EN BANC

[G.R. No. 181613. November 25, 2009.]

ROSALINDA A. PENERA, *petitioner*, ***vs.*** **COMMISSION ON ELECTIONS and EDGAR T. ANDANAR**, *respondents*.

RESOLUTION

CARPIO, *J* p:

We grant Rosalinda A. Penera's (Penera) motion for reconsideration of this Court's Decision of 11 September 2009 (Decision).

The assailed Decision dismissed Penera's petition and affirmed the Resolution dated 30 July 2008 of the COMELEC En Banc as well as the Resolution dated 24 July 2007 of the COMELEC Second Division. The Decision disqualified Penera from running for the office of Mayor in Sta. Monica, Surigao del Norte and declared that the Vice-Mayor should succeed Penera.

In support of her motion for reconsideration, Penera submits the following arguments:

> 1. Penera was not yet a candidate at the time of the incident under Section 11 of RA 8436 as amended by Section 13 of RA 9369.
>
> 2. The petition for disqualification failed to submit convincing and substantial evidence against Penera for violation of Section 80 of the Omnibus Election Code.
>
> 3. Penera never admitted the allegations of the petition for disqualification and has consistently disputed the charge of premature campaigning.
>
> 4. The admission that Penera participated in a motorcade is not the same as admitting she engaged in premature election campaigning.

Section 79 (a) of the Omnibus Election Code defines a "candidate" as "any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy . . . ". The second sentence, third

paragraph, Section 15 of RA 8436, as amended by Section 13 of RA 9369, provides that **"[a]ny person who files his certificate of candidacy within [the period for filing] shall *only* be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy"**. The immediately succeeding *proviso* in the same third paragraph states that **"unlawful acts or omissions applicable to a candidate shall take effect *only* upon the start of the aforesaid campaign period"**. These two provisions determine the resolution of this case.

The Decision states that "[w]hen the campaign period starts and [the person who filed his certificate of candidacy] 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**". **1**

Under the Decision, a candidate may already be liable for premature campaigning after the filing of the certificate of candidacy but **even before the start of the campaign period**. From the filing of the certificate of candidacy, even long before the start of the campaign period, the Decision considers the partisan political acts of a person so filing a certificate of candidacy **"as the promotion of his/her election as a candidate".** Thus, such person can be disqualified for premature campaigning for acts done before the start of the campaign period. **In short, the Decision considers a person who files a certificate of candidacy already a *"candidate"* even before the start of the campaign period.**

The assailed Decision is contrary to the clear **intent and letter** of the law.

The Decision reverses *Lanot v. COMELEC,* **2** which held that **a person who files a certificate of candidacy is not a candidate until the start of the campaign period**. In *Lanot,* this Court explained:

> Thus, the essential elements for violation of Section 80 of the Omnibus Election Code are: (1) a person engages in an election campaign or partisan political activity; (2) the act is designed to promote the election or defeat of a particular candidate or candidates; (3) the act is done outside the campaign period.

The second element requires the existence of a "candidate". Under Section 79 (a), a candidate is one who "has filed a certificate of candidacy" to an elective public office. Unless one has filed his certificate of candidacy, he is not a "candidate". The third element requires that the campaign period has not started when the election campaign or partisan political activity is committed.

Assuming that all candidates to a public office file their certificates of candidacy on the last day, which under Section 75 of the Omnibus Election Code is the day before the start of the campaign period, then no one can be prosecuted for violation of Section 80 for acts done prior to such last day. Before such last day, there is no "particular candidate or candidates" to campaign for or against. On the day immediately after the last day of filing, the campaign period starts and Section 80 ceases to apply since Section 80 covers only acts done "outside" the campaign period.

Thus, if all candidates file their certificates of candidacy on the last day, Section 80 may only apply to acts done on such last day, which is before the start of the campaign period and after at least one candidate has filed his certificate of candidacy. This is perhaps the reason why those running for elective public office usually file their certificates of candidacy on the last day or close to the last day.

There is no dispute that Eusebio's acts of election campaigning or partisan political activities were committed outside of the campaign period. The only question is whether Eusebio, who filed his certificate of candidacy on 29 December 2003, was a "candidate" when he committed those acts before the start of the campaign period on 24 March 2004.

Section 11 of Republic Act No. 8436 ("RA 8436") moved the deadline for the filing of certificates of candidacy to 120 days before election day. Thus, the original deadline was moved from 23 March 2004 to 2 January 2004, or 81 days earlier. The

crucial question is: did this change in the deadline for filing the certificate of candidacy make one who filed his certificate of candidacy before 2 January 2004 immediately liable for violation of Section 80 if he engaged in election campaign or partisan political activities prior to the start of the campaign period on 24 March 2004?

Section 11 of RA 8436 provides:

> 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.

The official ballots shall be printed by the National Printing Office and/or the Bangko Sentral ng Pilipinas at the price comparable with that of private printers under proper security measures which the Commission shall adopt. The Commission may contract the services of private printers upon certification by the National Printing Office/*Bangko Sentral ng Pilipinas* that it cannot meet the printing requirements. Accredited political parties and deputized citizens' arms of the Commission may assign watchers in the printing, storage and distribution of official ballots.

To prevent the use of fake ballots, the Commission through the Committee shall ensure that the serial number on the ballot stub shall be printed in magnetic ink that shall be easily detectable by inexpensive hardware and shall be impossible to reproduce on a photocopying machine, and that identification marks, magnetic strips, bar codes and other technical and security markings, are provided on the ballot.

The official ballots shall be printed and distributed to each city/municipality at the rate of one (1) ballot for every registered voter with a provision of additional four (4) ballots per precinct.

