EN BANC

[G.R. No. 136587. August 30, 1999]

ERNESTO BIBOT A. DOMINGO, JR., *petitioner*, *vs.* COMMISSION ON ELECTIONS and BENJAMIN BENHUR D. ABALOS, JR., *respondents*.

D E C I S I O N

GONZAGA-REYES, *J.*:

Assailed in this special civil action for *certiorari* are the *En Banc* Resolution of the Commission on Elections (COMELEC), dated December 1, 1998,[1] and the Resolution of the COMELEC FirstDivision, dated July 2, 1998,[2] in SPA No. 98-361, which dismissed, for lack of merit, the petition for disqualification filed against herein private respondent, the incumbent mayor of Mandaluyong City.

In the May 11, 1998 elections, petitioner Ernesto Domingo, Jr. and private respondent Benjamin Abalos, Jr. were both mayoralty candidates of Mandaluyong City. After private respondents proclamation on May 17, 1998, petitioner filed the instant petition for disqualification, on the ground that, during the campaign period, private respondent prodded his father, then incumbent Mandaluyong City Mayor Benjamin Abalos, Sr., to give substantial allowances to public school teachers appointed as chairpersons and members of the Boards of Election Inspectors (BEIs) for Mandaluyong City.

Petitioners allegations obtain from an incident on April 14, 1998, wherein, in a Pasyal-Aral outing for Mandaluyong City public school teachers in Sariaya, Quezon, then Mayor Benjamin Abalos, Sr. announced that the teachers appointed to the BEIs will each be given a hazard pay of P1,000.00 and food allowance of P500.00, in addition to the allowance of P1,500.00.[3] In the petition for disqualification filed before the COMELEC First Division, petitioner charged that private

respondents influence over his father on this matter was evident from the following declaration of father Abalos, Sr.:

Your President [referring to Mr. Alfredo de Vera, President of the Federation of Mandaluyong Public School Teachers], together with Benhur, *walang tigil yan kakapunta sa akin at* not because he is my son*siya ang nakikipag-usap sa kanila* and came up with a beautiful compromise. xxx[4]

As alleged by petitioner, the foregoing statement was revealing of how private respondent prodded his father, then Mayor Abalos, Sr., to award substantial allowances to the public school teachers who will assume seats in the BEIs in the May 11, 1998 elections, as to influence them into voting for him and ensuring his victory.

Mayor Abalos, Sr.s speech, as well, as other activities in the aforesaid Pasyal-Aral outing, were recorded on videotape per instructions of Mr. Perfecto Doroja, an associate of petitioner.[5] In addition to the videotape, petitioner also submitted photographs of a streamer, hung at the entrance of the Tayabas Bay Beach Resort, Sariaya, Quezon, declaring Mayor Benjamin S. Abalos, Sr. as co-sponsor of the Pasyal-Aral,[6] as well as affidavits of three public school teachers who participated in the said activity.[7]

Petitioner alleges that private respondents act of prodding his father, then incumbent mayor Benjamin S. Abalos, Sr., to give substantial allowances to the Mandaluyong City public school teachers constitutes a violation of Section 68 of the Omnibus Election Code, the pertinent provisions of which read:

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; xxx shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. xxx

In dismissing the petition for disqualification for insufficiency of evidence and lack of merit, the COMELEC First Division admonished petitioner and his counsel for attempting to mislead the COMELEC by making false and untruthful statements[8] in his petition. On reconsideration, the COMELEC, *En Banc*, affirmed the findings and conclusions of its First Division.

Before us, petitioner assails the Resolutions of public respondent COMELEC for being violative of his right to due process, and thus, issued with grave abuse of discretion. It is petitioners argument that the dismissal of his petition for disqualification on the ground of insufficiency of evidence was unfounded, considering that no hearing on the merits was conducted by public respondent on the matter.

Petitioner next contends that grave abuse of discretion was likewise attendant in public respondents act of dismissing the petition for disqualification for insufficiency of evidence, despite the overwhelming pieces of evidence of petitioner, consisting of the video cassette, pictures and affidavits, which were not denied by private respondent.[9] Petitioner further decries the fact that private respondent presented no evidence to substantiate his defense, while all the pieces of evidence that he submitted in his petition for disqualification were strong enough to prove violation by private respondent of Section 68 of the Omnibus Election Code.[10]

Before touching on the merits, we shall first resolve the procedural matters raised by private respondent; namely, forum-shopping and failure to file this petition on time.

It is not disputed that, in addition to the petition for disqualification, petitioner also filed a criminal complaint[11] and an election protest *ex abundante cautelam*[12] with public respondent COMELEC.Private respondent contends that, inasmuch as the petition for disqualification and the complaint for election offense involve the same issues and charges, *i.e.*, vote-buying, exerting undue influence on BEI members, petitioner should be held liable for forum-shopping.

We rule to the contrary. Forum-shopping exists when the petitioner files multiple petitions or complaints involving the same issues in two or more tribunals or agencies.[13] The issues in the two cases are different. The complaint for election offense is a criminal case which involves the ascertainment of the guilt or innocence of the accused candidate and, like any other criminal case, requires a conviction on proof beyond reasonable doubt.[14] A petition for disqualification, meanwhile, requires merely the determination of whether the respondent committed acts as to merit his disqualification from office, and is done through an administrative proceeding which is summary in character and requires only a clear preponderance of evidence.[15]

Next, petitioner admits receiving a copy of the assailed COMELEC First Division Resolution on July 13, 1998. He also admits filing a motion for reconsideration of the said COMELEC First Division Resolution on July 20, 1998. A copy of the assailed COMELEC *En Banc* Resolution dated December 1, 1998 was received by petitioner on December 4, 1998. Under Section 3, Rule 64 of the Revised Rules of Court, petitions for *certiorari* from orders or rulings of the COMELEC

shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of the said judgment or final order or resolution xxx shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Section 4 of Rule 19 of the COMELEC Rules of Procedure likewise provides:

Effect of motion for reconsideration on period to appeal. A motion to reconsider a decision, resolution, order or ruling when not *pro-forma*, suspends the running of the period to elevate the matter to the Supreme Court.

Inasmuch as the filing of a motion for reconsideration interrupts the 30-day period within which to file a petition for *certiorari* with this Court, petitioner has effectively consumed seven days of the abovestated 30-day period when he filed his motion for reconsideration. Thus, as correctly pointed out by private respondent, when petitioner received a copy of the assailed COMELEC *En Banc* Resolution, he only had 23 days from December 4, 1998, the date when he received the COMELEC *En Banc* Resolution, or until December 27, 1998[16], to file the instant petition for *certiorari*. This petition was filed on January 4, 1999.

In any event, whether the petition was filed on time or not, an examination of the records leaves us satisfied that public respondent COMELEC did not commit grave abuse of discretion in dismissing the petition for disqualification.

First, on the issue of due process, we find no violation thereof when public respondent COMELEC decided to dismiss the petition for disqualification without hearing. Well-established is the rule that the essence of due process is simply an opportunity to be heard. [17] In *Zaldivar vs. Sandiganbayan*[18], cited in the recent case of *Bautista vs. COMELEC*[19], we held that the right to be heard does not only refer to the right to present verbal arguments in court. A party may also be heard through his pleadings. Where opportunity to be heard is accorded, either through oral arguments or pleadings, there is no denial of procedural due process.

Furthermore, the filing by petitioner of a motion for reconsideration accorded him ample opportunity to dispute the findings of the COMELEC First Division, so that he was as fully heard as he might have been had oral arguments actually taken place. Deprivation of due process cannot be successfully invoked where a party was given the chance to be heard in his motion for reconsideration.[20]

Next, petitioner re-asserts before us the sufficiency of his evidence to prove that private respondent influenced the Mandaluyong City public school teachers, through his father, Abalos, Sr., in the performance of their functions as members of the BEIs.

Petitioners evidence fails to persuade. First, the affidavits of the three teachers who participated in the controversial Pasyal-Aral do not contain anything but the following bare declarations: (1) that they heard Abalos, Sr. promise that he will give hazard pay of P1,000.00 and food allowance of P500.00, in addition to the regular living allowance of P1,500.00, and (2) that, before the May 11, 1998 elections they each received P1,500.00, or half of the total allowances promised by Abalos, Sr. in his speech. Nothing in these affidavits suggests, let alone sets out, knowledge on any degree of participation of private respondent in the grant of these allowances. The name of private respondent was not even mentioned or alluded to by any of the three affiants.

Petitioner also submitted photographs taken of the streamer at the entrance of the Tayabas Bay Beach Resort, welcoming the participants to the Pasyal-Aral and declaring the Mandaluyong City School Board and then mayor Abalos, Sr. as co-sponsors of the affair. Since by law, the mayor is a co-chairman of the City School Board[21], we find nothing unusual in his having co-sponsored the said event. We on the public school teachers of Mandaluyong City.

Yet it is upon the videotape recordings that petitioner lays much reliance on, in proving his case for disqualification fail to see the connection between these pictures and the alleged influence wielded by private respondent. The recordings are supposed to document how former mayor Abalos, Sr. announced that his son, private respondent herein, prodded his father to release substantial allowances to teachers who will act as members of the BEIs. As found by the COMELEC First Division, the name uttered in the announcement was not Benhur, private respondents nickname and what petitioner alleged was uttered, but Lito Motivo, a name which truly sounded unlike Benhur.[22] Also, when the COMELEC, through its First Division, viewed the videotape submitted by petitioner, the speech of Mayor Abalos, Sr. was cut and so (they) also did not see and hear that part of Mayor Abalos, Sr.s speech allegedly uttered by him.[23]

In the Petition, petitioners counsel admitted that the assailed quotation in the petition for disqualification was based on an

erroneous transcript of the speech which was prepared by somebody else, and which he in turn failed to verify for errors. However, he denies having intended to mislead the COMELEC with the inclusion of this statement, but instead submits that the word Benhur was derived from the succeeding pronouncement of Abalos, Sr., not because he is my son, which may in turn be inferred to refer to private respondent, who was a mayoralty candidate at the time.[24]

We find no grave abuse of discretion in the COMELECs finding that Abalos, Sr.s controversial statement, effectively reduced to this:

Your President, together with Lito Motivo, *walang tigil yan kakapunta sa akin at* not because he is my son *siya ang nakikipag-usap sa kanila* and came up with a beautiful compromise. xxx

was seriously insufficient and vague to prove violation of Section 68 of the Omnibus Election Code. The burden of proving that private respondent indirectly influenced the public school teachers of Mandaluyong City, through his father, Abalos, Sr., was a burden that petitioner failed to meet.

Neither is this burden overcome by the argument that private respondent, for himself, had no evidence to rebut petitioners allegations, since the burden of proving factual claims rests on the party raising them.[25] Besides, it is not true that private respondent gave only denials and did not present any evidence to his defense, or to offer an explanation for his fathers actions, which were assailed as having been influenced by him. Private respondent presented in evidence a certified true copy of Joint Circular No. 1, series of 1998, [26] issued by the Department of Education, Culture and Sports, Department of Budget and Management and Department of Interior and Local Government, which authorized the payment of allowances of public school teachers chargeable to local government funds. [27] The Joint Circular provided the basis for private respondents argument that the disbursement of funds by then mayor Abalos, Sr. was valid as having been made pursuant to administrative circular, and was not an unlawful attempt made in conspiracy with private respondent to secure the latters victory in the elections.

In fine, we find no grave abuse of discretion in the COMELECs decision to dismiss the petition for disqualification. The conclusion that petitioners evidence is insufficient to support the charge of violation of Section 68 of the Omnibus Election Code was arrived at only after a careful scrutiny of the evidence at hand, especially of the videotapes of petitioner. This is clearly evident from the discussion of the COMELEC First Division, in the Resolution dated July 2, 1998, which quoted extensively from the pleadings and evidence of petitioners, and provided adequate explanation for why it considered petitioners evidence insufficient and unconvincing.

Clearly, where there is no proof of grave abuse of discretion, arbitrariness, fraud or error of law in the questioned Resolutions, the Court may not review the factual findings of COMELEC, nor substitute its own findings on the sufficiency of evidence.[28]

Finally, the foregoing conclusion is without prejudice to the election protest and election offense cases involving the same parties pending with public respondent COMELEC.

WHEREFORE, the petition is DISMISSED. The assailed COMELEC Resolutions dated July 2, 1998 and December 1, 1998, dismissing the petition for insufficiency of evidence and lack of merit, and affirming the proclamation of private respondent Benjamin Abalos, Jr. as duly elected mayor of Mandaluyong City, are hereby AFFIRMED. No costs.

SO ORDERED.

G.R. No. 168253 March 16, 2007

MAYOR NOEL E. ROSAL, Petitioner,
vs.
COMMISSION ON ELECTIONS, Second Division, and MICHAEL VICTOR IMPERIAL, Respondents.

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G.R. No. 172741 March 16, 2007

MAYOR NOEL E. ROSAL, Petitioner,
vs.
COMMISSION ON ELECTIONS and MICHAEL VICTOR IMPERIAL, Respondents.

D E C I S I O N

CORONA, *J.:*

Petitioner Noel E. Rosal and private respondent Michael Victor C. Imperial were candidates for mayor of Legaspi City in the May 10, 2004 elections. After the counting and canvassing of votes, petitioner was proclaimed as the duly elected mayor of Legaspi City, having received 44,792 votes over private respondent's 33,747 and thereby winning by a margin of 11,045 votes.

On May 24, 2004, private respondent instituted a petition to annul the proclamation,[1] assailing the canvass of election returns in the 520 precincts that had functioned during the election. On July 6, 2004, the case was superseded by an election protest filed by private respondent with the Commission on Elections (Comelec) contesting the results of the election in all 520 precincts on the grounds of miscounting, misreading and misappreciation of votes, substitute voting, disenfranchisement of voters, substitution and padding of votes, and other alleged irregularities. The protest was docketed as EPC No. 2004-61 and raffled to the Second Division of the Comelec.

After an initial hearing on private respondent's protest and petitioner's answer, the Second Division issued on November 17, 2004 an order directing the collection of the ballot boxes from the contested precincts and their delivery to the Comelec. On December 16, 2004, private respondent filed a manifestation[2] apprising the Second Division of the fact that out of the 520 ballot boxes retrieved for delivery to the Comelec, 95 had no plastic seals, 346 had broken plastic seals and only 79 remained intact with whole plastic seals and padlocks.

Revision of the contested ballots commenced in mid-January of 2005[3] and concluded on February 2, 2005. The revision report indicated a reduction in petitioner's vote count from 44,792 votes to 39,752 and an increase in that of private respondent from 22,474 to 39,184 votes. Shortly thereafter, petitioner filed a "motion for technical examination of contested ballots" on the ground that thousands of ballots revised by the revision committees were actually spurious ballots that had been stuffed inside the ballot boxes sometime after the counting of votes but before the revision proceedings. The Second Division denied the motion.

After the revision, the case was set for hearing on February 24, 2005. In that hearing, private respondent manifested that he would no longer present testimonial evidence and merely asked for time to pre-mark his documentary evidence. On March 9, 2005, private respondent filed his formal offer of evidence, thereby resting his case and signaling petitioner's turn to present evidence in his defense.

On March 17, 2005, the first hearing set for the presentation of his evidence, petitioner was directed to pre-mark his exhibits and formalize his intention to have his witnesses subpoenaed. Accordingly, petitioner filed on April 11, 2005 a motion for issuance of subpoena *duces tecum* and *ad testificandum* to witnesses whose testimonies would allegedly prove that a significant number of the revised ballots were not the same ballots that had been read and counted by the Board of Election Inspectors (BEI) during the election.

In an order dated April 25, 2005,[4] the Second Division ruled that the testimonies of the proposed witnesses were "unnecessary" inasmuch as the Comelec had the authority and wherewithal to determine by itself the ballots' authenticity and, for that reason, denied the motion and directed petitioner to file forthwith his formal offer of evidence.

Asserting his right to present evidence in his defense, petitioner filed on May 6, 2005 a motion for reconsideration of the April 25, 2005 order. In an order dated May 12, 2005, the Second Division denied the motion.

On June 4, 2005, petitioner filed an Ad Cautela *(sic)* Offer of Protestee's Evidence[5] as a precautionary measure against the foreclosure of his right to comply with the Second Division's April 25, 2005 order. Petitioner's evidence included: (1) provincial election supervisor Serrano's report that, at the time he took custody of the ballot boxes, their security seals bore signs of having been tampered with and (2) the affidavits of 157 BEI chairpersons who swore to the effect that the authenticating signatures on certain ballots[6] identified and enumerated in their affidavits (that is, signatures purporting to be theirs) were clear forgeries.

On June 15, 2005, petitioner filed in this Court a petition for certiorari[7] under Rule 65 of the Rules of Court (docketed as G.R. No. 1628253) assailing the April 25 and May 12, 2005 orders of the Comelec's Second Division for having been rendered with grave abuse of discretion. Petitioner complained, in substance, that the Second Division had, by these orders, denied him due process by effectively depriving him of a reasonable opportunity to substantiate with competent evidence his contention that the revised ballots were not the same ballots cast and counted during the elections, meaning, the revised ballots were planted inside the ballot boxes after the counting of votes (in place of the genuine ones) pursuant to a fraudulent scheme to manufacture grounds for a successful election protest.

