

VICTORINO DENNIS M. SOCRATES, MAYOR OF PUERTO PRINCESA CITY, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE PREPARATORY RECALL ASSEMBLY (PRA) OF PUERTO PRINCESA CITY, PRA INTE...*G.R. No. 154512. November 12, 2002*

Ponente: CARPIO, J.

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Before us are consolidated petitions for certiorari[1] seeking the reversal of the resolutions issued by the Commission on Elections (“COMELEC” for brevity) in relation to the recall election for mayor of Puerto Princesa City, Palawan.

The Antecedents

On July 2, 2002, 312 out of 528 members of the then incumbent barangay officials of the Puerto Princesa convened themselves into a Preparatory Recall Assembly (“PRA” for brevity) at the Gymnasium of Barangay San Jose from 9:00 a.m. to 12:00 noon. The PRA was convened to initiate the recall[2] of Victorino Dennis M. Socrates (“Socrates” for brevity) who assumed office as Puerto Princesa’s mayor on June 30, 2001. The members of the PRA designated Mark David M. Hagedorn, president of the Association of Barangay Captains, as interim chair of the PRA.

On the same date, the PRA passed Resolution No. 01-02 (“Recall Resolution” for brevity) which declared its loss of confidence in Socrates and called for his recall. The PRA requested the COMELEC to schedule the recall election for mayor within 30 days from receipt of the Recall Resolution.

On July 16, 2002, Socrates filed with the COMELEC a petition, docketed as E.M. No. 02-010 (RC), to nullify and deny due course to the Recall Resolution.

On August 14, 2002, the COMELEC en banc[3] promulgated a resolution dismissing for lack of merit Socrates’ petition. The COMELEC gave due course to the Recall Resolution and scheduled the recall election on September 7, 2002.

On August 21, 2002, the COMELEC en banc promulgated Resolution No. 5673 prescribing the calendar of activities and periods of certain prohibited acts in connection with the recall election. The COMELEC fixed the campaign period from August 27, 2002 to September 5, 2002 or a period of 10 days.

On August 23, 2002, Edward M. Hagedorn (“Hagedorn” for brevity) filed his certificate of candidacy for mayor in the recall election.

On August 17, 2002, Ma. Flores F. Adovo (“Adovo” for brevity) and Merly E. Gilo (“Gilo” for brevity) filed a petition before the COMELEC, docketed as SPA No. 02-492, to disqualify Hagedorn from running in the recall election and to cancel his certificate of candidacy. On August 30, 2002, a certain Bienvenido Ollave, Sr.

(“Ollave” for brevity) filed a petition-in-intervention in SPA No. 02-492 also seeking to disqualify Hagedorn. On the same date, a certain Genaro V. Manaay filed another petition, docketed as SPA No. 02-539, against Hagedorn alleging substantially the same facts and involving the same issues. The petitions were all anchored on the ground that “Hagedorn is disqualified from running for a fourth consecutive term, having been elected and having served as mayor of the city for three (3) consecutive full terms immediately prior to the instant recall election for the same post.” Subsequently, SPA Nos. 02-492 and 02-539 were consolidated.

In a resolution promulgated on September 20, 2002, the COMELEC’s First Division^[4] dismissed for lack of merit SPA Nos. 02-492 and 02-539. The COMELEC declared Hagedorn qualified to run in the recall election. The COMELEC also reset the recall election from September 7, 2002 to September 24, 2002.

On September 23, 2002, the COMELEC en banc promulgated a resolution denying the motion for reconsideration of Adovo and Gilo. The COMELEC affirmed the resolution declaring Hagedorn qualified to run in the recall election.

Hence, the instant consolidated petitions.

G.R. No. 154512

Petitioner Socrates seeks to nullify the COMELEC en banc resolution dated August 14, 2002 in E.M. No. 02-010 (RC) which gave due course to the Recall Resolution and scheduled the recall election on September 7, 2002.

Socrates alleges that the COMELEC gravely abused its discretion in upholding the Recall Resolution. Socrates cites the following circumstances as legal infirmities attending the convening of the PRA and its issuance of the Recall Resolution: (1) not all members of the PRA were notified of the meeting to adopt the resolution; (2) the proof of service of notice was palpably and legally deficient; (3) the members of the PRA were themselves seeking a new electoral mandate from their respective constituents; (4) the adoption of the resolution was exercised with grave abuse of authority; and (5) the PRA proceedings were conducted in a manner that violated his and the public’s constitutional right to information.

G.R. No. 154683

Petitioner Vicente S. Sandoval, Jr. seeks to annul COMELEC Resolution No. 5673 dated August 21, 2002 insofar as it fixed the recall election on September 7, 2002, giving the candidates only a ten-day campaign period. He prayed that the COMELEC be enjoined from holding the recall election on September 7, 2002 and that a new date be fixed giving the candidates at least an additional 15 days to campaign.

In a resolution dated September 3, 2002, the Court en banc enjoined the COMELEC from implementing Resolution No. 5673 insofar as it fixed the date of the recall election on September 7, 2002. The Court directed the COMELEC to give the candidates an additional fifteen 15 days from September 7, 2002 within which to campaign.

Accordingly, on September 9, 2002, the COMELEC en banc issued Resolution No. 5708 giving the candidates an additional 15 days from September 7, 2002 within which to campaign. Thus, the COMELEC reset the recall election to September 24, 2002.

G.R. Nos. 155083-84

Petitioners Adovo, Gilo and Ollave assail the COMELEC’s resolutions dated September 20, 2002 and September 23, 2002 in SPA Nos. 02-492 and 02-539 declaring Hagedorn qualified to run for mayor in the recall election. They likewise prayed for the issuance of a temporary restraining order to enjoin the proclamation of the winning candidate in the recall election.

Petitioners argue that the COMELEC gravely abused its discretion in upholding Hagedorn's qualification to run for mayor in the recall election despite the constitutional and statutory prohibitions against a fourth consecutive term for elective local officials.

In a resolution dated September 24, 2002, the Court ordered the COMELEC to desist from proclaiming any winning candidate in the recall election until further orders from the Court. Petitioners were required to post a P20,000 bond.

On September 27, 2002, Socrates filed a motion for leave to file an attached petition for intervention seeking the same reliefs as those sought by Adovo, Gilo and Ollave.

In the meantime, Hagedorn garnered the highest number of votes in the recall election with 20,238 votes. Rival candidates Socrates and Sandoval obtained 17,220 votes and 13,241 votes, respectively.

Hagedorn filed motions to lift the order restraining the COMELEC from proclaiming the winning candidate and to allow him to assume office to give effect to the will of the electorate.

On October 1, 2002, the Court granted Socrates' motion for leave to file a petition for intervention.

The Issues

The issues for resolution of the Court are:

1. In G.R. No. 154512, whether the COMELEC committed grave abuse of discretion in giving due course to the Recall Resolution and scheduling the recall election for mayor of Puerto Princesa.
2. In G.R. Nos.155083-84, whether Hagedorn is qualified to run for mayor in the recall election of Puerto Princesa on September 24, 2002.

In G.R. No. 154683, the issue of whether the COMELEC committed grave abuse of discretion in fixing a campaign period of only 10 days has become moot. Our Resolution of September 3, 2002 and COMELEC Resolution No. 5708 granted an additional 15 days for the campaign period as prayed for by petitioner.

First Issue: Validity of the Recall Resolution.

Petitioner Socrates argues that the COMELEC committed grave abuse of discretion in upholding the Recall Resolution despite the absence of notice to 130 PRA members and the defective service of notice to other PRA members. The COMELEC, however, found that—

“On various dates, in the month of June 2002, the proponents for the Recall of incumbent City Mayor Victorino Dennis M. Socrates sent notices of the convening of the PRA to the members thereof pursuant to Section 70 of the Local Government Code. Copies of the said notice are in Volumes I and II entitled Notices to PRA. Likewise, Proof of Service for each of the said notices were attached to the Petition and marked as Annex “G” of Volumes II and III of the Petition.

Notices were likewise posted in conspicuous places particularly at the Barangay Hall. Photos establishing the same were attached to the Petition and marked as Annex “H”. The proponents likewise utilized the broadcast mass media in the dissemination of the convening of the PRA.

Notices of the convening of the Puerto Princesa PRA were also sent to the following: [a list of 25 names of provincial elective officials, print and broadcast media practitioners, PNP officials, COMELEC city, regional and national officials, and DILG officials].

x x x

The City Election Officer of Puerto Princesa City in her Certification dated 10 July 2002 certified that upon a 'thorough and careful verification of the signatures appearing in PRA Resolution 01-02, x x x the majority of all members of the PRA concerned approved said resolution.' She likewise certified 'that not a single member/signatory of the PRA complained or objected as to the veracity and authenticity of their signatures.'

The Provincial Election Supervisor of Palawan, Atty. Urbano Arlando, in his Indorsement dated 10 July 2002, stated, 'upon proper review, all documents submitted are found in order.'

The Acting Director IV, Region IV, in his study dated 30 July 2002 submitted the following recommendations:

'This Office, after evaluating the documents filed, finds the instant Petition sufficient in form and substance. That the PRA was validly constituted and that the majority of all members thereof approved Resolution No. 01-02 calling for the recall of Mayor Victorino Dennis M. Socrates.'

x x x ."

This Court is bound by the findings of fact of the COMELEC on matters within the competence and expertise of the COMELEC, unless the findings are patently erroneous. In *Malonzo v. COMELEC*,^[5] which also dealt with alleged defective service of notice to PRA members, we ruled that—

"Needless to state, the issue of propriety of the notices sent to the PRA members is factual in nature, and the determination of the same is therefore a function of the COMELEC. In the absence of patent error, or serious inconsistencies in the findings, the Court should not disturb the same. The factual findings of the COMELEC, based on its own assessments and duly supported by gathered evidence, are conclusive upon the court, more so, in the absence of a substantiated attack on the validity of the same."

In the instant case, we do not find any valid reason to hold that the COMELEC's findings of fact are patently erroneous.

Socrates also claims that the PRA members had no authority to adopt the Recall Resolution on July 2, 2002 because a majority of PRA members were seeking a new electoral mandate in the barangay elections scheduled on July 15, 2002. This argument deserves scant consideration considering that when the PRA members adopted the Recall Resolution their terms of office had not yet expired. They were all *de jure* sangguniang barangay members with no legal disqualification to participate in the recall assembly under Section 70 of the Local Government Code.

Socrates bewails that the manner private respondents conducted the PRA proceedings violated his constitutional right to information on matters of public concern. Socrates, however, admits receiving notice of the PRA meeting and of even sending his representative and counsel who were present during the entire PRA proceedings. Proponents of the recall election submitted to the COMELEC the Recall Resolution, minutes of the PRA proceedings, the journal of the PRA assembly, attendance sheets, notices sent to PRA members, and authenticated master list of barangay officials in Puerto Princesa. Socrates had the right to examine and copy all these public records in the official custody of the COMELEC. Socrates, however, does not claim that the COMELEC denied him this right. There is no legal basis in Socrates' claim that respondents violated his constitutional right to information on matters of public concern.

Thus, we rule that the COMELEC did not commit grave abuse of discretion in upholding the validity of the Recall Resolution and in scheduling the recall election on September 24, 2002.

Second Issue: Hagedorn's qualification to run for mayor in the recall election of September 24, 2002.

The three-term limit rule for elective local officials is found in Section 8, Article X of the Constitution, which states:

“Section 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.”

This three-term limit rule is reiterated in Section 43 (b) of RA No. 7160, otherwise known as the Local Government Code, which provides:

“Section 43. Term of Office. – (a) x x x

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official was elected.”

These constitutional and statutory provisions have two parts. The first part provides that an elective local official cannot serve for more than three consecutive terms. The clear intent is that only consecutive terms count in determining the three-term limit rule. The second part states that voluntary renunciation of office for any length of time does not interrupt the continuity of service. The clear intent is that involuntary severance from office for any length of time interrupts continuity of service and prevents the service before and after the interruption from being joined together to form a continuous service or consecutive terms.

After three consecutive terms, an elective local official cannot seek immediate reelection for a fourth term. The prohibited election refers to the next regular election for the same office following the end of the third consecutive term. Any subsequent election, like a recall election, is no longer covered by the prohibition for two reasons. First, a subsequent election like a recall election is no longer an immediate reelection after three consecutive terms. Second, the intervening period constitutes an involuntary interruption in the continuity of service.

When the framers of the Constitution debated on the term limit of elective local officials, the question asked was whether there would be no further election after three terms, or whether there would be “no immediate reelection” after three terms. This is clear from the following deliberations of the Constitutional Commission:

“THE PRESIDENT: The Acting Floor Leader is recognized.

