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

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

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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.[1]

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."[2] Judicial review gives authority to the courts to invalidate acts of legislative, executive, and constitutional bodies if shown contrary to the Constitution.[3]

Grave abuse of discretion refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction[.]"[4]

In *Mitra v. Commission on Elections*:[5]

> [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

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1 CONST., Article VIII, sec. 1.

2 *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].

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

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

5 *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.[6]

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 junctions 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. [7]

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.[8]

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."[9]

Under Rule 64[10] 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

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6 Id. at 777.

7 RULES OF COURT, Rule 65, sec. 1.

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

9 Id. at 656.

10 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,[11] 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.[12] They add that the overwhelming number of votes in favor of Ferdinand Marcos, Jr. (Marcos, Jr.) has rendered the Petitions moot.[13]

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[.]"[14]

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.[15]

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.[16]

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.[17]

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*[18] and *David v. Senate Electoral Tribunal*[19] demonstrate this distinction.

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11 *Rollo* (G.R. No. 260374), pp. 654–732.
12 Id. at 669–672.
13 Id. at 665–666.
14 CONST., art. VII, sec. 4.
15 *Macalintal v. Presidential Electoral Tribunal*, 650 Phil. 326 (2010) [Per J. Nachura, En Banc].
16 *Tecson v. Commission on Elections*, 468 Phil. 421 (2004) [Per J. Vitug, En Banc].
17 *Tecson v. Commission on Elections*, 468 Phil. 421 (2004) [Per J. Vitug, En Banc].
18 782 Phil. 292 (2016) [Per J. Perez, En Banc].
19 795 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."[20]

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

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[20] *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[21] 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.[22] 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.[23] On the other hand, the

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[21] *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. Torrefranca-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 Comission 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. Torrefranca-Neri of the Commission on Elections, En Banc, Manila.

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

[23] 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.[24]

The substantive qualifications for presidency are found in Article VII, Section 2 of the Constitution.[25] These qualifications are reiterated in Section 63 of the Omnibus Election Code.[26] Meanwhile, the disqualifications are found in Sections 12[27] and 68[28] 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.[29] It is through a certificate of candidacy that a candidate certifies under oath their eligibility, *i.e.*, their qualifications to the office sought.[30]

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

[25] *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.

[26] *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.

[27] *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.

[28] *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.

[29] *See* Batas Pambansa Blg. 881 (1985), art. IX, secs. 73 and 74.

[30] *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:[31]

> (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.[32]

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31 *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.

32 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*,[33] 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.
>
> . . . .

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[33] 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.[34]

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.[35]

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.[36]

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.[37]

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34 Id. 465–469.

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

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

37 *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.[38] To be false, it must be established that the candidate "intentionally tried to mislead the electorate regarding [their] qualifications."[39] 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."[40]

In *Mitra v. Commission on Elections*,[41] 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.[42]

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.[43] It deprives a person of a basic and substantive political right to be voted for public office.[44]

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.

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38 *Mitra v. Commission on Elections*, 636 Phil. 753 (2010) [Per J. Brion, En Banc].
39 J. Leonen, Concurring Opinion in *Poe-Llamanzares v. Commission on Elections*, 782 Phil. 292, 787 (2016) [Per J. Perez, En Banc].
40 *Ugdoracion, Jr. v. Commission on Elections*, 575 Phil. 253, 265–266 (2008) [Per J. Nachura, En Banc].
41 636 Phil. 753 (2010) [Per J. Brion, En Banc].
42 Id. at 780.
43 *Salcedo II v. Commission on Elections*, 371 Phil. 377 (1999) [Per J. Gonzaga-Reyes, En Banc].
44 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."[45] 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.[46] 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."
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> . . . .

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

46 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."[47]

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.[48]

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47 Id. at 673–682.

48 *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[.][49] (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:

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[49] 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.[50]

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.[51] Ultimately, it is the dispositive portion that binds respondent Marcos, Jr.[52]

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*,[53] this Court held:

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50 *Ponencia*, p. 8

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

52 Id.

53 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.[54] (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.[55]

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."[56] In *Villaber v. Commission on Elections*,[57] this Court defined moral turpitude as "an act of baseness, vileness, or depravity in

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54 Id.
55 Batas Pambansa Blg. 881 (1985), art. I, sec. 12.
56 *Villaber v. Commission on Elections*, 420 Phil. 930, 937 (2001) [Per J. Sandoval-Gutierrez, En Banc].
57 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."[58]

The definition of moral turpitude and the identification of crimes involving moral turpitude is loose.[59] Generally, the standard surrounding moral turpitude depends on what the society accepts as rules of right and duty, justice, honesty, or good morals.[60] 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.[61] It is ultimately a question of fact, and it depends on the circumstances surrounding the violation.[62] For this reason, this Court must determine what crimes involve moral turpitude.[63]

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*.[64] 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."[65] 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.[66]

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."[67]

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:

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58 Id.
59 Id.
60 *Ty-Delgado v. House of Representatives Electoral Tribunal*, 779 Phil. 268 (2016) [Per J. Carpio, En Banc].
61 Id.
62 *Villaber v. Commission on Elections*, 420 Phil. 930 (2001) [Per J. Sandoval-Gutierrez, En Banc].
63 Id.
64 *Republic v. Marcos II*, 612 Phil. 355 (2009) [Per J. Peralta, Third Division].
65 Id. at 375–376.
66 Id.
67 *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.[68]

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.[69]

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

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[68] National Internal Revenue Code, sec. 255.

[69] *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 (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[.]"[70]

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."[71] 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."[72]

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[73] of the Commission on Elections Second Division's January 17, 2022 Resolution[74] that denied the Buenafe Petition for lack of merit.[75] Moreover, in its February 10, 2022 Resolution,[76] the Commission on Elections Former First Division dismissed the Ilagan Petition, and motions for reconsideration were also filed soon after.[77] 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.

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70 CONST., art. IX(C), sec. 2(1).
71 Batas Pambansa Blg. 881 (1985), art. IX, sec. 78.
72 Batas Pambansa Blg. 881 (1985), art. IX, sec. 72.
73 *Rollo* (G.R. No. 260374), pp. 191–216.
74 Id. at 94–125.
75 *Ponencia*, p. 11.
76 *Rollo* (G.R. No. 260426), pp. 198–238.
77 *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.[78]

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.

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[78] CONST., art. IX(C), sec. 2(1).

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

> 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.

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[79] Marie Louise Knott ed., (translated by Anthony David), The Correspondence of Hannah Arendt and Gershom Sholem, 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

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. Ibardolaza, 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, The House of Representatives, represented by the Speaker of the House of Representatives****, respondents.*

Promulgated:

June 28, 2022

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SEPARATE OPINION

CAGUIOA, *J.*:

Before the Court are two (2) consolidated *Petitions for Certiorari* (Consolidated Petitions) filed pursuant to Rule 64 in relation to Rule 65 of the Rules of Court.

G.R. No. 260374 stems from petitioners Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, Celia Lagman Sevilla, Roland C. Vibal, and Josephine Lascano's (Buenafe, *et al.*) *Petition to Cancel or Deny Due Course* (Section 78 Petition) respondent Ferdinand R. Marcos, Jr.'s (Marcos, Jr.) Certificate of Candidacy (CoC) based on Section 78 of the Omnibus Election Code[1] (OEC) filed before the Commission on Elections (COMELEC). Buenafe, *et al.* assert that Marcos, Jr. committed two (2) material misrepresentations in his CoC: (1) that he is eligible to run as President of the Philippines; and (2) answering "No" to the question of whether he has been found liable for any offense which carries the penalty of perpetual disqualification to hold public office.

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[1] Batas Pambansa Blg. 881, OMNIBUS ELECTION CODE OF THE PHILIPPINES, December 3, 1985.

G.R. No. 260426, on the other hand, originates from the *Petition to Disqualify* Marcos, Jr. under Section 12 of the OEC filed by petitioners 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. Ibardolaza, CSSJB, Sr. Susan Santos Esmile, SFIC, Homar Rubert Roca Distajo, Polynne Espineda Dira, James Carwyn Candila, and Jonas Angelo Lopena Abadilla (Ilagan, *et al.*). Ilagan *et al.* aver, among others, that Marcos, Jr. was convicted of a crime involving moral turpitude and that the same conviction likewise imposed (or should have imposed) upon Marcos, Jr. a penalty of more than eighteen (18) months of imprisonment.

The Consolidated Petitions are anchored on the same set of criminal cases that had been filed against Marcos, Jr. for violation of Presidential Decree No. (PD) 1158[2] or the National Internal Revenue Code of 1977 (1977 NIRC). In a Decision dated October 31, 1997 of the Court of Appeals (CA Decision), Marcos, Jr. was ultimately found guilty of violating Section 45 of the 1977 NIRC for failure to file his income tax returns (ITRs) for the years 1982 to 1985.[3] He was sentenced by the Court of Appeals (CA) to pay a fine for these violations.[4]

The COMELEC, in separate resolutions, denied both petitions. Ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC, petitioners bring before the Court the Consolidated Petitions.

The *ponencia* dismisses the Consolidated Petitions and affirms the resolutions of the COMELEC.

I concur in the disposition of the *ponencia*.

I write this *Separate Opinion* to clarify the following salient points:

> (1) the Court retains jurisdiction to rule on the Consolidated Petitions, even after Marcos, Jr. assumes and takes his oath of office;
>
> (2) the core issue as to the materiality of Marcos, Jr.'s representations relating to the penalty of perpetual disqualification is whether the same constitutes an ineligibility;

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2 A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES, otherwise known as the "NATIONAL INTERNAL REVENUE CODE OF 1977," June 3, 1977.

3 *Ponencia*, p. 8.

4 Id.

(3) it is not a statute's designation of a penalty being "principal" or "accessory" that determines whether a penalty should be expressly stated or already deemed imposed — penalties should be expressly stated except when a statute says otherwise;

(4) for failure of the CA Decision to expressly impose as a penalty the perpetual disqualification provided under the 1977 NIRC as amended by PD 1994[5] for the offense of failure to file an ITR, the representations relating to such penalty in Marcos, Jr.'s CoC cannot be said to be false and, if false, cannot be said to have been made with malicious intent;

(5) the CA Decision imposed a penalty within the range prescribed by the applicable law and, as such, cannot be declared void;

(6) whether a crime involves moral turpitude must be assessed based on the nature and the elements of the crime itself — mere failure to file annual ITRs is not a crime involving moral turpitude; and

(7) Marcos, Jr.'s alleged non-service of sentence does not constitute a ground for disqualification.

The Court has jurisdiction to rule on the petitions

Marcos, Jr. and the COMELEC argue that the Court has no jurisdiction over the instant petitions as exclusive jurisdiction now lies with the Presidential Electoral Tribunal (PET).[6]

The Consolidated Petitions are petitions for *certiorari* filed before the Court in accordance with Rule 64 in relation to Rule 65 of the Rules of Court, alleging that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions. The Court has subject matter jurisdiction over these petitions pursuant to Sections 1 and 5, Article VIII of the 1987 Constitution, thus:

> 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

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5 FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, November 5, 1985.

6 *Ponencia*, p. 29.

> of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.
>
> x x x x
>
> Section 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.
>
> x x x x

The petitions here have complied with the requirements of Rule 64 in relation to Rule 65 in assailing the COMELEC resolutions as allegedly having been issued with grave abuse of discretion. Thus, the conditions for the Court to exercise its jurisdiction are present. It has the authority to decide these petitions.

On the other hand, the jurisdiction over contests relating to the qualifications of the President can be found in the last paragraph of Section 4, Article VII of the 1987 Constitution, thus:

> The **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 its rules for the purpose**. (Emphasis supplied)

Pursuant to the last part of the above-quoted paragraph, the Court promulgated the 2010 Rules of the Presidential Electoral Tribunal[7] (2010 PET Rules), Rule 13 of which reflects the Court's jurisdiction granted under the Constitution, thus:

> **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.

The question for the Court is: what is the relationship between the Court's *certiorari* jurisdiction over cases elevated to it from the COMELEC (involving Presidential and Vice-Presidential candidates) and the PET's jurisdiction over election contests involving the President and the Vice-President?

To answer this, the *ponencia* relies on *Reyes v. Commission on Elections*[8] (*Reyes*). According to the *ponencia, Reyes* outlined the conditions for the exercise of jurisdiction of the House of Representatives Electoral Tribunal (HRET)[9] and proceeded to apply these by analogy to the PET, as follows:

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7 A.M. No. 10-4-29-SC, May 4, 2010.
8 712 Phil. 192 (2013).
9 *Ponencia*, p. 30.

Our ruling in *Reyes v. Commission on Elections* (*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:
>
> x x x x
>
> 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.
> x x x
>
> 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.
>
> 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. x x x[10]

Ultimately, applying *Reyes*, the *ponencia* rules that the Court retains jurisdiction over the petitions because Marcos, Jr., although already proclaimed, has not yet taken his oath and has not yet assumed office.[11]

Following *Reyes*, the *ponencia* goes further and rules that once Marcos, Jr., takes his oath and assumes office, this would result in the removal from this Court of jurisdiction over any pre-proclamation remedy elevated to it from the COMELEC, thus:

> 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.[12]

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10 Id. at 30-32.
11 See id. at 32.
12 Id.

However, in another part, the *ponencia* likewise rules that the PET is a function of the Court *en banc*. Citing *Macalintal v. Presidential Electoral Tribunal*[13] (*Macalintal*), which extensively laid down the nature and history of the PET, the *ponencia* concluded that the PET's jurisdiction should not be considered as a limitation on the jurisdiction of the Court to rule on the pending petitions. The *ponencia* considered the peculiar nature of this case where what is involved is the jurisdiction of the PET and the Court, which are one and the same body, and ruled as follows:

> 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.[14]

It appears that the two (2) positions taken by the *ponencia* are inconsistent. I submit that the latter position of the *ponencia* is the correct view in terms of the relationship of the Court's *certiorari* jurisdiction over cases elevated from the COMELEC and the PET's jurisdiction over election contests involving the President and the Vice-President. The Court does not *lose* jurisdiction, and the PET does not *gain* jurisdiction, upon the happening of the conditions set forth in *Reyes*. The Court and the PET are one and the same, the latter merely being a function of the former.

As discussed by the *ponencia*, citing *Macalintal*, the Court's *certiorari* jurisdiction and the PET's jurisdiction are, indeed, akin to Regional Trial Courts (RTC) and the relationship between their general jurisdiction and their limited jurisdiction as special courts. The Court had an opportunity to explain this relationship in *Gonzales v. GJH Land, Inc.*[15] (*Gonzales*).

In *Gonzales*, a case involving an intra-corporate dispute was raffled to an RTC Branch in Muntinlupa City that was not the designated Special Commercial Court. The respondents filed a Motion to Dismiss, which the RTC granted, ruling that since it was not the designated Special Commercial Court, it had no jurisdiction to rule on the case.

The issue was elevated to the Court, which ruled that the RTC committed an error in dismissing the case. Since Republic Act No. (RA) 8799[16] conferred jurisdiction to the RTCs over intra-corporate disputes,

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13 650 Phil. 326 (2010).
14 *Ponencia*, p. 38.
15 772 Phil. 483 (2015).
16 THE SECURITIES REGULATION CODE, July 19, 2000.

among others, the RTC should not have dismissed the case for lack of jurisdiction. Because there was a designated Special Commercial Court in Muntinlupa City, the RTC should have simply referred the case to the Executive Judge for re-docketing, who then should have assigned the case to the Special Commercial Court in Muntinlupa City. The Court then ruled that the question of whether an RTC resolves an issue in the exercise of its general jurisdiction or of its limited jurisdiction as a special court is only a matter of procedure, not of jurisdiction, thus:

> As a basic premise, let it be emphasized that a court's acquisition of jurisdiction over a particular case's subject matter is different from incidents pertaining to the exercise of its jurisdiction. Jurisdiction over the subject matter of a case is **conferred by law**, whereas a court's **exercise of jurisdiction,** unless provided by the law itself, is governed by the Rules of Court or by the orders issued from time to time by the Court. In *Lozada v. Bracewell*, it was recently held that **the matter of whether the RTC resolves an issue in the exercise of its general jurisdiction or of its limited jurisdiction as a special court is only a matter of procedure and has nothing to do with the question of jurisdiction**.[17] (Emphasis and underscoring in the original)

The *ponencia* is therefore correct in saying that the PET's jurisdiction should not be seen as a limitation on the Court's jurisdiction to rule on these petitions as the PET and the Court should not be seen as separate and distinct entities.

I, however, emphasize that, similar to the RTC as a court of general jurisdiction and acting as a special court, whether the Court is ruling under its *certiorari* jurisdiction or as the PET is only a matter of procedure and has nothing to do with jurisdiction. Following *Gonzales*, when it becomes apparent that the case pending before the Court should properly be decided by the Court sitting as the PET, the Court should not dismiss the case. It should instead re-docket the same as a case before the PET and direct the payment of the proper docket fees, if necessary, and thereafter apply the 2010 PET Rules. It may be well to point out that, compared to the RTCs wherein the specialized case is transferred to another *sala*, the re-docketing of the subject case from the Court to the PET may be done with greater ease as the Court *en banc* and the PET are comprised of the same members.

The next question is when does it become apparent that a pending case elevated from the COMELEC should be re-docketed as a case before the PET? I submit that this is where the conditions in *Reyes* are applicable but not in the manner the *ponencia* has applied it.

In *Reyes*, the question posed before the Court was whether the COMELEC was **ousted of its jurisdiction** when petitioner therein was proclaimed as a Member of the House of Representatives. The Court ruled

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[17] *Gonzales v. GJH Land, Inc.*, supra note 15, at 505. Citations omitted.

that for the HRET to **acquire jurisdiction**, or stated otherwise, for the COMELEC to be **ousted of its jurisdiction**, a petition must be filed before the HRET, and the petition should involve a Member of the House of Representatives.[18] *Reyes* ruled that one is considered a Member of the House of Representatives only when the following requisites concur: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office,[19] thus:

> This pronouncement was reiterated in the case of *Limkaichong v. COMELEC*, wherein the Court, referring to the jurisdiction of the COMELEC *vis-a-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.
> >
> > 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. x x x[20] (Emphasis in the original)

Applying the foregoing to petitioner therein, the Court ruled that since petitioner had not yet assumed office, she could not be considered as a Member of the House of Representatives, and until such time, the COMELEC retained jurisdiction. Thus:

> Here, the petitioner cannot be considered a Member of the House of Representatives because, primarily, she has not yet assumed office. To repeat what has earlier been said, the term of office of a Member of the House of Representatives begins only "*at noon on the thirtieth day of June next following their election.*" Thus, until such time, the COMELEC retains jurisdiction.[21] (Italics in the original)

To my mind, the doctrine on when the jurisdiction of the COMELEC ends and when the jurisdiction of the HRET begins is ***not*** applicable when what is involved is the Court's jurisdiction *vis-à-vis* the PET because, as discussed above, the PET and the Court are one and the same body. To stress, exclusive jurisdiction over contests involving the election, returns, and qualifications of the President is vested by the Constitution on the "Supreme Court, sitting *en banc*." Similar to the specialized courts as discussed in *Macalintal* and *Gonzales*, the PET is also the Supreme Court sitting *en banc,* only that the former is limited in functions. The independence bestowed upon

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18 *Reyes v. Commission on Elections*, supra note 8, at 210-211.
19 Id. at 212.
20 Id. Citations omitted.
21 Id. at 213. Citation omitted.

the Supreme Court sitting as the PET, with its own budget allocation, rules and seal, is intended merely to better facilitate the gargantuan task of resolving election contests involving the President and the Vice-President, pursuant to Section 4, Article VII of the 1987 Constitution.[22]

For me, what can be applied to the PET are the conditions in *Reyes* when one is considered the "President" or "Vice-President" under Section 4, Article VII of the 1987 Constitution. One is considered the President or Vice-President when: (a) he/she has been proclaimed, (b) he/she has taken his/her oath, and (c) he/she has assumed office. It is when these conditions already exist that the cases before the Court may be deemed an election contest involving the President or Vice-President, and it is only then that the Court may re-docket a pending case before it (that was elevated from the COMELEC) as an election contest and thereafter apply the 2010 PET Rules to the case.

In the interest of the orderly administration of justice and to finally settle the issues raised in these cases, the Court should rule that it has jurisdiction to rule on whether Marcos, Jr. complied with the substantive and procedural requirements for running for the position of the President of the Republic of the Philippines. Following the discussion above, subsequent events after June 30, 2022 will not wrest from the Court its jurisdiction to rule on these cases but will only affect the procedure to be followed in resolving these cases.

A Section 78 Petition is distinct from a petition for disqualification

As mentioned, the present case is a consolidation of two (2) petitions for *certiorari* assailing two (2) sets of COMELEC resolutions which denied two (2) different petitions filed before the COMELEC — 1) a Section 78 Petition and 2) a petition for disqualification based on Section 12 of the OEC, although both petitions referred to the same set of criminal convictions against Marcos, Jr. for violating the 1977 NIRC.[23]

Section 78 of the OEC provides:

> SECTION 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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22 *See Macalintal v. Presidential Electoral Tribunal*, supra note 13, at 352-353.

23 *Ponencia*, p. 5.

Section 12 of the same law 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 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.

As can be gathered from the letter of the law itself, a Section 78 Petition and a petition for disqualification are two (2) distinct remedies against electoral candidates. They are based on different grounds and have different prescriptive periods and legal consequences.[24]

A petition to deny due course to or cancel a CoC under Section 78 is grounded on a false representation made by a candidate in the CoC. This false representation pertains to a material fact that affects the candidate's right to run for the elective office for which he or she filed the CoC, *e.g.,* citizenship, residence, status as a registered voter.[25] On the other hand, a petition for disqualification "can only be premised on a ground specified in Section 12 or 68 of the Omnibus Election Code or Section 40 of the Local Government Code [(LGC)]."[26]

For a Section 78 Petition to prosper, it must be proven that there is a deliberate attempt to mislead, misinform, or hide the material fact subject of the petition.[27] Meanwhile, a petition for disqualification must prove that the candidate possesses a disqualification under the law or statute.[28]

As to their effects, a person whose CoC is cancelled or denied due course is not treated as a candidate at all.[29] Consequently, he or she cannot be substituted.[30] In contrast, a disqualified candidate is prohibited to run for the elective position but may be duly substituted.[31]

Re the Section 78 Petition: A Section 78 Petition may include grounds for disqualification if the false material

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24 See *ponencia*, pp. 26-27.
25 *Velasco v. Commission on Elections*, 595 Phil. 1172, 1185 (2008).
26 *Aratea v. Commission on Elections*, 696 Phil. 700, 736 (2012).
27 *Hayudini v. Commission on Elections*, 733 Phil. 822, 844-845 (2014).
28 *Amora, Jr. v. Commission on Elections*, 655 Phil. 467, 478 (2011).
29 *Fermin v. Commission on Elections*, 595 Phil. 449, 469 (2008).
30 Id. at 469.
31 OMNIBUS ELECTION CODE, Sec. 77.

representation in a CoC relates to such grounds. Such representation, in order to be material, must pertain exclusively to the grounds enumerated in Section 74 of the OEC. Eligibility to run for public office is a material disclosure under the OEC.

Despite the distinct actions filed by petitioners before the COMELEC, the *ponencia* nevertheless points out that while the grounds for a petition for disqualification are limited to Sections 12 and 68 of the OEC and 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 [in relation to Section 74[32] of the OEC]."[33]

In rationalizing this, the *ponencia* cites *Chua v. Commission on Elections*[34] (*Chua*) where the Court affirmed the COMELEC's treatment of a Section 78 Petition to be one for disqualification since the material misrepresentation cited — permanent residence in a foreign country — is also one of the grounds for disqualification under Section 40 of the LGC.[35]

At the outset, let it be clarified that the jurisprudential requirements for the cancellation of a CoC under Section 78 of the OEC are: (1) that a representation is made with respect to a material fact, (2) that the representation is false, and (3) that there is intent to deceive or mislead the electorate.[36] Hence, the representation must first be material, *i.e.*, it relates to the matters affecting the candidates' right to be elected to and hold the public position sought, as so listed under Section 74 of the OEC to be stated in the CoC.[37]

Hence, while I agree that a Section 78 Petition may include grounds for disqualification if the false material representation in a CoC relates to such grounds, the same is limited to the matters expressly mentioned in Section 74. Section 78 expressly states that the petition to deny due course to or cancel CoC must be filed **exclusively** on the ground of any material misrepresentation contained in the CoC as required under Section 74, thus:

> SECTION 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

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32 Section 74 provides for the matters required to be stated in a CoC.
33 *Ponencia*, p. 27. Emphasis omitted.
34 783 Phil. 876 (2016).
35 *Ponencia*, p. 27.
36 See *Caballero v. Commission on Elections*, 770 Phil. 94, 118-119 (2015).
37 See OMNIBUS ELECTION CODE, Sec. 78.

> candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (Emphasis and underscoring supplied)

Section 74, which enumerates the information required to be stated by a candidate in his or her CoC, does *not* include a declaration on the part of the person filing a CoC that he or she is not perpetually disqualified from holding public office. The relevant portion of Section 74 states:

> SECTION 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.
>
> x x x x

Accordingly, on the basis of the letter of Sections 74 and 78, I disagree with the *ponencia*'s reliance on *Chua*.

The Court, indeed, ruled in *Chua* that "[i]f the false material representation in the [CoC] relates to a ground for disqualification, the petitioner may choose whether to file a petition to deny due course [to] or cancel a [CoC] or a petition for disqualification, so long as the petition filed complies with the requirements under the law."[38] However, *Chua* is not on all fours with the Consolidated Petitions.

The ground raised and discussed in *Chua*, *i.e.,* that the petitioner is a permanent resident in a foreign country, while a ground for disqualification under Section 40 of the LGC,[39] likewise pertains to a material representation explicitly required under Section 74. This is not the situation here where the ground raised in the Consolidated Petitions, particularly, Marcos, Jr.'s perpetual disqualification, is not mentioned in Section 74.

Thus, it is my submission that the ruling in *Chua* finds relevance only in cases where a representation in a CoC, as *expressly required under Section 74*, is alleged to be false, and such representation also relates to a ground for disqualification. Accordingly, *Chua* finds no application in the case at bar.

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[38] *Chua v. Commission on Elections*, supra note 34, at 895.

[39] Section 40 provides for the disqualifications from running for any elective local position.

Nevertheless, I recognize that Section 74 requires that a candidate state in the CoC that he or she is "eligible" for the office sought. It is in this requisite of declaring one's eligibility that the allegation of having been imposed the penalty of perpetual disqualification — the ground relied upon in the Section 78 Petition — should be assessed.

In *Jalosjos, Jr. v. Commission on Elections*[40] (*Jalosjos, Jr.*), the accessory penalty of perpetual special disqualification was considered as an "ineligibility." In ruling in favor of the respondent, the Court held that petitioner's ineligibility existed on the day he filed his CoC, and that the cancellation of his CoC retroacted to the day he filed the same.[41] The Court said:

> x x x As used in Section 74, 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 public office. 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.** x x x
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> The COMELEC properly cancelled Jalosjos' certificate of candidacy. **A void certificate of candidacy on the ground of ineligibility that existed at the time of the filing of the certificate of candidacy can never give rise to a valid candidacy, and much less to valid votes.** Jalosjos' certificate of candidacy was cancelled because he was ineligible from the start to run for Mayor. **Whether his certificate of candidacy is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a valid candidate from the very beginning, his certificate of candidacy being void *ab initio*. Jalosjos' ineligibility existed on the day he filed his certificate of candidacy, and the cancellation of his certificate of candidacy retroacted to the day he filed it.** Thus, Cardino ran unopposed. There was only one qualified candidate for Mayor in the May 2010 elections — Cardino — who received the highest number of votes.[42] (Emphasis supplied)

Likewise, in *Aratea v. Commission on Elections*,[43] the Court held that both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. A person that carries these ineligibilities is not eligible to run for elective public

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40 696 Phil. 601 (2012).
41 Id. at 633.
42 Id. at 629-633. Citations omitted.
43 Supra note 26.

office, and consequently commits a false material representation if he or she states in his or her CoC that he or she is eligible to run for the elective position.[44] The Court ruled:

> The penalty of *prisión mayor* automatically carries with it, by operation of law, the accessory penalties of temporary absolute disqualification and perpetual special disqualification. Under Article 30 of the Revised Penal Code, **temporary absolute disqualification produces the effect of "deprivation of the right to vote in any election for any popular elective office *or to be elected to such office.*"** The duration of temporary absolute disqualification is the same as that of the principal penalty of *prisión mayor*. On the other hand, under Article 32 of the Revised Penal Code, **perpetual special disqualification means that "the offender shall not be permitted to hold any public office during the period of his disqualification," *which is perpetually.* Both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. A person suffering from these ineligibilities is ineligible to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run.**[45] (Italics in the original; emphasis supplied)

Thus, in view of the foregoing cases, whether the declaration of Marcos, Jr. in his CoC that he has not been convicted for a crime which carried the penalty of perpetual disqualification is a material representation, and whether it is a proper subject of a Section 78 Petition, will depend on whether this declaration pertains to an "eligibility" under Section 74.

Re the Section 78 Petition: Perpetual disqualification impairs one's eligibility and is, thus, material.

As mentioned, Section 78 states that a CoC may be denied due course or cancelled on the exclusive ground that any material representation contained therein, as required under Section 74, is false. In turn, Section 74 provides, among others, that a CoC shall state that the person filing it is *eligible for the office* he or she seeks to be elected to.[46]

Marcos, Jr. contends that his alleged misrepresentations relating to the penalty of perpetual disqualification are not material as the same do not relate to the eligibility of a person to become President of the Philippines, such eligibility being limited to the enumeration under Section 2, Article VII of the 1987 Constitution — to the exclusion of any statutory provision.[47]

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44 Id. at 728.

45 Id.

46 OMNIBUS ELECTION CODE, Sec. 74, the relevant portion of which reads as follows:

> SECTION 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**[.] (Emphasis supplied)

47 *Ponencia*, p. 61.

This position is reductive and contrary to prevailing jurisprudence.