Meanwhile, the Second Division continued with the proceedings and, following the submission of the parties' memoranda, considered EPC No. 2004-61 submitted for resolution.

In a resolution[8] dated January 23, 2006, the Second Division — then composed of only two sitting members, namely, Presiding Commissioner Mehol Sadain (now retired) and Commissioner Florentino Tuason, Jr. — declared private respondent Imperial the winning candidate for mayor of Legaspi City and ordered petitioner Rosal to vacate said office and turn it over peacefully to private respondent.

Commissioner Sadain, who wrote the main opinion, relied on the election return count only in precincts the ballot boxes of which were found to contain fake ballots notwithstanding petitioner's assertion that genuine but otherwise invalid ballots might have been switched with the ones actually cast in the elections. These numbered a mere 129 precincts. For the rest, he examined, appreciated and counted the ballots themselves, invalidating in the process over 14,000 ballots cast for petitioner for having been written by two persons or for being in groups written by one hand. Commissioner Sadain ended up crediting private respondent with 32,660 valid votes over 30,517 for petitioner.

Commissioner Tuason filed a separate concurring opinion[9] manifesting disagreement with Commissioner Sadain's appreciation of certain ballots but arriving at the same practical result.

On January 30, 2006, petitioner filed a motion for reconsideration of the Second Division's resolution. The motion was denied by the Comelec *en banc* in a resolution dated May 29, 2006.[10] In due time, petitioner came to this Court with a petition for certiorari and prohibition assailing the Comelec *en banc* resolution. The case was docketed as G.R. No. 172741 and consolidated with G.R. No. 168253.[11]

Interlocutory Orders and Rule 65

Before focusing on the merits of this case, the Court sees fit to address a procedural concern with respect to G.R. No. 168253. Private respondent has persistently thrust upon us the proposition that the April 25, 2005 order subject of the petition in G.R. No. 168253, being, as it is, an interlocutory order rendered by a division of the Comelec, cannot be assailed by means of a special civil action for certiorari, as only final orders of the Comelec e*n banc* can be brought to the Supreme Court by that mode.

We disagree. Section 1, Rule 65 of the Rules of Court, which governs petitions for certiorari, provides that:

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

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Under the foregoing provision, one may resort to a special civil action for certiorari under three conditions:

> (1) the petition must be directed against a tribunal, board or officer exercising judicial or quasi-judicial functions;
>
> (2) the tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and
>
> (3) there is no plain, speedy and adequate remedy in the ordinary course of law.

Other than these three, the Supreme Court's jurisdiction over petitions for certiorari has no preset boundaries.*Any* act by an officer or entity exercising judicial or quasi-judicial functions, if done without or in excess of jurisdiction or with grave abuse of discretion, may be assailed by means of a special civil action for certiorari when no appeal or any other plain, speedy and adequate remedy in the ordinary course of law is available. In other words, no judicial or quasi-judicial act or order is excluded *a priori* from the ambit of the Supreme Court's power to correct through the writ of certiorari. It is therefore incorrect to say that interlocutory orders issued by a division of the Comelec, or by any judicial or quasi-judicial body for that matter, are beyond the reach of this Court.

That the Supreme Court has jurisdiction over petitions for certiorari assailing interlocutory orders rendered by a Comelec division from which no recourse to the Comelec *en banc* could be had was, in fact, acknowledged in *Kho v. Commission on Elections*.[12] In that case, Kho, an election protestant, filed a petition for certiorari in the Supreme Court questioning the Comelec First Division's interlocutory orders relating to the admission of his opponent's belatedly filed answer.

One of the issues in *Kho* was whether the controversial orders should have first been referred to the Comelec *en banc*. Citing Section 5(c), Rule 3 of the Comelec Rules of Procedure which states that:

[a]ny motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission en banc except motions on interlocutory orders of the division which shall be resolved by the division which issued the order

this Court ruled that the authority to resolve such incidental matters fell on the division itself. The Court went on to say that:

where the Commission in division committed grave abuse of discretion or acted without or in excess of jurisdiction in issuing interlocutory orders relative to an action pending before it and the controversy did not fall under any of the instances mentioned in Section 2, Rule 3 of the COMELEC Rules of Procedure [which enumerates the cases in which the Comelec may sit *en banc*],[13] the remedy of the aggrieved party is not to refer the controversy to the Commission *en banc* as this is not permissible under its present rules but to elevate it to this Court via a petition for certiorari under Rule 65 of the Rules of Court.[14]

In fine, *Kho* tells us that an interlocutory order of a Comelec division should be challenged at the first instance through a proper motion, such as a motion for reconsideration, filed with the division that rendered the order. If that fails and no other plain, speedy and adequate remedy (such as recourse to the Comelec *en banc*) is available, the party aggrieved by the interlocutory order may elevate the matter to the Supreme Court by means of a petition for certiorari on the ground that the order was issued without or in excess of jurisdiction or with grave abuse of discretion.

Private respondent asserts, however, that *Kho* has been superseded by the more recent case of *Repol v. Commission on Elections*[15] from which he cites the dictum that:

[t]he Supreme Court has no power to review via certiorari an interlocutory order or even a final resolution of a Division of the COMELEC. Failure to abide by this procedural requirement constitutes a ground for dismissal of the action.[16]

Again, we disagree.

There is no contradiction between *Kho* and *Repol* that calls for the application of the doctrine that a later judgment supersedes a prior one in case of inconsistency. In *Repol*, the petitioner went directly to the Supreme Court from an interlocutory order of the Comelec First Division without first filing a motion for reconsideration with said division. That was properly a cause for concern inasmuch as failure to move for reconsideration of the act or order before challenging it through a petition for certiorari often constitutes a ground for dismissal for non-compliance with the condition in Rule 65: that resort to certiorari should be justified by the unavailability of an appeal or any other plain, speedy and adequate remedy in the ordinary course of law. In the end, however, the Court in *Repol* applied the ruling in *ABS-CBN Broadcasting Corporation v. COMELEC*[17] that an exception to the procedural requirement of filing a motion for reconsideration was warranted since there was hardly enough time to move for reconsideration and obtain a swift resolution in time for the impending elections.

A sensible reading of our decision shows that *Repol* was not a negation or repudiation of this Court's jurisdiction over petitions for certiorari from interlocutory orders rendered by a Comelec division. Had it been so, then we would have dismissed the petition on the ground that it was beyond our jurisdiction. Rather, this Court in *Repol* merely applied the rule that a petition for certiorari must be justified by the absence of a plain, speedy and adequate remedy in the ordinary course of law; we said that the rule had been satisfied inasmuch as a motion for reconsideration was not a plain, speedy and adequate remedy under the circumstances.

Repol therefore merely serves as a reminder that, in a petition for certiorari from an interlocutory order, the petitioner bears the burden of showing that the remedy of appeal taken after a judgment or final order (as opposed to an interlocutory one) has been rendered will not afford adequate and expeditious relief,[18] as it is often the better practice for a party aggrieved by an interlocutory order to continue with the case in due course and, in the event of an adverse decision, appeal from it and include the interlocutory order as one of the errors to be corrected by the reviewing body.

In this instance, petitioner filed a motion for reconsideration of the Second Division's order. When that failed, no other speedy and adequate remedy against the unpardonable vices attending the Second Division's treatment of the election protest was left to him except recourse to this Court under Rule 65. Under the circumstances, he was without the shadow of a doubt justified in taking it.

Election Protest and Ballots As Evidence

It will be recalled that the Second Division had been apprised of the ballot boxes' impaired condition even prior to the commencement of the revision proceedings. This notwithstanding, it brushed aside petitioner's protestations that he was the victim of an ingenious post-election fraud involving infiltration of the ballot boxes and the clever switching of ballots actually cast with invalid ones to ensure his defeat in the election protest. The division ruled that:

mere allegations cannot suffice to convince this Commission that switching of ballots has occurred, absent any positive and direct evidence in the form of fake ballots themselves being found among genuine ballots. Regardless of any technical examination that may have been conducted or testimonial evidence presented, as emphatically moved by the protestee but denied by the Commission, the best proof of the alleged substitution of ballots is the ballots themselves. And the process by which this proof is established is by way of an evaluation of the ballots by the Commission itself during its appreciation of the revised ballots.[19]

On the basis of this reasoning, the Second Division proceeded with an appreciation and recount of the ballots from over 300 precincts and set aside the physical count of the revised ballots in favor of the election returns only in precincts the ballot boxes of which were found to contain spurious ballots.

In view of the facts of this case, the Court cannot but hold that the Second Division adopted a manifestly unreasonable procedure, one totally unfit to address the single most vital threshold question in an election protest, namely, whether the ballots found in the ballot boxes during the revision proceedings were the same ballots that were cast and counted in the elections.

The purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is the true and lawful choice of the electorate.[20] Such a proceeding is usually instituted on the theory that the election returns, which are deemed *prima facie* to be true reports of how the electorate voted on election day[21] and which serve as the basis for proclaiming the winning candidate, do not accurately reflect the true will of the voters due to alleged irregularities that attended the counting of ballots. In a protest prosecuted on such a theory, the protestant ordinarily prays that the official count as reflected in the election returns be set aside in favor of a revision and recount of the ballots, the results of which should be made to prevail over those reflected in the returns pursuant to the doctrine that "in an election contest where what is involved is the number of votes of each candidate, the best and most conclusive evidence are the ballots themselves."[22]

It should never be forgotten, though, that the superior status of the ballots as evidence of how the electorate voted **presupposes that these were the very same ballots actually cast and counted in the elections**. Thus, it has been held that before the ballots found in a box can be used to set

aside the returns, the court (or the Comelec as the case may be) must be sure that it has before it the same ballots deposited by the voters.[23]

Procedure to Address Post-Election Fraud

How, then, can one establish that the ballots sought to be revised are the same ballots cast by the voters during the elections? Obviously, the proof cannot be supplied by an examination of the ballots themselves, their identity being the very fact in dispute. Answers may be found in abundance in the early case of *Cailles v. Gomez*[24] in which the following doctrines were quoted with favor:

In an election contest the ballots cast by the voters is the primary and best evidence of the intention of the voters, but the burden of proof is on the contestor to show that the ballots have been preserved in the manner provided by law and have not been tampered with, and the fact that the ballots have been in the custody of the proper officers from the time of the canvass to the time of the recount is only prima facie and not conclusive proof of their integrity.

In an election contest the rule that as between the ballots and the canvass of them, the ballots control, has no application where the ballots have been tampered with. The court must be sure that it has before it the identical and unaltered ballots deposited by the voters before they become controlling as against the certificate of the election officers of the result of the canvass.

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Where an official count has been made, it is better evidence of who was elected than the ballots, unless he who discredits the count shows affirmatively that the ballots have been preserved with a care which precludes the opportunity of tampering and all suspicion of change, abstraction or substitution.

The law is well settled that the burden of proof is on the plaintiff, when he seeks to introduce the ballots to overturn the official count, to show affirmatively that the ballots have not been tampered with, and that they are the genuine ballots cast by the voters.

In an action to contest the right of a party to an office to which he has been declared elected, the returns of the election boards should be received as prima facie true. In order to overcome this evidence by a recount of the ballots cast at the election, the contestant must affirmatively prove that the ballots have not been tampered with, and that they remained in the same condition as they were when delivered to the proper custody by the judges of election. If it appear to the satisfaction of the court that the ballots have not been tampered with, it should adopt the result as shown by the recount, and not as returned by the election board.

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The principles of law and the rules of evidence governing cases such as this have been so often declared that a review of the many authorities is unnecessary. Those curious or interested in pursuing the subject will find in the reporter's notes, preceding, many instructive cases collated by the industry of counsel. Suffice it here to say that, while the ballots are the best evidence of the manner in which the electors have voted, being silent witnesses which can neither err nor lie, they are the best evidence only when their integrity can be satisfactorily established. One who relies, therefore, upon overcoming the prima facie correctness of the official canvass by a resort to the ballots must first show that the ballots, as presented to the court, are intact and genuine. Where a mode of preservation is enjoined by the statute proof must be made of a substantial compliance with

the requirements of that mode. But such requirements are construed as directory merely, the object looked to being the preservation inviolate of the ballots. If this is established it would be manifestly unjust to reject them merely because the precise mode of reaching it had not been followed.

So, too, when a substantial compliance with the provisions of the statute has been shown, the burden of proof shifts to the contestee of establishing that, notwithstanding this compliance, the ballots have in fact been tampered with, or that they have been exposed under such circumstances that a violation of them might have taken place. But this proof is not made by a naked showing that it was possible for one to have molested them. The law cannot guard against a mere possibility, and no judgment of any of its courts is ever rendered upon one.

The probative value of the result of the return made by the board of inspectors is a question already settled at various times by the courts of the United States. In the case of Oakes vs. Finlay, the following doctrine was laid:

"The returns of an election board, when legally and properly authenticated, are not only conclusive upon the board of canvassing officers, but are also prima facie evidence of the number of votes cast, in a proceeding to contest the election; and the burden of proof is upon the person who assails the correctness of these returns."

In the case of Stafford vs. Sheppard, the court said:

"Certificates of the result of an election, made by the commissioners at the precincts, are prima facie evidence of the result of the election. The ballots, if identified as the same cast, are primary and higher evidence; but, in order to continue the ballots as controlling evidence, it must appear that they have been preserved in the manner and by the officers prescribed by the statute, and that, while in such custody, they have not been changed or tampered with." (internal citations omitted)[25]

We summarize the foregoing doctrines: (1) the ballots cannot be used to overturn the official count as reflected in the election returns unless it is first shown affirmatively that the ballots have been preserved with a care which precludes the opportunity of tampering and all suspicion of change, abstraction or substitution; (2) the burden of proving that the integrity of the ballots has been preserved in such a manner is on the protestant; (3) where a mode of preserving the ballots is enjoined by law, proof must be made of such substantial compliance with the requirements of that mode as would provide assurance that the ballots have been kept inviolate notwithstanding slight deviations from the precise mode of achieving that end; (4) it is only when the protestant has shown substantial compliance with the provisions of law on the preservation of ballots that the burden of proving actual tampering or the likelihood thereof shifts to the protestee and (5) only if it appears to the satisfaction of the court or Comelec that the integrity of the ballots has been preserved should it adopt the result as shown by the recount and not as reflected in the election returns.

Our election laws are not lacking in provisions for the safekeeping and preservation of the ballots. Among these are Sections 160, 217, 219 and 220 of the Omnibus Election Code[26] which provide:

SECTION 160. ***Ballot boxes***. — (a) There shall be in each polling place on the day of the voting a ballot box one side of which shall be transparent which shall be set in a manner visible to the voting public containing two compartments, namely, the compartment for valid ballots which is indicated by an interior cover painted white and the compartment for spoiled ballots which is indicated by an interior cover painted red. The boxes shall be uniform throughout the Philippines and shall be solidly constructed and shall be closed with three different locks as well as three numbered security locks and such other safety devices as the Commission may prescribe in such a way that they can not be opened except by means of three distinct keys and by destroying such safety devices.

(b) In case of the destruction or disappearance of any ballot box on election day, the board of election inspectors shall immediately report it to the city or municipal treasurer who shall furnish another box or receptacle as equally adequate as possible. The election registrar shall report the incident and the delivery of a new ballot box by the fastest means of communication on the same day to the Commission and to the provincial election supervisor.

SECTION 217. ***Delivery of the ballot boxes, keys and election supplies and documents***. — Upon the termination of the counting of votes, the board of election inspectors shall place in the compartment for valid ballots, the envelopes for used ballots hereinbefore referred to, the unused ballots, the tally board or sheet, a copy of the election returns, and the minutes of its proceedings, and then shall lock the ballot box with three padlocks and such safety devices as the Commission may prescribe. Immediately after the box is locked, the three keys of the padlocks shall be placed in three separate envelopes and shall be sealed and signed by all the members of the board of election inspectors. The authorized representatives of the Commission shall forthwith take delivery of said envelopes, signing a receipt therefor, and deliver without delay one envelope to the provincial treasurer, another to the provincial fiscal and the other to the provincial election supervisor.

The ballot box, all supplies of the board of election inspectors and all pertinent papers and documents shall immediately be delivered by the board of election inspectors and the watchers to the city or municipal treasurer who shall keep his office open all night on the day of election if necessary for this purpose, and shall provide the necessary facilities for said delivery at the expense of the city or municipality. The book of voters shall be returned to the election registrar who shall keep it under his custody. The treasurer and the election registrar, as the case may be, shall on the day after the election require the members of the board of election inspectors who failed to send the objects referred to herein to deliver the same to him immediately and acknowledge receipt thereof in detail.