Under Section 11 of RA 8436, the only purpose for the early filing of certificates of candidacy is to give ample time for the

printing of official ballots. This is clear from the following deliberations of the Bicameral Conference Committee:

> SENATOR GONZALES. Okay. Then, how about the campaign period, would it be the same[,] uniform for local and national officials?
>
> THE CHAIRMAN (REP. TANJUATCO). Personally, I would agree to retaining it at the present periods.
>
> SENATOR GONZALES. But the moment one files a certificate of candidacy, he's already a candidate, and there are many prohibited acts on the part of candidate.
>
> THE CHAIRMAN (REP. TANJUATCO). Unless we. . . .
>
> SENATOR GONZALES. And you cannot say that the campaign period has not yet began (*sic*).
>
> THE CHAIRMAN (REP. TANJUATCO). If we don't provide that the filing of the certificate will not bring about one's being a candidate.
>
> SENATOR GONZALES. If that's a fact, the law cannot change a fact.
>
> THE CHAIRMAN (REP. TANJUATCO). **No, but if we can provide that the filing of the certificate of candidacy will not result in that official vacating his position, we can also provide that insofar he is concerned, election period or his being a candidate will not yet commence. Because here, the reason why we are doing an early filing is to afford enough time to prepare this machine readable ballots.**
>
> So, with the manifestations from the

> Commission on Elections, Mr. Chairman, the House Panel will withdraw its proposal and will agree to the 120-day period provided in the Senate version.
>
> THE CHAIRMAN (SENATOR FERNAN). Thank you, Mr. Chairman.
>
> xxx xxx xxx
>
> SENATOR GONZALES. How about prohibition against campaigning or doing partisan acts which apply immediately upon being a candidate?
>
> THE CHAIRMAN (REP. TANJUATCO). **Again, since the intention of this provision is just to afford the Comelec enough time to print the ballots, this provision does not intend to change the campaign periods as presently, or rather election periods as presently fixed by existing law.**
>
> THE ACTING CHAIRMAN (SEN. FERNAN). So, it should be subject to the other prohibition.
>
> THE CHAIRMAN (REP. TANJUATCO). That's right.
>
> THE ACTING CHAIRMAN (SEN. FERNAN). Okay.
>
> THE CHAIRMAN (REP. TANJUATCO). In other words, actually, there would be no conflict anymore because we are talking about the 120-day period before election as the last day of filing a certificate of candidacy, election period starts 120 days also. So that is election period already. But he will still not be considered as a candidate.

Thus, because of the early deadline of 2 January 2004 for purposes of printing of official ballots, Eusebio filed his certificate of candidacy on 29 December 2003. Congress, however, never intended the filing of a certificate of candidacy

> before 2 January 2004 to make the person filing to become immediately a "candidate" for purposes other than the printing of ballots. This legislative intent prevents the immediate application of Section 80 of the Omnibus Election Code to those filing to meet the early deadline. The clear intention of Congress was to preserve the **"election periods as . . . fixed by existing law"** prior to RA 8436 and that one who files to meet the early deadline **"will still not be considered as a candidate"**. **3** (Emphasis in the original)

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 the intent of the provisions of RA 8436, which laid the legal framework for an automated election system. There was no express provision in the original RA 8436 stating that one who files a certificate of candidacy is not a candidate until the start of the campaign period.

When Congress amended RA 8436, Congress decided to expressly incorporate the *Lanot* doctrine into law, realizing that *Lanot* merely relied on the deliberations of Congress in holding that —

> The clear intention of Congress was to preserve the **"election periods as . . . fixed by existing law"** prior to RA 8436 and that one who files to meet the early deadline **"will still not be considered as a candidate"**. **4** (Emphasis supplied)

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. Thus, in enacting RA 9369, Congress expressly wrote the *Lanot* doctrine into the **second sentence**, third paragraph of the amended Section 15 of RA 8436, thus:

> xxx xxx xxx
>
> For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition for registration/manifestation to participate in the election. **Any person who files his certificate of candidacy within this**

> **period <u>shall only be considered as a candidate at the start of the campaign period</u> for which he filed his certificate of candidacy:** *Provided,* That, unlawful acts or omissions applicable to a candidate shall take 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 facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certificate of candidacy. (Boldfacing and underlining supplied)

Congress elevated the *Lanot* doctrine into a statute by specifically inserting it as the **second sentence** of the third paragraph of the amended Section 15 of RA 8436, which cannot be annulled by this Court except on the sole ground of its unconstitutionality. The Decision cannot reverse *Lanot* without repealing this **second sentence**, because to reverse *Lanot* would mean repealing this **second sentence**.

The assailed Decision, however, in reversing *Lanot* does not claim that this **second sentence** or any portion of Section 15 of RA 8436, as amended by RA 9369, is unconstitutional. In fact, the Decision considers the entire Section 15 good law. Thus, the Decision is self-contradictory — reversing *Lanot* but maintaining the constitutionality of the **second sentence**, which embodies the *Lanot* doctrine. In so doing, the Decision is irreconcilably in conflict with the clear intent and letter of the **second sentence**, third paragraph, Section 15 of RA 8436, as amended by RA 9369.

In enacting RA 9369, Congress even further clarified the first *proviso* in the third paragraph of Section 15 of RA 8436. The original provision in RA 8436 states —

> . . . Provided, further, That, unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period, ...

In RA 9369, Congress inserted the word **"only"** so that the first *proviso* now reads —

> . . . Provided, That, unlawful acts or omissions

> applicable to a candidate shall take effect **only** upon the start of the aforesaid campaign period . . . . (Emphasis supplied)

Thus, Congress not only reiterated but also strengthened its mandatory directive that election offenses can be committed by a candidate **"only"** upon the start of the campaign period. This clearly means that before the start of the campaign period, such election offenses cannot be so committed.