The Court has reiterated that the word "eligible," as used in Section 74 of the OEC, 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.**"[48] The Court has, thus, ruled that a violation of the three-term limit rule,[49] and suffering from any penalty which produces the effect of deprivation to be elected to office,[50] constitute ineligibilities properly subject of a petition for cancellation of CoC.

Indeed, to adopt a limited view that "eligibility," as contemplated in Section 74 in relation to Section 78, pertains strictly and exclusively to the qualifications as provided in the Constitution or statutes for holding public office, while at the same time asserting that a petition for disqualification can only be filed on the basis of Sections 12 and 68 of the OEC, and Section 40 of the LGC, creates a void, leaving no recourse for instances where a candidate is barred from running for public office on the basis of a penalty of perpetual disqualification or violation of term limitations.

To further illustrate, the 2010 PET Rules allows any registered voter to contest the election of the President or Vice-President on the ground of *ineligibility* or *disloyalty to the Republic of the Philippines*.[51] Adopting a narrow view on what constitutes "ineligibility" restrains voters from alleging that a proclaimed President or Vice-President has been imposed the penalty of perpetual disqualification. That an individual suffering perpetual disqualification may proceed to assume the highest or second highest office in government, provided only that he or she has all the requirements set forth in Section 2, Article VII of the 1987 Constitution, can, thus, easily be seen as an absurdity.

To stress, the penalty of perpetual disqualification is imposed upon a public official preventing him or her from *holding* any public office, in addition to perpetually disqualifying him or her "to vote and to participate in any election."[52] To allow such public official to assume and exercise the duties of any public office because of a supposed void in the remedies brought about by the unreasonably limited treatment of "eligibility" under Section 74 would be to grossly violate the clear mandate of the law providing for the perpetual disqualification.

For the foregoing reasons, I subscribe to the view that a person suffering from the penalty of perpetual disqualification is ineligible to run for elective

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48 *Albania v. Commission on Elections*, 810 Phil. 470, 481 (2017), citing *Aratea v. Commission on Elections*, supra note 26, at 732. Emphasis supplied.

49 *Aratea v. Commission on Elections*, id. at 731-732.

50 See *Jalosjos, Jr. v. Commission on Elections*, supra note 40, at 629-630.

51 2010 PET RULES, Rule 16.

52 PD 1994, Sec. 286(c).

public office, and commits a false material representation if he or she states in his or her CoC that he or she is eligible to so run.[53] As aptly summarized in *Jalosjos, Jr.*:

> Section 74 requires the candidate to state under oath in his certificate of candidacy "that he is eligible for said office." A candidate is eligible if he has a right to run for the public office. If a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78.[54] (Underscoring supplied)

From the foregoing, it is clear that the subject representations of Marcos, Jr., *i.e.*, that he is eligible to run as President and that he has never been found liable for any offense which carries the penalty of perpetual disqualification to hold public office, are material, the falsity of which constitutes a ground to cancel his CoC.

Hence, there is a need to now look into whether the subject representations are indeed false.

The criminal charges filed against Marcos, Jr. and the pertinent laws

At this juncture, clarifications must be made regarding the different criminal charges filed against Marcos, Jr. and the laws applicable to such cases.

To recall, the Consolidated Petitions relate to charges against Marcos, Jr. filed by the Commissioner of Internal Revenue with the Secretary of Justice in 1991. Therein, he was charged with four (4) counts of failure to file his ITRs for the years 1982 to 1985,[55] as well as four (4) counts of failure to pay income taxes due, also for the years 1982 to 1985.[56] The RTC convicted Marcos, Jr. and sentenced him to serve various periods of imprisonment and various amounts of fine for both sets of criminal charges and for all the years subject thereof.[57]

On appeal, however, the CA,[58] in its Decision dated October 31, 1997, acquitted Marcos, Jr. of the charges for non-payment of deficiency taxes for all the subject years 1982 to 1985, but found him guilty beyond reasonable doubt of failure to file ITRs for all the same subject years, 1982 to 1985.

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53 *Aratea v. Commission on Elections*, supra note 26, at 728.
54 *Jalosjos, Jr. v. Commission on Elections*, supra note 40, at 624. Citations omitted.
55 Criminal Cases Nos. Q-91-24391, Q-92-29212, Q-92-29213 and Q-92-29217.
56 Criminal Cases Nos. Q-91-24390, Q-92-29214, Q-92-29215 and Q-92-29216.
57 See *ponencia*, pp. 6-7.
58 In CA-G.R. CR No. 18569.

Accordingly, it ordered Marcos, Jr. to pay deficiency income taxes with interest and a fine of ₱2,000.00 each for his failure to file ITRs for the years 1982 to 1984, and ₱30,000.00 for failing to so file his ITR for 1985, plus surcharges. The CA Decision eventually lapsed into finality.[59]

At this point, it is well to emphasize the laws applicable to the criminal charges against Marcos, Jr., considering that an amendatory law was issued during the period subject of said charges which means that different laws are applicable to the subject taxable years.

Specifically, on January 1, 1986, PD 1994 took effect.[60] It introduced substantial amendments to the 1977 NIRC, which included the imposition, upon public officers or employees who are convicted of **any crime under the 1977 NIRC**, of two (2) important penalties: 1) the maximum penalty prescribed for the relevant offense; and 2) the additional penalty of perpetual disqualification from holding public office. The relevant portion of Section 286 of the 1977 NIRC, as amended by PD 1994, states:

> 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.
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> [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 [accountant] shall, upon conviction, be automatically revoked or cancelled.
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> x x x x (Emphasis and underscoring supplied)

As to the specific crime that Marcos, Jr. was convicted of — failure to file ITRs, the pertinent law varies because, again, of the amendments introduced by PD 1994 in January 1986. Specifically, PD 1994 made the following changes to the old 1977 NIRC: (1) it renumbered Section 73 of the old 1977 NIRC which then became Section 288 under the amended law; and (2) it prescribed a higher fine and longer period of imprisonment, but retained the language of the old law which imposed a punishment of fine OR imprisonment OR both.

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59 *Ponencia*, p. 8.

60 PD 1994, Sec. 49, which reads:

SECTION 49. *Effectivity.* — This Decree shall take effect on January 1, 1986.

Section 73 of the old 1977 NIRC stated:

> 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.**
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> x x x x (Emphasis supplied)

On the other hand, Section 288 of PD 1994 states:

> 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**. (Emphasis supplied)

Again, PD 1994 took effect on January 1, 1986.[61] Meanwhile, the deadline for the filing of 1985 ITRs was on March 15, 1986.[62] Accordingly, for Marcos, Jr.'s failure to file his ITR for the year 1985, the amendments brought about under PD 1994 apply.

To stress, these amendments are the main bases of the petitions filed with the COMELEC. The Section 78 Petition was based on the penalty of perpetual disqualification to hold public office, alleged to have been falsely declared by Marcos, Jr. in his CoC. On the other hand, the petition for disqualification was mainly based on the imposition of the maximum penalty prescribed for the non-filing of ITR (by Section 73 of the old 1977 NIRC as to the years 1982 to 1984; and Section 288 of PD 1994 as to the year 1985), which is alleged to constitute grounds for disqualification under the OEC. Hence, by and large, it is only the failure to file ITR for the year 1985 that is the main subject of controversy in the present case.

Re the Section 78 Petition: The penalty of perpetual disqualification was not imposed upon Marcos, Jr. for his failure to file ITR for the year 1985 as the same was not expressly stated in the CA Decision.

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61 Id.

62 See 1977 NIRC, Sec. 45(c), which provides that individual returns covering income of the preceding taxable year "shall be filed on or before the fifteenth day of March each year[.]"

As mentioned, Section 286 of PD 1994, which applies to the charge of non-filing of Marcos, Jr.'s 1985 ITR, prescribes the additional penalty of perpetual disqualification to hold public office. Despite the clear language of the law, the CA Decision, in its dispositive portion, did not expressly impose such penalty. The decretal portion of the CA Decision made mention only of the payment of deficiency taxes and fines as the penalties imposed. It is petitioners' theory, however, that the perpetual disqualification is *deemed* imposed as it is an accessory penalty that is supposedly automatically imposed upon conviction for the subject crime. Alternatively, petitioners posit that the CA Decision is void for having completely ignored the directive of the law to impose perpetual disqualification on offenders who happen to be public officers and employees.

I am not persuaded.

As a general rule, the penalties imposed should be expressly stated in the decision convicting the accused of a crime with which the latter is charged.[63] To be clear, it is not a statute's designation of a penalty being "principal" or "accessory" that determines whether a penalty should be expressly stated or already be deemed imposed. To reiterate, as a rule, penalties should be expressly stated.[64] Penalties are "deemed imposed" only when the statute says so. The prime example of this is the Revised Penal Code[65] (RPC) as it implements a system of having accessory penalties deemed automatically imposed upon the imposition of certain principal penalties. The RPC does this through its Article 73, which states that "[w]henever 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." Articles 40 to 45, in turn, provide for the accessory penalties to various principal penalties.

It must be emphasized, however, that the RPC does this only for the crimes it punishes. To recall, the RPC provides that "[o]ffenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code."[66] The system, therefore, that there are penalties "deemed included" operate only for crimes punished by the RPC or any such special penal law that employs or will employ the same system. In other words, the principle that "accessory penalties" are deemed imposed with the "principal penalties" is not inherent in Philippine criminal law.

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63 See *Velarde v. Social Justice Society*, 472 Phil. 285 (2004), where the Court clarified that, "[i]n a criminal case, the disposition should include a finding of innocence or guilt, the specific crime committed, the penalty imposed, the participation of the accused, the modifying circumstances if any, and the civil liability and costs." Id. at 325.

64 See id.

65 Act No. 3815, AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS, December 8, 1930.

66 Id., Art. 10.

To illustrate, in *People v. Perez*,[67] decided prior to the enactment of the RPC, the Court stated that "accessory penalties are to be imposed upon the convict expressly[. Further], according to Viada, they are not to be presumed to have been imposed."[68] These bolster the point that criminal penalties are to be expressly stated in decisions, unless the law itself — like the RPC — provides for a system of "accessory penalties" being deemed automatically imposed with the imposition of some "principal penalties."[69]

Associate Justice Jhosep Y. Lopez (J. Lopez) and Associate Justice Amy C. Lazaro-Javier submit that as the penalty of perpetual disqualification in the present case is a principal penalty, then the same should have been expressly imposed as a penalty by the CA, as opposed to an accessory penalty which is deemed imposed with the pertinent principal penalty. J. Lopez discusses that accessory penalties are inherent and made dependent on the existence of principal penalties. Accordingly, as Section 286(c) of the 1977 NIRC does not specify a principal penalty to which the penalty of perpetual disqualification attaches, then the latter penalty cannot be characterized as an accessory penalty; it is clearly a principal penalty.[70]

With respect, I disagree with this view.

In *People v. Rafanan*,[71] the Court characterized as an accessory penalty the penalty of temporary special disqualification under Article 346 of the RPC, which attached, not to a specified penalty, but by virtue of the status of the accused as a high school principal.[72] Further, in RA 9847,[73] the penalty of perpetual disqualification is characterized as an "accessory penalty" which penalty likewise attaches not to a particular "principal" penalty, but to any offense committed under the law when committed by a public officer or an officer of the law.[74]

As in the present case, the subject law therein did not make mention of a predicate principal penalty, yet the Court categorized as an accessory the subject penalty of the case.

What is clear, therefore, is that the CA ***should have*** expressly stated that Marcos, Jr. was imposed the penalty of perpetual disqualification as a result of his conviction for violating Section 45 of the 1977 NIRC. As

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67 47 Phil. 984 (1924).
68 Id. at 987.
69 See id.
70 Separate Concurring Opinion of J. Lopez, pp. 13-14.
71 261 Phil. 965 (1990).
72 Id. at 981.
73 AN ACT ESTABLISHING MOUNTS BANAHAW AND SAN CRISTOBAL IN THE PROVINCES OF LAGUNA AND QUEZON AS A PROTECTED AREA UNDER THE CATEGORY OF PROTECTED LANDSCAPE, PROVIDING FOR ITS MANAGEMENT AND FOR OTHER PURPOSES, otherwise known as the "MTS. BANAHAW-SAN CRISTOBAL PROTECTED LANDSCAPE (MBSCPL) ACT OF 2009," December 11, 2009.
74 Id., Sec. 18.

mentioned, however, the CA did not. This failure, thus, results in the perpetual disqualification not having been imposed as a penalty.

Anent petitioners' argument that this failure of the CA Decision to include the penalty of perpetual disqualification rendered the same "void," the *ponencia* holds, that as the CA Decision has already attained finality, then the Court can no longer modify the same.[75]

While I agree with the *ponencia* that the Court cannot modify the CA Decision, I elucidate on the bases of my conclusions, which slightly differ from the *ponencia*'s discussions.

To make its point, the *ponencia* cites *Estarija v. People*[76] (*Estarija*), where the Court ruled that the questioned judgment, despite imposing an erroneous penalty, could no longer be modified as it had long attained finality. While I agree with the applicability of *Estarija*, it must be clarified that the rulings therein must be qualified by the Court's more recent ruling in *People v. Celorio*[77] (*Celorio*). The case of *Celorio* involved a judgment which imposed a sentence that was based on a non-existent or repealed law. The People then assailed the judgment through a petition for *certiorari.* The Court held that the judgment was void, and therefore created no rights and imposed no duties. As the judgment was void, the Court said that it could not have attained finality even with the accused's decision to file for probation — which, under normal circumstances, would have rendered the judgment final and executory. The Court then went on to modify the penalty imposed on the accused.

Celorio thus qualifies *Estarija* in that the Court is not entirely powerless to modify a judgment with an erroneous penalty that has supposedly attained finality. The error in a judgment could be of such character so as to render it void – and thus, such judgment would not attain finality. What separates *Estarija* from *Celorio* is that the penalty in *Estarija* was still within the range prescribed by law, while the penalty in *Celorio* came from a law that has already been repealed. The penalty in *Estarija* was considered erroneous because the lower court (1) did not impose an indeterminate penalty, as required by the Indeterminate Sentence Law, but instead imposed a straight penalty, and (2) did not impose the penalty of perpetual disqualification. However, as mentioned, the straight penalty imposed was still within the range provided by the law. It was, thus, reasonable to rule that the judgment had attained finality even though the penalty was erroneous.

It is through this modified doctrine in *Estarija* that Marcos, Jr.'s case should be looked at. In Marcos, Jr.'s case, the penalty imposed by the CA was within the penalty prescribed by law, albeit without the additional penalty of

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75 See *ponencia*, pp. 77-78.
76 619 Phil. 457 (2009).
77 G.R. No. 226335, June 23, 2021.

perpetual disqualification. While there was ultimately an error in the CA Decision, the said decision still attained finality as the penalty was within the range prescribed by law.

Moreover, both *Estarija* and *Celorio* involved proceedings raised by the parties in the respective cases — either through an appeal by the accused himself or through a petition for *certiorari* by the People. Here, petitioners intend to void the CA Decision even while they are not parties to the case.

Based on the foregoing reasons, it is my view that the CA Decision is not void or cannot be voided in this proceeding.

Re the Section 78 Petition: Not having been explicitly imposed the penalty of perpetual disqualification, Marcos, Jr.'s representation that he is eligible to run for public office is not false. However, his representation that he was never found guilty of an offense which carries the penalty of perpetual disqualification, is false.

Having established that the subject representations relating to Marcos, Jr.'s alleged perpetual disqualification from holding public office are material, the next question to ask is: are such representations false?

To recall, two (2) representations in Marcos, Jr.'s CoC relate to the subject penalty: 1) that he is eligible to run as President of the Philippines; and 2) that he has not been found liable for any offense which carries the penalty of perpetual disqualification to hold public office.

The first representation — that Marcos, Jr. is eligible to run for public office — is not false. For failure of the CA Decision to expressly state that Marcos, Jr. was imposed the penalty of perpetual disqualification as a result of his conviction, he was not rendered ineligible to run for any public office.

However, the second representation — that he was not found liable for any offense which ***carries*** the penalty of perpetual disqualification — is false. Indeed, a conviction under Section 73 of the 1977 NIRC and Section 288 of the 1977 NIRC, as amended by PD 1994, when committed by a public official or employee, *carries* with it the penalty of perpetual disqualification from holding any public office, to vote and to participate in any election.[78]

Re the Section 78 Petition: Marcos, Jr. lacked the requisite intent to

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[78] See 1977 NIRC, Sec. 286(c), as amended by PD 1994.

deceive the electorate in making the material representations relating to his alleged perpetual disqualification.

The third requisite for a Section 78 Petition to prosper is that the false material representations must have been made with a malicious intent to deceive the electorate.[79]

First, the material representation that he is eligible to run for President of the Philippines, as mentioned, is not false and, hence, could not have been made with malicious intent.

Second, the representation that he was not found liable for any offense which ***carries*** the penalty of perpetual disqualification, while false, was not intended to deceive the electorate. Arising from the same omission of the CA to expressly impose the penalty of perpetual disqualification, Marcos, Jr. cannot be imputed with having intended to deceive or mislead the electorate in representing that he was not found liable with an offense that carries such penalty.

The rule is that any mistake on a doubtful or difficult question of law may be the basis of good faith.[80] Further, when the dispositive part of a final decision or order is definite, clear, and unequivocal, and can wholly be given effect without need of interpretation or construction, the same is controlling.[81]

Marcos, Jr. can thus be said to have legitimately relied on the dispositive portion of the CA Decision which did not impose upon him the penalty of perpetual disqualification. As the CA Decision is straightforward, it is contrary to good faith to require that Marcos, Jr. look beyond the language of his judgment of conviction in search of other penalties imposable upon him.

To conclude my position regarding the Section 78 Petition: I concur with the *ponencia* that Marcos, Jr. did not commit false material representation in his CoC. His representation that he is eligible to run for President is, while material, not false. On the other hand, his representation that he was never found liable with an offense that ***carries*** the penalty of perpetual disqualification to hold public office, while material and false, was not made with an intent to deceive the electorate. The requisites for a Section 78 Petition to prosper not having been established by petitioners, the COMELEC was correct in dismissing the same.

Re Petition for Disqualification: The CA's final judgment against Marcos, Jr. did not impose a penalty of

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79 See *Caballero v. Commission on Elections*, supra note 36, at 118-119.
80 *Lecaroz v. Sandiganbayan*, 364 Phil. 890, 908 (1999).
81 *Obra v. Spouses Badua*, 556 Phil. 456, 461 (2007).

imprisonment of more than eighteen (18) months.

To recall, Ilagan, *et al.* maintain that Marcos, Jr. is disqualified under Section 12 of the OEC which disqualifies a person who has been sentenced: 1) to a penalty of imprisonment of more than eighteen (18) months; or 2) for a crime involving moral turpitude.

Section 12 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.
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> x x x x (Emphasis supplied)

Ilagan, *et al.* argue that the CA Decision which removed the penalty of imprisonment written in the RTC Decision and imposed only the penalty of fine, is void as it completely ignored the directive of Section 286 of the 1977 NIRC, as amended by PD 1994, which prescribes the maximum penalty for offenders who are public officers. They maintain that courts do not have the power to impose a lower penalty than that which is authorized by law. Ilagan, *et al.* claim that since the CA Decision is void, it produced no legal effect and it never became final and executory.

As earlier discussed, Section 286 mandates, among others, that if the offender is a public officer, he shall suffer the ***maximum*** penalty, thus:

> 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**: x x x
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> x x x x
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> [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 [accountant] shall, upon conviction, be automatically revoked or cancelled.
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> x x x x (Emphasis and underscoring supplied)

As also earlier explained, Section 286, insofar as it imposes the maximum penalty on public officials, is relevant only for the charge of failure to file Marcos, Jr.'s 1985 ITR the filing for which was due on March 15, 1986, hence, covered by PD 1994 which took effect on January 1, 1986. Thus, only the law applicable to the 1985 ITR is relevant. This is Section 288 of the 1977 NIRC, as amended by PD 1994, which I quote anew:

> 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**. (Emphasis supplied)

From the above, I submit that the maximum penalty is the imposition of *both* payment of fines and imprisonment,[82] *i.e.*, a fine of ₱50,000.00 *and* imprisonment of five (5) years. Thus, the CA again erred in failing to impose the maximum penalty prescribed by Section 286 for the offense of failure to file Marcos, Jr.'s 1985 ITR.

However, in the same way that the CA Decision, despite its failure to impose the penalty of perpetual disqualification, cannot be voided, the CA's error in not imposing the maximum penalties prescribed by law is also an error that does not justify the modification or voiding of the CA Decision. The penalty actually imposed by the CA — the fine of ₱30,000.00[83] — is still within the range of penalties prescribed by Section 288. The CA Decision cannot, thus, be said to be void and is, thus, still covered by the rule on immutability of judgments.

Re Petition for Disqualification: Failure to file annual ITR is not a crime involving moral turpitude.

Ilagan, *et al.*, also allege that Marcos, Jr., is disqualified under Section 12 of the OEC as he had been convicted of failure to file ITRs, a crime allegedly involving moral turpitude.

Moral turpitude has been defined as any act which is 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

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82 See *U.S. v. Cueto*, 38 Phil. 935 (1918).
83 *Ponencia*, p. 8.

general.[84] However, not all crimes or offenses involve moral turpitude.[85] The term is a flexible concept and must be determined according to the particular facts and circumstances prevailing in each case in relation to the offense charged.[86]

In *Zari v. Flores*,[87] the Court held that generally, crimes *mala prohibita* do not involve moral turpitude:

> [Moral turpitude] implies something immoral in itself, regardless of the fact that it is punishable by law or not. **It must not merely be mala prohibita, but the act itself must be inherently immoral**. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. 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.[88] (*Emphasis supplied.*)

As to the offense of failure to file annual ITRs, the Court has previously addressed the same issue in an earlier case also involving Marcos, Jr., in *Republic v. Marcos II*[89] (*Marcos II*).

In the said case, the State opposed the grant of letters testamentary to Marcos, Jr. and his appointment as executor of the estate of his father, the late dictator Ferdinand E. Marcos, Sr., on the ground of conviction of an offense involving moral turpitude, for his prior conviction of failure to file annual ITRs. The Court held that Marcos, Jr. was not disqualified as an executor as the failure to file his annual ITRs is not a crime involving moral turpitude.[90]

The Court differentiated the three (3) violations with regard to the filing of an ITR under the NIRC: (1) the filing of a false return, (2) a fraudulent return with intent to evade tax; and (3) failure to file a return. Citing *Aznar v. Court of Tax Appeals*[91] (*Aznar*), the Court segregated the first two offenses as involving falsity and fraud, while the third case involves only an omission. Thus, the filing of a false return and fraudulent return, with intent to evade tax, involve moral turpitude as they entail willfulness and fraudulent intent on the part of the individual. In contrast, the mere failure to file a return, where the mere omission is already a violation, does not involve moral turpitude. Thus, the Court held that there was no ground to disqualify Marcos, Jr. as executor of his late father's estate.[92]

It is also important to note that Marcos, Jr. was acquitted by the CA of the crime of failure to pay income tax, and as earlier discussed, the said

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84 *Soriano v. Dizon*, 515 Phil. 635, 641 (2006).
85 *Dela Torre v. COMELEC*, 327 Phil. 1144, 1150 (1996).
86 Id. at 1150-1151.
87 183 Phil. 27 (1979).
88 Id. at 33. Citations omitted.
89 612 Phil. 355 (2009).
90 Id. at 375 and 377.
91 157 Phil. 510 (1974).
92 *Republic v. Marcos II*, supra note 89, at 376-377.

decision has long become final and immutable. Thus, what remains is Marcos, Jr.'s conviction for failure to file ITRs, which is not a crime involving moral turpitude.

Ilagan, *et al.* point out that Marcos, Jr. failed to file ITRs for four (4) consecutive years which shows his utter disregard of the law. However, as discussed above, it is the nature of the crime which determines whether it involves moral turpitude, not the frequency of the violation.

In this connection, Associate Justice Japar B. Dimaampao (J. Dimaampao) submits that failure to file ITRs *may or may not* be a crime involving moral turpitude[93] and advances that when the violation is attended by the element of willfulness, the non-filing of ITRs becomes tax evasion.[94] To determine whether willfulness is attendant, the esteemed justice states:

> x x x [W]illfulness may be determined through, among others, the contemporaneous and subsequent acts of taxpayers, their level of discernment, their educational attainment, the frequency of their non-filing of income tax returns, the amount of income concealed, and such other considerations peculiar to each and every case. No factor from the foregoing can singularly establish tax evasion. In the ultimate analysis, willful intent to evade taxes is a question of fact that would depend on the totality of the circumstances surrounding the case.[95] (Underscoring supplied)

J. Dimaampao then concludes that, taking into account the *totality of circumstances* surrounding the case, Marcos, Jr.'s failure to file his ITRs was not attended by willfulness and, thus, did not involve moral turpitude.[96]

I respectfully disagree with this manner of determining that Marcos, Jr.'s failure to file ITR lacked moral turpitude.

There is no dispute that if non-filing of ITRs is found to be a deliberate means to evade or defeat taxes, the same constitutes fraud and involves moral turpitude.[97] In fact, a finding of willfulness in the failure to file returns or supply information required under the 1977 NIRC is meted with surcharges on the tax or deficiency tax.[98] Clearly, therefore, the law already takes into consideration the deliberateness and willfulness of a taxpayer's omission and imposes additional penalties when the same is proven.

In the present Consolidated Petitions, however, Marcos, Jr. was convicted for violation of Section 45 of the 1977 NIRC,[99] without any finding

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93 See Reflections of J.Dimaampao, pp. 5-6.
94 Id. at 6.
95 Id. at 7.
96 Id.
97 See *Republic v. Marcos II*, supra note 89, at 377; *Aznar v. Court of Tax Appeals*, supra note 91, at 523.
98 See 1977 NIRC, Secs. 72, 97, 131, 193, 262, 264, 268, and 269.
99 1977 NIRC, Sec. 45, the relevant portion of which reads:

of circumstances or *indicia* that he was motivated by a fraudulent intent to evade payment of taxes.[100] It is likewise undisputed that the CA Decision had long attained finality and had become immutable.

Despite this, J. Dimaampao proceeds to make a determination on whether Marcos, Jr.'s failure to file his ITRs constitutes an act involving moral turpitude by taking into account the "totality of circumstances" surrounding the case.

As mentioned, it is at this juncture that I dissent.

The law is clear when it states that the ground for disqualification of a candidate is his or her having been sentenced by final judgment for *a crime involving moral turpitude.*[101] The qualifying clause "involving moral turpitude" pertains to the offense — not to the accused's personal circumstances or any acts of the accused after his conviction.

More importantly, in each criminal case, the lower courts evaluate the attendant circumstances in determining the accused's guilt as well as the imposable penalty, should guilt be proven beyond reasonable doubt. These findings, as a rule, may no longer be re-litigated because of the doctrine of

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SECTION 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[.]

See 1977 NIRC, Sec. 73, which reads:

SECTION 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. (Underscoring supplied)

[100] See 1977 NIRC, Sec. 72, which reads:

SECTION 72. *Surcharges for failure to render returns and for rendering false and fraudulent returns.* — In case of willful neglect to file the return or list required under this Title within the time prescribed by law, x x x, the Commissioner 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, a surcharge of fifty *per centum* of the amount of such tax or deficiency tax. x x x (Underscoring supplied)

See also 1977 NIRC, Secs. 287 and 288, as amended by PD 1994, which read:

Sec. 287. *Attempt to evade or defeat tax.* —Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than ten thousand pesos or imprisoned for not more than two years, 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. (Underscoring supplied)

[101] OMNIBUS ELECTION CODE, Sec. 12.

immutability of judgments[102] in relation to the constitutional proscription against double jeopardy.[103]

In the same way that the CA Decision, specifically its erroneous imposition of penalties in this case, as discussed above, can no longer be disturbed, more so must the Court exercise restraint in trying facts long settled.

I, thus, reject the bent to re-assess the totality of circumstances, including the acts of Marcos, Jr. long after a judgment of guilt, solely to determine whether the crime committed involves moral turpitude.

The above bent sets a dangerous precedent. In every case requiring the determination of the presence of moral turpitude, the courts will be empowered to essentially look into the character of the accused and his or her actions and behavior even after the crime has already been committed. And, as in the present actions, even after the judgment finding him or her guilty of the crime had long attained finality and had become immutable. Ultimately, the "totality of circumstances" approach sanctions a judgment of character separate from the judgment of guilt and an endless probe into an already convicted person's every move.

As such, I firmly take the position that whether a crime involves moral turpitude should be assessed only on the basis of the nature and elements of the crime itself. Again, the phrase "involving moral turpitude" qualifies the crime. Contemporaneous or subsequent acts of the accused and circumstances which are not material in the determination of one's guilt should likewise have no effect in the classification of the crime as involving or not involving moral turpitude.

Surely, it is in the best interest of justice to be rigid and uncompromising in safeguarding the citizens' rights from post-conviction intrusion.

For avoidance of doubt, I submit that non-filing of ITRs *per se*, as in this case, does not involve moral turpitude. This is in contrast with willful neglect to file ITRs, amounting to tax evasion, which is a separate offense requiring the element of willfulness. Indeed, in the case of *Marcos II*, citing *Aznar*, the Court extensively explained the differences among the *distinct and separate* cases of false return, fraudulent return with intent to evade tax, and failure to file return, which are segregated by the NIRC itself into three (3) different classes: falsity, fraud, and omission.[104]

To this end, I cannot subscribe to the position that the "totality of circumstances" should be considered in determining whether a crime involves

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[102] See *Spouses Tabalno v. Dingal, Sr.*, 770 Phil. 556 (2015).
[103] See *People v. Celorio*, supra note 77.
[104] *Republic v. Marcos II*, supra note 89, at 376.

moral turpitude. I maintain that the existence of moral turpitude should be decided solely on the nature and elements of the offense Marcos, Jr. was found guilty of — his failure to file ITRs.

As applied in this case, I submit that failure to file ITRs, an act punished based on a taxpayer's mere omission, does not involve moral turpitude.

Re Petition for Disqualification: Non-payment of fines is not a ground for disqualification under Section 12 of the OEC.

