

EN BANC

G.R. No. 260374 — FR. CHRISTIAN B. BUENAFE, FIDES M. LIM, MA. EDELIZA P. HERNANDEZ, CELIA LAGMAN SEVILLA, ROLAND C. VIBAL, and JOSEPHINE LASCANO, *Petitioners*, v. 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*;

G.R. No. 260426 — 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, CARMENCITA MENDOZA FLORENTINO, DOROTEO CUBACUB ABAYA, JR., ERLINDA NABLE SENTURIAS, 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*, v. COMMISSION ON ELECTIONS, FERDINAND ROMUALDEZ MARCOS, JR., THE SENATE OF THE PHILIPPINES, represented by the Senate President, and THE HOUSE OF REPRESENTATIVES, represented by the Speaker of the House of Representatives, *Respondents*.

Promulgated:

June 28, 2022

x-----x  


SEPARATE CONCURRING OPINION

LEONEN, J.:

These cases do not present difficult legal questions.

What makes these cases apparently difficult are their political repercussions and the threat of unthinking judgments by passionate partisans from either side.

Put in another way: what are at issue in this case are narrow legal questions, not political ones.



What is at issue in this case is not whether the Justices of this court politically support a candidate. The personal background, the leadership potentials or even the platform, or lack thereof, of any candidate for the highest political office are not at issue. How we vote in this case does not necessarily reveal how we voted during the last elections nor reveal our continuing positions regarding various platforms of government.


Thus, in the resolution of the narrow legal questions, any Justice should be careful not to privilege our political choices. Rather, we should adopt the longer view: to examine the applicable text of the provisions of the Constitution and the law; to review the existing construction of their meaning as well as their genealogy; and to be conscious of our interpretative methodology and ensure that our premises proceed not from the political results that we want, but from the values and principles congealed in the legal provisions and applicable not only for the parties involved in this case but also durable enough for the future.

How we vote in this case will reveal our commitment to the rule of law, regardless of its personal political consequences for us.

In general, the qualifications for any person to vie for President of the Republic of the Philippines is limited to those enumerated in Section 2, Article VII of the Constitution. These qualifications are admittedly very sparse, but intentionally so. Its intent is to be inclusive, as well as to put as much of the characteristics, background, and platform of a candidate to the electorate. It will, in the future, allow a socialist, a union leader, an activist that had already been convicted of illegal possession of firearms during martial law, or even a former government employee who may have been wrongly convicted by a final judgment of failure to file an income tax return—even when taxes were withheld from his or her monthly compensation—to run for President.

In my view, these qualifications cannot be amended by statute. Neither can additional qualifications be included through interpretation by the Court. The Constitution can only be modified through the process of amendment and revision outlined in its own Article XVII.

In general, the Certificate of Candidacy is the document that would allow the Commission on Elections to evaluate: (a) the qualifications and disqualifications of a candidate; and (b) determine whether his or her name should be included in the ballot. It is submitted to the Commission on Elections and is not required to be published. It is not the sole and exclusive document that will be used by the electorate to evaluate and judge the candidate.



In view of its limited purpose, the Omnibus Election Code requires that any cancellation be founded not only on material misrepresentations, but that the representations be proven to be intentionally false.

Resolving the question does not mean that the candidate misrepresents his or her credentials to the electorate—this will be the subject of public discussions and forums after the filing of the Certificate of Candidacy. The question is whether a candidate has intentionally misled the Commission on Elections with a false representation which is material enough to affect whether or not his or her name should be included in the ballot.


Private respondent's final conviction did not include perpetual disqualification from any elected public office. That conviction is already beyond the review of this Court. It became final upon the withdrawal of the appeal to this Court. Neither is the accessory penalty of perpetual disqualification automatically and implicitly imposed in crimes that are not prescribed by the Revised Penal Code.

The non-filing of an Income Tax Return—an individual's self-report of his or her taxable income—is not, in all cases, similar to tax evasion. Certainly, the law now provides for a process of compromising the failure to file income tax returns on time. Definitely, a failure to file an income tax return by a government employee whose compensation is already subject to withholding taxes is generally not tax evasion.

Thus, there are certain instances when the conviction for failing to file income tax returns is not considered as a crime involving moral turpitude within the meaning of Section 12 of the Omnibus Election Code. Moral turpitude in the context of that provision implies an act that displays a level of depravity that goes into the one's character to be able to discern right from wrong. Not all acts that are punished by law involves a showing of moral turpitude.

Our legal order does not require one to be a saint before a person can consider running for public office. Candidates may have made mistakes in the past. They may make mistakes in filing Certificates of Candidacy. But the intent of the relevant law is to have the electorate, rather than for courts, judge the strengths and faults of a candidate for themselves, through a narrow reading of the law divorced from its spirit, to determine who will be included in the ballot.

Certainly, in my view, we cannot add to the minimum constitutional qualifications to run for President through the indirect route of assessing Certificates of Candidacies.



Consistent with this, I concur with the *ponencia*.

I explain further.

## I.

This Court has the duty and power of judicial review under the Constitution. Article VIII, Section 1 of the Constitution provides:

### ARTICLE VIII Judicial Department

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.<sup>1</sup>

The 1987 Constitution has expanded the scope of this judicial review from its traditional purview. Courts are no longer only bound to “settle actual controversies involving rights which are legally demandable and enforceable.” They are also “empowered to determine if any government branch or instrumentality has acted beyond the scope of its powers, such that there is grave abuse of discretion.”<sup>2</sup> Judicial review gives authority to the courts to invalidate acts of legislative, executive, and constitutional bodies if shown contrary to the Constitution.<sup>3</sup>

Grave abuse of discretion refers to “capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction[.]”<sup>4</sup>

In *Mitra v. Commission on Elections*:<sup>5</sup>

[T]he abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or 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. Mere abuse of discretion is not enough; it must be grave. We have held, too, that

<sup>1</sup> CONST., Article VIII, sec. 1.