MR. ROMULO:[6] We are now ready to discuss the two issues, as indicated on the blackboard, and these are Alternative No. 1 where there is no further election after a total of three terms and Alternative No. 2 where there is no immediate reelection after three successive terms.”[7]

The Journal of the Constitutional Commission reports the following manifestation on the term of elective local officials:

“MANIFESTATION OF MR. ROMULO

Upon resumption of session, Mr. Romulo manifested that the Body would proceed to the consideration of two issues on the term of Representatives and local officials, namely: 1) Alternative No. 1 (no further reelection after a total of three terms), and 2) Alternative No. 2 (no immediate reelection after three successive terms).”[8]

The framers of the Constitution used the same “no immediate reelection” question in voting for the term limits of Senators[9] and Representatives of the House.[10]

Clearly, what the Constitution prohibits is an immediate reelection for a fourth term following three consecutive

terms. The Constitution, however, does not prohibit a subsequent reelection for a fourth term as long as the reelection is not immediately after the end of the third consecutive term. A recall election mid-way in the term following the third consecutive term is a subsequent election but not an immediate reelection after the third term.

Neither does the Constitution prohibit one barred from seeking immediate reelection to run in any other subsequent election involving the same term of office. What the Constitution prohibits is a consecutive fourth term. The debates in the Constitutional Commission evidently show that the prohibited election referred to by the framers of the Constitution is the immediate reelection after the third term, not any other subsequent election.

If the prohibition on elective local officials is applied to any election within the three-year full term following the three-term limit, then Senators should also be prohibited from running in any election within the six-year full term following their two-term limit. The constitutional provision on the term limit of Senators is worded exactly like the term limit of elective local officials, thus:

“No Senator shall serve for more than two consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.”[11]

In the debates on the term limit of Senators, the following exchange in the Constitutional Convention is instructive:

“GASCON:[12] I would like to ask a question with regard to the issue after the second term. We will allow the Senator to rest for a period of time before he can run again?

DAVIDE:[13] That is correct.

GASCON: And the question that we left behind before - if the Gentleman will remember - was: How long will that period of rest be? Will it be one election which is three years or one term which is six years?

DAVIDE: If the Gentleman will remember, Commissioner Rodrigo expressed the view that during the election following the expiration of the first 12 years, whether such election will be on the third or on the sixth year thereafter, this particular member of the Senate can run. So, it is not really a period of hibernation for six years. That was the Committee’s stand.

GASCON: So, effectively, the period of rest would be three years at the least.”[14] (Emphasis supplied)

The framers of the Constitution thus clarified that a Senator can run after only three years[15] following his completion of two terms. The framers expressly acknowledged that the prohibited election refers only to the immediate reelection, and not to any subsequent election, during the six-year period following the two term limit. The framers of the Constitution did not intend “the period of rest” of an elective official who has reached his term limit to be the full extent of the succeeding term.

In the case of Hagedorn, his candidacy in the recall election on September 24, 2002 is not an immediate reelection after his third consecutive term which ended on June 30, 2001. The immediate reelection that the Constitution barred Hagedorn from seeking referred to the regular elections in 2001. Hagedorn did not seek reelection in the 2001 elections.

Hagedorn was elected for three consecutive terms in the 1992, 1995 and 1998 elections and served in full his three consecutive terms as mayor of Puerto Princesa. Under the Constitution and the Local Government Code, Hagedorn could no longer run for mayor in the 2001 elections. The Constitution and the Local Government Code disqualified Hagedorn, who had reached the maximum three-term limit, from running for a fourth consecutive term as mayor. Thus, Hagedorn did not run for mayor in the 2001 elections.[16] Socrates ran and won as mayor of

Puerto Princesa in the 2001 elections. After Hagedorn ceased to be mayor on June 30, 2001, he became a private citizen until the recall election of September 24, 2002 when he won by 3,018 votes over his closest opponent, Socrates.

From June 30, 2001 until the recall election on September 24, 2002, the mayor of Puerto Princesa was Socrates. During the same period, Hagedorn was simply a private citizen. This period is clearly an interruption in the continuity of Hagedorn's service as mayor, not because of his voluntary renunciation, but because of a legal prohibition. Hagedorn's three consecutive terms ended on June 30, 2001. Hagedorn's new recall term from September 24, 2002 to June 30, 2004 is not a seamless continuation of his previous three consecutive terms as mayor. One cannot stitch together Hagedorn's previous three-terms with his new recall term to make the recall term a fourth consecutive term because factually it is not. An involuntary interruption occurred from June 30, 2001 to September 24, 2002 which broke the continuity or consecutive character of Hagedorn's service as mayor.

In *Lonzanida v. Comelec*,^[17] the Court had occasion to explain interruption of continuity of service in this manner:

"x x x The second sentence of the constitutional provision under scrutiny states, "Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which he was elected." The clear intent of the framers of the constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term is evident in this provision. Voluntary renunciation of a term does not cancel the renounced term in the computation of the three-term limit; conversely, involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service. x x x." (Emphasis supplied)

In Hagedorn's case, the nearly 15-month period he was out of office, although short of a full term of three years, constituted an interruption in the continuity of his service as mayor. The Constitution does not require the interruption or hiatus to be a full term of three years. The clear intent is that interruption "for any length of time," as long as the cause is involuntary, is sufficient to break an elective local official's continuity of service.

In the recent case of *Adorneo v. Comelec and Talaga*,^[18] a unanimous Court reiterated the rule that an interruption consisting of a portion of a term of office breaks the continuity of service of an elective local official. In *Adorneo*, Ramon Y. Talaga, Jr. had served two consecutive full terms as mayor of Lucena City. In his third bid for election as mayor in 1998, Talaga lost to Bernard G. Tagarao. However, in the recall election of May 12, 2000, Talaga won and served the unexpired term of Tagarao from May 12, 2000 to June 30, 2001. When Talaga ran again for mayor in the 2001 elections, Raymundo Adorneo, the other candidate for mayor, petitioned for Talaga's disqualification on the ground that Talaga had already served three consecutive terms as mayor.

Thus, the issue in *Adorneo* was whether Talaga's recall term was a continuation of his previous two terms so that he was deemed to have already served three consecutive terms as mayor. The Court ruled that Talaga was qualified to run in the 2001 elections, stating that the period from June 30, 1998 to May 12, 2000 when Talaga was out of office interrupted the continuity of his service as mayor. Talaga's recall term as mayor was not consecutive to his previous two terms because of this interruption, there having been a break of almost two years during which time Tagarao was the mayor.

We held in *Adorneo* that the period an elective local official is out of office interrupts the continuity of his service and prevents his recall term from being stitched together as a seamless continuation of his previous two consecutive terms. In the instant case, we likewise hold that the nearly 15 months Hagedorn was out of office interrupted his continuity of service and prevents his recall term from being stitched together as a seamless continuation of his previous three consecutive terms. The only difference between *Adorneo* and the instant case

is the time of the interruption. In *Adorneo*, the interruption occurred after the first two consecutive terms. In the instant case, the interruption happened after the first three consecutive terms. In both cases, the respondents were seeking election for a fourth term.

In *Adorneo*, the recall term of Talaga began only from the date he assumed office after winning the recall election. Talaga's recall term did not retroact to include the tenure in office of his predecessor. If Talaga's recall term was made to so retroact, then he would have been disqualified to run in the 2001 elections because he would already have served three consecutive terms prior to the 2001 elections. One who wins and serves a recall term does not serve the full term of his predecessor but only the unexpired term. The period of time prior to the recall term, when another elective official holds office, constitutes an interruption in continuity of service. Clearly, *Adorneo* established the rule that the winner in the recall election cannot be charged or credited with the full term of three years for purposes of counting the consecutiveness of an elective official's terms in office.

In the same manner, Hagedorn's recall term does not retroact to include the tenure in office of Socrates. Hagedorn can only be disqualified to run in the September 24, 2002 recall election if the recall term is made to retroact to June 30, 2001, for only then can the recall term constitute a fourth consecutive term. But to consider Hagedorn's recall term as a full term of three years, retroacting to June 30, 2001, despite the fact that he won his recall term only last September 24, 2002, is to ignore reality. This Court cannot declare as consecutive or successive terms of office which historically and factually are not.

Worse, to make Hagedorn's recall term retroact to June 30, 2001 creates a legal fiction that unduly curtails the freedom of the people to choose their leaders through popular elections. The concept of term limits is in derogation of the sovereign will of the people to elect the leaders of their own choosing. Term limits must be construed strictly to give the fullest possible effect to the sovereign will of the people. As this Court aptly stated in *Borja, Jr. v. Comelec*:

"Thus, a consideration of the historical background of Art. X, §8 of the Constitution reveals that the members of the Constitutional Commission were as much concerned with preserving the freedom of choice of the people as they were with preventing the monopolization of political power. Indeed, they rejected a proposal put forth by Commissioner Edmundo F. Garcia that after serving three consecutive terms or nine years there should be no further reelection for local and legislative officials. Instead, they adopted the alternative proposal of Commissioner Christian Monsod that such officials be simply barred from running for the same position in the succeeding election following the expiration of the third consecutive term. Monsod warned against 'prescreening candidates [from] whom the people will choose' as a result of the proposed absolute disqualification, considering that the draft constitution contained provisions 'recognizing people's power.'" [19] (Emphasis supplied)

A necessary consequence of the interruption of continuity of service is the start of a new term following the interruption. An official elected in recall election serves the unexpired term of the recalled official. This unexpired term is in itself one term for purposes of counting the three-term limit. This is clear from the following discussion in the Constitutional Commission:

"SUAREZ:[20] For example, a special election is called for a Senator, and the Senator newly elected would have to serve the unexpired portion of the term. Would that mean that serving the unexpired portion of the term is already considered one term? So, half a term, which is actually the correct statement, plus one term would disqualify the Senator concerned from running? Is that the meaning of this provision on disqualification, Madam President?

DAVIDE: Yes, because we speak of 'term,' and if there is a special election, he will serve only for the unexpired portion of that particular term plus one more term for the Senator and two more terms for the

Members of the Lower House.”[21]

Although the discussion referred to special elections for Senators and Representatives of the House, the same principle applies to a recall election of local officials. Otherwise, an elective local official who serves a recall term can serve for more than nine consecutive years comprising of the recall term plus the regular three full terms. A local official who serves a recall term should know that the recall term is in itself one term although less than three years. This is the inherent limitation he takes by running and winning in the recall election.

In summary, we hold that Hagedorn is qualified to run in the September 24, 2002 recall election for mayor of Puerto Princesa because:

1. Hagedorn is not running for immediate reelection following his three consecutive terms as mayor which ended on June 30, 2001;
2. Hagedorn’s continuity of service as mayor was involuntarily interrupted from June 30, 2001 to September 24, 2002 during which time he was a private citizen;
3. Hagedorn’s recall term from September 24, 2002 to June 30, 2004 cannot be made to retroact to June 30, 2001 to make a fourth consecutive term because factually the recall term is not a fourth consecutive term; and
4. Term limits should be construed strictly to give the fullest possible effect to the right of the electorate to choose their leaders.

WHEREFORE, the petitions in G.R. Nos. 154512, 154683 and 155083-84 are DISMISSED. The temporary restraining order issued by this Court on September 24, 2002 enjoining the proclamation of the winning candidate for mayor of Puerto Princesa in the recall election of September 24, 2002 is lifted. No costs.

SO ORDERED.

Bellosillo, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio-Morales, and Callejo, Sr., JJ., concur.

Davide, Jr., C.J., see concurring and dissenting opinion.

Puno, J., see concurring opinion.

Vitug, J., in the result.

Mendoza, J., in the result, without to the filing of separate opinion.

Austria-Martinez, J., on leave.

Corona, J., no part - prior consultation.

Azcuna, J., joins the separate opinion of C.J. Davide.

[1] Filed under Rule 65 in relation to Rule 64 of the 1997 Rules of Civil Procedure with prayers for preliminary injunction and temporary restraining orders.

[2] Pursuant to the provisions of Republic Act 7160 or the Local Government Code of 1991, Chapter 5, Sections 69 to 75.

[3] Composed of Benjamin S. Abalos, Sr. as Chairman with Commissioners Luzviminda G. Tancangco, Rufino S.B. Javier, Ralph C. Lantion, Mehol K. Sadain, Resurreccion Z. Borra and Florentino A. Tuason, Jr.

[4] With Mehol K. Sadain as Presiding Commissioner and Luzviminda G. Tancangco and Resurreccion Z. Borra as Commissioners.

[5] 269 SCRA 380 (1997).

[6] Ricardo J. Romulo, Commissioner of the 1986 Constitutional Convention.