I likewise do not subscribe to the argument of petitioners that Marcos, Jr.'s alleged non-payment of the penalty of fine evinces moral turpitude. It is the view of petitioners that since Marcos, Jr. has not yet served his penalty, the same constitutes an evasion of sentence which is a violation of the law involving moral turpitude under Section 12 of the OEC, which reads:

> 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.
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> x x x x (Emphasis and underscoring supplied)

At the outset, Section 12 provides that a person shall be disqualified to be a candidate if he or she has been *sentenced by final judgment* for a crime involving moral turpitude. There is, however, neither allegation nor evidence on record that a criminal prosecution for evasion of service of sentence has been instituted against Marcos, Jr., much less a final adjudication of guilt. On this note alone, Ilagan, *et al.*'s reliance on the non-payment of fines as a ground for disqualification loses footing.

Assuming arguendo that Marcos, Jr. has yet to pay the deficiency taxes and fines due him, this act does not constitute the crime of evasion of service of sentence as defined and penalized under Article 157[105] of the RPC, the elements of which are: (1) the offender is a *convict* by final judgment; (2) he is *serving* his sentence which consists in deprivation of liberty; and (3) he evades service of sentence by *escaping* during the term of his sentence.[106] The

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[105] ART. 157. *Evasion of service of sentence.* – The penalty of *prision correccional* in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence by escaping during the term of his imprisonment by reason of final judgment. However, if such evasion or escape shall have taken place by means of unlawful entry, by breaking doors, windows, gates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the penal institution, the penalty shall be *prision correccional* in its maximum period.

[106] *Tanega v. Masakayan*, 125 Phil. 966, 969 (1967).

second and third elements are not present. Marcos, Jr. was neither imposed the penalty of imprisonment nor did he evade imprisonment by escaping during the term of his sentence.

Hence, regarding the petition for disqualification, as Marcos, Jr. was not sentenced to a penalty of more than eighteen (18) months or convicted of a crime involving moral turpitude, I concur with the *ponencia* that he is not disqualified as a candidate under Section 12 of the OEC. The COMELEC may, thus, not be faulted for dismissing the petition for disqualification.

Conclusions

Summarizing my views:

First, the Court has and will retain jurisdiction to rule on the present petitions, even after Marcos, Jr. assumes and takes his oath of office on June 30, 2022. The sole judge of all contests relating to the election, returns and qualifications of the President and the Vice-President under Section 4, Article VII of the 1987 Constitution is the "Supreme Court, sitting *en banc*." The PET is merely a function of the Court and the independence bestowed upon the Court, sitting as the PET, with its own rules, budget allocation and seal, are intended merely to better facilitate the awesome task of resolving contests involving the two (2) highest positions in the land, pursuant to Section 4, Article VII of the 1987 Constitution.

The doctrine on when the jurisdiction of the COMELEC ends and when the jurisdiction of the HRET begins as laid down in *Reyes* is inapplicable to the Court *vis-à-vis* the PET. Unlike the COMELEC *vis-à-vis* the electoral tribunals, the PET and the Court are one and the same. The Court, thus, does not lose jurisdiction nor does the PET acquire such upon the happening of the conditions in *Reyes*. Instead, *Reyes* determines when the case becomes an election contest involving the "President" and the "Vice-President" and, consequently, when the Court, sitting as the PET, may take cognizance of the case. For this purpose, the present action may be re-docketed and transferred to the PET, akin to the transfer of cases from the RTC to the RTC sitting as a specialized court in proper cases as discussed in *Gonzales*.

Second, while a Section 78 Petition is distinct from a petition for disqualification as to grounds and effects, a Section 78 Petition may include grounds for disqualification if the false material representation in a CoC relates to such grounds. However, such false representation, in order to be "material," must relate exclusively to the matters enumerated under Section 74, following the clear letter of Section 78.

Third, the ground invoked in the present Section 78 action relating to the alleged perpetual disqualification of Marcos, Jr. is material as the same impairs his eligibility to run for office — a matter expressly required to be

declared in the CoC by Section 74. Stated differently, a person suffering from perpetual disqualification is ineligible to run for any public office, and he or she, thus, commits a false material representation if he or she makes a contrary declaration in his or her CoC.

Fourth, while Marcos, Jr.'s representations in his CoC relating to his alleged perpetual disqualification is material, the same is not false. This is because such penalty, while prescribed by PD 1994 for the offense of non-filing of ITR for the year 1985 with which he was convicted of by final judgment by the CA, the same was not actually and expressly imposed as a penalty in the CA Decision.

Penalties, as a rule and regardless of their characterization as either "principal" or "accessory," must be expressly imposed in a court's decision. The characterization of a penalty as an accessory penalty does not *ipso facto* allow for its automatic or implied imposition with the imposition of a principal penalty, in the absence of a law providing for the same. Neither can it be concluded that a penalty is not an accessory penalty upon the mere fact that the law does not mention a predicate principal penalty to which it attaches.

Fifth, although the CA Decision fails to impose the proper penalty of perpetual disqualification for Marcos, Jr.'s failure to file his 1985 ITR, the penalty of fine actually imposed in such decision is still within the range of penalties provided under the law. As such, the decision cannot be said to be a void judgment which can be altered as an exception to the rule on immutability of final judgments.

Sixth, Marcos, Jr.'s representation that he was eligible to run for President of the Philippines was not false because the penalty of perpetual disqualification was not imposed upon him in the CA Decision. However, his representation that he has not been found guilty of an offense which carries the penalty of perpetual disqualification was false.

Seventh, Marcos, Jr. lacked the requisite malicious intent to deceive the electorate when he made the representations relating to his alleged perpetual disqualification. He cannot be faulted for relying on the clear language of the CA Decision which, again, did not expressly impose upon him said penalty.

Eighth, the CA's final judgment did not impose upon Marcos, Jr. a penalty of imprisonment of more than eighteen (18) months. While it appears that the CA again erred in failing to impose the maximum penalty of both fine and imprisonment prescribed by the 1977 NIRC for violators who are public officials, the penalty of fine actually imposed in the CA Decision is still within the range of penalties prescribed by the law. Hence, similar to the position I take as to the failure of the CA to impose the proper penalty of perpetual disqualification, the CA's failure to impose the proper penalty of both fine

and imprisonment can no longer be corrected in the present case as the judgment is not void and has long attained finality and immutability.

Ninth, the crime for which Marcos, Jr. was convicted — failure to file annual ITR — is, by definition, one that does not involve moral turpitude. It is the nature of the crime which determines whether or not it involves moral turpitude, not the circumstances of the accused or his contemporaneous or subsequent acts. As such, it is neither necessary nor proper to inquire into the circumstances surrounding Marcos, Jr.'s failure to file his ITR. Likewise, his alleged failure to pay the fines imposed by the CA does not amount to a conviction for the crime of evasion of service of sentence which allegedly involves moral turpitude.

In these lights, I agree with the *ponencia*'s dismissal of the Consolidated Petitions. Contrary to the allegations of petitioners, the COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions.

Marcos, Jr. did not commit false material representation in his CoC when he made declarations therein relating to his alleged perpetual disqualification and ineligibility as the elements for the same are not established. Consequently, the Section 78 Petition was rightfully dismissed by the COMELEC. Likewise, the petition for disqualification was correctly dismissed as Marcos, Jr. was not convicted, by final judgment, of an offense involving moral turpitude, nor was he imposed the penalty of imprisonment of more than eighteen (18) months. There are, in fine, no valid grounds to support his disqualification under the OEC.

On a final note, it may be well to clarify that the ruling of the Court in refusing to alter the decision of the CA on the basis of the same having attained finality and, thus, immutability, should not, in any way, be taken to mean that it sanctions the CA's egregious mistake in failing to impose the proper penalties upon Marcos, Jr. under Section 286 in relation to Section 288 of the 1977 NIRC, as amended by PD 1994.

To be sure, the duty of the courts is to apply or interpret the law, not to make or amend it.[107] When the same is clear — as in this case — there is no other recourse but to apply it.[108] A judge is not only bound by oath to apply the law; he or she must also be conscientious and thorough in doing so. Certainly, judges, by the very delicate nature of their office, should be more circumspect in the performance of their duties.[109]

Nevertheless, although the CA was remiss in performing its duty in imposing the proper penalties, as discussed, its error, egregious though it may

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107 *Silverio v. Republic*, 562 Phil. 953, 973 (2007).
108 See *Office of the Court Administrator v. Tormis*, 794 Phil. 1 (2016).
109 Id. at 29.

have been, does not rise to a level that renders its judgment void. Thus, the Court's hands are tied in correcting the same under the doctrine of immutability of judgments. Still, this case presents an opportune moment to enjoin the courts to be more circumspect in applying the clear letter of the law and imposing the penalties mandated therein.

Considering the above, I vote to dismiss the Consolidated Petitions.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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, Dorotea 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, petitioners v. Commission on Elections, Ferdinand Romuladez 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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CONCURRENCE

LAZARO-JAVIER, *J.*:

> At balance, the question really boils down to a choice of philosophy and perception of how to interpret and apply laws relating to elections: literal or liberal; the letter or the spirit; the naked provision or its ultimate purpose; legal syllogism or substantial justice; in isolation or in the context of social conditions; harshly against or gently in favor of the voters' obvious choice. *In applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms.*
>
> - The Supreme Court of the Philippines

Here, the fact of consequence is the *overwhelming choice* of the sovereign will. It *shapes* how election laws are to be explained and enforced.

Mere *doubts* arising from asserted interpretations of election laws cannot unseat the *clear popular choice*, his duly elected government *cannot be thwarted*. It is *not within this Court's power* to found a government enabled only by *complex but little understood legalisms*.

From this broad principle, the specifics I shall discuss below, I concur with the balanced, exhaustive, and excellently written *ponencia* of my revered colleague Associate Justice Rodil V. Zalameda.

Grounds Raised

In **G.R. No. 260374,** petitioners assert that the certificate of candidacy (*COC*) of President-elect Ferdinand Marcos Jr. (*PEMJ*) should be cancelled under Section 78 of the Omnibus Election Code of the Philippines (*OECP*):[1]

> SECTION 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.[2]

They argue that PEMJ made false material representations in his COC that he was eligible to run as a presidential candidate and be voted for as President, and that he had never been found guilty of any offense that carries with it the penalty of perpetual disqualification to hold public office, which is now final and executory. As a result, according to their theory, his COC should be cancelled and he should be declared as not having been a presidential candidate at all. They argue too, but do not pray, that the presidential candidate receiving the second highest number of votes be proclaimed the winner.

Their argument is based on the consolidated judgment of conviction of the Court of Appeals finding PEMJ guilty of not filing his compensation income tax returns for the years 1982, 1983, 1984, and 1985 contrary to Section 45 in relation to Section 73 of the National Internal Revenue Code of 1977 (*NIRC 1977*),[3] and ordering him to pay his deficiency compensation income taxes with legal interest and a fine of ₱2,000.00 for each of his offenses in 1982, 1983 , and 1984 and ₱30,000.00 for his offense in 1985. But in this consolidated judgment, *no other penalty* was imposed for his offenses.

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1 BATAS PAMBANSA Blg. 881, OMNIBUS ELECTION CODE OF THE PHILIPPINES, Approved on December 3, 1985.

2 Id.

3 BATAS PAMBANSA Blg. 135, An Act Amending Certain Provisions of the National Internal Revenue Code of 1977, As Amended, and for Other Purposes, Approved on December 18, 1981.

Petitioners claim that PEMJ's conviction for these four offenses *automatically* carried with it his *perpetual disqualification* from running for, and holding, any public office. They assert that the fact of his conviction *necessarily implied* the imposition of this penalty *as well*, thus:

> 79. The consequence of perpetual disqualification from holding any public office, to vote and participate in any election, applies to ALL convictions of crimes under the NIRC, regardless of the penalty imposed. The **penalty of perpetual disqualification** from holding any public office, to vote and participate in any election **arises solely from the fact of conviction**. Plainly, **conviction under the NIRC, results *ipso facto* in the perpetual disqualification** from holding any public office, to vote and participate in any election.
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> 85. Respondent Marcos, Jr.'s conviction for four (4) violations of the NIRC renders him "**perpetually disqualified** from holding any public office, to vote[,] and to participate in any election." This consequence **is deemed written into his conviction** by the RTC and affirmed by the Court of Appeals, which **renders his statements under item 11 in relation to Box 22 of the subject COC false**.
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> 86. To emphasize, the **perpetual disqualification** from holding any public office, to vote, and to participate in any election **is an inevitable and automatic consequence of the mere fact of conviction** and is **not dependent on the penalty actually imposed**. Clearly, the inescapable fact is that **the mere fact of CONVICTION for violating the NIRC perpetually disqualified** respondent Marcos, Jr. from participating in any election, more so to run for any public office. This **automatically rendered false his answer** ("No") in Box 22 of the subject COC, which when read in relation to his affirmative declaration in Item 11 makes these two items material misrepresentations warranting denial of due course or cancellation of respondent Marcos Jr.'s COC under Rule 23 of the COMELEC's Rules.
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> x x x x
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> 91. The **penalty of perpetual disqualification was not explicitly written** in respondent Marcos, Jr.'s judgment of conviction **because the CA did not have to do so**. The applicable provision of the 1977 NIRC is clear and leaves no room for interpretation: **the aecessory penalty of perpetual disqualification** from holding any public office, to vote[,] and to participate in any election, **shall be imposed** in cases of conviction of any crime penalized under the NIRC.
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> "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 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.
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> x x x x

> [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 cancelled."

The core reference is Section 286, an amendment to the NIRC 1977 which *petitioners admit became effective on January 1, 1986.*[4]

As regards the meaning of Section 286, they aver:

> 92. A **reading of the particular phraseology used in Section 286[c]** which identifies **three classes of persons** makes certain that **the additional penalties imposed upon their conviction do not require any further act** for their effectivity; thus, a **convicted foreigner** shall be **deported without further proceeding** after service of sentence; a **convicted certified public accountant's certificate** is **automatically cancelled** or revoked. **Neither** of those consequences **need to be expressly imposed** in the judgment of conviction before the concerned agency of government can enforce deportation or cancellation. **And so it is with a convicted public officer** or employee. When Section 286[c] **used the word "imposed"**, it does so **only by reference** to the maximum penalty. It **then follows this with mandatory language** – "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." **Being an imposition** of law, there is **no further need for the court to expressly impose** the consequent penalties for these to take effect. It likewise follows that the concerned agency, the COMELEC in this instance, can and should bar the convicted public officer from participating in any election without [the] need of further pronouncement from any other court or tribunal.
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> 93. Thus, **by operation of law, and regardless of whether such disqualification was expressly directed in the judgment** of conviction, the consequence of **perpetual disqualification is deemed imposed** upon the final conviction of Respondent Marcos, Jr.[.] The **perpetual disqualification is deemed written into the final judgment** of conviction of respondent Marcos, Jr., which the COMELEC was duty bound to enforce and implement.

They cite *Jalosjos, Jr. v. Commission on Elections (Jalosjos)*[5] to support the claim that the perpetual disqualification under Section 286 of the NIRC 1977, as amended, is deemed part of the final consolidated judgment

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[4] PRESIDENTIAL DECREE NO. 1994, FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, January 1, 1986.

[5] 711 Phil. 414–438 (2013).

and took effect immediately upon the finality of the consolidated judgment of conviction against PEMJ.

They also maintain that PEMJ's alleged ignorance of his ineligibility, if he were, should not excuse his false representations. On the contrary, according to their theory, he deliberately attempted to mislead, misinform, or hide his criminal convictions, which rendered him ineligible and which he could not have but known as he himself actively participated in the trial and the appeal.

In **G.R. No. 260426**, petitioners invoke Section 12 of the OECP, as amended, to disqualify PEMJ from running for, and being elected to, the Presidency. Section 12 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.
>
> 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.[6]

Petitioners claim that PEMJ was convicted of crimes for which he was sentenced to more than 18 months. They refer to the joint decision of the Regional Trial Court-Branch 105, in Quezon City, convicting him of not filing his compensation income tax returns for the years 1982, 1983, 1984, and 1985 contrary to Section 45 in relation to Section 73 of the NIRC 1977, and for not paying his income taxes for these years, and sentencing him to suffer a total of 18 months of imprisonment and pay an aggregate of ₱72,000.00 fine, plus his deficiency compensation income taxes with legal interest.

We have to clarify, however, as already mentioned, that the only relevant final and executory criminal judgment here is **not** the consolidated judgment of the Regional Trial Court **but** that of the Court of Appeals.

To reiterate, the Court of Appeals found PEMJ guilty of *not filing his* **compensation income** *tax returns* for the years 1982, 1983, 1984, and 1985 contrary to Section 45 in relation to Section 73 of the NIRC, and ordered him to pay his deficiency compensation income taxes with legal interest and a fine

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[6] BATAS PAMBANSA BLG. 881, OMNIBUS ELECTION CODE OF THE PHILIPPINES, Approved on December 3, 1985.

of ₱2,000.00 for each of his offenses in 1982, 1983, and 1984 and ₱30,000.00 for his offense in 1985. *No other penalty* was imposed for his offenses.

Petitioners also point to the definition of a *crime involving moral turpitude* and conclude that this definition fits the crime of not filing compensation income tax returns. Petitioners' accepted definition is cited in *Villaber v. Commission on Elections*[7] that –

> As to the meaning of "moral turpitude," we have consistently adopted the definition in Black's Law Dictionary as "an act of baseness, vileness, or depravity in the private duties which 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 woman, or conduct contrary to justice, honesty, modesty, or good morals."[8]

Petitioners in **G.R. No. 260426** seem to share common ground with petitioners in **G.R. No. 260374** in insisting that PEMJ is subject to the penalty of perpetual disqualification from running for and being elected to any public office including the Presidency. But petitioners in **G.R. No. 260426** go to the extent of denouncing the consolidated judgment of the Court of Appeals against PEMJ as *void* for not expressly imposing the penalty of perpetual disqualification on him.

In **G.R. No. 260426**, petitioners seek to declare as stray the votes for PEMJ and for the Court to proclaim the candidate who obtained the second highest number of votes as the winning candidate for the Presidency.

Issues

Therefore, in **G.R. No. 260374**, whether PEMJ made false material representations in his COC is hinged on the allegation that he was perpetually disqualified from public office. Was he? In sequence, the issues are:

1. Though a question of law, may a candidate's eligibility be the subject of a false material representation under Section 78 of the OECP?

2. Did PEMJ make a false representation in his COC as regards his eligibility to run as a presidential candidate and be elected President?

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[7] 420 Phil. 930, 937 (2001).
[8] Id.

2.1 That is, did he *falsely* claim to be *not* perpetually disqualified from running as a presidential candidate and being elected to such position?

a. Would perpetual disqualification prejudice PEMJ, albeit it was not expressly written in the consolidated judgment of conviction against him?

b. Was perpetual disqualification deemed written into this consolidated judgment of conviction?

c. Was perpetual disqualification an *imposable* penalty for *all* the offenses he was found guilty of?

d. Would perpetual disqualification be a fit and proper penalty against him when the predicate offense has itself been repealed and until today remains repealed?

3. Did PEMJ harbor the malicious intent to deceive the electorate as to his qualifications for public office?

On the other hand, in **G.R. No. 260426**, the singular issue of note is the applicability of Section 12 of Batas Pambansa (*BP*) Blg. 881, as amended to disqualify PEMJ from running for and being elected to the Presidency:

1. Does the Court have jurisdiction over the issue of PEMJ's alleged lack of qualifications to be elected and sit as President?

2. Was PEMJ convicted of a crime or crimes to which he was sentenced to more than 18 months of imprisonment?

3. Was PEMJ convicted of a crime or crimes involving moral turpitude?

4. Is the consolidated judgment of the Court of Appeals against PEMJ void for failing to include expressly the penalty of perpetual disqualification against him?

5. Is it valid and proper for the Court to declare as stray the votes cast for PEMJ and declare the candidate receiving the second highest number of votes as the President-elect?

Discussion

I. G.R. No. 260374

I will first discuss the arguments in **G.R. No. 260374**.

Section 78 of the OECP has two broad constituent elements – the *actus reus* (prohibited act) and the *mens rea* (mental element).

The prohibited act consists of false material representation. Ordinarily, the representation would be of a *fact*, but as discussed below, a candidate's legal opinion may also be characterized as having been *misrepresented* though in reality, the false representation has to do with the *facts* upon which the legal opinion was anchored.

The *mens rea* element is the candidate's state of mind in representing the material fact or opinion – the statement in the certificate of candidacy becomes material only when there is, or appears to be, a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.[9]

Eligibility may be falsely represented in a COC.

Though a question of law, **eligibility** may be **falsely represented** in a COC for which a petition under Section 78 of the OECP may be triggered. This is the ruling of the Court in a host of cases including *Halili v. Commission on Elections* (*Halili*).[10] To be clear, however, the false representation in *Halili* and the other case law is not simply about the legal conclusion of a candidate's eligibility. Rather, the misrepresentation includes the *facts* from which the legal conclusion of eligibility or ineligibility is to be inferred. Hence, Section 78 is not just penalizing the expression of one's legal opinion or belief about one's eligibility, which would be unfair if it were just that, but rather the *false statements of facts* that the candidate knows or ought to know from which their[11] ineligibility arises.

In *Halili*, for instance, candidate Halili claimed to be eligible **though he had already served three continuous terms**, which by law included the time he was mayor when his local government unit was converted from a municipality to a city. This was *the fact – i.e.*, that Halili was not the mayor for three consecutive terms *including* the time when his municipality was

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9 See *Romualdez-Marcos v. Commission on Elections*, 318 Phil. 329 (1995).
10 G.R. No. 231643, January 15, 2019.
11 I use "their" to indicate gender neutrality and non-specificity.

converted to a city – which Halili misrepresented to support his false claim that he was eligible.

To illustrate further, a candidate's claim of eligibility though they had not been a resident of the electoral unit would constitute a false representation of their eligibility if the candidate was **not in fact a resident** of that locality.

Arguably, a **misrepresentation** about one's eligibility as a candidate, in cases **where the factual basis for the claim is *not egregiously absent***, while still an instance of a false material representation under Section 78, would **not** be **actionable** under this provision, **since** the element of *malicious intent* or *mens rea* would be absent.

As a matter of pleading, thus, petitioners are correct in challenging PEMJ's COC on the basis of the alleged misrepresentation of his eligibility as a candidate for President.

PEMJ did not make a false representation in his COC as regards his eligibility to run as a presidential candidate and be elected President.

There was *no* false claim in the COC of PEMJ that he was *not* perpetually disqualified from being a candidate for the presidency and eligible to be voted as such. As a factual matter, he was *not* perpetually disqualified by the consolidated judgment of conviction for this purpose.

One. Neither of the consolidated judgments of conviction against PEMJ for not filing his compensation income tax returns for the years 1982, 1983, 1984, and 1985 ***expressly*** **imposed the penalty of perpetual disqualification** for any of these offenses. Petitioners' argument that this penalty is ***deemed written*** into the consolidated judgments of conviction has ***no legal basis***. Hence, it ***cannot be said*** that PEMJ was meted the penalty of, and is suffering from, perpetual disqualification from running for and being elected to public office. And, in the absence of *any other court judgment* **expressly** imposing this penalty, it *cannot be said* that he is disqualified, perpetually or otherwise, from exercising this political right.

To begin with, petitioners' invocation of *Jalosjos* is misplaced.

In *Jalosjos*, petitioner Dominador Jalosjos, Jr. was a candidate for mayor in Dapitan City, Zamboanga Del Norte. Prior to the filing of his COC, he, along with others was convicted by final judgment of *robbery*, a crime

under the Revised Penal Code *(RPC)*, and sentenced to *prision correccional* minimum to *prision mayor* maximum.[12]

The Commission on Elections (*COMELEC*) cancelled his COC on the ground that he misrepresented himself to be eligible to run as a mayoral candidate since he had been convicted by final judgment of robbery with the penalty of *prision correccional* minimum to *prision mayor* maximum. According to the COMELEC, this conviction carried with it, by virtue of Article 42, in relation to Article 73 of the RPC, the accessory penalties of temporary absolute disqualification and perpetual special disqualification, which meant disqualifying him from being a candidate.

The Court affirmed the ruling of the COMELEC. It decreed that "[t]he penalty of *prision mayor* automatically carries with it, by operation of law, the accessory penalties of temporary absolute disqualification and perpetual special disqualification."

This ruling came about *not because* penalties are *per se* inferred from other penalties. Rather, there were ***clear* and *especially applicable rules*** which ***required* the *automatic* imposition** of the ***expressly*** designated *accessory* penalties for the crime of robbery and other crimes under **Articles 42** and **73**, RPC,[13] and the ruling in *People v. Silvallana* (*Silvallana*).[14]

The clarity of **these provisions** and **the ruling** in *Silvallana* mandated the *automatic* imposition of the *accessory* penalties – **without even mentioning** them as penalties in the judgment of conviction. The accessory penalties *are deemed written* into the conviction. Thus:

> ARTICLE 42. *Prision Mayor*; *Its Accessory Penalties*. — The penalty of ***prision 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.
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> x x x x
>
> ARTICLE 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 [A]rticles 40, 41, 42, 43, 44[,] and 45 of this Code, **it must be understood that the accessory penalties are also imposed** upon the convict.
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> x x x x

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12 Supra note 5.
13 ACT No. 3815, The Revised Penal Code, Approved on December 8, 1930.
14 61 Phil. 636–644 (1935).

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> **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 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 [A]rticles 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.**[15] (Emphases ours)

In contrast, there is ***nothing* in the NIRC 1977**, as amended by Section 286 to denote the ***automatic* appropriation of the penalties** mentioned in Section 286 to those imposable under Section 73 of the same *Code*.

Section 286 states in full:

> "TITLE XI"
> Additions to the Tax and General Penal Provisions
>
> CHAPTER II
> Crimes, Other Offenses and Forfeitures
>
> "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 [accountant] shall, upon conviction, be automatically revoked or cancelled.
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> "[d] In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, general manager, branch

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[15] Id.

manager, treasurer, officer-in-charge, and employees responsible for the violation.[16]

Section 73 as amended provides:

> SECTION 12. Section 73 of said Code is hereby amended to read as follows:
>
> > "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: *Provided*, however, That an individual with compensation income taxable under Section 21(a) of this Code and where the tax withheld from such compensation income is final shall be exempt from the penalty for failure to pay the tax on such compensation income and to file a return thereon at the designated period.
> >
> > "Any individual or any officer of any corporation, or general co-partnership (compania colectiva), required by law to make, render, sign or verify any return or to supply any information, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this Code to be made, shall be punished by a fine of not less than Five thousand pesos and imprisonment of not less than two years."[17]

Not only are there ***no words*** of *automatic imposition* or *automatic appropriation* **as in** the *RPC* or the *Silvallana* ruling, Section 286(c) is itself ***textually*** **structured** to state *explicitly* if the imposition is to be *automatic*, and by necessary implication, to require the *express imposition* of the penalty (here, of perpetual disqualification) to be enforceable, if it *does not*.

Section 286(c) is very clear that if it wants to mean the *automatic imposition* of the additional penalties, **it states so very clearly and candidly**. Thus, as regards **certified public accountants**, Section 286(c) states, that *upon conviction*, their license shall be ***automatically*** **revoked** or **cancelled**.

This **wording** as regards certified public accountants in Section 286(c) **approximates** Articles 42 and 73 of RPC that *Silvallana* capitalized on to rule that "[i]t is therefore unnecessary to express the accessory penalties in the sentence."

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[16] PRESIDENTIAL DECREE NO. 1994, FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, January 1, 1986.

[17] BATAS PAMBANSA Blg. 135, An Act Amending Certain Provisions of the National Internal Revenue Code of 1977, as Amended, and for Other Purposes, Approved on December 18, 1981.

Section 286(c) is therefore *aware of the nuance* of its wording when it **categorically distinguished** certified public accountants from public officers or employees and probably foreigners. If indeed Section 286(c) had intended to authorize the **automatic** imposition of perpetual disqualification as a penalty for public officers *even without expressly imposing it in the judgment of conviction*, then Section 286(c) could have easily expressed such intent in the law, **as it did** with the certified public accountants in the same provision. We must presume that the legislature was aware of, and intended this meaning when it used these words in Section 286(c).[18]

Indeed, as then COMELEC Commissioner (now Associate Justice) Antonio T. Kho, Jr. observed, and ***as the language of Section 286(c) itself proves***, the **penalty** of **perpetual disqualification** is **not** a mere **accessory penalty** but a **principal penalty** which ought to be **imposed expressly** in order to be **enforceable**.

Additionally, we cannot adopt an interpretation which is not favorable to an accused if there is one that would be favorable to them.[19]

Here, there are two interpretations of the meaning of Section 286(c) on whether the penalty of perpetual disqualification should be expressly imposed to be enforceable – *one* approach is to say that this is needed, which would *favor an accused* as they would be spared the additional non-imposed penalty; the other, which is unfavorable to an accused, is to enforce *belatedly* and *automatically* the perpetual disqualification and disturb their peace.

Following established constitutional order, the first is the *sole legally acceptable approach or interpretation*. The Court *is bound* to reject the other.

Thus:

> Intimately related to the *in dubio pro reo principle* is the rule of lenity. The rule applies when the court is faced with two possible interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him. The rule calls for the adoption of an interpretation which is more lenient to the accused.[20]

Two. The perpetual disqualification was **not an *imposable* penalty at all** for *all* the offenses PEMJ was found guilty of.

Section 286 was *enacted* only in 1985 through Presidential Decree (*PD*) No. 1994 (November 5, 1985). It was a *further amendment* of the *National*

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18 See *Araullo v. Aquino III*, 737 Phil. 457–852 (2014).

19 I use "them" to indicate gender sensitivity and non-specificity.

20 *Ient v. Tullett Prebon (Philippines), Inc.*, 803 Phil. 163, 186 (2017).