When the applicable provisions of RA 8436, as amended by RA 9369, are read together, these provisions of law do not consider Penera a candidate for purposes other than the printing of ballots, until the start of the campaign period. There is absolutely no room for any other interpretation.

We quote with approval the Dissenting Opinion of Justice Antonio T. Carpio:

> . . . The definition of a "candidate" in Section 79(a) of the Omnibus Election Code should be read together with the amended Section 15 of RA 8436. A "'candidate' refers to 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". However, it is no longer enough to merely file a certificate of candidacy for a person to be considered a candidate because **"any person who files his certificate of candidacy within [the filing] period shall *only be considered a candidate at the start of the campaign period* for which he filed his certificate of candidacy"**. Any person may thus file a certificate of candidacy on any day within the prescribed period for filing a certificate of candidacy yet that person shall be considered a candidate, for purposes of determining one's possible violations of election laws, **only during the campaign period**. Indeed, there is no "election campaign" or "partisan political activity" designed to promote the election or defeat of a particular candidate or candidates to public office simply because there is no "candidate" to speak of prior to the start of the campaign period. Therefore, despite the filing of her certificate of candidacy, the law does not consider Penera a candidate at the time of the

> questioned motorcade which was conducted a day before the start of the campaign period. . . .
>
> The campaign period for local officials began on 30 March 2007 and ended on 12 May 2007. Penera filed her certificate of candidacy on 29 March 2007. Penera was thus a candidate on 29 March 2009 only for purposes of printing the ballots. **On 29 March 2007, the law still did not consider Penera a candidate for purposes other than the printing of ballots.** Acts committed by Penera prior to 30 March 2007, the date when she became a "candidate", even if constituting election campaigning or partisan political activities, are not punishable under Section 80 of the Omnibus Election Code. Such acts are within the realm of a citizen's protected freedom of expression. Acts committed by Penera within the campaign period are not covered by Section 80 as Section 80 punishes only acts outside the campaign period. **5**

The assailed Decision gives a specious reason in explaining away the first *proviso* in the third paragraph, the amended Section 15 of RA 8436 that **election offenses applicable to candidates take effect only upon the start of the campaign period**. The Decision states that:

> . . . [T]he 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 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. **6** (Emphasis supplied)

It is a basic principle of law that any act is lawful unless expressly declared unlawful by law. This is specially true to expression or speech, which Congress cannot outlaw except on very narrow grounds involving clear, present and imminent danger to the State. 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 RA 8436, as amended by RA 9369, that political partisan 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.

In layman's language, this means that a candidate is liable for an election offense only for acts done during the campaign period, not before. The law is clear as daylight — any election offense that may be committed by a candidate under any election law cannot be committed before the start of the campaign period. In ruling that Penera is liable for premature campaigning for partisan political acts before the start of the campaigning, the assailed Decision ignores the clear and express provision of the law.

The Decision rationalizes that a candidate who commits premature

campaigning can be disqualified or prosecuted only after the start of the campaign period. This is not what the law says. What the law says is **"any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period"**. The plain meaning of this provision is that 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.

The law does not state, as the assailed Decision asserts, 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. This is clearly not the language of the law. 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.

Congress has laid down the law — a candidate is liable for election offenses only upon the start of the campaign period. This Court has no power to ignore the clear and express mandate of the law that **"any person who files his certificate of candidacy within [the filing] period shall only be considered a candidate at the start of the campaign period for which he filed his certificate of candidacy"**. Neither can this Court turn a blind eye to the express and clear language of the law that **"any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period"**.

The forum for examining the wisdom of the law, and enacting remedial measures, is not this Court but the Legislature. This Court has no recourse but to apply a law that is as clear, concise and express as the **second sentence**, and its immediately succeeding *proviso,* as written in the third paragraph of Section 15 of RA 8436, as amended by RA 9369.

WHEREFORE, we **GRANT** petitioner Rosalinda A. Penera's Motion for Reconsideration. We **SET ASIDE** the Decision of this Court in G.R. No. 181613 promulgated on 11 September 2009, as well as the Resolutions dated 24 July 2007 and 30 January 2008 of the COMELEC Second Division and the COMELEC En Banc, respectively, in SPA No. 07-224. Rosalinda A. Penera shall continue as Mayor of Sta. Monica, Surigao del Norte.

SO ORDERED.

Puno, C.J., Corona, Carpio Morales, Velasco, Jr., Brion, Peralta, Bersamin and *Villarama, Jr., JJ.,* concur.

Chico-Nazario, J., please see my dissenting opinion.

Nachura, Leonardo-de Castro and Del Castillo, JJ., join the dissent of J. Nazario.

Abad, J., see my dissent.

Separate Opinions

CHICO-NAZARIO, *J., dissenting*:

On 11 September 2009, the Court rendered a Decision in the instant case disqualifying Rosalinda A. Penera from running as Mayor of Sta. Monica, Surigao Del Norte for engaging in the prohibited act of premature campaigning.

Penera forthwith filed a Motion for Reconsideration **1** of the above Decision, invoking the following arguments, to wit:

> 1) Penera was not yet a candidate at the time of the incident under Section 11 of Republic Act No. 8436, as amended by Section 13 of Republic Act No. 9369. **2**
>
> 2) Section 80 of the Omnibus Election Code was expressly repealed by Republic Act No. 9369. **3**
>
> 3) The petition for disqualification failed to submit convincing and substantial evidence against Penera for violation of Section 80 of the Omnibus Election Code. **4**
>
> 4) Penera never admitted the allegations of the petition for disqualification and has consistently disputed the charge of premature campaigning. **5**
>
> 5) The admission that Penera participated in a motorcade is not the same as admitting she engaged in premature election campaigning. **6**

I vote to deny the Motion for Reconsideration.

Penera's Motion for Reconsideration

The basic issues in the Motion for Reconsideration were already passed upon in the Decision dated 11 September 2009 and no substantial arguments were raised.