[7] Record of the Constitutional Commission, Vol. 2, p. 236.

[8] Journal of the Constitutional Commission, Vol. I, p. 420.

[9] “MR. ROMULO: Madam President, we are now ready to vote on the question of the Senators, and the schemes are as follows: The first scheme is, no further election after two terms; the second scheme is, no immediate reelection after two successive terms. Madam President, inasmuch as the principles applicable here are the same as those for the House of Representatives, I move that we go directly to the voting and forego any further discussions.

THE PRESIDENT: Please distribute the ballots for this particular item for Senators. Are we ready now? The Secretary-General will please count the ballots.

COUNTING OF BALLOTS

THE SECRETARY-GENERAL: We have 43 ballots here, Madam President. We shall now begin to count.

THE PRESIDENT: Please proceed.

THE SECRETARY-GENERAL, reading:

Scheme No. I — ////-////-//

Scheme No. II — ////-////-////-////-////-////-//

THE PRESIDENT: The results show 12 votes for Scheme No. I and 32 votes for Scheme No. II; Scheme No. II is approved.” (Emphasis supplied) Record of the Constitutional Commission, Vol. 2, pp. 244-245.

[10] “MR. GASCON: Is this voting just for Congressmen?

THE PRESIDENT: Yes.

The Secretary-General will now please proceed to count the votes.

COUNTING OF BALLOTS

THE SECRETARY-GENERAL: Madam President, we have here 43 ballots cast. We will now start the counting.

Alternative No. 1 — no further election after a total of three terms: ////-////-////-//

Alternative No. 2 — no immediate reelection after three successive terms: ////-////-////-////-////-//

THE PRESIDENT: The results show 17 votes for Alternative No. 1 and 26 votes for Alternative No. 2; Alternative No. 2 is approved.” (Emphasis supplied) Record of the Constitutional Commission, Vol. 2, pp. 243-244.

[11] Second paragraph of Section 4, Article VI of the Constitution.

[12] Jose Luis Martin C. Gascon, Commissioner of the 1986 Constitutional Commission.

[13] Hilario G. Davide, Jr., Commissioner of the 1986 Constitutional Commission, and now Chief Justice of the Supreme Court.

[14] Record of the Constitutional Commission, Vol. II, p. 590.

[15] Bernas, The Intent of the 1986 Constitution Writers, p. 341 (1995).

[16] Hagedorn instead ran for Governor of Palawan in the 2001 elections but lost.

[17] 311 SCRA 602 (1999).

[18] G.R. No. 147927, February 4, 2002.

[19] 295 SCRA 157 (1998).

[20] Jose E. Suarez, Commissioner of the 1986 Constitutional Commission.

[21] Record of the Constitutional Commission, Vol. II, p. 592.

CONCURRING AND DISSENTING OPINION

DAVIDE, JR., C.J.:

I concur with the opinion and conclusion of Mr. Justice Antonio T. Carpio in G.R. No. 154512 and G.R. No. 154683. The Commission on Elections (COMELEC) committed no grave abuse of discretion in giving due course to the Recall Resolution. Dismissal then of G.R. No. 154512 is inevitable. This notwithstanding, I still hold on to my dissenting view in G.R. No. 111511 (*Garcia, et al. vs. COMELEC, et al.*, 227 SCRA 100, 121 [1993]) that the provision on the preparatory recall assembly in Section 70 of the Local Government Code of 1991 is unconstitutional.

Our issuance of the Resolution of 3 September 2002 in G.R. No. 154683 enjoining the COMELEC from implementing its Resolution No. 5673 insofar as it fixed the recall election on 7 September 2002, and the subsequent Resolution of the COMELEC giving the candidates an additional campaign period of fifteen days from 7 September 2002 rendered moot and academic the principal issue in G.R. No. 154683. The dismissal of the petition therein is also in order.

However, I regret I cannot concur with the argument and conclusion relative to G.R. Nos. 155083-84. I respectfully submit that private respondent Edward S. Hagedorn is disqualified from running for the position of Mayor of Puerto Princesa City in the recall election in question.

Section 8 of Article X of the Constitution expressly provides:

SEC. 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an Interruption In the continuity of his service for the full term for which he was elected.

Paragraph (b), Section 43 of R.A. No. 7160 (The Local Government Code) restates this constitutional restriction, thus: SEC. 43. Term of office.—

...(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official was elected.

Section 8 of Article X of the Constitution was not found in the Report of the Committee on Local Governments of the Constitutional Commission of 1986. It was introduced at the plenary session by Commissioner Hilario G. Davide, Jr. Commenting thereon in his book entitled “The Intent of 1986 Constitution Writers” (1995 ed., p. 699), Commissioner Joaquin Bernas states:

This provision was not found among the Committee’s proposals but came as an amendment proposed by Commissioner Davide. It was readily accepted without much discussion and formally approved.

Section 8 sets the duration of a term at three years, and prohibits elective local officials from serving for more than three consecutive terms.

Pursuant to the second paragraph of Section 1 of Article XVIII (The Transitory Provision) of the Constitution, and Executive Order No. 270, as amended by R.A. No. 6636, the first local election, that is, the election for the first term under the Constitution for elective local officials, was on 18 January 1988. By express provision of Section 5 of R.A. No. 6636, in relation to Section 2 of Article XVIII of the Constitution, that term expired at noon of 30

June 1992. The second election, i.e., the election for the second term of elective local officials which expired at noon of 30 June 1995, for elective local officials, was on the second Monday of May 1992 pursuant to R.A. No. 7166 (An Act Providing for Synchronized National and Local Elections and for Electoral Reforms). The third election, i.e., for the third term which expired at noon of 30 June 1998, was on the second Monday of May 1995, pursuant to Section 2 of R.A. No. 7166. The fourth election, or for the fourth term which expired at noon of 30 June 2001, was on the second Monday of May 1998. The fifth election, i.e., for the fifth term which would expire at noon of 30 June 2004, was on the second Monday of May 2001. Conformably with Section 8 of Article X of the Constitution and Section 43(b) of R.A. No. 7160, a local official elected in the first local election of 18 January 1988 may be reelected in the synchronized elections in May 1992 and in May 1995. He could not seek another reelection in the May 1998 election because that would have been his fourth term. Similarly, a local official who was elected in the May 1992 election could be reelected in the May 1995 and May 1998 elections.

Private respondent Hagedorn was first elected as City Mayor of Puerto Princesa City in the May 1992 election. He was reelected in the May 1995 and May 1998 elections. His third term, by virtue of his election in the May 1998 election, expired on 30 June 2001. Therefore, he was constitutionally and statutorily barred from seeking reelection in the May 2001 election, which would have been his fourth term.

The term of office covered by the May 2001 election is up to 30 June 2004. Section 8 of Article X of the Constitution and Section 43(b) of R.A. No. 7160 are clear in what is prohibited, which is the fourth term. Nothing can be clearer from the wordings thereof: “the term of office of elective local officials ... shall be three years and no such official shall serve for more than three consecutive terms.” In short, an elective local official who has served three consecutive terms, like Hagedorn, is disqualified from seeking re-election for the succeeding fourth term. The provision bars the holding of four consecutive terms.

The ponencia is then correct when it holds that the three-term limit bars an immediate reelection for a fourth term. But I disagree when it rules that in the case of Hagedorn he did not seek an immediate reelection for a fourth term because he was not a candidate for reelection in the May 2001 election. It forgets that what would have been his fourth term by virtue of the May 2001 election was for the period from 30 June 2001 to 30 June 2004. The flaw in the ruling results from an apparent confusion between term and election, the root cause of which is the attempt to distinguish “voluntary renunciation” of office from “involuntary severance” from office and the term of office to which it relates.

Let me first discuss the matter of whether the Constitutional Commission did approve the rule of “no Immediate reelection after three consecutive terms.” In support of its affirmative conclusion the ponencia quotes the Manifestation of Commissioner Romulo as entered in the Journal of the Constitutional Commission, thus:

MANIFESTATION OF MR. ROMULO

Upon resumption of session, Mr. Romulo manifested that the Body would proceed to the consideration of two issues on the term of Representatives and local officials, namely: a) Alternative No. 1 (no further reelection after a total of three terms), and 2) Alternative No. 2 (no immediate reelection after three successive terms).

This is inaccurate. What actually happened was that the issue was originally for elective national and local officials. However, the Commission decided to consider first the term of the members of Congress; and to defer the discussion on the term of elective local officials until the Commission would consider the report of the Committee on Local Governments. On this point I quote the pertinent portions of Volume Two, pages 238-245 of the Record of the Constitutional Commission of its proceedings on 25 July 1986:

THE PRESIDENT. Maybe it will be of help we Just remind ourselves that what we have before us now is the report of the Committee on the Legislative. Therefore, maybe we should confine ourselves first to what is

covered by the report which is the term of office of the Senators and the Representatives. And with respect to the local officials, let us await the report of the Committee on Local Governments as to its recommendation on this matter.

MR. RODRIGO. As a matter of fact, I will go further than that, it is my belief, as regards local officials, that we should leave this matter to the legislative.

THE PRESIDENT. So what is the pleasure now of the Acting Floor Leader or of the Chairman of the Committee on the Legislative?

MR. RODRIGO. I wonder if the two proponents, Madam President, will agree that we first talk about the term of office of the Representatives because we are now discussing the legislative department.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. I will agree really that this matter should relate only to the term of office of the Representatives.

THE PRESIDENT. But are we agreed on these two proposals - the one of Commissioner Garcia where there is no further election after a total of three terms and the other where there is no Immediate reelection after three successive terms?

MR. OPLE. Madam President, originally if I remember right, the Commission decided to consider the synchronization of elections. And from that original commitment, we proceeded to fix the terms and decided related questions within the context of synchronization. Are we now abandoning the original task of synchronization which could only be fully settled in terms of delimitations on the proposed terms of the President and the Vice-President, the Members of Congress and the local officials, or do we want to postpone the synchronization task to a later time after we hear from the Committee on Local Governments and the other concerned committees?

THE PRESIDENT. What does the Acting Floor Leader say to this particular question of Commissioner Ople?

MR. ROMULO. In a way, Madam President, we have settled the synchronization task, because we have decided on the officials' absolute terms. All we are really talking about now is whether or not they are eligible for reelection, and I think those are separable issues.

MR. OPLE. If they are separable, and we have already settled the synchronization task, then I think that is something to be thankful about. But considering the immediate business at hand, is it the wish of the Acting Floor Leader that the election of the local officials should be eliminated from the consideration of those two choices?

MR. ROMULO. Yes, I think the sense of the body now is to limit this choice to the Members of the House of Representatives.

MR. OPLE. And do the manifestations of both Commissioners Garcia and Monsod still stand after the elimination of the election of the local officials?

MR. ROMULO. Yes, I think so.

...

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Madam President, as worded, It is a personal disqualification.

MR. ROMULO. We are now ready to vote, Madam President.

SUSPENSION OF SESSION

THE PRESIDENT. We are now ready to vote by ballot. Let us distribute the ballots. Anyway the voting would take only about 10 minutes.

The session is suspended.

It was 3:40 p.m.

At this juncture, pieces of paper were distributed, and the Commissioners wrote down their votes.

RESUMPTION OF SESSION

At 3:50 p.m., the session was resumed.

THE PRESIDENT. The session is resumed.

MR. GASCON. Madam President, may I have a clarification before we count the ballots. The voting now is just for Representatives. We are not speaking of the term of office of the Senators yet. Is that correct?

THE PRESIDENT. The term of office of the Senators was disposed of this morning.

This voting now is only for Representatives.

MR. GASCON. I think the Issue of whether the Senators could run again for election after their two consecutive terms or 12 years after a lapse of a period of time has not yet been finalized.

THE PRESIDENT. I beg the Commissioner's pardon.

MR. GASCON. Is this voting just for Congressmen?

THE PRESIDENT. Yes.

The Secretary-General will now please proceed to count the votes.

COUNTING OF BALLOTS

THE SECRETARY-GENERAL. Madam President, we have here 43 ballots cast. We will now start the counting.

Alternative No. 1 - no further election after a total of three terms: ////-////-////-//

Alternative No. 2 - no immediate reelection after three successive terms: ////-////-////-////-////-//

THE PRESIDENT. The results show 17 votes for Alternative No. 1 and 26 votes for Alternative No. 2; Alternative No. 2 is approved.

What does the Acting Floor Leader say?

MR. ROMULO. Alternative No. 2 has won, Madam President. It seems there are some doubts as to the term of office of the Senators, so I propose that we similarly vote on that to end any doubt. It was my understanding this morning that when we voted for the term of office of the Senators, they would not be perpetually disqualified.

