We identify the grounds it raised as follows:

[For both Buenafe and Ilagan Petitions]

I. The petition does not present an actual case or controversy since it has been rendered moot and academic by the proclamation made by Congress acting as NBOC that xxx respondent [Marcos, Jr.] is the duly elected President of the Philippines.[123]

II. In any event, the petition raises the matter of xxx respondent [Marcos, Jr.'s] qualifications which now falls under the jurisdiction of the Presidential Electoral Tribunal.[124]

III. xxx Respondent [Marcos, Jr.] is an eligible candidate, and his COC is valid. Therefore, the candidate with the next highest number of votes cannot be proclaimed as President.[125]

[For the Buenafe Petition]

IV. Even assuming that the Honorable Court has jurisdiction over the instant case, the COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions.

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[122] *Rollo* (G.R. No. 260374), pp. 540-542.
[123] COMELEC's Comment (G.R. No. 260374), p. 9; (G.R. No. 260426), p. 10.
[124] Id.
[125] COMELEC's Comment (G.R. No. 260374), p. 11; (G.R. No. 260426), p. 11

A. The petition failed to impute grave abuse of discretion on the part of the COMELEC, thus, the Honorable Court should uphold the decision of the administrative body created by the Constitution with the expertise, specialized skills, and knowledge on the issue.

B. The petition for cancellation of COC filed before the COMELEC included grounds for disqualification of a candidate, in violation of Section 1, Rule 23 of the COMELEC Rules of Procedure.

C. xxx Respondent [Marcos, Jr.'s] act of signing and subscribing to the COC that he is eligible for office under Item 11 thereof does not constitute material misrepresentation of his eligibility.

D. xxx Respondent [Marcos, Jr.'s] checking of the "No" box in question no. 22 in the COC does not constitute false material representation as he was never convicted of an offense which imposed the penalty of perpetual disqualification to hold public office.

E. The accessory penalty of perpetual disqualification was not deemed imposed by operation of law in the judgment of conviction of xxx [respondent Marcos, Jr.]

i. Perpetual disqualification did not attach as an accessory penalty considering that the principal penalty of imprisonment was deleted by the CA.

ii. The failure to file an ITR does not amount to a crime involving moral turpitude which carries the penalty of perpetual disqualification.

iii. xxx respondent [Marcos, Jr.'s] status as a public officer at the time of the commission of the offense is not a conclusive and incontrovertible fact.[126]

[For the Ilagan Petition]

V. The COMELEC did not commit grave abuse of discretion.

A. The evidence of xxx respondent [Marcos, Jr.] is sufficient to justify the Resolution of the COMELEC Former First Division.

B. The Honorable Court should sustain the decision of the administrative body with the presumed expertise in the laws it is entrusted to enforce.

C. The conviction of xxx respondent [Marcos, Jr.] for failure to file his [income tax returns] did not disqualify him from holding any public office.

D. xxx [R]espondent [Marcos, Jr.] is qualified to be elected as President of the Philippines.

[126] COMELEC's Comment (G.R. No. 260374), pp. 9-11.

i. The CA Decision is not void and has already attained finality.

ii. xxx [R]espondent [Marcos, Jr.] has been sentenced by final judgment to a penalty of more than 18 months of imprisonment.

iii. xxx [R]espondent [Marcos, Jr.] has not been sentenced by final judgment for a crime involving moral turpitude.

VI. Petitioners [Ilagan, et al.] are not entitled to the issuance of a TRO/Writ of Preliminary Injunction.[127]

The Senate filed a Manifestation[128] in lieu of Comment. It stated that the Senate and the House of Representatives have duly approved to proclaim respondent Marcos, Jr. as the duly elected President of the Philippines.

The House of Representatives, on the other hand, filed an Opposition *Ad Cautelam*[129] in lieu of Comment. It argues that this Court does not have jurisdiction to enjoin or restrain Congress in its functions as the NBOC for the positions of the President and Vice President. Even assuming *arguendo* that this Court has the jurisdiction or authority to issue the TRO prayed for in the Buenafe Petition, the acts sought to be enjoined are *fait accompli*.

Ruling of the Court

The consolidated petitions are DISMISSED. The Court holds that respondent Marcos, Jr. is qualified to run for President, and that his COC is valid.

This Court is well-aware of its singular responsibility. This is not the first time that We are asked to decide whether a candidate for President is qualified after elections have been conducted, votes have been counted, and winners have been proclaimed. There is precedent to declare this case moot had respondent Marcos, Jr. not garnered the highest number of votes.[130]

In the cases where the qualifications of a presidential candidate were questioned, the issues sought to be determined involved questions on

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[127] COMELEC's Comment (G.R. No. 260426), pp. 10-11.
[128] *Rollo* (G.R. No. 260374), pp. 582-591.
[129] Id. at 637-649.
[130] *See Pormento v. Estrada*, 643 Phil. 735 (2010).

citizenship,[131] and both citizenship and residency.[132] These issues were definitively decided before the conduct of the elections.

The cases involving the winners of the two highest positions in the Executive branch that were decided after the conduct of the elections did not question the qualifications of the candidates or the validity of their COCs. All of these cases were election protests,[133] adjudicated by this Court acting as the Presidential Electoral Tribunal (PET), where the second placers questioned the number of votes of the proclaimed winners and sought to be proclaimed in their stead.

This Court, in all the cases involving controversies over the candidacies or election of the President or Vice-President, has always asserted its jurisdiction to decide the cases brought before it under the authority vested upon it by the Constitution. We take the same stance here and decide on the issues raised in the present Petitions.

We deem it necessary to state at the outset that the qualifications for the candidates for President are not limited to those enumerated in the Constitution. Section 2, Article VII of the 1987 Constitution provides:

> Sec. 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

Additionally, a candidate for President may also find his or her COC canceled under grounds found in statutes such as the OEC. Specifically, Section 69 of the OEC has laid down the requirements to weed out nuisance candidates for elective positions, including those for President.[134] It reads:

> Sec. 69. *Nuisance candidates.* - The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for

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[131] *Tecson v. COMELEC*, 468 Phil. 421 (2004).

[132] *Poe-Llamanzares v. COMELEC*, 782 Phil. 292 (2016).

[133] *Defensor-Santiago v. Ramos*, PET Case No. 001, 13 February 1996, 323 Phil. 665 (1996); *Poe v. Macapagal-Arroyo*, PET Case No. 02, 29 March 2005, 494 Phil. 137 (2005); *Legarda v. De Castro*, PET Case No. 003, 18 January 2008, 566 Phil. 123 (2008); *Roxas v. Binay*, PET Case No. 004, 16 August 2016, 793 Phil. 9 (2016); *Marcos, Jr. v. Robredo*, PET Case No. 005, 15 October 2019.

[134] This Court decreed Eddie Conde Gil (*Gil v. COMELEC*, G.R. No. 162885, 27 April 2004), Rizalito Y. David (*David v. COMELEC*, G.R. No. 221768, 12 January 2016), Simeon de Castro (*De Castro, Jr. v. COMELEC*, G.R. No. 221979, 02 February 201602 February 2016), and Rev. Elly Velez Lao Pamatong (*Pamatong v. COMELEC*, 470 Phil. 711 (2004)) as nuisance candidates for President.

the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

I. A petition to deny due course or to cancel a COC is distinct from a petition for disqualification

We acknowledge that there are distinctions between the remedies sought by the petitioners in these consolidated cases. The present petitions stem from two cases before the COMELEC: (1) SPA Case No. 21-156 (DC), filed by petitioners Buenafe, *et al.*, which sought to deny due course to or cancel respondent Marcos, Jr.'s COC; and (2) SPA No. 21-212 (DC), filed by petitioners Ilagan, *et al.*, which sought to disqualify respondent Marcos, Jr. as a candidate for President.

A petition to deny due course to or cancel COC is governed by Section 78 in relation to Section 74, of the OEC, to wit:

> Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy.* — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person **exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false**. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.
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> Sec. 74. *Contents of certificate of candidacy.* — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that **he is eligible for said office**; if for Member of the *Batasang Pambansa*, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge. xxx (Emphases supplied.)

On the other hand, a petition for disqualification may be filed pursuant to Sections 12 or 68 of the OEC.[135] The provisions under the OEC state, in relevant part:

> Sec. 12. *Disqualifications*. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.
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> These disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.
>
> xxx
>
> Sec. 68. *Disqualifications*. - Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

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[135] *See* Republic Act 7160, Sec. 40, or the LOCAL GOVERNMENT CODE (LGC), for grounds for disqualification for candidates to local elective positions.

Sec. 40. *Disqualifications*. - The following persons are disqualified from running for any elective local position:
(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
(b) Those removed from office as a result of an administrative case;
(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;
(d) Those with dual citizenship;
(e) Fugitives from justice in criminal or non-political cases here or abroad;
(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
(g) The insane or feeble-minded.

A. A petition to deny due course or to cancel a COC shares similarities with a petition for disqualification

Apart from having the same respondent, these consolidated petitions share further similarities. For one, they are both pre-election remedies with a similar objective: to prevent a purportedly ineligible candidate from running for an elective position.[136] In addition, they can be filed by **any registered voter** or any duly registered political party, organization, or coalition of political parties.[137]

On this score, and based on our examination of the records, there appears to be no real disagreement on the matter of petitioners' standing to file these cases. The records show that the present Petitions were filed by petitioners Buenafe, *et al.* and Ilagan, *et al.* in their capacities as citizens, **registered voters,** martial law victims and rights advocates.[138] Although the COMELEC did not appear to have any issues on the matter initially, it now contests petitioners' standing, on the theory that the instant petitions have been rendered moot by respondent Marcos, Jr.'s supervening proclamation.[139] The COMELEC maintains that since the issues raised against respondent Marcos, Jr.'s qualifications are essentially election contests, which fall under the exclusive jurisdiction of the PET,[140] petitioners, to have standing, must show proof that they were either a registered candidate for the presidency who received the second or third highest number of votes, or a voter who voted in the May 2022 elections.[141]

We will discuss the questions of mootness and jurisdiction in another part of this Decision. Nevertheless, and for purposes of settling the issue of standing, suffice to state that petitioners, as the parties aggrieved by the denial of their respective petitions before the COMELEC, are allowed under the Rules of Court to assail the judgment or final order or resolution of the COMELEC before the Supreme Court through a petition for *certiorari* under Rule 65.[142] Significantly, respondent Marcos, Jr. never challenged petitioners' standing in any of the pleadings he filed before the COMELEC and this Court.[143]

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[136] *Munder v. COMELEC*, 675 Phil. 300 (2011).
[137] COMELEC RULES OF PROCEDURE, Rules 23 and 25, as amended by Resolution No. 9523.
[138] *Rollo* (G.R. No. 260374), pp. 8-9; *rollo* (G.R. No. 260426), p. 61.
[139] Id. at 664-669.
[140] Id. at 672.
[141] Id. at 672-674.
[142] RULES OF COURT, Rule 64, Sec. 2.
[143] *See Rollo* (G.R. No. 260374), pp. 306-312.

B. A petition to deny due course to or to cancel a COC and a petition for disqualification are different remedies

Ultimately, however, a petition to deny due course to or to cancel COC and a petition for disqualification are "different remedies, based on different grounds, and resulting in different eventualities."[144]

First, the two remedies are anchored on *distinct grounds*: whereas an action under Section 78 of the OEC is concerned with the **false representation** by a candidate as to material information in the COC,[145] a petition for disqualification relates to the declaration of a candidate as ineligible or lacking in quality or accomplishment fit for the elective position said candidate is seeking.[146] To prosper, the former requires proof of deliberate attempt to mislead, misinform, or hide a fact[147] relating to the candidate's requisite residency, age, citizenship, or any other legal qualification necessary to run for elective office;[148] the latter, possession of a disqualification as declared by a final decision of a competent court, or as found by the Commission.[149]

Second, they have *different prescriptive periods*: a petition to deny due course to or cancel a COC may be filed within five days from the last day of filing of COCs, but not later than 25 days from the filing of the COC sought to be canceled; a petition for disqualification may be filed any day after the last day of the filing of COC, but not later than the date of the proclamation.[150]

Third, both have *markedly distinct effects*: a disqualified person is merely prohibited to continue as a candidate, while the person whose certificate is canceled or denied due course is not treated as a candidate at all.[151] Moreover, a disqualified candidate may still be substituted[152] if they

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[144] *Dela Cruz v. COMELEC*, 698 Phil. 548 (2012), citing *Fermin v. COMELEC*, 595 Phil. 449 (2008).
[145] *Munder v. COMELEC*, supra.
[146] *Amora, Jr. v. COMELEC*, 655 Phil. 467 (2011).
[147] *Hayundini v. COMELEC*, 733 Phil. 822 (2014).
[148] *Maruhom v. COMELEC*, 611 Phil. 501 (2009).
[149] *Francisco v. COMELEC*, 831 Phil. 106 (2018).
[150] *Munder v. COMELEC*, supra.
[151] *Fermin v. COMELEC*, supra.
[152] Sec. 77. *Candidates in case of death, disqualification or withdrawal of another.* — If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of election day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is candidate or, in case of candidates to be voted for by the entire electorate of the country, with the Commission.

had a valid COC in the first place. However, one whose COC was denied due course or canceled cannot be substituted because the law considers him or her to not have been a candidate at all.[153]

While the grounds for a petition for disqualification are limited to Sections 12 and 68 of the OEC, and, for local elective officials, Section 40 of the LGC, the same grounds may be invoked in a petition to deny due course to or cancel COC if these involve the representations required under Section 78.

The case of *Chua v. COMELEC*[154] (*Chua*) is instructive on this point. In *Chua*, a Petition to Deny Due Course to and/or Cancel COC was filed against Arlene Chua on the date of her proclamation as councilor based on the allegation that she was a dual citizen and a permanent resident of the United States of America (U.S.). Notwithstanding the caption of the petition, the COMELEC considered the same as one for Disqualification since the ground cited falls under Section 40 of the LGC. As such, the COMELEC found that the petition was timely filed pursuant to Rule 25 of the COMELEC Rules of Procedure, as amended. The Court, faced with the issue of whether the petition was for disqualification or to deny due course to or cancel COC, elucidated that the choice of remedy lies with the petitioner, to wit:

> It is true that under Section 74 of the Omnibus Election Code, persons who file their certificates of candidacy declare that they are not a permanent resident or immigrant to a foreign country. Therefore, a petition to deny due course [to] or cancel a certificate of candidacy may likewise be filed against a permanent resident of a foreign country seeking an elective post in the Philippines on the ground of material misrepresentation in the certificate of candidacy.
>
> What remedy to avail himself or herself of, however, depends on the petitioner. **If the false material representation in the certificate of candidacy relates to a ground for disqualification, the petitioner may choose whether to file a petition to deny due course [to] or cancel a certificate of candidacy or a petition for disqualification, so long as the petition filed complies with the requirements under the law.**
>
> Before the Commission on Elections, private respondent Fragata had a choice of filing either a petition to deny due course [to] or cancel petitioner's certificate of candidacy or a petition for disqualification. xxx (Emphasis supplied.)

As in *Chua*, Section 12 of the OEC may likewise be invoked as a ground for a petition to deny due course to or cancel COC since Section 74 of the OEC requires a person filing a COC to declare that he is eligible for

[153] *Miranda v. Abaya*, 370 Phil. 642 (1999).
[154] 783 Phil. 876 (2016).

office. Thus, in *Ty-Delgado v. HRET*[155] (*Ty-Delgado*), We found that therein petitioner committed false material representation in his COC as to his eligibility given that he had been convicted by a final judgment for a crime involving moral turpitude, which is a ground for disqualification under Section 12 of the OEC.