<sup>2</sup> *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208>> [Per J. Leonen, En Banc].

<sup>3</sup> *Araullo v. Aquino III*, 752 Phil. 716 (2014) [Per J. Bersamin, En Banc].

<sup>4</sup> *Villarosa v. House of Representatives Electoral Tribunal*, 394 Phil. 730, 775 (2000) [Per C.J. Davide, Jr., En Banc].

<sup>5</sup> *Mitra v. Commission on Elections*, 636 Phil. 753 (2010) [Per J. Brion, En Banc].

the use of wrong or irrelevant considerations in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.<sup>6</sup>

Rule 65 of the Rules of Court corrects acts made without or in excess of jurisdiction by any tribunal, board, or officer in the exercise of its governmental function:

SECTION 1. Petition for certiorari.—When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess [of] its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.<sup>7</sup>

A writ of certiorari may be issued:

(a) where the tribunal's approach to an issue is tainted with grave abuse of discretion, as where it uses wrong considerations and grossly misreads the evidence at arriving at its conclusion; (b) where a tribunal's assessment is "far from reasonable[,] [and] based solely on very personal and subjective assessment standards when the law is replete with standards that can be used[;]" "(c) where the tribunal's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable[;]" and (d) where the tribunal uses wrong or irrelevant considerations in deciding an issue.<sup>8</sup>

There is grave abuse of discretion when a "constitutional body makes patently gross errors in making factual inferences[,] such that critical pieces of evidence presented by a party not traversed or even stipulated by the other parties are ignored."<sup>9</sup>

Under Rule 64<sup>10</sup> in relation to Rule 65 of the Rules of Court, a judgment or final order of the Commission on Elections may be reviewed by this Court

<sup>6</sup> Id. at 777.

<sup>7</sup> RULES OF COURT, Rule 65, sec. 1.

<sup>8</sup> J. Leonen, Concurring Opinion in *Poe-Llamanzares v. Commission on Elections*, 782 Phil. 292, 657 (2016) [Per J. Perez, En Banc].

<sup>9</sup> Id. at 656.

<sup>10</sup> RULES OF COURT, Rule 64, sec. 2 provides:

SECTION 2. Mode of review.—A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided.

on the ground that the Commission acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its Comment,<sup>11</sup> public respondent Commission on Elections posits that the Presidential Electoral Tribunal has jurisdiction over the Petitions. It claims that as the elections have been concluded, this Court has already been stripped of its power to resolve the issues raised.<sup>12</sup> They add that the overwhelming number of votes in favor of Ferdinand Marcos, Jr. (Marcos, Jr.) has rendered the Petitions moot.<sup>13</sup>

Commission on Elections is mistaken.

Under the Constitution, this Court *En Banc*, sitting as the Presidential Electoral Tribunal, is also the “sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President[.]”<sup>14</sup>

The Presidential Electoral Tribunal is an independent constitutional body. However, it is not separate and distinct from this Court. When this Court convenes as the tribunal, it exercises judicial power albeit wearing a different hat.<sup>15</sup>

This Court *En Banc* sitting as the Presidential Electoral Tribunal has the power to rule on election contests. A “contest” refers to a postelection scenario.<sup>16</sup>

Moreover, this Court has held that the Presidential Electoral Tribunal only has jurisdiction over the declared president and vice president of the elections, and not candidates. Thus, it cannot resolve cases filed before it that question the qualifications of candidates for presidency or vice presidency.<sup>17</sup>

Moreover, the nature of election issues raised before the Commission on Elections are different from those that can be raised before the electoral tribunals. The 2016 cases of *Poe-Llamanzares v. Commission on Elections*<sup>18</sup> and *David v. Senate Electoral Tribunal*<sup>19</sup> demonstrate this distinction.

---

<sup>11</sup> *Rollo* (G.R. No. 260374), pp. 654–732.

<sup>12</sup> *Id.* at 669–672.

<sup>13</sup> *Id.* at 665–666.

<sup>14</sup> CONST., art. VII, sec. 4.

<sup>15</sup> *Macalintal v. Presidential Electoral Tribunal*, 650 Phil. 326 (2010) [Per J. Nachura, En Banc].

<sup>16</sup> *Tecson v. Commission on Elections*, 468 Phil. 421 (2004) [Per J. Vitug, En Banc].

<sup>17</sup> *Tecson v. Commission on Elections*, 468 Phil. 421 (2004) [Per J. Vitug, En Banc].

<sup>18</sup> 782 Phil. 292 (2016) [Per J. Perez, En Banc].

<sup>19</sup> 795 Phil. 529 (2016) [Per. J. Leonen, En Banc].

In *Poe-Llamanzares*, petitions under Rule 64 were filed assailing the decision of the Commission on Elections that cancelled the certificate of candidacy for presidency filed by Senator Grace Poe-Llamanzares (Poe-Llamanzares). The Commission on Elections found that the senator committed false material representation regarding her citizenship and residency.

In its ruling, this Court clarified that the Commission on Elections can only rule whether the certificate of candidacy should be cancelled on the ground that there is false material representation. It cannot rule on the qualification or lack thereof of the candidate.

*Poe-Llamanzares* stressed that the Constitution withholds from the Commission on Elections the power to decide inquiries into qualifications of the candidates, such as age, residency, and citizenship. Questions on candidates' qualification are within the jurisdiction of electoral tribunals.

This Court further created the distinction between “disqualification proceedings” and “declaration of ineligibility.”