The grounds that: (1) Penera was not yet a candidate at the time of the incident under Section 11 of Republic Act No. 8436, as amended by Section 13 of Republic Act No. 9369; (2) Section 80 of the Omnibus Election Code was expressly repealed by Republic Act No. 9369; and (3) the petition for disqualification failed to submit convincing and substantial evidence against Penera for violation of Section 80 of the Omnibus Election Code are all reiterations of her previous arguments before the Court and the same had already been adequately addressed in the Decision dated 11 September 2009.

Incidentally, Penera herself disclosed in her Motion for Reconsideration that she is the respondent in a criminal case filed by Edgar T. Andanar for the commission of election offenses in violation of the Omnibus Election Code, which is docketed as EO Case No. 08-99. **7** Thus, the pronouncement in the Decision dated 11 September 2009 that the instant case should concern only the electoral aspect of the disqualification case finds more reason. As noted in the Decision, any discussion on the matter of Penera's criminal liability for premature campaigning would have been preemptive and nothing more than *obiter dictum.*

With respect to the assertion that Penera never admitted the allegations of the petition for disqualification and has consistently disputed the charge of premature campaigning, the same is utterly without merit. Penera admitted participating in the motorcade after filing her COC. What she merely denied and/or refuted were the minor details concerning the conduct of said motorcade.

Likewise, Penera's contention that her admission of participating in the motorcade in this case is not the same as admitting that she engaged in premature campaigning deserves scant consideration. Logically, to admit to the elements constituting the offense of premature campaigning is to admit to the commission of the said offense. Precisely, it is the act of participating in the motorcade after the filing of her COC that constituted the prohibited act of premature campaigning in the instant case.

Finally, the claim of Penera that not all motorcades are designed to promote the election of a candidate is unimpressive. Clearly, the context of the discussion on motorcades in the Decision dated 11 September 2009 was disregarded. The discussion pertained to motorcades conducted during election periods by candidates and their supporters. In such an instance, a motorcade assumes an

entirely different significance and that is to promote a candidate.

As held in the Decision dated 11 September 2009, the conduct of a motorcade during election periods 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[.]" The obvious purpose of the conduct of motorcades during election periods 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.

The pretense that the motorcade was only a convoy of vehicles, which was entirely an unplanned event that dispersed eventually, does not hold water. After filing their certificates of candidacy, Rosalinda Penera and the other members of her political party conducted a motorcade and went around the different *barangays* in the municipality of Sta. Monica, Surigao Del Norte. The motorcade consisted of two (2) jeepneys and ten (10) motorcycles, which were all festooned with multi-colored balloons. There was marching music being played on the background and the individuals onboard the vehicles threw candies to the people they passed by along the streets. With the number of vehicles, the balloons, the background marching music, the candies on hand and the route that took them to the different *barangays,* the motorcade could hardly be considered as spontaneous and unplanned.

Majority Opinion

Although the majority opinion initially mentions the above-stated grounds of Penera's Motion for Reconsideration, the same were not at all discussed. The Resolution of the majority purely involves an exposition of the grounds set forth in the Dissenting Opinion of Justice Antonio T. Carpio to the Decision dated 11 September 2009.

At the outset, the majority opinion highlights the relevant provisions of law defining the meaning of a candidate.

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"**. On the other hand, the second sentence in the third

paragraph of Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369, states that **"[a]ny 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"**. The first *proviso* in the same paragraph provides that **"unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period"**.

The majority opinion goes on to quote a paragraph in the Decision dated 11 September 2009, underscoring a portion of the same as follows:

> 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 [certificate of candidacy (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.**

According to the interpretation of the majority of the above pronouncement, the Decision dated 11 September 2009 already considers a person who filed a COC a "candidate" even before the start of the campaign period. From the filing of the COC, even before the start of the campaign period, the *ponente* allegedly considers the partisan political acts of a person filing a COC **"as the promotion of his/her election as a candidate"**.

The majority clearly mistook the import of the above-quoted portion and read the same out of context. Absolutely nowhere in the Decision dated 11 September 2009 was it stated that a person who filed a COC is **already deemed a candidate** even before the start of the campaign period.

To recall, the Court held in its Decision that Section 80 of the Omnibus Election Code, which defines the prohibited act of premature campaigning, was not repealed, expressly or impliedly, by Section 15 of Republic Act No. 8436, as amended.

Section 80 of the Omnibus Election Code reads:

> 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:** . . . .

While relevant portions of Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369, provide:

> SECTION 15. *Official Ballot.* — . . .
>
> xxx xxx xxx
>
> 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 take effect only upon the start of the aforesaid campaign period[.]**

The Court harmonized and reconciled the above provisions in this wise:

> 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", 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:

xxx xxx xxx

> (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. . . . (Underscoring supplied.)

The last paragraph of the aforequoted portion of the Decision dated 11 September 2009 should be read together with, and qualified by, the paragraph immediately preceding it. Clearly, the *ponente* was quite explicit in stating that, after the filing of the COC but before the start of the campaign period, a person is **not yet considered a candidate**. After filing the COC, however, the commission by such person of the acts enumerated under Section 79 (b) of the Omnibus Election Code can already be construed as being for the purpose of promoting his/her **intended candidacy**.

Thereafter, it is only at the start of the campaign period, when said person is already a formal candidate, that the partisan political acts that he/she committed after the filing of the COC can already be considered as being for the promotion of his/her election as a candidate; hence, constituting premature campaigning.

Reversal of Lanot v. Commission on Elections

The majority likewise ascribes error on the part of the *ponente* for reversing *Lanot,* which held that a person should be a candidate before premature campaigning may be committed. Resolved under the auspices of Republic Act No. 8436, **8** the previous automation law, *Lanot* was allegedly decided on the ground that one who files a COC is not a candidate until the start of the campaign period.

