EN BANC

G.R. No. 260374 ***(Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, Celia Lagman Sevilla, Roland C. Vibal, and Josephine Lascano, petitioners v. Commission on Elections, Ferdinand Romualdez Marcos, Jr., The Senate of the Philippines, represented by the Senate President, The House of Representatives, represented by the Speaker of the House of Representatives, respondents);*** **G.R. No. 260426** ***(Bonifacio Parabuac Ilagan, Saturnino Cunanan Ocampo, Maria Carolina Pagaduan Araullo, Trinidad Gerilla Repuno, Joanna Kintanar Cariño, Elisa Tita Perez Lubi, Liza Largoza Maza, Danilo Mallari Dela Fuente, Carmencita Mendoza Florentino, Dorotea Cubacub Abaya, Jr., Erlinda Nable Senturias, Sr., Arabella Cammagay Balingao, Sr., Cherry M. Ibardolaza, CSSJB, Sr., Susan Santos Esmile, SFIC, Homar Rubert Roca Distajo, Polynne Espineda Dira, James Carwyn Candila, and Jonas Angelo Lopena Abadilla, petitioners v. Commission on Elections, Ferdinand Romuladez Marcos, Jr., The Senate of the Philippines, represented by the Senate President, The House of Representatives, represented by the Speaker of the House of Representatives, respondents).***

Promulgated:

June 28, 2022

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CONCURRENCE

LAZARO-JAVIER, *J.*:

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

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

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

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

Grounds Raised

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

> SECTION 78. *Petition to deny due course to or cancel a certificate of candidacy.* — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.[2]

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

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

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

2 Id.

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

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

> 79. The consequence of perpetual disqualification from holding any public office, to vote and participate in any election, applies to ALL convictions of crimes under the NIRC, regardless of the penalty imposed. The **penalty of perpetual disqualification** from holding any public office, to vote and participate in any election **arises solely from the fact of conviction**. Plainly, **conviction under the NIRC, results *ipso facto* in the perpetual disqualification** from holding any public office, to vote and participate in any election.
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> 85. Respondent Marcos, Jr.'s conviction for four (4) violations of the NIRC renders him "**perpetually disqualified** from holding any public office, to vote[,] and to participate in any election." This consequence **is deemed written into his conviction** by the RTC and affirmed by the Court of Appeals, which **renders his statements under item 11 in relation to Box 22 of the subject COC false**.
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> 86. To emphasize, the **perpetual disqualification** from holding any public office, to vote, and to participate in any election **is an inevitable and automatic consequence of the mere fact of conviction** and is **not dependent on the penalty actually imposed**. Clearly, the inescapable fact is that **the mere fact of CONVICTION for violating the NIRC perpetually disqualified** respondent Marcos, Jr. from participating in any election, more so to run for any public office. This **automatically rendered false his answer** ("No") in Box 22 of the subject COC, which when read in relation to his affirmative declaration in Item 11 makes these two items material misrepresentations warranting denial of due course or cancellation of respondent Marcos Jr.'s COC under Rule 23 of the COMELEC's Rules.
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> 91. The **penalty of perpetual disqualification was not explicitly written** in respondent Marcos, Jr.'s judgment of conviction **because the CA did not have to do so**. The applicable provision of the 1977 NIRC is clear and leaves no room for interpretation: **the aecessory penalty of perpetual disqualification** from holding any public office, to vote[,] and to participate in any election, **shall be imposed** in cases of conviction of any crime penalized under the NIRC.
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> "Section 286. General provisions. – [a] Any person convicted of a crime penalized by this Code shall, ***in addition to being liable for the payment of the tax***, be subject to the penalties imposed herein: Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.
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> [c] If the offender is not a citizen of the Philippines, he shall be ***deported immediately after serving the sentence without further proceedings*** for deportation. If he is a **public officer or employee, the maximum penalty** prescribed for the offense **shall be imposed** *and, in addition,* ***he shall be*** *dismissed from the public service* and ***perpetually disqualified from holding any public office, to vote and to participate in any election***. If the offender is a certified public accountant, his certificate as a certified public account shall, upon conviction, be ***automatically*** revoked or cancelled."