Disqualification is based on Sections 12 and 68 of the Omnibus Elections Code and Section 40 of the Local Government Code. It bars a person from “becoming a candidate or from continuing as a candidate from public office.” On the other hand, ineligibility pertains to the “lack of qualifications prescribed in the Constitution or the statutes for holding public office[.]” It is the procedural vehicle to “remove the incumbent from office.”<sup>20</sup>

*Poe-Llamanzares* elucidated that there is no legal proceeding to determine the eligibility of a candidate before election. This is because the determination of a candidate's eligibility, such as their citizenship or residency, takes a long time and may extend beyond the start of the term of office. Moreover, the rationale behind the prohibition against pre-proclamation cases in elections for president, vice president, and members of Congress is to preserve the prerogatives of the electoral tribunals.

Thus, in *Poe-Llamanzares*, this Court held that the electoral tribunal had no jurisdiction over the controversy. While the case touched upon the requirements of citizenship and residency, it mainly involved a petition for cancellation of certificate of candidacy based on false material representation.

This is in contrast with the subsequent case of *David*, where the citizenship and residency of Poe-Llamanzares were likewise assailed. However, *David* is distinct from *Poe-Llamanzares* as it was filed after Senator

---

<sup>20</sup> *Poe-Llamanzares v. Commission on Elections*, 782 Phil. 292, 388 (2016) [Per J. Perez, En Banc], citing *Fermin v. Commission on Elections*, 595 Phil. 449 (2008) [Per J. Nachura, En Banc].



Poe-Llamanzares already took office as a senator. As a post-election case, the petition was correctly filed before the Senate Electoral Tribunal as it assailed the actual eligibility of Poe-Llamanzares as a senator, not the validity of her certificate of candidacy.

In this case, the two Petitions are correctly filed under Rule 64 in relation to Rule 65 of the Rules of Court. They question the various Resolutions<sup>21</sup> of the Commission on Elections, which denied the petition for cancellation of certificate of candidacy and the petition for disqualification against Marcos, Jr. The petitions assailing the certificate of candidacy of Marcos, Jr. were filed before the elections were conducted, making them a preelection contest.

The Petitions mainly assail the certificate of candidacy of Marcos, Jr. on the ground that he committed false material representation. While it involves his qualifications, the Petitions are anchored on the cancellation of his certificate of candidacy. It is a preelection contest filed before the Commission on Elections and reviewable by this Court. Thus, this Court may review the Petitions notwithstanding the fact that the elections have been concluded.

## II

To be enabled to run for any elective public office, a person must satisfy both substantive and procedural requirements under our electoral laws. A candidate's eligibility or ineligibility is defined by the Constitution and statutes, such as the Omnibus Election Code.<sup>22</sup> These provide the minimum qualifications for a person to present a candidacy to run for a public office.

Substantive requirements pertain to the possession of qualifications and none of the disqualifications for a public office.<sup>23</sup> On the other hand, the

<sup>21</sup> *Rollo* (G.R. No. 260374), pp. 94–125. The January 17, 2022 Resolution was signed by Presiding Commissioner Socorro B. Inting and Commissioners Antonio T. Kho, Jr. (now a member of this Court) and Rey E. Bulay of the Second Division of the Commission on Elections, Manila; *rollo* (G.R. No. 260374), pp. 72–82. The May 10, 2022 Resolution was signed by Chairperson Saidamen B. Pangarungan and Commissioners Marlon S. Casquejo, Socorro B. Inting, Aimee P. Ferolino, Rey E. Bulay, and Aimee S. Torre Franca-Neri of the Commission on Elections, En Banc, Manila; *rollo* (G.R. No. 260426), pp. 198–238. The February 10, 2022 Resolution was signed by Presiding Commissioner Marlon S. Casquejo and Commissioner Aimee P. Ferolino of the Former First Division of the Commission on Elections, Manila; *rollo* (G.R. No. 260426), pp. 285–299. The May 10, 2022 Resolution was signed by Chairperson Saidamen B. Pangarungan and Commissioners Marlon S. Casquejo, Socorro B. Inting, Aimee P. Ferolino, Rey E. Bulay, and Aimee S. Torre Franca-Neri of the Commission on Elections, En Banc, Manila.

<sup>22</sup> J. Leonen, Concurring Opinion in *Poe-Llamanzares v. Commission on Elections*, 782 Phil. 292 (2016) [Per J. Perez, En Banc].

<sup>23</sup> Qualifications for public office are continuing requirements and must be possessed at the time of election or assumption of office and during the entire tenure. Once any of the required qualifications is lost, an elective officer's title may be seasonably challenged. See *Amores v. House of Representatives Electoral Tribunal*, 636 Phil. 600 (2010) [Per J. Carpio Morales, En Banc].



procedural requirements pertain to the compliance with the electoral process for a particular national or local election, as outlined by the Omnibus Election Code and Commission on Elections.<sup>24</sup>

The substantive qualifications for presidency are found in Article VII, Section 2 of the Constitution.<sup>25</sup> These qualifications are reiterated in Section 63 of the Omnibus Election Code.<sup>26</sup> Meanwhile, the disqualifications are found in Sections 12<sup>27</sup> and 68<sup>28</sup> of the Omnibus Election Code.

It is not enough that a person *actually* possesses the qualifications and none of the disqualifications for the position sought. They must likewise dutifully and honestly declare details relating to these in their certificate of candidacy. A person must file their certificate of candidacy in the form and within the period prescribed by the Omnibus Election Code and by the Commission on Elections.<sup>29</sup> It is through a certificate of candidacy that a candidate certifies under oath their eligibility, *i.e.*, their qualifications to the office sought.<sup>30</sup>

<sup>24</sup> See CONST., art. XI-C, sec. 2(1), in relation to Omnibus Election Code, Section 52 and COMELEC Resolution No. 10717, sec. 16.

<sup>25</sup> See CONST., Article VII, sec. 2, which provides:

SECTION 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.