SECTION 219. ***Preservation of the ballot boxes, their keys and disposition of their contents***. — (a) The provincial election supervisor, the provincial treasurer and the provincial fiscal shall keep the envelope containing the keys in their possession intact during the period of three months following the election. Upon the lapse of this period, unless the Commission has ordered otherwise, the provincial election supervisor and the provincial fiscal shall deliver to the provincial treasurer the envelope containing the keys under their custody.

(b) The city and municipal treasurer shall keep the ballot boxes under their responsibility for three months and stored unopened in a secure place, unless the Commission orders otherwise whenever said ballot boxes are needed in any political exercise which might be called within the said period, provided these are not involved in any election contest or official investigation, or the Commission or other competent authority shall demand them sooner or shall order their preservation for a longer time in connection with any pending contest or investigation. However, upon showing by any candidate that the boxes will be in danger of being violated if kept in the possession of such officials, the Commission may order them kept by any other official whom it may designate. Upon the lapse of said time and if there should be no order to the contrary, the Commission may authorize the city and municipal treasurer in the presence of its representative to open the boxes and burn their contents, except the copy of the minutes of the voting and the election returns deposited therein which they shall take and keep.

(c) In case of calamity or fortuitous event such as fire, flood, storm, or other similar calamities which may actually cause damage to the ballot boxes and/or their contents, the Commission may authorize the opening of said ballot boxes to salvage the ballots and other contents by

placing them in other ballot boxes, taking such other precautionary measures as may be necessary to preserve such documents.

SECTION 220. ***Documents and articles omitted or erroneously placed inside the ballot box***. — If after the delivery of the keys of the ballot box to the proper authorities, the board of election inspectors shall discover that some documents or articles required to be placed in the ballot box were not placed therein, the board of election inspectors, instead of opening the ballot box in order to place therein said documents or articles, shall deliver the same to the Commission or its duly authorized representatives. In no instance shall the ballot box be reopened to place therein or take out therefrom any document or article except to retrieve copies of the election returns which will be needed in any canvass and in such excepted instances, the members of the board of election inspectors and watchers of the candidates shall be notified of the time and place of the opening of said ballot box: Provided, however, That if there are other copies of the election returns outside of the ballot box which can be used in canvass, such copies of the election returns shall be used in said canvass and the opening of the ballot box to retrieve copies of the election returns placed therein shall then be dispensed with.

Additional safeguards were provided for in Comelec Resolution No. 6667 (General Instructions for the Boards of Election Inspectors on the Casting and Counting of Votes in Connection with the May 10, 2004 National and Local Elections) which laid down the following directives:

Section 50. *Disposition of ballot boxes, keys, election returns and other documents.* - Upon the termination of the counting of votes and the announcement of the results of the election in the precinct, the BEI shall:

a. Place the following documents inside the compartment of the ballot box for valid ballots.

1. Envelope containing used/counted official ballots;

2. Envelope containing excess/marked/spoiled/half of torn unused official ballots;

3. Envelope containing the copy of the election returns for the ballot box;

4. Envelope containing one copy of the Minutes of Voting and Counting of Votes (copy for the ballot box);

5. Tally Board; and

6. Stubs of used pads of official ballots.

b. Close the inner compartments of the ballot box, lock them with one (1) self-locking fixed-length seal and then lock the outer cover with the (3) padlocks and one (1) self-locking fixed-length seal. The three keys to the padlocks shall be placed in separate envelopes which shall be sealed and signed by all members of the BEI;

c. Deliver the ballot box to the city or municipal treasurer. In case the ballot box delivered by the BEI was not locked and/or sealed, the treasurer shall lock and/or seal the ballot box. The treasurer shall include such fact, including the serial number of the self-locking fixed-length seal used, in his report to the Commission;

d. Deliver to the Election Officer:

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> 5. Three (3) envelopes, each containing a key to a padlock of the ballot box which shall be delivered, under proper receipt, by the election officer to the provincial election supervisor, the provincial prosecutor and the provincial treasurer. In the case of cities whose voters do not vote for provincial officials, and municipalities in the National Capital Region, the election officer shall retain one envelope and distribute the two other envelopes to the city/municipal prosecutor and city/municipal treasurer, as the case may be.

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The ballot box, all supplies of the BEI and all pertinent papers and documents shall immediately be delivered by the BEI, accompanied by watchers, to the city/municipal treasurer. For this purpose, the city/municipal treasurer shall, if necessary, keep his office open all night on the day of the election and shall provide the necessary facilities for said delivery at the expense of the city/municipality.

Section 52. *Omission or erroneous inclusion of documents in ballot box.* - If after locking the ballot box, the BEI discovers that some documents or articles required to be placed in the ballot box were not placed therein, the BEI, instead of opening the ballot box in order to place therein said documents or articles, shall deliver the same to the election officer. In no instance shall the ballot box be reopened to place therein or to take out therefrom any document or article except in proper cases and with prior written authority of the Commission, or its duly authorized official, to retrieve copies of the election returns which will be needed in any canvass. In such instance, the members of the BEI and the watchers shall be notified of the time and place of the opening of said ballot box. However, if there are other copies of the election returns outside of the ballot box which can be used in the canvass, such copies of the election returns shall be used in said canvass and the opening of the ballot box to retrieve copies of the election returns placed therein shall then be dispensed with.

In case the BEI fails to place the envelope containing the counted ballots inside the ballot box, the election officer shall, with notice to parties, deposit said envelopes in a separate ballot box which shall be properly sealed, padlocked and stored in a safe place in his office. Said ballot boxes shall remain sealed unless otherwise ordered by the Commission.

As made abundantly clear by the foregoing provisions, the mode of preserving the ballots in this jurisdiction is for these to be stored safely in sealed and padlocked ballot boxes which, once closed, shall remain unopened unless otherwise ordered by the Comelec in cases allowed by law. The integrity of the ballots and therefore their probative value, as evidence of the voters' will, are contingent on the integrity of the ballot boxes in which they were stored. Thus, it is incumbent on the protestant to prove, at the very least, that the safety features meant to preserve the integrity of the ballot boxes and their contents were installed and that these remained in place up to the time of their delivery to the Comelec for the revision proceedings. If such substantial compliance with these safety measures is shown as would preclude a reasonable opportunity of tampering with the ballot boxes' contents, the burden shifts to the protestee to prove that actual tampering took place. If the protestee fails to discharge this burden, the court or the Comelec, as the case may be, may proceed on the assumption that the ballots have retained their integrity and still constitute the best evidence of the election results. However, where a ballot box is found in such a condition as would raise a reasonable suspicion that unauthorized persons could have gained unlawful access to its contents, no evidentiary value can be given to the ballots in it and the official count reflected in the election return must be upheld as the better and more reliable account of how and for whom the electorate voted.

The procedure adopted by the Second Division was a complete inverse of the one outlined above and was contrary to reason. There was complete arbitrariness on its part.

First, there was no indication at all that it ever considered the condition of the ballot boxes at the time they were delivered to the Comelec for revision. We find this rather puzzling, considering that it had been apprised of such information even before revision and even its own Rules of Procedure on election protests requires the revision committee to "make a statement of the condition in which the ballot boxes and their contents were found upon the opening of the same"[27] — in recognition of the vital significance of such facts.

Second, it placed the burden of proving actual tampering of the ballots on petitioner herein (the protestee below) notwithstanding private respondent's previous manifestation that most of the ballot boxes bore "overt signs of tampering"[28] and only 79 ballot boxes were found intact.

Third, instead of diligently examining whether the ballot boxes were preserved with such care as to preclude any reasonable opportunity for tampering with their contents, the Second Division made the probative value of the revised ballots dependent solely on whether spurious ballots were found among them. It failed to recognize that, in view of reports that the ballot boxes had been tampered with and allegations that their contents had been switched with genuine but invalid ballots, the question of whether the revised ballots could be relied on as the same ones cast and counted during the elections could not obviously be settled by an examination of the ballots themselves. Clearly, the time when these were deposited in the ballot boxes — a detail of utmost importance — could not possibly have been determined by that means.

These errors on the part of the Second Division were infinitely far from harmless; the proper legal procedure could have made a substantial difference in the result of the election protest and most certainly could have led to a better approximation of the true will of the electorate. This, in the final analysis, is what election protests are all about.

Under the circumstances, the question as to who between the parties was duly elected to the office of mayor cannot be settled without further proceedings in the Comelec. In keeping with the precepts laid down in this decision, the Comelec must first ascertain, after due hearing, whether it has before it the same ballots cast and counted in the elections. For this purpose, it must determine: (1) which ballot boxes sufficiently retained their integrity as to justify the conclusion that the ballots contained therein could be relied on as better evidence than the election returns and (2) which ballot boxes were in such a condition as would afford a reasonable opportunity for unauthorized persons to gain unlawful access to their contents. In the latter case, the ballots must be held to have lost all probative value and cannot be used to set aside the official count reflected in the election returns.

WHEREFORE, the petitions are **GRANTED**. The April 25 and May 12, 2005 orders and the January 23, 2006 resolution of the Commission on Elections Second Division and the May 29, 2006 resolution of the Commission on Elections *en banc* in EPC No. 2004-61 are hereby declared **null** and **void**. The Commission on Elections is hereby **DIRECTED** to determine, with utmost dispatch and all due regard for the parties' right to be heard, the true result of the 2004 elections for mayor of Legaspi City. To this end, it shall:

> (1) identify the precincts the ballot boxes of which were found intact with complete and undamaged seals and padlocks or were otherwise preserved with such substantial compliance with statutory safety measures as to preclude a reasonable opportunity for tampering with their contents. The ballots from these precincts shall be deemed to have retained their integrity in the absence of evidence to the contrary and the Commission on Elections may consider them in the recount.

(2) ascertain the precincts the ballot boxes of which were found in such a condition as would afford a reasonable opportunity for unlawful access to their contents. The Commission on Elections shall exclude from the recount the ballots from these precincts and shall rely instead on the official count stated in the election returns.

The status quo ante order issued by this Court on June 7, 2006 is, for all intents and purposes consistent with this decision, hereby **MAINTAINED**.

12. Dumpit-Michelena vs Boado

Nov. 17, 2005

This is a petition assailing COMELEC resolution disqualifying Dumpit in the May 2004 election.

Facts:

Dumpit-Michelena was a candidate for the position of mayor in the municipality of Agoo, La Union during the May 10, 2004 Synchronized National and Local Elections. Boado sought Dumpit-Michelena's disqualification and the denial or cancellation of her COC on the ground of material misrepresentation under Sections 74 and 78of Batas Pambansa Blg. 881.

Boado, et al. alleged that Dumpit-Michelena, the daughter of Congressman Tomas Dumpit, Sr. of the Second District of La Union, is not a resident of Agoo, La Union. Boado, et al. claimed that Dumpit-Michelena is a resident and was a registered voter of Naguilian, La Union and that Dumpit-Michelena only transferred her registration as voter to San Julian West, Agoo, La Union on October 24, 2003.

Dumpit-Michelena countered that she already acquired a new domicile in San Julian West when she purchased from her father, Congressman Dumpit, a residential lot on April 19, 2003. She even designated a caretaker of her residential house. Dumpit-Michelena presented the affidavits and certifications of her neighbors in San Julian West to prove that she actually resides in the area. COMELEC rules in favor of Boado et al. The COMELEC En Banc denied in its ruling the motion for reconsideration filed by Dumpit-Michelena.

Issues:

WON Dumpit-Michelena satisfied the residency requirement under the Local Government Code of 1991.

Held:

Dumpit-Michelena failed to prove that she has complied with the residency requirement. The concept of residence in determining a candidate's qualification is already a settled matter. For election purposes, residence is used synonymously with domicile.

Trinidad vs Commission on Elections and Sunga

G.R. No. 135716

September 23, 1999

This is a petition for certiorari questioning the Resolution of the Commission on Elections disqualifying petitioner as a mayoralty candidate in the May 1995 elections. Likewise, it seeks the review of a subsequent resolution annulling petitioner's proclamation as elected mayor in the May 1998 elections.

Facts:

Petitioner Trinidad won the May 1995 elections. Private respondent Sunga filed a disqualification case against petitioner and asking the COMELEC to proclaim him as the duly elected mayor. COMELEC

promulgated it decision on June 22, 1998, disqualifying Trinidad. Petitioner filed a Motion For Reconsideration claiming that he was deprived of due process. Petitioner was again proclaimed winner in the May 1998 elections. On October 13, 1998 COMELEC denied petitioner's MR as well as annulling his proclamation as elected mayor.

Thus this petition for certiorari.

Issues:

1. WON petitioner was deprived of due process in the proceedings before the COMELEC insofar as his disqualification under the May 8, 1995 and May 8, 1998 elections were concerned.

2. WON petitioner's proclamation as Mayor under the May 11, 1998 elections may be cancelled on account of the disqualification case filed against him during the May 8, 1995 elections.

3. WON private respondent, as the candidate receiving the second highest number of votes, may be proclaimed as Mayor in the event of petitioner's disqualification.

HELD

1. NO. Petitioner was able to file an Answer with Counter Petition and Motion to Dismiss. He was also able to submit his counter-affidavit and sworn statements of forty-eight witnesses. He was also given a chance to explain in his Motion for Reconsideration. He was afforded an opportunity to be heard, through his pleadings, therefore, there is no denial of procedural due process.

2. NO. Petitioner cannot be disqualified from his reelection term of office. Removal cannot extend beyond the term during which the alleged misconduct was committed. If a public official is not removed

before his term of office expires, he can no longer be removed if he is thereafter reelected for another term.

3. NO. As earlier decided by the Supreme Court, the candidate who obtains the second highest number of votes may not be proclaimed winner in case the winning candidate is disqualified. That would be disenfranchising the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people's right to elect officials of their choice.

[G.R. No. 135716. September 23, 1999]

FERDINAND TRINIDAD, *petitioner, vs.* COMMISSION ON ELECTIONS and MANUEL C. SUNGA, *respondents*.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

The instant Petition for *Certiorari* questions the June 22, 1998 Resolution[1] of the Commission on Elections (hereinafter referred to as COMELEC) in SPA No. 95-213, disqualifying petitioner as a candidate for Mayor of Iguig, Cagayan, in the May 8, 1995 elections. It also questions the October 13, 1998 COMELEC Resolution[2] which not only denied petitioners Motion for Reconsideration, but also annulled his proclamation as elected Mayor in the May 11, 1998 elections.

This case has been filed before this Court when the Petition for Disqualification of private respondent (SPA No. 95-213) was dismissed by the COMELEC. Acting on the Petition for *Certiorari* of private respondent, this court, in *Sunga v. Commission on Elections,* [3] ordered the COMELEC to reinstate SPA No. 95-213 and act thereon.

The facts of the case, as found in *Sunga v. Commission on Elections, supra*, are as follows:

Petitioner (herein private respondent) Manuel C. Sunga was one of the candidates for the position of Mayor in the Municipality of Iguig, Province of Cagayan, in the May 8, 1995 elections. Private respondent (herein petitioner) Ferdinand B. Trinidad, then incumbent mayor, was a candidate for re-election in the same municipality.

On 22 April 1995, Sunga filed with the COMELEC a letter-complaint for disqualification against Trinidad, accusing him of using three (3) local government vehicles in his campaign, in violation of Section 261, par. (o), Art. XXII, of BP Blg. 881 (Omnibus Election Code, as amended). On 7 May 1995, Sunga filed another letter-complaint with the COMELEC charging Trinidad this time with violation of Sec. 261, par. (e) (referring to threats, intimidation, terrorism or other forms of coercion) of the Omnibus Election Code, in addition to the earlier violation imputed to him in the first letter-complaint. This was followed by an Amended Petition for disqualification consolidating the charges in the two (2) letters-complaint, including vote buying, and providing more specific details of the violations committed by Trinidad. The case was docketed as SPA No. 95-213.

In a Minute Resolution dated 25 May 1995, the COMELEC 2nd Division referred the complaint to its Law Department for investigation. Hearings were held wherein Sunga adduced evidence to prove his accusations. Trinidad, on the other hand, opted not to submit any evidence at all.

Meanwhile, the election results showed that Trinidad garnered the highest number of votes, while Sunga trailed second.

On 10 May 1995 Sunga moved for the suspension of the proclamation of Trinidad. However, notwithstanding the motion, Trinidad was proclaimed the elected mayor, prompting Sunga to file another motion to suspend the effects of the proclamation. Both motions were not acted upon by the COMELEC 2nd Division.

On 28 June 1995 the COMELEC Law Department submitted its Report to the COMELEC En Banc recommending that Trinidad be charged in court for violation of the following penal provisions of the

Omnibus Election Code: (a) Sec. 261, par. (a), on vote buying; (b) Sec. 261, par. (e), on threats, intimidation, terrorism or other forms of coercion; and, (c) Sec. 261, par. (o), on use of any equipment, vehicle owned by the government or any of its political subdivisions. The Law Department likewise recommended to recall and revoke the proclamation of Ferdinand D. Trinidad as the duly elected Mayor of Iguig, Cagayan; proclaim Manuel C. Sunga as the duly elected Mayor, and, direct Sunga to take his oath and assume the duties and functions of the office.