THE PRESIDENT. From the transcripts, it appears here that with respect to Senators, 22 votes went to Scheme No. II; that is, with one reelection. This is already a majority. So, does the Acting Floor Leader propose that we vote again?

MR. ROMULO. The question is whether or not that will be perpetual, Madam President, or after resting for six years they can run again. That is the question that is not answered. I am talking of the Senators.

THE PRESIDENT. This morning, Scheme No. I, without reelection, has 3 votes; Scheme No. II, with one reelection - 22 votes; Scheme No. III, no limit on reelection - 17 votes.

MR. REGALADO. Madam President.

MR. RODRIGO. Madam President.

THE PRESIDENT. May we first clarify this from the Secretary-General?

MR. ROMULO. The question is whether or not in voting for the term of six years with one reelection, the Senator is perpetually disqualified, so that is a similar question to what we had posed with regard to the House of Representatives.

THE PRESIDENT. In other words, after serving with one reelection, whether or not he is perpetually disqualified after serving 12 years?

MR. ROMULO. Yes, Madam President.

MR. RODRIGO. Madam President.

THE PRESIDENT. Yes, Commissioner Rodrigo is recognized.

MR. RODRIGO. Or, if after one reelection, he is perpetually disqualified or he can hibernate - the very word used - for six years and then run again for reelection but not consecutive, not immediate. In other words, he is entitled to one immediate reelection.

REV. RIGOS. Another point, Madam President.

MR. RODRIGO. And then, after that, if there is a gap, when he is not a Senator, then he can run for the same office.

REV. RIGOS. Madam President.

THE PRESIDENT. Yes, Commissioner Rigos is recognized.

REV. RIGOS. In relation to that, if he will be allowed to run again as Senator after a period of hibernation, we have to clarify how long that should be. It could be three years, because in the proposed scheme, every three years we can elect the Senators.

MR. RODRIGO. Yes, Madam President, it can be three years.

SUSPENSION OF SESSION

THE PRESIDENT. I will suspend the session again so as to allow the parties to compare with the Acting Floor Leader so that we will know what we are going to vote on.

The session is suspended

It was 3:58 p.m.

RESUMPTION OF SESSION

At 4:05 p.m., the session was resumed.

THE PRESIDENT. The session is resumed.

The Acting Floor Leader is recognized.

MR. ROMULO. Madam President, we are now ready to vote on the question of the Senators, and the schemes are as follows: The first scheme is, no further election after two terms; the - second scheme is, no immediate reelection after two successive terms.

Madam President, inasmuch as the principles applicable here are the same as those for the House of Representatives, I move that we go directly to the voting and forego any further discussions.

THE PRESIDENT. Please distribute the ballots for this particular item for Senators.

Are we ready now?

The Secretary-General will please count the ballots.

COUNTING OF BALLOTS

THE SECRETARY-GENERAL. We have 43 ballots here, Madam President. We shall now begin to count.

THE PRESIDENT. Please proceed.

THE SECRETARY-GENERAL, reading:

Scheme No. I - ////-////-//

Scheme No. II - ////-////-////-////-////-////-//

THE PRESIDENT. The results show 12 votes for Scheme No. I and 32 votes for Scheme No. II; Scheme No. II approved.

All the results will be considered by the Committee on the Legislative in preparation of their report.

So can we leave this matter now?

The corresponding proposal on the three-term limit for elective local officials without immediate reelection was taken up by the Constitutional Commission much later or specifically on 16 August 1986. On this point, the pertinent portions of Vol. Three, pages 406-408, Record of the Constitutional Commission, read as follows:

MR. RAMA. Madam President, I ask that Commissioner Davide be recognized.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Thank you, Madam President.

After Section 4, I propose to Insert a new section to be denominated later as Section 5. It provides as follows: THE TERM OF OFFICE OF ELECTIVE LOCAL OFFICIALS, EXCEPT BARANGAY OFFICIALS, WHICH SHALL BE DETERMINED BY LAW, SHALL BE THREE YEARS AND NO SUCH OFFICIAL SHALL SERVE FOR MORE THAN THREE CONSECUTIVE TERMS. VOLUNTARY RENUNCIATION OF THE OFFICE FOR ANY LENGTH OF TIME SHALL NOT BE CONSIDERED AS AN INTERRUPTION IN THE CONTINUITY OF HIS SERVICE FOR THE FULL TERM FOR WHICH HE WAS ELECTED. This is in accordance with the mandate of the Commission when we voted on the terms of officials up to local officials, excluding the term of barangay officials which was a very specific exception.

MR. NOLLEDO. One clarificatory question, Madam President. What will be the term of the office of barangay officials as provided for?

MR. DAVIDE. As may be determined by law.

MR. NOLLEDO. As provided for in the Local Government Code.

MR. DAVIDE. Yes.

MR. NOLLEDO. We accept the amendment. The Committee accepts the amendment.

...

THE PRESIDENT. May we have the reaction of the Committee?

MR. NOLLEDO. The Committee accepts the amendment, as amended, Madam President.

THE PRESIDENT. Is there any other comment?

MR. OPLE. Madam President.

THE PRESIDENT. Commissioner Ople is recognized.'

MR. OPLE. May we ask the Committee to read the proposed amendment now.

MR. NOLLEDO. May we ask Commissioner Davide to read the new section.

MR. DAVIDE. THE TERM OF OFFICE OF ELECTIVE LOCAL OFFICIALS, EXCEPT BARANGAY OFFICIALS, WHICH SHALL BE DETERMINED BY LAW, SHALL BE THREE YEARS AND N SUCH OFFICIAL SHALL SERVE FOR MORE THAN THREE CONSECUTIVE TERMS. VOLUNTARY RENUNCIATION OF THE OFFICE FOR ANY LENGTH OF TIME SHALL NOT BE CONSIDERED AS AN INTERRUPTION IN THE CONTINUITY OF HIS SERVICE FOR THE FULL TERM FOR WHICH HE WAS ELECTED.

...

THE PRESIDENT. Then let us vote first on the Davide amendment.

Is there any objection to this new section proposed by Commissioner Davide which has been read to the body?
(Silence) The Chair hears none; the proposed section is approved.

I wish to add that the Constitutional Commission debates on the issue of "no immediate reelection" after three consecutive terms for members of Congress clearly indicated that the "no immediate reelection" after the 3-term limit would equally apply to the elective local officials. This accounted for the immediate acceptance by the Committee on Local Governments of the aforementioned Amendment of Commissioner Davide, which is now Section 8 of Article X of the Constitution. These debates clearly showed the Intent of the Commission that the ban against an immediate reelection after three consecutive terms applies to the fourth term, i.e., the term immediately following the three consecutive terms, to be filled up by the regular election for such fourth term. For one to be able to run again after three consecutive terms, he has to rest for the entire immediately succeeding fourth term. On the next fifth term he can run again to start a new series of three consecutive terms. We quote these pertinent portions of the debates, recorded in Volume Two, pages 232-233 of the Record of the Constitutional Commission: MR. ROMULO. Madam President, the following are the various alternatives: Scheme No. I is without reelection; Scheme No. II is with one reelection; and Scheme No. III is reelection without limit. This is for 'the Senators.

At this juncture, pieces of paper were distributed and the Commissioners wrote down their votes.

THE PRESIDENT. The Chair asks the Chairman, Commissioner Davide, to please consolidate the results of the voting for President and Vice-President.

THE SECRETARY-GENERAL. Madam President, we are ready. THE PRESIDENT. The Secretary-General will please proceed.

COUNTING OF BALLOTS

THE SECRETARY-GENERAL, reading:

Scheme No. I - ///

Scheme No. II - /////-///// -///// -///// -//

Scheme No. III - /////-///// -///// -//

THE PRESIDENT. The results show 3 votes for Scheme No. I; 22 votes for Scheme No. II; and 17 votes for Scheme No. III; Scheme No. II is approved.

MR. ROMULO. Madam President, the next position is for the House of Representatives, the Congressmen. I would assume we can use the same choices. Does any one want any variation?

MR. RODRIGO. Madam President.

THE PRESIDENT. Commissioner Rodrigo is recognized.

MR. RODRIGO. For the record, I would like to ask Commissioner Romulo some questions.

MR. ROMULO. Yes.

MR. RODRIGO. Scheme No. II says “the Vice-President - with one reelection.”

THE PRESIDENT. No, that is for Senators.’

MR. GUINGONA. Madam President.

THE PRESIDENT. Yes, Commissioner Guenon is recognized.

MR. GUINGONA. May I suggest one more scheme - with two reelections for the Members of the House of Representatives?

THE PRESIDENT. So, we shall distribute ballots again.

MR. ROMULO. While the ballots are being distributed, may I read the following four propositions for Congressmen:‘

Scheme No. I, without reelection.

Scheme No. II, with one reelection.

Scheme No. III, with two reelections.

Scheme No. IV, no limit on reelection. I

MR. DE LOS REYES. Madam President.

THE PRESIDENT. Commissioner de los Reyes is recognized.

MR. DE LOS REYES. The term of the Members of the House of Representatives will be three years, according to the first voting; the term of the Senators, if they are entitled to one reelection, will be 12 years. So, in order for a Member of the House of Representatives to have also 12 years, he must be entitled to three reelections. I propose another scheme with three reelections to make it equal.

MR. RODRIGO. Will the Gentleman maintain the number there and add that as No. V. I filled up my ballot already and if I erase, this might be disqualified as a marked ballot.

THE PRESIDENT. Commissioner Rodrigo may change his ballot.

MR. DE CASTRO. Madam President.

THE PRESIDENT. Commissioner de Castro Is recognized.

MR. DE CASTRO. The situation stated by Commissioner de los Reyes is apparently covered by Scheme No. II which we agreed upon earlier. The situation will not happen, because both the Senators and the Congressmen will have five (5) years on the first election. So, the possibility that the Senators will have a longer term than the Congressmen is remote.

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. Madam President, it occurred to us that the three alternatives are not really mutually exclusive. Can we have only these three: without reelection, with reelection and with unlimited reelection? We are asking here for plurality only, Madam President. Can we eliminate?

THE PRESIDENT. In other words, we shall have the same schemes as those for Senators; without reelection, with one reelection and unlimited reelection.

REV. RIGOS. Madam President, besides we have already submitted our ballots.

MR. MONSOD. I withdraw my proposal, Madam President.

MR. GARCIA. Madam President, I would suggest that the two schemes with the highest votes be voted upon to get the key majority. For example, if the schemes with two reelections and no limit to election get the highest number of votes, then we vote again to get the key majority.

THE PRESIDENT. We will do that. Are all the votes in?

COUNTING OF BALLOTS

THE SECRETARY-GENERAL. Madam President, we have 43 ballots.

THE PRESIDENT. The Secretary-General will please proceed. THE SECRETARY-GENERAL, reading:

Scheme No. I - 0

Scheme No. II - //

Scheme No. III - /////-///// - /////-///// - /

Scheme No. IV - /////-///// - ///

Scheme No. V - ///// - /

THE PRESIDENT. The results show no vote for Scheme No. I; 2 votes for Scheme No. II; 21 votes for Scheme No. III; 14 votes for Scheme No. IV; and 6 votes for Scheme No. V; Scheme No. III is approved.

MR. RODRIGO. Madam President.

THE PRESIDENT. Commissioner Rodrigo is recognized.

MR. RODRIGO.. I would like to ask a question for clarification.

THE PRESIDENT. Please proceed.

MR. RODRIGO. If the Members of the Lower House can have two reelections, does this mean two immediate reelections, or a term of nine consecutive years? Let us say that a Member of the Lower House has been reelected twice; that means he will serve for nine years. Can he let three years elapse and then run again?

THE PRESIDENT. We will ask the Chairman of the Committee on the Legislative to answer the question.

MR. DAVIDE. That is correct, Madam President, because two reelections mean two successive reelections. So he cannot serve beyond nine consecutive years.

MR. RODRIGO. Consecutively?

MR. DAVIDE. Consecutively.

MR. RODRIGO. But after nine years he can let one...

MR. DAVIDE. He can rest. He can hibernate for three years.

MR. RODRIGO. And run again.

MR. DAVIDE. He can run again.

MR. RODRIGO. And again have nine years as a maximum.

MR. DAVIDE. I do not know if that is also the thinking of Commissioner Garcia who is the main proponent of this proposal on two reelections. I would seek the opinion of Commissioner Garcia for the record. (underscoring supplied for emphasis.)

...