Supposably, Congress wanted to ensure that any person filing a COC under the early deadline required by the automated election system would not be disqualified for any partisan political act done prior to the start of the campaign period. In enacting Republic Act No. 9369, Congress expressly wrote the *Lanot* doctrine into the second sentence, third paragraph, Sec. 15 of Republic Act No. 8436, which states that **"[a]ny person who files his certificate of candidacy within [the period for filing COCs] shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy"**.

The majority, therefore, concludes that the *ponente* cannot reverse *Lanot* without repealing the above sentence, since to reverse *Lanot* would mean repealing the said sentence. The *ponente,* however, in reversing *Lanot* does not claim that the second sentence or any portion of Section 15 of RA 8436, as amended by RA 9369, is unconstitutional. Thus, the Decision dated 11 September 2009 is supposedly self-contradictory — reversing *Lanot* but maintaining the constitutionality of the second sentence, which embodies the *Lanot* doctrine. In so doing, the majority avers that the majority decision is irreconcilably in conflict with the clear intent and letter of the second sentence, third paragraph of Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369.

The majority opinion arrives at an erroneous conclusion based on a faulty premise.

Lanot was decided on the basis of the requirement therein that there must be first a **candidate** before the prohibited act of premature campaigning may be committed.

In *Lanot v. Commission on Elections,* **9** Lanot, *et al.,* filed a petition for disqualification against the then Pasig City mayoralty candidate Vicente P. Eusebio for engaging in various forms of election campaign on different occasions outside of the designated campaign period after he filed his COC during the 2004 local elections. The Commission on Elections (COMELEC) Law Department recommended the disqualification of Eusebio for violation of Section 80 of the Omnibus Election Code, which recommendation was approved by the COMELEC First Division. The COMELEC *en banc* referred the case back to the COMELEC Law Department to determine whether Eusebio actually committed the acts subject of the petition for disqualification.

The Court, speaking through Justice Carpio, adjudged that Eusebio was not liable for premature campaigning given that the latter committed partisan political acts **before he became a candidate**. The Court construed the application of Section 11 of Republic Act No. 8463 *vis-à-vis* the provisions of Sections 80 and 79 (a) of the Omnibus Election Code. Section 11 of Republic Act No. 8436 moved the deadline for the filing of certificates of candidacy to 120 days before election day. The Court ruled that the only purpose for the early filing of COCs was to give ample time for the printing of official ballots. Congress, however, never intended the early filing of a COC to make the person filing to become immediately a "candidate" for purposes other than the printing of ballots. This legislative intent prevented the immediate application of Section 80

of the Omnibus Election Code to those filing to meet the early deadline. The clear intention of Congress was to preserve the "election periods as . . . fixed by existing law" prior to Republic Act No. 8436 and that **one who files to meet the early deadline "will still not be considered as a candidate"**. **10**

Simply stated, the Court adjudged in *Lanot* that when Eusebio filed his COC to meet the early deadline set by COMELEC, he did not thereby immediately become a candidate. Thus, there was no premature campaigning since there was no candidate to begin with. It is on this ground that the majority reversed *Lanot.*

The *ponente* reiterates that the existence of a candidate is not necessary before premature campaigning may be committed. Section 80 of the Omnibus Election Code unequivocally 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 specific are the wordings of the law that the individual who may be held liable to commit the unlawful act of premature campaigning can be any person: a voter or non-voter, a candidate or a non-candidate.

Furthermore, as already previously discussed, Section 80 of the Omnibus Election Code was not repealed by Section 15 of RA 8436, as amended by RA 9369. In construing the said provisions, as well as that of Section 79 (a) of the Omnibus Election Code, which defines the meaning of the term candidate, the majority has settled that, after the filing of the COC but before the start of the campaign period, a person is yet to be considered a formal candidate. Nonetheless, by filing the COC, the person categorically and explicitly declares his/her intention to run as a candidate. Thereafter, if such person commits the acts enumerated under Section 79 (b) of the Omnibus Election Code, said acts can already be construed as for the purpose of promoting his/her intended candidacy.

Thus, contrary to the majority opinion, the Decision dated 11 September 2009 is not self-contradictory. The *ponente* can reverse *Lanot* and still uphold the second sentence, third paragraph of Section 15 of Republic Act No. 8436, as amended.

The majority also stresses that in the enactment of Republic Act No. 9369, Congress inserted the word **"only"** to the first *proviso* in the third paragraph of Section 11 of Republic Act No. 8436 so that the same now reads:

> *Provided,* That, unlawful acts or omissions

> applicable to a candidate shall take effect **only** upon the start of the aforesaid campaign period.

Thus, Congress even strengthened its mandatory directive that election offenses can be committed by a candidate "only" upon the start of the campaign period. Accusing the *ponente* of giving a specious reasoning in explaining the above *proviso,* the majority points out to the basic principle of law that any act is lawful, unless expressly declared as unlawful. Therefore, the majority claims that there was no need for Congress to declare in Section 15 of Republic Act No. 8436, as amended, that partisan political activities before the start of the campaign period are lawful. The logical conclusion is that partisan political acts, if done before the start of the campaign period, are lawful. According to the majority, *any election offense* that may be committed by a candidate under *any election law* cannot be committed before the start of the campaign period.

The *ponente* takes exception to the above sweeping and unwarranted reasoning. Not all election offenses are required to be committed by a candidate and, like the prohibited act of premature campaigning, not all election offenses are required to be committed after the start of the campaign period. To reiterate, Section 80 of the Omnibus Election Code, which defines the prohibited act of premature campaigning is still good law despite the passage of Section 15 of Republic Act No. 8436, as amended. Precisely, the conduct of election campaign or partisan political activity before the campaign period is the very evil that Section 80 seeks to prevent.