II. This Court has jurisdiction over the present petitions

A. The petitions are not moot

A case is moot when a supervening event has terminated the legal issue between the parties, such that this Court is left with nothing to resolve. It can no longer grant any relief or enforce any right, and anything it says on the matter will have no practical use or value.[156] This is not the scenario We have here.

The issues raised in both the Buenafe and Ilagan Petitions – whether respondent Marcos, Jr. is guilty of material misrepresentation of his eligibility and whether he suffers any of the grounds for disqualification – are not rendered moot by his receipt of the highest number of votes or by his subsequent proclamation. The petitions raise fundamental questions as to whether respondent Marcos, Jr. is qualified to be a candidate for President. These are actual and justiciable controversies that the Court must resolve in the exercise of its judicial power. We cannot stress enough that the qualification of the candidate is not waived by his or her subsequent election to the office. A candidate may obtain 99% of the votes cast, but if he or she is found to possess any of the grounds for disqualification, our laws prohibit such candidate from occupying public office.

In its Comment, the COMELEC argues that the case was mooted by the completion of the electoral process, where respondent Marcos, Jr. obtained an overwhelming number of votes, and his proclamation as the President-elect.[157]

However, the cases relied upon by the COMELEC are not on all fours with the present Petitions. In *Perez v. Provincial Board of Nueva Ecija,*[158] We ruled that a provincial fiscal is deemed *ipso facto* resigned from office upon his filing of a COC for Mayor of Cabanatuan City, Nueva Ecija. Meanwhile,

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[155] 779 Phil. 268 (2016).

[156] *Express Telecommunications Co., Inc. v. AZ Communications, Inc.*, G.R. No. 196902, 13 July 2020, citing *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, 728 Phil. 535 (2014).

[157] *Rollo* (G.R. No. 260374), pp. 665-666.

[158] 198 Phil. 572 (1982).

in *Morelos v. Dela Rosa*,[159] We dismissed a petition to annul the election of *barrio* officials for being moot due to the expiration of their term of office.

The COMELEC's use of Our pronouncement in *Quizon v. COMELEC*[160] (*Quizon*) should likewise be clarified. To justify overlooking irregularities in the COC, We explained:

> As to the alleged **irregularity in the filing of the certificate of candidacy**, it is important to note that this Court has repeatedly held that provisions of the election law regarding certificates of candidacy, such as signing and swearing on the same, as well as the information required to be stated therein, are considered mandatory prior to the elections. Thereafter, they are regarded as merely directory to give effect to the will of the people. In the instant case, Puno won by an overwhelming number of votes. Technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself, as in this case.[161] (Emphasis supplied and citations omitted.)

We underscore, however, that Our pronouncement in *Quizon* is limited to technical irregularities in the COC (such as signing and swearing on the same and information required to be stated) and not the eligibility of a candidate.

B. The conditions for the filing of petitions before the Presidential electoral Tribunal have not been met

Respondent Marcos, Jr. and the COMELEC argue that this Court has no jurisdiction over the Petitions since exclusive jurisdiction now lies with the PET.[162]

The last paragraph of Section 4, Article VII of the 1987 Constitution provides that "[t]he Supreme Court, sitting *en banc*, shall be the sole judge of all contests, relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate rules for the purpose." This is echoed in Rule 13 of A.M. No. 10-4-29-SC, or the 2010 Rules of the Presidential Electoral Tribunal, which reads:

> Rule 13. *Jurisdiction.* - The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines.

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[159] 190 Phil. 562 (1981).
[160] 569 Phil. 323 (2008). *See also Sinaca v. Mula and COMELEC*, 373 Phil. 896 (1999).
[161] Id.
[162] *Rollo* (G.R. No. 260374), pp. 542-543 and 669-672.

1. An election contest is initiated through a petition against a winning candidate who has assumed office

The 1987 Constitution mandates the creation of Electoral Tribunals for only four offices: President, Vice-President, Senator, and Member of the House of Representatives. It is recognized that Section 4, Article VII, which refers to the President and Vice-President, is similarly worded to Section 17, Article VI, which refers to Senators and Members of the House of Representatives. Both provisions describe the respective Electoral Tribunals as being the "sole judge" of all contests relating to the election, returns, and qualifications of their respective subjects. The rulings on the trigger point for the exercise of the jurisdiction of the Senate Electoral Tribunal (SET) and the House of Representatives Electoral Tribunal (HRET) are thus instructive for identifying when the jurisdiction of the PET should be invoked.

Our ruling in *Reyes v. Commission on Elections*[163] (*Reyes*) painstakingly described the conditions for the exercise of the jurisdiction of the HRET:

> *First,* the HRET does not acquire jurisdiction over the issue of petitioner's qualifications, as well as over the assailed COMELEC Resolutions, unless a petition is duly filed with said tribunal. Petitioner has not averred that she has filed such action.
>
> *Second,* the jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives, as stated in Section 17, Article VI of the 1987 Constitution:
>
> > Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective **Members**.
>
> As held in *Marcos v. COMELEC,* the HRET does not have jurisdiction over a candidate who is not a member of the House of Representatives, *to wit*:
>
> > As to the House of Representatives Electoral Tribunal's supposed assumption of jurisdiction over the issue of petitioner's qualifications after the May 8, 1995 elections, suffice it to say that HRET's jurisdiction as the sole judge of all contests relating to the elections, returns and qualifications of members of Congress begins **only after a candidate has become a member of the House of**

[163] 712 Phil. 192 (2013).

> **Representatives. Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.** (Emphasis supplied.)

The next inquiry, then, is when is a candidate considered a Member of the House of Representatives?

In *Vinzons-Chato v. COMELEC* citing *Aggabao v. COMELEC* and *Guerrero v. COMELEC*, the Court ruled that:

> The Court has invariably held that once a winning candidate has been **proclaimed, taken his oath**, and **assumed office** as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. (Emphasis supplied.)

This pronouncement was reiterated in the case of *Limkaichong v. COMELEC*, wherein the Court, referring to the jurisdiction of the COMELEC *vis-à-vis* the HRET, held that:

> The Court has invariably held that once a winning candidate has **been proclaimed, taken his oath**, and **assumed office** as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. (Emphasis supplied.)

This was again affirmed in *Gonzalez v. COMELEC*, to wit:

> After **proclamation, taking of oath** and **assumption of office** by Gonzalez, jurisdiction over the matter of his qualifications, as well as questions regarding the conduct of election and contested returns — were transferred to the HRET as the constitutional body created to pass upon the same. (Emphasis supplied.)

From the foregoing, it is then clear that to be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office.[164] (Citations omitted)

Applying the ruling in *Reyes* to the present petitions, this Court, sitting *En Banc,* can only take cognizance of an election contest if the following requisites concur: (a) a petition is filed before it; and (b) the petition is filed against a Presidential or Vice-Presidential candidate who has been validly proclaimed, properly taken his or her oath, and assumed office.

[164] Id.

These conditions are not present here. The Buenafe and Ilagan Petitions are filed under Rule 65 assailing the Resolutions of the COMELEC *En Banc*. While respondent Marcos, Jr. has been proclaimed as the Presidential candidate with the highest number of obtained votes, he has yet to take his oath and assume office. As Associate Justice Jhosep Y. Lopez astutely pointed out, the term of office begins at noon on the 30th day of June following the election. Hence, as long as the petitions remain with this Court before 30 June 2022, this Court has jurisdiction to resolve them.[165]

2. No petition has been filed before the PET

Based on current records, no petition for an election contest has been filed before the PET. An election protest should be filed within thirty days after the proclamation of the winner.[166] On the other hand, a petition for *quo warranto* should be filed within ten days after the proclamation of the winner.[167]

The petitioner in an election protest is limited to the registered candidate for President or Vice-President of the Philippines who received the second or third highest number of votes. On the other hand, a *quo warranto* case may be filed by any registered voter who has voted in the election concerned.

An election protest is anchored on allegations of electoral frauds, anomalies, or irregularities in the protested precincts, while a petition for *quo warranto* attacks the protestee's ineligibility or specific acts of disloyalty to the Republic of the Philippines.[168]

In any case, the proclamation, oath-taking, and assumption of the President result in removing from the jurisdiction of this Court any pre-proclamation remedy elevated to the Court from the COMELEC.

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[165] *See* J. J.Y. Lopez's Reflections, p. 4.

[166] The 2010 RULES OF THE PRESIDENTIAL ELECTORAL TRIBUNAL, Rule 15.

[167] Id. at Rule 16. *See also* J. Brion's Dissent in *Reyes:*

> In the context of the present case, by holding that the COMELEC retained jurisdiction (because Reyes, although a proclaimed winner, has not yet assumed office), the majority effectively emasculates the HRET of its jurisdiction as it allows the filing of an election protest or a petition for quo warranto only after the assumption to office by the candidate (i.e, on June 30 in the usual case). To illustrate using the dates of the present case, any election protest or a petition for quo warranto filed after June 30 or more than fifteen (15) days from Reyes' proclamation on May 18, 2013, shall certainly be dismissed outright by the HRET for having been filed out of time under the HRET rules.

[168] Id. at Rule 17.

C. The PET is a function of the Supreme Court En Banc

The peculiar scenario availing here is that the present Petitions are pending before Us after the same were elevated from the COMELEC after the conduct of the elections. The PET, which is this Court sitting *en banc*, has to exercise exclusive jurisdiction over the issues of election, returns, and qualification upon the assumption to office of respondent Marcos, Jr. The question then is: should We dismiss these petitions and wait for the same petitions to be filed before Us sitting as the PET?

To arrive at the answer, We revisit the history of the PET and its relation to the Court as elucidated in *Macalintal v. Presidential Electoral Tribunal*,[169] thus:

> Article VII, Section 4, paragraph 7 of the 1987 Constitution is an innovation. The precursors of the present Constitution did not contain similar provisions and instead vested upon the legislature all phases of presidential and vice-presidential elections — from the canvassing of election returns, to the proclamation of the president-elect and the vice-president elect, and even the determination, by ordinary legislation, of whether such proclamations may be contested. Unless the legislature enacted a law creating an institution that would hear election contests in the Presidential and Vice-Presidential race, a defeated candidate had no legal right to demand a recount of the votes cast for the office involved or to challenge the ineligibility of the proclaimed candidate. Effectively, presidential and vice-presidential contests were non-justiciable in the then prevailing milieu.
>
> The omission in the 1935 Constitution was intentional. It was mainly influenced by the absence of a similar provision in its pattern, the Federal Constitution of the United States. Rather, the creation of such tribunal was left to the determination of the National Assembly. xxx
>
> To fill the void in the 1935 Constitution, the National Assembly enacted R.A. No. 1793, establishing an independent PET to try, hear, and decide protests contesting the election of President and Vice-President. The Chief Justice and the Associate Justices of the Supreme Court were tasked to sit as its Chairman and Members, respectively. Its composition was extended to retired Supreme Court Justices and incumbent Court of Appeals Justices who may be appointed as substitutes for ill, absent, or temporarily incapacitated regular members.
>
> The eleven-member tribunal was empowered to promulgate rules for the conduct of its proceedings. It was mandated to sit *en banc* in deciding presidential and vice-presidential contests and authorized to exercise powers similar to those conferred upon courts of justice, including the issuance of subpoena, taking of depositions, arrest of

[169] 650 Phil. 326 (2010).

witnesses to compel their appearance, production of documents and other evidence, and the power to punish contemptuous acts and bearings. The tribunal was assigned a Clerk, subordinate officers, and employees necessary for the efficient performance of its functions.

R.A. No. 1793 was implicitly repealed and superseded by the 1973 Constitution which replaced the bicameral legislature under the 1935 Constitution with the unicameral body of a parliamentary government.

With the 1973 Constitution, a PET was rendered irrelevant, considering that the President was not directly chosen by the people but elected from among the members of the National Assembly, while the position of Vice-President was constitutionally non-existent.

In 1981, several modifications were introduced to the parliamentary system. Executive power was restored to the President who was elected directly by the people. An Executive Committee was formed to assist the President in the performance of his functions and duties. Eventually, the Executive Committee was abolished and the Office of Vice-President was installed anew.

These changes prompted the National Assembly to revive the PET by enacting, on December 3, 1985, Batas Pambansa Bilang (B.P. Blg.) 884, entitled *"An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Election Contests in the Office of the President and Vice-President of the Philippines, Appropriating Funds Therefor and for Other Purposes."* This tribunal was composed of nine members, three of whom were the Chief Justice of the Supreme Court and two Associate Justices designated by him, while the six were divided equally between representatives of the majority and minority parties in the Batasang Pambansa.

Aside from the license to wield powers akin to those of a court of justice, the PET was permitted to recommend the prosecution of persons, whether public officers or private individuals, who in its opinion had participated in any irregularity connected with the canvassing and/or accomplishing of election returns.

The independence of the tribunal was highlighted by a provision allocating a specific budget from the national treasury or Special Activities Fund for its operational expenses. It was empowered to appoint its own clerk in accordance with its rules. However, the subordinate officers were strictly employees of the judiciary or other officers of the government who were merely designated to the tribunal.

xxx

With R.A. No. 1793 as framework, the 1986 Constitutional Commission transformed the then statutory PET into a constitutional institution, albeit without its traditional nomenclature:

FR. BERNAS.

> ....
> .... So it became necessary to create a Presidential Electoral Tribunal. What we have done is to constitutionalize what was statutory but it is not an infringement on the separation of powers because the power being given to the Supreme Court is a judicial power.
>
> xxx

> Be that as it may, we hasten to clarify the structure of the PET as a legitimate progeny of Section 4, Article VII of the Constitution, composed of members of the Supreme Court, sitting *en banc.* xxx

The "constitutionalization" of the PET has been described as independent but not separate from the Judiciary. As such, the PET cannot be considered distinct from the Supreme Court, thus:

> A plain reading of Article VII, Section 4, paragraph 7, readily reveals a grant of authority to the Supreme Court sitting *en banc.* In the same vein, although the method by which the Supreme Court exercises this authority is not specified in the provision, the grant of power does not contain any limitation on the Supreme Court's exercise thereof. The Supreme Court's *method* of deciding presidential and vice-presidential election contests, through the PET, is actually a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision. Thus, the subsequent directive in the provision for the Supreme Court to "promulgate its rules for the purpose."
>
> The conferment of full authority to the Supreme Court, as a PET, is equivalent to the full authority conferred upon the electoral tribunals of the Senate and the House of Representatives, *i.e.* the Senate Electoral Tribunal (SET) and the House of Representatives Electoral Tribunal (HRET), which we have affirmed on numerous occasions.
>
> Particularly cogent are the discussions of the Constitutional Commission on the parallel provisions of the SET and the HRET. The discussions point to the inevitable conclusion that the different electoral tribunals, with the Supreme Court functioning as the PET, are constitutional bodies, **independent** of the three departments of government — Executive, Legislative, and Judiciary — **but not separate** therefrom.
>
> xxx
>
> MR. MAAMBONG.
>
> Could we, therefore, say that either the Senate Electoral Tribunal or the House Electoral Tribunal is a constitutional body?
>
> MR. AZCUNA.

It is, Madam President.

MR. MAAMBONG.

If it is a constitutional body, is it then subject to constitutional restrictions?

MR. AZCUNA.

It would be subject to constitutional restrictions intended for that body.

MR. MAAMBONG.

I see. But I want to find out if the ruling in the case of *Vera v. Avelino,* 77 Phil. 192, will still be applicable to the present bodies we are creating since it ruled that the electoral tribunals are not separate departments of the government. Would that ruling still be valid?

MR. AZCUNA.

Yes, they are not separate departments because the separate departments are the legislative, the executive and the judiciary; but they are constitutional bodies.