The dichotomy made in the ponencia between “voluntary renunciation of the office” as used in Section 8 of Article X of the Constitution and Section 43(b) of R.A. No. 7160 and “involuntary severance from office” is unnecessary, if not misplaced. From the discussion in the ponencia, the latter is made to apply to the banned term, i.e., the fourth term immediately following three consecutive terms. Speaking now of Hagedorn, he cannot have suffered “involuntary severance from office” because there was nothing to be severed; he was not a holder of an office either in a de jure or de facto capacity. He knew he was disqualified from seeking a third reelection to office. Disqualification is, definitely, not synonymous with involuntary severance. Even if we concede that involuntary severance is an act which interrupts the continuity of a term for purposes of applying the three-term principle the rule laid down in *Lonzanida vs. COMELEC* (311 SCRA 609), cited in the ponencia, page 17, is not applicable in the case of Hagedorn. The involuntary severance referred to in that case was one that took place during any of the three terms; hence, the term during which it occurred should be excluded in the computation. In the case of Hagedorn, no such involuntary severance took place during any of his three terms brought about by his election in 1992 and reelections in 1995 and 1998.

More importantly, the voluntary renunciation referred to in Section 8, Article X of the Constitution and Section 43(b) of R.A. No. 7160 is one that takes place at any time during either the first, second, or third term of the three consecutive terms. This is very clear from the last clause of Section 8, Article X of the Constitution, which reads: “shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.” The purpose of the provision is to prevent an elective local official from voluntarily resigning from office for the purpose of circumventing the rule on the belief that the term during which he resigned would be excluded in the counting of the three-term rule. In short, the provision excluded is intended to impose a penalty on one who flouts the rule or make a mockery of it by the simple act of resigning. Thus, applying it in the case of Hagedorn, even if he voluntarily resigned on his third term, he would still be barred from seeking reelection in the May 2001 election.

Hagedorn cannot likewise avail of the ruling in *Adormeo vs. COMELEC* (G.R. No. 147927, 4 February 2002) because in that case Talaga did not win in his second reelection bid, or for a third term, in the May 1998 elections. He won in the recall election of 12 May 2000. Hagedorn, as earlier stated, fully served three successive terms.

Neither can we allow Hagedorn to take refuge under the exchange between Commissioner Suarez and Commissioner Davide found on page 592, Vol. II of the Record of the Constitutional Commission and quoted on pages 19-20 of the ponencia:

SUAREZ: For example, a special election is called for a Senator, and the Senator newly elected would have to

serve the unexpired portion of the term. Would that mean that serving the unexpired portion of the term is already considered one term? So, half a term, which is actually the correct statement, plus one term would disqualify the Senator concerned from running? Is that the meaning of this provision on disqualification, Madam President?

DAVIDE: Yes, because we speak of “term” And if there is a special election, he will serve only for the unexpired portion of that particular term plus one more term for the Senator and two more terms for the Members of the Lower House.

On the contrary, it is clear from the views of Commissioners Suarez and Davide that the term of office of one who is elected in a special election is considered one term for purposes of determining the three consecutive terms.

A declaration that Hagedorn is qualified to seek reelection in a recall election to remove the Mayor who was elected for a term for which Hagedorn was constitutionally and statutorily disqualified to be reelected to or, to hold Is to subvert the rationale of the three-consecutive-term rule and make a mockery of it. Worse, it abets destructive endless partisan politics and unsound governance. An elective local official who is disqualified to seek a fourth term because of the three-term limit but obsessed to hold on to power would spend the first year of the fourth term campaigning for the recall of the incumbent in the second year of said term. This would’ not be a problem If the disqualified official has a solid following and a strong political machinery. Interestingly, in this case, as stated on page 3 of the ponencia, the President of the Association of Barangay Captains of Puerto Princesa City is one Mark David M. Hagedorn and he was designated by the Preparatory Recall Assembly as interim Chairman.

I therefore vote to grant the petition in G.R. Nos. 155083-84, to set aside the resolution of the COMELEC holding private respondent Edward Hagedorn a qualified candidate for the position of Mayor of Puerto Princesa City in the recall election, and to declare him DISQUALIFIED from seeking reelection for a fourth term or from being a candidate for Mayor in the recall election in question.

SEPARATE OPINION

Mendoza, J., concurring in the judgment:

There is no dispute in this case that respondent Edward S. Hagedorn had served for three consecutive terms as Mayor of Puerto Princesa City prior to his election to the same position in the recall election held on September 24, 2002. The question is whether his election was for a fourth consecutive term in violation of Art. X, §8 of the Constitution, which bars elective local officials, with the exception of barangay officers, from “serv[ing] for more than three consecutive terms.”[1]

The majority hold that it does not because “what the Constitution prohibits is an immediate reelection for a fourth term following three consecutive terms.” (p. 15) They argue that ?

. . . Hagedorn’s recall term does not retroact to include the tenure in office of Socrates. Hagedorn can only be disqualified to run in the September 24, 2002 recall election if the recall term is made to retroact to June 30, 2001, for only then can the recall term constitute a fourth consecutive term. But to consider Hagedorn’s recall term as a full term of three years, retroacting to June 30, 2001, despite the fact that he won his recall term only last September 24, 2002, is to ignore reality. This Court cannot declare as consecutive or successive terms of office which historically and factually are not. (p. 22)

On the other hand, the dissenters argue that “what is prohibited is [a] fourth term” (p. 4) and that the only way an elective local official, who has served for three consecutive terms, may again be elected to the same position is for

him to allow the fourth term to expire before doing so.

Both the majority and the dissenters are thus agreed that the term following the three consecutive terms must be counted. Their disagreement is in considering whether or not to count the term during which a recall election is held as part of the three consecutive terms preceding it. The majority consider the term as a consecutive term of the term following ? but not of the third term preceding ? which has just ended because of the interruption between the beginning of the fourth term and the date of the recall election. Thus, the majority state:

A necessary consequence of the interruption of continuity of service is the start of a new term following the interruption. An official elected in recall election serves the unexpired term of the recalled official. This unexpired term is in itself one term for purposes of counting the three-term limit. (p. 23)

In contending that the unexpired term served by the winner in a recall election “is in itself one term for purposes of counting the three term limit,” the majority take contradictory positions because they also argue that “Hagedorn’s recall term does not retroact” to the beginning of that term and that “to consider Hagedorn’s recall term as a full term of three years, retroacting to June 30 2001, despite the fact that he won his recall term only last September 24, 2002, is to ignore reality.” The majority are thus riding two unruly horses, contending on the one hand that the term during which a recall election takes place is a fourth term, and on the other that it is not a fourth term for purposes of determining whether an elective local official has served for more than three consecutive terms.

On the other hand, the dissenters say that the only way an elective local official can run again for the same position after serving three consecutive terms is for him to allow the succeeding full term of three years to pass before doing so. They contend:

. . . For one to be able to run again after three consecutive terms, he has to rest for the entire immediately succeeding fourth term. On the next fifth term he can run again to start a new series of three consecutive terms. (p. 11)

Hagedorn may not have “rested” for one full term before running in the recall election on September 24, 2002, but neither will he be serving a fourth term because a term consists of three years. Not to have “rested” for one full term requires that he should also serve for one full term. This is not, however, possible because, under Art. X, §8 of the Constitution, “the term of office of elective officials . . . shall be three years.” Less than three years is not a term.

The flaw in the theories of both the majority and the dissenters is that both agree that if there is an interruption in the continuity of service of an elective local official during the three consecutive terms, not caused by the voluntary renunciation of office, the term during which the interruption occurs should not be counted in determining the three-term limit. This is in accordance with the ruling in *Lonzanida v. COMELEC*[2] that if the election of a mayor for the third consecutive term is annulled, he can run again in the next election because the term during which his election was invalidated is not to be counted. Similarly, in *Adorneo v. COMELEC*,[3] it was held that if after serving for two consecutive terms, a mayor loses in his bid for reelection but, in a recall election subsequently held during that term, he wins he can still run in the next regular election because the term during which he lost is not to be counted for applying the three-term limit. However, the majority and the dissenters also say that if the interruption takes place in the term following three consecutive terms, the term should be counted in applying the three-term limit. For the majority, such term should be included in determining the next consecutive terms, while the dissenters say it should be considered in determining the consecutive terms preceding it. Both majority and the dissenters are thus inconsistent.

Moreover, both erroneously assume that the election in a recall election is a reelection. Both cite the records of the

Constitutional Commission that what is prohibited after a service for more than three consecutive terms is not reelection per se but “immediate reelection.” They note that the three-term limit, originally adopted for Senators and members of the House of Representatives, was later applied to elective local officials as well.[4] Hence, they focus their discussion on whether a reelection is “immediate.”

To the majority a recall election is a reelection but it is not an “immediate” one because a recall election does not immediately follow the end of the third term. On the other hand, to the dissenters, such election is “immediate” because it takes place during the fourth term which “immediately follows” three consecutive terms. Consequently, the election during that term of a local elective official is prohibited if he has served in the previous three consecutive terms. To quote the dissenters:

These debates [in the Constitutional Commission] clearly show the intent of the Commission that the ban against an immediate reelection after three consecutive terms applies to the fourth term, i.e., the term immediately following the three consecutive terms, to be filled up by the regular election for such term. (p. 11)

The question is not whether an election during a recall is an “immediate reelection.” The question is whether it is a reelection at all. The dictionary meaning of “reelect” is “to elect for another term.”[5] On the other hand, as already pointed out, the Constitution provides that the term of an elective local official is three years. Therefore, the period during which one serves by virtue of a recall election is not a term because it cannot be for three years. It is only a tenure.

I submit with respect that the term during which a recall election is held should not be counted in computing the three-term limit not only when the recall election occurs within three consecutive terms, as this Court has already held,[6] but also when such election is held during the fourth term immediately following three consecutive terms. The reason for this is that the elective local official cannot be said to have served “for more than three consecutive terms” because of the break in his service. What prevents the fourth term from being counted in determining the three-term limit is the lack of continuity, or the break, in the “service of the full term.” I must stress that the Constitution does not say “service for more than three terms” but “service for more than three consecutive terms.”

As the discussion of the Constitutional Commission on Art. X, §8 shows, the three-term limit is aimed at preventing the monopolization or aggrandizement of political power and the perpetration of the incumbent in office. This abuse is likely to arise from a prolonged stay in power. It is not likely to arise if the service is broken, albeit it is for more than three terms. Hence, the application of the constitutional ban on the holding of elective local office for three consecutive terms requires in my view (1) election in a regular election for three consecutive terms and (2) service for the full terms, each consisting of three years, for which the official is elected. The first requirement is intended to give the electorate the freedom to reelect a candidate for a local elective position as part of their sovereign right (the right of suffrage) to choose those whom they believe can best serve them. This is the reason the framers of our Constitution rejected Scheme No. 1, which was to ban reelection after three successive terms, and adopted Scheme No. 2, which is about “no immediate reelection after three successive terms.” On the other hand, the second requirement is intended to prevent the accumulation of power resulting from too long a stay in office.[7]

To repeat, the term during which a recall election is held is not a fourth term in relation to the three consecutive terms preceding it. Nor is the unexpired portion of such term a new one. Much less is the election a reelection. This can be made clear by the following example: If A is thrice elected mayor of a municipality for three consecutive terms and, during his third term, is made to face a recall election in an off-year election and is elected over his rivals, it would be absurd to contend that he cannot continue in office because his election will actually be his fourth election and the service of the remainder of the third term will actually be service for the fourth

consecutive term. In this case, for lack of the second element, i.e., service for more than three consecutive terms, the three-term limit rule cannot be applied to the election of Hagedorn in the recall election of September 24, 2002.

Finally, the dissenters argue that, unless the three-term limit is applied to a recall election taking place after three consecutive terms, a popular elective local official, unable to run for a fourth term, may be tempted to plot the recall of his successor so that he can return to power in the ensuing election. I appreciate the point of the dissenters. But the danger is equally great for a vice-mayor plotting against the mayor and by succession ascending into power and from thence forward seeking three more successive terms. And yet we have held that service for the unexpired term, by reason of succession, is not to be counted.^[8] In any event, it is familiar learning that “the possibility of abuse is not an argument against the concession of power as there is no power that is not susceptible of abuse.”^[9]

Thus, while I do not subscribe to the majority reasoning by which the decision in this case is justified, I reach the same result as they do in holding that Hagedorn was not disqualified because of prior service for more than three consecutive terms to run for Mayor of Puerto Princesa City in the recall election held on September 24, 2002. The result reached upholds the right of a candidate to seek a popular mandate and vindicates the sovereign judgment of the electorate of Puerto Princesa City.

FOR THE FOREGOING REASONS, I vote to dismiss the petition in G.R. Nos. 155083-84 as well as those in G.R. Nos. 154512 and 154683 and to declare respondent Edward S. Hagedorn qualified to run in the last recall election for Mayor of Puerto Princesa City.

[1] Const., Art. X, §8: “The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.”