The majority opinion maintains its objection to the allegedly strained construction and/or interpretation of the *ponente* of the particular provisions involved in this case. With equal vehemence, however, the *ponente* adamantly rejects the majority's absurd and unwarranted theory of repeal of Section 80 of the Omnibus Election Code put forth in both the Dissenting Opinion to the Decision dated 11 September 2009 and the Resolution of the majority.

As the majority repeatedly pointed out, Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369, was enacted merely to give the COMELEC ample time for the printing of ballots. Section 80 of the Omnibus Election Code, on the other hand, is a substantive law which defines the prohibited act of premature campaigning, an election offense punishable with the gravest of penalties that can be imposed on a candidate, *i.e.,* disqualification or, if elected, removal from office. If the majority opinion indignantly rejects the attempts of the *ponente* to reconcile the provisions of Section 80 of the Omnibus Election Code and Section 15 of Republic Act No. 8436, as amended, then why should they

insist on repealing the former provision and not the latter?

The *ponente* emphasizes that **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**. Again, 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.

However, by virtue of the Resolution of the majority, premature campaigning will now be officially decriminalized and, as a consequence, the value and significance of having a campaign period will now be utterly negated. Thus, one year, five years or even ten years prior to the day of the elections, a person aspiring for public office may now engage in election campaign or partisan political activities to promote his candidacy, with impunity. All he needs to have is a very deep campaign war chest to be able to carry out this shrewd activity.

Indeed, while fair elections has been dealt a fatal blow by the Resolution of the majority, it is fervently hoped that the writing of the Decision dated 11 September 2009 and this Dissenting Opinion will not be viewed as an effort made in vain if in the future the said Resolution can be revisited and somehow rectified.

Premises considered, there is no reason to reverse and set aside the earlier ruling of the Court rendered in this case.

I, therefore, vote to **DENY WITH FINALITY** the Motion for Reconsideration filed by Rosalinda A. Penera on the Decision dated 11 September 2009.

ABAD, *J., dissenting:*

The Facts and the Case

Petitioner Rosalinda Penera and respondent Edgar Andanar ran for mayor of Sta. Monica, Surigao Del Norte, during the May 14, 2007 elections.

On March 29, 2007 a motorcade by petitioner Penera's political party preceded the filing of her certificate of candidacy before the Municipal Election Officer of Sta. Monica. Because of this, on April 2,

2007 Andanar filed with the Regional Election Director for Region 13 in SPA 07-224 a petition to disqualify **1** Penera, among others, **2** for engaging in election campaign before the start of the campaign period.

Andanar claimed that Penera and her partymates went around Sta. Monica on March 29, announcing their candidacies and asking the people to vote for them in the coming elections. Answering the petition, Penera claimed that although a motorcade preceded the filing of her certificate of candidacy, she merely observed the usual practice of holding a motorcade on such momentous occasion, but which celebration ended soon after she filed her certificate. Penera claimed that no one made a speech during the event. All they had were lively background music and "a grand standing for the purpose of raising the hands of the candidates in the motorcade".

The parties presented their position papers and other evidence in the case. **3** Afterwards, the regional office forwarded its record to the Commission on Elections (COMELEC) in Manila where the case was raffled to the Second Division for resolution. But the elections of May 14, 2007 overtook it, with petitioner Penera winning the election for Mayor of Sta. Monica. She assumed office on July 2, 2007.

On July 24, 2007 the COMELEC's Second Division issued a resolution, disqualifying petitioner Penera from continuing as a mayoralty candidate in Sta. Monica on the ground that she engaged in premature campaigning in violation of Sections 80 and 68 of the Omnibus Election Code. The Second Division found that she, her partymates, and a bevy of supporters held a motorcade of two trucks and numerous motorcycles laden with balloons, banners, and posters that showed the names of their candidates and the positions they sought. One of the trucks had a public speaker that announced Penera's candidacy for mayor.

Petitioner Penera filed before the COMELEC *en banc* a motion for reconsideration **4** of the Second Division's July 24, 2007 resolution. The *En Banc* denied her motion on January 30, 2008. **5** Still undeterred, Penera came up to this Court. On September 11, 2009 an almost evenly divided Court affirmed the ruling of the COMELEC. On motion for reconsideration, however, the number of votes shifted in favor of granting the petition and reversing the ruling of the COMELEC.

The Issue

The core issue that divided the Court is whether or not petitioner

Penera's act of campaigning for votes immediately preceding the filing of her certificate of candidacy on March 29, 2007 violates the prohibition in Section 80 of the Omnibus Election Code against premature campaigning, with the result that she is disqualified from holding office in accordance with Section 68 of the Code.

Discussion

Section 80 of the Omnibus Election Code prohibits any person, whether a candidate or not, from engaging in election campaign or partisan political activity except during the campaign period fixed by law.

Apart from its penal consequence, the law disqualifies any candidate who engages in premature campaigning from holding the office to which he was elected. Section 68 of the Code 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 . . . (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; . . . .** (Underscoring supplied.)

Since the COMELEC found petitioner Penera guilty of having led on March 29, 2007 a colorful and noisy motorcade that openly publicized her candidacy for mayor of Sta. Monica, this Court held in its original decision that the COMELEC correctly disqualified her from holding the office to which she was elected.