The COMELEC En Banc approved the findings of the Law Department and directed the filing of the corresponding informations in the Regional Trial Court against Trinidad. Accordingly, four (4) informations for various election offenses were filed in the Regional Trial Court of Tuguegarao, Cagayan. The disqualification case, on the other hand, was referred to the COMELEC 2nd Division for hearing.

On 2 May 1996 Sunga filed a Second Urgent Motion to Suspend the Effects and Annul the Proclamation with Urgent Motion for Early Resolution of the Petition. But in its 17 May 1996 Resolution, the COMELEC 2nd Division dismissed the petition for disqualification, x x x.

His motion for reconsideration having been denied by the COMELEC *En Banc*, Sunga filed the instant petition contending that the COMELEC committed grave abuse of discretion in dismissing the petition for disqualification x x x.

As we have mentioned, above, private respondents Petition with this Court was granted and COMELEC was ordered to reinstate SPA No. 95-213 and hear the same.[4]

Finally, on June 22, 1998, the COMELEC 1st Division (former 2nd Division) promulgated the first questioned Resolution disqualifying petitioner as a candidate in the May 8, 1995 elections.[5] Petitioner filed a Motion for Reconsideration,[6] claiming denial of due process. Private respondent filed his Opposition to the Motion,[7] at the same time moving for the cancellation of petitioners proclamation as elected

Mayor in the 1998 elections and praying that he be proclaimed Mayor instead.

On October 13, 1998, the COMELEC *En Banc* denied petitioners Motion for Reconsideration and also annulled his proclamation as duly elected Mayor of Iguig, Cagayan in the May 11, 1998 elections. [8] Private respondents motion to be declared Mayor was, however, denied. Commissioner Teresita Dy-Liacco Flores rendered a dissenting opinion insofar as the Resolution annulled the proclamation of petitioner as Mayor in the May 11, 1998 elections, which she found to be bereft of any legal basis.

Petitioner alleges that the questioned Resolutions were promulgated without any hearing conducted and without his evidence having been considered by the COMELEC, in violation of his right to due process. He also contends that the portion of the October 13, 1998 Resolution annulling his proclamation as Mayor in the May 11, 1998 elections was rendered without prior notice and hearing and that he was once more effectively denied due process. Petitioner also adopts the stand of Commissioner Dy-Liacco Flores that his disqualification, if any, under SPA No. 95-213 cannot extend beyond the three-year term to which he was elected on May 8, 1995, in relation to which the corresponding Petition for his disqualification was lodged.

In his Comment, [9] private respondent assails the arguments raised in the Petition and prays that he be proclaimed as the elected Mayor in the 1998 elections. Petitioner filed a Reply [10] to private respondents Comment on February 24, 1999. Meanwhile, on February 25, 1999, the criminal cases filed against the petitioner with the Regional Trial Court of Tuguegarao, Cagayan were dismissed. [11] On March 8, 1999, the Solicitor General filed a Comment for the COMELEC, [12] reiterating the argument that the COMELEC is empowered to disqualify petitioner from continuing to hold public office and at the same time, barring private respondents moves to be proclaimed elected in the 1998 elections. Respective Memoranda were filed by both parties.

The issues before us may be summarized as follows:

1. Was petitioner deprived of due process in the proceedings before the COMELEC insofar as his disqualification under the May 8, 1995 elections was concerned?

2. Was petitioner deprived of due process in the proceedings before the COMELEC insofar as his disqualification under the May 11, 1998 elections was concerned?

3. May petitioners proclamation as Mayor under the May 11, 1998 elections be cancelled on account of the disqualification case filed against him during the May 8, 1995 elections?

4. May private respondent, as the candidate receiving the second highest number of votes, be proclaimed as Mayor in the event of petitioners disqualification?

The Commission on Elections is the agency vested with exclusive jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election contests involving elective municipal and barangay officials. Unless the Commission is shown to have committed a grave abuse of discretion, its decision and rulings will not be interfered with by this Court.[13]

Guided by this doctrine, we find that no violation of due process has attached to the COMELECs June 22, 1998 Resolution.

Petitioner complains that while the COMELEC reinstated SPA No. 95-213, it conducted no hearing and private respondent presented no evidence.[14] Yet, this does not equate to a denial of due process.As explained in *Paat v. Court of Appeals*[15]--

x x x. Due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard (Pepsi Cola Distributors of the Phil. V. NLRC, G.R. No. 100686, August 15, 1995). One may be heard, not solely by verbal presentation but also, and perhaps many times more creditably and predictable than oral argument, through pleadings (Concerned Officials of MWSS v. Vasquez, G.R. No. 109113, January 25, 1995). In administrative proceedings moreover,

technical rules of procedure and evidence are not strictly applied; administrative process cannot be fully equated with due process in its strict judicial sense (Ibid.) Indeed, deprivation of due process cannot be successfully invoked where a party was given a chance to be heard on his motion for reconsideration (Rodriguez v. Project 6 Market Service Cooperative, G.R. No. 79968, August 23, 1995), as in the instant case, when private respondents were undisputedly given the opportunity to present their side when they filed a letter of reconsideration dated June 28, 1989 which was, however, denied in an order of July 12, 1989 of Executive Director Baggayan. In Navarro III vs. Damasco (G.R. No. 101875, July 14, 1995), we ruled that:

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain ones side or an opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial type hearing is not at all times and in all instances essential. The requirements are satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice or hearing.

In the case at bar, petitioner was able to file an Answer with Counter Petition and Motion to Dismiss.[16] He was also able to submit his counter-affidavit and sworn statements of forty-eight (48) witnesses. While he complains that these were not considered by the Hearing Officer, he, himself, admits that the COMELEC did not rely on the findings of the Hearing Officer but referred the case to its Second Division. Thus, by the time the Second Division reviewed his case, petitioners evidence were already in place. Moreover, petitioner was also given a chance to explain his arguments further in the Motion for Reconsideration which he filed before the COMELEC. Clearly, in the light of the ruling in *Paat,* no deprivation of due process was committed. Considering that petitioner was afforded an opportunity to be heard, through his pleadings, there is really no denial of procedural due process.[17]

Being interrelated, we shall discuss the second and third issues together.

We note that petitioners term as Mayor under the May 8, 1995 elections expired on June 30, 1998.[18] Thus, when the first questioned Resolution was issued by COMELEC on June 22, 1998, petitioner was still serving his term. However, by the time the Motion for Reconsideration of petitioner was filed on July 3, 1998, the case had already become moot and academic as his term had already expired. So, too, the second questioned Resolution which was issued on October 13, 1998, came at a time when the issue of the case had already been rendered moot and academic by the expiration of petitioners challenged term of office.

In *Malaluan v. Commission on Elections,*[19] this Court clearly pronounced that expiration of the challenged term of office renders the corresponding petition moot and academic. Thus:

It is significant to note that the term of office of the local officials elected in the May, 1992 elections expired on June 30, 1995. This petition, thus, has become moot and academic insofar as it concerns petitioners right to the mayoralty seat in his municipality (Amatong v. COMELEC, G.R. No. 71003, April 28, 1988, En Banc, Minute Resolution; Artano v. Arcillas, G.R. No. 76823, April 26, 1988, En Banc, Minute Resolution) because expiration of the term of office contested in the election protest has the effect of rendering the same moot and academic (Atienza v. Commission on Elections, 239 SCRA 298; Abeja v. Tanada, 236 SCRA 60; Yorac v. Magalona, 3 SCRA 76).

When the appeal from a decision in an election case has already become moot, the case being an election protest involving the office of the mayor the term of which had expired, the appeal is dismissible on that ground, unless the rendering of a decision on the merits would be of practical value (Yorac v. Magalona, *supra*). This rule we established in the case of Yorac v. Magalona which was dismissed because it had been mooted by the expiration of the term of office of the Municipal Mayor of Saravia, Negros Occidental. x x x.

(underscoring, ours)

With the complaint for disqualification of private respondent rendered moot and academic by the expiration of petitioners term of office therein contested, COMELEC acted with grave abuse of discretion in proceeding to disqualify petitioner from his reelected term of office in its second questioned Resolution on the ground that it comes as a matter of course after his disqualification in SPA No. 95-213 promulgated after the 1998 election. While it is true that the first questioned Resolution was issued eight (8) days before the term of petitioner as Mayor expired, said Resolution had not yet attained finality and could not effectively be held to have removed petitioner from his office.[20] Indeed, removal cannot extend beyond the term during which the alleged misconduct was committed. If a public official is not removed before his term of office expires, he can no longer be removed if he is thereafter reelected for another term.[21]

In this regard, therefore, we agree with the dissenting opinion of Commissioner Teresita Dy-Liacco Flores in the second questioned Resolution that petitioners disqualification under SPA No. 95-213 cannot extend beyond the term to which he was elected in 1995.[22]

Yet another ground to reverse the COMELECs annulment of petitioners proclamation under the 1998 elections is the undeniable fact that petitioner was not accorded due process insofar as this issue is concerned. To be sure, this was not part of the first questioned Resolution which only touched on the matter raised in the complaint the May 8, 1995 elections. Private respondent merely prayed for the annulment of petitioners proclamation as winner in the 1998 elections in his Opposition to the Motion for Reconsideration. It was with grave abuse of discretion, then, that the COMELEC went on to annul petitioners proclamation as winner of the 1998 elections without any prior notice or hearing on the matter.[23]

As per the Certificate of Canvass,[24] petitioner obtained 5,920 votes as against the 1,727 votes obtained by private respondent and 15 votes garnered by the third mayoral candidate, Johnny R. Banatao.This gives petitioner a high 77.26% of the votes cast. There is no doubt, therefore, that petitioner received his municipalitys clear

mandate. This, despite the disqualification case filed against him by private respondent.

This further lends support to our decision to bar his disqualification insofar as the May 11, 1998 elections is concerned. Indeed, in election cases, it is fundamental that the peoples will be at all times upheld. As eloquently stressed in *Frivaldo v. Commission on Elections*[25]--

This Court has time and again liberally and equitably construed the electoral laws of our country to give fullest effect to the manifest will of our people, for in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate freely expressed through the ballot. Otherwise stated, legal niceties and technicalities cannot stand in the way of the sovereign will. Consistently, we have held:

x x x (L)aws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections (Benito v. Commission on Elections, 235 SCRA 436, 442 [August 17, 1994]).

Finally, we see no error in the COMELECs rejection of private respondents move to be declared as Mayor on account of petitioners disqualification. To begin with, the issue had been rendered moot and academic by the expiration of petitioners challenged term of office. Second, even in law and jurisprudence, private respondent cannot claim any right to the office. As held by the COMELEC, the succession to the office of the mayor shall be in accordance with the provisions of the Local Government Code which, in turn, provides that the vice mayor concerned shall become the mayor.[26] Also, in *Nolasco v. Commission on Elections,*[27] citing *Reyes v. Commission on Elections,*[28] we already rejected, once and for all, the position that the candidate who obtains the second highest number of votes may be proclaimed the winner in the event of disqualification or failure of the candidate with the highest number of votes to hold office. This court ratiocinated thus

That the candidate who obtains the second highest number of votes may not be proclaimed winner in case the winning candidate is

disqualified is now settled (Frivaldo v. COMELEC, 174 SCRA 245 [1989]; Labo, Jr. v. COMELEC, 176 SCRA 1 [1989]; Abella v. COMELEC, 201 SCRA 253 [1991]; Labo, Jr. v. COMELEC, 211 SCRA 297 [1992]; Benito v. COMELEC, 235 SCRA 436 [1994]). The doctrinal instability caused by see-sawing rulings (*Compare* Topacio v. Paredes, 23 Phil. 238 [1912] *with* Ticson v. COMELEC, 103 SCRA 687 [1981]; Geronimo v. Ramos, 136 SCRA 435 [1985] *with* Santos v. COMELEC, 137 SCRA 740 [1985]) has since been removed. In the latest ruling (Aquino v. COMELEC, G.R. No. 120265, September 18, 1995) on the question, this Court said:

To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under the circumstances.

Private respondent claims that there are compelling reasons to depart from this doctrine. He argues that since the disqualification case filed against the petitioner for the 1995 elections has been rendered moot and academic, it is with the 1998 elections that its impact must be felt. He also claims that justice should be given him as victim of petitioners dilatory tactics.

We are not persuaded. On the other hand, the fact that despite the disqualification case filed against petitioner relating to the 1995 elections, he still won the mandate of the people for the 1998 elections, leads us to believe that the electorate truly chose petitioner and repudiated private respondent. To allow private respondent, a defeated and repudiated candidate, to take over the mayoralty despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the peoples right to elect officials of their choice.[29]

Therefore, the Resolution of the COMELEC dated October 13, 1998 which annulled petitioners proclamation as Mayor of Iguig, Cagayan in the May 11, 1998 elections should be set aside. On the other hand, the petition filed before the COMELEC against petitioner for election offenses committed during the May 1995 elections should be dismissed for being moot and academic, the term of office to which petitioner was elected having already expired.

WHEREFORE, the petition is partly GRANTED. The Resolution of the COMELEC, dated October 13, 1998 is SET ASIDE insofar as it annuls the proclamation of petitioner as winner in the May 11, 1998 elections. Insofar as the May 8, 1995 elections is concerned, we find the issues related thereto rendered moot and academic by expiration of the term of office challenged and, accordingly, DISMISS the petition lodged in connection therewith. No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, and *Gonzaga-Reyes, JJ.,* concur.

Pardo, J., no part.

Penera vs. Commission on Elections, et al.
G.R. No. 181613
25 November 2009
(motion for reconsideration)

Facts:

On 11 September 2009, the Supreme Court affirmed the COMELEC's decision to

disqualify petitioner Rosalinda Penera (Penera) as mayoralty candidate in Sta. Monica, Surigao del Norte, for engaging in election campaign outside the campaign period, in violation of Section 80 of Batas Pambansa Blg. 881 (the Omnibus Election Code).

Penera moved for reconsideration, arguing that she was not yet a candidate at the time of the supposed premature campaigning, since under Section 15 of Republic Act No. 8436 (the law authorizing the COMELEC to use an automated election system for the process of voting, counting of votes, and canvassing/consolidating the results of the national and local elections), as amended by Republic Act No. 9369, one is not officially a candidate until the start of the campaign period.

Issue:

Whether or not Penera's disqualification for engaging in premature campaigning should be reconsidered.

Holding:

Granting Penera's motion for reconsideration, the Supreme Court En Banc held that Penera did not engage in premature campaigning and should, thus, not be disqualified as a mayoralty candidate. The Court said –

(A) The Court's 11 September 2009 Decision (or "the assailed Decision") considered a person who files a certificate of candidacy already a "candidate" even before the start of the campaign period. This is contrary to the clear intent and letter of Section 15 of Republic Act 8436, as amended, which states that a person who files his certificate of candidacy will only be considered a candidate at the start of the campaign period, and unlawful acts or omissions applicable to a candidate shall take effect only upon the start of such campaign period.

Thus, applying said law:

(1) The effective date when partisan political acts become unlawful as to a candidate is when the campaign period starts. Before the start of the campaign period, the same partisan political acts are lawful.

(2) Accordingly, a candidate is liable for an election offense only for acts done during the campaign period, not before. In other words, election offenses can be committed by a candidate only upon the start of the campaign period. Before the start of the campaign period, such election offenses cannot be so committed. Since the law is clear, the Court has no recourse but to apply it. The forum for examining the wisdom of the law, and enacting remedial measures, is not the Court but the Legislature.

(B) Contrary to the assailed Decision, Section 15 of R.A. 8436, as amended, does not provide that partisan political acts done by a candidate before the campaign period are unlawful, but may be prosecuted only upon the start of the campaign period. Neither does the law state that partisan political acts done by a candidate before the campaign period are temporarily lawful, but becomes unlawful upon the start of the campaign period. Besides, such a law as envisioned in the Decision, which defines a criminal act and curtails freedom of expression and speech, would be void for vagueness.

(C) That Section 15 of R.A. 8436 does not expressly state that campaigning before the start of the campaign period is lawful, as the assailed Decision asserted, is of no moment. It is a basic principle of law that any act is lawful unless expressly declared unlawful by law. The mere fact that the law does not declare an act unlawful ipso facto means that the act is lawful. Thus, there is no need for Congress to declare in Section 15 of R.A. 8436 that partisan political activities before the start of the campaign period are lawful. It is sufficient for

Congress to state that “any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period.” The only inescapable and logical result is that the same acts, if done before the start of the campaign period, are lawful.

(D) The Court’s 11 September 2009 Decision also reversed Lanot vs. COMELEC (G.R. No. 164858; 16 November 2006). Lanot was decided on the ground that one who files a certificate of candidacy is not a candidate until the start of the campaign period. This ground was based on the deliberations of the legislators who explained that the early deadline for filing certificates of candidacy under R.A. 8436 was set only to afford time to prepare the machine-readable ballots, and they intended to preserve the existing election periods, such that one who files his certificate of candidacy to meet the early deadline will still not be considered as a candidate.