[2] 311 SCRA 602 (1999).

[3] G.R. No. 147927, Feb. 4, 2002.

[4] 2 RECORD OF THE CONSTITUTIONAL COMMISSION 243-245 (Session of July 25, 1986) (hereafter referred to as Record); 3 Record 406-408 (Session of August 16, 1986).

[5] Webster’s Third International Dictionary of the English Language (Unabridged) p. 731 (1993).

[6] *Adorneo v. COMELEC*, G.R. No. 147927, Feb. 4, 2002.

[7] See *Borja v. COMELEC*, 295 SCRA 157 (1998); *Arcos v. COMELEC (res.)*, G.R. No. 133639, Oct. 6, 1998.

[8] *Borja v. COMELEC*, *supra*; *Arcos v. COMELEC*, *supra*.

[9] *Angara v. Electoral Commission*, 63 Phil. 139, 177 (1936); *Nava v. Gatmaitan*, 90 Phil. 172, 200 (1951); *Vera v. Avelino*, 77 Phil. 192 (1946); *Aquino v. Enrile, Jr.*, 59 SCRA 183, 417 (1974).

CONCURRING OPINION

PUNO, J.:

The correctness of the decision so ably written by Mr. Justice Carpio speaks for itself. Nonetheless, the complex constitutional dimensions of the issue for resolution compels this humble concurring opinion. The issue is whether private respondent Hagedorn is disqualified from running in the September 24, 2002 recall election for mayor of Puerto Princesa City and from serving the unexpired portion of the 2001-2004 mayoralty term considering that he

has thrice been consecutively elected and has served three full terms as Puerto Princesa City mayor from 1992-1998. In illuminating the gray interstices of this election case, prudence dictates that “. . . where the sovereignty of the people is at stake, we must not only be legally right but also politically correct.” [1]

Private respondent Hagedorn was elected mayor of Puerto Princesa City, Palawan in 1992, 1995 and 1998 and served three full terms. In the May 14, 2001 national and local elections, he ran for governor for the Province of Palawan and lost. Petitioner-intervenor Victorino Dennis M. Socrates was elected mayor of Puerto Princesa City.

On July 2, 2002, three hundred twelve (312) out of five hundred twenty-eight (528) members of the Barangay Officials of Puerto Princesa City convened themselves into a Preparatory Recall Assembly to initiate the recall of Mayor Socrates. On August 21, 2002, COMELEC promulgated Resolution No. 5673 prescribing a calendar of activities for the recall election. Two days after, Hagedorn filed his certificate of candidacy for mayor in said election.

On August 27, 2002, petitioners Adovo and Gilo sought for Hagedorn's immediate disqualification on the ground that he had served three consecutive full terms as mayor of Puerto Princesa City immediately prior to the recall election and was thus proscribed by the Constitution from running in said election. On August 30, 2002, petitioner Ollave, Sr. intervened to disqualify Hagedorn on the same ground.

The recall election was set on September 24, 2002. On September 20, 2002, public respondent COMELEC's First Division denied the petitions for Hagedorn's disqualification. The following day, petitioners Adovo, Gilo and Ollave, Sr. filed a motion for reconsideration imploring the COMELEC en banc to reverse the September 20 resolution. On September 23, 2002, the COMELEC en banc affirmed the resolution of the First Division holding Hagedorn qualified to run in the recall election.

On September 24, 2002, petitioners Adovo, Gilo and Ollave, Sr. sought recourse in this Court with a Very Urgent Petition for Certiorari and Prohibition with Preliminary Injunction and Prayer for Temporary Restraining Order. On the same date, Mayor Socrates filed a petition-in-intervention to nullify the September 23 resolution of the COMELEC.

The petitions before us raise the following issues:

“I.

THE COMELEC GRAVELY ABUSED ITS DISCRETION WHEN IT RULED THAT RESPONDENT HAGEDORN IS NOT DISQUALIFIED FROM RUNNING FOR THE POSITION OF MAYOR OF PUERTO PRINCESA CITY IN THE SCHEDULED RECALL ELECTION, THE CLEAR AND UNAMBIGUOUS CONSTITUTIONAL AND STATUTORY PROHIBITION AGAINST A FOURTH CONSECUTIVE TERM FOR LOCAL ELECTIVE OFFICIALS NOTWITHSTANDING.

II.

THE HONORABLE COMELEC GRAVELY ERRED AND ABUSED ITS DISCRETION WHEN IT PROCEEDED TO DIVIDE A SINGLE TERM OF OFFICE INTO TWO.

III.

THE HONORABLE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AND VIOLATED THE INTENT AND PURPOSE FOR HOLDING THE SCHEDULED RECALL ELECTIONS FOR THE POSITION OF MAYOR OF PUERTO PRINCESA CITY AND THE CONSTITUTIONAL AND STATUTORY BAR AGAINST A FOURTH CONSECUTIVE TERM.

IV.

THE HONORABLE COMELEC GRAVELY ABUSED ITS DISCRETION WHEN IT RULED THAT RESPONDENT HAGEDORN IS NOT DISQUALIFIED FROM RUNNING IN THE UPCOMING RECALL ELECTIONS AS HIS INELIGIBILITY IS NOT APPARENT UNDER SECTIONS 65 AND 68 OF THE OMNIBUS ELECTION CODE, SECTIONS 39 AND 40 OF RA 7160 (LOCAL GOVERNMENT CODE), AND RULES 23 AND 25 OF THE COMELEC RULES OF PROCEDURE.

V.

THE HONORABLE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT RESPONDENT HAGEDORN IS QUALIFIED TO RUN IN THE RECALL ELECTION EVEN IF HE STANDS DISQUALIFIED FROM SERVING UNDER A FOURTH CONSECUTIVE TERM AS SUCH IS ALLEGEDLY NOT THE PROVINCE OF THE INSTANT DISQUALIFICATION PROCEEDINGS.

VI.

THE HONORABLE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ISSUED A DEFECTIVE AND CLEARLY VOID RESOLUTION.”[2]

The foregoing issues may be reduced to the singular issue of whether or not private respondent Hagedorn is disqualified from running in the September 24, 2002 recall election and serving as mayor of Puerto Princesa City considering that he has been thrice consecutively elected and has served three full terms in that position from 1992 to 2001.

I find the petitions devoid of merit.

Art. X, Sec. 8 of the Constitution provides:

“Sec. 8: The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.”

This constitutional provision is restated in the Local Government Code of 1991, to wit:

“Sec. 43. Term of Office. -. . (b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.”

We have not interpreted Art. X, Sec. 8 of the Constitution in the recall election context of the cases at bar. It is imperative to distill the intent of the framers of the Constitution and the people who ratified it.[3] Mere reliance on the surface meaning of the words of the above provision, however, will not suffice to capture this elusive intent. Thus, we turn to the proceedings and debates of the Constitutional Commission (ConCom) as an extrinsic aid to interpretation.[4] The Record of the Constitutional Commission shows that Art. X, Sec. 8 was readily accepted by the Commissioners without much discussion;[5] nonetheless, their debates on setting the term limit for Representatives show that the rationale for the limit applies to both Representatives and elective local officials. We quote at length the relevant portions of the debates, to wit:

“MR. GARCIA. I would like to advocate the proposition that no further election for local and legislative officials be allowed after a total of three terms or nine years. I have four reasons why I would like to advocate this proposal, which are as follows: (1) to prevent monopoly of political power; (2) to broaden the choice of the people; (3) so that no one is indispensable in running the affairs of the country; (4) to create a reserve of statesmen both in the national and local levels. May I explain briefly these four reasons.

First: To prevent monopoly of political power - Our history has shown that prolonged stay in public office can lead to the creation of entrenched preserves of political dynasties. In this regard, I would also like to advocate that immediate members of the families of public officials be barred from occupying the same position being vacated.

Second: To broaden the choice of the people - Although individuals have the right to present themselves for public office, our times demand that we create structures that will enable more aspirants to offer to serve and to provide the people a broader choice so that more and more people can be enlisted to the cause of public service, not just limited only to those who may have the reason or the advantage due to their position.

Third: No one is indispensable in running the affairs of the country – After the official's more than a decade or nearly a decade of occupying the same public office, I think we should try to encourage a more team-oriented consensual approach to governance favored by a proposal that will limit public servants to occupy the same office for three terms. And this would also favor not relying on personalities no matter how heroic, some of whom, in fact, are now in our midst.

Lastly, the fact that we will not reelect people after three terms would also favor the creation of a reserve of statesmen both in the national and local levels.

Turnovers in public office after nine years will ensure that new ideas and new approaches will be welcome. Public office will no longer be a preserve of conservatism and tradition. At the same time, we will create a reserve of statesmen, both in the national and local levels, since we will not deprive the community of the wealth of experience and advice that could come from those who have served for nine years in public office.

Finally, the concept of public service, if political dynasty symbolized by prolonged stay in particular public offices is barred will have fuller meaning. It will not be limited only to those who directly hold public office, but also to consultative bodies organized by the people, among whom could be counted those who have served in public office with accomplishment and distinction, for public service must no longer be limited only to public office.

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MR. MONSOD. Madam President, I was reflecting on this issue earlier and I asked to speak because in this draft Constitution, we are recognizing people power. We have said that now there is a new awareness, a new kind of voter, a new kind of Filipino. And yet at the same time, we are prescreening candidates among whom they will choose. We are saying that this 48-member Constitutional Commission has decreed that those who have served for a period of nine years are barred from running for the same position.

The argument is that there may be other positions. But there are some people who are very skilled and good at legislation, and yet are not of a national stature to be Senators. They may be perfectly honest, perfectly competent and with integrity. They get voted into office at the age of 25, which is the age we provide for Congressmen. And at 34 years old we put them to pasture.

Second, we say that we want to broaden the choices of the people. We are talking here only of congressional or senatorial seats. We want to broaden the people's choice but we are making a prejudgment today because we exclude a certain number of people. We are, in effect, putting an additional qualification for office - that the officials must not have served a total of more than a number of years in their lifetime.

Third, we are saying that by putting people to pasture, we are creating a reserve of statesmen, but the future participation of these statesmen is limited. Their skills may only be in some areas, but we are saying that they are going to be barred from running for the same position.

Madam President, the ability and capacity of a statesman depend as well on the day-to-day honing of his skills and competence, in intellectual combat, in concern and contact with the people, and here we are saying that he

is going to be barred from the same kind of public service.

I do not think it is in our place today to make such a very important and momentous decision with respect to many of our countrymen in the future who may have a lot more years ahead of them in the service of their country.

If we agree that we will make sure that these people do not set up structures that will perpetuate them, then let us give them this rest period of three years or whatever it is. Maybe during that time, we would even agree that their fathers or mothers or relatives of the second degree should not run. But let us not bar them for life after serving the public for a number of years.

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MR. OPLE. . . . The principle involved is really whether this Commission shall impose a temporary or a perpetual disqualification on those who have served their terms in accordance with the limits on consecutive service as decided by the Constitutional Commission. I would be very wary about the Commission exercising a sort of omnipotent power in order to disqualify those who will already have served their terms from perpetuating themselves in office. I think the Commission achieves its purpose in establishing safeguards against the excessive accumulation of power as a result of consecutive terms. We do put a gap on consecutive service - in the case of the President, six years; in the case of the Vice-President, unlimited; and in the case of the Senators, one reelection. In the case of the Members of Congress, both from the legislative districts and from the party list and sectoral representation, this is now under discussion and later on the policy concerning local officials will be taken up by the Committee on Local Governments. The principle remains the same. I think we want to prevent future situations where, as a result of continuous service and frequent reelections, officials from the President down to the municipal mayor tend to develop a proprietary interest in their positions and to accumulate those powers and perquisites that permit them to stay on indefinitely or to transfer these posts to members of their families in a subsequent election. I think that is taken care of because we put a gap on the continuity or unbroken service of all of these officials. But were we now (to) decide to put these prospective servants of the people or politicians, if we want to use the coarser term, under a perpetual disqualification, I have a feeling that we are taking away too much from the people, whereas we should be giving as much to the people as we can in terms of their own freedom of choice.

I think the veterans of the Senate and of the House of Representatives here will say that simply getting nominated on a party ticket is a very poor assurance that the people will return them to the Senate or to the House of Representatives. There are many casualties along the way of those who want to return to their office, and it is the people's decision that matters. They judge whether or not a Soc Rodrigo, a Sumulong, a Padilla, an Alonto and a Rosales, after a first and second term, should go back to the Senate. That is a prerogative of the people that we should not take away from them -the right to judge those who have served. In any case, we already take away from the people the freedom to vote for the third termers because we say that a Senator, say, Mr. Rodrigo, is only good for twelve years. But if he wants to be like Cincinnatus, if he is called back by his people to serve again, let us say for a period of six years – which Commissioner Davide called a period of hibernation which is spent at his fishpond in Bulacan, Bulacan - because there is a new situation in the country that fairly impels the people to summon him back, like Cincinnatus in the past, then there will no longer be any Cincinnatus.