The current majority of the Court claims, however, that with the passage of Republic Act (R.A.) 9369, a candidate who campaigns before the official campaign period may no longer be regarded as having committed an unlawful act that constitutes ground for disqualification. The majority's reasoning is as follows:

> a. Section 79 (a) of the Omnibus Election Code states that 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".
>
> b. It is a person's **filing of a certificate of**

> **candidacy**, therefore, that marks the beginning of his being a *candidate.* It is also such filing that marks his assumption of the responsibilities that goes with being a candidate. Before Penera filed her certificate of candidacy on March 29, 2007, she could not be regarded as having assumed the responsibilities of a "candidate".
>
> c. One of these responsibilities is the duty not to commit acts that are forbidden a *candidate* such as campaigning for votes before the start of the prescribed period for election campaigns. Premature campaigning is a crime and constitutes a ground for disqualification from the office that the candidate seeks.
>
> d. But, with the amendment of Section 15 of R.A. 8436 by Section 13 of R.A. 9369, a person's filing of a certificate of candidacy does not now automatically mark him as a "candidate". He shall be regarded a "candidate", says Section 15, only at the start of the campaign period. Further, the "unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period".

It is significant that before the passage of R.A. 9369 a candidate for a local office had up to the day before the start of the campaign period (which in the case of a local election consists of 45 days before the eve of election day) within which to file his certificate of candidacy and, thus, be regarded as a "candidate". But the need for time to print the ballots with the names of the candidates on them under the automated election system prompted Congress to authorize the COMELEC to set a deadline for the filing of the certificates of candidacy long before the start of the campaign period. Thus, the pertinent portion of Section 15 of R.A. 8436, as amended, provides:

> **SECTION 15. *Official ballot. —***
>
> **xxx xxx xxx**
>
> **For this purpose [the printing of ballots], the Commission shall set the deadline for the filing of certificate of candidacy/petition for registration/manifestation to participate in the election. . . .**
>
> **xxx xxx xxx**

Evidently, while Congress was willing to provide for advance filing of certificates of candidacy, it did not want to impose on those who file early certificates the responsibilities of being already regarded as "candidates" even before the start of the campaign period. Thus, the same Section 15 provides further on:

> **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; . . . .**

In Penera's case, she filed her certificate of candidacy on March 29, 2007. Section 15 does not yet treat her as "candidate" then. Only at the start of the official campaign period on March 30, 2007 was she to be considered as such "candidate". To emphasize this, Congress provided further on in Section 15 that an early filer's responsibility as a *candidate* begins only when the campaign period begins. Thus —

> ***Provided,* That, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period; . . . .**

The current majority concludes from the above that from the time R.A. 9369 took effect on February 10, 2007 a person like petitioner Penera cannot be held liable as a "candidate" for engaging in premature election campaign before she filed her certificate of candidacy or even after she filed one since she may be regarded as a "candidate" only at the start of the campaign period on March 30, 2007. Consequently, since she was not yet a "candidate" on March 29, 2007 when she went around Sta. Monica campaigning for votes on her way to appearing before the election registrar to file her certificate of candidacy, she cannot be held liable for premature campaigning.

But the fact that Penera was not yet a candidate before she actually handed in her certificate of candidacy to the designated COMELEC official does not exempt her from the prohibition against engaging in premature election campaign. Section 80 which imposes the ban ensnares **"any person"**, even a non-candidate. Thus:

> **SECTION 80. *Election campaign or partisan political activity outside campaign period.* — It shall be unlawful for <u>any person</u>, 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: . . .** (Emphasis ours.)

Essentially, the law makes the prohibition against premature campaigning apply to "any person" and "any party, or association of persons". This means that no one is exempt from the ban. The mention of the word "candidate" in the first grouping, *i.e.,* "any person, whether or not a voter or **candidate**", merely stresses the point that even those with direct interest in a political campaign are not exempt from the ban. Consequently, even if Penera had not yet filed her certificate of candidacy, Section 80 covered her because she fell in the category of **"any person"**.

The provision of Section 15 of R.A. 8436, as amended, that regards Penera as a "candidate" only at the start of the campaign period on March 30, 2007 did not, therefore, exempt her from liability as a non-candidate engaging in premature election campaign.

Here, candidate Penera has been found by the COMELEC to have violated Section 80 when, even before she was a candidate, she prematurely campaigned for votes for herself. The ground for her consequent disqualification — premature campaigning — already accrued by the time she filed her certificate of candidacy or when the official campaign period began. Consequently, she is disqualified under Section 68 from continuing as a candidate or, since she has been elected, from holding on to that office. Thus:

> **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 . . . (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; . . .** (Underscoring supplied.)

Does this position contravene Section 15 of R.A. 8436, as amended, that regards Penera as a "candidate" only at the start of the campaign period on March 30, 2007? It does not because Section 80, which the Court seeks to enforce, is essentially intended as a ground for sanctioning **"any person"**, not necessarily a candidate, who engages in premature election campaign.

The real challenge to the current minority position, however, is the meaning that the Omnibus Election Code places on the term "election campaign". "The term 'election campaign' or 'partisan political activity', says Section 79, "refers to an act designed to promote the election or defeat of **a particular candidate** or candidates to a public office". The object of the election campaign activity must be the "election or defeat of a particular candidate".

When petitioner Penera practically said "vote for me" during the March 29 motorcade that she led around Sta. Monica, did she solicit votes for a "particular candidate"? The current majority holds that since, according to Section 79, a "candidate refers to any person aspiring for or seeking an elective public office, **who has filed a certificate of candidacy**" and since Penera held her vote-solicitation motorcade **before** she filed her certificate of candidacy, she did not engage during the town motorcade in a campaign for the election of any "particular candidate".

But this is being too literal. It is like saying that a woman cannot be held liable for parricide since the penal code uses the male pronoun in ascribing to the offender the acts that constitute the crime. Thus, the penal code says:

> **Art. 246. *Parricide.* — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death.**

Yet, parricide, as everyone knows, can also be committed by a woman who shall kill **her** father, mother, or child, or **her** spouse. The spirit of the law intends to punish any person, male or female, who kills his or her ascendants, descendants, or spouse. Literalness must yield to evident legislative intent.