<sup>26</sup> See Batas Pambansa Blg. 881 (1985), art. IX, sec. 63, which provides:

SECTION 63. Qualifications for President and Vice-President of the Philippines. — No person may be elected President or Vice-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 election, and a resident of the Philippines for at least ten years immediately preceding such election.

<sup>27</sup> See Batas Pambansa Blg. 881 (1985), art. I, sec. 12, which provides:

SECTION 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.

This [sic] 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.

<sup>28</sup> See Batas Pambansa Blg. 881 (1985), art. IX, sec. 68, which provides:

SECTION 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, 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. 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.

<sup>29</sup> See Batas Pambansa Blg. 881 (1985), art. IX, secs. 73 and 74.

<sup>30</sup> See Batas Pambansa Blg. 881 (1985), art. IX, secs. 73 and 74. See also COMELEC Resolution No. 10717, Section 16.

The lack of any qualification for a public office, or the commission of any act constituting a ground for disqualification, including any material misrepresentation in a certificate of candidacy as regards their qualifications, may prevent a person from running, or if elected, from serving a public office. In other words, when an ineligible person is elected as a public officer, their right to hold office may be challenged in at least two ways:<sup>31</sup>

(a) by filing a petition to deny due course or to cancel a certificate of candidacy pursuant to Section 78, in relation to Section 74 of the Omnibus Election Code (Section 78 petition); or

(b) by filing a petition for disqualification pursuant to Section 68 of the Omnibus Election Code (Section 68 petition).

Pursuant to Section 78 of the Omnibus Election Code, a certificate of candidacy may be denied or cancelled when there is false material representation of the contents of the certificate of candidacy:

*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.

In turn, Section 74 of the Omnibus Election Code enumerates the contents of a certificate of candidacy:

*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.<sup>32</sup>

---

<sup>31</sup> See *Fermin v. COMELEC*, 595 Phil. 449 (2008) [Per J. Nachura, En Banc]. In *Fermin*, this Court stated that the eligibility or qualification of a candidate may also be challenged through a *quo warranto* proceeding under Section 253 of the Omnibus Election Code.

<sup>32</sup> The use of the pronoun “he” is retained to respect the language of the law. Nonetheless, the use of gender-neutral language is observed in other parts of this separate opinion.

Meanwhile, Section 68 of the Omnibus Election Code provides for the grounds for which a candidate may be disqualified:

SECTION 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, 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. 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.

In *Fermin v. Commission on Elections*,<sup>33</sup> this Court pointed out that a Section 78 petition and a Section 68 petition are two distinct remedies:

Lest it be misunderstood, the denial of due course to or the cancellation of the [certificate of candidacy] 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 [certificate of candidacy] that he/she is eligible for the office he/she seeks. Section 78 of the [Omnibus Election Code], 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 [certificate of candidacy] that is false, the [Commission on Elections], 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 [Omnibus Election Code] 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.

At this point, we must stress that a “Section 78” petition ought not to be interchanged or confused with a “Section 68” petition. They are different remedies, based on different grounds, and resulting in different eventualities.

....

---

<sup>33</sup> 595 Phil. 449 (2008) [Per J. Nachura, En Banc].

[Section 68 of the Omnibus Election Code] only refers to *the commission of prohibited acts* and the possession of a permanent resident status in a foreign country as grounds for disqualification . . .

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code] . . . On the other hand, a petition to deny due course to or cancel a [certificate of candidacy] can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a [certificate of candidacy]. Thus, in *Miranda v. Abaya*, this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the [Omnibus Election Code] because he/she remains a candidate until disqualified; but a person whose [certificate of candidacy] has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.<sup>34</sup>

A grant of a Section 78 petition involves a finding that: (a) a person lacks a qualification; and (b) that they made a false material representation.<sup>35</sup>

To deny due course or to cancel a certificate of candidacy under Section 78, there must be a showing that the representations of the candidates are both false and material.<sup>36</sup>

To be material, the representation must pertain to the qualification for the office sought by the candidate:

First, a misrepresentation in a certificate of candidacy is material when it refers to a qualification for elective office and affects the candidate's eligibility. Second, when a candidate commits a material misrepresentation, [they] may be proceeded against through a petition to deny due course to or cancel a certificate of candidacy under Section 78, or through criminal prosecution under Section 262 for violation of Section 74. Third, a misrepresentation of a non-material fact, or a non-material misrepresentation, is not a ground to deny due course to or cancel a certificate of candidacy under Section 78. In other words, for a candidate's certificate of candidacy to be denied due course or [cancelled] by the COMELEC, the fact misrepresented must pertain to a qualification for the office sought by the candidate.<sup>37</sup>

---

<sup>34</sup> Id. 465–469.

<sup>35</sup> *Talaga v. Commission on Elections*, 696 Phil. 786 (2012) [Per J. Bersamin, En Banc].

<sup>36</sup> See *Batas Pambansa Blg. 881* (1985), art. IX, sec. 78. *Mitra v. Commission on Elections*, 636 Phil. 753 (2010) [Per J. Brion, En Banc].

<sup>37</sup> *Lluz v. Commission on Elections*, 551 Phil. 428, 443 (2007) [Per J. Carpio, En Banc].