The view taken by Justices Adolfo S. Azcuna and Regalado E. Maambong is schooled by our holding in *Lopez v. Roxas, et al.*:

> Section 1 of Republic Act No. 1793, which provides that:
>
> "There shall be an independent Presidential Electoral Tribunal ... which shall be the sole judge of all contests relating to the election, returns, and qualifications of the president-elect and the vice-president-elect of the Philippines."
>
> has the effect of giving said defeated candidate the legal right to contest judicially the election of the President-elect or Vice-President-elect and to demand a recount of the votes cast for the office involved in the litigation, as well as to secure a judgment declaring that he is the one elected president or vice-president, as the case may be, and that, as such, he is entitled to assume the duties attached to said office. And by providing, further, that the Presidential Electoral Tribunal "shall be composed of the Chief Justice and the other ten Members of the Supreme Court," said legislation has conferred upon such Court an *additional* original jurisdiction of an exclusive character.
>
> Republic Act No. 1793 has *not* created a new or separate court. It has merely conferred upon the Supreme Court the *functions* of a Presidential Electoral Tribunal. The result of the enactment may be likened to the fact that

courts of first instance perform the functions of such ordinary courts of first instance, those of court of land registration, those of probate courts, and those of courts of juvenile and domestic relations. It is, also, comparable to the situation obtaining when the municipal court of a provincial capital exercises its authority, pursuant to law, over a limited number of cases which were previously within the exclusive jurisdiction of courts of first instance.

In all of these instances, the *court* (court of first instance or municipal court) is only *one*, although the *functions* may be *distinct* and, even, *separate.* Thus the powers of a court of first instance, in the exercise of its jurisdiction over ordinary civil cases, are broader than, as well as distinct and separate from, those of the *same* court acting as a court of *land registration* or a *probate* court, or as a court of juvenile and domestic relations. So too, the authority of the municipal court of a provincial capital, when acting as such municipal court, is, territorially more limited than that of the *same court* when hearing the aforementioned cases which are primary within the jurisdiction of courts of first instance. In other words, there is only *one court*, although it may perform the *functions* pertaining to several types of courts, each having some characteristics different from those of the others.

Indeed, the Supreme Court, the Court of Appeals and courts of first instance, are vested with original jurisdiction, as well as with appellate jurisdiction, in consequence of which they are both trial courts and, appellate courts, without detracting from the fact that there is only *one* Supreme Court, *one* Court of Appeals, and *one* court of first instance, clothed with authority to discharge said dual functions. A court of first instance, when performing the functions of a probate court or a court of land registration, or a court of juvenile and domestic relations, although with powers less broad than those of a court of first instance, hearing ordinary actions, is *not inferior* to the latter, for one cannot be inferior to itself. So too, the Presidential Electoral Tribunal is *not* inferior to the Supreme Court, since it is *the same Court* although the *functions* peculiar to the said Tribunal are *more* limited in scope than those of the Supreme Court in the exercise of its ordinary functions. Hence, the enactment of Republic Act No. 1793, does not entail an assumption by Congress of the power of appointment vested by the Constitution in the President. It merely connotes the imposition of additional duties upon the Members of the Supreme Court.

By the same token, the PET is not a separate and distinct entity from the Supreme Court, albeit it has functions peculiar only to the Tribunal. It is obvious that the PET was constituted in implementation of

> Section 4, Article VII of the Constitution, and it faithfully complies — not unlawfully defies — the constitutional directive. The adoption of a separate seal, as well as the change in the nomenclature of the Chief Justice and the Associate Justices into Chairman and Members of the Tribunal, respectively, was designed simply to highlight the singularity and exclusivity of the Tribunal's functions as a special electoral court.[170] (Emphasis supplied and citations omitted.)

When the Court acts as the PET, it is not a separate and distinct body from the Court itself. The constitutional provision refers to the same "Supreme Court sitting *en banc*." However, it should be recognized that the proceedings before the PET require a distinct set of rules of procedure owing to the very specific nature of its functions. Thus, the exercise of jurisdiction of the Court *En Banc* as the PET is likened to the characterization of specialized courts in relation to the then Courts of First Instance. They are the same courts having the same jurisdiction, only that specialized courts are intended for practicality. Section 4, Article VII of the 1987 Constitution therefore should not be considered as a limitation on the jurisdiction of the Court over the pending petitions.

III. Respondent Marcos, Jr. possesses all of the qualifications and does not possess any of the grounds for disqualification

Any person intending to run for public office needs to have the qualifications required under the law for the position he or she intends to hold.[171] At the same time, he or she must also possess none of the grounds for disqualification under the law and the relevant regulations.[172]

We reiterate that the qualifications for President and Vice-President are prescribed in Section 2, Article VII of the 1987 Constitution. These qualifications are also found in Section 63 of the OEC.

There is no question that respondent Marcos, Jr. has all the qualifications of a candidate for President as provided under the Constitution and the OEC. Notably, neither the Buenafe Petition nor the Ilagan Petition alleges that respondent Marcos, Jr. lacks any of these qualifications: natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

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[170] Id.
[171] *Chua v. COMELEC*, supra.
[172] Id.

Petitioners Ilagan, *et al.* instead argue that respondent Marcos, Jr. has been convicted of a crime involving moral turpitude and is thus disqualified from being a candidate and holding any government office under Section 12[173] of the OEC.

Notably, Section 68 of the OEC, which provides additional grounds for disqualification, namely, being found to have committed an election offense,[174] or being a permanent resident of, or an immigrant in, a foreign country, is not being invoked in the present case. Hence, We limit Our discussion to the alleged disqualification of respondent Marcos, Jr. under Section 12 of the OEC.

A. Respondent Marcos, Jr.'s failure to file income tax returns is not a crime involving moral turpitude

The CA found respondent Marcos, Jr. guilty of failing to file income tax returns for the taxable years 1982 to 1985 in Criminal Cases No. Q-91-24391, Q-92-29212, Q-92-29213 and Q-92-29217.[175] Petitioners Ilagan, *et al.* argue that this amounts to a conviction of a crime involving moral turpitude, which has the effect of disqualifying respondent Marcos, Jr. from being a candidate and from holding any government office. Failure to file income tax returns may or may not be a crime involving moral turpitude. We explain this below.

Not every criminal act involves moral turpitude, nor do they necessarily have to be heinous. Moral turpitude has been often understood to mean acts that are "contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general."[176] It does not include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited.[177]

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[173] Sec. 12. *Disqualifications.* - Any person who xxx has been sentenced by final judgment xxx for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty. xxx

[174] (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions;
(b) committed acts of terrorism to enhance his candidacy;
(c) spent in his election campaign an amount in excess of that allowed by this Code;
(d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or
(e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office.

[175] *Rollo* (G.R. No. 260374), pp. 225-238.

[176] *Teves v. COMELEC*, 604 Phil. 717 (2009), citing *Soriano v. Dizon*, 515 Phil. 635 (2006).

[177] Id.

Associate Justice Arturo D. Brion, in his separate concurring opinion in *Teves v. COMELEC,*[178] laid down the historical roots of moral turpitude. He explained:

> ***I. Historical Roots***
>
> The term 'moral turpitude' first took root under the United States *(U.S.)* immigration laws. Its history can be traced back as far as the 17th century when the States of Virginia and Pennsylvania enacted the earliest immigration resolutions excluding criminals from America, in response to the British government's policy of sending convicts to the colonies. State legislators at that time strongly suspected that Europe was deliberately exporting its human liabilities. In the U.S., the term 'moral turpitude' first appeared in the Immigration Act of March 3, 1891, which directed the exclusion of persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude; this marked the first time the U.S. Congress used the term 'moral turpitude' in immigration laws. Since then, the presence of moral turpitude has been used as a test in a variety of situations, including legislation governing the disbarment of attorneys and the revocation of medical licenses. Moral turpitude also has been judicially used as a criterion in disqualifying and impeaching witnesses, in determining the measure of contribution between joint tortfeasors, and in deciding whether a certain language is slanderous.
>
> In 1951, the U.S. Supreme Court ruled on the constitutionality of the term 'moral turpitude' in *Jordan v. De George.* The case presented only one question: whether conspiracy to defraud the U.S. of taxes on distilled spirits is a crime involving moral turpitude within the meaning of Section 19 (a) of the Immigration Act of 1919 (*Immigration Act*). Sam de George, an Italian immigrant was convicted twice of conspiracy to defraud the U.S. government of taxes on distilled spirits. Subsequently, the Board of Immigration Appeals ordered de George's deportation on the basis of the Immigration Act provision that allows the deportation of aliens who commit multiple crimes involving moral turpitude. De George argued that he should not be deported because his tax evasion crimes did not involve moral turpitude. The U.S. Supreme Court, through Chief Justice Vinzon, disagreed, finding that 'under an unbroken course of judicial decisions, the crime of conspiring to defraud the U.S. is a crime involving moral turpitude.' Notably, the Court determined that fraudulent conduct involved moral turpitude without exception:
>
> > Whatever the phrase 'involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. . . . We therefore decide that Congress sufficiently forewarned respondent that the statutory

[178] *Teves v. COMELEC*, supra.

> consequence of twice conspiring to defraud the United States is deportation.
>
> Significantly, the U.S. Congress has never exactly defined what amounts to a 'crime involving moral turpitude.' The legislative history of statutes containing the moral turpitude standard indicates that Congress left the interpretation of the term to U.S. courts and administrative agencies. In the absence of legislative history as interpretative aid, American courts have resorted to the dictionary definition — 'the last resort of the baffled judge.' The most common definition of moral turpitude is similar to one found in the early editions of Black's Law Dictionary:
>
> > [An] act of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. . . . Act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others. . . . The quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory *mala prohibita*."[179] (Emphasis supplied and citations omitted.)

Based on the foregoing, it is clear that the concept of "moral turpitude" can be traced back to the immigration laws of the U.S. It is thus not surprising that in determining whether a crime involves moral turpitude, this Court has earlier used definitions from U.S. cases as reference.

It may be worth noting that under the U.S. Foreign Affairs Manual, the following are considered common crimes involving moral turpitude:

(a) crimes committed against property – making false representation, knowledge of such false representation by the perpetrator, reliance on the false representation by the person defrauded, intent to defraud, actual act of committing fraud, arson, blackmail, burglary, embezzlement, extortion, false pretenses, forgery, fraud, larceny (grand or petty), malicious destruction of property, receiving stolen goods (with guilty knowledge), robbery, theft (when it involves the intention of permanent taking), transporting stolen property (with guilty knowledge), animal fighting, credit card/identity fraud, damaging private property (where intent to damage is not required), breaking and entering (if the statute does not require a specific or implicit intent to commit a crime involving moral turpitude), passing bad checks (where intent to defraud is not required by the statute), possessing stolen property (if guilty knowledge is not essential for a conviction under the

[179] Separate Concurring Opinion of J. Brion in *Teves v. COMELEC*, supra.

statute), joy riding (where the intention to take the vehicle permanently is not required under the statute), and juvenile delinquency;

(b) crimes committed against government authority – bribery, counterfeiting, fraud against revenue or other government functions, mail fraud, perjury, harboring a fugitive from justice (with guilty knowledge), and **tax evasion (willful)**; and

(c) crimes committed against person, family relationship, and sexual morality – abandonment of a minor child (if willful and resulting in the destitution of the child), assault with intent to kill, assault with intent to commit rape, assault with intent to commit robbery, assault with intent to commit serious bodily harm, assault with a dangerous or deadly weapon, bigamy, contributing to the delinquency of a minor, gross indecency, incest (if the result of an improper sexual relationship), kidnapping, lewdness, voluntary manslaughter, involuntary manslaughter (where the statute requires proof of recklessness generally will involve moral turpitude), mayhem, murder, pandering, possession of child pornography, prostitution, and rape (including statutory rape).[180]

In 1955, the Supreme Court of California, in *Call v. State Bar of California*[181], characterized moral turpitude as one that involves fraud, and must be distinguished from mere neglect or unintended failure, *viz*:

> "The term moral turpitude includes fraud and has been said to mean dishonesty and conduct not in accordance with good morals; being based on moral guilt, it implies an intentional breach of the duty owed to a client as distinguished from an unintended failure to discharge his duties to the best of his ability."[182]

In the 1990 case of *In Re Grimes*,[183] it was ruled that willful commission of a crime does not automatically mean fraudulent, hence, it does not *per se* involve moral turpitude. In said case, petitioner attorney pleaded guilty to three (3) counts of willfully failing to file a tax return. The Supreme Court of California found that petitioner's misconduct did not involve moral turpitude, but it did warrant discipline.

In the Philippines, we can trace the term moral turpitude as far back as 1901 in Act No. 190 (Code of Civil Actions and Special Proceedings). This law provided that a member of the bar may be removed or suspended from

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[180] US Foreign Affairs Manual available at <https://fam.state.gov/search/viewer?format=html&query=moral+turpitude&links=MORAL,TURPITUD&url=/FAM/09FAM/09FAM030203.html#M302_3_2_B_2> (visited 24 May 2022).

[181] *Call v. State Bar of Cal.*, 45 Cal. 2d 104, 287 P.2d 761 (1955).

[182] Supra.

[183] 51 Cal. 3d 199, 270 Cal. Rptr. 855, 793 P.2d 61 (1990).

his office as lawyer by the Supreme Court upon conviction of a crime involving moral turpitude. Subsequently, moral turpitude found its way in statutes governing disqualifications of notaries public, priests and ministers in solemnizing marriages, registration to military service, exclusion and naturalization of aliens, discharge of the accused to be a state witness, admission to the bar, suspension and removal of elective local officials, and disqualification of persons from running for any elective local position.[184]

We first had occasion to characterize moral turpitude in the 1920 case of *In Re Basa.*[185] This involves an interpretation of Section 21 of the Code of Civil Procedure on the disbarment of a lawyer for conviction of a crime involving moral turpitude. Carlos S. Basa, a lawyer, was convicted of the crime of abduction with consent. The sole question presented was whether the crime of abduction with consent, as punished by Article 446 of the Penal Code of 1887, involved moral turpitude. The Court, finding no exact definition in the statutes, turned to Bouvier's Law Dictionary for guidance and held:

> 'Moral turpitude,' it has been said, 'includes everything which is done contrary to justice, honesty, modesty, or good morals.' (Bouvier's Law Dictionary, cited by numerous courts.) Although no decision can be found which has decided the exact question, it cannot admit of doubt that crimes of this character involve moral turpitude. The inherent nature of the act is such that it is against good morals and the accepted rule of right conduct.[186]

Thus, early on, the Philippines followed the American lead and adopted a general dictionary definition to interpret the concept of moral turpitude.