Internal Revenue Code of 1977 as amended, and published in the Official Gazette (Volume 81, Number 48, Page 5527) on December 2, 1985, thus:

"TITLE XI"
Additions to the Tax and General Penal Provisions

CHAPTER II
Crimes, Other Offenses and Forfeitures

"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 cancelled.[21]

Prior to PD 1994, the **penalty** for the **non-filing of compensation income tax returns** was found **only** in **Section 73** of Title II on *Income Tax*, Chapter IX on *Administrative Provisions* of the *National Internal Revenue Code of 1977* (Presidential Decree No. 1158-A), which in 1983 was amended by BP 135[22] (published in Volume 79, Number 18, Page 2554 of the Official Gazette on May 2, 1983), to wit:

SECTION 12. Section 73 of said Code is hereby amended to read as follows:

"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: *Provided*, however, That an individual with compensation income taxable under Section 21(a) of this Code and where the tax withheld from such compensation income is final shall be exempt from the penalty for failure

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21 PRESIDENTIAL DECREE No. 1994, FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, January 1, 1986.

22 BATAS PAMBANSA Blg. 135, An Act Amending Certain Provisions of the National Internal Revenue Code of 1977, as Amended, and for Other Purposes, Approved on December 18, 1981.

> to pay the tax on such compensation income and to file a return thereon at the designated period.
>
> "Any individual or any officer of any corporation, or general co-partnership (compania colectiva), required by law to make, render, sign or verify any return or to supply any information, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this Code to be made, shall be punished by a fine of not less than Five thousand pesos and imprisonment of not less than two years."[23]

Clearly, for PEMJ's offenses of not filing his compensation income tax returns in ***1982***, ***1983***, and ***1984***, the **penalty** was generally a **fine** of ₱2,000.00. **Perpetual disqualification** was **not a penalty** for these offenses when they were committed. Thus, PEMJ **could not have been** meted the penalty of **perpetual disqualification** even if the consolidated judgment of conviction wanted to do so expressly, *but nonetheless did not.*

Three. I address the **offense pertaining to the 1985 compensation income tax return due in 1986**, an offense which was committed in 1986 when it was due when PD 1994 was already in effect. It is my opinion that **perpetual disqualification *could no longer be imposed on him*** through the present proceedings since **this predicate offense has *itself* been *repealed* and until today remains to be repealed**.

As late as Executive Order No. 37, which further amended the NIRC 1977, dated **July 31, 1986,**[24] and published in Volume 82, Number 31, Page 3733 of the Official Gazette on August 4, 1986, **pure compensation income earners were *not exempt* from filing a tax return**.

But this criminal provision was subsequently decriminalized when Revenue Regulations (*RR*) No. 3-2002[25] **mandated** the Certificate of Compensation Payment/Tax Withheld (*BIR Form 2316*) to serve as the employee's income tax return under the "Substituted Tax Filing System" rule beginning in 2002. **This is still in effect.**

Decriminalization or the process, either legislative or otherwise, of legalizing an illegal act, can come in many forms. In the case of a substituted filing system, while this is indeed a practice established and observed by the BIR with the issuance of RR 3-2002. It is not without authority as the Commissioner of Internal Revenue specifically has the power to make assessments and prescribe additional requirements for tax administration and enforcement as well as interpret the Tax Code. More, the issuance of RR 3-2002 excused the prosecution of this offense that they interpreted as superfluous given the Certificate of Compensation Payment/Tax Withheld

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23 Id.

24 EXECUTIVE ORDER NO. 37, FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, July 1, 1986.

25 Revenue Regulations No. 3-2002, March 27, 2002.

(BIR Form 2316) issued by the employers bears the same information as the income tax return (*ITR*) required to be filed under the law.

In any event, the subsequent installation of Section 51-A in the Tax Code by Republic Act No. 10963, TRAIN Law,[26] excuses 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) from filing an annual income tax return, only solidify this argument.

With the **repeal** of the *predicate offense* of non-filing of compensation income tax return, the Court *can no longer look back* on PEMJ's judgment of conviction for his 1985/1986 offense and *import* the penalty of perpetual disqualification, since the crime of which he was convicted is **no longer a crime.**

As held in *People v. Pimentel*:[27]

> **Although this legal effect of R.A. No. 7636 on private-respondent's case has never been raised as an issue by the parties** — obviously because the said law came out only several months after the questioned decision of the Court of Appeals was promulgated and while the present petition is pending with this Court — **we should nonetheless fulfill our duty as a court of justice by applying the law to whomsoever is benefited by it** regardless of whether or not the accused or any party has sought the application of the beneficent provisions of the repealing law.
>
> **That R.A. No. 7636 should apply retroactively** to accused-private respondent is beyond question. The repeal by said law of R.A. No. 1700, as amended, was categorical, definite and absolute. There was no saving clause in the repeal. The legislative intent of totally abrogating the old anti-subversion law is clear. Thus, it would be illogical for the trial courts to try and sentence the accused-private respondent for an offense that no longer exists.
>
> As early as 1935, we ruled in *People vs. Tamayo*:
>
> "There is no question that at common law and in America a much more favorable attitude towards the accused exists relative to statutes that have been repealed than has been adopted here. Our rule is more in conformity with the Spanish doctrine, but even in Spain, **where the offense ceases to be criminal, prosecution cannot be had**. (1 Pacheco Commentaries, 296)"
>
> **Where, as here, the repeal of a penal law is total and absolute and the act which was penalized by a prior law ceases to be criminal under the new law, the previous offense is obliterated.** It is a recognized rule in this jurisdiction that **a total repeal deprives the courts of jurisdiction to try, convict and sentence persons charged with violation of the old law prior to the repeal.**

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[26] Republic. Act No. 10963, TRAIN Law, January 1, 2018.
[27] 351 Phil. 781, 795–796 (1998).

> With the enactment of R.A. No. 7636, the charge of subversion against the accused-private respondent has no more legal basis and should be dismissed.[28]

Four. For the Court **to read into** the consolidated judgments of conviction, the penalty of perpetual disqualification, as a result of petitioners' interpretation of Section 286, NIRC 1977, as amended, would be to *violate the constitutional prohibition* against *ex post facto* measures.[29]

An *ex post facto* law is a law that either:

> (1) makes criminal an act done before the passage of the law that was innocent when done, and punishes such act; or **(2) aggravates a crime, or makes the crime greater than it was when committed**; or **(3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed**; or (4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; or (5) assumes to regulate civil rights and remedies only, but in effect imposes a penalty or deprivation of a right for an act that was lawful when done; or **(6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction** or acquittal, or a proclamation of amnesty.[30]

The protection against an *ex post facto* law applies to **interpretations by the Court** of statutory provisions, criminal or otherwise, whose effect is any of those mentioned above.[31]

Here, several times, PEMJ was *allowed to run unmolested* by the consolidated judgments of conviction rendered against him. If a ruling from this Court were to adopt petitioners' understanding of Section 286, *the ruling would become part of the law* of the land and *part of the criminal legislation* that it would be interpreting.

But the ruling which petitioners are clamoring for, **cannot** by any means be applied **retroactively**. This is because it would impose upon PEMJ a **greater** and **aggravated penalty** than *those to which everyone has come to accept*, **only except now** when he ran and is now the President-elect. It would also *deprive him* of the **protection of the finality** of the consolidated judgment of conviction of the Court of Appeals which **can no longer** be disturbed and remediated at this late in time.

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28 Id.

29 Constitution, Article III, Section 22. No ex post facto law or bill of attainder shall be enacted.

30 *Estrada v. Sandiganbayan* (5th Division), 836 Phil. 281, 293–294 (2018).

31 *Republic v. Eugenio Jr.*, G.R. No. 174629, February 14, 2008.

For sure, the law cannot *single him out* **now** *only because* of his victorious return.

Too, given the events of February 1986, when his family was ousted from power and exiled abroad and barred from returning, which had given rise to the *legal impossibility* of him filing his compensation income tax returns, imposing perpetual disqualification as an *added* penalty – *only* now and *only* because he *has won overwhelmingly* – would hardly be a fit and proper penalty.

For one, it is *absurd* to punish him more harshly for an act that under a more neutral discernment would have already merited an acquittal. Besides, how could he have filed his compensation income tax return in 1986 when there had just been a people power revolution directed against his family?

As a point of fact, PEMJ, along with his parents and siblings, was barred by the then President, and affirmed no less by the Court in *Marcos v. Manglapus*,[32] from returning to the Philippines. To refresh memories, the Court held –

> WHEREFORE, and it being our well-considered opinion that **the President did not act arbitrarily or with grave abuse of discretion** in determining that the return of former President Marcos and his family at the present time and under present circumstances poses a serious threat to national interest and welfare and **in prohibiting their return to the Philippines**, the instant petition is hereby DISMISSED.
>
> **SO ORDERED.**[33] (Emphases supplied)

More, for us to revise the judgment of conviction for the 1985/1986 offense, by reading into it the perpetual disqualification penalty, **when no one thought it was really there, as shown by PEMJ's several *unmolested* runs for public office before the presidential elections of 2022**, is to dig a graveyard that has been *left forlorn* for so long a time. *Lex prospicit, non respicit* – the law looks forward, not backward. As it is in *stark violation* of this legal principle, the contrary proposition of petitioners seems more likely than not to be an *attempt to weaponize the law* against the one chosen by the sovereign-of-the-day.

PEMJ harbored no malicious intent to deceive the electorate as to his qualifications for public office.

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32 258 Phil. 479, 509 (1989).
33 Id.

As stated, Section 78 has a *mental element* too. The false statement in the certificate of candidacy becomes a *false material representation* only when the candidate *intends* a *deliberate attempt to mislead, misinform, or hide a fact* which would otherwise render them[34] ineligible.

This malicious intent is *missing* here. Neither of the consolidated judgments of conviction **directed PEMJ's mind** to the penalty of perpetual disqualification. It was *absolutely silent* on this penalty. No one has ever bothered *to check on* and **correct, if they must,** these consolidated judgments of conviction. The then sovereign-of-the-day *did not deign to vet* their completeness, much less, their legality, despite the power and opportunity to do so.

Meantime, PEMJ was able to file his COCs for the several public offices he eventually ran for, *unmolested*. By being able to campaign and be successful in most of them, it stands to reason that *he has always represented his eligibility* and *has always checked off* the absence of any judgment by which he could have been disqualified from a public office. And, no one has ever seen, *until now*, these statements as being deceitful or malicious misrepresentations of his eligibility. **This evidence of his habit and routine** proves clearly and convincingly that he *had* **no** *intention* and *did* **not** *intend* to mislead or misinform about, or hide, his alleged ineligibility.

The situation *cannot* be any different now for his COC for the Presidency. He could not have been innocent before, but malicious now. There was no event, foreseeable or unforeseeable, which interrupted the chain from before, his *innocent* representation of eligibility, to the present. Except for his election as President, nothing has changed for us to conclude hastily that he has **now** *maliciously* misrepresented his eligibility. But for the overwhelming clamor for his leadership, and the forceful voice of those who wish him not to assume the presidency, *nothing of consequence* has changed. Thus, **his state of mind then** *should be still* **his state of mind now**.

In the absence of malicious intent which Section 78 requires, nothing can resuscitate the challenge (now subject of the petition in **G.R. No. 260374**) which COMELEC has seen fit to deny.

II. G.R. No. 260426

I will now turn my attention to the arguments in **G.R. No. 260426**.

The Court has jurisdiction over PEMJ's alleged lack of qualifications to be elected and sit as President.

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[34] I use "them" to respect gender sensitivity and non-specificity.

With the indulgence of the good ponente, I **adopt his reasoning in full** on why the Court has jurisdiction over PEMJ's alleged lack of qualifications to be elected and sit as President.

May I add that **postponing the resolution** of this issue to a later date by the Presidential Electoral Tribunal (*PET*), *when there are no factual questions to be resolved* and *the PET is constituted by the same Members of the Court*, would be **contrary to the rule of law.** For this bedrock legal principle is *all about the stability it brings to the workings of society* and **anathema to judicial economy** because this legal principle sees *value in the efficient use of our court system*.

All of these reasons should already justify the jurisdiction of the Court to resolve this issue.

Failure to file compensation income tax returns is not a crime involving moral turpitude.

One. PEMJ **cannot be disqualified** under Section 12 of BP 881, as amended because **he has not been sentenced** to suffer imprisonment for more than 18 months.

The consolidated judgment of conviction against him by the Regional Trial Court was **set aside** and **vacated** by the Court of Appeals in the judgment it subsequently rendered. As decreed by the appellate court, PEMJ was only ordered to pay a fine and some civil liabilities but *was not sentenced* to suffer imprisonment, much less, one for more than 18 months.

Two. PEMJ **cannot be disqualified** under Section 12 of BP 881 because this provision took effect only in December 1985.

Section 283 of BP 881 states that "[t]his *Code* shall take effect upon its approval." BP 881 was approved on December 3, 1985, and was published in Volume 81, Number 49, Page 5659, December 9, 1985.

Hence, **Section 12 of BP 881, cannot be applied to PEMJ's offenses in 1982, 1983**, and **1984**. The prohibition against *ex post facto* law **prohibits the retroactive** application of Section 12 to these offenses as Section 12 has the effect of **aggravating** these offenses and **increasing** the penalties attached to them.

Notably, for the years prior to or the years 1982, 1983, and 1984, there was **no such counterpart provision** in effect.

Three. As regards the *offense done in 1986*, PEMJ **cannot be disqualified** under Section 12 of BP 881, as amended because failure to file compensation income tax return is **not** a crime involving moral turpitude.

Teves v. Commission on Elections[35] explains a crime involving moral turpitude as follows:

> **Moral turpitude** has been defined as **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.**
>
> x x x x
>
> However, conviction under the second mode does not automatically mean that the same involved moral turpitude. **A determination of all surrounding circumstances of the violation of the statute must be considered.** Besides, **moral turpitude does not include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited**, as in the instant case.
>
> Thus, in ***Dela Torre v. Commission on Elections***, the Court clarified that:
>
> > **Not every criminal act, however, involves moral turpitude.** It is for this reason that "as to what crime involves moral turpitude, is for the Supreme Court to determine." In resolving the foregoing question, **the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not**, the rationale of which was set forth in "***Zari v. Flores***", to wit:
> >
> > > "It **(moral turpitude) implies something immoral in itself**, regardless of the fact that it is punishable by law or not. **It must not be merely *mala prohibita*, but the act itself must be inherently immoral.** The **doing of the act itself, and not its prohibition by statute fixes the moral turpitude**. Moral turpitude **does not**, however, **include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited**."
>
> This guideline nonetheless proved short of providing a clear-cut solution, for in "International Rice Research Institute v. NLRC, the Court admitted that it cannot always be ascertained whether moral turpitude does or does not exist by merely classifying a crime as *malum in se* or as *malum*

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[35] 604 Phil. 717–752 (2009).

> *prohibitum*. There are crimes which are *mala in se* and yet but rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only. In the final analysis, 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**. (Emphases in the original)
>
> Applying the foregoing guidelines, we examined all the circumstances surrounding petitioner's conviction and found that the same does not involve moral turpitude.
>
> First, there is **neither merit nor factual basis** in COMELEC's finding that **petitioner used his official capacity in connection with his interest in the cockpit and that he hid the same by transferring the management** to his wife, **in violation of the trust reposed on him by the people**.
>
> x x x x
>
> Second, while possession of business and pecuniary interest in a cockpit licensed by the local government unit is expressly prohibited by the present LGC, however, its illegality does not mean that violation thereof necessarily involves moral turpitude or makes such possession of interest inherently immoral. **Under the old LGC, mere possession by a public officer of pecuniary interest in a cockpit was not among the prohibitions** x x x
>
> *Lastly*, it may be argued that having an interest in a cockpit is detrimental to public morality as it tends to bring forth idlers and gamblers, hence, violation of Section 89(2) of the LGC involves moral turpitude.
>
> **Suffice it to state that cockfighting, or sabong in the local parlance, has a long and storied tradition in our culture and was prevalent even during the Spanish occupation.** While it is a form of gambling, the morality thereof or the wisdom in legalizing it is not a justiciable issue x x x[36] (Emphases supplied)

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."

First, the tax has *already been deducted and withheld* from PEMJ's compensation income. Hence, the filing of the compensation income tax return would amount **merely to a summary** of the essential thing that *had already been done* – payment of taxes on one's compensation income. There is *nothing vile or base* about **not rendering the summary of what**, in the first place, the government as an employer is **presumed to have already done** correctly. The filing of the compensation income tax return is a **technical requirement** that can actually *be done away* with without impacting on the

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[36] Id.

essential private and social duties of PEMJ that he as a public officer then owed to our country and compatriots.

Second. As discussed, prior to December 1985, failure to file compensation income tax returns **was not a ground to disqualify** from public office. In 1997, the requirement of filing compensation income tax returns **was altogether abrogated**. Clearly, these circumstances indicate the **technical nature** of this erstwhile requirement. We were once compelled to prepare and file compensation income tax returns not because this was *inherently good* or *inherently demanded of us as humans*, but because of the *happenstance of time and place* then that it was required.

Third. There is neither *reliable* claim nor evidence that PEMJ *deliberately* omitted to file his compensation income tax returns. Petitioners *speculate* that he deliberately did not do so – but *where is the evidence* of his deliberate intent, and *what motive* would he have had to deliberately omit to file it? What is clear is *only* the non-filing of this type of return, *nothing else*. There is *no evidence*, and it really cannot be inferred, that the omission was for a *fraudulent* or *any other dishonorable* purpose.

For the Court to indulge in hypotheticals and provide additional arsenal to the BIR without judicial precedent is dangerous and pregnant with consequences we cannot yet imagine. For the Court to indulge this is to render an advisory opinion, resolve a hypothetical or feigned problem, or a mere academic answer, which is beyond the Court's power of review, arming an agency with vast powers already. The issue is the failure to file a return and its consequent decriminalization.

To be sure, **what is really worrisome** about the categorization of this offense as a crime of moral turpitude is the *prevalent practice* of our laborers and micro-entrepreneurs of *not filing* tax returns of different sorts, not just for compensation income. Of course, their motivations in not doing so may differ from that of PEMJ, if any, but it should be easy and reasonable to infer that their respective omissions have **nothing to do** with being vile, base, or want to act contrary to justice, modesty, or good morals.

The consolidated judgment of conviction of the Court of Appeals against PEMJ is not void.

It would **set a dangerous precedent** if the Court were to agree with petitioners that the consolidated judgment of the Court of Appeals against PEMJ is void for failing to impose expressly and categorically the penalty of perpetual disqualification. I say this for *two reasons*.

For one, there is **absolutely no evidence of wrongdoing** as to what went on in the decision-making process of the Court of Appeals. For sure, even petitioners **did not turn their attention to** the court proceedings going on, **much less, were then they concerned** with the judgment meted out to Ferdinand Marcos, Jr. (*Ferdinand Jr.*). I am certain too that the Court of Appeals did not decide as it did because it was *banking on prescience* and was *positive like soothsayers* that Ferdinand, Jr. would aspire for and become President one day. In this light, we have to *presume regularity* in the performance of the official duty of the Court of Appeals.

Verily, if **without any evidence of wrongdoing**, we *start undoing* the workings of our institutions which happened years back, and we allow this to go on using **sheer speculation** as a basis, we will end up with no country and no community to live in or go back to. There must be some order, direction, and **finality** in the way our government works.

Further, the alleged error of the Court of Appeals would at most be an **error of judgment**. These errors happen. That is why we have the higher courts to correct the error when an appeal or review is timely initiated. At times, the higher courts themselves make the error – they endeavor to correct an already correct decision but end up promulgating an erroneous decision in its place. These things happen. No one is perfect. Institutions are not perfect. **We simply have to live and move forward through these mistakes.** People who *did not* check these mistakes out *when they could have done so*, should **not, at some distant point in the future, be allowed to return to assail** the past judgment, erroneous or not, for being void, as it is no longer to their liking. Just because the decision does not serve their present purposes **does not make it void**. In the absence of anything of substance to challenge the consolidated judgment of the Court of Appeals, it is, and must remain valid.

It is not necessary, much less, proper for the Court to declare as stray the votes cast for PEMJ and declare the candidate receiving the second highest number of votes as the President-elect.

In view of the foregoing considerations, it would no longer be necessary and even proper to declare as stray the votes cast for PEMJ. He did not falsely misrepresent his eligibility. Hence, his COC is not void. He is not disqualified from the Presidency. Thus, his victory is solid and he may assume the office he was elected to.

Lastly, I do not think it is fair to involve the candidate receiving the second highest number of votes in the present cases since she herself is not a party to them. To be sure, and in fairness to her, **she is not the one seeking the declaration of stray votes and her victory in the elections**. The petitions

do not bear her signature. I think it would truly be a disservice to ascribe these courses of action to her benefit when in the first place she has not claimed them for herself. **She has always been a person of grace and integrity.** Let us leave it at that.

Conclusion

In **G.R. No. 260374** and **G.R. No. 260426**, the choice of leaders of the sovereign-of-the-day *cannot be overturned* by speculative and far-fetched arguments. In case of *doubt*, as here, the Court will for sure allow the sovereign will to be respected. This is to be expected. The election of our leaders is *the greatest of all political questions*. It has been committed *not just textually but as a matter of long-standing and unassailable practice* to the conviction and belief of *our electors* since time immemorial. Therefore, *in applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms.* Win or lose as regards the candidates we have highly esteemed, the clear choice *nonetheless* binds us all.

ACCORDINGLY, I **join the *ponencia*** in **dismissing** the petitions and **affirming in full** the assailed decisions of the COMELEC.

AMY C. LAZARO-JAVIER

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 Maliari Dela Fuente, 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,*** *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*.

Promulgated:

June 28, 2022

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SEPARATE CONCURRING OPINION

M. LOPEZ, J.:

I concur that the Petitions for *Certiorari*, assailing the Commission on Elections (COMELEC) Resolutions, should be dismissed. I submit this opinion to emphasize that the remedies of a petition for disqualification and a petition for cancellation of Certificate of Candidacy (CoC) should not be interchanged. While some grounds invoked in these remedies may overlap, such as residency or citizenship, the nature of the remedy is different and determines the filing period and legal consequences. The choice on which remedy to pursue rests with the petitioner.

Respondent Ferdinand Marcos, Jr. (Marcos, Jr.) was a public officer from the taxable years 1982 to 1985. He was elected as the Vice-Governor and later as Governor of Ilocos Norte from 1982 until he was forced into exile in February 1986 following the EDSA Revolution.[1] Marcos, Jr. failed to file his income tax returns for these taxable years. In 1995, the Regional Trial

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[1] *Ponencia*, p. 9. In SPA No. 21-156 (DC), the COMELEC Second Division made a factual finding that Ferdinand Marcos, Jr. ceased to be a public officer when his family was forced to leave the Philippines on February 25, 1986.

Court (RTC) of Quezon City found Marcos, Jr. guilty of violating the National Internal Revenue Code (NIRC) of 1977, as amended, imposed penalties of imprisonment and fines, and ordered him to pay the taxes due to the Bureau of Internal Revenue. The RTC found that Marcos, Jr. failed to pay his income taxes and file his income tax returns for the taxable years of 1982 to 1985. The imposed period of imprisonment was for more than eighteen (18) months.[2]

Upon review of the RTC Decision, the Court of Appeals (CA) acquitted Marcos, Jr. from charges involving non-payment of deficiency taxes. The CA also modified the imposed penalties for non-filing of income tax returns. It removed the penalty of imprisonment but retained the imposition of fines:

> WHEREFORE, the Decision of the trial court is hereby MODIFIED as follows:
>
> 1. ACQUITTING [Marcos, Jr.] of the charges for violation of Section 50 of the NIRC for non-payment of deficiency taxes for the taxable years 1982 to 1985 x x x 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 year 1982 to 1985 x x x
> 2. Ordering [Marcos, Jr.] to pay the BIR the deficiency income taxes with interest at the legal rate until fully paid;
> **3. Ordering [Marcos, Jr.] a fine of ₱2,000.00 for each charge x x x for failure to file income tax returns for the years 1982, 1983, and 1984; and the fine of ₱30,000.00 x x x for failure to file income tax return for 1985, with surcharges.**
>
> SO ORDERED.[3] (Emphasis supplied.)

The CA Decision became final and executory,[4] and an entry of judgment was entered on November 10, 1997.[5] Two decades later, Marcos, Jr. filed his CoC for president with the COMELEC during the filing period (October 1 to 8, 2021).[6] He represented that he was **eligible for the office of**

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2 *Ponencia*, pp. 6–7. The dispositive portion of the RTC Decision reads:

> WHEREFORE, the Court finds accused Ferdinand Romualdez Marcos II guilty beyond reasonable doubt x x x and sentences him as follows:
>
> 1. To serve imprisonment of six (6) months and pay a fine of ₱2,000.00 for each charge x x x for failure to gile income tax returns for the years 1982, 1983, 1984;
> 2. To serve imprisonment of six (6) months and pay a fine of ₱2,000.00 for each charge x x x 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 ₱30,000.00 x x x for failure to file income tax return for the year 1985;
> 4. To serve imprisonment of three (3) years and pay a fine of ₱30,000.00 x x x for failure to pay income tax for the year 1985; and
> 5. To pay the Bureau of Internal Revenue the taxes due x x x
>
> SO ORDERED.

3 *Ponencia*, p. 8.

4 Id.

5 Id.

6 Commission on Elections, RULES AND REGULATIONS GOVERNING: 1) POLITICAL CONVENTIONS; 2 SUBMISSION OF NOMINEES OF GROUPS OR ORGANIZATIONS PARTICIPATING UNDER THE PARTY-LIST

the president.[7] He also represented that he was not found liable for an offense with the accessory penalty of perpetual disqualification to hold public office.[8]

On November 2, 2021, petitioners Fr. Christian B. Buenafe et al. (Buenafe) filed a petition to cancel the CoC of Marcos, Jr. under Section 78 in relation to Section 74 of the Omnibus Election Code[9] (OEC).[10] They argued that Marcos, Jr.'s prior conviction carries the accessory penalty of perpetual disqualification from holding any office, voting, and participating in any election.[11] Thus, Marcos, Jr. committed a false material representation when he stated that he was eligible to run for president.[12] The case was docketed as SPA No. 21-256 (DC).[13]

On November 20, 2021, another petition was filed against Marcos. Jr. with the COMELEC.[14] Petitioners Bonifacio Parabuac Ilagan et al. (Ilagan) filed a petition for disqualification under Section 12 of the OEC. They also argued that Marcos, Jr. committed false material representation in his CoC that he has not been found liable for an offense that carries the accessory penalty of perpetual disqualification to hold public office.[15] This argument stems from their claim that the CA Decision is invalid because the penalty of perpetual disqualification to hold office should have been imposed. After all, Marcos, Jr. was a public officer when he violated the 1977 NIRC. The case was docketed as SPA No. 21-212 (DC).

SYSTEM OF REPRESENTATION; AND 3) FILING OF CERTIFICATES OF CANDIDACY AND NOMINATION OF AND ACCEPTANCE BY OFFICIAL CANDIDATES OF REGISTERED POLITICAL PARTIES IN CONNECTION WITH THE MAY 9, 2022 NATIONAL AND LOCAL ELECTIONS, Resolution No. 10717, promulgated on August 18, 2021 available at https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com_res_10717.pdf last accessed on June 27, 2022.

7 SEC. 74 of the Omnibus Election code requires candidates to state that they are eligible for the office they are running for. SEC. 74 states that "[t]he 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** x x x." COMELEC Resolution No. 10717, Section 18 also provides mandatory contents and form of a certificate of candidacy. SEC. 18 (n) provides that the statement that "**the aspirant is eligible for said office**" is a mandatory content of the certificate of candidacy.

8 *Ponencia*, pp. 12–13; Commission on Elections, RULES AND REGULATIONS GOVERNING: 1) POLITICAL CONVENTIONS; 2) SUBMISSION OF NOMINEES OF GROUPS OR ORGANIZATIONS PARTICIPATING UNDER THE PARTY-LIST SYSTEM OF REPRESENTATION; AND 3) FILING OF CERTIFICATES OF CANDIDACY AND NOMINATION OF AND ACCEPTANCE BY OFFICIAL CANDIDATES OF REGISTERED POLITICAL PARTIES IN CONNECTION WITH THE MAY 9, 2022 NATIONAL AND LOCAL ELECTIONS, Resolution No. 10717, SEC. 19 (w), promulgated on August 18, 2021 available at https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com_res_10717.pdf last accessed on June 27, 2022. Section 19 (w) provides that an aspirant must state under oath that:

> SEC. 19. Contents and Form of Certificate of Candidacy. – The COC shall be under oath and shall state:
> x x x x
> (w) Whether the aspirant has been found liable for an offense/s which carries with it the accessory penalty of perpetual disqualification to hold public office, which has become final and executory.

9 Batas Pambansa Bilang 881, Approved on December 3, 1985.

10 *Ponencia*, p. 5.

11 Id. at 9.

12 Id.

13 Id.

14 Id. at 5.

15 Id. at 12–13.

The COMELEC dismissed both petitions. Aggrieved, Buenafe and Ilagan come before this Court and insist that Marcos, Jr.'s CoC should have been cancelled or disqualified. Buenafe's petition was docketed as G.R. No. 260374, while Ilagan's petition was docketed as G.R. No. 260426.

I vote to dismiss both petitions.

A criminal conviction may give rise to separate grounds preventing convicts from pursuing their candidacies for public office. If the conviction carries a penalty for the imprisonment of more than eighteen (18) months or if the crime involves moral turpitude, then the convict may be disqualified to run for public office under Section 12 of the OEC. If the conviction carries with it a penalty of perpetual disqualification to hold public office, then the convict's CoC may be cancelled under Section 78 of the OEC following the case of *Jalosjos, Jr. v. COMELEC*.[16] The petitioner may choose which remedy to avail.

In *Miranda v. Abaya*,[17] the Court enumerated the following circumstances to describe the nature of the CoC filed and related them to the existing remedies under the OEC:

> (1) A candidate may not be qualified to run for election but may have filed a valid certificate of candidacy;
> (2) A candidate may likewise be not qualified and at the same time not have a valid certificate of candidacy. In this case, the certificate of candidacy may be denied due course or cancelled;
> (3) A candidate may be qualified, but his or her certificate of candidacy may be denied due course or cancelled.[18]

In the first circumstance, a petition for disqualification under Section 68 of the OEC may be availed. The second circumstance may be challenged via a petition to cancel the CoC of a candidate under Section 78 in relation to Section 74 of the OEC. The third circumstance may be challenged by a petition to declare a candidate as a nuisance under Section 69 of the OEC.[19]

Section 78 of the OEC provides that a petition filed under this section should be limited to material representations as required under Section 74 of the OEC:

> Section 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.** x x x

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16 *Jalosjos, Jr. v. COMELEC*, 696 Phil. 601, 632 (2012).
17 370 Phil. 642, 660 (1999).
18 See also *Talaga v. COMELEC*, 696 Phil. 786, 829 (2012).
19 See *Miranda v. Abaya*, id. at 17.