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

As regards the meaning of Section 286, they aver:

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

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

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

[5] 711 Phil. 414–438 (2013).

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

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

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

> Section 12. Disqualifications. — **Any person who** has been declared by competent authority insane or incompetent, or **has been sentenced by final judgment** for subversion, insurrection, rebellion or **for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office**, unless he has been given plenary pardon or granted amnesty.
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> These disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.[6]

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

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

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

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

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

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

> As to the meaning of "moral turpitude," we have consistently adopted the definition in Black's Law Dictionary as "an act of baseness, vileness, or depravity in the private duties which a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman, or conduct contrary to justice, honesty, modesty, or good morals."[8]

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

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

Issues

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Discussion

I. G.R. No. 260374

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

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

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

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

Eligibility may be falsely represented in a COC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> ARTICLE 42. *Prision Mayor*; *Its Accessory Penalties*. — The penalty of ***prision mayor*** **shall, carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage** which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.
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> ARTICLE 73. ***Presumption in Regard to the Imposition of*** *Accessory Penalties*. — **Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties**, according to the provisions of [A]rticles 40, 41, 42, 43, 44[,] and 45 of this Code, **it must be understood that the accessory penalties are also imposed** upon the convict.
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12 Supra note 5.
13 ACT No. 3815, The Revised Penal Code, Approved on December 8, 1930.
14 61 Phil. 636–644 (1935).

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> **The defendant must suffer the accessory penalty of perpetual special disqualification**, not because article 217 of the Revised Penal Code provides that in all cases persons guilty of malversation shall suffer perpetual disqualification in addition to the principal penalty, but **as a consequence of the penalty of *prision mayor* provided in article 171. In accordance with article 42 of the** Revised Penal Code **the penalty of *prision mayor* carries with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage**, and article 32 provides that during the period of his disqualification the offender shall not be permitted to hold any public office. **Moreover, article 73 of the** Revised Penal Code **provides that whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties**, according to the provisions of [A]rticles 40, 41, 42, 43, 44, and 45 of the Revised Penal Code, it must be understood that **the accessory penalties are also imposed upon the convict. It is therefore unnecessary to express the accessory penalties in the sentence.**[15] (Emphases ours)

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

Section 286 states in full:

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

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[15] Id.

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

Section 73 as amended provides:

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

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

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

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

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

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

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

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

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

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

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

Thus:

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

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

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

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

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

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

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

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

CHAPTER II
Crimes, Other Offenses and Forfeitures

"Sec. 286. General provisions. - [a] Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

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

"[c] If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a certified public accountant, his certificate as a certified public account shall, upon conviction, be automatically revoked or cancelled.[21]

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

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

"Sec. 73. Penalty for failure to file return or to pay tax. - **Any one liable** to pay the tax, **to make a return** or to supply information required under this Code, **who refuses or neglects** to pay such tax, **to make such return** or to supply such information at the time or times herein specified in each year, **shall be punished by a fine of not more than Two thousand pesos** or by imprisonment for not more than six months, or both: *Provided*, however, That an individual with compensation income taxable under Section 21(a) of this Code and where the tax withheld from such compensation income is final shall be exempt from the penalty for failure

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

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

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

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

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

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

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

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

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23 Id.

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

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

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

In any event, the subsequent installation of Section 51-A in the Tax Code by Republic Act No. 10963, TRAIN Law,[26] excuses individual taxpayers receiving purely compensation income, regardless of amount, from only one employer in the Philippines for the calendar year, the income tax of which has been withheld correctly by the said employer (tax due equals tax withheld) from filing an annual income tax return, only solidify this argument.

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

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

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

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

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

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

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

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

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

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

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

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28 Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. G.R. No. 260426

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[35] 604 Phil. 717–752 (2009).

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

Taken in its proper context, the failure to file a compensation income tax return is **far from** being "everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general."

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

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[36] Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

AMY C. LAZARO-JAVIER