The representation must not only be material, but also be false.<sup>38</sup> To be false, it must be established that the candidate “intentionally tried to mislead the electorate regarding [their] qualifications.”<sup>39</sup> It must evince a “deliberate intent to mislead, misinform or hide a fact which would otherwise render a candidate ineligible[,]” and “made with an intention to deceive the electorate as to one’s qualifications to run for public office.”<sup>40</sup>

In *Mitra v. Commission on Elections*,<sup>41</sup> this Court emphasized that the attempt to mislead must be deliberate:

The false representation under Section 78 must likewise be a “deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible.” Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate’s qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if [they run] and [are] elected, [they] cannot serve; in both cases, [they] can be prosecuted for violation of the election laws.<sup>42</sup>

The false material representation committed by a candidate cannot merely be an innocuous mistake. It must be both false and material considering that the consequences imposed on a guilty candidate are grave. The cancellation of the certificate of candidacy prevents the candidate from running, or if elected, from serving their term of office.<sup>43</sup> It deprives a person of a basic and substantive political right to be voted for public office.<sup>44</sup>

Indeed, in *David and Poe-Llamanzares*, this Court had the occasion to elaborate on whether a foundling is a natural-born Filipino citizen in relation to a declaration of citizenship in a candidate’s certificate of candidacy. These two cases arose from Section 78 petitions involving Senator Poe-Llamanzares’s certificate of candidacy to run for public office.

*David* held that the Senate Electoral Tribunal did not commit grave abuse of discretion in finding that Senator Poe-Llamanzares is a natural-born Filipino citizen and qualified to hold a seat as senator under Article VI, Section 3 of the 1987 Constitution.

---

<sup>38</sup> *Mitra v. Commission on Elections*, 636 Phil. 753 (2010) [Per J. Brion, En Banc].

<sup>39</sup> J. Leonen, Concurring Opinion in *Poe-Llamanzares v. Commission on Elections*, 782 Phil. 292, 787 (2016) [Per J. Perez, En Banc].

<sup>40</sup> *Ugdoracion, Jr. v. Commission on Elections*, 575 Phil. 253, 265–266 (2008) [Per J. Nachura, En Banc].

<sup>41</sup> 636 Phil. 753 (2010) [Per J. Brion, En Banc].

<sup>42</sup> *Id.* at 780.

<sup>43</sup> *Salcedo II v. Commission on Elections*, 371 Phil. 377 (1999) [Per J. Gonzaga-Reyes, En Banc].

<sup>44</sup> *Id.*

This Court clarified that a reading of “the Constitution sustains a presumption that all foundlings found in the Philippines are born to at least either a Filipino father or a Filipino mother and are thus natural-born, unless there is substantial proof otherwise.”<sup>45</sup> Any other conclusion would equate to a permanent discrimination against foundlings, which violates the equal protection clause and runs contrary to our commitment to comply with our international treaty obligations.

In *Poe-Llamanzares*, I voted to set aside resolutions issued by the Commission on Elections as Senator Poe-Llamanzares made no false material representation in her certificate of candidacy for presidency.<sup>46</sup> I expressed that a candidate should not be expected to be thoroughly familiar with the precise interpretation of a legal concept related to their eligibility to run for public office, which in that case pertained to the concept of foundlings vis-à-vis the citizenship requirement, and to correctly apply such a concept.

Absent any doctrine on the matter, the assertion made by Senator Poe-Llamanzares in her certificate of candidacy did not constitute a false material representation of fact, but a mere misinterpretation of law. Moreover, as I have pointed out, the Commission on Elections could not, based on new doctrines not known to Senator Poe-Llamanzares, declare that her certificate of candidacy is infected with false material representation.

In this relation, I emphasized the need to establish that a material representation is false to successfully challenge a certificate of candidacy through a Section 78 petition:

[T]o successfully challenge a certificate of candidacy under Section 78, a petitioner must establish that:

First, that the assailed certificate of candidacy contains a representation that is false;

Second, that the false representation is material, *i.e.*, it involves the candidate's qualifications for elective office, such as citizenship and residency; and

Third, that the false material representation was made with a “deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible” or “with an intention to deceive the electorate as to one's qualifications for public office.”

....

<sup>45</sup> 795 Phil. 529, 599 (2016) [Per J. Leon, En Banc].

<sup>46</sup> J. Leonen, Concurring Opinion in *Poe-Llamanzares v. Commission on Elections*, 782 Phil. 292, 657 (2016) [Per J. Perez, En Banc].

It is true that Section 78 makes no mention of “intent to deceive.” Instead, what Section 78 uses is the word “representation.” Reading Section 78 in this way creates an apparent absence of textual basis for sustaining the claim that intent to deceive should not be an element of Section 78 petitions. It is an error to read a provision of law.

“Representation” is rooted in the word “represent,” a verb. Thus, by a representation, a person actively does something. There is operative engagement in that the doer brings to fruition what he or she is pondering — something that is abstract and otherwise known only to him or her, a proverbial “castle in the air.” The “representation” is but a concrete product, a manifestation, or a perceptible expression of what the doer has already cognitively resolved to do. One who makes a representation is one who intends to articulate what, in his or her mind, he or she wishes to represent. He or she actively and intentionally uses signs conventionally understood in the form of speech, text, or other acts.

Thus, representations are assertions. By asserting, the person making a statement pushes for, affirms, or insists upon something. These are hardly badges of something in which intent is immaterial. On the contrary, no such assertion can exist unless a person actually wishes to, that is, intends, to firmly stand for something.

In Section 78, the requirement is that there is “material representation contained therein as required by Section 74 hereof is false.” A “misrepresentation” is merely the obverse of “representation.” They are two opposite concepts. Thus, as with making a representation, a person who misrepresents cannot do so without intending to do so.

That intent to deceive is an inherent element of a Section 78 petition is reflected by the grave consequences facing those who make false material representations in their certificates of candidacy. They are deprived of a fundamental political right to run for public office. Worse, they may be criminally charged with violating election laws, even with perjury. For these reasons, the false material representation referred to in Section 78 cannot “just [be] any innocuous mistake.”