In subsequent cases, We continued borrowing definitions established in U.S. jurisprudence. In the 1959 case of *Tak Ng v. Republic*[187], We cited U.S. cases defining moral turpitude to pertain to an act of baseness, vileness, or depravity in the private and social duties that a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man[188] or conduct contrary to justice, honesty, modesty, or good morals.[189]

Twenty years later, in 1979, in *Zari v. Flores*[190], We added that moral turpitude implies something immoral in itself, regardless of whether it is

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[184] Separate Concurring Opinion of J. Brion in *Teves v. COMELEC*, supra. Citations omitted.
[185] 41 Phil. 275 (1920).
[186] Id.
[187] 106 Phil. 727 (1959).
[188] *Tak Ng v. Republic*, supra, citing *Traders & General Ins. Co. v. Rusell, Tex. Civ. App.*, 99 S.W. [2d] 1079.
[189] Supra, citing *Marah v. State Bar of California*, 210 Cal. 303, 219 P. 583.
[190] 183 Phil. 27 (1979).

punishable by law or not. It must not merely be *mala prohibita*, the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute, establishes moral turpitude.[191] Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in the fact of their being positively prohibited.[192]

Meanwhile, in other cases, We examined the existence of moral turpitude based on the fraudulent intent of the offender. The Court in its 1964 decision in *Ao Lin v. Republic*[193] explained:

> We hold that the use of a meter stick without the corresponding seal of the Internal Revenue Office by one who has been engaged in business for a long time, involves moral turpitude because it involves a fraudulent use of a meter stick, not necessarily because the Government is cheated of the revenue involved in the sealing of the meter stick, but because it manifests an evil intent on the part of the petitioner to defraud customers purchasing from him in respect to the measurement of the goods purchased.[194]

Then, in 1975, in the case *In Re Lanuevo*[195], We declared that it is for the Supreme Court to determine what crime involves moral turpitude.[196] This became the foundation of the jurisprudential doctrine holding that whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute.[197]

Over the years, We adjudged the following as crimes **involving moral turpitude**:

1. Abduction with consent[198]
2. Bigamy[199]
3. Concubinage[200]
4. Smuggling[201]
5. Rape[202]

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[191] Supra, citing 41 C.J. 212.
[192] Supra, citing *State Medical Board v. Rogers*, 79 S. W. 2d 83.
[193] *Ao Lin v. Republic*, 119 Phil. 284 (1964).
[194] Supra.
[195] *In Re: Lanuevo,* 160 Phil. 935 (1975).
[196] Supra.
[197] *Dela Torre v. COMELEC*, 327 Phil. 1144 (1996), citing *IRRI v. NLRC*, G.R. No. 97239, 12 May 1993, citing In Re: Lanuevo, supra.
[198] Id. citing *In Re Basa*, supra.
[199] Id. citing *In Re Marcelino Lontok,* 43 Phil. 293 (1922).
[200] Id. citing *In Re Juan C. Isada*, 60 Phil. 915 (1934); *Macarrubo v. Macarrubo*, 468 Phil. 148 (2004), citing *Laguitan v. Tinio*, 259 Phil. 322 (1989).
[201] Id. citing *In Re Atty. Rovero*, 92 Phil. 128 (1952).
[202] Id. citing *Mondano v. Silvosa*, 97 Phil. 143 (1955).

6. Estafa through falsification of a document[203]
7. Attempted Bribery[204]
8. Profiteering[205]
9. Robbery[206]
10. Murder, whether consummated or attempted[207]
11. Estafa[208]
12. Theft[209]
13. Illicit Sexual Relations with a Fellow Worker[210]
14. Violation of BP Blg. 22[211]
15. Falsification of Document[212]
16. Intriguing against Honor[213]
17. Violation of the Anti-Fencing Law[214]
18. Violation of Dangerous Drugs Act of 1972 (Drug-pushing)[215]
19. Perjury[216]
20. Forgery[217]
21. Direct Bribery[218]
22. Frustrated Homicide[219]
23. Adultery[220]
24. Arson[221]
25. **Evasion of income tax**[222]
26. Barratry[223]
27. Blackmail[224]
28. Criminal conspiracy to smuggle opium[225]
29. Dueling[226]
30. Embezzlement[227]

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[203] Id. citing *In the Matter of Eduardo A. Abesamis*, 102 Phil. 1182 (1958).
[204] Id. citing *In Re Dalmacio De Los Angeles*, 106 Phil 1 (1959).
[205] Id. citing *Tak Ng v. Republic*, supra.
[206] Id. citing *Paras v. Vailoces*, 111 Phil. 569 (1961).
[207] Id. citing *Can v. Galing*, 239 Phil. 629 (1987), citing *In Re Gutierrez*, Adm. Case No. L-363, 31 July (1962).
[208] Id. citing *In Re: Atty. Vinzon*, 126 Phil. 96 (1967).
[209] Id. citing *Philippine Long Distance Telephone Company v. NLRC*, 248 Phil. 655 (1988).
[210] Id.
[211] Id. citing *People v. Tuanda*, A.M. No. 3360, 30 January 1990; *Paolo C. Villaber v. COMELEC*, 420 Phil. 930 (2001); *Lao v. Atty. Medel*, 453 Phil. 115 (2003).
[212] Id. citing *UP v. CSC*, 284 Phil. 296 (1992).
[213] Id. citing *Betguen v. Masangcay*, 308 Phil. 500 (1994).
[214] Id. citing *Dela Torre v. COMELEC*, 327 Phil. 1144 (1996), citing *Zari v. Flores*, supra.
[215] Id. citing *OCA v. Librado*, 329 Phil. 432 (1996).
[216] Id. citing *People v. Sorrel*, 343 Phil. 890 (1997).
[217] Id. citing *Campilan v. Campilan Jr.*, 431 Phil. 223 (2002).
[218] Id. citing *Magno v. COMELEC*, 439 Phil. 339 (2002).
[219] Id. citing *Soriano v. Dizon*, supra.
[220] Id. citing *Zari v. Flores*, supra.
[221] Id.
[222] Id.
[223] Id.
[224] Id.
[225] Id.
[226] Id.
[227] Id.

31. Extortion[228]
32. Forgery[229]
33. Libel[230]
34. Making fraudulent proof of loss on insurance contract[231]
35. Mutilation of public records[232]
36. Fabrication of evidence[233]
37. Offenses against pension laws[234]
38. Seduction under the promise of marriage[235]
39. Falsification of public document[236]
40. *Estafa* thru falsification of public document[237]

Indeed, in *Zari v. Flores*,[238] We said that tax evasion is a crime involving moral turpitude. On whether an act or omission constitutes tax evasion, We certainly agree that it depends on the totality of circumstances. As such, it must be clarified that **failure to file income tax return does not always amount to tax evasion.** Tax evasion connotes fraud through the use of pretenses and forbidden devices to lessen or defeat taxes.[239] The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by law. It must amount to intentional wrong-doing with the sole object of avoiding the tax.[240] Furthermore, tax evasion connotes the integration of three factors: (a) the end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (b) an accompanying state of mind, which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"; and (c) a course of action or failure of action that is unlawful.[241]

On the other hand, failure to file income tax return may be committed by neglect, without any fraudulent intent and/or willfulness. In fact, under

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[228] Id.
[229] Id.
[230] Id.
[231] Id.
[232] Id.
[233] Id.
[234] Id.
[235] Id.
[236] Id.
[237] Id.
[238] Supra.
[239] JUSTICE JAPAR B. DIMAAMPAO, TAX PRINCIPLES AND REMEDIES 174 (2021); *Yutivo Sons Hardware Co. v. CTA*, 110 Phil. 751 (1961).
[240] *CIR v. Spouses Magaan*, G.R. No. 232663, 03 May 2021, *citing CIR v. Javier, Jr.*, 276 Phil. 914 (1991).
[241] *CIR v. Toda*, 481 Phil. 626 (2004).

Section 248 of the 1997 NIRC, the law treats "failure to file any return" differently from "willful neglect to file the return." The former is meted with a surcharge of 25%, while the latter, 50%.[242] The 50% rate is referred to as the **fraud penalty**.[243] Previously, under Section 72 of the 1939 NIRC, a taxpayer may be excused from the 25% surcharge if the taxpayer subsequently files the return despite absence of BIR notice and the earlier failure is due to a reasonable cause. Section 248 of the 1997 NIRC and Section 72 of the 1939 NIRC respectively state:

> **Sec. 248.** ***Civil Penalties.*** **-**
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to **twenty-five percent (25%)** of the amount due, in the following cases:
>
> (1) **Failure to file any return** and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
>
> (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
>
> (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.
>
> (B) In case of **willful neglect to file the return** within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be **fifty percent (50%)** of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

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[242] THE NATIONAL INTERNAL REVENUE CODE OF 1997, Sec. 248.
[243] ERIC R. RECALDE, A TREATISE ON TAX PRINCIPLES AND REMEDIES 465 (2016).

> **Sec. 72.** ***Surcharges for Failure to Render Returns and for Rendering False and Fraudulent Returns.*** – The Collector of Internal Revenue shall assess all income taxes. In case of **willful neglect to file the return** or list within the time prescribed by law, or in case a false or fraudulent return or list is willfully made, the Collector of Internal Revenue shall add to the tax or to the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud, or surcharge of **fifty per centum** of the amount of such tax or deficiency tax. In case of any **failure to make and file a return** or list within the time prescribed by law or by the Collector or other internal-revenue officer, not due to willful neglect, the Collector of Internal Revenue shall add to tax **twenty-five per centum** of its amount, **except that, when a return is voluntarily and without notice from the Collector or other officer filed after such time, and it is shown that the failure to file it was due to a reasonable cause, no such addition shall be made to the tax.** The amount so added to any tax shall be collected at the same time and in the same manner as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax. (Emphases and underscoring supplied.)

The foregoing discussion illustrates that omission to file a tax return is not fraudulent *per se*.

As Associate Justice Amy C. Lazaro-Javier eloquently declared, taken in its proper context, the failure to file a compensation income tax return is far from being "everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general."[244]

Although petitioners suggest that We reexamine the totality of circumstances surrounding respondent Marcos, Jr.'s non-filing of an income tax return, We deem it unnecessary to go through the same exercise because of this Court's Decision involving the same facts. In *Republic v. Marcos II,*[245] We already declared that respondent Marcos Jr.'s non-filing of an income tax return is not a crime involving moral turpitude, *viz*:

> **The 'failure to file an income tax return' is not a crime involving moral turpitude as the mere omission is already a violation regardless of the fraudulent intent or willfulness of the individual.** This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return.

[244] Citing *Teves v. COMELEC*, supra.
[245] 612 Phil. 355 (2009).

The same is illustrated in Section 51(b) of the NIRC which reads:

(b) Assessment and payment of deficiency tax – xxx

In case a person fails to make and file a return or list at the time prescribed by law, or makes willfully or otherwise, false or fraudulent return or list x x x.

Likewise, in *Aznar v. Court of Tax Appeals*, this Court observed:

> To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, and (3) omission. **Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, "falsity," "fraud" and "omission."**

Applying the foregoing considerations to the case at bar, the filing of a 'fraudulent return with intent to evade tax' is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual. The same, however, cannot be said for 'failure to file a return' where the mere omission already constitutes a violation. Thus, this Court holds that even if the conviction of respondent Marcos II is affirmed, the same not being a crime involving moral turpitude cannot serve as a ground for his disqualification. (Emphases supplied.)

Significantly, *Republic v. Marcos II* involved the same Decision in CA-G.R. CR No. 18569 and considered the same act of non-filing of income tax returns at issue in the present Petitions. We held in the said case that respondent Marcos, Jr. is not disqualified from being an executor of his father's will since the crime of failure to file income tax returns does not involve moral turpitude. Thus, consistent with our earlier pronouncement, respondent Marcos, Jr.'s failure to file income tax returns does not involve moral turpitude.

The foregoing militates against the notion that non-filing of income tax return by an individual taxpayer receiving purely compensation income involves moral turpitude, or is against good morals and accepted rule of conduct.[246] It is not in itself immoral, and neither does it constitute an act of baseness, vileness, or depravity in the private and social duties which a man owes his fellowmen, or to society in general.[247] Thus, We sustain the COMELEC's ruling that the omission of respondent Marcos Jr. to file income tax returns does not involve moral turpitude.

As We sustain COMELEC's ruling, We, however, address and state Our disagreement with the argument that the omission to file income tax returns does not involve moral turpitude because the offense has already been decriminalized by RA 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law.

At this juncture, We clarify that non-filing of income tax returns has not been decriminalized under the 1997 NIRC and its subsequent amendments. Rather, what our current tax laws introduced are classifications of taxpayers who are not required to file an income tax return and who may file a tax return under the substituted filing system.

This clarification starts with a distinction between taxpayers who are not required to file income tax returns from taxpayers who file tax returns under the substituted filing system. Under Section 51(A)(2) of the 1997 NIRC, as amended, a minimum wage earner is exempt from income tax and is not required to file an income tax return. On the other hand, an individual earning purely compensation income from a single employer whose income tax has been correctly withheld by said employer is not required to file an annual income tax return.[248] Over the years, the BIR recognized the need to simplify the filing of individual income tax returns. It introduced the

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[246] *In Re Basa*, supra.

[247] *Teves v. Commission on Elections,* G.R. No. 180363, 28 April 2009, citing *Soriano v. Dizon,* supra.

[248] SECTION 51. *Individual Return.*—
(A) *Requirements.*—
xxx

(2) The following individuals shall not be required to file an income tax return:

(a) An individual whose gross income does not exceed his total personal and additional exemptions for dependents under Section 35: *Provided*, That a citizen of the Philippines and any alien individual engaged in business or practice of profession within the Philippines shall file an income tax return, regardless of the amount of gross income;

(b) **An individual with respect to pure compensation income, as defined in Section 32(A)(1), derived from sources within the Philippines, the income tax on which has been correctly withheld under the provisions of Section 79 of this Code**: *Provided*, That an individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return: *Provided, further*, That an individual whose pure compensation income derived from sources within the Philippines exceeds Sixty thousand pesos (P60,000) shall also file an income tax return;

substituted filing system in Revenue Regulations (R.R.) No. 3-2002,[249] which was further amended by R.R. No. 19-2002.[250] Substituted filing took effect in taxable year 2001 and was made mandatory starting the taxable year 2002.

The substituted filing system made it easier for pure compensation earners to file their income tax returns because the relevant information is more accessible to their employers. In substituted filing, the employer's annual return for the employee is considered as the employee's income tax return because they contain identical information. Employers, or other persons who are required to deduct and withhold the tax on compensation, furnish their employees with a *Certificate of Income Tax Withheld on Compensation,* or BIR Form No. 2316.[251] After the issuance of a joint certification by the employer and the employee, the employee who is qualified for substituted filing is no longer required to file an *Annual Income Tax Return*, or BIR Form No. 1700.[252]

"Substituted filing" was distinguished from "non-filing" of income tax returns in Revenue Memorandum Circular (RMC) No. 1-2003. RMC No. 1-2003 further clarified the provisions of R.R. No. 3-2002, as amended by R.R. No. 19-2002.

> Under "substituted filing", an individual taxpayer although required under the law to file his income tax return, will no longer have to personally file his own income tax return but instead the employer's annual information return filed will be considered as the "substitute" income tax return of the employee inasmuch as the information in the employer's return is exactly the same information in the employee's return.
>
> "Non-filing" is applicable to taxpayers who are not required under the law to file an income tax return. An example is an employee whose pure compensation income does not exceed P60,000, and has only one

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(c) An individual whose sole income has been subjected to final withholding tax pursuant to Section 57(A) of this Code; and

(d) An individual who is exempt from income tax pursuant to the provisions of this Code and other laws, general or special. xxx (Emphasis supplied)

[249] Amending Section 2.58 and Further Amending Section 2.83 of Revenue Regulations No. 2-98 as Amended, Relative to the Submission of the Alphabetical Lists of Employees/Payees in Diskette Form and the Substituted Filing of Income Tax Returns of Payees/Employees Receiving Purely Compensation Income from Only One Employer for One Taxable Year Whose Tax Due is Equal to Tax Withheld and Individual-Payees Whose Compensation Income is Subject to Final Withholding Tax.

[250] Amending Revenue Regulations No. 3-2002 and Further Amending Section 2.83 of Revenue Regulations No. 2-98 as Amended, Relative to Substituted Filing of Income Tax Return of Employees Receiving Purely Compensation Income from Only One Employer for One Taxable Year Whose Tax Due is Equal to Tax Withheld and Individual-Payees Whose Compensation Income is Subject to Final Withholding Tax.

[251] Revenue Regulation No. 19-2002, Sec. 2.

[252] No. 11, Revenue Memorandum Circular No. 1-2003.

> employer for the taxable year and whose tax withheld is equivalent to his tax due.[253]

The substituted filing system did not dispense with the requirement of filing income tax returns for pure compensation earners. Neither did it exempt qualified taxpayers from filing income tax returns as required by Section 51 of the 1997 NIRC.