That is not perhaps a very important point, but I think we already have succeeded in striking a balance of policies, so that the structures, about which Commissioner Garcia expressed a very legitimate concern, could henceforth develop to redistribute opportunities, both in terms of political and economic power, to the great majority of the people, because very soon, we will also discuss the multiparty system. We have unshackled the Philippine politics from the two-party system, which really was the most critical support for the perpetuation of political dynasties in the Philippines. That is quite a victory, but at the same time, let us not despise the role of political parties. The strength of democracy will depend a lot on how strong our democratic parties are, and a

splintering of all these parties so that we fall back on, let us say, nontraditional parties entirely will mean a great loss to the vitality and resiliency of our democracy...

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BISHOP BACANI. . . . I think when we voted on the provision that the illiterate be allowed to vote and when we proposed in this Constitutional Commission for initiative as a way also of empowering our people to engage in the legislative exercise, we are really presupposing the political maturity of our people. Why is it that that political maturity seems now to be denied by asking that we should put a constitutional bar to a further election of any Representative after a term of three years? Why should we not leave that to the premise accepted by practically everybody here that our people are politically mature? Should we use this assumption only when it is convenient for us, and not when it may also lead to a freedom of choice for the people and for politicians who may aspire to serve longer?

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MR. GARCIA. I would like to answer Commissioner Bacani. We put a constitutional bar to reelection of any Representative basically because of the undue advantage of the incumbent. It is not because of lack of trust in the people. We realize from history that Mexico fought a revolution simply because of the issue of reelection. No reelection, sufragio universal. Basically, it is because of the undue advantage of the incumbent that he accumulates power, money, party machine or patronage. As regards what Commissioner Aquino has said, politics is not won by ideals alone; it is won by solid organizing work by organizations that have the capacity to do so; and normally the incumbent has all the advantages. . .

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THE SECRETARY-GENERAL. Madam President, we have here 43 ballots cast. We will now start the counting.

Alternative No. 1 - no further election after a total of three terms: /////-///// -///// -//

Alternative No. 2 - no immediate reelection after three successive terms: /////-///// -///// -///// -///// -//”[6] (emphasis supplied)

In several cases, this Court was guided by the proceedings of the ConCom in construing Art. X, Sec. 8 of the Constitution in relation to Section 43(b) of the Local Government Code of 1991. Different from the issue presented by the cases at bar, however, the question in those cases was what constitutes a “term” for purposes of counting the three consecutive terms allowed under Art. X, Sec. 8. It is apropos to revisit these cases to aid us in extracting the intent behind said Constitutional provision and properly apply it to the unique case of private respondent Hagedorn.

The maiden case was *Borja, Jr. v. Commission on Elections and Jose T. Capco*[7] which involved the 1998 mayoralty election in Pateros. In 1989, private respondent Capco became mayor by operation of law upon the death of the incumbent, Cesar Borja. In 1992, he was elected mayor for a term ending in 1995. In 1995, he was reelected mayor for another term of three years ending in June 1998. In March 1998, he filed his certificate of candidacy for the May 1998 mayoralty election of Pateros. Petitioner Borja, Jr., another candidate for mayor, sought Capco’s disqualification on the ground that by June 30, 1998, Capco would have already served as mayor for three consecutive terms and would therefore be ineligible to serve for another term. The COMELEC en banc declared Capco eligible to run for mayor, thus Borja, Jr. sought recourse in this Court. In dismissing the petition, we considered the historical background of Art. X, Sec. 8 of the Constitution, viz:

“...a consideration of the historical background of Article X, §8 of the Constitution reveals that the members of the Constitutional Commission were as much concerned with preserving the freedom of choice of the people as

they were with preventing the monopolization of political power. Indeed, they rejected a proposal put forth by Commissioner Edmundo F. Garcia that after serving three consecutive terms or nine years there should be no further reelection for local and legislative officials. Instead, they adopted the alternative proposal of Commissioner Christian Monsod that such officials be simply barred from running for the same position in the succeeding election following the expiration of the third consecutive term (2 RECORD OF THE CONSTITUTIONAL COMMISSION 236-243 [Session of July 25, 1986] . . .). Monsod warned against ‘prescreening candidates [from] whom the people will choose’ as a result of the proposed absolute disqualification, considering that the draft constitution contained provisions ‘recognizing people’s power.’

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Two ideas thus emerge from a consideration of the proceedings of the Constitutional Commission. The first is the notion of service of term, derived from the concern about the accumulation of power as a result of a prolonged stay in office. The second is the idea of election, derived from the concern that the right of the people to choose whom they wish to govern them be preserved. (emphasis supplied)

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To recapitulate, the term limit for elective local officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Consequently, it is not enough that an individual has served three consecutive terms in an elective local office, he must also have been elected to the same position for the same number of times before the disqualification can apply. This point can be made clearer by considering the following cases or situations:

Case No. 1. Suppose A is a vice-mayor who becomes mayor by reason of the death of the incumbent. Six months before the next election, he resigns and is twice elected thereafter. Can he run again for mayor in the next election?

Yes, because although he has already first served as mayor by succession and subsequently resigned from office before the full term expired, he has not actually served three full terms in all for the purpose of applying the term limit. Under Art. X, §8, voluntary renunciation of the office is not considered as an interruption in the continuity of his service for the full term only if the term is one “for which he was elected.” Since A is only completing the service of the term for which the deceased and not he was elected, A cannot be considered to have completed one term. His resignation constitutes an interruption of the full term.

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...the mayor is entitled to run for reelection because the two conditions for the application of the disqualification provisions have not concurred, namely, that the local official concerned has been elected three consecutive times and that he has fully served three consecutive terms. In the first case, even if the local official is considered to have served three full terms notwithstanding his resignation before the end of the first term, the fact remains that he has not been elected three times. . .

Case No. 3. The case of vice-mayor C who becomes mayor by succession involves a total failure of the two conditions to concur for the purpose of applying Art. X, § 8. Suppose he is twice elected after that term, is he qualified to run again in the next election?

Yes, because he was not elected to the office of mayor in the first term but simply found himself thrust into it by operation of law. Neither had he served the full term because he only continued the service, interrupted by the death, of the deceased mayor.

To consider C in the third case to have served the first term in full and therefore ineligible to run a third time for reelection would be not only to falsify reality but also to unduly restrict the right of the people to choose whom they wish to govern them. If the vice-mayor turns out to be a bad mayor, the people can remedy the

situation by simply not reelecting him for another term. But if, on the other hand, he proves to be a good mayor, there will be no way the people can return him to office (even if it is just the third time he is standing for reelection) if his service of the first term is counted as one for the purpose of applying the term limit.

To consider C as eligible for reelection would be in accord with the understanding of the Constitutional Commission that while the people should be protected from the evils that a monopoly of political power may bring about, care should be taken that their freedom of choice is not unduly curtailed.”[8] (emphasis supplied)

We reiterated the Borja ruling in *Lonzanida v. Commission on Elections, et al.*[9] which involved the election for mayor of San Antonio, Zambales. Prior to the May 8, 1995 elections, petitioner Romeo Lonzanida served two consecutive terms as municipal mayor of San Antonio, Zambales. In the May 1995 elections, he ran for mayor, was proclaimed winner, and assumed office. His proclamation was, however, contested by his opponent Juan Alvez in an election protest filed before the Regional Trial Court of Zambales which rendered a decision declaring a failure of elections. Upon appeal of the decision to the COMELEC, Alvez was declared the duly elected mayor of San Antonio. In February 1998, the COMELEC issued a writ of execution ordering Lonzanida to vacate the post, and Alvez served the remainder of the term.

Lonzanida filed his certificate of candidacy for the May 11, 1998 election for mayor of San Antonio. His opponent Eufemio Muli filed with the COMELEC a petition to disqualify Lonzanida on the ground that he had already served three consecutive terms in the same office and was thus prohibited from running in the upcoming election. On May 13, 1998, Lonzanida was proclaimed winner. COMELEC ruled that Lonzanida was disqualified as his assumption to office in 1995, although he was unseated before the expiration of the term, was considered one full term for purposes of counting the three term limit under the Constitution and the Local Government Code of 1991.

On appeal to this Court, we ruled, viz:

“It is not disputed that the petitioner was previously elected and served two consecutive terms as mayor of San Antonio, Zambales prior to the May 1995 mayoral elections. In the May 1995 elections he again ran for mayor of San Antonio, Zambales and was proclaimed winner. He assumed office and discharged the rights and duties of mayor until March 1998 when he was ordered to vacate the post by reason of the COMELEC decision dated November 13, 1997 on the election protest against the petitioner which declared his opponent Juan Alvez, the duly elected mayor of San Antonio. Alvez served the remaining portion of the 1995-1998 mayoral term.

The two requisites for the application of the three term rule are absent. First, the petitioner cannot be considered as having been duly elected to the post in the May 1995 elections, and second, the petitioner did not fully serve the 1995-1998 mayoral term by reason of voluntary relinquishment of office. After a re-appreciation and revision of the contested ballots the COMELEC itself declared by final judgment that petitioner Lonzanida lost in the May 1995 mayoral elections and his previous proclamation as a winner was declared null and void. His assumption of office as mayor cannot be deemed to have been by reason of a valid election but by reason of a void proclamation...

Second, the petitioner cannot be deemed to have served the May 1995 to 1998 term because he was ordered to vacate his post before the expiration of the term. The respondents’ contention that the petitioner should be deemed to have served one full term from May 1995-1998 because he served the greater portion of that term has no legal basis to support it; it disregards the second requisite for the application of the disqualification, i.e., that he has fully served three consecutive terms.

In sum, the petitioner was not the duly elected mayor and he did not hold office for the full term; hence, his assumption of office from May 1995 to March 1998 cannot be counted as a term for purposes of computing the three term limit.”[10] (emphasis supplied)

Finally, in the recent case of *Adorneo v. COMELEC, et al.*,^[11] we ruled that a mayor who assumed office via a recall election and served the unexpired portion of the mayoralty term is not considered to have served a full term for purposes of applying the three term limit. In this case, therein private respondent Ramon Talaga, Jr. was elected mayor in May 1992 and served the full term. In 1995, he was reelected and again served the full term. In 1998, he lost to Bernard G. Tagarao. About two years later, a recall election was held where Talaga, Jr. ran against Tagarao. He (Talaga, Jr.) won and served the remainder of Tagarao's term.

In view of the upcoming May 2001 mayoralty election, Talaga, Jr. filed his certificate of candidacy. On March 2, 2001, therein petitioner Adorneo sought the cancellation of Talaga, Jr.'s certificate of candidacy and/or his disqualification on the ground that he had been thrice elected and had served three consecutive terms as city mayor. Talaga, Jr., however, was declared qualified for the position of city mayor. Adorneo thus sought recourse before this Court.

Citing the *Borja* and *Lonzanida* rulings, we ruled that Talaga, Jr. was not disqualified as the two conditions for disqualification, namely (1) the elective official concerned was elected for three consecutive terms in the same post and (2) he has fully served three consecutive terms, were not met. We did not consider Talaga, Jr.'s service of the unexpired portion of Tagarao's term as service of a full term for purposes of the three term limit. We also ruled that he did not serve for three consecutive terms as there was a break in his service when he lost to Tagarao in the 1998 elections. We held, viz:

“COMELEC's ruling that private respondent was not elected for three (3) consecutive terms should be upheld. For nearly two years, he was a private citizen. The continuity of his mayorship was disrupted by his defeat in the 1998 elections.

Patently untenable is petitioner's contention that COMELEC in allowing respondent Talaga, Jr. to run in the May 1998 election violates Article X, Section 8 of the 1987 Constitution. (footnote omitted) To bolster his case, respondent adverts to the comment of Fr. Joaquin Bernas, a Constitutional Commission member, stating that in interpreting said provision that ‘if one is elected representative to serve the unexpired term of another, that unexpired (term), no matter how short, will be considered one term for the purpose of computing the number of successive terms allowed.’