When Congress amended R.A. 8436, Congress decided to expressly incorporate the Lanot doctrine into law, thus, the provision in Section 15 of R.A. 8436 that a person who files his certificate of candidacy shall be considered a candidate only at the start of the campaign period. Congress wanted to insure that no person filing a certificate of candidacy under the early deadline required by the automated election system would be disqualified or penalized for any partisan political act done before the start of the campaign period. This provision cannot be annulled by the Court except on the sole ground of its unconstitutionality. The assailed Decision, however, did not claim that this provision is unconstitutional. In fact, the assailed Decision considered the entire Section 15 good law. Thus, the Decision was self-contradictory — reversing Lanot but maintaining the constitutionality of the said provision.

ROSALINDA A. PENERA,

Petitioner,

- versus -

G. R. No. 181613

Present:

PUNO, *C.J.*,
QUISUMBING,
YNARES-SANTIAGO,
CARPIO,
CORONA,
CARPIO MORALES,
CHICO-NAZARIO,
VELASCO, JR.,
NACHURA,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO, and

ABAD, *JJ*.

COMMISSION ON ELECTIONS and EDGAR T. ANDANAR,

Respondents.

Promulgated:

September 11, 2009

x - x

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for *Certiorari* with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order[1] under Rule 65, in relation to Rule 64 of the Rules of Court, seeks the nullification of the Resolution[2] dated 30 January 2008 of the Commission on Elections (COMELEC) *en banc*. Said Resolution denied the Motion for Reconsideration of the earlier Resolution[3] dated 24 July 2007 of the COMELEC Second Division in SPA No. 07-224, ordering the disqualification of herein petitioner Rosalinda A. Penera (Penera) as a candidate for the position of mayor of the Municipality of Sta. Monica, Surigao del Norte (Sta. Monica) in the 2007 Synchronized National and Local Elections.

The antecedents of the case, both factual and procedural, are set forth hereunder:

Penera and private respondent Edgar T. Andanar (Andanar) were mayoralty candidates in Sta. Monica during the 14 May 2007 elections.

On 2 April 2007, Andanar filed before the Office of the Regional Election Director (ORED), Caraga Region (Region XIII), a Petition for Disqualification[4] against Penera, as well as the candidates for Vice-Mayor and *Sangguniang Bayan* who belonged to her political party,[5] for unlawfully engaging in election campaigning and partisan political activity prior to the commencement of the campaign period. The petition was docketed as SPA No. 07-224.

Andanar claimed that on 29 March 2007 a day before the start of the authorized campaign period on 30 March 2007 Penera and her partymates went around the different*barangays* in Sta. Monica, announcing their candidacies and requesting the people to vote for them on the day of the elections. Attached to the Petition were the Affidavits of individuals[6] who witnessed the said incident.

Penera alone filed an Answer[7] to the Petition on 19 April 2007, averring that the charge of premature campaigning was not true. Although Penera admitted that a motorcade did take place, she explained that it was simply in accordance with the usual practice in nearby cities and provinces, where the filing of certificates of candidacy (COCs) was preceded by a motorcade, which dispersed soon after the completion of such filing. In fact, Penera claimed, in the motorcade held by her political party, no person made any speech, not even any of the candidates. Instead, there was only marching music in the background and a grand standing for the purpose of raising the hands of the candidates in the motorcade. Finally, Penera cited *Barroso v. Ampig*[8] in her defense, wherein the Court supposedly ruled that a motorcade held by candidates during the filing of their COCs was not a form of political campaigning.

Also on 19 April 2007, Andanar and Penera appeared with their counsels before the ORED-Region XIII, where they agreed to submit their position papers and other evidence in support of their allegations.[9]

After the parties filed their respective Position Papers, the records of the case were transmitted to the COMELEC main office in Manila for adjudication. It was subsequently raffled to the COMELEC Second Division.

While SPA No. 07-224 was pending before the COMELEC Second Division, the 14 May 2007 elections took place and, as a result thereof, Penera was proclaimed the duly elected Mayor of Sta. Monica. Penera soon assumed office on 2 July 2002.

On 24 July 2007, the COMELEC Second Division issued its Resolution in SPA No. 07-224, penned by Commissioner Nicodemo T. Ferrer (Ferrer), which disqualified Penera from continuing as a mayoralty candidate in Sta. Monica, for engaging in premature campaigning, in violation of Sections 80 and 68 of the Omnibus Election Code.

The COMELEC Second Division found that:

On the afternoon of 29 March 2007, the 1st [sic] day to file the certificates of candidacy for local elective positions and a day before the start of the campaign period for the May 14, 2007 elections [some of the members of the political party Partido Padajon Surigao], headed by their mayoralty candidate Datty Penera, filed their respective Certificates of Candidacy before the Municipal Election Officer of Sta. Monica, Surigao del Norte.

Accompanied by a bevy of supporters, [Penera and her partymates] came to the municipal COMELEC office on board a convoy of two (2) trucks and an undetermined number of motorcycles, laden with balloons ad [sic] posters/banners containing names and pictures and the municipal positions for which they were seeking election. Installed with [sic] one of the trucks was a public speaker sound subsystem which broadcast [sic] the intent the [sic] run in the coming elections. The truck had the posters of Penera attached to it proclaiming his [sic] candidacy for mayor. The streamer of [Mar Longos, a candidate for the position of Board Member,] was proudly seen at the vehicles side. The group proceeded to motorcade until the barangays of Bailan, Libertad and as afar [sic] as Mabini almost nine (9) kilometers from Sta. Monica. [Penera and her partymates] were seen aboard the vehicles and throwing candies to the residents and onlookers.

Various affidavits and pictures were submitted elucidating the above-mentioned facts. The above facts were also admitted in the Answer, the Position Paper and during the hearings conducted for this case, the only defense propounded by [Penera] is that such acts allegedly do not constitute campaigning and is therefore not proscribed by the pertinent election laws.

x x x x

> What we however find disturbing is [Peneras] reference to the *Ampig Case* as the justification for the acts committed by [her]. There is really no reference to the acts or similar acts committed by [Penera] as having been considered as not constituting political campaign or partisan political activity. The issue in that case is whether or not the defect of the lack of a certification against non-forum [sic] shopping should result to the immediate dismissal of the election cases filed in that case. There is nothing in said case justifying a motorcade during the filing of certificates of candidacy. [Peneras] reliance thereon is therefore misplaced and of no potency at all.
>
> x x x x
>
> However, the photos submitted by [Andanar] only identified [Penera] and did not have any notation identifying or indicating any of the other [candidates from Peneras party]. It cannot be conclusively proven that the other [candidates from Peneras party] were indeed with Penera during the Motorcade. More importantly, the Answer and the Position Paper contain admissions referring only to [Penera]. There is therefore no justification for a whole sale [sic] disqualification of all the [candidates from Peneras party], as even the petition failed to mention particularly the participation of the other individual [party members].[10]

The afore-quoted findings of fact led the COMELEC Second Division to decree:

> PREMISES CONSIDERED, this Commission resolves to disqualify [Penera] but absolves the other [candidates from Peneras party] from violation of section 80 and 68 of the Omnibus Elections [sic] Code.[11]

Commissioner Florentino A. Tuason, Jr. (Tuason) wrote a Separate Opinion[12] on the 24 July 2007 Resolution. Although Commissioner Tuason concurred with the *ponente*, he stressed that, indeed, Penera should be made accountable for her actions after the filing of her COC on 29 March 2007. Prior thereto, there was no candidate yet whose candidacy would have been enhanced by the premature campaigning.

It was the third member of the COMELEC Second Division, Commissioner Rene V. Sarmiento (Sarmiento) who put forth a Dissenting Opinion[13] on the 24 July 2007Resolution. Commissioner Sarmiento believed that the pieces of evidence submitted by Andanar did not sufficiently establish probable cause that Penera engaged in premature campaigning, in violation of Sections 80 and 68 of the Omnibus Election Code. The two photocopied pictures, purporting to be those of Penera, did not clearly reveal what was actually happening in the truck or who were the passengers thereof. Likewise, the Affidavits seemed to have been prepared and executed by one and the same person because they had similar sentence construction and form, and they were sworn to before the same attesting officer.

Penera filed before the COMELEC *en banc* a Motion for Reconsideration[14] of the 24 July 2007 Resolution of the COMELEC Second Division, maintaining that she did not make any admission on the factual matters stated in the appealed resolution. Penera also contended that the pictures and Affidavits submitted by Andanar should not have been given any credence. The pictures were mere photocopies of the originals and lacked the proper authentication, while the Affidavits were taken *ex parte*, which would almost always make them incomplete and inaccurate. Subsequently, Penera filed a Supplemental Motion for Reconsideration,[15] explaining that supporters spontaneously accompanied Penera and her fellow candidates in filing their COCs, and the motorcade that took place after the filing was actually part of the dispersal of said supporters and their transportation back to their respective *barangays*.

In the Resolution dated 30 January 2008, the COMELEC *en banc* denied Peneras Motion for Reconsideration, disposing thus:

> **WHEREFORE**, this Commission **RESOLVES** to **DENY** the instant Motion for Reconsideration filed by [Penera] for **UTTER LACK OF MERIT**.[16]

The COMELEC *en banc* ruled that Penera could no longer advance the arguments set forth in her Motion for Reconsideration and Supplemental Motion for Reconsideration, given that she failed to first express and elucidate on the same in her Answer and Position Paper. Penera did not specifically deny the material averments that the motorcade went as far as Barangay Mabini, announcing their candidacy and requesting the people to vote for them on Election Day, despite the fact that the same were clearly propounded by Andanar in his Petition for Disqualification and Position Paper. Therefore, these material averments should be considered admitted. Although the COMELEC *en banc* agreed that no undue importance should be given to sworn statements or affidavits submitted as evidence, this did not mean that such affidavits should not be given any evidentiary weight at all. Since Penera neither refuted the material averments in Andanars Petition and the Affidavits attached thereto nor submitted countervailing evidence, then said Affidavits, even if taken *ex parte*, deserve some degree of importance. The COMELEC *en banc* likewise conceded that the pictures submitted by Andanar as evidence would have been unreliable, but only if they were presented by their lonesome. However, said pictures, together with Peneras admissions and the Affidavits of Andanars witnesses, constituted sufficient evidence to establish Peneras violation of the rule against premature campaigning. Lastly, the COMELEC *en banc* accused Penera of deliberately trying to mislead the Commission by citing *Barroso,* given that the said case was not even remotely applicable to the case at bar.

Consistent with his previous stand, Commissioner Sarmiento again dissented[17] from the 30 January 2008 Resolution of the COMELEC *en banc*. He still believed that Andanar was not able to adduce substantial evidence that would support the claim of violation of election laws. Particularly, Commissioner Sarmiento accepted Peneras explanation that the motorcade conducted after the filing by Penera and the other candidates of their COCs was merely part of the dispersal of the spontaneous gathering of their supporters. The incident was only in accord with normal human social experience.

Still undeterred, Penera filed the instant Petition before us, praying that the Resolutions dated 24 July 2007 and 30 January 2008 of the COMELEC Second Division and *en banc*, respectively, be declared null and void for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In a Resolution[18] dated 4 March 2008, we issued a Temporary Restraining Order (TRO), enjoining the COMELEC from implementing the assailed Resolutions, on the condition that Penera post a bond in the amount of ₱5,000.00. We also directed COMELEC and Andanar to comment on the instant Petition.

After the COMELEC, through the Office of the Solicitor General (OSG), and Andanar filed their respective Comments[19] on the Petition at bar, we required Penera, in a Resolution[20] dated 17 June 2008, to file a Reply. However, as no Reply was filed in due time, we dismissed Peneras Petition in a Resolution[21] dated 14 October 2008, in accordance with Rule 56, Section 5(e) of the Rules of Court.[22] Penera subsequently filed an *Ex Parte* Motion to Admit Reply,[23] which we treated as a Motion for Reconsideration of the Resolution dated 14 October 2008. On 11 November 2008, we issued another Resolution reinstating Peneras Petition.[24]

Penera presents the following issues for our consideration:

I.

Whether or not [Penera] has engaged in an election campaign or partisan political activity outside the campaign period.

II.

Whether the contents of the complaint are deemed admitted for failure of [Penera] to specifically deny the same.

III.

Whether or not [Andanar] has presented competent and substantial evidence to justify a conclusion that [Penera] violated Section 80 and 68 of the Omnibus Election Code.

IV.

Whether or not [the COMELEC] committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in finding that the act of [Penera] in conducting a motorcade before the filing of her certificate of candidacy constitutes premature campaigning.

V.

> Whether or not [the COMELEC] committed grave abuse of discretion amounting to lack of or in excess of jurisdiction when it resolves [sic] to disqualify [Penera] despite the failure of [Andanar] to present competent, admissible and substantial evidence to prove [the] violation of Section 68 and 80 of the Omnibus Election Code.

Penera claims that the COMELEC exercised its discretion despotically, arbitrarily and whimsically in disqualifying her as a mayoralty candidate in Sta. Monica on the ground that she engaged in premature campaigning. She asserts that the evidence adduced by Andanar was grossly insufficient to warrant the ruling of the COMELEC.

Penera insists that the COMELEC Second Division erred in its findings of fact, basically adopting Andanars allegations which, contrary to the belief of the COMELEC Second Division, Penera never admitted. Penera maintains that the motorcade was spontaneous and unplanned, and the supporters merely joined Penera and the other candidates from her party along the way to, as well as within the premises of, the office of the COMELEC Municipal Election Officer. Andanars averments that after Penera and the other candidates from her party filed their COCs, they held a motorcade in the different *barangays* of Sta. Monica, waived their hands to the public and threw candies to the onlookers were not supported by competent substantial evidence. Echoing Commissioner Sarmientos dissent from the assailed COMELEC Resolutions, Penera argues that too much weight and credence were given to the pictures and Affidavits submitted by Andanar. The declaration by the COMELEC that it was Penera in the pictures is tenuous and erroneous, as the COMELEC has no personal knowledge of Peneras identity, and the said pictures do not clearly reveal the faces of the individuals and the contents of the posters therein. In the same vein, the Affidavits of Andanars known supporters, executed almost a month after Andanar filed his Petition for Disqualification before the ORED-Region XIII, were obviously prepared and

executed by one and the same person, because they have a similar sentence construction, and computer font and form, and were even sworn to before the same attesting officer on the same date.

We find no merit in the instant Petition.

The questions of fact

Crystal clear from the above arguments is that Penera is raising only questions of fact in her Petition presently before us. We do not find any reason to pass upon the same, as this Court is not a trier of facts. It is not the function of the Court to review, examine and evaluate or weigh the probative value of the evidence presented. A question of fact would arise in such an event.

The sole function of a writ of *certiorari* is to address issues of want of jurisdiction or grave abuse of discretion, and it does not include a review of the tribunals evaluation of the evidence.[25] Because of its fact-finding facilities and its knowledge derived from actual experience, the COMELEC is in a peculiarly advantageous position to evaluate, appreciate and decide on factual questions before it. Factual findings of the COMELEC, based on its own assessments and duly supported by evidence, are conclusive on this Court, more so in the absence of a grave abuse of discretion, arbitrariness, fraud, or error of law in the questioned resolutions. Unless any of these causes are clearly substantiated, the Court will not interfere with the findings of fact of the COMELEC.[26]

Grave abuse of discretion is such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. The abuse must be so patent and so gross as

to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[27]

We find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC Second Division in disqualifying Penera as a mayoralty candidate in Sta. Monica in the Resolution dated 24 July 2007; and also on the part of the COMELEC *en banc* in denying Peneras Motion for Reconsideration on the Resolution dated 30 January 2008. Said Resolutions are sufficiently supported by substantial evidence, meaning, such evidence as a reasonable mind might accept as adequate to support a conclusion.[28]

The prohibited act of premature campaigning is defined under Section 80 of the Omnibus Election Code, to wit:

> SECTION 80. *Election campaign or partisan political activity outside campaign period*. **It shall be unlawful for any person, whether or not a voter or candidate, or for any party, or association of persons, to engage in an election campaign or partisan political activity except during the campaign period**: *Provided*, That political parties may hold political conventions or meetings to nominate their official candidates within thirty days before the commencement of the campaign period and forty-five days for Presidential and Vice-Presidential election. (Emphasis ours.)

If the commission of the prohibited act of premature campaigning is duly proven, the consequence of the violation is clearly spelled out in Section 68 of the said Code, which reads:

> 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 xxx (e) **violated any of Sections 80**, 83, 85, 86 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. (Emphases ours.)

In the case at bar, it had been sufficiently established, not just by Andanars evidence, but also those of Penera herself, that Penera and her partymates, after filing their COCs on 29 March 2007, participated in a motorcade which passed through the different *barangays* of Sta. Monica, waived their hands to the public, and threw candies to the onlookers.