Prior to the enactment of the TRAIN Law in 2017, an individual whose pure compensation income is derived from sources within the Philippines exceeds ₱60,000.00 is still mandated to file an income tax return.[254] Hence, even if an individual taxpayer is qualified to avail of the substituted filing of income tax return, he or she is still not excused from filing an income tax return. The TRAIN Law, in amending the 1997 NIRC, added a new section, 51-A, to incorporate the substituted filing system established by BIR practice into law.[255]

> Sec. 51-A. *Substituted Filing of Income Tax Returns by Employees Receiving Purely Compensation Income.* – Individual taxpayers receiving purely compensation income, regardless of amount, from only one employer in the Philippines for the calendar year, the income tax of which has been withheld correctly by the said employer (tax due equals tax withheld) shall not be required to file an annual income tax return. The certificate of withholding filed by the respective employers, duly stamped 'received' by the BIR, shall be tantamount to the substituted filing of income tax returns by said employees.

Associate Justice Japar B. Dimaampao states[256] that, in adopting the system of substituted filing under Section 51-A of the 1997 Tax Code, as amended by the TRAIN Law, Congress did not decriminalize the non-filing of income tax returns. It merely ordained, for the convenience of individual taxpayers, a practice already established and observed by the BIR. What is clear, however, is that the non-filing of income tax returns by those who have not duly met the requirements and conditions may still be penalized under both the 1997 NIRC and the TRAIN Law.

In any event, as discussed above, the COMELEC concluded that respondent Marcos, Jr.'s failure to file income tax returns does not constitute a crime involving moral turpitude. And We affirm the COMELEC's conclusion.

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[253] No. 2, Revenue Memorandum Circular No. 1-2003. The threshold amount is now ₱250,000.00 under the TRAIN Law.

[254] NATIONAL INTERNAL REVENUE CODE OF 1997, 51(A)(2)(b).

[255] Bicameral Conference Committee Meeting on the Disagreeing Provisions of HB No. 5636 and SB No. 1592 Re: Tax Reform for Acceleration and Inclusion, 01 December 2017, KMS/ VIII-3, p. 35.

[256] J. Dimaampao's Reflections, p. 3.

B. Conviction for non-filing of income tax returns is not a ground for disqualification

The RTC convicted respondent Marcos, Jr. and meted out the penalty of imprisonment and fine. However, the CA modified this ruling and limited the penalty to the payment of fine.[257]

In arguing that Section 12 of the OEC should still apply to disqualify respondent Marcos, Jr., petitioners Ilagan, *et al.* asserted before the COMELEC that the CA Decision is void for failing to follow the penalty provided under Section 254 of the 1977 NIRC, which expressly imposes the penalty of *both* imprisonment and a fine.

Further, petitioners Ilagan, *et al.* insist that, even if the CA did not err in deleting the penalty of imprisonment in resolving the case against respondent Marcos, Jr., he is still perpetually disqualified on the basis of the unequivocal language of PD 1994, which amended the 1977 NIRC. They argue that a mandatory accessory penalty of perpetual disqualification is imposed by PD 1994 in addition to the penalties provided under the 1977 NIRC.[258] For their part, petitioners Buenafe, *et al.* assert that the consequence of perpetual disqualification applies to *all* convictions of crimes under the NIRC, regardless of the imposed penalty.[259]

We agree with the COMELEC, that the introduction of the penalty of *both* imprisonment and fine in Section 254 only became effective in 1998 when the 1997 NIRC was passed. Consequently, this cannot be retroactively applied to the prejudice of respondent Marcos, Jr., who was convicted for failure to file the required tax returns for the years 1982 to 1985. Well-settled is the rule that penal laws cannot be given retroactive effect, unless favorable to the accused.[260]

Following the doctrine on immutability of judgments,[261] the CA Decision has long attained finality and can no longer be modified in any respect. Nevertheless, We deem it necessary to restate and clarify which laws apply to the different violations.

For respondent Marcos, Jr's. failure to file income tax returns for the years 1982 to 1984, what should apply instead is Section 73 of the 1977 NIRC, which states:

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[257] *Rollo* (G.R. No. 260426), pp. 168-182.
[258] Id. at 35.
[259] *Rollo* (G.R. No. 260374), p. 42.
[260] *Nasi-Villar v. People*, 591 Phil. 804 (2008).
[261] *Taningco v. Fernandez*, G.R. No. 215615, 09 December 2020.

> Sec. 73. *Penalty for failure to file return or to pay tax.* — Any one liable to pay the tax, to make a return or to supply information required under this Code, who refuses or neglects to pay such tax, to make such return or to supply such information at the time or times herein specified in each year, shall be **punished by a fine of not more than two thousand pesos or by imprisonment for not more than six months, or both**. xxx (Emphasis supplied.)

On the other hand, PD 1994 is the applicable law for respondent Marcos, Jr.'s failure to file his 1985 income tax return. Section 288 of said law imposes the penalty of a fine *or* imprisonment *or* both:

> Sec. 288. *Failure to file return, supply information, pay tax, withhold and remit tax.* - Any person required under this Code or by regulations promulgated thereunder to pay any tax, make a return, keep any records, or supply any information, who willfully fails to pay such tax, make such return, keep such records, or supply such information, or withhold or remit taxes withheld, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, upon conviction thereof, **be fined not less than five thousand pesos nor more than fifty thousand pesos, or imprisoned for not less than six months and one day but not more than five years, or both**.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed are turn or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor be fined not less than three thousand pesos or imprisoned for not more than one year, or both. (Emphasis supplied.)

Clearly, the CA had the discretion to impose the penalty of a fine *or* imprisonment *or* both, upon respondent Marcos, Jr. The CA's Decision imposing only the penalty of a fine is valid. Consequently, respondent Marcos, Jr. cannot be disqualified on the ground that he was sentenced by final judgment to a penalty of more than eighteen months under Section 12 of the OEC.

Similarly, as will be expounded later on, We agree with the COMELEC's finding that respondent Marcos, Jr. was not imposed with the penalty of perpetual disqualification from running for public office.[262]

The said accessory penalty was not originally provided for in the 1977 NIRC, as this was only imposed upon the effectivity of PD 1994 in 01 January 1986.[263] Hence, again, respondent Marcos, Jr. may be imposed with

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[262] *Rollo* (G.R. No. 260426), pp. 217-222.

[263] Sec. 286. General provisions. - (a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: Provided,

the accessory penalty only for his failure to file his income tax return for the year 1985.

However, a perusal of the dispositive portion of the CA Decision[264] would reveal that the accessory penalty of perpetual disqualification was not imposed on respondent Marcos, Jr. Evidently, this this CA Decision has long attained finality, and can no longer be touched upon by this Court.[265] To alter the same would be extremely prejudicial to respondent Marcos, Jr., and would create a precedent contrary to the basic principle that all doubts should be construed against the State and in favor of the accused.[266]

IV. The COMELEC did not gravely abuse its discretion in refusing to deny due course to or to cancel respondent Marcos, Jr.'s COC

Respondent Marcos, Jr. raises the argument that petitioners Buenafe, *et al.* violated Section 1, Rule 23 of the COMELEC Rules of Procedure, as amended, which states:

> Sec. 1. *Ground for Denial or Cancellation of Certificate of Candidacy.* –
>
> xxx
>
> A Petition to Deny Due Course to or Cancel Certificate of Candidacy invoking grounds other than those stated above or grounds for disqualification, or combining grounds for a separate remedy, shall be summarily dismissed.[267]

Petitioners Buenafe, *et al.* counter that their petition before the COMELEC did not violate the cited provision since it only raised grounds relating to the falsity of the material representation of eligibility in

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That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

(b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another, shall be liable the same manner as the principal.

(c) If the offender is not citizen of the Philippines, he shall be adopted immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a certified public accountant, his certificate as a certified public account shall, upon conviction, be automatically revoked or cancelled.

(d) In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

[264] *Rollo* (G.R. No. 260426), pp. 181-182.

[265] *LBP v. Arceo*, 581 Phil. 77 (2008).

[266] *De Leon v. Luis*, G.R. No. 226236, 06 July 2021.

[267] As amended by COMELEC Resolution No. 9523, entitled "In the Matter of the Amendment to Rules 23, 24, and 25 of the COMELEC Rules of Procedure for purposes of the 13 May 2013 National, Local and ARMM Elections and Subsequent Elections."

respondent Marcos, Jr.'s COC.[268] Thus, the COMELEC erred in ruling that their petition was susceptible to summary dismissal for invoking grounds for disqualification.[269]

For their part, respondent Marcos, Jr. and the COMELEC claim that the petition may be summarily dismissed for raising grounds for disqualification, such as respondent Marcos, Jr.'s conviction for an offense involving moral turpitude and a crime that carries the penalty of imprisonment of more than eighteen (18) months.[270]

However, these arguments are neither decisive of, nor relevant to, the present controversy. The COMELEC did not dismiss the petition on the ground of violating Section 1, Rule 23 of the COMELEC Rules of Procedure. Instead, it proceeded to rule on the substantive issues raised and denied the petition for lack of merit.[271] The pertinent portion of the COMELEC Second Division's Resolution dated 17 January 2022 reads:

> Despite summary dismissal being warranted in the case at bar, We shall nevertheless relax compliance with the technical rules of procedure and proceed to discuss the merits if only to fully and finally settle the matter in this case because of its paramount importance.[272]

The COMELEC *En Banc* further noted that "despite the finding that the Petition may be summarily dismissed for noncompliance with the requirements under the law, the Commission (Second Division) relaxed compliance with technical rules and proceeded to discuss the merits of the case."[273] Given that, there is no need to belabor the procedural correctness of petitioners Buenafe, *et al.*'s submissions before the COMELEC. Whether petitioners Buenafe, *et al.* raised arguments more appropriate for a petition for disqualification[274] is now irrelevant to this Court's resolution of the present petitions.

Moreover, the Court has ruled that, even without a petition under Section 78 of the OEC, "the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from the accessory penalty of perpetual special disqualification to run for public office by virtue of a final

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[268] *Rollo* (G.R. No. 260374), pp. 35-38.
[269] Id. at 35.
[270] Id. at 547-549 and 684-687.
[271] Id. at 125.
[272] Id. at 102.
[273] Id. at 78.
[274] See *rollo* (G.R. No. 260374), p. 171 (Petition dated 02 November 2021 filed before the COMELEC): "Respondent Marcos, Jr. was convicted of a crime involving moral turpitude, thereby disqualifying him under the Omnibus Election Code to be a candidate and to hold any public office." (Capitalization omitted); See also id. at 179: "The conviction of Respondent Marcos, Jr. in the tax evasion cases carries the mandatory penalty of imprisonment of more than 18 months as imposed by law, disqualifying him under the Omnibus Election Code from running for any public office." (Capitalization omitted).

judgment of conviction."[275] Thus, even procedural defects in petitioners Buenafe at al.'s COMELEC petition will not save respondent Marcos, Jr.'s COC from scrutiny.

In passing upon the merits of these petitions, We are mindful that the scope of Our review in a petition for *certiorari* is limited. Pursuant to Rule 64, in relation to Rule 65, of the Rules of Court, petitioners Buenafe, *et al.* must show that the COMELEC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[276]

Grave abuse of discretion generally refers to a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction."[277] Thus, mere abuse of discretion is not enough.[278] The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."[279] Unless it is firmly established that the COMELEC committed grave abuse of discretion, We would not interfere with its decision.[280] Findings of fact of the COMELEC, when supported by substantial evidence, shall be final and non-reviewable.[281]

We find no grave abuse of discretion in this case. The COMELEC's ruling is amply supported by law, jurisprudence, and the evidence on record.

As previously mentioned, Sections 74 and 78 of the OEC govern the cancellation of, or denial of due course to, COCs on the ground of false material representation. Under Section 74, a person filing a COC must state therein that "he is eligible for said office," among other information. On the other hand, Section 78 expressly provides that the denial of due course or cancellation of a COC may be filed exclusively on the ground that the information the candidate provided under Section 74 is false.

Notably, not every false representation warrants the denial of due course to or cancellation of a COC. It must be shown that the false representation pertained to material information and was made with an "intention to deceive the electorate as to one's qualifications for public office."[282] Thus, a candidate's disqualification to run for public office does

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[275] *Jalosjos, Jr. v. COMELEC*, 696 Phil. 601 (2012).
[276] RULES OF COURT, Rule 64, Sec. 2, in relation to Rule 65, Sec. 1.
[277] *Varias v. COMELEC*, 626 Phil. 292 (2010).
[278] *Suliguin v. COMELEC*, 520 Phil. 92 (2006).
[279] *Peñas v. COMELEC*, UDK-16915, 15 February 2022.
[280] *Pagaduan v. COMELEC*, 548 Phil. 427 (2007).
[281] RULES OF COURT, Rule 64, Sec. 5.
[282] *Salcedo II v. COMELEC*, supra.

not, in and of itself, justify the cancellation of his or her COC.[283] The requisites of materiality and intent must be present.

A. Respondent Marcos, Jr.'s representations that are subject of the Petitions are material

Section 78 does not specify the parameters of a "material representation." Nonetheless, this Court has had numerous occasions in the past to expound on the concept.

In *Villafuerte v. COMELEC*,[284] We held that, for a representation to be material, it must "refer to an eligibility or qualification for the elective office the candidate seeks to hold." Thus, facts pertaining to a candidate's residency, age, citizenship, or any other legal qualification are considered material under Section 78 of the OEC.[285]

Further, in *Salcedo II v. COMELEC*,[286] the Court explained the rationale behind the requirement of materiality, and concluded that the law should not be interpreted to cover innocuous mistakes:

> Therefore, it may be concluded that the material misrepresentation contemplated by section 78 of the Code refer to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his [or her] certificate of candidacy are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him [or her] for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake. (Citation omitted.)

In this case, petitioners Buenafe, *et al.* assert that respondent Marcos, Jr. made a false material representation when, in his COC, he certified under oath the statement, "I am eligible for the office I seek to be elected to."[287] Respondent Marcos, Jr. also allegedly misrepresented his eligibility when he checked the box "No" in response to the question, "[h]ave you ever been found liable for an offense which carries with it the accessory penalty of perpetual disqualification to hold public office, which has become final and executory?"[288] Petitioners Buenafe, *et al.* claim that respondent Marcos, Jr.'s

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[283] *Ugdoracion, Jr. v. COMELEC*, supra.
[284] G.R. No. 206698, 25 February 2014.
[285] Id.
[286] 371 Phil. 377 (1999).
[287] *Rollo* (G.R. No. 260374), pp. 21-22.
[288] Id. at 22-23.

conviction for violation of the NIRC carried with it the penalty of perpetual disqualification, thereby rendering the two statements false.[289]

The assailed representations pass the test of materiality because they pertain to respondent Marcos, Jr.'s eligibility to hold elective office. In *Dimapilis v. COMELEC*[290] (*Dimapilis*), We ruled that perpetual disqualification is a material fact because it directly affects a person's capacity to be elected and to hold public office, thus:

> A CoC is a formal requirement for eligibility to public office. Section 74 of the OEC provides that the CoC of the person filing it shall state, among others, that he is eligible for the office he seeks to run, and that the facts stated therein are true to the best of his knowledge. To be "eligible" relates to the capacity of holding, as well as that of being elected to an office. Conversely, "ineligibility" has been defined as a "disqualification or legal incapacity to be elected to an office or appointed to a particular position." In this relation, **a person intending to run for public office must not only possess the required qualificatious for the position for which he or she intends to run, but must also possess none of the grounds for disqualification under the law**.
>
> In this case, petitioner had been found guilty of Grave Misconduct by a final judgment, and punished with dismissal from service with all its accessory penalties, including perpetual disqualification from holding public office. Verily, **perpetual disqualification to hold public office is a material faet involving eligibility** which rendered petitioner's CoC void from the start since he was not eligible to run for any public office at the time he filed the same. (Emphases and underscoring in the original; citations omitted.)