Here, did Congress in enacting R.A. 9369 intend to abolish or repeal Section 80 of the Omnibus Election Code that prohibits election campaigns before the start of the campaign period? It did not. Section 80 remains in the statute books and R.A. 9369 did not, directly or indirectly, touch it.

The current majority of course claims, citing Section 15 of R.A. 8436, as amended, that "the effective date when partisan political acts become unlawful as to a candidate is when the campaign period starts. The pertinent portion of Section 15 says:

> ***Provided,* That, unlawful acts or omissions**

> **applicable to a candidate shall take effect only upon the start of the aforesaid campaign period; . . . .**

If we were to abide by the view of the current majority, Congress ordained when it passed the above provision that it is only for unlawful acts or omissions committed during the campaign period that candidates could be punished. Consequently, if candidates take campaign funds from a foreign government **6** or conspire with others to bribe voters **7** just one day before the start of the campaign period, they cannot be prosecuted. A candidate under the theory of the current majority can freely commit a litany of other crimes relating to the election so long as he commits them before the start of the campaign period. Surely, R.A. 9369 did not intend to grant him immunity from prosecution for these crimes.

The more reasonable reading of the provision — that unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the campaign period — is that Congress referred only to unlawful acts or omissions that could essentially be committed only during the campaign period. For how could a candidate commit **unlawful "pre-campaign" acts** during the campaign period?

The unlawful act of engaging in premature election campaign under Section 80, in relation to Section 79 which defines the terms "candidate" and "election campaign", may be regarded as consisting of three elements:

> 1. A person acts to promote the election or defeat of another to a public office;
>
> 2. He commits the act before the start of the campaign period; and
>
> 3. The person whose election or defeat the offender seeks has filed a certificate of candidacy for the office.

The first two elements could take place when the offender engages in premature election campaign for the person whose election or defeat he seeks to promote but who has not as yet filed his certificate of candidacy. Whereas, the third element — consisting in the latter person's filing his certificate of candidacy — could take place later, close to the campaign period.

The elements of a crime need not be present on a single occasion. In B.P. 22 cases, the issuer of the check may have knowingly issued a perfectly worthless check to apply on account. But, until the check is dishonoured by the drawee bank, the crime of issuing a bouncing

check is not deemed committed. The analogy is far from perfect but the point is that the offender under Section 80 knew fully when she shouted on the top of her voice, "vote for me as your mayor!" before she filed her certificate of candidacy that she was running for mayor. If she says she is not liable because she is technically not yet a candidate, the people should say, "Let us not kid each other!"

Congress could not be presumed to have written a ridiculous rule. It is safe to assume that, in enacting R.A. 9369, Congress did not intend to **decriminalize** illegal acts that candidates and non-candidates alike could commit prior to the campaign period.

Further, current majority's view may doom the next generations. Congress enacted Section 80 because, historically, premature election campaigns begun even years before the election saps the resources of the candidates and their financial backers, ensuring considerable pay-back activities when the candidates are elected. Such lengthy campaigns also precipitate violence, corrupt the electorate, and divert public attention from the more vital needs of the country. **8**

Actually, practically all the principal stakeholders in the election, namely, the voters, the candidates, and the COMELEC, have since 1969 assumed that premature election campaign is not allowed. People generally wait for the campaign period to start before engaging in election campaign. Even today, after the passage of R.A. 9369, those aspiring to national offices have resorted to the so-called "infomercials" that attempt to enhance their popularities by showing their philosophies in life, what they have accomplished, and the affection with which ordinary people hold them. No one has really come out with ads soliciting votes for any particular candidate or person aspiring for a particular public office. They are all aware of Section 80.

Parenthetically, the Supreme Court declared the law banning premature election campaign constitutional in *Gonzales v. Commission on Elections* **9** only because the majority in the Court were unable to muster two-thirds votes to declare it unconstitutional. The freedom of expression has always loomed large in the mind of the Court. It would not be likely, therefore, for the Court to hastily declare every expression tending to promote a person's chances in the elections as prohibited election campaigning.

I vote to deny the motion for reconsideration.

Footnotes

1. Decision, p. 23 (Boldfacing and underscoring supplied).

2. G.R. No. 164858, 16 November 2006, 507 SCRA 114.

3. *Id.* at 147-152.

4. *Id.* at 152.

5. Dissenting Opinion of Justice Antonio T. Carpio, pp. 4-6.

6. Decision, p. 24.

CHICO-NAZARIO, J., dissenting:

1. *Rollo,* pp. 439-469.

2. *Rollo,* p. 441.

3. *Rollo,* p. 452.

4. *Rollo,* p. 455.

5. *Rollo,* p. 459.

6. *Rollo,* p. 465.

7. *Rollo,* p. 455. Under Section 7, Rule 4 of the Commission on Elections Rules of Procedure, EO stands for Election Offenses.

8. The relevant provision in Republic Act No. 8436 is Section 11, which pertinently provides:

SECTION 11. *Official ballot.* — . . .

xxx xxx xxx

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, further, That, **unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period[.]**

9. G.R. No. 164858, 16 November 2006.

10. *Lanot v. Commission on Elections,* G.R. No. 164858, 16

November 2006, 507 SCRA 114, 152.

ABAD, J., dissenting:

1. *Rollo,* pp. 53-54.

2. Arcelito Petallo, Renato Virtudazo, Glorina Aparente, Silverio Tajos, Jose Platil, Medardo Sunico, Edelito Lerio and Sensualito Febra.

3. *Rollo,* p. 127.

4. *Id.* at 97-108.

5. *Id.* at 48.

6. Section 96, Omnibus Election Code.

7. Section 261 (b), Omnibus Election Code.

8. *Gonzales v. Commission on Elections,* 137 Phil. 471, 490-491 (1969).

9. *Id.*