In *Fermin v. Comelec,*[20] the Court held that a petition under Section 78 of the OEC must refer to the constitutional and statutory provisions on qualifications or eligibility for public offices, such as age, citizenship, and residency requirements. *Fermin* also cautioned against interchanging or confusing "Section 68" and "Section 78" petitions because they are *"different remedies, based on different grounds, and resulting in different eventualities."* One key difference is the filing period. A petition under Section 78 must be filed within twenty-five (25) days of the COC filing. Otherwise, it is time-barred without prejudice to file a *quo warranto*, if proper.

In *Fermin,* the Court had to determine whether a petition questioning the one-year residency of the mayoralty candidate was for disqualification or cancellation of CoC under Section 78 because the petition was filed beyond twenty-five (25) days after the CoC was filed. The Court had to make sure that the residency requirement does not pertain to any grounds for disqualification under the OEC or the Local Government Code:

> The ground raised in the Dilangalen petition is that Fermin allegedly lacked one of the qualifications to be elected as mayor of Northern Kabuntalan, *i.e.*, he had not established residence in the said locality for at least one year immediately preceding the election. Failure to meet the one-year residency requirement for the public office *is not a ground for the "disqualification" of a candidate* under Section 68. The provision only refers to *the commission of prohibited acts and the possession of a permanent resident status in a foreign country* as grounds for disqualification, thus:
>
> **SEC. 68. *Disqualifications*** x x x
>
> Likewise, the other provisions of law referring to "disqualification" do not include the lack of the one-year residency qualification as a ground therefor, thus:
>
> Section 12 of the OEC
>
> **Section. 12. *Disqualifications.*** — x x x
>
> Section 40 of the Local Government Code (LGC)
>
> **Section. 40. *Disqualifications.*** — The following persons are disqualified from running for any elective local position: x x x
>
> Considering that the Dilangalen petition does not state any of these grounds for disqualification, it cannot be categorized as a "Section 68" petition.
>
> To emphasize, **a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC.** On the other hand, a petition to deny due course to or cancel a CoC 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 CoC. Thus, in *Miranda v. Abaya,* [the] Court made the distinction that a candidate who is disqualified under Section 68 can validly

[20] 595 Phil. 449, 465 (2008).

> be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate. (Emphases supplied and citations omitted.)

While Section 78 of the OEC mentioned that the petition for cancellation must be anchored *"exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false,"* the Court in *Jalosjos, Jr. v. COMELEC*[21] may have unwittingly expanded the grounds that may be invoked under a "Section 78" petition by defining what "eligible" means:

> **Section 74 requires the candidate to state under oath in his certificate of candidacy "that he is eligible for said office." A candidate is eligible if he has a right to run for public office.** If a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78. (Emphasis supplied and citations omitted.)

By equating eligibility to the "right to run for public office" without any restrictions, Sections 12 and 68 of the OEC and Section 40 of the Local Government Code for local elective officials may as well be considered proper grounds for a "Section 78" petition. As worded, these law provisions prevent a candidate from pursuing their candidacies:

> Omnibus Election Code
>
> Section 12. Disqualifications. — x x x shall be disqualified to be a candidate and to hold any office x x x
>
> Section 68. Disqualifications. — x x x shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office
>
> Local Government Code
>
> Section 40. Disqualifications. — The following persons are disqualified from running for any elective position

Surely, the OEC did not intend to provide different provisions for petitions for disqualification and cancellation of CoC if it only means the same thing. Thus, I express my reservation on the *ponencia's* observation that *"[w]hile 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 invoke the representations required under Section 78."*[22]

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[21] 696 Phil. 601, 623 (2012).

[22] *Ponencia*, p. 22.

I submit that *Jalosjos, Jr. v COMELEC*[23] should be revisited to reflect the distinctions between a petition for disqualification and a petition for cancellation of CoC. In his Separate Opinion in *Talaga v. COMELEC*,[24] Supreme Court Justice Arturo Brion provided an analysis by which eligibility requirements and disqualification are reconciled. This analysis supports the earlier pronouncements in *Fermin* that Section 78 of the OEC should refer to the constitutional and statutory provisions on qualifications such as age, citizenship, and residence:

> ***The Concept of Disqualification and its Effects.***
>
> To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules. It is in these senses that the term is understood in our election laws.
>
> Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens may be **deprived of the right to be a candidate or may lose the right to be a candidate** (if he has filed his CoC) because of a trait or characteristic that applies to him or an act that can be imputed to him ***as an individual, separately from the general qualifications that must exist for a citizen to run for a local public office.*** Notably, **the breach of the three-term limit** is a trait or condition that can possibly apply *only* to those who have previously served for three consecutive terms in the same position sought immediately prior to the present elections.
>
> In a disqualification situation, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC.
>
> Sections 68 and 12 of the OEC (together with Section 40 of LGC 1991, outlined below) cover the following as traits, characteristics or acts of disqualification: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.
>
> Section 40 of LGC 1991, on the other hand, essentially repeats those already in the OEC under the following disqualifications:

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[23] 696 Phil. 601, 631 (2012).
[24] 696 Phil. 786, 859 (2012).

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.

Together, these provisions embody the disqualifications that, by statute, can be imputed against a candidate or a local elected official to deny him of the chance to run for office or of the chance to serve if he has been elected.

A unique feature of "disqualification" is that under Section 68 of the OEC, it **refers only to a "candidate,"** not to one who is not yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. **This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification. The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.**

To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate's CoC.

When the law allows the **cancellation of a candidate's CoC, the law considers the cancellation from the point of view of the requirements that every citizen who wishes to run for office must commonly satisfy**. Since the elements of "eligibility" are common, the vice of ineligibility attaches to and affects both the candidate ***and*** his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the "eligibility" requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified. (Emphases originally supplied and citations omitted.)

Nonetheless, there are grounds for a petition for disqualification, which may overlap with a Petition for Cancellation of CoC. The case of *Chua v.*

COMELEC[25] cited in the *ponencia* recognized these overlapping grounds. In *Chua*, a candidate for councilor was allegedly a permanent resident of a foreign country. The candidate's permanent residency issue may fall under Section 68[26] of the OEC or Section 40 (f) of the Local Government Code[27], which are proper for a petition for disqualification. The residency issue may also be considered a ground to cancel the CoC of a candidate because it relates to the statutory provisions on qualifications or eligibility for public office[28] under Section 39 of the Local Government Code.[29] Incidentally, Section 74 of the OEC also requires that the candidate state under oath that they are not a permanent resident of a foreign country. Thus, *Chua* correctly held that the petitioner might choose the remedy of either a petition for disqualification or a petition for cancellation of CoC. At any rate, the proper characterization of the petitions filed with the COMELEC is not material in this case because the COMELEC resolved the petitions on the merits and the legal consequences of disqualifying or cancelling the CoC of Marcos, Jr. are immaterial. Also, the Buenafe petition asserting false material representation was filed on time, while the Ilagan petition for disqualification under Section 12 of the OEC was likewise timely filed.

Section 12 of the OEC[30] is inapplicable to Marcos, Jr. It provides that a person sentenced by final judgment to a penalty of eighteen (18) months or for a crime involving moral turpitude is disqualified from being a candidate and holding any office. The second paragraph of the same section also provides that the disqualification to be a candidate shall be removed *"after the expiration of five (5) years from his service of sentence."* Here, the petitioners failed to show that Marcos, Jr. was sentenced to suffer imprisonment. The CA Decision modified the trial court's decision and removed the penalties of imprisonment.

The petitioners' argument that the CA Decision is void because the penalty of imprisonment was deleted fails to persuade. As pointed out in the *ponencia,* the penalty of **imprisonment and fine** was only introduced in

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25 783 Phil. 876, 895 (2016).

26 Section 68. Disqualifications. — x x x Any person who is a permanent resident of or an immigrant of a foreign country in accordance with the residence requirement provided in the election laws.

27 Section 40. Disqualifications. — The following persons are disqualified from running for any elective Local position:

x x x x

(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.

28 *Chua v. COMELEC*, 783 Phil. 876, 894 (2016); citing *Fermin v. COMELEC*, 595 Phil. 449, 465-466 (2008).

29 Section 39. Qualifications. — (a) An elective local official must be x x x a resident therein for ar least one (1) year immediately preceding the day of the election;

30 Batas Pambansa Bilang 881, Approved on December 3, 1985; Section 12 provides:

SECTION 12. *Disqualifications.* — Any person who x x x has been sentenced by final judgment for x x x 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 x x x after the expiration of a period of five years from his service of sentence x x x. (Emphases supplied.)

1998[31] or years after Marcos, Jr. was supposed to file his income tax returns. The amendment cannot be given retroactive effect because it is not favorable to the accused.[32] When Marcos, Jr. failed to file his income tax returns, the penalty of only a fine satisfied the provisions of the 1977 NIRC. Thus, the Court of Appeals may exercise discretion in imposing the penalty of imprisonment, a fine, or both. Here, the CA imposed penalties that were within the prescribed range.

Further, the circumstances surrounding Marcos, Jr.'s non-filing of income tax returns negate a finding that he committed a crime involving moral turpitude because there is no fraudulent intent. As aptly observed by the *ponencia* and pointed out by Justice Japar Dimaampao, Marcos, Jr. was a provincial government employee during the taxable years of 1982 to 1985. The provincial government was duty-bound to withhold the corresponding taxes from Marcos, Jr.'s income.[33] Thus, Marcos, Jr.'s failure to file his income tax returns was not animated by wilfulness to defeat or circumvent the tax law to illegally reduce his tax liability.[34] The frequency of non-filing of income tax returns is immaterial because Marcos, Jr.'s correct taxes should have already been properly withheld. Curiously, in *Republic of the Philippines v. Marcos II,*[35] the Court has already held that the crime of failure to file an income tax return is not a crime involving moral turpitude because fraudulent intent is not an element of the crime.

Considering that Marcos, Jr. was not sentenced to imprisonment and his conviction does not involve moral turpitude, Section 12 of the OEC is not applicable. Whether Marcos, Jr. paid the fine or the deficiency taxes is immaterial because it is not a ground for disqualification. It becomes material only if Marcos, Jr.'s conviction involves moral turpitude or imprisonment of more than 18 months because the ground for disqualification under Section 12 ceases after five (5) years from service of the sentence. The payment of the fine would be equated to the service of the sentence. It serves as the reckoning point for counting the five (5) years. [36]

I also agree with the *ponencia* that Marcos, Jr. is not suffering from *"perpetual disqualification from holding any office, to vote and to participate in any election"* because it was not imposed. However, I submit that there was no error in sentencing. Section 40 of Presidential Decree No. 1994 (1977 NIRC, as amended),[37] amending the 1977 NIRC, provides the guidelines on

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31 *Ponencia*, p. 53.

32 Id.

33 Reflections of Justice Japar Dimaampao, p. 7 citing Section 94 of the 1977 National Internal Revenue Code:

> SECTION 94. *Return and payment in case of Government employees.* — If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, the return of the amount deducted and withheld upon any wages shall be made by the officer or employee having control of the payment of such wages, or by any officer or employee duly designated for that purpose.

34 Reflections of Justice Japar Dimaampao, p. 6.

35 612 Phil. 355, 375 (2009).

36 See *Ty-Delgado v. HRET*, 779 Phil. 268, 278 (2016).

37 FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, Presidential Decree No. 1994; The decree took effect on January 1, 1986.

how penalties are imposed, who is liable, and additional penalties to be imposed depending on the circumstances of the violator. The succeeding sections provide the prescribed penalties depending on the provisions violated:

> Section 40. Title XI of the National Internal Revenue Code is hereby amended as follows:
>
> x x x
>
> Chapter II - Crimes, Other Offenses and Forfeitures
>
> "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 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.
>
> "Sec. 287. Attempt to evade or defeat tax. — x x x
>
> "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.**
>
> "Sec. 289. Penal liability of corporations. — x x x
>
> "Sec. 290. Penal liability for making false entries, records or reports. — x x x
>
> "Sec. 291. Unlawful pursuit of business. — x x x
>
> "Sec. 292. Illegal collection of foreign payments. — x x x

x x x (emphases supplied)

Here, Section 286 (c) is not applicable. Thus, the CA is not required to impose the maximum penalty of a fine of fifty thousand pesos, imprisonment of five (5) years, or both, as provided under Section 288. The additional penalties of dismissal from *"public service and perpetually disqualified from holding any public office, to vote and to participate in any election"* could not be imposed. *First*, the amendment to the 1977 NIRC introducing the provision under Section 286 (c) became effective only in January 1986. Thus, the non-filing of income tax returns for the taxable years of 1982 to 1984 will not merit the additional penalty of *"perpetual disqualification from holding any public office, to vote and to participate in any election*" applicable to public officers. Section 73 of Presidential Decree No. 1158[38] (1977 NIRC) is applicable for these taxable years, which only prescribes the penalty of a *"fine of not more than two thousand pesos or imprisonment for not more than six months, or both." Second*, the COMELEC Second Division made a factual finding that Marcos, Jr. was no longer a public officer when the deadline to file the income returns for the taxable year of 1985 lapsed.[39] Although the income tax return pertains to the taxable year of 1985, when he was still a public officer, Marcos, Jr. was no longer a public officer when he omitted to file his income tax return. The reckoning point must be when Section 45 of the 1977 NIRC, as amended, was violated — *"the fifteenth day of March of each year, covering income of the preceding taxable year"*[40] or on March 1986. Thus, the CA's imposition of a fine of ₱30,000.00 follows Section 288 of the 1977 NIRC, as amended. The imposed penalty was within the prescribed range. Even assuming that Marcos, Jr. was still a public officer then, the CA merely committed an error in sentencing, which is not enough to invalidate the CA Decision. I join Justice Alfredo Benjamin Caguioa in that the error cannot be considered grave, which would amount to a lack of jurisdiction because the imposed penalty was still within the range of penalty of Section 288 of the 1977 NIRC, as amended.[41]

Accordingly, Marcos, Jr.'s CoC should not be cancelled. The representations in his certificate of candidacy that he is eligible for the office of the president and that he was not found liable for the accessory penalty of perpetual disqualification to hold public office are not false. It follows that

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38 A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES, Presidential Decree No. 1158 (1977).

39 *Ponencia*, p. 11

40 A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES, Presidential Decree No. 1158 (1977), Section 45 (c) states:

CHAPTER VI
Returns and Payments of Tax

SECTION 45. Individual returns. — 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, 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. x x x

41 Justice Alfredo Benjamin Caguioa's Separate Opinion, pp. 23–24.

there is no intention to deceive the electorates of his eligibility. Marcos, Jr. is also not disqualified from running for president in the 2022 national and local elections. The petitioners failed to establish that Section 12 of the OEC is applicable. Utmost, the petitioners' causes of action are dependent on a strained interpretation that the CA Decision is void and how the CA should have exercised its discretion in sentencing Marcos, Jr. As discussed above, the petitioners are mistaken.

MARIO V. LOPEZ
Associate Justice

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, 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.*

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. IBARDOLAZA, CSSJB, SR., SUSAN SANTOS ESMILE, SFIC, HOMAR RUBERT ROCA DISTAJO, POLYNNE ESPINEDA DIRA, JAMES CARWYN CANDILA, and JONAS ANGELO LOPENA ABADILLA, *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*.

Promulgated: June 28, 2022

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CONCURRING OPINION

GAERLAN, *J.*:

I join the *ponencia*'s denial of the present petitions. I write separately to elaborate on the concept of moral turpitude, and its application to tax crimes, particularly to the present case, which involves a conviction for the crime of failure to file a tax return.

I. Recapitulation of the facts

Respondent Ferdinand R. Marcos, Jr. (Marcos, Jr.) was an elected official of the province of Ilocos Norte from November 3, 1982 to March 31, 1986.[1] When his father, then President Ferdinand E. Marcos (President Marcos), was ousted from power through the first People Power Revolution the previous February, the Marcos family, Marcos, Jr. included, fled the

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[1] *Ponencia*, p. 6.

Philippines.[2] On September 28, 1989, President Marcos died in Honolulu, Hawaii.[3] On June 27, 1990, the Bureau of Internal Revenue conducted a special investigation into the possible tax liabilities of President Marcos' estate, his family, and his close associates.[4] Acting on the findings of the special investigation, then-Bureau of Internal Revenue (BIR) Commissioner Jose U. Ong filed a complaint with the Secretary of Justice on July 25, 1991.[5] This led to Marcos, Jr. being criminally charged with violation of the National Internal Revenue Code (NIRC) for failure to pay income tax, and to file income tax returns for the years 1982, 1983, 1984, and 1985, before the Quezon City Regional Trial Court (RTC).[6] On July 27, 1995, the RTC rendered a judgment disposing thus:

> 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:
>
> 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;
>
> 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.[7]

Marcos, Jr. appealed the judgment to the Court of Appeals (CA). His appeal was docketed as CA-G.R. CR No. 18569. In a decision promulgated on October 31, 1997,[8] the CA reversed the RTC, and ruled that the BIR failed to give prior notice to Marcos, Jr. in accordance with the provisions of the NIRC; thus, he cannot be held criminally liable for failing to pay income tax.

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2 *Marcos v. Manglapus*, 258 Phil. 479, 491 (1989), and *Marcos v. Manglapus* (Resolution), 258-A Phil. 547 (1989).
3 *Marcos v. Manglapus* (Resolution), supra at 551.
4 *Ponencia*, p. 6.
5 Id.
6 Id.
7 Id. at 7.
8 Hereinafter referred to as the 1997 CA Decision.

However, the CA sustained the RTC ruling with respect to failure to file income tax returns; and ordered Marcos, Jr. to pay the deficiency income taxes since his acquittal did not extinguish his tax liability.[9] The CA disposed of the case 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.[10]

Marcos, Jr. moved for an extension of time to file a petition for review before this Court; but later sought to withdrew said motion. The Court allowed the withdrawal, paving the way for the 1997 CA Decision to become final and executory on August 31, 2001, upon the Court's entry of judgment thereon.[11]

In the present petition for cancellation or denial of due course to a certificate of candidacy filed on November 2, 2021, and petition for disqualification filed on November 20, 2021, both filed with the Commission on Elections (COMELEC), herein petitioners cite the ***final and executory*** 1997 CA Decision as basis for asserting that Marcos, Jr.: 1) committed a crime involving moral turpitude, and is therefore disqualified from being a candidate for, or holding, any public office, pursuant to Section 12 of the Omnibus Election Code (OEC); and 2) committed a material misrepresentation in his certificate of candidacy (COC) for President of the Republic of the Philippines when he stated therein 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," when he has been meted the penalty of perpetual disqualification from public

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9 *Ponencia*, p. 7-8.
10 Id. at 8.
11 Id.

office, thereby nullifying said COC pursuant to Section 78 of the OEC. The present petitions thus, turn on a very narrowly-defined question: Does the 1997 CA Decision disqualify Ferdinand R. Marcos, Jr. from running for or holding public office?

II. The concept of moral turpitude

The two words in the term "moral turpitude" also embody the two components of the concept. The concept and definition of what is "*moral*" is in itself a stupendously deep and diverse field of study.[12] Lexicographers, for their part, state that the word came to English ultimately from the Latin *mos*, or **custom**, which in turn became *moralis*, and later *moral.*[13] *Moral*, as an adjective has been defined as "of or relating to principles or considerations of right and wrong action or good and bad character"; "expressing or teaching a conception of right behavior"; and "conforming to or proceeding from a standard of what is good or right."[14]

The term *turpitude* also comes from Latin as *turpitudo*, from the root *turpis*, which means vile, foul, or base; thus, *turpitude* is defined as "inherent baseness of vileness of principle, words, or actions."[15] Taking these two terms together, *moral turpitude* has been defined as "***an act or behavior*** that gravely violates the moral sentiment or accepted moral standards of the community";[16] as "***conduct*** that is contrary to justice, honesty, or morality"[17] and as "the morally culpable ***quality*** held to be present in some criminal offenses as distinguished from others."[18]

The use of moral turpitude as a legal standard has been held up as a textbook example of the classically problematized relationship between morals and law:

> Whether one adheres to the view that the preservation of morality is not the law's concern, or to [the view] that what is immoral is illegal and should, therefore, be punished, the problem, first of all, lies in a determination of what is immoral.
>
> Society is morally a plural society comprising a number of different mutually tolerant moralities. Bentham believed that "the good of the community cannot require that any act should be made an offense, which is not liable, in some way or the other, to be detrimental to the community."

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12 See, *e.g.*, the Introduction in Teresita J. Herbosa and Corazon P. Paredes, *Comments on Crime Involving Moral Turpitude*, 51 PHIL. L. J. 124, 124-126 (1976); Bernard Gert and Joshua Gert, "The Definition of Morality," *The Stanford Encyclopedia of Philosophy* (Fall 2020 Edition), Edward N. Zalta (ed.), accessed at https://plato.stanford.edu/archives/fall2020/entries/morality-definition/.

13 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 1468 (1993).

14 Id.

15 Id. at 2469.

16 Id. at 1469.

17 BLACK'S LAW DICTIONARY (9TH ED.) 1101 (2009).

18 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, supra note 13, at 1469.

> Stephen, on the other hand, stressed that criminal law should not be used unless it was supported by an "overwhelming moral majority". Lord Devlin in speaking of how the collective judgment of society is to be ascertained stated:
>
> > It is that of the reasonable man. He is not to be confused with the rational man He is not expected to reason about everything and his judgment may be largely a matter of feeling.
>
> Immorality then, in its simplest sense and for the purpose of law, is that species of conduct which is likely to harm specific individuals (Lord Devlin's "reasonable man") or an indefinite number of unidentifiable individuals which is capable of sufficiently precise definition (Bentham's "community" or Stephen's "overwhelming moral majority"). Thus, criminal law becomes a mere formal embodiment of the moral values of the dominant group in society. But, then, this dominant group is not precluded from prohibiting or punishing any act which they would like to prohibit or punish regardless of the morality or immorality of said act. In the end, therefore, the mere fact that a given act is made punishable by law does not settle the question of immorality of the prohibited conduct, it does not preclude the people from passing moral judgments on the rightfulness or wrongfulness of the behavior.
>
> At this point, it is submitted that the term "crime involving moral turpitude" aptly demonstrates what has so far been said. Why so? The word "crime" by itself refers to an act or omission prohibited by public law. When such is qualified by the words "moral turpitude", it can only mean an act or omission which is against both law and morals. This is, of course, an oversimplification of what the term means.[19]

In a concurring opinion, Justice Arturo D. Brion, citing American legal studies and jurisprudence, proffered the following criticisms of the use of moral turpitude as a legal standard:

> *First, the current definition of the term is broad.* It can be stretched to include most kinds of wrongs in society — a result that the Legislature could not have intended. This Court itself concluded in *IRRI v. NLRC* that moral turpitude "is somewhat a vague and indefinite term, the meaning of which must be left to the process of judicial inclusion or exclusion as the cases are reached" — once again confirming, as late as 1993 in *IRRI*, our case-by-case approach in determining the crimes involving moral turpitude.
>
> *Second, the definition also assumes the existence of a universally recognized code for socially acceptable behavior* — the "private and social duties which man owes to his fellow man, or to society in general"; moral turpitude is an act violating these duties. The problem is that the definition does not state what these duties are, or provide examples of acts which violate them. Instead, it provides terms such as "baseness," "vileness," and "depravity," which better describe moral reactions to an act than the act itself. In essence, they are "conclusory but non-descriptive." To be sure, the use of morality as a norm cannot be avoided, as the term "moral turpitude"

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[19] Herbosa & Paredes, supra note 12 at 125-126. Citations omitted.

> contains the word "moral" and its direct connotation of right and wrong. "Turpitude," on the other hand, directly means "depravity" which cannot be appreciated without considering an act's degree of being right or wrong. Thus, the law, in adopting the term "moral turpitude," necessarily adopted a concept involving notions of morality — standards that involve a good measure of subjective consideration and, in terms of certainty and fixity, are far from the usual measures used in law.
>
> *Third, as a legal standard, moral turpitude fails to inform anyone of what it requires*. It has been said that the loose terminology of moral turpitude hampers uniformity since . . . [i]t is hardly to be expected that a word which baffle judges will be more easily interpreted by laymen. This led Justice Jackson to conclude in *Jordan* that "moral turpitude offered judges no clearer guideline than their own consciences, inviting them to condemn all that we personally disapprove and for no better reason than that we disapprove it." This trait, however, cannot be taken lightly, given that the consequences of committing a crime involving moral turpitude can be severe.[20]

II.A. Moral turpitude in American jurisprudence

Moral turpitude as a legal concept has been utilized primarily in terms of its definition of being a *quality inherent* in certain acts, crimes, or classes of persons. The application of moral turpitude to law is a singularly American invention,[21] which is based on a set of "***core honor norms***" prevalent among the political and intellectual classes of the United States (US) during the early years of its independence.[22] These "core honor norms" emphasized the values of integrity, honesty, and fealty to one's word for men, and the values of chastity and sexual purity for women.[23] Conversely, deception (especially in financial matters), disloyalty (*e.g.*, oath-breaking), "failure to contribute productively to society," and sexual misconduct were considered hallmarks of moral turpitude.[24] As a legal standard, moral turpitude was first applied in the state of New York to determine whether an utterance is slanderous *per se*.[25] In 1809, the New York Supreme Court decided the case of *Brooker v. Coffin*[26] (*Brooker*), which involved an action for slander filed by a woman accused of being a prostitute. The court ruled that being accused as such would amount to an imputation of moral turpitude, and therefore slanderous:

> It has been supposed that, therefore, to charge a woman with being a common prostitute, was charging her with such an offence as would give an

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20 Brion, *J.*, concurring in *Teves v. COMELEC*, infra note 111, at 738-740. Citations omitted.

21 See Julia Ann Simon-Kerr, *Moral Turpitude*, 2012 UTAH L. REV. 1001, 1008-1016 (2012); Crimes Involving Moral Turpitude, 43 HARVARD L. REV. (No. 1) 118 (1929); Brion, *J.*, concurring in *Teves v. COMELEC*, infra note 111 at 734, citing Brian C. Harms, *Redefining "Crimes of Moral Turpitude": A Proposal to Congress*, 15 GEO. IMMIGR. L.J. 259, 261 (2001).

22 Simon-Kerr, supra.

23 Simon-Kerr, id. at 1011-1014.

24 Simon-Kerr, id.

25 Simon-Kerr, id. at 1010.

26 5 Johns. 188 (N.Y. Sup. Ct. 1809). Accessed on June 21, 2022 at https://cite.case.law/johns/5/188/.

> action for the slander. The same statute which authorises the infliction of imprisonment on common prostitutes, as disorderly persons, inflicts the same punishment for a great variety of acts, the commission of which renders persons liable to be considered *disorderly*; and to sustain this action would be going the whole length of saying, that every one charged with any of the acts prohibited by that statute, would be entitled to maintain an action for defamation. Among others, to charge a person with pretending to have skill in physiognomy, palmistry, or pretending to tell fortunes, would, if this action is sustained, be actionable. Upon the fullest consideration, we are inclined to adopt this as the safest rule, and one which, as we think, is warranted by the cases: **In case the charge, if true, will subject the party charged to an indictment for a crime involving moral turpitude, or subject him to an infamous punishment, then the words will be in themselves actionable** x x x.[27] (Emphasis and underscoring supplied)

Brooker has been credited for introducing the concept of moral turpitude into law, as a standard for determining the actionably slanderous nature of utterances, as laid down in the last sentence of the aforequoted paragraph.[28] It has been noted, however, that even as *Brooker* lays down the imputation of an act involving moral turpitude as the standard for slander, it does not even define the term *moral turpitude*. This is because the term had a latent social meaning as reflected in the then-prevailing core honor norms of early American society.[29] Thus, it has been noted that 19th-century American courts have often ruled imputations of dishonesty and unchastity to be slanderous *per se*;[30] but excluded violent crimes from the ambit of moral turpitude, on the ground that the prevailing cultural norms often excused violence when grounded upon certain extenuating circumstances relating to the violation of a person's honor (*e.g.*, killing committed in the heat of passion).[31] Eventually, the moral turpitude standard came to be used as basis for excluding or disqualifying a person from acquiring or exercising certain rights. Thus, it has been used in the impeachment of witnesses;[32] disbarment cases;[33] and, with the inclusion of the standard in the provisions of the Immigration Act of 1891, to the exclusion and deportation of aliens.[34]

Problems with moral turpitude as a legal standard began to emerge as states tried to apply the original "core honor norms" which gave rise to the standard as a means to disenfranchise Black voters.[35] Likewise, difficulties emerged in the application of the moral turpitude standard to "marginal

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27 Id. at 191.

28 Simon-Kerr, supra note 21, at 1016; Rob Doersam, *Punishing Harmless Conduct: Toward a New Definition of "Moral Turpitude" in Immigration Law*, 79 OHIO ST. L. J. (No. 3) 547, 564-565 (2018).

29 Simon-Kerr, id. at 1017.

30 Simon-Kerr, id. at 1017-1019, citing 1 FRANCIS HILLIARD, THE LAW OF TORTS OR PRIVATE WRONGS 277 (2d ed. 1861).

31 Simon-Kerr, id. at 1018. Doersam, supra note 28, at 566-567.

32 Simon-Kerr, id. at 1025-1039; Herbosa & Paredes, supra note 12, at 127.

33 John S. Bradway, *Moral Turpitude as the Criterion of Offenses That Justify Disbarment*, 24 CAL. L. REV. (No. 1) 9 (1935).