When respondent Marcos, Jr. declared that he has not been convicted of an offense that carries with it the accessory penalty of perpetual disqualification to hold office, he made a material representation regarding his eligibility to run for and hold elective office. This representation, if proved false, would fall within the ambit of Section 78 of the OEC.

Similarly, respondent Marcos, Jr. made a material representation when he signed and subscribed to his COC, which states that, "I am eligible for the office I seek to be elected to."[291] In *Aratea v. COMELEC*[292] (*Aratea*), the Court emphasized that disqualification to run for office is an ineligibility. Consequently, a statement in the COC that one is eligible, when such is not the case, is a false material representation constituting ground for the application of Section 78 of the OEC:

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289 Id. at 23.
290 808 Phil. 1108 (2017).
291 *Rollo* (G.R. No. 260374), pp. 21-22.
292 696 Phil. 700 (2012).

> **Perpetual special disqualification** is a ground for a petition under Section 78 of the Omnibus Election Code because this accessory penalty is an **ineligibility**, which means that the convict is not eligible to run for public office, contrary to the statement that Section 74 requires him to state under oath in his certificate of candidacy. As this Court held in *Fermin v. Commission on Elections*, the false material representation may refer to **"qualifications or eligibility."** One who suffers from perpetual special disqualification is ineligible to run for public office. If a person suffering from perpetual special disqualification files a certificate of candidacy stating under oath that "he is eligible to run for (public) office," **as expressly required under Section 74**, then he clearly makes a **false material representation** that is a ground for a petition under Section 78. As this Court explained in *Fermin*:
>
> > Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, **which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on *qualifications or eligibility* for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate.** Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate. (Emphasis and italics in the original; citations omitted.)

The Court came to the same conclusion in the cases of *Ty-Delgado*,[293] cited earlier, and *Jalosjos, Jr. v. COMELEC*[294] (*Jalosjos, Jr.*). In these cases, the Court ruled that petitioners therein, who had filed their respective COCs, made false material representations when they declared themselves eligible to hold public office, despite prior convictions that rendered them ineligible.

Dimapilis involved a candidate found guilty by a final judgment of the administrative offense of Grave Misconduct. Meanwhile, in *Aratea*, *Jalosjos, Jr.* and *Ty-Delgado*, the candidates seeking to run for public office had criminal convictions under the RPC. None of these cited cases pertains

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[293] Supra.

[294] 696 Phil. 601 (2012).

to a conviction under the NIRC, specifically the application of Section 286, as amended by PD 1994.

Nonetheless, We find no reason to depart from these cases' ruling on the effect of perpetual disqualification to hold public office on a person's representation of eligibility in his or her COC. Accordingly, We hold that the assailed representations in this case are material for the purpose of applying Section 78 of the OEC.

Respondent Marcos, Jr. claims that his alleged perpetual disqualification to hold public office does not bear on his eligibility because it does not pertain to any of the requirements under Section 2, Article VII of the 1987 Constitution.[295] He argues that these requirements are exclusive.[296] Hence, in determining his eligibility to run for President, only the requirements under this constitutional provision must be considered, to the exclusion of any other grounds for disqualification under other laws.[297]

The Court has ruled that, as used in Section 74 of the OEC, the word "eligible" means having "the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office."[298] Perpetual disqualification is an ineligibility. Necessarily, therefore, it directly affects one's eligibility to run for office. Equally established is that the enumeration of qualifications in the 1987 Constitution, as reiterated in Section 63 of the OEC, is not exclusive. Other pertinent laws lay down requirements for qualification and eligibility to run for and hold elective office. These considerations are sufficient to meet the requirement of materiality under Section 78 of the OEC.

Having established that the subject representations are material, We now resolve whether they are false, *i.e.*, whether respondent Marcos, Jr. misrepresented himself to be eligible and not disqualified from running as president. Relevant to its resolution is whether respondent Marcos, Jr. was indeed perpetually disqualified from holding public office in light of the CA Decision.

B. In the Philippines, disqualification from public office is a long-established penalty

The concept of disqualification from public office has been present in Philippine laws for more than a century. It figured several times in the

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[295] *Rollo* (G.R. No. 260374), p. 551.
[296] Id. at 550-551.
[297] Id. at 551.
[298] *Aratea v. COMELEC*, supra.

various Acts enacted by the First Philippine Commission between 1900 to 1907. Under Act No. 5,[299] disloyalty to the U.S. as the supreme authority in the Islands was declared a ground for complete *disqualification for holding office* in the Philippine civil service.[300]

Act No. 1126[301] empowered the Civil Governor not only to remove any municipal officer from office, but also, in his discretion, declare such official either temporarily or permanently *disqualified thereafter from holding office*.

Moreover, Act No. 1582, or the Election Law of 1907,[302] which governed the country's very first national elections through popular votes,[303] provided that "xxx no person who has been convicted of a crime which is punishable by imprisonment for two years or more shall hold any public office, and no person disqualified from holding public office by the sentence of a court xxx shall be eligible to hold public office during the term of his disqualification."[304] Prior to this, persons who meet the minimum age, residence and literacy requirements[305] can become municipal officers, unless they are ecclesiastics, soldiers in active service, persons receiving salaries from provincial, departmental, or governmental funds, contractors for public works of the municipality,[306] or someone who habitually smokes, chews, swallows, injects, or otherwise consumes or uses opium in any of its forms.[307]

In addition, Act No. 1582 provided for a penalty of disqualification from any public office, for a period of five years, upon certain officials who shall "aid any candidate or influence in any manner or take any part in any municipal, provincial, or Assembly election."[308]

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299 "Establishment and Maintenance of an Efficient and Honest Civil Service," 19 September 1900.

300 Section 15 of Act No. 5.

301 "An Act for the Purpose of Empowering Provincial Boards to Subpoena Witnesses and to Require Testimony under Oath in Conducting Certain Investigations, and for Other Purposes," 28 April 1904.

302 "An Act to Provide for the Holding of Elections in the Philippine Islands, for the Organization of the Philippine Assembly, and for Other Purposes," 09 January 1907.

303 "The History of the Philippine Assembly (1906-1916)," <https://nhcp.gov.ph/the-history-of-the-first-philippine-assembly-1907-1916/> (visited 10 June 2022).

304 Section 12, Act No. 1582. *See also* the case of *Topacio v. Paredes*, 23 Phil. 238 (1912), where the Court had the occasion to discuss the qualifications and disqualifications of elective provincial and municipal officers based on the laws in effect at the time.

305 THE MUNICIPAL CODE or Act No. 82, Sec. 15.

306 Id. at Sec. 14

307 Act No. 1768, "An Act to Amend Act Numbered Fifteen Hundred and Eighty-Two, Known As 'The Election Law,' as Amended by Acts Numbered Seventeen Hundred and Nine and Seventeen Hundred and Twenty-Six, by Disqualifying Habitual Users of Opium From Holding Provincial or Municipal Officers," 11 October 1907.

308 Act No. 1582, Sec. 29. This provision, among others, was subsequently amended by Act No. 1709 (31 August 1907) which expanded the list of public officers who may be disqualified from holding public office if found to have committed the offenses proscribed under said Act

Under Section 11 of Act No. 1450,[309] which amended Act No. 136,[310] the penalty of disqualification from holding office may also be meted by the Governor General upon justices of the peace found "not performing his duties properly" or "unfit for the service." A person may also be disqualified from running from office by reason of the non-payment of taxes, which disqualification can be removed by paying the delinquent taxes after election and before the date fixed by law for assuming office, but not afterwards.[311] Persons convicted of offenses connected with administration of the then Bureau of Audits (such as embezzlement or malversation in office) were likewise "*ipso facto* forever disqualified from holding any public office or employment of any nature whatever within the Philippine Islands."[312]

Further back in history, disqualification from public office was already recognized as a penalty even before the American occupation. The Penal Code for the Philippine Islands (old Penal Code), which was promulgated in 1884 under the Spanish Constitution,[313] state in pertinent part:

> Art. 31. The penalty of **perpetual absolute disqualification** shall produce the following effects:
>
> 1. The deprivation of all honors and of any public offices and employments which the offender may have held, even if conferred by popular election.
>
> 2. The deprivation of the right to vote in any election for any popular elective office or to be elected to such office.
>
> 3. The disqualification for any honor, office, or public employment, and for the exercise of any of the rights mentioned.
>
> 4. The loss of all right to retirement pay or other pension for any office formerly held, but without prejudice to any allowance for living expenses which the Government may see fit to grant the defendant for any distinguished service.
>
> The provisions of this article shall not affect any rights acquired at the time of the conviction by the widow or children of the offender.

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[309] An Act Amending Certain Sections of Acts Numbered One Hundred and Thirty-Six, One Hundred and Ninety, and One Hundred and Ninety-Four, and Making Additional Provisions so as to Increase the Efficiency of Courts of Justices of the Peace, 03 February 1906, as amended by Act No. 1627, "Amending General Orders No. 58, s. 1900 and Acts No. 82, 136, 183, 190, 194, 787 and Repealing Acts No. 590, 992 and 1450," 30 March 1907.

[310] An Act Providing for the Organization of Courts in the Philippine Islands, 11 June 1901.

[311] ADMINISTRATIVE CODE, Act No. 2657, Sec. 504.

[312] Id. at Sec. 2662.

[313] *U.S. v. Balcorta*, 25 Phil. 273 (1913).

> Art. 32. The penalty of **temporary absolute disqualification** shall produce the following effects:
>
> 1. The deprivation of all honors and of any public offices and employments which the offender may have held, even if conferred by popular election.
>
> 2. The deprivation of the right to vote in any election for any popular elective office or to be elected to such office, during the term of the sentence.
>
> 3. The disqualification for any of the honors, employments, offices, and rights mentioned in paragraph one hereof, during the term of the sentence.
>
> Art. 33. The penalty of **perpetual special disqualification for public office** shall produce the following effects:
>
> 1. The deprivation of the office or employment thereby affected and of the honors thereto appertaining.
>
> 2. The disqualification for holding similar offices or employments.
>
> Art. 34. The penalty of **perpetual special disqualification** for the right of suffrage shall forever deprive the offender of the right to vote at any election for the public office in question or to be elected to such office.
>
> Art. 35. The penalty of **temporary special disqualification for public office** shall produce the following effects:
>
> 1. The deprivation of the office or employment in question and of all honors appurtenant thereto.
>
> 2. The disqualification for holding any similar office during the term of the sentence.
>
> Art. 36. The penalty of **temporary special disqualification for the exercise of the right of suffrage** shall deprive the offender, during the term of the sentence, of the right to vote in any election for the office to which the sentence refers or to be elected to such office. (Emphases and underscoring supplied.)

It was then considered both an afflictive[314] and accessory penalty. As a stand-alone penalty, disqualification from public office can be imposed for a duration of six years and one day to twelve years.[315] On the other hand,

[314] THE PENAL CODE, Article 25.
[315] Id. at Article 27.

when imposed as an accessory to other penalties,[316] its duration was as provided by law.[317]

In 1930, the old Penal Code was repealed by Act No. 3815, or the RPC. Although the provisions relating to disqualification from public office were essentially retained, there were still notable changes: *first*, from six separate Articles under the old Penal Code, the provisions on disqualification were thereafter compressed into two provisions, which now read:

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[316] Art. 53. The death penalty, when it shall not be executed by reason of the pardon of the offender, shall carry with it that **of perpetual absolute disqualification** and subjection to the surveillance of the authorities during the lifetime of the offender, unless such accessory penalties shall have been expressly remitted in the pardon.

Art. 54. The penalty of *cadena perpetua* carries with it the following:
1. Degradation, in case the principal penalty of *cadena perpetua* be imposed upon any public employee for any official misconduct, if the office held by him be such as to confer permanent rank.
2. Civil interdiction.
3. Subjection to the surveillance of the authorities during the lifetime of the offender.
Even though the offender be pardoned as to the principal penalty, he shall suffer **perpetual absolute disqualification** and subjection to the surveillance of the authorities **during his lifetime**, unless these accessory penalties shall have been expressly remitted in the pardon granted with respect to the principal penalty.

Art. 55. The penalties of *reclusión perpetua, relegación perpetua* and *extrañamiento perpetuo* shall carry with them the penalties of **perpetual absolute disqualification** and subjection to the surveillance of the authorities **for the lifetime of the offender,** which penalties he shall suffer even though pardoned as to the principal penalty, unless the same shall have been remitted in the pardon.

Art. 56. The penalty of *cadena temporal* shall carry with it the following penalties:
1. Civil interdiction of the convict during the term of the sentence.
2. Perpetual absolute disqualification.
3. Subjection to the surveillance of the authorities during the lifetime of the offender.

Art. 57. The penalty of *presidio mayor* shall carry with it those of **temporary absolute disqualification to its full extent** and subjection to the surveillance of the authorities for a term equal to that of the principal penalty; the term of the latter accessory penalty shall commence upon the expiration of the principal penalty.

Art. 58. The penalty of *presidio correccional* shall carry with it that of suspension from public office, from the right to follow a profession or calling and from the exercise of the right of suffrage.

Art. 59. The penalties of *reclusión temporal, relegación temporal* and *extrañamiento temporal* shall carry with them the penalties of **temporary absolute disqualification to its full extent** and subjection to the surveillance of the authorities during the term of the sentence, and for another equal period to commence at the expiration of the term of the principal penalty.

Art. 60. The penalty of *confinamiento* shall carry with it those of **temporary absolute disqualification** and subjection to the surveillance of the authorities **during the term of the sentence, and for another equal period to commence at the expiration of the term of the principal penalty.**

Art. 61. The penalties of *prisión mayor, prisión correccional* and *arresto mayor* shall carry with them **suspension of the right to hold public office** and the right of suffrage **during the term of the sentence.**

[317] THE PENAL CODE, Article 29.

> **Art. 30.** *Effects of the penalties of perpetual or temporary absolute disqualification.* - The penalties of **perpetual or temporary absolute disqualification for public office** shall produce the following effects:
>
> 1. The deprivation of the public offices and employments which the offender may have held even if conferred by popular election.
>
> 2. The deprivation of the right to vote in any election for any popular office or to be elected to such office.
>
> 3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.
>
> In case of **temporary disqualification**, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.
>
> 4. The loss of all rights to retirement pay or other pension for any office formerly held.
>
> **Art. 32.** *Effect of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage.* - The **perpetual or temporary special disqualification for the exercise of the right of suffrage** shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification. (Emphases and underscoring supplied.)

The Court, in *Lacuna v. Abes,*[318] clarified the distinction between the different kinds of disqualification as distilled in these two provisions:

> The accessory penalty of *temporary absolute disqualification* disqualifies the convict for public office and for the right to vote, such disqualification to last only during the term of the sentence xxx
>
> But this does not hold true with respect to the other accessory penalty of *perpetual special disqualification for the exercise of the right of suffrage*. This accessory penalty deprives the convict of the right to vote or to be elected to or hold public office *perpetually*, as distinguished from temporary special disqualification, which lasts during the term of the sentence. xxx
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> xxx
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> The word "perpetually" and the phrase "during the term of the sentence" should be applied distributively to their respective antecedents; thus, the word "perpetually" refers to the perpetual kind of special disqualification, while the phrase "during the term of the sentence" refers

[318] 133 Phil. 770 (1968).

> to the temporary special disqualification. The duration between the perpetual and the temporary (both special) are necessarily different because the provision, instead of merging their durations into one period, states that such duration is "according to the nature of said penalty" – which means according to whether the penalty is the perpetual or the temporary special disqualification.