Petitioner correctly argued that Section 78 should be read in relation to Section 74’s enumeration of what certificates of candidacy must state. Under Section 74, a person filing a certificate of candidacy declares that the facts stated in the certificate “are true to the best of his [or her] knowledge.” The law does not require “absolute certainty” but allows for mistakes in the certificate of candidacy if made in good faith. This is consistent with the “summary character of proceedings relating to certificates of candidacy.”<sup>47</sup>

Section 74 of the Omnibus Election Code requires a candidate to state under oath that “[they are] eligible for said office.” In the event a candidate certifies under oath that they are eligible to run for public office notwithstanding a final judgment expressly disqualifying them from running, that is the time that the candidate is making a false material representation.<sup>48</sup>

---

<sup>47</sup> Id. at 673–682.

<sup>48</sup> *Jalosjos, Jr. v. Commission on Elections*, 696 Phil. 601 (2012) [Per J. Carpio, En Banc].

Here, there is no false material representation on private respondent Ferdinand Romualdez Marcos, Jr.'s part when he did not indicate in his certificate of candidacy that he was convicted of a crime carrying a penalty of perpetual disqualification and a crime involving moral turpitude.

While the representation is material as it refers to a qualification to run for presidency, there is nothing false in his certificate of candidacy.

Petitioners posit that the penalty of perpetual disqualification from public service attaches to respondent Marcos, Jr.'s conviction and is deemed incorporated in the dispositive portion. They refer to Section 286 of Presidential Decree No. 1994 that amended the National Internal Revenue Code. The amendment included that a public officer or employee convicted of a crime penalized under the National Internal Revenue Code would be disqualified from holding any public office:

Section 286. General provisions — (a) Any person convicted of a crime penalized by this Code, shall, in addition to being liable for the payment of tax, be subject to the penalties imposed herein . . .

(c) . . . 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[.]<sup>49</sup> (Emphasis supplied)

As pointed out by Commission on Elections, Presidential Decree No. 1994 took effect only on January 1, 1986, which introduced the penalty of perpetual disqualification for convictions under the National Internal Revenue Code. Thus, the 1977 National Internal Revenue Code is the applicable law for the taxable years of 1982, 1983, and 1984, which does not include the accessory penalty of perpetual disqualification.

While the provision is effective during the taxable year of 1985, respondent Marcos, Jr. was no longer a public officer when he was required to file his tax return. Thus, the accessory penalty under Presidential Decree No. 1994 does not attach to his conviction.

Moreover, the dispositive portion of the Court of Appeals' Decision, which became final and executory, is crucial in this point. To recall, the Court of Appeals' Decision modified the Regional Trial Court's ruling, acquitting respondent Marcos, Jr. of his violation for nonpayment of deficiency taxes but affirming his conviction for failing to file income tax returns for taxable years 1982 to 1985. In so ruling, the Court of Appeals removed the penalty of imprisonment and retained the payment of fine. Thus:

---

<sup>49</sup> Presidential Decree No. 1994 (1985), sec. 255.



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 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.<sup>50</sup>

Evidently, the dispositive portion of the final and binding judgment does not impose a penalty of imprisonment or perpetual disqualification from public service. This is the directive part of the Decision and the order that should be followed in the execution.<sup>51</sup> Ultimately, it is the dispositive portion that binds respondent Marcos, Jr.<sup>52</sup>

Thus, the order of execution can never go beyond the terms and consequences clearly expressed in the dispositive portion. Otherwise, adding other penalties not stated in the Decision transgresses upon the Court of Appeals' judicial discretion to impose penalties and incredibly prejudices respondent Marcos, Jr.

The Court of Appeals has the judicial discretion to impose a penalty of imprisonment, including perpetual disqualification. Here, the Court of Appeals, within the discretion bound by law, decided to delete the imprisonment and retain the imposition of fine.

Further, it bears emphasis that the Court of Appeals' Decision has been rendered final. It is beyond appeal and alteration. In *Kumar v. People*,<sup>53</sup> this Court held:

---

<sup>50</sup> *Ponencia*, p. 8

<sup>51</sup> *Risos-Vidal v. Commission on Elections*, 751 Phil. 479 (2015) [Per J. Leonardo-De Castro, En Banc].

<sup>52</sup> *Id.*

<sup>53</sup> G.R. No. 247661, June 15, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66335>> [Per J. Leonen, Third Division].

[A] decision that has acquired finality becomes immutable and unalterable. As such, it may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.<sup>54</sup> (Citation omitted)

Thus, the ruling can no longer be disturbed, even if the questions raised are meant to correct errors of fact or law.

Moreover, respondent Marcos, Jr.'s conviction for the failure to file his income tax return does not disqualify him to run as a candidate.

Apart from identifying the qualifications of candidates for public office, the Omnibus Election Code likewise enumerates the circumstances that will render a person disqualified. Section 12 of the Omnibus Election Code states:

SECTION 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.

This 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.<sup>55</sup>

None of these disqualifications are present in respondent Marcos, Jr.'s case. He was not found to be insane or incompetent by competent authority, and he was not sentenced by final judgment for subversion, insurrection, and rebellion. Moreover, the affirmation of his conviction before the Court of Appeals did not carry a penalty of imprisonment.

Petitioners, however, assert that the failure to file an income tax return in violation of Section 45 of the National Internal Revenue Code is a crime involving moral turpitude.

Moral turpitude refers to "everything. . . done contrary to justice, honesty, or good morals."<sup>56</sup> In *Villaber v. Commission on Elections*,<sup>57</sup> this Court defined moral turpitude as "an act of baseness, vileness, or depravity in

---

<sup>54</sup> Id.

<sup>55</sup> Batas Pambansa Blg. 881 (1985), art. I, sec. 12.

<sup>56</sup> *Villaber v. Commission on Elections*, 420 Phil. 930, 937 (2001) [Per J. Sandoval-Gutierrez, En Banc].