Indeed, Penera expressly admitted in her Position Paper that:

> Respondents **actually had a motorcade** of only two (2) jeppneys [sic] and ten (10) motorcycles **after filing their Certificate of Candidacy** at 3:00 P.M., March 29, 2007 without any speeches made and only one streamer of a board member Candidate and multi-colored balloons attached to the jeppneys [sic] and motorcycles.[29] (Emphasis ours.)

Additionally, the Joint Affidavit of Marcial Dolar, Allan Llatona, and Renante Platil, attached to Peneras Position Paper, gave an even more straightforward account of the events, thus:

1. That on March 29, 2007 at 3:00 P.M. at Sta. Monica, Surigao del Norte, Mayoralty Candidates Rosalinda CA. Penera [sic] and her parties of four (4) kagawads filed their certificate of candidacy at the COMELEC Office;

2. That their [sic] was a motorcade consisting of two jeppneys [sic] and 10 motorcycles **after actual registration with the COMELEC** with jeeps decorated with balloons and a streamer of Margarito Longos, Board Member Candidate;

3. That **the motorcade proceeded to three (3) barangays out of the 11 barangays while supporters were throwing sweet candies to the crowd**;

4. That there was **merriment and marching music** without mention of any name of the candidates more particularly lead-candidate Rosalinda CA. Penera [sic];

5. That we were in the motorcade on that afternoon only riding in one of the jeepneys.[30] (Emphases ours.)

In view of the foregoing admissions by Penera and her witnesses, Penera cannot now be allowed to adopt a conflicting position.

More importantly, the conduct of a motorcade is a form of election campaign or partisan political activity, falling squarely within the ambit of Section 79(b)(2) of the Omnibus Election Code, on [h]olding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate[.] A motorcade is a procession or parade of automobiles or other motor vehicles.[31] The conduct thereof during election periods by the candidates and their supporters is a fact that need not be belabored due to its widespread and pervasive practice. The obvious purpose of the conduct of motorcades is to introduce the candidates and the positions, to which they seek to be elected, to the voting public; or to make them more visible so as to facilitate the recognition and recollection of their names in the minds of the voters come election time. Unmistakably, motorcades are undertaken for no other purpose than to promote the election of a particular candidate or candidates.

In the instant Petition, Penera never denied that she took part in the conduct of the motorcade after she filed her COC on the day before the start of the campaign period.She merely claimed that the same was not undertaken for campaign purposes. Penera proffered the excuse that the motorcade was already part of the dispersal of the supporters who spontaneously accompanied Penera and her partymates in filing their COCs. The said supporters were already being transported back to their respective *barangays* after the COC filing. Penera stressed that no speech was made by any person, and there was only background marching music and a grand standing for the purpose of raising the hands of the candidates in the motorcade.

We are not convinced.

As we previously noted, Penera and her witnesses admitted that the vehicles, consisting of two jeepneys and ten motorcycles, were festooned with multi-colored balloons; the motorcade went around three *barangays* in Sta. Monica; and Penera and her partymates waved their hands and threw sweet candies to the crowd. With vehicles, balloons, and even candies on hand, Penera can hardly persuade us that the motorcade was spontaneous and unplanned.

For violating Section 80 of the Omnibus Election Code, proscribing election campaign or partisan political activity outside the campaign period, Penera must be disqualified from holding the office of Mayor of Sta. Monica.

The questions of law

The dissenting opinion, however, raises the legal issue that Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369, provides a new definition of the term candidate, as a result of which, premature campaigning may no longer be committed.

Under Section 79(a) of the Omnibus Election Code, a *candidate* is any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties.

Republic Act No. 8436,[32] enacted on 22 December 1997, authorized the COMELEC to use an automated election system for the process of voting, counting of votes, and canvassing/consolidating the results of the national and local elections. The statute also mandated the COMELEC to acquire automated counting machines, computer equipment, devices and materials; and to adopt new

electoral forms and printing materials. In particular, Section 11 of Republic Act No. 8436 provided for the specifications of the official ballots to be used in the automated election system and the guidelines for the printing thereof, the relevant portions of which state:

> SECTION 11. *Official ballot*. - The Commission shall prescribe the size and form of the official ballot which shall contain the titles of the positions to be filled and/or the propositions to be voted upon in an initiative, referendum or plebiscite. Under each position, the names of candidates shall be arranged alphabetically by surname and uniformly printed using the same type size. A fixed space where the chairman of the Board of Election inspectors shall affix his/her signature to authenticate the official ballot shall be provided.
>
> Both sides of the ballots may be used when necessary.
>
> **For this purpose, the deadline for the filing of certificate of candidacy/petition for registration/manifestation to participate in the election shall not be later than one hundred twenty (120) days before the elections**: Provided, That, any elective official, whether national or local, running for any office other than the one which he/she is holding in a permanent capacity, except for president and vice-president, shall be deemed resigned only upon the start of the campaign period corresponding to the position for which he/she is running: **Provided, further, That, unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period**: Provided, finally, That, for purposes of the May 11, 1998 elections, the deadline for filing of the certificate of candidacy for the positions of President, Vice President, Senators and candidates under the Party-List System as well as petitions for registration and/or manifestation to participate in the Party-List System shall be on February 9, 1998 while the deadline for the filing of certificate of candidacy for other positions shall be on March 27, 1998. (Emphases ours.)

On 10 February 2007, Republic Act No. 9369[33] took effect. Section 13 of Republic Act No. 9369 amended Section 11 of Republic Act No. 8436 and renumbered the same as the new Section 15 of Republic Act No. 8436. The pertinent portions of Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369, now read:

> SECTION.15. *Official Ballot*. - The Commission shall prescribe the format of the electronic display and/or the size and form of the official ballot, which shall contain the titles of the position to be filled and/or the proposition to be voted upon in an initiative, referendum or plebiscite. Where practicable, electronic displays must be constructed to present the names of all candidates for the same position in the same page or screen, otherwise, the electronic displays must be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot. Under each position to be filled, the names of candidates shall be arranged alphabetically by surname and uniformly indicated using the same type size. The maiden or married name shall be listed in the official ballot, as preferred by the female candidate. Under each proposition to be vote upon, the choices should be uniformly indicated using the same font and size.
>
> A fixed space where the chairman of the board of election inspector shall affix her/her signature to authenticate the official ballot shall be provided.
>
> For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition of registration/manifestation to participate in the election. **Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy**: *Provided*, **That, unlawful acts or omissions applicable to a candidate shall effect only upon the start of the aforesaid campaign period**: *Provided, finally*, That any person holding a public appointive office or position, including active members of the armed forces, and officers, and employees in government-owned or-controlled corporations, shall be considered *ipso factor* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certification of candidacy. (Emphases ours.)

In view of the third paragraph of Section 15 of Republic Act No. 8436, as amended, the Dissenting Opinion argues that Section 80 of the Omnibus Election Code can not be applied to the present case since, as the Court held in *Lanot v. Commission on Elections*,[34] the election campaign or partisan activity, which constitute the prohibited premature campaigning, should be designed **to promote the election or defeat of a particular candidate or candidates**. Under present election laws, while a person may have filed his/her COC within the prescribed period for doing so, said person shall not be considered a candidate until the start of the campaign period. Thus, prior to the start of the campaign period, there can be no election campaign or partisan political activity designed to promote the election or defeat of a particular candidate to public office because there is no candidate to speak of.

According to the Dissenting Opinion, even if Peneras acts before the start of the campaign period constitute election campaigning or partisan political activities, these are not punishable under Section 80 of the Omnibus Election Code given that she was not yet a candidate at that time. On the other hand, Peneras acts, if committed within the campaign period, when she was already a candidate, are likewise not covered by Section 80 as this provision punishes only acts outside the campaign period.

The Dissenting Opinion ultimately concludes that because of Section 15 of Republic Act No. 8436, as amended, the prohibited act of premature campaigning in Section 80 of the Omnibus Election Code, is practically impossible to commit at any time.

We disagree. Section 80 of the Omnibus Election Code remains relevant and applicable despite Section 15 of Republic Act No. 8436, as amended.

A close reading of the entire Republic Act No. 9369, which amended Republic Act No. 8436, would readily reveal that that it did not contain an express repeal of

Section 80 of the Omnibus Election Code. An **express repeal** is one wherein a statute declares, usually in its repealing clause, that a particular and specific law, **identified by its number or title**, is repealed.[35] Absent this specific requirement, an express repeal may not be presumed.

Although the title of Republic Act No. 9369 particularly mentioned the amendment of Batas Pambansa Blg. 881, or the Omnibus Election Code, to wit:

> An Act Amending Republic Act No. 8436, Entitled "An Act Authorizing the Commission on Elections to Use an Automated Election System x x x, **Amending for the Purpose Batas Pambansa Blg. 881, As Amended** x x x. (Emphasis ours.),

said title explicitly mentions, not the repeal, but the **amendment** of Batas Pambansa Blg. 881. Such fact is indeed very material. *Repeal* of a law means its complete abrogation by the enactment of a subsequent statute, whereas the *amendment* of a statute means an alteration in the law already existing, leaving some part of the original still standing.[36]Section 80 of the Omnibus Election Code is not even one of the specific provisions of the said code that were expressly **amended** by Republic Act No. 9369.

Additionally, Section 46,[37] the repealing clause of Republic Act No. 9369, states that:

> Sec. 46. *Repealing Clause.* All laws, presidential decrees, executive orders, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 46 of Republic Act No. 9369 is a general repealing clause. It is a clause which predicates the intended repeal under the condition that a **substantial conflict** must be found in existing and prior acts. The failure to add a specific repealing clause indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and old laws. This latter situation falls under the category of an **implied repeal**.[38]

Well-settled is the rule in statutory construction that implied repeals are disfavored. In order to effect a repeal by implication, the later statute must be so irreconcilably inconsistent and repugnant with the existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before the inference of implied repeal may be drawn, for inconsistency is never presumed. There must be a showing of repugnance clear and convincing in character. The language used in the later statute must be such as to render it irreconcilable with what had been formerly enacted. An inconsistency that falls short of that standard does not suffice.[39]

Courts of justice, when confronted with apparently conflicting statutes, should endeavor to **reconcile** the same instead of declaring outright the invalidity of one as against the other. Such alacrity should be avoided. The wise policy is for the judge to **harmonize** them if this is possible, bearing in mind that they are equally the handiwork of the same legislature, and so give effect to both while at the same time also according due respect to a coordinate department of the government.[40]

To our mind, there is **no absolute and irreconcilable incompatibility** between Section 15 of Republic Act No. 8436, as amended, and Section 80 of the Omnibus Election Code, which defines the prohibited act of premature campaigning. It is possible to harmonize and reconcile these two provisions and, thus, give effect to both.

The following points are explanatory:

First, Section 80 of the Omnibus Election Code, on premature campaigning, explicitly provides that [i]t shall be unlawful for **any person, whether or not a voter or candidate,**or for any party, or association of persons, to engage in an election campaign or partisan political activity, **except during the campaign period.** Very simply, premature campaigning may be committed even by a person who is **not a candidate**.

For this reason, the plain declaration in *Lanot* that [w]hat Section 80 of the Omnibus Election Code prohibits is an election campaign or partisan political activity **by a candidate**outside of the campaign period,[41] is clearly erroneous.

Second, Section 79(b) of the Omnibus Election Code defines election campaign or partisan political activity in the following manner:

> SECTION 79. *Definitions*. - As used in this Code:
>
> x x x x
>
> (b) The term "**election campaign**" or "**partisan political activity**" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:
>
> (1) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;

(2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

(3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.

True, that pursuant to Section 15 of Republic Act No. 8436, as amended, even after the filing of the COC but before the start of the campaign period, a person is not yet officially considered a *candidate*. Nevertheless, a person, **upon the filing of his/her COC,** already **explicitly declares his/her intention** to run as a candidate in the coming elections. The commission by such a person of any of the acts enumerated under Section 79(b) of the Omnibus Election Code (*i.e.*, holding rallies or parades, making speeches, *etc*.) can, thus, be logically and reasonably construed as for the purpose of promoting his/her intended candidacy.

When the campaign period starts and said person proceeds with his/her candidacy, **his/her intent turning into actuality**, we can already consider his/her acts, after the filing of his/her COC and prior to the campaign period, as the promotion of his/her election **as a candidate**, hence, constituting premature campaigning, for which he/she may be disqualified. Also, conversely, if said person, for any reason, withdraws his/her COC before the campaign period, then there is no point to view his/her acts prior to said period as acts for the promotion of his/her election as a candidate. In the latter case, there can be no premature

campaigning as there is no candidate, whose disqualification may be sought, to begin with.[42]

Third, in connection with the preceding discussion, the line in Section 15 of Republic Act No. 8436, as amended, which provides that any unlawful act or omission applicable to a candidate shall **take effect** only upon the start of the campaign period, does not mean that the acts constituting premature campaigning can only be committed, for which the offender may be disqualified, **during** the campaign period. Contrary to the pronouncement in the dissent, **nowhere** in the said *proviso* was it stated that campaigning before the start of the campaign period is lawful, such that the offender may freely carry out the same with impunity.

As previously established, **a person**, after filing his/her COC but prior to his/her becoming a candidate (thus, prior to the start of the campaign period), can already **commit** the acts described under Section 79(b) of the Omnibus Election Code as election campaign or partisan political activity. However, only after said person officially becomes a candidate, at the beginning of the campaign period, can said acts be **given effect** as premature campaigning under Section 80 of the Omnibus Election Code. Only after said person officially becomes a candidate, at the start of the campaign period, can his/her **disqualification** be sought for acts constituting premature campaigning. **Obviously, it is only at the start of the campaign period, when the person officially becomes a candidate, that the undue and iniquitous advantages of his/her prior acts, constituting premature campaigning, shall accrue to his/her benefit.** Compared to the other candidates who are only about to begin their election campaign, a candidate who had previously engaged in premature campaigning already enjoys an unfair headstart in promoting his/her candidacy.

As can be gleaned from the foregoing disquisition, harmony in the provisions of Sections 80 and 79 of the Omnibus Election Code, as well as Section 15 of Republic Act No. 8436, as amended, is not only very possible, but in fact desirable, necessary and consistent with the legislative intent and policy of the law.

The laudable and exemplary intention behind the prohibition against premature campaigning, as declared in *Chavez v. Commission on Elections*,[43] is to level the playing field for candidates of public office, to equalize the situation between the popular or rich candidates, on one hand, and lesser-known or poorer candidates, on the other, by preventing the former from enjoying undue advantage in exposure and publicity on account of their resources and popularity. The intention for prohibiting premature campaigning, as explained in *Chavez*, could not have been significantly altered or affected by Republic Act No. 8436, as amended by Republic Act No. 9369, the avowed purpose of which is to carry-on the automation of the election system. **Whether the election would be held under the manual or the automated system, the need for prohibiting premature campaigning to level the playing field between the popular or rich candidates, on one hand, and the lesser-known or poorer candidates, on the other, by allowing them to campaign only within the same limited period remains.**

We cannot stress strongly enough that premature campaigning is a pernicious act that is continuously threatening to undermine the conduct of fair and credible elections in our country, no matter how great or small the acts constituting the same are. The choice as to who among the candidates will the voting public bestow the privilege of holding public office should not be swayed by the shrewd conduct, verging on bad faith, of some individuals who are able to spend resources to promote their candidacies in advance of the period slated for campaign activities.

Verily, the consequences provided for in Section 68[44] of the Omnibus Election Code for the commission of the prohibited act of premature campaigning are severe: the candidate who is declared guilty of committing the offense shall be disqualified from continuing as a candidate, or, if he/she has been elected, from holding office. Not to mention that said candidate also faces criminal prosecution for an election offense under Section 262 of the same Code.

The Dissenting Opinion, therefore, should not be too quick to pronounce the ineffectiveness or repeal of Section 80 of the Omnibus Election Code just because of a change in the meaning of *candidate* by Section 15 of Republic Act No. 8436, as amended, primarily, for administrative purposes. An interpretation should be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory. [45] Indeed, not only will the prohibited act of premature campaigning be officially decriminalized, the value and significance of having a campaign period before the conduct of elections would also be utterly negated. Any unscrupulous individual with the deepest of campaign war chests could then afford to spend his/her resources to promote his/her candidacy well ahead of everyone else. Such is the very evil that the law seeks to prevent. Our lawmakers could not have intended to cause such an absurd situation.

The Dissenting Opinion attempts to brush aside our preceding arguments by contending that there is no room for statutory construction in the present case since Section 15 of Republic Act No. 8436,[46] as amended by Section 13 of Republic Act No. 9369,[47] is crystal clear in its meaning. We disagree. There would only be no need for statutory construction if there is a provision in Republic Act No. 8436 or Republic Act No. 9369 that explicitly states that there shall be no more premature campaigning. But absent the same, our position herein, as well as that of the Dissenting Opinion, necessarily rest on our respective construction of the legal provisions involved in this case.