34 Simon-Kerr, supra note 21, at 1039-1068.

35 Simon-Kerr, id. at 1040-1044.

cases"[36] which cannot be easily categorized as falling under the "core honor norms," particularly, in immigration cases involving exclusion and deportation of non-citizens[37] due to varied offenses such as defamation of the English monarch through accusation of bigamy,[38] assault upon a police officer,[39] possession of stolen bus transfers,[40] failure to pay liquor sales tax,[41] violation of the prohibition on the manufacture, sale, and transportation of intoxicating liquors,[42] and cockfighting.[43] In response, courts began to correlate the moral turpitude standard with existing common-law concepts[44] such as *mala in se*[45] and *scienter*.[46] To determine whether a crime involved moral turpitude, courts began looking at whether the elements of the crime involved evil or fraudulent intent,[47] or whether the crime was deemed inherently immoral at common law.[48] To this day, American courts and agencies continue to use both approaches rather inconsistently, leading a legal scholar to conclude that:

> Despite its failings, the allure of moral turpitude is undeniable. Historically, it offered the promise of an easy proxy for reputational harm, and then more simply, for a bad reputation with attendant assumptions about character. Still later, the country found itself in need of a way to identify persons who should be prohibited from entry. In 1985, the California Supreme Court proved that moral turpitude is not a relic when it elected to retain the standard, despite its flaws, as a test for impeachment evidence. It may be that the persistence of the standard—beyond a story of congressional disinterest and judicial avoidance—reflects a continuing longing for legal standards that invoke our common conscience. Codes cannot fill all of the gaps, nor do we want them to. At the same time, this Article suggests that we must be wary of the path we take to accomplish that goal.
>
> Viewed in the context of its longer history, the moral turpitude standard provides a powerful counterpoint to the claim, made frequently in recent years, that judges are eager to judge based on their own moral

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36 Simon-Kerr, id. at 1039.

37 Simon-Kerr, id. at 1044, 1055-1067.

38 *United States ex rel. Mylius v. Uhl*, 203 F. 152, 153 (S.D.N.Y. 1913); 210 F. 860 (1914).

39 *Ciambelli ex rel. Maranci v. Johnson*, 12 F.2d 465, 466 (D. Mass. 1926), which states in part: "If one ordinarily law-abiding, in the heat of anger, strikes another, that act would not reveal such inherent baseness or depravity as to suggest the idea of moral turpitude. If, on the other hand, one deliberately assaulted an officer of the law with a dangerous weapon and with felonious intent, or for the purpose of interfering with the officer in the performance of his duty, the attendant circumstances showing an inclination toward lawlessness, the act might well be considered as one involving moral turpitude." https://law.justia.com/cases/federal/district-courts/F2/12/465/1490244/.

40 *Michel v. INS*, 206 F.3d 253, 263 (2000).

41 *Jordan v. De George*, 341 U.S. 223 (1951).

42 *United States ex rel. Iorio v. Day*, 34 F.2d 920 (1929).

43 *Ortega-Lopez v. Lynch*, 834 F.3d 1015 (2016).

44 Simon-Kerr, supra note 21, at 1023-1024; Herbosa & Paredes, supra note 12, at 127.

45 *Mala in se* is used here in its common law denotation, as acts criminalized by the common law, as opposed to *mala prohibita*, or acts criminalized by statute. Simon-Kerr, fn. at 161, id. at 1023.

46 A degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission; the fact of an act's having been done knowingly, esp. as a ground for civil damages or criminal punishment. BLACK'S LAW DICTIONARY (9th ed.) 1463 (2009).

47 Simon-Kerr, supra note 21, at 1059-1068.

48 Simon-Kerr, id. at 1023.

> intuitions rather than the law. Paradoxically, the very standard that would provide most leeway for judges to be activist in the service of their own values has instead produced judgments so rigid in their adherence to precedent that nineteenth-century honor norms are still the best predictor of their outcomes. Courts seem more likely to reason about community moral beliefs or absolute right and wrong if they are adjudicating disputes over speeding tickets than if they are determining whether a particular crime involved moral turpitude.[49]

II.B. Moral turpitude in Philippine jurisprudence

The American conception of moral turpitude was also introduced into Philippine law. The 1938 case of *People v. Raagas*[50] applied the *Brooker* standard in an action for oral defamation. The accused claimed that he was fired from his job because he refused to contribute to the offended party's collection of one peso from their co-workers to defray the cost of hiring an orchestra to welcome the offended party's daughter, who had just returned from a beauty pageant. The offended party took offense at the claim and filed a criminal action. In sustaining the trial court's grant of accused's demurrer to evidence, we found that the collection was voluntary, and was therefore not "reproachable nor an act invoking vice, defect or moral turpitude, and cannot therefore be harmful to the honor and reputation of anybody."[51]

The moral turpitude standard also found its way into our statutes, such as Section 21 of the Code of Civil Procedure,[52] which provided:

> SECTION 21. *Disbarments.* — A member of the bar may be removed or suspended from his office as lawyer by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, or by reason of his conviction of a crime involving moral turpitude or for any violation of either of the oaths aforesaid, or for the willful disobedience of any lawful order of the Supreme Court or Courts of First Instance, or for corruptly or willfully appearing as a lawyer for a party to an action or proceeding without authority so to do.

Thus, the earliest Philippine rulings on moral turpitude arose from disbarment cases. [53] Unlike American courts, the Philippine Supreme Court's determination of moral turpitude therein has applied the same norms to both men and women. The Court has pronounced crimes of sexual misconduct such as Abduction with Consent,[54] Concubinage,[55] and Bigamy[56] to involve

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49 Simon-Kerr, id. at 1068.
50 65 Phil. 630 (1938).
51 Id. at 632.
52 Act No. 190; effective on September 1901.
53 See footnotes 54 to 56, infra.
54 *In re Basa*, 41 Phil. 275 (1920).
55 *In re Isada*, 60 Phil. 915 (1934).
56 *In re Lontok*, 43 Phil. 293 (1922).

moral turpitude, regardless of the offender's sexual orientation,[57] holding that "*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.*"[58] Likewise, early decisions also adhere to the American principle that crimes which violate the "core honor norms" involve moral turpitude. In *People v. Carillo*,[59] the Court refused to give credence to the testimony of a witness[60] partly because he had been previously convicted of robbery, which the Court held to be a crime involving moral turpitude. We also refused to grant Philippine citizenship to an alien who had been convicted of perjury, which we held to involve moral turpitude.[61]

Still consistent with the original scope of the "core honor norms," the Supreme Court has recommended the imposition of a lesser penalty for two men who have been convicted of parricide, on the ground that the men, although guilty of parricide, have not exhibited "such moral turpitude as requires life imprisonment."[62] However, a later case held that murder involves moral turpitude.[63]

II.B.1. Category-based approach

Later cases have employed a category-based approach to determining moral turpitude, which involve the categorization of certain crimes as involving moral turpitude,[64] based on prevailing moral standards usually

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57 In fact, most of the decisions involving crimes of sexual misconduct as moral turpitude involve male lawyers sought to be disbarred for said offenses. See cases in footnotes 53 to 55, supra and footnote 63, infra.

58 *In re Basa*, supra note 54 at 276. Citations omitted.

59 85 Phil. 611 (1950).

60 However, in *Cordial v. People*, 248 Phil. 247, 255-256 (1988), the Court expressed its reservations on the use of moral turpitude as a standard for impeaching witnesses: "Moral turpitude or depravity as a reason for exclusion of a witness is legally frowned upon mainly for the reason that any attempt to establish such an incapacity is met by two objections. One is that in rational experience, no class of persons can safely be asserted to be so thoroughly lacking in a sense of moral responsibility or so callous to the ordinary motives or veracity as not to tell the truth (as they see it) in a large or larger proportion of instances. The second objection is that, even if such a defect existed and were ascertainable, its operation is so uncertain and elusive that any general rule of exclusion would be as likely in a given instance to exclude the truth as to exclude falsities." Citation omitted.

61 *In Re: Guy v. Guy*, 200 Phil. 636, 648 (1982).

62 *People v. Castañeda,* 60 Phil. 604, 609 (1934); *People v. Formigones,* 87 Phil. 658, 665 (1950).

63 *In re Gutierrez*, 115 Phil. 647, 648-649 (1962).

64 The following crimes/offenses have been held to involve moral turpitude: Intriguing against honor in *Betguen v. Masangcay*, 308 Phil. 500 (1994); Rape and Concubinage in *Mondano v. Silvosa,* 97 Phil. 143 (1955); Estafa in *Medina v. Bautista*, 120 Phil. 787 (1964), *In re Jaramillo*, 101 Phil. 323 (1957), *In re Vinzon*, 126 Phil. 96 (1967), and *Moreno v. Araneta*, 496 Phil. 788 (2005); Falsification of Public Documents in *In re Avanceña*, 127 Phil. 426 (1967), *In re Pajo*, 203 Phil. 79 (1983), *In re Pactolin*, 686 Phil. 351 (2012), and *Pagaduan v. Civil Service Commission*, 747 Phil. 590 (2014), because it is a "violation of the public faith and the destruction of truth as therein solemnly proclaimed"; use of an unsealed meter stick in *Ao Lin v. Republic*, 119 Phil. 284 (1964), because use of measuring sticks without government seals constitutes fraud; Concubinage in *Laguitan v. Tinio*, 259 Phil. 322 (1989); Bigamy in *Villasanta v. Peralta*, 101 Phil. 313 (1957); Smuggling in *In re Rovero*, 92 Phil. 128 (1952); Bribery and Direct bribery under Art. 210 of the Revised Penal Code, in *Re: Joselito C. Barrozo*, 764 Phil. 310 (2015), *Magno v. COMELEC*, 439 Phil. 339 (2002), and *In re De los Angeles*, 106 Phil. 1 (1959); Swindling in *Bron v. Delis*, 178 Phil. 347 (1979); Attempted Rape in *People v. Torrefranca*,

traceable to the core honor norms, primarily honesty, integrity, truthfulness, and sexual virtue. In *De Jesus-Paras v. Vailoces*,[65] we disbarred a lawyer who was convicted of falsification of public documents for forging a will. We explained that "*embezzlement, forgery, robbery, [and] swindling are crimes, which denote moral turpitude and, as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude.*"[66] The Court has gone so far as to generally state that "*[d]eceitful conduct involves moral turpitude and includes anything done contrary to justice, modesty or good morals.*"[67]

With respect to violent crimes, early decisions adopt the American rule, but later ones generally hold that violent crimes involve moral turpitude.[68] In an early obiter dictum which sought to reconcile two provisions of the old Election Code on the enumeration of persons not qualified to vote, the Court held:

> But, it would be asked, why should paragraph (b) discriminate against crimes against property? And why should it confine itself to crimes punishable with less than one year imprisonment?
>
> The answer is that major crimes always involve a high degree of moral turpitude. When it comes to lesser crimes, or rather crimes punishable with lighter penalty, the concept is reversed. Petty thefts and petty deceits and embezzlement always involve dishonesty and are reprehensible, while assaults and battery, calumnies, violations of municipal ordinance and traffic regulations, are, more likely than not, the products of violent passion or emotion, negligence or ignorance of law.[69]

The Court therein does not explain what it meant by "major" or "lesser" crimes, but it seems to suggest a correlation between harshness of penalty and moral turpitude. The Court was more categorical in *People v. Jamero*,[70] where

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235 Phil. 143 (1987); Forgery in *Campilan v. Campilan, Jr.*, 431 Phil. 223 (2002); and Sale of Dangerous Drugs in *Office of the Court Administrator v. Librado*, 329 Phil. 432 (1996); The following offenses have been held to ***not*** involve moral turpitude: slight physical injuries in *Ochate v. Deling*, 105 Phil. 384 (1959); and Intoxication as an administrative offense under the rules of the former Integrated National Police in *Jaculina v. National Police Commission*, 277 Phil. 559 (1991).

65 111 Phil. 569 (1961).

66 Id. at 571.

67 *Yamon-Leach v. Astorga*, A.C. No. 5987, August 28, 2019; *Suarez v. Maravilla-Ona*, 796 Phil. 27 (2016); *San Juan v. Venida*, A.C. No. 11317, August 23, 2016. In accordance with this general rule, violation of Batas Pambansa Blg. 22 has been held to involve moral turpitude. *People v. Tuanda* (Resolution), 260 Phil. 572 (1990); *Barrios v. Martinez*, 485 Phil. 1 (2004); *Vitor v. Zafra*, 749 Phil. 74 (2014); *Re: Imelda B. Fortus*, 500 Phil. 23 (2005); *Villaber v. COMELEC*, 420 Phil. 930 (2001). This general rule is congruent with the principle laid down in the landmark case of *Jordan v. DeGeorge*, supra note 41, at 227-229, that "a crime in which fraud is an ingredient involves moral turpitude. x x x. [F]raud has ordinarily been the test to determine whether crimes not of the gravest character involve moral turpitude. In every deportation case where fraud has been proved, federal courts have held that the crime in issue involved moral turpitude. x x x [F]raud has consistently been regarded as such a contaminating component in any crime that American courts have, without exception, included such crimes within the scope of moral turpitude."

68 See supra notes 62 and 63.

69 *Pendon v. Diasnes*, 91 Phil. 848, 853 (1952), involving *quo warranto* against a municipal mayor who had been previously convicted of Estafa.

70 133 Phil. 127 (1968).

appellants questioned the trial court's discharge of one of their co-accused as a state witness on the ground of a previous conviction for malicious mischief. In sustaining the trial court, we held:

> Moral turpitude has been described as an act of baseness, vileness and depravity in the private and social duty which a man owes to his fellowmen or to society in general, done out of a spirit of cruelty, hostility or revenge, but there is also authority to the effect that an act is not so done when it is prompted by the sudden resentment of an injury calculated in no slight degree to awaken passion. In the light of these authorities, We have searched the record of the case in an effort to ascertain the gravity of the nature of the crime of malicious mischief allegedly committed by Retirado, but We found the evidence wanting in this respect. What appears to have been established by the defense were the facts that Cresencio Retirado was convicted of the crime of malicious mischief by the Justice of the Peace Court of Sagay, Negros Occidental, and that the said accused was therein sentenced to five (5) days imprisonment. In the absence, therefore, of any evidence to show the gravity and the nature of the malicious mischief committed, We are constrained to declare that We are not in a position to say whether or not the previous conviction referred to, assuming Cresencio Retirado and Inocencio Retirado are one and the same person, proves that Retirado had displayed the baseness, the vileness and the depravity which constitute moral turpitude. And considering that under paragraph 3 of Article 329 of the Revised Penal Code, any deliberate act (not constituting arson or other crimes involving destruction) causing damage to the property of another, may constitute the crime of malicious mischief, We should not make haste in declaring that such crime involves moral turpitude without determining, at least, the value of the property destroyed and/or the circumstances under which the act of destroying was committed. Moreover, it appears that after the lower court issued the order of discharge complained of, the defense ventilated before this Court the issue as to whether or not the crime of malicious mischief involves moral turpitude by questioning the legality of the said order in a petition for certiorari and prohibition. The fact that this Court did not give due course to their petition (Jamero, et al. vs. Judge Enriquez, et al., L-15552) should have been sufficient warning that the theory advanced by them is not meritorious.[71]

Years later, *Can v. Galing*[72] deviated from the American rule and held that attempts on another person's life involve moral turpitude:

> In *In re Gutierrez*, the crime of murder was considered a crime involving moral turpitude. Certainly, attempted murder, for which the accused Daria was found guilty, belongs to the same classification. The premeditated attempt to take a human life is decidedly a base, vile, and depraved act contrary to moral standards of right and wrong. Coupled with the other crimes for which the accused Daria had been previously convicted, the latter's disqualification to be discharged from the information to become a state witness should have been obvious.[73]

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71 Id. at 169-170. Citations omitted.
72 239 Phil. 629 (1987).
73 Id. at 634. Citation omitted.

A line of cases stemming from the late 1980s denies separation pay as a social justice measure to workers who were validly dismissed for "offenses involving moral turpitude." In *Philippine Long Distance Telephone Co. v. National Labor Relations Commission*, [74] Philippine Long Distance Telephone, Co. questioned the award of separation pay as financial assistance to an employee it had validly dismissed for demanding bribes from customers to facilitate telephone installation. The majority agreed, and essentially held that it would be unjust to award separation pay to employees who have violated the "core honor norms":

> But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for his inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. A security guard found sleeping on the job is doubtless subject to dismissal but may be allowed separation pay since his conduct, while inept, is not depraved. But if he was in fact not really sleeping but sleeping with a prostitute during his tour of duty and in the company premises, the situation is changed completely. This is not only inefficiency but immorality and the grant of separation pay would be entirely unjustified.
>
> We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. **Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.**[75] (Emphasis and underscoring supplied)

Subsequent cases have invoked this moral turpitude rule to deny separation pay to employees dismissed for the following causes: dishonesty;[76] embezzlement and serious misconduct;[77] theft or pilfering of company property;[78] tampering of documents to cover up unliquidated cash advances;[79]

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74 247 Phil. 641 (1988).

75 Id. at 649.

76 *Philippine National Construction Corp. v. National Labor Relations Commission*, 252 Phil. 211, 214 (1989).

77 *Osias Academy v. Department of Labor and Employment*, 254 Phil. 468 (1989).

78 *Philippine Airlines, Inc. v. National Labor Relations Commission*, 347 Phil. 215 (1997); *United South Dockhandlers, Inc. v. National Labor Relations Commission*, 335 Phil. 76 (1997); *Sampaguita Garments Corp. v. National Labor Relations Commission*, 303 Phil. 276 (1994); *Del Monte Phil., Inc. v. National Labor Relations Commission*, 266 Phil. 405 (1990); *Pacaña v. National Labor Relations Commission*, 254 Phil. 473 (1989).

79 *Baguio Country Club Corp. v. National Labor Relations Commission*, 288 Phil. 560 (1992).

misappropriation of company funds;[80] and having an affair with a married colleague.[81]

Interestingly, early decisions hold that libel "does not necessarily involve moral turpitude."[82] As will be demonstrated below, equivocal pronouncements like this created "marginal cases"[83] that necessitated the development of new approaches to determining moral turpitude.

II.B.2. Mala in se approach

At least one case employs the *mala in se-mala prohibita* distinction, and limits crimes involving moral turpitude to *mala in se* offenses. In *Court Administrator v. San Andres*[84] (*San Andres*), illegal recruitment was held to not involve moral turpitude:

> Anent his conviction for illegal recruitment, We find no cogent reason to modify or disturb the submission of the investigating judge that notwithstanding respondents' conviction, it should not be held against him because the crime committed is not one involving moral turpitude. Moral Turpitude "implies something immoral in itself regardless of the fact that it is punishable by law or not. It must not merely be mala prohibita, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute, fixes the moral turpitude. 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." (Zari vs. Flores, Adm. Matter No. ([2170-MC] P-1356, 94 SCRA 323). The undisputed fact that herein respondent was a volunteer employee of the recruitment agency, receiving no compensation, and had only hoped that he would be deployed for overseas employment readily shows that he himself was a victim of the unscrupulous acts of others who had capitalized on his service, not aware that he would be prejudiced at the end. From the documents on file in this administrative case and considering the report submitted by the Judge tasked to investigate, We are inclined to resolve this case in favor of the respondent.[85]

However, it may be argued that illegal recruitment, although *malum prohibitum*, essentially involves deceitful recruitment practices,[86] and therefore involves fraudulent or deceitful conduct, moreso considering that "a person who commits acts constituting illegal recruitment may be held liable not only for the crime of illegal recruitment but also for estafa,"[87] which indisputably involves moral turpitude. Also, the resort to a *mala in se*

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80 *San Miguel Corp. v. National Labor Relations Commission*, 325 Phil. 940 (1996).
81 *Santos, Jr. v. National Labor Relations Commission*, 350 Phil. 560 (1998). The offender was also married.
82 *Burguete v. Mayor*, 94 Phil. 930, 932 (1954); *Lacson v. Roque*, 92 Phil. 456 (1953).
83 Simon-Kerr, supra note 36.
84 (Resolution), 274 Phil. 990 (1991).
85 Id. at 997.
86 Republic Act No. 8042, Sec. 6; *Toston y Hular v. People*, G.R. No. 232049, March 3, 2021.
87 *Toston y Hular v. People*, supra.

approach was not necessary, in view of the finding that the respondent was not guilty of any fraud, but was actually a victim of fraud himself.

II.B.3. Fact- and element-based approaches

As earlier discussed, the original category-based approach easily becomes unworkable when applied to cases which cannot be easily categorized as falling under the "core honor norms." Likewise, the aforecited *San Andres* case highlights the failure of the *mala in se* approach to take into account possible nuances of moral turpitude in *malum prohibitum* offenses. Thus, the Supreme Court has adopted fact-based[88] approaches to determine moral turpitude, where the facts of the case are applied to a certain legal, moral, or social standard. In other cases, the Court examined the elements of an offense to see if any of them involves a violation of the core honor norms.

These approaches were first employed in immigration proceedings, where the Court primarily considered the social effects of the acts claimed to be morally turpitudinous. In *Ng Teng Lin v. Republic*,[89] we granted citizenship to the applicant despite his admission that he had been previously cited for speeding, for which he was sentenced to pay a fine. We held the offense to be a mere minor transgression, which does not involve moral turpitude, considering the glowing testimonies of the witnesses as to the applicant's character. However, in *Tak Ng v. Republic*,[90] we denied citizenship to an alien who had been convicted of profiteering because it is

> an offense which is severely and heavily penalized with imprisonment of not more than 10 years, or by a fine of not more than ₱10,000.00, or by both, involves moral turpitude, inasmuch as it affects the price of prime commodities and goes to the life of the citizens, especially those who are poor and with hardly the means to sustain themselves.[91]

The Court has also used the fact-based approach to determine moral turpitude in disbarment, judicial discipline, and bar matters. In *Velez v. Locsin*,[92] a lawyer was accused of using the name of a religious organization, the Barangay Sang Virgen, to avoid customs duties and taxes on an imported car. During the proceedings, it was found that the car was actually consigned to the Barangay Sang Virgen, who then allowed the lawyer to use the car

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88 In the United States, this approach is referred to as a "modified categorical inquiry," whereby the court examines the record of conviction to determine if the circumstances of the offense involve moral turpitude. Pooja R. Dadhania, *The Categorical Approach for Crimes Involving Moral Turpitude After Silva-Trevino*, 111 COLUMBIA L. REV. 313, 329-332, 336-340 (2011); Patrick J. Campbell, *Crimes Involving Moral Turpitude: In Search of a Moral Approach to Immoral Crimes*, 88 ST. JOHN'S L. REV. (No. 1) 147, 165, 171-173. (2014); Sara Salem, *Should They Stay or Should They Go: Rethinking the Use of Crimes Involving Moral Turpitude in Immigration Law*, 70 FLA. L. REV. 225, 237-238 (2018).

89 103 Phil. 484 (1958).

90 106 Phil. 727 (1959).

91 Id. at 730-731. Citations omitted.

92 (Resolution) 154 Phil. 133 (1974).

because he was the chief legal counsel of the organization. When the non-payment of the duties and taxes on the car was discovered, the Barangay Sang Virgen and the lawyer's other institutional client paid the same, so that the car may be released from impounding. In absolving the lawyer, we held:

> Under these facts one is hard put to impute moral turpitude on respondent's part. Pursuant to Republic Act No. 1916, the car was exempt from payment of all taxes and duties. That it was respondent who has been using the car, is of no moment in the face of the certification of the religious organization to which it was donated, that respondent was its Chief Legal Counsel and that it had assigned the car to him for his use in the performance of his duties as such legal officer. In any event, thru the insistence of the military authorities, and to prevent further 103s and damage to the car by its continued impounding, the Barangay Sang Virgen and the Roman Catholic Bishop of Bacolod were constrained to pay the taxes due thereon under Presidential Decree No. 52 so that the car could be released.[93]

In *Zari v. Flores*[94] (*Zari*), a judge asked the Supreme Court to dismiss his clerk of court, in part because the latter had been convicted of libel, which the judge claims to be morally turpitudinous. We refused to categorically rule on the moral turpitude of libel;[95] rather, we used the fact of conviction in conjunction with other evidence,[96] to conclude that the clerk was unfit for judicial office. Despite *Zari's* lack of a categorical ruling on the moral turpitude of libel, *Ty-Delgado v. House of Representatives Electoral Tribunal*[97] (*Ty-Delgado*), which is a disqualification case against a candidate for the House of Representatives, cites it to that effect. Essentially, the citation was unnecessary in view of the Court's analysis, which used the elements of the crime to determine that libel involves malice or bad faith, and is therefore a violation of a core honor norm. Since the candidate sought to be disqualified had been found guilty of publishing four articles which are libelous *per se*, he was disqualified for conviction of a crime involving moral turpitude.

Garcia v. De Vera[98] involved a petition to disqualify a lawyer from being elected governor of the Integrated Bar of the Philippines for Eastern Mindanao, in part because he had been found guilty of indirect contempt for publishing statements calculated to influence the Supreme Court's ruling in a particular case. We held that the lawyer's statements, while contemptuous, did not involve moral turpitude because

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93 Id. at 140.

94 183 Phil. 27 (1979).

95 We admitted that the fact of the clerk's conviction "alone is not sufficient to warrant disciplinary action," and that "conviction for libel does not automatically justify removal of a public officer." Id. at 38.

96 The clerk had written a defamatory letter to another judge, was shown to have exercised undue influence in the judge's disposition of cases, and lied about his criminal record in an affidavit. Id. at 33-34.

97 779 Phil. 268 (2016).

98 463 Phil. 385 (2003).

> it cannot be said that the act of expressing one's opinion on a public interest issue can be considered as an act of baseness, vileness or depravity. Respondent De Vera did not bring suffering nor cause undue injury or harm to the public when he voiced his views on the Plunder Law. Consequently, there is no basis for petitioner to invoke the administrative case as evidence of respondent De Vera's alleged immorality.[99]

Veering away from generalizations about violent crime, the Court has also used a fact-based approach in determining the moral turpitude of homicide and its stages of execution. In *International Rice Research Institute v. National Labor Relations Commission*[100] (*IRRI*), the International Rice Research Institute (IRRI) dismissed a laborer after he was convicted of homicide, for an incident which occurred off-duty. The laborer contested his dismissal all the way to this Court, where IRRI argued that "the crime of homicide committed by [the employee] involves moral turpitude as the killing of a man is conclusively an act against justice and is immoral in itself[,] not merely prohibited by law."[101] The Supreme Court rejected IRRI's argument, and took the factual background of the laborer's homicide conviction into account:

> IRRI failed to comprehend the significance of the facts in their totality. The facts on record show that Micosa was then urinating and had his back turned when the victim drove his fist unto Micosa's face; that the victim then forcibly rubbed Micosa's face into the filthy urinal; that Micosa pleaded to the victim to stop the attack but was ignored and that it was while Micosa was in that position that he drew a fan knife from the left pocket of his shirt and desperately swung it at the victim who released his hold on Micosa only after the latter had stabbed him several times. These facts show that Micosa's intention was not to slay the victim but only to defend his person. The appreciation in his favor of the mitigating circumstances of self-defense and voluntary surrender, plus the total absence of any aggravating circumstance demonstrate that Micosa's character and intentions were not inherently vile, immoral or unjust.[102]

Crucially, the Court categorically rejected intent-based and *mala in se* approaches, and held that moral turpitude should be defined essentially on the basis of factual circumstances:

> This is not to say that all convictions of the crime of homicide do not involve moral turpitude. Homicide may or may not involve moral turpitude depending on the degree of the crime. **Moral turpitude is not involved in every criminal act and is not shown by every known and intentional violation of statute**, but whether any particular conviction involves moral turpitude may be a question of fact and frequently depends on all the surrounding circumstances. While x x x generally but not always, crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, **it cannot always be ascertained whether moral turpitude does or**

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99 Id. at 415. Citation omitted.
100 293 Phil. 823 (1993).
101 Id. at. 834.
102 Id.

> **does not exist by classifying a crime as *malum in se* or as *malum prohibitum*, since there are crimes which are *mala in se* and yet but rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only.** It follows therefore, that moral turpitude is somewhat a vague and indefinite term, the meaning of which must be left to the process of judicial inclusion or exclusion as the cases are reached. [103] (Emphasis and underscoring supplied; citations omitted)

Expressly relying on *IRRI*, Court followed the same fact-based approach in *Soriano v. Dizon*[104] (*Soriano*), where a lawyer's conviction for frustrated homicide was invoked as grounds for his disbarment. The Court found that the factual background of the lawyer's crime evinced moral turpitude. Comparing the circumstances of the lawyer's attack with that of the laborer in *IRRI*, the Court concluded that:

> The present case is totally different. As the IBP correctly found, the circumstances clearly evince the moral turpitude of respondent and his unworthiness to practice law.
>
> Atty. Dizon was definitely the aggressor, as he pursued and shot complainant when the latter least expected it. The act of aggression shown by respondent will not be mitigated by the fact that he was hit once and his arm twisted by complainant. Under the circumstances, those were reasonable actions clearly intended to fend off the lawyer's assault.
>
> We also consider the trial court's finding of treachery as a further indication of the skewed morals of respondent. He shot the victim when the latter was not in a position to defend himself. In fact, under the impression that the assault was already over, the unarmed complainant was merely returning the eyeglasses of Atty. Dizon when the latter unexpectedly shot him. To make matters worse, respondent wrapped the handle of his gun with a handkerchief so as not to leave fingerprints. In so doing, he betrayed his sly intention to escape punishment for his crime.
>
> The totality of the facts unmistakably bears the earmarks of moral turpitude. By his conduct, respondent revealed his extreme arrogance and feeling of self-importance. As it were, he acted like a god on the road, who deserved to be venerated and never to be slighted. Clearly, his inordinate reaction to a simple traffic incident reflected poorly on his fitness to be a member of the legal profession. His overreaction also evinced vindictiveness, which was definitely an undesirable trait in any individual, more so in a lawyer. In the tenacity with which he pursued complainant, we see not the persistence of a person who has been grievously wronged, but the obstinacy of one trying to assert a false sense of superiority and to exact revenge.[105]

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[103] Id. at 834-835.
[104] 515 Phil. 635 (2006).
[105] Id. at 643-644.