Second, in addition to being classified as an accessory penalty, the penalty of disqualification from public office[319] is also *specifically* imposed by the RPC as a penalty for the commission of the following crimes:

a. Knowingly rendering unjust judgment (Art. 204);
a. Judgment rendered through negligence (Art. 205);
b. Direct bribery (Art. 210);
c. Other frauds (Art. 214);
d. Malversation of public funds or property (Art. 217);
e. Illegal use of public funds or property (Art. 220);
f. Conniving with or consenting to evasion (Art. 223);
g. Evasion through negligence (Art. 224);
h. Removal, concealment or destruction of documents (Art. 226);
i. Officer breaking seal (Art. 227);
j. Opening of closed documents (Art. 228);
k. Revelation of secrets by an officer (Art. 229);
l. Open disobedience (Art. 231);
m. Disobedience to Order of Superior Officer, when said order was suspended by inferior officer (Art. 232);
n. Refusal of Assistance (Art. 233);
o. Maltreatment of Prisoners (Art. 235);
p. Prolonging performance of duties and powers (Art. 237);
q. Usurpation of Legislative Powers (Art. 239);
r. Disobeying request for disqualification (Art. 242);
s. Abuses against chastity (Art. 245);
t. Corruption of minors (Art. 340);
u. Liability of ascendants, guardians, teachers, or other persons entrusted with the custody of the corrupted/abused minor (Art. 346);
v. Simulation of births, substitution of one child for another and concealment or abandonment of a legitimate child (Art. 347).

Third, under the old Penal Code, accessory penalties must be explicitly imposed.[320] Thus, in *People v. Perez,*[321] this Court held:

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[319] THE REVISED PENAL CODE (RPC), Article 25, 08 December 1930. It is considered as an accessory to the following penalties: Death (Article 40), *Reclusion perpetua and reclusion temporal* (Article 41), *Prision Mayor* (Article 42), *Prision Correccional* (Article 43), and *Arresto Mayor* (Article 44). *See also* Article 58 (on Additional penalty to be imposed upon certain accessories).

[320] Art. 90. Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of Section III of the next preceding chapter, they shall also expressly impose upon the convict the latter penalties.

[321] 47 Phil. 984 (1924).

> The first question that presents itself for consideration is whether or not by virtue of the judgment imposing two years, four months and one day of *prision correccional* upon the accused in the aforesaid criminal case for assault against a person in authority, the appellant became disqualified from assuming said office of municipal president.
>
> If we confine ourselves to the field of the Penal Code now in force, our answer would be in the negative for two reasons: First, because in said judgment, whose disposing part is set out hereinabove, he is not expressly sentenced to be disqualified, which disqualification would have been an accessory penalty in the form of suspension from office and from the right of suffrage during the life of the sentence, according to article 61 of the Penal Code. Article 90 of this Code provides that the accessory penalties are to be imposed upon the convict expressly, and, according to Viada, they are not to be presumed to have been imposed xxx

In contrast, Article 73 of the RPC categorically provided for a presumption regarding the *automatic* imposition of accessory penalties, thus:

> **Art. 73.** *Presumption in Regard to the Imposition of Accessory Penalties.* — Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of articles 40, 41, 42, 43, 44, and 45 of this Code, **it must be understood that the accessory penalties are also imposed upon the convict**. (Emphases supplied.)

To be sure, disqualification from public office has also been provided as a principal penalty for the commission of crimes identified and defined under special laws. These include, among others:

(1) RA 9165[322] imposes maximum penalties for the unlawful acts provided for in this law, in addition to *absolute perpetual disqualification from any public office,* if those found guilty of such unlawful acts are government officials and employees;

(2) RA 10845,[323] which provides that government officials or employees found guilty of *large-scale agricultural smuggling* shall be meted the maximum of the penalty prescribed, in addition to the penalty of *perpetual disqualification from public office*, to vote and to participate in any public election;

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[322] Also known as "The Comprehensive Dangerous Drugs Act of 2002," 07 June 2002. *See* Sec. 28.
[323] Also known as the "Anti-Agricultural Smuggling Act of 2016, 23 May 2016. *See* Sec. 4.

(3) RA 10863[324] states that if a public officer or employee commits any of the acts proscribed therein, the penalty next higher in degree shall be imposed in addition to the penalty *of perpetual disqualification from public office*, disqualification to vote and to participate in any public election; and

(4) RA 11479,[325] which declares that public officials or employees found guilty of any act punished under said law shall be charged with the administrative offense of grave misconduct and/or disloyalty to the Republic of the Philippines and the Filipino people and meted with the penalty of dismissal from the service, with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits and *perpetual absolute disqualification from running for any elective office or holding any public office.*[326]

Disqualification from public office may also be imposed as a penalty in administrative cases. Section 51 of the 2017 Rules on Administrative Cases in the Civil Service,[327] for example, specifically provides that the grave administrative offense of fixing and/or collusion with fixers in consideration of economic and/or other gain or advantage shall be penalized by dismissal and perpetual disqualification from public service.

Generally, however, perpetual disqualification from holding public office is among the disabilities considered inherent in, and follows as a consequence of, the penalty of dismissal.[328] Such penalties are, in turn, imposed for the commission of acts constituting grave misconduct, that is, misconduct attended by any of the additional elements of corruption, willful intent to violate the law or disregard of established rules:

> xxx This gravity means that misconduct was committed with such depravity that it justifies not only putting an end to an individual's current engagement as a public servant, but also the foreclosure of any further opportunity at occupying public office.
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> xxx
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> One who commits grave misconduct is one who, by the mere fact of that misconduct, has proven himself or herself unworthy of the continuing confidence of the public. By his or her very

[324] Customs Modernization and Tariff Act, 30 May 2016. *See* Sec. 1431.
[325] "The Anti-Terrorism Act of 2020," 03 July 2020.
[326] Sec. 15.
[327] Civil Service Commission Resolution No. 1701077, 03 July 2017.
[328] 2017 Rules on Administrative Cases in the Civil Service, Sec. 58. *See also* Civil Service Commission Resolution No. 1101502, Sec. 52, or the Revised Uniform Rules on Administrative Cases in the Civil Service, 08 November 2011; Civil Service Commission Resolution No. 991936, Secs. 57 and 58, or the Uniform Rules on Administrative Cases in the Civil Service, 14 September 1999.

commission of that grave offense, the offender forfeits any right to hold public office.[329]

1. Respondent Marcos, Jr. was not imposed the principal penalty of perpetual disqualification from public office

Petitioners Ilagan, *et al.* maintain that the COMELEC gravely abused its discretion when it declared that respondent Marcos, Jr. was not disqualified from running for public office for the following reasons: (1) PD 1994 clearly and unequivocally imposed a mandatory penalty of perpetual disqualification as an accessory penalty on top of the penalties provided by the 1977 NIRC;[330] (2) respondent Marcos, Jr. was a public official until 1986 and there was no abandonment of office that would justify his failure to file the required income tax returns;[331] (3) the CA Decision imposing only the penalty of fine is void as it completely ignored a mandatory directive to impose the maximum penalty prescribed, as well as the accessory penalty of perpetual disqualification from public office;[332] (4) in any case, since respondent Marcos, Jr. never filed the required income tax returns, he is, to date, considered to be in continued violation of the NIRC.[333]

As the foregoing issues are interrelated, this Court shall address them jointly.

Section 45[334] of the 1977 NIRC required every Filipino citizen having a gross annual income of at least ₱1,800.00, whether residing in the Philippines or abroad, to file an income tax return on or before the fifteenth day of March of each year, covering income of the preceding taxable year. Failure to so file was originally punished, under Section 73, by "a fine of not

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[329] *Office of the Ombudsman v. Regalado*, G.R. Nos. 208481-82, 07 February 2018.

[330] *Rollo* (G.R. No. 260426), pp. 23-24.

[331] Id. at 28-29.

[332] Id. at 34-36.

[333] Id. at 25-27.

[334] Sec. 45. *Individual returns.* — (a) Requirements. — (1) The following individuals are required to file an income tax return, if they have a gross income of at least P1,800 for the taxable year:

(A) Every Filipino citizen, whether residing in the Philippines or abroad and,

(B) Every alien residing in the Philippines, regardless of whether the gross income was derived from sources within or outside the Philippines.

x x x x

(c) When to file. — The return of the following individuals shall be filed on or before the fifteenth day of March of each year, covering income of the preceding taxable year:

(A) Residents of the Philippines, whether citizens or aliens, whose income have been derived solely from salaries, wages, interest, dividends, allowances, commissions, bonuses, fees, pensions, or any combination thereof.

(B) The return of all other individuals not mentioned above, including non-resident citizens shall be filed on or before the fifteenth day of April of each year covering income of the preceding taxable year.

x x x x

more than two thousand pesos or by imprisonment for not more than six months, or both."

On 05 November 1985, PD 1994 was issued, introducing substantial amendments to the 1977 NIRC. These amendments included Section 286, to wit:

> **Sec. 286. General provisions. — (a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein**: Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.
>
> (b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another, shall be liable in the same manner as the principal.
>
> (c) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. **If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election.** If the offender is a certified public accountant, his certificate as a certified public account shall, upon conviction, be automatically revoked or canceled.
>
> (d) In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation. (Emphases supplied.)

We agree with petitioners Ilagan, *et al.* that Section 286 clearly provides for the imposition of disqualification from public office as a penalty upon public officials or employees found guilty of violating the provisions of the 1977 NIRC, as amended by PD 1994. It is, however, not disputed that the *fallo* of the CA Decision[335] adjudging respondent Marcos, Jr.'s guilt for non-filing of the required income tax return makes absolutely no mention of said penalty. We again quote the dispositive portion for emphasis:

> WHEREFORE, the Decision of the trial court is hereby MODIFIED as follows:
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> 1. ACQUITTING the accused-appellant of the charges of violation of Section 50 of the NIRC for

[335] *Rollo* (G.R. No. 260426), pp. 181-182.

non-payment of deficiency taxes for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-92-29216, Q-92-29215, Q-92-29214 and Q-92-24390; and FINDING him guilty beyond reasonable doubt of violation of Section 45 of the NIRC for failure to file income tax returns for the taxable years 1982 to 1985 in Criminal Cases No. Q-91-24391, Q-92-29212, Q-92-29213 and Q-92-29217;

1. Ordering the appellant to pay to the BIR the deficiency income taxes due with interest at the legal rate until fully paid;
2. Ordering the appellant to pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212 and Q-92-29217 for failure to file income tax returns for the years 1982, 1983 and 1984; and the fine of P30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, with surcharges.

SO ORDERED."

Petitioners Ilagan, *et al.* advance the view that the imposition of disqualification from public office as an accessory penalty is mandatory and that, since courts have no power to impose a lower penalty than what is authorized by law, the CA Decision is void as it "completely ignored the mandatory directive of Section 286 of PD 1994."[336]

However, it must be emphasized that in criminal cases, the party affected by the dismissal of the criminal action is the State. The interest of the private offended party, if any, is restricted only to the civil liability.[337] Thus, in *Yokohama Tire Philippines, Inc. v. Reyes*,[338] We sustained the dismissal of the petition for the annulment of a decision of acquittal on the ground that the same would "necessarily require a review of the criminal aspect of the case and, as such, is prohibited. xxx [O]nly the State, and not herein petitioner, who is the private offended party, may question the criminal aspect of the case."

The offense of non-filing of income tax returns does not conceivably implicate any private interests, much less those pertaining to petitioners Ilagan, *et al.* As in malversation of public funds or property, tax evasion, or violations of RA 3019, the government is the offended party that sustained actual and direct injury as a result of the commission of the offense in question and the one entitled to the civil liabilities, if any, of the accused.[339] On this score alone, petitioner Ilagan, *et al.*'s contentions should be rejected.

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[336] Id. at p. 35.
[337] *JCLV Realty & Development Corp. v. Mangali*, G.R. No. 236618, 27 August 2020.
[338] G.R. No. 236686, 05 February 2020.
[339] *Ramiscal, Jr. v. Sandiganbayan*, 487 Phil. 384 (2004); *Andaya v. People*, 526 Phil. 480 (2006).

Even granting *ex gratia argumenti* standing in petitioners Ilagan, *et al.*'s favor, the CA Decision has long become final and executory as in fact Entry of Judgment was issued more than twenty (20) years ago, on 31 August 2001.[340] It can no longer be modified, even by this Court.

Finally, in *Estarija v. People*,[341] We upheld the erroneous penalty imposed by the RTC upon Estarija for violation of Section 3(b) of RA 3019. The trial court imposed upon Estarija a straight penalty of seven years, without any accessory penalty. The correct penalty under the law, with the application of the Indeterminate Sentence Act, would have been imprisonment ranging from six years and one month, as minimum, to nine years as maximum, with perpetual disqualification from public office. However, the decision of the RTC had already become final and executory because Estarija mistakenly appealed his conviction with the CA instead of the Sandiganbayan. In resolving the case, We held:

> [The RTC Decision] may no longer be modified in any respect, **even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and whether or not made by the highest court of the land.** The reason is grounded on the fundamental considerations of public policy and sound practice that, at the risk of occasional error, the judgments or orders of courts must be final at some definite date fixed by law.
>
> The RTC imposed upon Estarija the straight penalty of seven (7) years. This is erroneous. The penalty for violation of Section 3 (b) of Republic Act No. 3019 is imprisonment for not less than six years and one month nor more than fifteen years, and perpetual disqualification from public office. Under the Indeterminate Sentence Law, if the offense is punished by a special law, the Court shall sentence the accused to an indeterminate penalty, the maximum term of which shall not exceed the maximum fixed by said law, and the minimum term shall not be less than the minimum prescribed by the same. **Thus, the correct penalty should have been imprisonment ranging from six (6) years and one (1) month, as minimum, to nine (9) years as maximum, with perpetual disqualification from public office. However, since the decision of the RTC has long become final and executory, this Court cannot modify the same.**[342] (Emphasis supplied.)

In another case, *Tan v. People*,[343] We set aside the amendatory judgment of the trial court increasing the penalty imposed on petitioner for

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[340] *Rollo* (G.R. No. 260374), p. 241.

[341] 619 Phil. 457 (2009).

[342] *See also People v. Paet*, 100 Phil. 357 (1956), where the Court refused to modify the decision of the trial court (which has already become final) to include the accessory penalty of confiscation or forfeiture, of the undeclared dollars, in favor of the government.

[343] 430 Phil. 685 (2002).

bigamy after it had already pronounced judgment, on the basis of which petitioner had applied for probation, foreclosing his right to appeal and rendering the previous verdict to lapse into finality. Thus, even if the trial court erred in the penalty imposed, the decision can no longer be amended after it has attained finality.

This is not to say, however, that there was, in fact, error or grave abuse of discretion on the part of the CA when it saw fit to modify the conclusions reached, and penalties imposed, by the trial court.

In the landmark case of *People v. Simon,*[344] We have already settled the matter of treatment of penalties found in special laws and the RPC:

> xxx **[W]here the penalties under the special law are different from and are without reference or relation to those under the Revised Penal Code, there can be no suppletory effect of the rules for the application of penalties under said Code or by other relevant statutory provisions based on or applicable only to said rules for felonies under the Code.** In this type of special law, the legislative intendment is clear.
>
> The same exclusionary rule would apply to the last given example, Republic Act No. 5639. While it is true that the penalty of 14 years and 8 months to 17 years and 4 months is virtually equivalent to the duration of the medium period of reclusion temporal, such technical term under the Revised Penal Code is not given to that penalty for carnapping. Besides, the other penalties for carnapping attended by the qualifying circumstances stated in the law do not correspond to those in the Code. The rules on penalties in the Code, therefore, cannot suppletorily apply to Republic Act No. 6539 and special laws of the same formulation.
>
> On the other hand, the rules for the application of penalties and the correlative effects thereof under the Revised Penal Code, as well as other statutory enactments founded upon and applicable to such provisions of the Code, have suppletory effect to the penalties under the former Republic Act No. 1700 and those now provided under Presidential Decrees Nos. 1612 and 1866. While these are special laws, **the fact that the penalties for offenses thereunder are those provided for in the Revised Penal Code lucidly reveals the statutory intent to give the related provisions on penalties for felonies under the Code the corresponding application to said special laws, in the absence of any express or implicit proscription in these special laws.** To hold otherwise would be to sanction an indefensible judicial truncation of an integrated system of penalties under the Code and its allied legislation, which could never have been the intendment of Congress.[345] (Emphases supplied.)