Notably, while faulting us for resorting to statutory construction to resolve the instant case, the Dissenting Opinion itself cites a rule of statutory construction, particularly, that penal laws should be liberally construed in favor of the offender. The Dissenting Opinion asserts that because of the third paragraph in Section 15 of Republic Act No. 8436, as amended, the election offense described in Section 80 of the Omnibus Election Code is practically impossible to commit at

any time and that this flaw in the law, which defines a criminal act, must be construed in favor of Penera, the offender in the instant case.

The application of the above rule is uncalled for. It was acknowledged in *Lanot* that a disqualification case has two aspects: one, electoral;[48] the other, criminal.[49] The instant case concerns only the electoral aspect of the disqualification case. Any discussion herein on the matter of Peneras criminal liability for premature campaigning would be nothing more than *obiter dictum*. More importantly, as heretofore already elaborated upon, Section 15 of Republic Act No. 8436, as amended, did not expressly or even impliedly repeal Section 80 of the Omnibus Election Code, and these two provisions, based on legislative intent and policy, can be harmoniously interpreted and given effect. Thus, there is**no flaw** created in the law, arising from Section 15 of Republic Act No. 8436, as amended, which needed to be construed in Peneras favor.

The Dissenting Opinion further expresses the fear that pursuant to our theory, all the politicians with infomercials prior to the filing of their COCs would be subject to disqualification, and this would involve practically all the prospective presidential candidates who are now leading in the surveys.

This fear is utterly unfounded. It is the filing by the person of his/her COC through which he/she explicitly declares his/her intention to run as a candidate in the coming elections. It is such declaration which would color the subsequent acts of said person to be election campaigning or partisan political activities as described under Section 79(b) of the Omnibus Election Code. **It bears to point out that, at this point, no politician has yet submitted his/her COC.** Also, the plain solution to this rather misplaced apprehension is for the politicians themselves to adhere to the letter and intent of the law and keep within the bounds of fair play in the pursuit of their candidacies. This would mean that after filing their COCs, the prudent and proper course for them to take is to wait for

the designated start of the campaign period before they commence their election campaign or partisan political activities. Indeed, such is the only way for them to avoid disqualification on the ground of premature campaigning. It is not for us to carve out exceptions to the law, much more to decree away the repeal thereof, in order to accommodate any class of individuals, where no such exception or repeal is warranted.

Lastly, as we have observed at the beginning, Peneras Petition is essentially grounded on questions of fact. Peneras defense against her disqualification, before the COMELEC and this Court, rests on the arguments that she and her partymates did not actually hold a motorcade; that their supporters spontaneously accompanied Penera and the other candidates from her political party when they filed their certificates of candidacy; that the alleged motorcade was actually the dispersal of the supporters of Penera and the other candidates from her party as said supporters were dropped off at their respective barangays; and that Andanar was not able to present competent, admissible, and substantial evidence to prove that Penera committed premature campaigning. **Penera herself never raised the argument that she can no longer be disqualified for premature campaigning under Section 80, in relation to Section 68, of the Omnibus Election Code, since the said provisions have already been, in the words of the Dissenting Opinion, rendered inapplicable, repealed, and done away with by Section 15 of Republic Act No. 8436, as amended.** This legal argument was wholly raised by the Dissenting Opinion.

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal. Points of law, theories, issues, and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule.[50] If we do not allow and consider the change in theory of a case by a party on appeal, should we not also refrain

from *motu proprio* adopting a theory which none of the parties even raised before us?

Nonetheless, the questions of fact raised by Penera and questions of law raised by the Dissenting Opinion must all be resolved against Penera. Penera should be disqualified from holding office as Mayor of Sta. Monica for having committed premature campaigning when, right after she filed her COC, but still a day before the start of the campaign period, she took part in a motorcade, which consisted of two jeepneys and ten motorcycles laden with multi-colored balloons that went around several *barangays* of Sta. Monica, and gave away candies to the crowd.

Succession

Despite the disqualification of Penera, we cannot grant Andanars prayer to be allowed to assume the position of Mayor of Sta. Monica. The well-established principle is that the ineligibility of a candidate receiving majority votes does not entitle the candidate receiving the next highest number of votes to be declared elected.[51]

In this case, the rules on succession under the Local Government Code shall apply, to wit:

> SECTION 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor*. **If a permanent vacancy occurs in the office of the** xxx **mayor**, **the** x x x **vice-mayor concerned shall become the** x x x **mayor**.
>
> x x x x

> For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, **fails to qualify or is removed from office**, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office. (Emphases ours.)

Considering Peneras disqualification from holding office as Mayor of Sta. Monica, the proclaimed Vice-Mayor shall then succeed as Mayor.

WHEREFORE, premises considered, the instant Petition for *Certiorari* is hereby **DISMISSED**. The Resolutions dated 24 July 2007 and 30 January 2008 of the COMELEC Second Division and *en banc*, respectively, in SPA No. 07-224 are hereby **AFFIRMED**. In view of the disqualification of petitioner Rosalinda A. Penera from running for the office of Mayor of Sta. Monica, Surigao del Norte, and the resulting permanent vacancy therein, it is hereby **DECLARED** that the proclaimed Vice-Mayor is the rightful successor to said office. The Temporary Restraining Order issued on 4 March 2008 is hereby **ORDERED** lifted. Costs against the petitioner.

SO ORDERED.

Nolasco vs Comelec

FACTS

A disqualification case was filed against Meycauayan, Bulacan Mayor-elect Florentino Blanco for alleged performing acts which are grounds for disqualification under the Omnibus Election Code – giving money to influence, induce or corrupt the voters or public officials performing election functions: for committing acts of terrorism to enhance his candidacy, and for spending an amount for his campaign in excess of what is allowed by the law.

The COMELEC First Division required both parties to submit their position papers. The case was decided against Blanco.

A reconsideration was moved by Blanco in the COMELEC En Banc. Nolasco, the vice-mayor-elect took part as intervenor, urging that should Blanco be finally disqualified, the mayoralty position be turned over to him. The parties were allowed to file their memoranda. En Banc denied Blanco and Nolasco's motions thus this petition for certiorari.

Issues:

1. WON Blanco was denied due process and equal protection of laws
2. WON the COMELEC committed grave abuse of discretion in proclaiming Alarilla as the duly elected mayor

Held:

1. Blanco was not denied due process and equal protection of the laws. He was given all the opportunity to prove that the evidence on his disqualification was not strong. Blanco's contention that the minimum quantum of evidence was not met is untenable. What RA 6646 and the COMELEC Rules of Procedure require is a mere evidence of guilt that should be strong to justify the COMELEC in suspending a winning candidate's proclamation.

2. Nolasco, not Alarilla, is adjudged as the Mayor of Meycauayan. It is already a settled principle in the case of Reyes v COMELEC that the candidate with the second highest number of votes cannot be proclaimed winner in case the winning candidate be disqualified. There cannot be an assumption that the second placer would have received the other votes otherwise it is a judgment substituting the mind of a voter. It cannot be assumed that the second placer would have won the elections because in the situation where the disqualified candidate is excluded, the condition would have substantially changed.

EN BANC

[G.R. No. 122250 & 122258. July 21, 1997]

EDGARDO C. NOLASCO, *petitioner, vs*. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS, MEYCAUAYAN, BULACAN, and EDUARDO A. ALARILLA, *respondents*.

FLORENTINO P. BLANCO, *petitioner, vs*. COMMISSION ON ELECTIONS and EDUARDO A. ALARILLA, *respondents*.

D E C I S I O N

PUNO, *J.*:

First, we rewind the facts. The election for mayor of Meycauayan, Bulacan was held on May 8, 1995. The principal protagonists were petitioner Florentino P. Blanco and private respondent Eduardo A. Alarilla. Blanco received 29,753 votes, while Alarilla got 23,038 votes. [1] Edgardo Nolasco was elected Vice-Mayor with 37,240 votes.

On May 9, 1995, Alarilla filed with the COMELEC a petition to disqualify Blanco. He alleged:

x x x x x x x x x

4. Based on intelligence reports that respondent was maintaining his own `private army' at his aforesaid resident, P/Insp. Ronaldo O. Lee of the Philippine National Police assigned with the Intelligence Command at Camp Crame, applied for and was granted search warrant no. 95-147 by Branch 37 of the Regional Trial Court of Manila on 5 May 1995. A copy of the said search warrant is attached as Annex "A" hereof.

5. In compliance with said search warrant no. 95-147, an elite composite team of the PNP Intelligence Command, Criminal Investigation Service (CIS), and Bulacan Provincial Command, backed up by the Philippine National Police Special Action Force, accompanied by mediamen who witnessed and recorded the search by video and still cameras, raided the house of respondent Florentino Blanco at his stated address at Bancal, Meycauayan, Bulacan.

6. Enclosed as Annex "A-1" is a video tape taken of the proceedings during the raid.

7. The composite team was able to enter the said premises of respondent Florentino Blanco where they conducted a search of the subject firearms and ammunition.

8. The search resulted in the arrest of six (6) men who were found carrying various high powered firearms without any license or authority to use or possess such long arms. These persons composing respondent's `private army,' and the unlicensed firearms are as follows:

A. Virgilio Luna y Valderama -

1. PYTHOM (sic) Cal. 347 SN 26946 with six (6) Rounds of Ammo.

2. INGRAM M10 Cal. 45 MP with Suppressor SN: 45457 with two (2) Mags and 54 Rounds of Ammo.

B. Raymundo Bahala y Pon -

1. HKMP5 Sn. C334644 with two (2) Mags and 47 Rounds of Ammo.

C.Roberto Santos y Sacris -

1. Smith and Wesson 357 Magnum Sn: 522218 with six (6) Rounds of Ammo.

D. Melchor Cabanero y Oreil -

1. Armscor 12 Gauge with three (3) Rounds of Ammo.

E. Edgardo Orteza y Asuncion -

1. Paltik Cal. 38 Rev with six (6) Rounds of Ammo.

F. Francisco Libari y Calimag -

1. Paltik Cal. 38 SN: 36869

Copies of the inventory receipts are hereto attached as Annexes "B" to "B-5" hereof.

9. During the search, members of the composite team saw through a large clear glass window, respondent's Galil assault rifle on a sofa inside a closed room of the subject premises.

10. Not allowed entry thereto by respondent and his wife, the members of the composite police-military team applied for the issuance of a second search warrant (Annex "B-6") so that they could enter the said room to seize the said firearm.

11. While waiting for the issuance of the second search warrant, respondent's wife and respondent's brother, Mariano Blanco, claiming to be the campaign manager of respondent in the Nationalist People's Coalition Party, asked permission to enter the locked room so they could withdraw money in a vault inside the locked room to pay their watchers, and the teachers of Meycauayan in the 8 May 1995 elections.

12. For reasons not known to petitioner, Mrs. Florentino Blanco and Mariano Blanco, were allowed to withdraw ten (10) large plastic bags from the vault.

13. When the said PNP composite team examined the ten (10) black plastic bags, they found out that each bag contained ten (10) shoe boxes. Each shoe box when examined contained 200 pay envelopes, and each pay envelope when opened contained the amount of P1,000.00. When questioned, respondent's brother Mariano Blanco and respondent's wife, admitted to the raiding team that the total amount of money in the ten (10) plastic bags is P10,000,000.00.

14. The labels found in the envelope shows that the money were intended as respondent's bribe money to the teachers of Meycauayan. Attached as Annex "C" is the cover of one of the shoe boxes containing the inscription that it is intended to the teachers of Brgy. Lawa, Meycauayan, Bulacan.

15. On election day 8 May 1995, respondent perpetrated the most massive vote-buying activity ever in the history of Meycauayan politics. Attached as Annex "D" is the envelope where this P10,000,000.00 was placed in 100 peso denominations totalling one thousand pesos per envelope with the inscription `VOTE!!! TINOY.'

This massive vote-buying activity was engineered by the respondent through his organization called `MTB' or `MOVEMENT FOR TINOY BLANCO VOLUNTEERS.' The chairman of this movement is respondent's brother, Mariano P. Blanco, who admitted to the police during the raid that these money were for the teachers and watchers of Meycauayan, Bulacan.

Attached as Annex "E" hereof is an MTB ID issued to one Armando Bulan of Precinct 77-A, Brgy. Jasmin, Bancal, Meycauayan, Bulacan. You will note that the ID is perforated in the middle. The purpose is for the voter to tear the office copy and return it to respondent's headquarters to receive the balance of the P500.00 of the bribe money after voting for respondent during the elections. The voter will initially be given a down-payment of P500.00.

16. This massive vote-buying was also perpetrated by respondent thru the familiar use of flying voters. Attached as Annex "F" hereof is a copy of the Police Blotter dated 8 May 1995 showing that six (6) flying voters were caught in different precincts of Meycauayan, Bulacan, who admitted after being caught and arrested that they were paid P200.00 to P300.00 by respondent and his followers, to vote for other voters in the voter's list.

17. Not satisfied, and with his overflowing supply of money, respondent used another scheme as follows. Respondent's paid voter will identify his target from the list of voter and will impersonate said voter in the list and falsify his signature.

Attached as Annex "G" hereof is the Minutes of Voting and Counting of Votes in Precinct No. 26, Brgy. Calvario, Meycauayan, Bulacan. Annex "G-1" is the statement of one Ma. Luisa de los Reyes Cruz stating that when she went to her precinct to vote, her name was already voted upon by another person. This entry was noted by Leticia T. Villanco, Poll Chairman; Estelita Artajo, - Poll Clerk; and Nelson John Nito - Poll Member.

18. Earlier before the election, respondent used his tremendous money to get in the good graces of the local Comelec Registrar, who was replaced by this Office upon the petition of the people of Meycauayan.Attached as Annex "H" hereof is an article in the 3 May 1995 issue of Abante entitled `1 M Suhol sa Comelec Registrar.'

19. The second search warrant on respondent's residence yielded to more firearms and thousands of rounds of ammunition. These guns were used by respondent to terrorize the population and make the people afraid to complain against respondent's massive vote buying and cheating in today's elections. Respondent's bribery of the teachers ensured the implementation of his vote-buying ballot box switching, impersonations, and other cheating schemes.

Attached as Annexes `I-1' to I-2' are the pertinent Receipts of the guns and ammunitions seized from respondent. Attached as Annex "J" is a Certification to the same effect.

20. The above acts committed by respondent are clear grounds for disqualification under Sec. 68 of the Omnibus Election Code for giving money to influence, induce or corrupt the voters or public officials performing election functions; for committing acts of terrorism to enhance his candidacy; and for spending in his election campaign an amount in excess of that allowed by the Election Code. There are only 97,000 registered voters in Meycauayan versus respondent's expenses of at least P10,000,000.00 as admitted above. (Emphasis supplied).

On May 15, 1995, Alarilla filed a Very Urgent Ex Parte Motion to Suspend Proclamation. The COMELEC (First Division) granted the motion after finding that there was a "probable commission of election offenses which are grounds for disqualification pursuant to the provisions of section 68 of the Omnibus Election Code (BP 881), and the evidence in support of disqualification is strong." It directed the Municipal Board of Canvassers "to complete the canvassing of election returns of the municipality of Meycauayan, but to suspend proclamation of respondent Florentino P. Blanco should he obtain the winning number of votes for the position of Mayor of Meycauayan, Bulacan until such time when the petitions for disqualification against him shall have been resolved."

On May 25, 1995, Blanco filed a Motion to Lift or Set Aside the Order suspending his proclamation. On May 29, 1995, he filed his Answer to the petition to disqualify him.

On May 30, 1995, the COMELEC (First Division) heard the petition to disqualify Blanco. The parties thereafter submitted their position papers.[2] Blanco even replied to the position paper of Alarilla on June 9, 1995.

On August 15, 1995, the COMELEC (First Division) disqualified Blanco on the ground of vote-buying, viz.:[3]

x x x x x x x x x

"WHEREFORE, premises considered, the Commission (First Division) RESOLVES to DISQUALIFY Respondent Florentino P. Blanco as a candidate for the Office of Mayor of Meycauayan, Bulacan in the May 8, 1995 elections for having violated Section 261 (a) of the Omnibus Election Code. The Order suspending the proclamation of herein Respondent is now made PERMANENT. The Municipal Board of Canvassers of Meycauayan, Bulacan shall immediately reconvene and, on the basis of the completed canvass of the election returns, determine the winner out of the remaining qualified candidates who shall be immediately proclaimed.

SO ORDERED."

Blanco moved for reconsideration on August 19, 1995 in the COMELEC en banc. Nolasco, as vice mayor, intervened in the proceedings.[4] He moved for reconsideration of that part of the resolution directing the Municipal Board of Canvassers to "immediately reconvene and, on the basis of the completed canvass of the election returns, determine the winner out of the remaining qualified candidates who shall be immediately proclaimed." He urged that as vice-mayor he should be declared mayor in the event Blanco was finally disqualified. The motions were heard on September 7, 1995. The parties were allowed to file their memoranda with right of reply. On October 23, 1995, the COMELEC en banc denied the motions for reconsideration.

In this petition for certiorari,[5] Blanco contends:

x x x x x x x x x

18. Respondent COMELEC En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction and acted arbitrarily in affirming en toto and adopting as its own the majority decision of the First Division in that:

18.1 It upheld the validity of the May 17, 1995 order suspending proclamation of Petitioner Blanco herein as the winning candidate for Mayor of Meycauayan without the benefit of any notice or hearing in

gross and palpable violation of Blanco's constitutional right to due process of law.

18.2 It violated the provisions of COMELEC Res. No. 2050 as amended, prescribing the procedure for disposing of disqualification cases arising out of the prohibited acts mentioned in Sec. 68 of the Omnibus Election Code, which Resolution this Honorable Tribunal explicitly sanctioned in the case of Lozano vs. Yorac. Moreover, it (COMELEC) violated Blanco's right to equal protection of the laws by setting him apart from other respondents facing similar disqualification suits whose case were referred by COMELEC to the Law Department pursuant to Com. Res. No. 2050 and ordering their proclamation -- an act which evidently discriminated against Petitioner Blanco herein.

18.3 It decided Petitioner Blanco's disqualification case in a SUMMARY PROCEEDING in violation of law and the precedents which consistently hold that questions of VOTE-BUYING, terrorism and similar such acts should be resolve in a formal election protest where the issue of vote buying is subjected to a full-dress hearing instead of disposing of the issue in a summary proceeding;

18.4 It declared Petitioner Blanco as having been involved in a conspiracy to engage in VOTE-BUYING without that minimum quantum of proof required to establish a disputable presumption of vote-buying in gross and palpable violation of the provisions of Section 28, Rep. Act. 6646;

18.5 It ordered the proclamation of a SECOND PLACER as the duly elected Mayor of Meycauayan, Bulacan, in gross violation and utter disregard of the doctrine laid down by this Honorable Supreme Court in the case of LABO vs. COMELEC which was reiterated only recently in the case of Aquino vs. Syjuco.

On the other hand, Nolasco contends in his petition for certiorari[6] that he should be declared as Mayor in view of the disqualification of Blanco. He cites section 44 of R.A. No. 7160 otherwise known as the Local Government Code of 1991 and our decision in Labo vs. COMELEC.[7]

We shall first resolve the Blanco petition.

Blanco was not denied due process when the COMELEC (First Division) suspended his proclamation as mayor pending determination of the petition for disqualification against him.Section 6 of R.A. No. 6646 and sections 4 and 5 of the Rule 25 of the Comelec Rules of Procedure merely require that evidence of guilt should be strong to justify the COMELEC in suspending a winning candidate's proclamation. It ought to be emphasized that the suspension order is provisional in nature and can be lifted when the evidence so warrants. It is akin to a temporary restraining order which a court can issue ex-parte under exigent circumstances.

In any event, Blanco was given all the opportunity to prove that the evidence on his disqualification was not strong. On May 25, 1995, he filed a Motion to Lift or Set Aside the Order suspending his proclamation. On May 29, 1995, he filed his Answer to the petition to disqualify him. The COMELEC heard the petition. Blanco thereafter submitted his position paper and reply to Alarilla's position paper. The COMELEC considered the evidence of the parties and their arguments and thereafter affirmed his disqualification. The hoary rule is that due process does not mean prior hearing but only an opportunity to be heard. The COMELEC gave Blanco all the opportunity to be heard. Petitions for disqualification are subject to summary hearings.[8]

Blanco also faults the COMELEC for departing from the procedure laid down in COMELEC Resolution 2050 as amended, in disqualification cases. The resolution pertinently provides:

x x x x x x x x x

Where a similar complaint is filed after election but before proclamation of the respondent candidate the complaint shall, nevertheless, be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department. If, before proclamation, the Law Department makes a prima facie finding of guilt and the corresponding information has been

filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the court before which the criminal case is pending and the said court may order the suspension of the proclamation if the evidence of guilt is strong."

It is alleged that the violation is fatal as it deprived Blanco of equal protection of our laws.

We do not agree. It cannot be denied that the COMELEC has jurisdiction over proclamation and disqualification cases. Article IX-C, section 2 of the Constitution endows the COMELEC the all encompassing power to "enforce and administer all laws and regulations relative to the conduct of an election x x x." We have long ruled that this broad power includes the power to cancel proclamations.[9] Our laws are no less explicit on the matter. Section 68 of B.P. Blg. 881 (Omnibus Election Code) provides:

"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, 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 an 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 elections laws."

Section 6 of R.A. No. 6646 likewise provides:

"Sec. 6. *Effect of Disqualification Case* - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong."

Despite these laws and existing jurisprudence, Blanco contends that COMELEC must follow the procedure in Resolution No. 2050 as amended. We hold that COMELEC cannot always be straitjacketed by this procedural rule. The COMELEC has explained that the resolution was passed to take care of the proliferation of disqualification cases at that time. It deemed it wise to delegate its authority to its Law Department as partial solution to the problem. The May 8, 1995 elections, however, did not result in a surfeit of disqualification cases which the COMELEC cannot handle. Hence, its decision to resolve the disqualification case of Blanco directly and without referring it to its Law Department is within its authority, a sound exercise of its discretion. The action of the COMELEC is in accord with Section 28 of R.A. No. 6646, *viz*:

"x x x.

"SEC. 28. Prosecution of Vote-Buying and Vote-selling. - The presentation of a complaint for violations of paragraph (a) or (b) of Section 261 of Batas Pambansa Blg. 881 supported by affidavits of complaining witness attesting to the offer or promise by or of the voter's acceptance of money or other consideration from the relatives, leaders or sympathizers of a candidate, shall be sufficient basis for an investigation to be immediately conducted by the Commission, directly or through its duly authorized legal officers under Section 68 or Section 265 of said Batas Pambansa Blg. 881. (emphasis supplied)

"x x x."

Indeed, even Commissioner Maambong who dissented from the majority ruling, clings to the view that "Resolution No. 2050 cannot divest the Commission of its duty to resolve disqualification cases under the clear provision of section 6 of R.A. No. 6646."[10] Clearly too, Blanco's contention that he was denied equal protection of the law is off-line. He was not the object of any invidious discrimination. COMELEC assumed direct jurisdiction over his disqualification case not to favor anybody but to discharge its constitutional duty of disposing the case in a fair and as fast a manner as possible.

Blanco also urges that COMELEC erred in using summary proceedings to resolve his disqualification case. Again, the COMELEC action is safely anchored on section 4 of its Rules of Procedure which expressly provides that petitions for disqualification "shall be heard summarily after due notice." Vote-buying has its criminal and electoral aspects. Its criminal aspect to determine the guilt or innocence of the accused cannot be the subject of summary hearing. However, its electoral aspect to ascertain whether the offender should be disqualified from office can be determined in an administrative proceeding that is summary in character.

The next issue is whether there is substantial evidence to prove the vote buying activities of Blanco. The factual findings of the COMELEC (First Division) are as follows:[11]

"x x x

"Respondent argues that the claim of vote-buying has no factual basis because the affidavits and sworn statements admitted as evidence against him are products of hearsay; inadmissible because of the illegal searches; they violate the Rule of Res Inter Alios Acta and the offense of vote-buying requires consummation.

We are not impressed.

A studied reading of the affidavits [Respondent's affidavit is unsigned] attached to the Reply of the Respondent to the Position Paper of the

Petitioner [Annexes 1, 2 and 3] would reveal that they are in the nature of general denials emanating from individuals closely associated or related to respondent Blanco.

The same holds true with the affidavits attached to Respondent's Position Paper [Annexes 1, 2, 3 and 4]. Said affidavits were executed by Blanco's political leaders and private secretary.

On the other hand, the affidavit of Romeo Burgos [Exhibit "E-1"] is rich in detail as to how the alleged vote-buying was conducted.

Moreover, the same is corroborated by object evidence in the nature of MTB [Movement for Tinoy Blanco] cards which were in the possession of the affiants and allegedly used as a means to facilitate the vote-buying scheme.

There are also admissions of certain individuals who received money to vote for Respondent [Annexes "E-2", "E-3", "E-4", "E-5", "E-6", "E-7", "E-8", "E-9" and "E-10"].

On the day of the elections, two individuals were apprehended for attempting to vote for Respondent when they allegedly are not registered voters of Meycauayan. A criminal complaint for violation of section 261 [2] of BP 881 was filed by P/Sr. Inspector Alfred S. Corpus on May 9, 1995 with the Municipal Trial Court of Bulacan. The same was docketed as Criminal Case 95-16996 [Exhibit F-2].

Again, similar pay envelopes with money inside them were found in the possession of the suspected flying voters.

The incident was corroborated by Adriano Llorente in his affidavit narrating the same [Exhibit "F-1"]. Llorente, a poll watcher of Petitioner, was the one who accosted the two suspected flying voters when the latter attempted to vote despite failing to locate their names in the voter's list.

From this rich backdrop of detail, We are disappointed by the general denial offered by Respondent. In People of the Philippines vs.

Navarro, G.R. No. 96251, May 11, 1993, 222 SCRA 684, the Supreme Court noted that "Denial is the weakest defense' [page 692].

In People of the Philippines vs. Rolando Precioso, et al., G.R. No. 95890, May 12, 1993, 221 SCRA 1993, the Supreme Court observed that,

`We have consistently ruled that denials if unsubstantiated by clear and convincing evidence are negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary weight over the testimony of credible witnesses. Ergo, as between the positive declarations of the prosecution witness and the negative statements of the accused, the former deserves more credence." [page 754].'

However, Respondent conveniently resorts to section 33, Rule 130 of the Revised Rules of Court which states that a declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included herein, may be given in evidence against him [affiants who executed Exhibits E-1 to E-10] but not against Respondent.

There is no merit in this contention.

The affiants are not the accused. Their participation in the herein case is in the nature of witnesses who have assumed the risk of being subsequently charged with violating Section 261 [1] of BP 881. In fact, their affidavits were sought by the Petitioner and not by any law enforcement agency. Even Respondent admits this finding when he filed his Reply to Petitioner's Position Paper and Motion to Refer for Preliminary Investigation and Filing of Information in Court against the Persons Who Executed Exhibits E-1 to E-10 for Having Admitted Commission of Election Offense. If they were the accused, why file the motion? Would not this be redundant if not irrelevant?

x x x

Another telling blow is the unexplained money destined for the teachers. Why such a huge amount? Why should the Respondent, a mayoralty candidate, and according to his own admission, be giving money to teachers a day before the elections? What were the peso bills doing in pay envelopes with the inscription "VOTE!!! TINOY", and kept in shoe boxes with the word "Teachers" written on the covers thereof?

There is also something wrong with the issuance of the aforementioned MTB cards when one considers the testimony of Burgos that more or less 50,000 of these cards, which is equivalent to more or less 52% of the 97,000 registered voters of Meycauayan, Bulacan, were printed by respondent; that there are only 443 precincts in Meycauayan; that under the law, a candidate is allowed only one watcher per polling place and canvassing area; and, finally, that there is no explanation at all by the respondent as to what these "watchers" did in order to get paid ₱300.00 each.

x x x

Respondent also avers that for an allegation of vote-buying to prosper, the act of giving must be consummated.

Section 281 [a] of BP 881 states "any person who gives, offers, or promises money x x x." Section 28 of RA 6646 also states that "the giver, offeror, the promisor as well as the solicitor, recipient and conspirator referred to in paragraphs [a] and [b] of section 261 of Batas Pambansa Blg. 881 shall be liable as principals: x x x.

While the giving must be consummated, the mere act of offering or promising something in consideration for someone's vote constitutes the offense of vote-buying.

In the case at bar, the acts of offering and promising money in consideration for the votes of said affiants is sufficient for a finding of the commission of the offense of vote-buying."

These factual findings were affirmed by the COMELEC en banc against the lone dissent of Commissioner Maambong.

There is an attempt to discredit these findings. Immediately obvious in the effort is the resort to our technical rules of evidence. Again, our ingrained jurisprudence is that technical rules of evidence should not be rigorously applied in administrative proceedings especially where the law calls for the proceeding to be summary in character. More importantly, we cannot depart from the settled norm of reviewing decisions of the COMELEC, i.e., that "this Court cannot review the factual findings of the COMELEC absent a grave abuse of discretion and a showing of arbitrariness in its decision, order or resolution."[12]

We now come to the petition of Nolasco that he should be declared as mayor in the event Blanco is finally disqualified.[13] We sustain the plea. Section 44, Chapter 2 of the Local Government Code of 1991 (R.A. No. 7160) is unequivocal, thus:

"x x x

"SEC. 44. Permanent Vacancies in the Offices of the Governor, Vice Governor, Mayor, and Vice Mayor.- (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice governor or vice mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor, or vice mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

(b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.

(c) A tie between or among the highest ranking sangguniang members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

For purposes of succession as provided in this Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each distribution the immediately preceding election."

In the same vein, Article 83 of the Rules and Regulations Implementing, the Local Government Code of 1991 provides:

"x x x.

"ART. 83. Vacancies and Succession of Elective Local Officials.- (a) What constitutes permanent vacancy - A permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

(b) Permanent vacancies in the offices of the governor, vice governor, mayor and vice mayor -

(1) If a permanent vacancy occurs in the office of the governor or mayor, the vice governor or vice mayor concerned shall ipso facto become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor, or vice mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall ipso facto become the governor, vice governor, mayor or vice mayor, as the

case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined in this Article."

Our case law is now settled that in a mayoralty election, the candidate who obtained the second highest number of votes, in this case Alarilla, cannot be proclaimed winner in case the winning candidate is disqualified. Thus, we reiterated the rule in the fairly recent case of Reyes v. COMELEC,[14] *viz*:

"x x x x x x x x x

"We likewise find no grave abuse of discretion on the part of the COMELEC in denying petitioner Julius O. Garcia's petition to be proclaimed mayor in view of the disqualification of Renato U. Reyes.

"That the candidate who obtains the second highest number of votes may not be proclaimed winner in case the winning candidate is disqualified is now settled. The doctrinal instability caused by see-sawing rulings has since been removed. In the latest ruling on the question, this Court said:

To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under the circumstances.

"Garcia's plea that the votes cast for Reyes be invalidated is without merit. The votes cast for Reyes are presumed to have been cast in the belief that Reyes was qualified and for that reason can not be treated as stray, void, or meaningless. The subsequent finding that he is disqualified cannot retroact to the date of the elections so as to invalidate the votes cast for him."

Consequently, respondent COMELEC committed grave abuse of discretion insofar as it failed to follow the above doctrine, a descendant of our ruling in Labo v. COMELEC.[15]

A final word. The dispute at bar involves more than the mayoralty of the municipality of Meycauyan, Bulacan. It concerns the right of suffrage which is the bedrock of republicanism. Suffrage is the means by which our people express their sovereign judgment. Its free exercise must be protected especially against the purchasing power of the peso. As we succinctly held in People v. San Juan,[16] "each time the enfranchised citizen goes to the polls to assert this sovereign will, that abiding credo of republicanism is translated into living reality. If that will must remain undefiled at the starting level of its expression and application, every assumption must be indulged in and every guarantee adopted to assure the unmolested exercise of the citizen's free choice. For to impede, without authority valid in law, the free and orderly exercise of the right of suffrage, is to inflict the ultimate indignity on the democratic process."

IN VIEW WHEREOF, the resolution of the respondent COMELEC en banc dated October 23, 1995 is affirmed with the modification that petitioner Edgardo C. Nolasco is adjudged as Mayor of Meycauyan, Bulacan in view of the disqualification of Florentino P. Blanco. No costs.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Melo, Vitug, Mendoza and *Francisco, JJ.,* concur.

Bellosillo, J., please see Concurring and Dissenting Opinion.

Hermosisima, Jr., and *Torres, Jr., JJ.,* on official leave.

Kapunan, J., on leave.

Padilla, J., no part on leave during deliberation.

Panganiban, J., no part. Former law office was counsel of petitioner Blanco.

[1] A third candidate, Mauro SC del Rosario received 6, 359 votes.

[2] Blanco submitted his position paper on June 5, 1995.

[3] Composed of Presiding Commissioner Regalado E. Maambong and Commissioners Graduacion A. Reyes-Claravall and Julio F. Desamito with Commissioner Maambong dissenting.

[4] He filed a Motion to Admit Intervenor's Motion for Reconsideration on August 18, 1995.

[5] G.R. No. 122258.

[6] G.R. No. 122250.

[7] 176 SCRA 1.

[8] See Section 4 of COMELEC Rules of Procedure.

[9] Lacson *v.* COMELEC, G.R. No. L-16261, December 28, 1951.

[10] See p. 27 of his August 15, 1995 Concurring and Dissenting Opinion.

[11] See pp. 50-53 of August 15, 1995 Resolution.

[12] Lozano *v*. Yorac, 203 SCRA 256.

[13] The same plea is made by Blanco in his petition.

[14] 254 SCRA 514 (1996).

[15] *Supra.*

[16] 22 SCRA 505.