In *Garcia v. Sesbreño*,[106] a conviction of homicide was again invoked to disbar a lawyer, who replied that *Soriano* should not apply to his case. Again, the Court reviewed the factual background of the homicide and found it morally turpitudinous:

> The Decision showed that the victim Luciano Amparado (Amparado) and his companion Christopher Yapchangco (Yapchangco) were walking and just passed by Sesbreño's house when the latter, without any provocation from the former, went out of his house, aimed his rifle, and started firing at them. According to Yapchangco, they were about five meters, more or less, from the gate of Sesbreño when they heard the screeching sound of the gate and when they turned around, they saw Sesbreño aiming his rifle at them. Yapchangco and Amparado ran away but Amparado was hit. An eyewitness, Rizaldy Rabanes (Rabanes), recalled that he heard shots and opened the window of his house. He saw Yapchangco and Amparado running away while Sesbreño was firing his firearm rapidly, hitting Rabanes' house in the process. Another witness, Edwin Parune, saw Amparado fall down after being shot, then saw Sesbreño in the middle of the street, carrying a long firearm, and walking back towards the gate of his house. The IBP-CBD correctly stated that Amparado and Yapchangco were just at the wrong place and time. They did not do anything that justified the indiscriminate firing done by Sesbreño that eventually led to the death of Amparado.[107]

In assessing the moral turpitude of violations of special penal laws, some decisions use, or at least invoke, two approaches in conjunction with each other. The test begins with a search for a violation of the core honor norms in the elements of the offense, and is complemented by an examination of the factual background of the conviction, when deemed necessary by the Court.

In *Dela Torre v. COMELEC*,[108] a mayoralty candidate was sought to be disqualified on the basis of his previous conviction for fencing under Presidential Decree (P.D.) No. 1612. The Court dispensed with the review of the factual background of the conviction, on the ground that the candidate "does not assail his conviction."[109] Thus, the Court used the element-based approach in *Ty-Delgado*; and held that fencing involves moral turpitude:

> Moral turpitude is deducible from the third element [of fencing, *i.e.*, the accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft]. Actual knowledge by the "fence" of the fact that property received is stolen displays the same degree of malicious deprivation of one's rightful property as that which animated the robbery or theft which, by their very nature, are crimes of moral turpitude. And although the participation of each felon in the unlawful taking differs in point in time and in degree, both the "fence" and the actual perpetrator/s of the robbery or

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106 752 Phil. 463 (2015).
107 Id. at 470-471.
108 (Resolution) 327 Phil. 1144 (1996).
109 Id. at 1152.

> theft invaded one's peaceful dominion for gain — thus deliberately reneging in the process "*private duties*" they owe their "*fellowmen*" or "*society*" in a manner "*contrary to x x x accepted and customary rule of right and duty x x x, justice, honesty x x x or good morals.*" The duty not to appropriate, or to return, anything acquired either by mistake or with malice is so basic it finds expression [in Articles 19 to 22 and 2154] of the Civil Code on "*Human Relations*" and "*Solutio Indebiti*[.]"
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> x x x x
>
> The same underlying reason holds even if the "fence" did not have actual knowledge, but merely "should have known" the origin of the property received. In this regard, the Court held:
>
> > "When knowledge of the existence of a particular fact is an element of the offense, such knowledge is established if a person is aware of the high probability of its existence unless he actually believes that it does not exist. On the other hand, the words 'should know' denote the fact that a person of reasonable prudence and intelligence would ascertain the fact in the performance of his duty to another or would govern his conduct upon assumption that such fact exists."
>
> Verily, circumstances normally exist to forewarn, for instance, a reasonably vigilant buyer that the object of the sale may have been derived from the proceeds of robbery or theft. Such circumstances include the time and place of the sale, both of which may not be in accord with the usual practices of commerce. The nature and condition of the goods sold, and the fact that the seller is not regularly engaged in the business of selling goods may likewise suggest the illegality of their source, and therefore should caution the buyer. This justifies the presumption found in Section 5 of P.D. No 1612 that "mere possession of any goods, . . ., object or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing" — a presumption that is, according to the Court," reasonable for no other natural or logical inference can arise from the established fact of . . . possession of the proceeds of the crime of robbery or theft." All told, the COMELEC did not err in disqualifying the petitioner on the ground that the offense of fencing of which he had been previously convicted by final judgment was one involving moral turpitude.[110]

Teves v. Commission on Elections[111] was a disqualification case against Teves, a candidate for the House of Representatives who had been previously convicted of possession of prohibited financial interest under Section 3(h) of Republic Act No. 3019, for having a financial interest in a cockpit while he was mayor. The Court examined the factual background of Teves' conviction, and found that: 1) he did not use his position as mayor to gain said interest; 2) the transfer of said interest to his wife was not made to conceal such; 3) mere possession of financial interest in a cockpit was not prohibited under previous laws; 4) the maximum sentence was not imposed on him because he was

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[110] Id. at 1153-1155. Citations omitted.
[111] 604 Phil. 717 (2009).

"[p]resumably x x x not yet very much aware of the prohibition,"[112] having been charged therewith shortly after the prohibition took effect; and 5) the immorality of cockfighting *per se*, and its use as a vehicle for gambling, is debatable. In view of these findings, the Court ruled that Teves' conviction did not involve moral turpitude.[113]

In his concurring opinion, Justice Brion endorsed the *ponencia*'s fact-based determination of moral turpitude. He also applied the category-based (referred to in the opinion as the objective approach) and the element-based approaches to Teves' conviction. First, he noted that the moral gravamen of the offense is the abetting of gambling, and such act is not "*per se* immoral" "by contemporary community standards,"[114] considering that possession of pecuniary interest in a cockpit by a public officer was not penalized by previous laws. He also analyzed the elements of the offense to determine if any of these involve a violation of the core honor norms:

> The essential elements of the offense of possession of prohibited interest (Section 3 (h) of the Anti-Graft Law) for which the petitioner was convicted are:
>
> 1. The accused is a public officer;
>
> 2. He has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and
>
> 3. He is prohibited from having such interest by the Constitution or any law.
>
> From the perspective of moral turpitude, the third element of the crime is the critical element. An analysis of this element, significantly using the objective norms of the first approach, shows that the holding of interest that the law covers is not a conduct clearly contrary to the accepted rules of right and duty, justice, honesty and good morals; it is illegal solely because of the prohibition that exists in law or in the Constitution. Thus, no depravity immediately leaps up or suggests itself based solely on the elements of the crime committed.[115]

Significant in Justice Brion's approach is the use of "contemporary community standards" as an alternative to the core honor norms, which is essentially rooted in 18th-century American culture; although his concurrence does not offer much clarification on what these "contemporary community standards" should be. At any rate, based on the foregoing cases, Philippine jurisprudence does not seem to reject the original notion that moral virtue includes, at the very least, the values of honesty, integrity, truthfulness, and sexual virtue; and crimes that violate these norms involve moral turpitude. The fact-based approach that has been developed for homicide and bodily

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[112] Id. at 732.
[113] Supra note 111
[114] Id. at 750.
[115] Id. at 751.

injury also hews closely to the original idea that violence, although criminal, does not involve moral turpitude when "justified" by the circumstances,[116] despite subsequent cases that deem the taking or injuring of human life as categorically immoral. Crucially, unlike early American jurisprudence, Philippine jurisprudence has demanded these virtues from all persons regardless of gender or sexual orientation.

II.C. Moral turpitude in tax offenses

In light of the foregoing discussion, we now proceed to the determination of moral turpitude in tax offenses, particularly, the offense for which Marcos, Jr. was convicted: failure to file a tax return.

"*The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that 'taxes are the lifeblood of the government.*'"[117] To this end, Chapter II, Title X of the NIRC defines and penalizes certain acts which are detrimental to the tax collection effort of the government. "*Tax laws imposing penalties for delinquencies, so we have long held, are intended to hasten tax payments by punishing* ***evasions or neglect of duty*** *in respect thereof.*"[118] Tax evasion has been defined as a scheme to reduce or avoid taxes outside of lawful means.[119] Tax evasion "*connotes fraud thru the use of pretenses and forbidden devices to lessen or defeat taxes.*"[120] Thus, tax crimes, as defined and penalized in the NIRC, offend not only the legal norms which underpin the power of taxation, but also the core honor norms of honesty, truthfulness, and contribution to society. In determining whether these offenses involve moral turpitude, courts must therefore, inquire into the circumstances of the offense or offenses involved in every case. If the circumstances of the case show that the offense was committed through mere omission or neglect, then the same cannot be considered as involving moral turpitude; but if the circumstances evince fraud or willful intent to avoid payment of taxes, moral turpitude exists.

The determination of moral turpitude in tax offenses in the US essentially centers on the existence of fraud. The doctrinal divergence lies in the issue of the proper approach: some cases use a category-based approach and hold that tax evasion is inherently fraudulent;[121] while some cases hold that it is not, and a fact-based approach must be used to determine whether the

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[116] Simon-Kerr, supra note 21 at 1029; supra note 31.

[117] *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, 638 Phil. 334, 351 (2010).

[118] *Philippine Refining Co. v. Court of Appeals*, 326 Phil. 680, 691 (1996). Emphasis, underscoring, and italics supplied.

[119] *Commissioner of Internal Revenue v. The Hongkong Shanghai Banking Corp. Limited-Philippine Branch*, G.R. No. 227121, December 9, 2020.

[120] Id.

[121] *Kawashima v. Holder*, 565 U.S. 478 (2012); *Tseung Chu v. Cornell*, 247 F.2d 929 (1957); *Maryland St. Bar Ass'n v. Agnew*, 318 A. 2d 811, 271 Md. 543 (1974).

circumstances of the offense involve fraud.[122] For example, the CA of the District of Columbia found no moral turpitude in a lawyer's conviction for tax evasion because

> [i]t is not obvious that he ever affirmatively lied in dealing with the IRS; he merely gave them the information they requested, and nothing more. He had organized his finances in such a way that his available resources were difficult to trace, but honestly reported his income in yearly tax returns. Because we do not know whether the jury predicated his conviction of tax evasion on any affirmative act more duplicitous than "placing his funds beyond the service of process," and because we cannot establish that he actually took steps to conceal information or made false statements, we cannot say that he practiced deception.[123]

Cases on failure to file a return have generally followed the same trend.[124] Notably, the offense involved in most of the US cases is ***willful*** failure to file a return, as defined and penalized under the US Internal Revenue Code.[125] Given the wording of the statute, courts have considered the element of willfulness as an indicator of fraudulent intent.[126] However, in *Attorney Grievance Commission of Maryland v. Walman*, the Maryland CA expressly rejected the category-based approach in favor of the fact-based approach:

> The question whether failure to file tax returns is per se a crime involving moral turpitude has been considered in a vast number of disciplinary cases and the courts have divided on the issue. Those courts which have held that every conviction of failure to file is per se an offense involving moral turpitude have done so by baldly arriving at that conclusion or by simply refusing to distinguish that crime from the § 7201 offense of making a false and fraudulent return, i.e., willful tax evasion, see, e.g., *In re MacLeod*, 479 S.W.2d 443, 445 (Mo.), cert. denied, 409 U.S. 979 (1972); *In re Kline, 156 Mont.* 177, 477 P.2d 881, 882 (1970); *State Bd. of Law Examiners v. Holland*, 494 P.2d 196, 197 (Wyo. 1972), a distinction which, as we have suggested, even the federal courts make.
>
> Most courts, however, hold that failure to file is not a crime involving moral turpitude per se, and that the issue turns on the facts of the particular case. They rest the proposition that not every such conviction involves moral turpitude either on the distinction between the two federal crimes or on the absence of fraudulent intent and further misconduct, or both, See, e.g., *In re Fahey*, 8 Cal.3d 842, 505 P.2d 1369, 1374-75, 106 Cal. Rptr. 313 (1973);

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122 *In the Matter of Shorter*, 570 A. 2d 760 (1990). Justice Richard Posner points out that the 2015 United States Department of State Foreign Affairs Manual explicitly classifies tax evasion as involving moral turpitude if willful, and not involving moral turpitude if without intent to defraud. Posner, *J.*, concurring in *Arias v. Lynch*, 834 F. 3d 823, 832-833 (2016).

123 Id. at 767.

124 See *Attorney Grievance Commission of Maryland v. Walman*, 374 A. 2d 354 (1977); *In re Hallinan*, 272 P. 2d 768 (1954); *Carty v. Ashcroft*, 395 F. 3d 1081 (2005), fn. 3., stating that "intent to defraud is implicit in willfully failing to file a tax return with the intent to evade taxes"; and the dissent arguing that fraud is not presumed, and must be proven in order for tax evasion to be considered morally turpitudinous.

125 Id.

126 Id.

Kentucky State Bar Association v. McAfee, 301 S.W.2d 899 (Ky. 1957); *Matter of Cochrane*, 549 P.2d 328, 329 (Nev. 1976); *In re Ford's Case*, 102 N.H. 24, 149 A.2d 863, 864 (1959); *Cincinnati Bar Assn. v. Leroux*, 16 Ohio St.2d 10, 242 N.E.2d 347, 348 (1968); *In re Walker*, 240 Ore. 65, 399 P.2d 1015, 1016 (1965); *In re Weisensee*, 224 N.W.2d 830, 831 (S.D. 1975); *In re McShane*, 122 Vt. 442, 175 A.2d 508 (1961); *Committee of Legal Ethics v. Scherr*, 143 S.E.2d at 145; *State v. Roggensack*, 19 Wis.2d 8, 119 N.W.2d 412, 416 (1963). See also *In re O'Hallaren*, 64 Ill.2d 426, 356 N.E.2d 520, 523, 1 Ill. Dec. 332 (1976).

There is a third line of cases in which the courts, though presented with the issue of whether failure to file was a crime involving moral turpitude, have found it unnecessary to decide the question, but nevertheless have proceeded to impose disciplinary sanctions. See, e.g., *People v. Fenton*, 165 Colo. 131, 437 P.2d 350, 351 (1968); *In re Schub*, 54 Ill.2d 277, 296 N.E.2d 738, 740 (1973), *Iowa State Bar Association v. Kraschel*, 148 N.W.2d at 628; *In re Bunker*, 294 Minn. 47, 199 N.W.2d 628, 631-32 (1972); *In re De Luca*, 112 R.I. 909, 308 A.2d 826, 827 (1973); In re Calhoun, 127 Vt. 220, 245 A.2d 560 (1968).

We think the better view is represented by the cases holding that not every conviction of failure to file is a crime involving moral turpitude, but that the issue depends on the particular facts of the individual case. As we have stressed, the federal cases have eliminated fraud and dishonesty, the very conduct by which we identify moral turpitude, as elements of the § 7203 crime. Consequently, such a conviction does not on its face establish moral turpitude. In the final analysis, then, whether failure to file is a crime involving moral turpitude hinges on the facts present in the individual case at hand. We turn then to the question whether the circumstances prevailing here reflect such conduct.

Here, as we have intimated, no evidence has been presented to show that respondent's failure to file the returns was accompanied by a fraudulent or dishonest intent. Nor does the record reflect an intent to avoid the ultimate payment of taxes. There is no suggestion, for example, that respondent falsified records, made deceptive statements to Internal Revenue agents, testified untruthfully, committed any other act of dishonesty, or was guilty of further misconduct. No evidence has ever been uncovered by either the I.R.S. or petitioner to refute respondent's explanation for his conduct: that it resulted from his inability to pay. In short, there is no further showing, beyond the bare fact of conviction for failure to file his returns, to indicate that respondent's conduct was infected with moral turpitude, as we have defined that term.

Nothing we have said is intended in the slightest degree to diminish the gravity of the crime involved here. It is, as we shall demonstrate, such conduct as may result in the imposition of any one of the sanctions prescribed by Rule BV11 a 1, that is, reprimand, suspension, or disbarment. The consequence of our holding is simply that disbarment does not automatically follow from every conviction for failure to file a federal tax return.[127]

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[127] *Attorney Grievance Commission of Maryland v. Walman*, id. at 461-463. Emphasis and underscoring supplied. The dissent, also using a fact-based approach, holds that the record sufficiently proved the moral turpitude of the lawyer's offense.

Similarly, the Supreme Court of California reversed the suspension of a lawyer despite his conviction for willful failure to file an income tax return because

> x x x [i]t is established that not only failure to file a tax return but also failure to pay a tax does not necessarily involve moral turpitude. (*In re Higbie*, supra, 6 Cal.3d 562, 571.) There must be more than mere repetition of the same acts to differentiate the offending attorney who is guilty of moral turpitude from the one who is not. No other basis is shown in the instant case for concluding that respondent's offense involved moral turpitude. The record shows no intent on his part to avoid ultimately filing his return or paying his taxes with penalties and interest. He is not shown to have falsified records, made deceptive statements to revenue agents, testified untruthfully, or committed any other act of dishonesty. There is no showing that his income tax delinquencies or his accompanying state of mind impaired his performance of professional duties to his clients in an honest and faithful manner.[128]

II.C.1. Moral turpitude of failure to file tax return under the NIRC and its amendments

Following the foregoing precedents, we employ both the element- and fact-based approaches to the case at bar. The final and executory 1997 CA Decision pronounced Marcos, Jr. "*guilty beyond reasonable doubt of violation of Section 45 of the* [1977] *NIRC for failure to file income tax returns for the taxable years 1982 to 1985*." Section 45 of the 1977 NIRC required the filing of an income tax return and provided for the parameters thereof. Violation of said provision denotes failure to the return required thereby. As originally worded in the 1977 NIRC, the provision penalizing the failure to file a return required thereby states:

> SECTION 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. (Emphasis and underscoring supplied)
>
> x x x x

In 1981, Batas Pambansa Blg. 135 amended the provision to read:

> 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

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[128] *In re Fahey*, 8 Cal.3d 842, 851-852 (1973).

> imprisonment for not more than six months, or both: Provided, however, **That an individual with compensation income taxable under Section 21 (a) of this Code and where the tax withheld from such compensation income is final shall be exempt from the penalty for failure to pay the tax on such compensation income and to file a return thereon at the designated period.** (Emphasis and underscoring supplied)
>
> x x x x

In 1985, the NIRC was overhauled by P.D. No. 1994, which introduced major changes to the structure and the individual provisions of the tax code. Accordingly, the penal provision on failure to file tax returns was renumbered and amended to include the modifier "willfully":

> 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 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 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 and underscoring supplied)

The modifier "willfully" was retained in the next major amendment of the NIRC in 1997:

> 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 and accurate information, **who willfully fails to** pay such tax, **make such return**, keep such record, or supply such 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 an internal revenue

> office wherein the same was actually filed shall, upon conviction therefor, 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. (Emphasis and underscoring supplied)

The first element of the offense has remained constant throughout the amendments: the offender must be a person required to file a return under the NIRC or regulations promulgated thereunder. The second element of the offense, as originally worded, contemplates both *refusal* and *neglect* to file a return. Notably, the 1981 version expressly exempts compensation income earners from liability thereunder. The introduction of the modifier "willfully" in the 1985 version puts it in line with the US Internal Revenue Code, and appears to limit the scope of the provision to *intentional* failure to file a return, effectively decriminalizing neglect to file.

As applied to Marcos, Jr.'s case, which covers his returns for the years his 1982 to 1985, the applicable laws and elements of the offense of failure to file return may be summarized as follows:

Year	Deadline for filing return	Law applicable to filing of return	Essential element of the offense under applicable law
1982	March 15, 1983	NIRC 1977	Refusal or neglect to file return
1983	March 18, 1984	NIRC, as amended in 1981[129]	Refusal or neglect to file return, compensation income earners exempted
1984	March 18, 1985	NIRC, as amended in 1981	Refusal or neglect to file return, compensation income earners exempted
1985	March 18, 1986	NIRC, as amended in 1985[130]	Willful failure to file return

In fine, the offense, as originally defined and made applicable to Marcos, Jr.'s case, makes no distinction as to the intent of the offender. The mere failure to file a return is penalized, whether it be borne of neglect or of refusal. Moreover, under the applicable law for the years 1983 and 1984, failure to file a return is not penalized when the person is a pure compensation income earner. Under the 1985 amendment, only willful failure to file is penalized. Thus, based on the textual evolution of the provision alone, it may already be concluded that failure to file tax return is not fraudulent *per se*. As early as 1974, the Supreme Court has already held that the provisions of the NIRC distinguish between fraud and omission with respect to the the non-filing of

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[129] Batas Pambansa Blg. 135 provided for its effectivity on January 1, 1982; but was published only on May 2, 1983.

[130] Presidential Decree No. 1984 was published on December 2, 1985, and had an effectivity date of January 1, 1986.

tax returns. In a case involving the application of Section 332 of the 1933 NIRC, as amended,[131] the Supreme Court held that:

> x x x 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, (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 aggregates the situations into three different classes, namely "falsity", "fraud" and "omission". That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.[132]

Crucially, this distinction between fraud and omission in the NIRC's rules on tax returns has already been cited by the Court to support the conclusion that failure to file tax return does not involve moral turpitude, since it does not *necessarily* involve fraud. That case,[133] serendipitously, also involves Marcos, Jr., who was then sought to be disqualified from serving as executor of his father's estate on the basis of the moral turpitude of his conviction under the 1997 CA Decision:

> Therefore, since respondent Ferdinand Marcos II has appealed his conviction relating to four violations of Section 45 of the NIRC, the same should not serve as a basis to disqualify him to be appointed as an executor of the will of his father. More importantly, even assuming arguendo that his conviction is later on affirmed, the same is still insufficient to disqualify him as the "failure to file an income tax return" is not a crime involving moral turpitude.
>
> x x x x
>
> **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.
>
> The same is illustrated in Section 51 (b) of the NIRC which reads:
>
> (b) Assessment and payment of deficiency tax — x x x

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131 This provision has essentially been retained in the 1977 NIRC as Section 319 thereof; and as Section 222 under the amendments introduced by Presidential Decree No. 1994.

132 *Aznar v. Court of Tax Appeals*, 157 Phil. 510, 523. (1974)

133 *Republic v. Marcos II*, 612 Phil. 355 (2009).

> 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 . . . . (Emphasis Supplied)
>
> 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". (Emphasis Supplied)
>
> 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.[134]

Furthermore, it must be noted that under the 1981 amendments to the NIRC, which govern the filing of Marcos, Jr.'s income tax returns for 1983 and 1984, failure to file a return is not even penalized if the taxpayer earned purely compensation income. As the *ponencia* and Justice Japar B. Dimaampao (Justice Dimaampao) point out, this is because under the withholding tax collection regime, the responsibilities of collecting the tax and complying with the requirements of the tax code, including the filing of the income tax return, are vested in the withholding agent, which in Marcos, Jr.'s case, is the provincial government of Ilocos Norte.[135] The *ponencia* and Justice Dimaampao again correctly point out that, under the amendments introduced by the TRAIN Law, the NIRC has now enshrined into statute the withholding system of collecting income tax from pure compensation income

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[134] Id. at 375-377. Emphasis and underscoring supplied; citations omitted.

[135] *Ponencia*, pp. 53-54. NIRC, as amended up to Batas Pambansa Blg. 135, Section 91(a), and Annex A thereof; NIRC, as amended up to Presidential Decree No. 1994, Section 82(g). With respect to government employees, the unit or agency concerned is responsible for withholding. 1977 NIRC, Sections 90(c), 91, and 94.

earners, which is complemented by a provision on substituted filing.[136] Here, it has been established that Marcos, Jr. was an elected official of Ilocos Norte during the period in question, and earned compensation income as such. There is likewise no proof within the records of this case that he earned any other form of income during said period.

A fact-based approach also supports the conclusion that Marcos, Jr.'s conviction under the 1997 CA Decision does not involve moral turpitude, primarily because the appellate court did not find any circumstance or indicia that Marcos, Jr.'s failure to file income tax returns from 1982 to 1985 was motivated by a fraudulent intent to evade payment of income tax. First, it has been established in the COMELEC proceedings, through a certification issued by the Local Finance Committee of the Province of Ilocos Norte, that taxes were withheld from Marcos, Jr.'s compensation from 1982 to 1985.[137] Second, it is judicially recognized that the Marcoses fled the Philippines in February 1986, and were able to return only in 1991,[138] when the investigation into their tax liabilities was already ongoing. Finally, the record shows that Marcos, Jr. eventually desisted from contesting his conviction before this Court, and paid the tax liability as imposed upon him in the 1997 CA Decision.[139] These circumstances indicate the lack of fraudulent intent to evade income tax liability on the part of Marcos, Jr.

For the foregoing reasons, I concur in the *ponencia*.

SAMUEL H. GAERLAN
Associate Justice

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136 *Ponencia*, p. 55.
137 Id. at 84.
138 *Marcos v. Manglapus*, supra note 2; *Republic v. Sandiganbayan*, 309 Phil. 488, 490 (1994).
139 *Ponencia*, pp. 8, 82-84.

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. Ibardolaza, 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, The House of Representatives, represented by the Speaker of the House of Representatives, respondents*).

Promulgated:

June 28, 2022

x - x

SEPARATE CONCURRING OPINION

LOPEZ, J., *J.*:

I concur in the disposition of the *ponencia*.

This Court may exercise jurisdiction to resolve the instant petitions. The proclamation of Ferdinand Marcos, Jr. (*Marcos, Jr.*) as the president-elect of the Republic of the Philippines in the recently concluded 2022 National and Local Elections does not serve to put an end to the jurisdiction of this Court on judicial matters, and the commencement of the Court's jurisdiction acting as the Presidential Electoral Tribunal (*PET*). With the same function as the other electoral tribunals, *i.e.*, the Senate Electoral Tribunal (*SET*) and the House of Representatives Electoral Tribunal (*HRET*), the PET serves as the body that decides on issues of election, return and qualifications of the specific government position which pertains to their mandate. Thus, whatever conditions that must be met in order to vest jurisdiction on the other electoral tribunals would necessarily be applicable to the PET before it could exercise jurisdiction. On this matter, the pronouncement of this Court, which extensively discussed the jurisdiction of the HRET, in *Reyes v. COMELEC*,[1] finds application, thus:

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[1] 712 Phil. 192 (2013).

At the outset, it is observed that the issue of jurisdiction of respondent COMELEC *vis-a-vis* that of House of Representatives Electoral Tribunal (HRET) appears to be a non-issue. Petitioner is taking an inconsistent, if not confusing, stance for while she seeks remedy before this Court, she is asserting that it is the HRET which has jurisdiction over her. Thus, she posits that the issue on her eligibility and qualifications to be a Member of the House of Representatives is best discussed in another tribunal of competent jurisdiction. It appears then that petitioner's recourse to this Court was made only in an attempt to enjoin the COMELEC from implementing its final and executory judgment in SPA No. 13-053.

Nevertheless, we pay due regard to the petition, and consider each of the issues raised by petitioner. The need to do so, and at once, was highlighted during the discussion *En Banc* on 25 June 2013 where and when it was emphasized that the term of office of the Members of the House of Representatives begins on the thirtieth day of June next following their election.

According to petitioner, the COMELEC was ousted of its jurisdiction when she was duly proclaimed because pursuant to Section 17, Article VI of the 1987 Constitution, the HRET has the exclusive jurisdiction to be the "sole judge of all contests relating to the election, returns and qualifications" of the Members of the House of Representatives.

Contrary to petitioner's claim, however, the COMELEC retains jurisdiction for the following reasons:

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**. x x x

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 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-a-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.[2]

Having established the requisites, this Court further clarified:

Indeed, in some cases, this Court has made the pronouncement that once a proclamation has been made, COMELEC's jurisdiction is already lost and, thus, its jurisdiction over contests relating to elections, returns, and qualifications ends, and the HRET's own jurisdiction begins. However, it must be noted that in these cases, the doctrinal pronouncement was made in the context of a proclaimed candidate who had not only taken an oath of office, but who had also assumed office.

For instance, in the case of *Dimaporo v. COMELEC*, the Court upheld the jurisdiction of the HRET against that of the COMELEC only after the candidate had been proclaimed, taken his oath of office before the

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2 *Id.* at 210-212.

Speaker of the House, and assumed the duties of a Congressman on 26 September 2007, or after the start of his term on 30 June 2007, to wit:

> On October 8, 2007, private respondent Belmonte filed his comment in which he brought to Our attention that on September 26, 2007, even before the issuance of the status quo ante order of the Court, he had already been proclaimed by the PBOC as the duly elected Member of the House of Representatives of the First Congressional District of Lanao del Norte. On that very same day, he had taken his oath before Speaker of the House Jose de Venecia, Jr. and assumed his duties accordingly.
>
> In light of this development, jurisdiction over this case has already been transferred to the House of Representatives Electoral Tribunal (HRET). (Emphasis supplied.)

Apparently, the earlier cases were decided after the questioned candidate had already assumed office, and hence, was already considered a Member of the House of Representatives, *unlike in the present case*.[3]

Verily, Section 4, Article VII of the 1987 Constitution provides the jurisdiction of the PET, which is essentially the same as that of the HRET and SET, as follows:

> x x x x
>
> The 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 its rules for the purpose.

Notably, a president-elect, despite his proclamation, does not become the President of the Republic of the Philippines until he begins his term of office. This term of office begins at noon on the thirtieth day of June next following the day of the election.[4] It is only at this instance when the duly elected President assumes office, after being proclaimed and after taking his oath of office.

Thus, as long as the petition remains with this Court before June 30, 2022, this Court retains jurisdiction to resolve the instant petitions.

To recapitulate, the petition for *certiorari* filed by Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, Celia Lagman Sevilla, Roland C. Vibal, and Josephine Lascano (*Buenafe, et al.*) arose from a **petition to cancel or deny due course** the Certificate of Candidacy (*COC*) of respondent Ferdinand Marcos, Jr. (*Marcos, Jr.*) under Section 78 of the

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3 *Id.* at 212-213.

4 See 1987 Constitution, Art. VII, Sec. 4.

Omnibus Election Code (*OEC*), while the petition for *certiorari* filed by 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. Ibardolaza, CSSJB, Sr., Susan Santos Esmile, SFIC, Homar Rubert Roca Distajo, Polynne Espineda Dira, James Carwyn Candila, and Jonas Angelo Lopena Abadilla (*Ilagan, et al.*) arose from a **petition for disqualification** of Marcos, Jr. under Section 12 of the OEC.[5]

As mentioned in the *ponencia*, both of these petitions referred to the same set of criminal cases for violation of the National Internal Revenue Code of 1977, as amended (*1977 NIRC*) involving Marcos, Jr.[6] Ultimately, Marcos, Jr. was acquitted by the Court of Appeals (*CA*) for non-payment of deficiency taxes for the taxable years 1982-1985, but convicted him for failure to file income tax return for the same period. He was then sentenced to pay a fine for these violations. This decision eventually became final and executory.[7]

Noticeably, both the petitions filed by Buenafe, *et al.* and Ilagan, *et al.* were anchored on the same factual basis, albeit being sought to be applied on different provisions of the OEC. Nonetheless, as extensively discussed in the *ponencia*, a petition to deny due course is different from a petition for disqualification. To further highlight the differences between these two remedies, *Fermin v. Comelec*[8] is instructive, *viz.*:

> 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.** x x x
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> x x x x
>
> x x x 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 CoC. Thus, in *Miranda v. Abaya*, this Court made the distinction that a candidate who is

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5 Ponencia, pp. 4-5.
6 *Id.* at 5.
7 *Id.* at 7.
8 595 Phil. 449 (2008).

> disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.[9]

The differences in the effect of these two remedies, as well as the ground by which these petitions have to be examined, necessitates a clear delineation between these two. The importance of the distinction was illustrated in the case of *Munder v. COMELEC*[10] when this Court examined a petition for disqualification as a petition to deny due course because of the ground relied upon by the petitioner therein, thus:

> It is thus clear that the ground invoked by Sarip in his Petition for Disqualification against Munder - the latter's alleged status as unregistered voter in the municipality - was inappropriate for the said petition. The said ground should have been raised in a petition to cancel Munder's CoC. Since the two remedies vary in nature, they also vary in their prescriptive period. A petition to cancel a CoC gives a registered candidate the chance to question the qualification of a rival candidate for a shorter period: within 5 days from the last day of their filing of CoCs, but not later than 25 days from the filing of the CoC sought to be cancelled. 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.
>
> The Comelec Second Division stated that the last day of filing of the CoCs was on 21 December 2009. Thus, the period to file a Petition to Deny Due Course or to Cancel Certificate of Candidacy had already prescribed when Sarip filed his petition against Munder.[11]

As such, it is important to examine the ground relied upon in a petition for cancellation of COC and a petition for disqualification. It has been held that the proper characterization of a petition as one for disqualification under the pertinent provisions of laws cannot be made dependent on the designation, correctly or incorrectly, of a petitioner.[12]

As mentioned, a petition for cancellation of COC must revolve around a material representation on the eligibility of a candidate, as set forth in the Constitution and laws. If the ground relied upon does not pertain to a material representation of any of the eligibility requirements of a candidate such as a nickname, the petition would have to be denied. This was aptly discussed by this Court in *Villafuerte v. COMELEC*[13] as follows:

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9 *Id.* at 465-469.
10 675 Phil. 300 (2011).
11 *Id.* at 313-314.
12 *Amora, Jr. v. COMELEC, et al.*, 655 Phil. 467, 477 (2011).
13 728 Phil. 74 (2014).

> x x x This case is a petition to deny due course and to cancel COC on the ground of a statement of a material representation that is false; to be material, such must refer to an eligibility or qualification for the elective office the candidate seeks to hold. Here, respondent's nickname is not a qualification for a public office which affects his eligibility. Notably, respondent's father, who won 3 consecutive terms as Governor of the Province of Camarines Norte, is popularly known as "LRAY," so when respondent wrote in his COC, "LRAY JR. MIGZ" as his nickname, he differentiated himself from Governor "LRAY," which negates any intention to mislead or misinform or hide a fact which would otherwise render him ineligible. Also, the appellation LRAY JR. was accompanied by the name MIGZ which was not so in the *Villarosa* case.
>
> It bears stressing that Section 74 requires, among others, that a candidate shall use in a COC the name by which he has been baptized, unless the candidate has changed his name through court-approved proceedings, and that he may include one nickname or stagename by which he is generally or popularly known in the locality, which respondent did. As we have discussed, the name which respondent wrote in his COC to appear in the ballot, is not considered a material misrepresentation under Section 78 of the Omnibus Election Code, as it does not pertain to his qualification or eligibility to run for an elective public office. By invoking the case of *Villarosa* which is in the nature of an election protest relating to the proclamation of Villarosa, petitioner should have instead filed an election protest and prayed that the votes for respondent be declared as stray votes, and not a petition to deny due course or cancel the COC.[14]

With respect to the presidency, the eligibility requirements therefor are set forth under Section 2, Article VII of the 1987 Constitution, which reads:

> 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.

Under this provision, the basic eligibility requirements that a presidential candidate must satisfy pertains to: (1) citizenship, (2) status as a voter, (3) ability to read and write, (4) age, and (5) residency. It is when any of these requirements are materially misrepresented in a COC when a COC may be denied due course.

In addition to Section 2, Article VII of the Constitution, other grounds pertaining to eligibility of a presidential candidate, which may be raised in a petition to deny due course or cancel COC are: (1) the provisions on term limitation, and (2) perpetual disqualification. These two additional grounds serve as a bar to a person who intends to run for public office and thereby affects eligibility of a candidate, as it limits the persons who can run for public office. Moreover, in the same manner as the basic eligibility requirements

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[14] *Id.* at 88.

under Section 2, Article VII of the Constitution could readily be ascertained at the time of the filing of the COC, these grounds could likewise be determined by the candidate him/herself.

The term limitation for those running for president is provided in Section 4, Article VII of the Constitution, which states:

> SECTION 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

Indeed, in the case of *Albania v. COMELEC*,[15] this Court upheld the COMELEC's ruling that a violation of the three term-limit rule for a mayoralty candidate is a ground for a petition for cancellation of COC, and not a petition for disqualification, *viz.*:

> Section 74 of the OEC provides that 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. The word "eligible" in Section 74 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. And We had held that a violation of the three-term limit rule is an ineligibility which is a proper ground for a petition to deny due course to or to cancel a COC under Section 78 of the Omnibus Election Code, x x x.[16]

The illustrative cases on term limitations were enumerated in *Aratea v. COMELEC*[17] as follows:

> In *Latasa v. Commission on Elections,* petitioner Arsenio Latasa was elected mayor of the Municipality of Digos, Davao del Sur in 1992, 1995, and 1998. The Municipality of Digos was converted into the City of Digos during Latasa's third term. Latasa filed his certificate of candidacy for city mayor for the 2001 elections. Romeo Sunga, Latasa's opponent, filed before the COMELEC a "petition to deny due course, cancel certificate of candidacy and/or disqualification" under Section 78 on the ground that Latasa falsely represented in his certificate of candidacy that he is eligible to run as mayor of Digos City. Latasa argued that he did not make any false representation. In his certificate of candidacy, Latasa inserted a footnote after the phrase "I am eligible" and indicated "*Having served three (3) term[s] as municipal mayor and now running for the first time as city mayor." The COMELEC First Division cancelled Latasa's certificate of

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15 810 Phil. 470 (2017).
16 *Id.* at 481.
17 696 Phil. 700 (2012).

candidacy for violation of the three-term limit rule but not for false material representation. This Court affirmed the COMELEC En Banc's denial of Latasa's motion for reconsideration.

We cancelled Marino Morales' certificate of candidacy in *Rivera III v. Commission on Elections* (*Rivera*). We held that Morales exceeded the maximum three-term limit, having been elected and served as Mayor of Mabalacat for four consecutive terms (1995 to 1998, 1998 to 2001, 2001 to 2004, and 2004 to 2007). We declared him ineligible as a candidate for the same position for the 2007 to 2010 term. Although we did not explicitly rule that Morales' violation of the three-term limit rule constituted false material representation, we nonetheless granted the petition to cancel Morales' certificate of candidacy under Section 78. We also affirmed the cancellation of Francis Ong's certificate of candidacy in *Ong v. Alegre,* where the "petition to disqualify, deny due course and cancel" Ong's certificate of candidacy under Section 78 was predicated on the violation of the three-term limit rule. [18]

With respect to perpetual disqualification as a ground for cancellation of COC, *Jalosjos, Jr. v. COMELEC*[19] expounded on the following:

Section 74 requires the candidate to state under oath in his certificate of candidacy "that he is eligible for said office." A candidate is eligible if he has a right to run for the public office. If a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78.

x x x x

The penalty of *prisión mayor* automatically carries with it, by operation of law, the accessory penalties of temporary absolute disqualification and perpetual special disqualification. Under Article 30 of the Revised Penal Code, temporary absolute disqualification produces the effect of "deprivation of the right to vote in any election for any popular elective office *or to be elected to such office*." The duration of the temporary absolute disqualification is the same as that of the principal penalty. On the other hand, under Article 32 of the Revised Penal Code[,] perpetual special disqualification means that "the offender shall not be permitted to hold any public office during the period of his disqualification," *which is perpetually*. Both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. A person suffering from these ineligibilities is ineligible to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run.

x x x x

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18 *Id.* at 732-733.

19 696 Phil. 601 (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. As used in Section 74, 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 public office. x x x[20]

Reiterating the foregoing, *Dimapilis v. COMELEC*[21] applied perpetual disqualification as a ground for cancellation of a COC, when said accessory penalty is imposed in an administrative case, to wit:

> 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 qualifications 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 fact 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.
>
> x x x x
>
> In this case, the OMB rulings dismissing petitioner for Grave Misconduct had already attained finality on May 28, 2010, which date was even prior to his first election as Punong Barangay of Brgy. Pulung Maragul in the October 2010 Barangay Elections. As above-stated, "[t]he penalty of dismissal [from service] shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service, unless otherwise provided in the decision." Although the principal penalty of dismissal appears to have not been effectively implemented (since petitioner was even able to run and win for two [2] consecutive elections), the corresponding accessory penalty of perpetual disqualification from holding public office had already rendered him ineligible to run for any elective local position. Bearing the same sense as its criminal law counterpart, the term perpetual in this administrative penalty should likewise connote a lifetime restriction and is not dependent on the term of any principal penalty. It is undisputable that this accessory penalty sprung from the same final OMB rulings, and therefore had already

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20 *Id.* at 624-629.

21 808 Phil. 1108 (2017).

> attached and consequently, remained effective at the time petitioner filed his CoC on October 11, 2013 and his later re-election in 2013. x x x[22]

While the other grounds in a petition for cancellation of COC may very well be differentiated from the grounds for a petition for disqualification, perpetual disqualification, as a ground for the cancellation of COC, presents a conundrum in this delineation. This is because perpetual disqualification is imposed based on the act committed by a person, whether it be a crime or an administrative infraction.

Verily, under Section 12 of the OEC, there are certain crimes, the conviction of which, would be a ground for disqualification of a candidate. The provision reads:

> 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.
>
> [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.

With this, there may be a situation where a person who has been sentenced to final judgment of a crime, which carries the penalty of perpetual disqualification, and which crime likewise involves moral turpitude, may be disqualified or his/her COC be cancelled. Indeed, this Court has already recognized that there is an overlap in the grounds for eligibility and ineligibility *vis-à-vis* qualifications and disqualifications.[23] In cases of such overlap, "the petitioner should not be constrained in [his/her] choice of remedy when the Omnibus Election Code explicitly makes available multiple remedies."[24] Such is the present case, with the petition filed by Buenafe, *et al.* as a petition for cancellation of COC of Marcos, Jr. and with the petition filed by Ilagan, *et al.* as a petition for disqualification.

While the arguments of the two petitions overlap, specifically pointing out the conviction of Marcos, Jr. for failure to file his income tax return, the basis of the analysis on these two petitions should be delineated.

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22 *Id.* at 1117-1123. (Citations omitted)

23 *Aratea v. COMELEC*, *supra* note 17, at 733.

24 *Id.*

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With respect to the petition filed by Buenafe, *et al.*, being a petition for cancellation of COC, the same should be analyzed as to whether the conviction of Marcos, Jr. carried perpetual disqualification. On the other hand, the petition filed by Ilagan, *et al.*, being a petition for disqualification, should be analyzed based on the issue of whether the conviction of Marcos, Jr. involved moral turpitude.

Examining the petition filed by Buenafe, *et al.*, the same was correctly denied by the COMELEC for failure to prove that the conviction of Marcos, Jr. by the CA for failure to file income tax return carried perpetual disqualification.

The accompanying effects of perpetual disqualification are very well defined under the RPC as follows:

> **Article 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.
>
> **Article 31.** *Effect of the Penalties of Perpetual or Temporary Special Disqualification.* - The penalties of perpetual or temporary special disqualification for public office, profession or calling shall produce the following effects:
>
> 1. The deprivation of the office, employment, profession or calling affected;
> 2. The disqualification for holding similar offices or employments either perpetually or during the term of the sentence according to the extent of such disqualification.
>
> **Article 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.

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The effect of perpetual disqualification on the deprivation of the public office to which it relates serves as a bar to one who is seeking for public office. It may be imposed as a principal or an accessory penalty. Under the RPC, perpetual disqualification is automatically imposed as an accessory to certain principal penalties, as follows:

> Article 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.
>
> Article 41. Reclusion Perpetua and Reclusion Temporal – Their accessory penalties. - The penalties of reclusion perpetua and reclusion 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.
>
> Article 42. Prision Mayor – Its Accessory Penalties. – The penalty of prision 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.
>
> Article 43. Prision Correccional – Its Accessory Penalties. – The penalty of prision 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.

Similarly, under the 2017 Rules on Administrative Cases in the Civil Service (*RACCS*), perpetual disqualification is automatically imposed as an accessory to the principal penalty of dismissal, as follows:

> Section 57. Administrative Disabilities Inherent in Certain Penalties. The following rules shall govern in the imposition of accessory penalties:
>
> a. The penalty of dismissal shall carry with it cancellation of eligibility, perpetual disqualification from holding public office, bar from taking civil service examinations, and forfeiture of benefits.

Noticeably, both the RPC and the RACCS specify the principal penalty to which the accessory penalty of perpetual disqualification attaches. Verily, being an accessory penalty, it is important to determine the principal penalty to which it attaches in order to guide the proper authority as to the inherent penalties that accompanies the principal penalty.

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In the instant case, the petition filed by Buenafe, *et al.* relies on Section 286 of the 1997 National Internal Revenue Code, which was introduced as an amendment thereto by Presidential Decree No. 1994. The provision reads:

> Chapter II – Crimes, Other Offenses
> And Forfeitures
>
> 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 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 [accountant] 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.

A reading of paragraph (c), Section 286 would show that it contained a general statement as to the imposition of perpetual disqualification, without however specifying the principal penalty to which it attaches to. This run against the nature of an accessory penalty, which is a penalty that is inherent to, and made dependent on the existence of a principal penalty. Further, this goes against due process considerations as it would appear that a mere conviction of any crime penalized by the NIRC, when committed by a public officer, would automatically carry perpetual disqualification. It bears noting that the provisions of the NIRC carry different penalties that correspond to the act that is being penalized. In the same way that the RPC and the RACCS imposes perpetual disqualification to penalties that are grave and correctional, the NIRC must necessarily adapt to the same principle. It cannot simply be imposed as an accessory penalty against any violation without specifying the principal penalty to which it attaches to.

Should the penalty of perpetual disqualification be treated as a principal penalty and not as an accessory penalty, then with more reason should the

petition of *Buenafe, et al.* be denied. As a principal penalty, it should be explicitly stated in the CA decision that convicted Marcos, Jr. for non-filing of his income tax return. In the absence of an express imposition, it cannot be said that Marcos, Jr. was perpetually disqualified from public office.

Withal, petitioners Buenafe, *et al.* failed to point out any provision of law imposing an accessory penalty to the penalty of fine as imposed by the CA. This CA decision, which has already become final and executory, did not carry in its dispositive portion, any wordings of perpetual disqualification. Thus, Marcos, Jr. did not commit material misrepresentation when he stated in his COC that he is eligible to run as president of the Republic of the Philippines.

With respect to the petition filed by Ilagan, *et al.*, the same must be examined on the basis of moral turpitude.

Moral turpitude has been defined as "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."[25] *Zari v. Flores*[26] is one case that has provided jurisprudence its own list of crimes involving moral turpitude, namely: adultery, concubinage, rape, arson, evasion of income tax, barratry, bigamy, blackmail, bribery, criminal conspiracy to smuggle opium, dueling, embezzlement, extortion, forgery, libel, making fraudulent proof of loss on insurance contract, murder, mutilation of public records, fabrication of evidence, offenses against pension laws, perjury, seduction under the promise of marriage, estafa, falsification of public document, and estafa thru falsification of public document.[27]

While the concept of moral turpitude has been viewed as a flexible concept that cuts across crimes for which morality may be invoked, it is my view that the most important consideration in determining whether a crime involves moral turpitude is the responsibility imposed upon the actor and whether his/her actions that led to the commission of a wrong resulted into a clear and grave loss to another individual.

In this case, the crime to which Marcos, Jr. has been adjudged guilty of pertains to non-filing of his income tax return during his term as the Vice-Governor and as Governor of Ilocos Norte in the years 1982-1985. While the CA Decision convicting him of the crime could no longer be modified, determining whether said crime involves moral turpitude would necessitate a review of the provisions of the NIRC which served as a basis for his conviction.

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25 *Teves v. COMELEC*, 604 Phil. 717, 726 (2009).

26 183 Phil. 27, 32 (1979).

27 Concurring Opinion of Justice Arturo D. Brion in *Teves v. COMELEC*, *supra* note 25, at 742.

Here, the developments in the NIRC would show that the responsibility to file a return falls on the withholding agent and not the taxpayer. Further, being an elected official at the time, Marcos, Jr. was a government employee. The provisions on these are as follows:

> ***Amendments to the NIRC Re: Income Tax, Republic Act No. 590, [September 22, 1950]***
>
> *SECTION 12. Supplement to Title II of Code.* — There is hereby added to Title II of the National Internal Revenue Code, as amended, as a supplement to, and an integral part of, the said Title, the following provisions to be known as "Supplement A":
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> x x x x
>
> Art. 4. *Return and payment to the Government of taxes withheld.* — Taxes deducted and withheld hereunder by the employer on wages of employees shall be covered by a return and paid to the treasurer of the province, city or municipality in which the employer has his legal residence or principal place of business, or; in case the employer is a corporation, in which the principal office is located. The return shall be filed and the payment made within twenty-five days from the close of each calendar quarter. The taxes deducted and withheld by employers shall be held in a special fund in trust for the Government until the same are paid to the said collecting officers. The Collector of Internal Revenue may, with the approval of the Secretary of Finance, require employers to pay or deposit the taxes deducted and withheld at more frequent intervals, in cases where such requirement is deemed necessary to protect the interest of the Government.
>
> Art. 5. *Return and payment in case of Government employees.* – If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, the return of the amount deducted and withheld upon any wages shall be made by the officer or employee having control of the payment of such wages, or by any officer or employee duly designated for that purpose
>
> ***Section 80 and 82 of the 1997 NIRC***
>
> SEC. 80. *Liability for Tax.* –
>
> *(A) Employer.* - The employer shall be liable for the withholding and remittance of the correct amount of tax required to be deducted and withheld under this Chapter. If the employer fails to withhold and remit the correct amount of tax as required to be withheld under the provision of this Chapter, such tax shall be collected from the employer together with the penalties or additions to the tax otherwise applicable in respect to such failure to withhold and remit.
>
> x x x x

SEC. 82. *Return and Payment in Case of Government Employees.* - If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, the return of the amount deducted and withheld upon any wage shall be made by the officer or employee having control of the payment of such wage, or by any officer or employee duly designated for the purpose.

Section 51 of the 1997 NIRC, and Section 51-A, introduced by the TRAIN Law

CHAPTER IX. RETURNS AND PAYMENT OF TAX

SEC. 51. ***Individual Return.*** –

(A) ***Requirements.*** –

(1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
   (a) Every Filipino citizen residing in the Philippines;
   (b) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines;
   (c) Every alien residing in the Philippines, on income derived from sources within the Philippines; and
   (d) Every nonresident alien engaged in trade or business or in the exercise of profession in the Philippines.

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

(a) An individual whose taxable income does not exceed Two hundred fifty thousand pesos (P250,000) under Section 24(A)(2)(a): *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.

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.

Significantly, a perusal of the developments in the provisions of our tax code would reveal the intention of the legislature to exempt a government employee, much less those who are receiving purely compensation income

from filing their income tax return. This is because of the withholding system of taxes that has already been in effect for those working in the government. Verily, there is no responsibility on the part of the government employees to file an income tax return when the appropriate amount of withholding tax has already been deducted from their salary.

As in the case of Marcos, Jr. being the then Vice-Governor and Governor of Ilocos Norte, his payroll falls under the payroll for government employees. Thus, his taxes would have to be withheld by the appropriate office before receiving his salary. As the legislative intent shows that it is the officer that has already withheld the taxes who should file the income tax return, the taxpayer, as in the case of Marcos, Jr., would have no such responsibility. Consequently, his inaction on the matter, and for not having shown to have caused a clear and grave loss to another individual, would not involve moral turpitude.

With the ground relied upon by the petition of Ilagan, *et al.* for the disqualification of Marcos, Jr. not having been proven, the COMELEC did not commit grave abuse of discretion in denying their petition.

Withal, the votes given to a winning candidate, especially when pertaining to the highest office of the land, could not simply be disregarded. The Philippines, as a republican and democratic State, relies on the voters' exercise of their right to choose the leaders whom they want them to represent. The pending petitions could not simply be left hanging until the president-elect takes his oath and assume office, as this would already take away the jurisdiction of this Court. Thus, I commend the efforts exerted by my colleague, Associate Justice Rodil V. Zalameda for his prompt action on the petitions, as reflected in his well-written *ponencia.*

In view of the foregoing, I vote to **DISMISS** the petitions filed by Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, Celia Lagman Sevilla, Roland C. Vibal, and Josephine Lascano in G.R. No. 260374 and 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. Ibardolaza, CSSJB, Sr., Susan Santos Esmile, SFIC, Homar Rubert Roca Distajo, Polynne Espineda Dira, James Carwyn Candila, and Jonas Angelo Lopena Abadilla in G.R. No. 260426.

JHOSEP Y. LOPEZ
Associate Justice

EN BANC

G.R. No. 260374 ***(Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, et al. v. Commission on Elections, et al.)***

G.R. No. 260426 ***(Bonifacio Parabuac Ilagan, et al. v. Commission on Elections, et al.)***

Promulgated:

June 28, 2022

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SEPARATE CONCURRING OPINION

DIMAAMPAO, *J.:*

At the center of judicial crosshairs are legal issues that have piqued the nation's attention and anticipation: *(1)* whether Ferdinand R. Marcos, Jr. (Marcos, Jr.) is qualified to run for the presidency; and *(2)* whether his certificate of candidacy (COC) should be canceled or denied due course. The Court writes *finis* to these questions under a solemn duty to apply what the rule of law indelibly expresses, while giving due regard to the sacred and sovereign will of the Filipino people, from whom all governmental authority emanates.

G.R. No. 260374 (Buenafe Petition) has its provenance in a petition to cancel or deny due course Marcos, Jr.'s COC based on Section 78,[1] in relation to Section 74,[2] Article IX of Batas Pambansa Blg. 881 or the Omnibus Election Code (OEC) filed before the Commission on Elections (Comelec). The Buenafe Petition claimed that Marcos, Jr. committed false material representation when he stated in his COC that he is eligible to run for president

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[1] SECTION 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. (Emphases added.)

[2] SECTION 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.
x x x x (Emphases added.)

although he had a prior conviction carrying with it the accessory penalty of perpetual disqualification from holding any public office and to participate in any election.

On the other hand, G.R. No. 260426 (Ilagan Petition) is an offshoot of the petition to disqualify Marcos, Jr. under Section 12[3] of the OEC. The Ilagan Petition averred that Marcos, Jr. was convicted of a crime involving moral turpitude.

Both petitions anchor their basis for disqualification and cancellation of COC on the same set of criminal cases involving Marcos, Jr. for violation of the National Internal Revenue Code of 1977 (1977 NIRC), as amended. The Regional Trial Court (RTC) of Quezon City convicted[4] him of failure to file income tax returns for the years 1982, 1983, 1984, and 1985. The RTC also convicted him of tax evasion for the same taxable years. On appeal, however, the Court of Appeals (CA) acquitted[5] Marcos, Jr. of tax evasion. The CA affirmed his conviction for failure to file income tax returns, albeit

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[3] 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.
x x x x (Emphases added.

[4] 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:

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;
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.

[5] 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.

modifying his penalty. Later, the decision of the CA became final and executory.

With these factual *milieux*, the Comelec denied both the Buenafe and Ilagan Petitions. Unfazed, petitioners brought the present cases to the Court ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Comelec.

After a judicious review, the *ponencia* sustains the Comelec Ruling and dismisses the consolidated petitions.

The *ponencia* holds that the failure to file income tax returns may or may not be a crime involving moral turpitude.[6] While it acknowledges that tax evasion is a crime involving moral turpitude, the *ponencia* clarifies that the failure to file income tax return—for which Marcos, Jr. was convicted—does not always amount to tax evasion.[7]

I concur with the *ponencia*. However, I humbly proffer my disquisition on the issue.

Concededly, tax evasion is a broad legal concept. Yet, this broad conceptual framework supports the thesis that *failure to file income tax returns may or may not amount to tax evasion.*

As enunciated in the *ponencia*, tax evasion connotes fraud through the use of pretenses and forbidden devices to lessen or defeat taxes. Thus, tax evasion integrates 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.[8]

Black's law dictionary defines tax evasion as: "*The willful attempt to defeat or circumvent the tax law in order to illegally reduce one's tax liability.*" From this definition, the elements of tax evasion could be dissected as follows: *one*, the act must be willful or intentional; *two*, the mode used must be illegal; and *three*, the end to be achieved is the reduction of one's tax liability.

Under the first element of tax evasion, the ultimate objective is to defeat or reduce *illegally* the payment of taxes. In order to achieve this ultimate objective, taxpayers resort to all sorts of strategies, means, methods, and schemes—including non-filing of income tax returns.

An income tax return is a sworn statement or declaration in which the taxpayer discloses the nature and extent of his tax liability by formally making

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6 *Ponencia*,, p. 39.
7 Id. at 46.
8 *See CIR v. Toda*, G.R. No. 147188, 14 September 2004.

a report of his income and allowable deductions for the taxable year.[9] In our current tax system, the Philippines adheres to the *pay-as-you-file* basis, which means that the taxpayers assess themselves, file their returns, and pay the taxes as shown in their returns upon filing thereof.

Necessarily, taxpayers are required to declare their true incomes at any given taxable year. Some taxpayers, however, abuse the system by not filing their income tax returns, at all, of course at the expense of risking themselves to civil and criminal liabilities. This willful exploitation of the *pay-as-you-file* system **could metastasize into a *criminal intent*** to *defeat or evade* payment of taxes by: *(1)* **willfully** mis-declaring or stating inaccurate figures in the income tax return, even under the pain of perjury, *i.e.*, filing a **fraudulent return** or *(2)* **willfully** not filing an income tax return. Both may be used as modes of committing tax evasion.

Hence, it is a mistake to treat non-filing of income tax returns and tax evasion *separately*, *independently*, and *mutually exclusive* from each other. Rather, non-filing of income tax returns and tax evasion are inextricably linked as the former may proximately cause the latter.

The non-filing of income tax returns morphs into tax evasion when the element of *willfulness* comes into play. This next query leaps to the eye: *when is non-filing of income tax return willful*?

A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. [10] Thus, to be considered willful, the taxpayers must not only have full knowledge of the consequence of the non-filing of income tax returns, but they also do so with the stubborn purpose to defeat the law and escape the payment of taxes altogether.

Moreover, willfulness may be determined through, among others, the contemporaneous and subsequent acts of taxpayers, their level of discernment, their educational attainment, the frequency of their non-filing of income tax returns, the amount of income concealed, and such other considerations peculiar to each and every case. No factor from the foregoing can singularly establish tax evasion. In the ultimate analysis, willful intent to evade taxes is a question of fact that would depend on the totality of the circumstances surrounding the case.

In the case before Us, I agree that Marcos, Jr.'s non-filing of income tax returns for the years 1982, 1983, 1984, and 1985 does not amount to tax evasion. The totality of circumstances at bench fails to establish the **element of willfulness.** However, I take exception in absolutely adhering to the myopic

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9 De Leon, H.S. & De Leon, Jr., H. M. The National Internal Revenue Code Annotated Volume 1. (2015). Rex Publishing, Inc. p. 605.

10 Black, Henry Campbell, BLACK'S LAW DICTIONARY, Revised Fourth Edition, St. Paul, Minn., West Publishing Co., 1968, p. 1773.

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view espoused in *Republic v. Marcos, II*[11] that non-filing of income tax returns is not a crime involving moral turpitude *sans* explanation of why or how it was so.

As aptly observed by the *ponencia*, in the years 1982 through 1985, Marcos, Jr. was the Governor of Ilocos Norte. Thus, he was **an employee**[12] **of the provincial government**. Essentially, the provincial government was his withholding agent. Section 94 of the 1977 NIRC provides:

> SECTION 94. *Return and payment in case of Government employees.* — If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, **the return of the amount deducted and withheld upon any wages shall be made by the officer or employee having control of the payment of such wages, or by any officer or employee duly designated for that purpose**. (Emphases supplied.)

Now, is it apposite to say that the provincial government willfully and deliberately failed to withhold the corresponding taxes from Marcos, Jr.'s income? It most certainly is not. The government will never deny itself of its very own lifeblood, unless it is ready to meet its untimely death.

Whence, Marcos, Jr.'s non-filing of income tax returns had no badge of willful and deliberate intent to defeat our tax laws. Corollarily, such failure is not tantamount to evasion of taxes.

A final word. The case now before Us is the perfect opportunity for the Court to dispel the cobwebs of doubt surrounding the nature of non-filing of income tax returns and its relation to tax evasion, and to refute any postulations which may arise from the mind of a circumspect citizen that "*no evil can ever come from failing to file tax return.*"

ACCORDINGLY, I vote to DISMISS the Petitions.

JAPAR B. DIMAAMPAO
Associate Justice

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[11] *See* G.R. Nos. 130371 and 130855, 4 August 2009.

[12] (c) Employee. — The term "employee" refers to any individual who is the recipient of wages and includes an officer, employee, or elected official of the Government of the Philippines or any political subdivision, agency or instrumentality thereof. The term "employee" also includes an officer of a corporation. (National Internal Revenue Code of 1977, Presidential Decree No. 1158, 3 June 1977).