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[344] 304 Phil.725 (1994).

[345] *See also Cahulogan v. People*, 828 Phil. 742 (2018); *Quimvel v. People*, 808 Phil. 889 (2017); *AAA v. People*, G.R. No. 229762, 28 November 2018; *People v. Molejon*, 830 Phil. 519 (2018).

Here, petitioners Ilagan, *et al.*'s theory that perpetual disqualification was automatically imposed with the mere fact of conviction finds basis from jurisprudence *involving disqualifications under the RPC*. Respondent Marcos, Jr.'s conviction, on the other hand, is for the non-filing of income tax return *under the 1977 NIRC*. Whereas the RPC contained a system of penalties categorized between principal or accessory penalties,[346] as well as an express presumption in regard to the imposition of certain penalties upon the mere fact of conviction,[347] the 1977 NIRC did not.

People v. Silvallana,[348] the case cited by petitioners Ilagan, *et al.* to support their argument that the accessory penalty need not be written in the judgment of conviction, clearly states that the presumption on the automatic imposition of accessory penalties applies only to Articles 40,[349] 41,[350] 42,[351] 43,[352] 44,[353] and 45[354] of the RPC, in relation to Article 73[355] thereof. In that case, We explained:

> The defendant must suffer the accessory penalty of perpetual special disqualification, not because article 217 of the Revised Penal Code provides that in all cases persons guilty of malversation shall suffer

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[346] THE REVISED PENAL CODE, Article 25.

[347] Id. at Article 73.

[348] 61 Phil. 636 (1935).

[349] Art. 40. *Death — Its Accessory Penalties.* — The death penalty, when it is not executed by reason of commutation or pardon shall carry with it that of perpetual absolute disqualification and that of civil interdiction during thirty years following the date of sentence, unless such accessory penalties have been expressly remitted in the pardon.

[350] Art. 41. *Reclusión Perpetua and Reclusión Temporal — Their accessory penalties.* — The penalties of *reclusión perpetua* and *reclusión temporal* shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

[351] Art. 42. *Prisión Mayor — Its Accessory Penalties.* — The penalty of *prisión mayor* shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

[352] Art. 43. *Prisión Correccional — Its Accessory Penalties.* — The penalty of *prisión correccional* shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in this article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

[353] Art. 44. *Arresto — Its Accessory Penalties.* — The penalty of *arresto* shall carry with it that of suspension of the right to hold office and the right of suffrage during the term of the sentence.

[354] Art.45. *Confiscation and Forfeiture of the Proceeds or Instruments of the Crime.* — Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.
Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.

[355] Art. 73. *Presumption in regard to the imposition of accessory penalties.* -- Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of Article 40, 41, 42, 43, 44, and 45 of this Code, it must be understood that the accessory penalties are also imposed upon the convict.

> perpetual disqualification in addition to the principal penalty, but as a consequence of the penalty of prision mayor provided in article 171. In accordance with article 42 of the Revised Penal Code the penalty of prision mayor carries with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage, and article 32 provides that during the period of his disqualification the offender shall not be permitted to hold any public office. Moreover, **article 73 of the Revised Penal Code provides that whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of articles 40, 41, 42, 43, 44, and 45 of the Revised Penal Code, it must be understood that the accessory penalties are also imposed upon the convict. It is therefore unnecessary to express the accessory penalties in the sentence.** (Emphasis supplied.)

Further, a more careful reading of Section 286 would also show details that militate against petitioners Ilagan, *et al.*'s reading of automatic imposition of the penalty of perpetual disqualification from public office. We refer to the following portion of Section 286:

> [c] If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a certified public accountant, his certificate as a certified public account shall, upon conviction, be **automatically** revoked or canceled. (Emphasis and underscoring supplied.)

As correctly pointed out by respondent Marcos, Jr.,[356] while Section 286(c) specifies that the revocation or cancellation of a certified public accountant's certificate is **automatic upon conviction**, the same is not true with respect to the imposition of the penalty of perpetual disqualification from public office. If indeed the legislative intent is such that a public officer or employee found guilty of violating the provisions of the 1977 NIRC is automatically perpetually disqualified from holding public office, then the law could have so easily stated. It, however, did not do so.

In dubiis reus est absolvendus – all doubts should be resolved in favor of the accused.[357] **This Court thus holds that, unless explicitly provided for in the *fallo*, the penalty of disqualification from public office under Section 286(c) is not deemed automatically imposed on a public officer or employee found to have violated the provisions of the 1977 NIRC.** We

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[356] *Rollo* (G.R. No. 260374), pp. 555-557.
[357] *People v. Sullano*, 827 Phil. 613 (2018).

find this interpretation to be more in keeping with the intention of the legislators, as well as being more favorable to the accused.[358]

Applying the same principle, petitioners Ilagan, *et al.*'s claim of a continuing violation on the part of respondent Marcos, Jr. also lacks merit. There is nothing in either the 1977 NIRC or PD 1994 that speaks of the continuing nature of the offense of non-filing of income tax returns. In fact, in case a person fails to make and file a return at the time prescribed by law, **the law allows the Commissioner of Internal Revenue to make the return from his own knowledge and from such information as he can obtain through testimony or otherwise**. Such return shall be *prima facie* good and sufficient for all legal purposes, unless the taxpayer can prove the contrary under proper proceedings.[359]

2. Respondent Marcos, Jr. served the penalties for his convictions

We reiterate that all doubts should be resolved in favor of the accused.[360] Indeed, penal statutes are strictly construed against the State and all doubts are to be resolved liberally in favor of the accused.[361] Additionally, We stress that execution must always conform to that decreed in the dispositive part of the decision, because the only portion thereof that may be subject of execution is that which is precisely ordained or decreed in the dispositive portion.[362]

Further, it is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.[363] To be sure, a decision that has acquired finality becomes immutable and unalterable in accordance with the principle of finality of judgment or immutability of judgment and may no longer be modified in any respect, even if the modification is intended to correct erroneous conclusions of fact and law and whether it may have been made by the court that rendered it or by the Supreme Court itself. Any act that violates this principle must be immediately struck down.[364]

We emphasize that the CA Decision[365] has long attained finality. A plain reading of the said decision would reveal that the penalty was limited to the imposition of the payment of fines, and respondent Marcos, Jr. was

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[358] *See David v. People*, 675 Phil.182 (2011).
[359] NATIONAL INTERNAL REVENUE CODE OF 1997, Sec. 51(b). *See also* id. at Sec. 16(b), after amendment by PD 1994.
[360] *People v. Sullano*, supra.
[361] *De Leon v. Luis*, supra.
[362] *NPC v. Tarcelo*, 742 Phil. 463 (2014).
[363] *Peralta v. De Leon*, 650 Phil. 592 (2010).
[364] *FGU Insurance Corporation v. RTC of Makati City, Branch 66*, 659 Phil. 117 (2011).
[365] *Rollo* (G.R. No. 260426) pp. 168-182.

neither sentenced to imprisonment nor meted the penalty of perpetual disqualification from holding public office. Verily, this Court cannot add to, nor modify, the penalties imposed therein. Moreover, as discussed above, respondent Marcos, Jr.'s failure to file an income tax return is not an offense involving moral turpitude.

At any rate, respondent Marcos, Jr. has already paid the deficiency taxes and fines imposed in the CA Decision.

To prove payment of the deficiency taxes and fines, respondent Marcos, Jr. presented a BIR Certification and a Landbank Official Receipt dated 27 December 2001.[366]

This notwithstanding, petitioners Ilagan, *et al.* assert that these are insufficient to prove satisfaction of the deficiency taxes and fines, as an order of payment must first come from the court before payment may be made.[367] Further, they argue that nowhere in the BIR Certification does it state that the payments were made in satisfaction of the imposed penalties rendered by the court. To support their submissions, petitioners Ilagan, *et al.* presented a Certification issued by the RTC stating that there is no record on file of: (1) compliance of payment or satisfaction of its Decision dated 27 July 1995 or the CA Decision dated 31 October 1997; and (2) entry in the criminal docket of the RTC Decision dated 27 July 1995 as affirmed/modified by the CA Decision.[368]

On the other hand, the COMELEC Former First Division found as sufficient the BIR Certification and a Landbank Official Receipt presented by respondent Marcos, Jr. Specifically, as regards the Landbank Official Receipt, the COMELEC Former First Division concluded that the payment was indeed for the deficiency taxes and fees as evidenced by the amounts indicated therein, and the writing of the number "0605."[369] It was explained that BIR Form 0605 is a payment form used by taxpayers to pay taxes and fees that do not require a tax return, including deficiency taxes.[370] Moreover, the COMELEC Former First Division considered that the breakdown of amounts indicated in the Landbank Official Receipt already includes the payment of fines ordered to be paid by the CA.[371] Consequently, it ruled that respondent Marcos, Jr. has already paid the deficiency taxes and fines in the total amount of ₱67,137.27, in compliance with the CA Decision.

We agree with the COMELEC.

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366 Id. at 232-233.
367 Id. at 22.
368 Id. at 183.
369 Id. at 233.
370 Id.
371 Id. at 232-233.

It bears stressing that BIR Form 0605 is accomplished every time a taxpayer pays taxes and fees that do not require the use of a tax return such as second installment payment for income tax, deficiency tax, delinquency tax, registration fees, penalties, advance payments, deposits, and installment payments, among others.[372] The same has also been considered by the Court as proof of payment of deficiency taxes.[373] We likewise reiterate that the best evidence for proving payment is by evidence of receipts showing the same.[374] Thus, We agree that respondent Marcos, Jr. has indeed submitted sufficient evidence to prove the payment of the deficiency taxes and fines imposed upon him.

In contrast, the RTC Certification presented by petitioners Ilagan, *et al.* is insufficient to establish that respondent Marcos, Jr. did not pay the deficiency taxes and fines because it merely establishes that there is no record on file showing compliance with the RTC and the CA Decisions. Basic is the rule that one who alleges a fact has the burden of proving it by means other than mere allegations.[375] Here, petitioners Ilagan, *et al.* failed to substantiate their allegations through this mere RTC Certification, especially when weighed against the evidence presented by respondent Marcos, Jr.

On this note, We stress that the 1977 NIRC provides that the failure to file return or to pay tax shall be punished by a fine *or* by imprisonment *or* both. There is therefore no merit to the allegation that the CA, by limiting the penalty to the payment of fines in its Decision, failed to correctly apply the provisions of the law effective at the time of the offense. The CA imposed a penalty that is within the range of penalties provided by law. Thus, it is erroneous to say that respondent Marcos, Jr. has yet to serve his penalty. Respondent Marcos, Jr. has already paid the deficiency taxes and fines imposed upon him.

Pertinently, it bears noting that respondent Marcos, Jr. was a government employee for the years 1982 to 1985. The COMELEC Former First Division considered the Certification issued by the Local Finance Committee of the Province of Ilocos,[376] which stated that taxes were withheld from his compensation received for the years 1982 to 1985. There is basis to conclude that any deficiency taxes due from his compensation should be attributable to the provincial government as the withholding agent, and not to respondent Marcos, Jr.[377]

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[372] *See* <*https://www.bir.gov.ph/index.php/bir-forms/payment-remittance-forms.html*> (visited 23 May 2022).

[373] *See Kepco Philippines Corp. v. CIR*, G.R. Nos. 225750-51, 28 July 2020.

[374] *Towne & City Development Corp. v. CA*, 478 Phil. 466 (2004), citing *PNB v. CA*, 326 Phil. 326 (1996).

[375] *SSS v. COA*, G.R. No. 243278, 03 November 2020.

[376] *Rollo* (G.R. 260426), p. 231.

[377] Id.

In any case, non-payment of fines is not a ground for disqualification under Section 12 of the OEC, which contemplates only three instances when a person may be disqualified to hold public office, thus:

> 1. Declared by competent authority insane or incompetent; or
>
> 2. Sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months; or
>
> 3. Sentenced by final judgment for a crime involving moral turpitude.

Verily, whether or not respondent Marcos, Jr. satisfied the payment of fines and penalties with the lower courts is immaterial since his sentence did not fall within the purview of Section 12 of the OEC.

V. Conclusion

> *"In free republics, it is most peculiarly the case: In these, the will of the people makes the essential principle of the government; and the laws which control the community, receive their tone and spirit from the public wishes."*[378]

Vox populi, vox Dei – In the 09 May 2022 elections, over half of the electorate chose to stake the fate of the entire nation on respondent Marcos, Jr. Only time can unravel the wisdom behind the overwhelming support given to him. In the meantime, no one can argue that the electoral exercise is an essential part of our democracy.

Equally important to the life of our Republic is the acknowledgement that it is founded upon the rule of law. Thus, even the will of the majority cannot subvert what the law has made obligatory. Candidates are expected to abide by the procedural and substantive requirements for running for public office.

As such, inquiring upon a candidate's qualifications and compliance is not just a right but a responsibility of every citizen. Petitioners Buenafe, *et al.* and petitioners Ilagan, *et al.* have exercised such responsibility which, in turn, brought these cases to light. In resolving these Petitions, the Court also

[378] Alexander Hamilton, First Speech, New York Ratifying Convention, 21 June 1787 <https://founders.archives.gov/documents/Hamilton/01-05-02-0012-0011> (visited 17 June 2022).

made its own determination not only as part of its constitutional duty, but in its role as a pillar of our democracy.

This Decision was never intended to validate the 31,629,783 who expressed their faith on respondent Marcos, Jr. Instead, this Decision aims to confirm the eligibility and qualifications of respondent Marcos, Jr. for the highest position of the land. After much scrutiny, We come to the conclusion that our laws do not support the position taken by petitioners Buenafe, *et al.*, who declared that respondent Marcos, Jr. made false material representations as to his eligibility, nor the assertions of petitioners Ilagan, *et al.*, who put doubt on respondent Marcos, Jr.'s qualifications by alleging that he is perpetually disqualified from running from public office and convicted of a crime involving moral turpitude.

Indeed, the exercise of this Court's power to decide the present controversy has led to no other conclusion but that respondent Marcos, Jr. is qualified to run for and be elected to public office. Likewise, his COC, being valid and in accord with the pertinent laws, was rightfully upheld by the COMELEC.

WHEREFORE, in view of the foregoing, the Petitions in G.R. Nos. 260374 and 260426 are hereby **DISMISSED.** The Resolutions of the Commission on Elections in SPA No. 21-156 (DC) dated 17 January 2022 and 10 May 2022, and in SPA No. 21-212 (DC) dated 10 February 2022 and 10 May 2022 are hereby **AFFIRMED**.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

See separate concurring opinion

MARVIC M. V. F. LEONEN
Associate Justice

On Official Leave but left his vote
See Separate Opinion
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

with Concurrence
AMY C. LAZARO-JAVIER
Associate Justice

No part
HENRY JEAN PAUL B. INTING
Associate Justice

Pls. see separate concurring opinion
MARIO V. LOPEZ
Associate Justice

Pls. see separate concurring opinion
SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

Write separate concurring
JHOSEP Y. LOPEZ
Associate Justice

See separate concurring opinion
JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice NO PART

See Separate Concurring Opinion
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to the Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice