EN BANC

G.R. No. 244274 – NORMAN CORDERO MARQUEZ, *Petitioner*, **v. COMMISSION ON ELECTIONS,** *Respondent.*

Promulgated:

September 3, 2019

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SEPARATE OPINION

LEONEN, *J.*:

I concur that the property test should not be the only ground to disqualify a candidate for public office or be the sole basis to declare him or her a nuisance candidate.

I

Aside from enumerating the qualifications of candidates for public office, the Omnibus Election Code likewise specifies the circumstances that will render a person disqualified from running for public office. Sections 12 and 68 of the Omnibus Election Code state:

> SECTION 12. Disqualifications. — Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.
>
> This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.
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> . . . .
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> SECTION 68. Disqualifications. — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code: (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97

and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

Nowhere in the Omnibus Election Code does it say that the lack of financial capacity to hit the campaign trail is one (1) of the established disqualifications.

Neither can the lack of financial capacity be the basis to characterize a candidate as a nuisance candidate. The Omnibus Election Code provides that a candidate is deemed to be a nuisance if there is patently no intention to run for office and the candidacy was lodged merely to create confusion:

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

A candidate who purportedly lacks financial capacity to back his or her run for public office cannot be lumped together with another candidate who was found to have mocked or caused disrepute to the election process. They share no similarities. As the *ponencia* aptly pointed out, this Court has declared as early as 1965 in *Maquera v. Borra*[1] that property qualifications cannot be imposed on aspirants to public office. Doing so goes against "social justice[,] [which] presupposes equal opportunity for all, rich and poor alike, and that, accordingly, no person shall, by reason of poverty, be denied the chance to be elected to public office[.]"[2]

In *Co v. House of Representatives Electorate Tribunal*,[3] this Court emphasized that the Constitution does not require property ownership for a candidate to be qualified to run. This was reiterated in *Representative Fernandez v. House of Representatives Electoral Tribunal*:[4]

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[1] 122 Phil. 412 (1965) [Per Curiam, En Banc].
[2] Id. at 415.
[3] 276 Phil. 758 (1991) [Per J. Gutierrez, Jr., En Banc].
[4] 623 Phil. 628 (2009) [Per J. Leonardo-De Castro, En Banc].

> Certainly, the Constitution does not require a congressional candidate to be a property owner in the district where he seeks to run but only that he resides in that district for at least a year prior to election day. To use ownership of property in the district as the determinative indicium of permanence of domicile or residence implies that only the landed can establish compliance with the residency requirement. This Court would be, in effect, imposing a property requirement to the right to hold public office, which property requirement would be unconstitutional.[5]

In *Martinez III v. House of Representatives Electoral Tribunal*,[6] this Court upheld the declaration of petitioner Edelito C. Martinez, who filed a certificate of candidacy to create confusion among voters, as a nuisance candidate:

> Petitioner should not be prejudiced by COMELEC's inefficiency and lethargy. Nor should the absence of objection over straying of votes during the actual counting bar petitioner from raising the issue in his election protest. The evidence clearly shows that Edilito C. Martinez, who did not even bother to file an answer and simply disappeared after filing his certificate of candidacy, was an unknown in politics within the district, a *"habal-habal"* driver who had neither the financial resources nor political support to sustain his candidacy. The similarity of his surname with that of petitioner was meant to cause confusion among the voters and spoil petitioner's chances of winning the congressional race for the Fourth Legislative District of Cebu.[7]

In *Martinez III*, this Court did not declare financial capacity as a requirement to run for public office; rather, it stated that the similarity in names, coupled with his lack of financial resources and political support, pointed to Martinez as a nuisance candidate.

The same is true in *Reverend Pamatong v. Commission on Elections*,[8] which underscored the need for "practical considerations"[9] to determine if a candidate was a nuisance to save not only time and effort, but also the hundreds and millions of pesos that would have been wasted in printing copies of the certified list of candidates, voters' information sheets, and official ballots.

In *Reverend Pamatong*, this Court did not say that it was solely the lack of financial capacity to run a nationwide campaign that would classify a candidate as a nuisance. Instead, it referred to the parameters contained in the Omnibus Election Code to determine whether one was a bona fide or a nuisance candidate.

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[5] Id. at 655.

[6] 624 Phil. 50 (2010) [Per J. Villarama, Jr., En Banc].

[7] Id. at 72–73.

[8] 470 Phil. 711 (2004) [Per J. Tinga, En Banc].

[9] Id. at 719.

Clearly, the lack of financial capacity does not by itself suffice to disqualify a candidate, or have him or her declared a nuisance candidate.

As I emphasized in my concurring and dissenting opinion[10] in *Atong Paglaum, Inc. v. Commission on Elections*,[11] our democratic and republican state is based on effective representation. Thus, the electorate's choices must be protected and respected:

> The core principle that defines the relationship between our government and those that it governs is captured in the constitutional phrase that ours is a "democratic and republican state." A democratic and republican state is founded on effective representation. It is also founded on the idea that it is the electorate's choices that must be given full consideration. We must always be sensitive in our crafting of doctrines lest the guardians of our electoral system be empowered to silence those who wish to offer their representation. We cannot replace the needed experience of our people to mature as citizens in our electorate.[12] (Citations omitted)

II

I appreciate the *ponencia's* detailed discussion on the history of the requirement of capable of repetition yet evading review as an exception to the general rule on mootness.[13] However, I disagree with the liberal use of American jurisprudence as part of the basis of the *ponencia's* ruling.

Judicial decisions that apply or interpret laws or the Constitution become part of the law of the land.[14] Although not laws in themselves, judicial decisions illustrate what the laws mean and establish the legislative intent behind them,[15] serving as a guiding authority in the resolution of all other cases concerning similar issues.[16] In *Ombudsman Carpio Morales v. Court of Appeals*,[17] this Court, citing *Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines*,[18] explained that while American jurisprudence is a helpful guide in this Court's decision-making, it should not be considered as precedent.[19]

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[10] 707 Phil. 454, 735–753 (2013) [Per J. Carpio, En Banc].

[11] 707 Phil. 454 (2013) [Per J. Carpio, En Banc].

[12] Id. at 738.

[13] Ponencia, pp. 5–7.

[14] CIVIL CODE, art. 8.

[15] *People v. Licera*, 160 Phil. 270, 273 (1975) [Per J. Castro, First Division].

[16] Emiliano M. Lazaro, *The Doctrine of Stare Decisis and the Supreme Court of the Philippine Islands*, 16 PHIL. L. J. 404, 406 (1937) *citing* Sutherland Statutory Construction, 2nd Ed., Vol. 2, pp. 898–899.

[17] 772 Phil. 672 (2015) [Per J. Perlas-Bernabe, En Banc].

[18] 503 Phil. 485 (2005) [Per J. Tinga, En Banc].

[19] *Ombudsman Carpio Morales v. Court of Appeals*, 772 Phil. 672, 759 (2015) [Per J. Perlas-Bernabe, En Banc].

Judicial decisions, with their unique General Register numbers, are easy to access. Compilations of our decisions and reports are regularly published in the Philippine Reports and Supreme Court Reports Annotated. Moreover, copies of our promulgated decisions and signed resolutions have been made available for downloading in the Supreme Court E-Library. In this manner, it is easy for members of the legal profession, law students, and any interested person to access this Court's decisions.

American jurisprudence, on the other hand, is not easily available simply because we do not have ready access to it. Also, members of the Philippine Bar are generally unfamiliar with the nuances of the American judicial system.

Including American jurisprudence in our judicial decisions elevates it to becoming part of our law, even if it may contradict our own statutes or the Constitution. Additionally, American jurisprudence does not treat judicial precedents with the same deference like we do, where we consider our jurisprudence to be part of the law of the land.

James Madison, a lawyer and the fourth president of the United States of America, acknowledged the binding force of judicial precedence,[20] but also recognized its limitation. He said: "That cases may occur which transcend all authority of precedents must be admitted, but they form exceptions which will speak for themselves and must justify themselves."[21]

This tension between upholding and reexamining precedents is seen in the history of the US Supreme Court's decisions. For one, the US Supreme Court under Chief Justice John Marshall (Chief Justice Marshall) has, in several instances,[22] been observed to not refer to judicial precedence even if it had already settled that same issue before. Nonetheless, the Marshall Court recognized the binding effect of judicial precedents.[23]

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[20] CALEB NELSON, STARE DECISIS AND DEMONSTRABLY ERRONEOUS PRECEDENTS, 87 VIRGINIA LAW REVIEW, 10–14 (2001).

[21] 9 JAMES MADISON, WRITINGS OF JAMES MADISON 443 (GAILLARD HUNT ED., 1831). Reprinting the Letter from James Madison to C.E. Haynes.

[22] Thomas R. Lee, *Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court*, 52 VANDERBILT LAW REVIEW 647, 667–668 (1999).

In several decisions, the Marshall Court did not cite previous cases which involved similar issues. An example is *Cohens v. Virginia*, where the issue was whether the Supreme Court has jurisdiction over an appeal from a conviction by a state court in Virginia. Chief Justice Marshall's opinion for the Court disagreed with the State's argument that the Supreme Court's appellate jurisdiction only applies to lower federal courts. This issue was already conclusively settled in the earlier case of *Martin v. Hunter's Lessee*, yet there was no mention of such previous case in Chief Justice Marshall's opinion.

In *McCulloch v. Maryland*, the same method was also used. Chief Justice Marshall concluded that the formation of a national bank was a necessary and proper exercise of powers expressly given to Congress. This conclusion was already reached by Chief Justice Marshall 14 years earlier in *United States v. Fisher*, yet there was also no mention of such previous case in *McCulloch*.

[23] Id. at 670.

In *United States v. Deveaux*,[24] Chief Justice Marshall, in referring to previous cases where the US Supreme Court had assumed jurisdiction over a dispute between a corporation and an individual, wrote: "Those decisions are not cited as *authority*; for they were made without considering this particular point; but they have much *weight*, as they show that this point neither occurred to the bar or the bench."[25] He also noted: "[T]he precedents of this court, though they were not decisions on argument, ought not to be absolutely disregarded."[26]

The authority bestowed upon judicial precedents saw a diminution in the 20th century, when "a feeling of freedom exists which would strike an English judge as revolutionary."[27] In *Hertz v. Woodman*:[28]

> The Circuit Court of Appeals was obviously not bound to follow its own prior decision. The rule of *stare decisis*, though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the court, which is again called upon to consider a question once decided.[29]

Meanwhile, in *Thurston v. Fritz*,[30] the Supreme Court of Kansas held:

> The doctrine of *stare decisis* does not preclude a departure from precedent established by a series of decisions clearly erroneous, unless property complications have resulted, and a reversal would work a greater injury and injustice than would ensue by following the rule.[31]

Thus, considering American jurisprudence's less stringent approach towards precedence, this Court should tread carefully when adopting it. Otherwise, we may inadvertently incorporate into our law an idea or doctrine that may have already been overturned or completely discarded by its original source.

Our ancestors fought valiantly to overthrow the yoke of colonialism. The least this Court can do to acknowledge their heroism, and to instill the idea that our sovereignty resides in our Filipino people, is to draw from our

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24 9 U.S. 61 (1809).

25 Thomas R. Lee, *Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court*, 52 VANDERBILT LAW REVIEW 647, 672 (1999) *citing United States v. Deveaux*, 9 U.S. 61 (1809).

26 Id. *citing United States v. Deveaux*, 9 U.S. 61 (1809).

27 Arthur L. Goodhart, *Case Law in England and America*, 15 CORNELL L. REVIEW 173, 180 (1930).

28 218 U.S. 205, 212, 30 Sup. Ct. 621, 622 (1910).

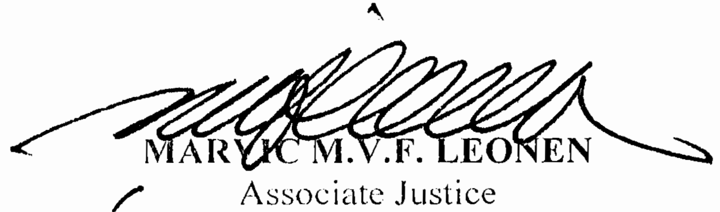
29 Arthur L. Goodhart, *Case Law in England and America*, 15 CORNELL L. REVIEW 173, 180 (1930) *citing Hertz v. Woodman*, 218 U.S. 205, 212, 30 Sup. Ct. 621, 622 (1910).

30 91 Kan. 468, 475, 138 Pac. 625, 627 (1914).

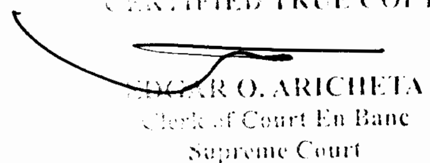
31 Arthur L. Goodhart, *Case Law in England and America*, 15 CORNELL L. REVIEW 173, 181 (1930) *citing Thurnston v. Fritz*, 91 Kan. 468, 475, 138 Pac. 625, 627 (1914).

own jurisprudence. I am certain that, with respect to our own needs, we are wiser than our former colonizers.

ACCORDINGLY, I vote to **GRANT** the Petition.



MARVIC M.V.F. LEONEN
Associate Justice



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