<sup>57</sup> Id.

the private duties which a [person] owes [their fellow], or to society in general, contrary to the accepted and customary rule of right and duty. . . , or conduct contrary to justice, honesty, modesty, or good morals.”<sup>58</sup>

The definition of moral turpitude and the identification of crimes involving moral turpitude is loose.<sup>59</sup> Generally, the standard surrounding moral turpitude depends on what the society accepts as rules of right and duty, justice, honesty, or good morals.<sup>60</sup> Determining what constitutes moral turpitude requires a social consensus of what acts are deemed reprehensible based on a society’s standards.

However, not every criminal act involves moral turpitude.<sup>61</sup> It is ultimately a question of fact, and it depends on the circumstances surrounding the violation.<sup>62</sup> For this reason, this Court must determine what crimes involve moral turpitude.<sup>63</sup>

The question of whether a failure to file an income tax return is a crime involving moral turpitude has been settled by this Court in *Republic v. Marcos II*.<sup>64</sup> In that case, this Court ruled that the failure to file an income tax return is not a crime involving moral turpitude because “the mere omission is already a violation regardless of the fraudulent intent or willfulness of the individual.”<sup>65</sup> Thus, the mere failure to file an income tax return is a distinct and separate violation from (1) filing a false return and (2) filing a fraudulent return with intent to evade tax.<sup>66</sup>

A false return may or may not be intentional. It simply involves a deviation from the truth regardless of the person’s intent. Meanwhile, a fraudulent return “implies intentional or deceitful entry with intent to evade the taxes due.”<sup>67</sup>

On the other hand, a mere omission or negligence in the filing of a tax return does not signify malicious intent. There is no apparent willfulness to evade payment of tax. The failure to file a tax return is not viewed as entirely irremissible. In fact, the penalty for failure to file an internal tax return can be compromised under Section 255 of the National Internal Revenue Code:

---

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> *Ty-Delgado v. House of Representatives Electoral Tribunal*, 779 Phil. 268 (2016) [Per J. Carpio, En Banc].

<sup>61</sup> Id.

<sup>62</sup> *Villaber v. Commission on Elections*, 420 Phil. 930 (2001) [Per J. Sandoval-Gutierrez, En Banc].

<sup>63</sup> Id.

<sup>64</sup> *Republic v. Marcos II*, 612 Phil. 355 (2009) [Per J. Peralta, Third Division].

<sup>65</sup> Id. at 375–376.

<sup>66</sup> Id.

<sup>67</sup> *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, 799 Phil. 391, 415 (2016) [Per J. Leonen, Second Division].

SECTION 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return 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 internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.<sup>68</sup>

Here, as pointed out in the *ponencia*, our tax laws are being developed in a way that decriminalizes failing to file an income tax return. This is fair and reasonable considering that many Filipinos miss or fail to file their income tax returns due to the complicated tax system, the lack of incentives to file, especially from individuals and businesses in the informal economy, or simply due to negligence.<sup>69</sup>

While these acts should not be enabled, there should be a broader understanding in characterizing this crime. The mere failure to file an income tax return does not demonstrate moral perversity or intent to defraud or evade payment of tax. Thus, under Section 12 of the Omnibus Election Code, respondent Marcos, Jr. cannot be disqualified from running as a presidential candidate despite his failure to file his income tax return.

Nevertheless, Filipinos who miss or fail to file their tax returns should face the consequences of the law. Our government relies heavily on the collection of taxes and compliance with our tax laws is a duty of every citizen. The president themselves must dutifully ensure that these laws are faithfully executed. This includes the rightful filing of returns and payment of taxes.

The Constitution merely sets out the minimum qualifications for the president. In doing so, it allows the electorate to decide for themselves the standard they deem fit for the position. This may include a person's character, integrity, educational background, political leaning, public service track

<sup>68</sup> National Internal Revenue Code, sec. 255.

<sup>69</sup> See Senate of the Philippines, *ANGARA TO BIR: SIMPLIFY TAX SYSTEM TO ENCOURAGE PINOYS TO PAY TAXES*, September 14, 2014, available at [http://legacy.senate.gov.ph/press\\_release/2014/0914\\_angara1.asp](http://legacy.senate.gov.ph/press_release/2014/0914_angara1.asp) (last accessed on June 24, 2022).

record, expertise, work ethic, or even records of criminal conviction. These standards can demonstrate and predict how a candidate will carry out their duties once elected to office. During the campaign period, the qualifications of a candidate are threshed out by the public with the hope that it provides guidance to the electorate in making an informed decision.

Thus, the electorate heavily relies on the information it receives and the kind of political discussions it participates in.

### III

As part of its duty, the Commission on Elections is bound to “enforce and administer all laws and regulations relative to the election[.]”<sup>70</sup>

The Omnibus Election Code states that petitions to deny due course or to cancel a certificate of candidacy, such as the Buenafe Petition, “shall be decided, after due notice and hearing, not later than fifteen days before the election.”<sup>71</sup> On the other hand, final decisions of petitions for disqualification, including the Ilagan Petition, “shall be rendered not later than seven days before the election in which the disqualification is sought.”<sup>72</sup>

Nevertheless, the Commission on Elections, in clear derogation of the above provisions, released its Resolutions on both petitions on May 10, 2022, a day after the 2022 elections.

The Commission on Elections cannot claim that it was given insufficient time to study the Petitions.

On January 20, 2022, petitioners filed a Motion for Partial Reconsideration<sup>73</sup> of the Commission on Elections Second Division’s January 17, 2022 Resolution<sup>74</sup> that denied the Buenafe Petition for lack of merit.<sup>75</sup> Moreover, in its February 10, 2022 Resolution,<sup>76</sup> the Commission on Elections Former First Division dismissed the Ilagan Petition, and motions for reconsideration were also filed soon after.<sup>77</sup> The Commission on Elections spent almost four and three months, respectively, to decide on the motions for reconsideration, releasing their Resolutions only after the electorate cast votes.

<sup>70</sup> CONST., art. IX(C), sec. 2(1).

<sup>71</sup> Batas Pambansa Blg. 881 (1985), art. IX, sec. 78.

<sup>72</sup> Batas Pambansa Blg. 881 (1985), art. IX, sec. 72.

<sup>73</sup> *Rollo* (G.R. No. 260374), pp. 191–216.

<sup>74</sup> *Id.* at 94–125.

<sup>75</sup> *Ponencia*, p. 11.

<sup>76</sup> *Rollo* (G.R. No. 260426), pp. 198–238.

<sup>77</sup> *Ponencia*, p. 15.

This unmitigated delay cannot be countenanced, especially as the petitions involved no less than a candidate for the highest government position in our country. Such delay in the resolution of the qualifications and the validity of the certificate of candidacy of respondent Marcos, Jr. has materially affected not just the results of the elections but also the smooth transition of the incoming administration. It negatively impacted not just the parties involved, but the electorate as well.

The pendency of the case was an effective sword of Damocles hanging over respondent Marcos, Jr. Petitioners were forced to cast their votes, wondering if their efforts were for naught. The looming issues on respondent Marcos, Jr.'s qualifications and certificate of candidacy caused confusion and uncertainty in the electorate's minds, one that clearly weighed into their choice of candidate.

The Commission on Elections should have expended all efforts to prioritize the resolution of these cases prior to the conduct of elections. The constitutional commission should be spearheading the Philippine election's organization and efficiency and should not be the cause of any setback, as it has been charged with the significant duty of enforcing and administering all laws and regulations relative to the conduct of the elections.<sup>78</sup>

#### IV

Already, even before the text of all the opinions in this case were published and even before they have read a single word in our unanimous reading of the legal provisions, partisans were so ready to brand the sitting Justices as traitors, motivated by greed and power, beholden to the President who appointed them almost ten years ago, and everything else other than being capable of legal judgment. All of which of course have no justification. All of which of course are false.

All of which of course reveal the kind of uncritical thinking that provides the fertile ground of disinformation and violence that will subvert our democracy.

The potential for any totalitarian or authoritarian government to succeed is directly proportional to the ability of the cultural environment of its society to dehumanize its component individuals, identities, groups, or communities.

---

<sup>78</sup> CONST., art. IX(C), sec. 2(1).

It was Hannah Arendt who said, in her six-page letter to the scholar Gerard Shoalem, clarifying again her concept of the banality of evil, which she first wrote in her book "*Eichmann in Jerusalem*":<sup>79</sup>

You are quite right, I changed my mind and do no longer speak of 'radical evil.' ... It is indeed my opinion now that evil is never 'radical,' that it is only extreme, and that it possesses neither depth nor any demonic dimension. It can overgrow and lay waste the whole world precisely because it spreads like a fungus on the surface. It is 'thought-defying,' as I said, because thought tries to reach some depth, to go to the roots, and the moment it concerns itself with evil, it is frustrated because there is nothing. That is its 'banality.' Only the good has depth that can be radical.

All of us are a potential part of that fungus, of that infection that can spread evil.

We do so when we reduce our enemies to their worst, when we caricaturize them as incapable of any humanity. We do so when we reduce the world into an "us-versus-they," with nothing in between. We do so when we maintain ourselves only in the company of our epistemic bubbles.

As citizens deserving of a better democracy, we have the responsibility to know that to speak and to express is a right, but it is a responsibility to speak well—to speak the truth, clearly, without drowning others, and with the openness to engage in real conversations.

Elections foster partisanship and division. Democracy, however, requires that we are open to listen; to be able to judge; and to distinguish our disagreement from our capacity to reduce those with whom we disagree as persons incapable of any kind of humanity.

Otherwise, we enable that system that oppresses. We facilitate that society that is incapable of recognizing the human rights of our opponents. When we participate in demonizing another, we are as responsible for atrocities to be committed against other human beings.

The constitutional guarantee of a democratic society, with the sovereign assurance that political leaders are chosen through elections, is certainly not an inevitable guarantee of the quality of that democracy.

An authentic and truly meaningful democracy can only be assured by the humanity and collective efforts of our people.

---

<sup>79</sup> Marie Louise Knott ed., (translated by Anthony David), *The Correspondence of Hannah Arendt and Gershom Shoalem*, Letter no. 133 (University of Chicago Press: 2017).

Any dysfunction in our democracy, any belief in the power of disinformation magnified by unmoderated and unregulated social media, any concerns about the weakening institutions such as media and education that traditionally informs a more critical citizenry, are better addressed by the strategic, collective, and sober action of our people.

On the other hand, winners of elections should acknowledge that the mandate they are given in an unequal society, with many who are poor, with the growing fear of health, climate, and economic crises, are mainly expressions of hope for a leadership that inspires the best solutions from all our people. That leadership should be tolerant, respectful of dissent, and always protective of the intrinsic dignity as well as the rights of every human being.

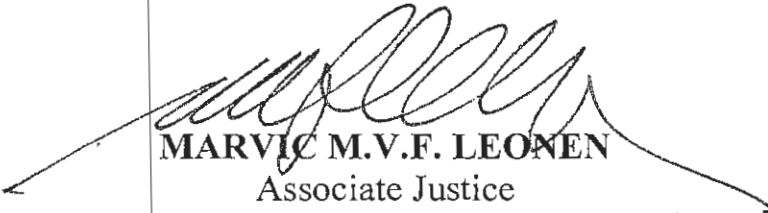
That leadership should lead through the power of their example: that they follow the law and pay the right taxes.

We have one life. Through elections, perhaps with reasons that only the universe will know, some are given one more chance to do what is right.

That opportunity should not be wasted.

The electorate, our people, will ensure that they will deserve nothing less.

**ACCORDINGLY**, I vote to **DISMISS** the Petitions.



**MARVIC M.V.F. LEONEN**  
Associate Justice