As pointed out by the COMELEC en banc, Fr. Bernas' comment is pertinent only to members of the House of Representatives. Unlike local government officials, there is no recall election provided for members of Congress. (Rollo, pp. 83-84)”^[12] (emphasis supplied)

The deliberations of the ConCom and the ruling case law of *Borja*, *Lonzanida* and *Adorneo* show that there are two principal reasons for the three term limit for elective local officials: (1) to prevent political dynasties perpetuated by the undue advantage of the incumbent and (2) to broaden the choice of the people by allowing candidates other than the incumbent to serve the people. Likewise evident in the deliberations is the effort to balance between two interests, namely, the prevention of political dynasties and broadening the choice of the people on the one hand, and respecting the freedom of choice and voice of the people, on the other; thus, the calibration between perpetual disqualification after three consecutive terms as proposed by Commissioner Garcia, and setting a limit on immediate reelection and providing for a hibernation period.

In all three cases - *Borja*, *Lonzanida* and *Adorneo* - we ruled that the “term” referred to in the three term limit is service of a full term of three years for elective local officials. This ruling furthers the intent of the ConCom to prevent political dynasties as it is the service of consecutive full terms that makes service continuous and which opens the gates to political dynasties limiting the people's choice of leaders. In the words Of Commissioner Ople, “. . . we want to prevent future situations where, as a result of continuous service and frequent reelections, officials from the President down to the municipal mayor tend to develop a proprietary interest in their positions

and to accumulate those powers and perquisites that permit them to stay on indefinitely or to transfer these posts to members of their families in a subsequent election. I think that is taken care of because we put a gap on the continuity or unbroken service of all of these officials. (emphasis supplied)” Thus, ConCom set the limit on consecutive full terms to no more than three. Otherwise stated, it is a fourth consecutive full term that is prohibited.

In the cases at bar, however, private respondent Hagedorn will not serve a prohibited fourth consecutive full term as he will be serving only the unexpired portion of the 2001-2004 mayoralty term. Similar to Talaga, Jr. in the Adorneo case, Hagedorn’s service as mayor will not be continuous from the third to a fourth consecutive full term as it was broken when Socrates was elected in the 2001 regular mayoralty election and served for one year. In the same vein that Talaga, Jr. was elected into office by recall election and his service of the unexpired portion of the incumbent’s term was not considered a consecutive full term for purposes of applying the three term limit, Hagedorn’s service of the unexpired portion of Socrates’ term should not also be counted as a prohibited fourth consecutive full term. It should not make a difference whether the recall election came after the second consecutive full term as in the Adorneo case or after the third consecutive term as in the cases at bar because the intent to create a hiatus in service is satisfied in both instances.

Even a textual analysis of Art. X, Sec. 8 will yield the interpretation that what is prohibited is the service of a fourth consecutive full term. Petitioners are correct in foisting the view that “term” is a fixed and definite period of time prescribed by law or the Constitution during which the public officer may claim to hold the office as a right. It is a fixed and definite period of time to hold office, perform its functions, and enjoy its privileges and emoluments until the expiration of the period.[13] In ascertaining what “term” means for elective local officials, the Constitution itself provides in Art. X, Sec. 8 that it means a fixed, definite, and full period of three years, viz: “Sec. 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years ...” Although one or more persons may discharge the duties of the office during this fixed three-year period, the term is not divided into smaller terms by the number of incumbents who may fill the office. It is one and indivisible, and term follows term in successive cycles of three years each. If the incumbent or the one elected to the office fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns or is otherwise permanently incapacitated to discharge the functions of his office, thereby creating a permanent vacancy,[14] the term would remain unbroken until the recurring election for the office.[15]

The provisions on voluntary renunciation under Art. X, Sec. 8 and other articles of the Constitution bolster the interpretation that for purposes of applying the three term limit, service of a full term of three years is contemplated, viz:

“Art. X, Sec. 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.”

“Art. VI, Sec. 4. . . . No Senator shall serve for more than two consecutive terms. Voluntary renunciation of the office for any length of time shall be considered as an interruption in the continuity of his service for the full term for which he was elected.

xxx xxx xxx

Sec. 7. . . . No Member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

xxx xxx xxx

Art. VII, Sec. 4. . . . No Vice-President shall serve more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.” (emphasis supplied)

Similarly, the Local Government Code of 1991 provides in Sec. 43(b), viz:

“Sec. 43(b) . . . No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.” (emphasis supplied)

Likewise, because “term” is understood to be a fixed, definite, and full period, the Constitution, in Art. VI, Sec. 9, uses the qualifier “unexpired term” to refer to only a portion of a term, viz:

“Art. VI, Sec. 9. In case of vacancy in the Senate or in the House of Representatives, a special election may be called to fill such vacancy in the manner prescribed by law, but the Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term.” (emphasis supplied)

Similarly, Sec. 44 of the Local Government Code of 1991 uses the phrase “unexpired term” to mean the remainder of the term, viz:

“Sec. 44(d). The successors as defined herein shall serve only the unexpired terms of his predecessors. . .” (emphasis supplied)

Thus, when Art. X, Sec. 8 of the Constitution states that “...no such (local elective) official shall serve for more than three consecutive terms,” it consistently means that it allows service of a maximum of three consecutive full terms and prohibits service of a minimum fourth consecutive full term.

In putting a cap on the number of consecutive full terms an elective local official can serve, the ConCom sought to curb the undue advantage of the incumbent over other aspirants, which advantage makes it easier to found a political dynasty. At the time of the September 24, 2002 recall election, however, Hagedorn was not the incumbent favored with this feared “undue advantage of the incumbent.” On the contrary, he ran against the incumbent Mayor Socrates who alone could be the subject of recall election and who, by law, was automatically a candidate in the election.[16] Hagedorn did not run in the 2001 regular mayoralty election of Puerto Princesa City which Socrates won, precisely because he was aware of the three term limit.

It is my respectful submission that the Constitution and the Local Government Code of 1991 proscribe a local official who has been thrice consecutively elected in regular elections and has served three full terms in the same position, from running in the regular election succeeding his third consecutive term. It is this situation that is prohibited because it makes possible service of more than three consecutive and continuous full terms, i.e., service of a fourth consecutive full term. We cannot overstate that it is this continuousness that the ConCom feared would open the gates to the two evils sought to be avoided: the incumbent’s use of his undue advantage to put up a political dynasty and limiting the people’s choice of leaders. It is in this context of regular elections that our obiter dictum in the Lonzanida case, which petitioners harp on, should be understood. In that case, we opined that “[a]s finally voted upon, it was agreed that an elective local government official should be barred from running for the same post after three consecutive terms. After a hiatus of at least one term, he may again run for the same office.”[17] Indeed, insofar as regular local elections are concerned, which were the elections involved in that case, there should be a hiatus of at least one full term of three years.

On the other hand, in the case of a local official who assumes office through a recall election - whether after his

first, second, or third consecutive term- there is a break in his service caused by the election of the incumbent who was recalled. Even in the case of a local official who initially assumes office via recall election, then wins the two succeeding regular elections and serves two full terms in the same post, he is not prohibited from seeking another reelection and serving another full term. This is so because his service of the remainder of the incumbent's term via recall election is not, in reality and in law, a full term continuing on to his three succeeding full terms. Local officials who assume office via recall election serve only the unexpired portion of the incumbent's term and this service is not counted as a full term, despite the Constitutional mandate that the term of office of elective local officials is three years. Such is the design because Art. XVIII, Secs. 2 and 5 of the Constitution also prescribe synchronization of regular national and local elections beginning on the second Monday of May 1992,[18] which is accomplished if the local official who assumes office through recall election serves only the incumbent's unexpired term.

It is only in the case of Representatives (and Senators) that "if one is elected Representative to serve the unexpired term of another, that unexpired term will be considered one term for purposes of computing the number of successive terms allowed." [19] The election herein contemplated is a special election thus this Constitutional intent does not apply to a recall election which involves only elective local officials. The Record bear this out, viz:

"MR. SUAREZ. . . May we ask a clarificatory question regarding the interpretation of the provisions in Sections 3 and 6 in relation to Section 9 regarding the disqualification on the part of the Senator to run for two consecutive terms, and in the case of the Members of the House of Representatives, for three consecutive terms. For example, a special election is called for a Senator, and the Senator newly elected would have to serve the unexpired portion of the term. Would that mean that serving the unexpired portion of the term is already considered one term? So, half a term, which is actually the correct statement, plus one term would disqualify the Senator concerned from running? Is that the meaning of this provision on disqualification, Madam President?

MR. DAVIDE. Yes, because we speak of "term" and if there is a special election, he will serve only for the unexpired portion of that particular term plus one more term for the Senator and two terms for the Members of the Lower House." [20]

As we ruled in the Adorneo case, service of an unexpired term is considered service of a full term only with respect to Representatives (and Senators) because unlike local government officials, Representatives cannot be recalled. It is continuous prolonged stay in office that breeds political dynasties. Understandably therefore, insofar as Representatives who cannot be recalled are concerned, service of an unexpired term is strictly counted as service of a full term because the purpose of the ConCom was to limit the right to run and be elected in Congress.[21]

In allowing Hagedorn to participate in the September 24 recall election, we are not unmindful of the intent of the ConCom to broaden the people's choice of leaders. The three term limit was adopted to allow the electorate to choose from other candidates in the regular election succeeding the incumbent's third consecutive term. This is clear in the Commissioners' alternatives for voting on the term limit for Representatives and the outcome of their voting where 17 voted for "no further election after a total of three terms" and 26 voted for "no immediate reelection after three successive terms." A reelection is immediate if a local official wins in the election succeeding the third consecutive term.[22] This is not the case with Hagedorn who did not run in the 2001 regular mayoralty election and left that political arena to other contenders, thereby upholding the intent of the ConCom to broaden the choice of the electorate.

The intent of the ConCom to create a hiatus in the service of elective local officials after three consecutive full terms cannot be undermined through abuse of the power of recall. The Local Government Code of 1991 provides

limitations on recall in Section 74, viz:

“Section 74. Limitations on Recall. (a) any elective local official may be the subject of a recall election only once during his term of office for loss of confidence.

(b) No recall shall take place within one (1) year from the date of the official’s assumption to office or one (1) year immediately preceding a regular local election.” (emphasis supplied)

Thus, an elective local official cannot perpetually hold on to his office through the mechanism of recall as at the very least, there will be a hiatus of one year after an unbroken service of three terms. He could not simply create, in the words of Commissioner Monsod, “structures that will perpetuate him (them)” in power with the assurance that they will not be exposed because after serving three consecutive full terms, he will certainly be replaced. Within the one-year period under Sec. 74, his successor could discover and begin to dismantle these manipulative structures. This one year period also provides a reasonable basis for the electorate to judge the performance of the incumbent successor, thus obviating fear of political maneuvering through initiation of recall proceedings by a Preparatory Recall Assembly dominated by minions of the previous local official.[23] In *Claudio v. COMELEC, et al.*, [24] we held, viz:

“In the *Bower* case (in re *Bower* 41 I11. 777, 242 N.E. 2d 252 [1968]) cited by this Court in *Angobung v. COMELEC* (269 SCRA 245, 256 [1997]), it was held that ‘The only logical reason which we can ascribe for requiring the electors to wait one year before petitioning for recall election is to prevent premature action on their part in voting to remove a newly elected official before having had sufficient time to evaluate the soundness of his policies and decisions.’”[25]

If, after one year in office, the incumbent proves himself to be worthy of his position, then his constituents will confirm this should a recall election be called, as in the case of Mayor Reynaldo Malonzo of Caloocan City. If, on the other hand, the incumbent turns out to be an ineffective leader, there is no reason why the electorate should not be allowed to make a Cincinnatus of their past leader.

The imagined fear of abuse of the power of recall does not suffice to disqualify private respondent Hagedorn and should not prevail over the resounding voice of the people of Puerto Princesa City. They have spoken and there is no mistaking that Hagedorn is their overwhelming choice. We cannot subscribe to the petitioners’ position and allow an overly literal reading of the law to mute the electorate’s cry and curtail their freedom to choose their leaders. This freedom was as much a concern of the ConCom as was the prevention of political dynasties and broadening the choice of the people. This Court has not just once admonished against a too literal reading of the law as this is apt to constrict rather than fulfill its purpose and defeat the intention of the authors.[26]

In sum, private respondent Hagedorn is not disqualified from running in the September 24, 2002 recall election as the disqualification under Art. X, Sec. 8 of the Constitution applies to the regular mayoralty election succeeding the third consecutive term served. Nor is he precluded from serving the unexpired portion of the 2001-2004 mayoralty term as this is not service of a prohibited fourth consecutive full term.

I vote to deny the petition, giving due consideration to the tenet of representative democracy that the people should be allowed to choose whom they wish to govern them.[27] In the end, “. . . more than judgments of courts of law, the judgment of the tribunal of the people is final for ‘sovereignty resides in the people and all government authority emanates from them.’”[28]

[1] *Frivaldo v. COMELEC*, 257 SCRA 727 (1996).

[2] Very Urgent Petition for Certiorari and Prohibition with Preliminary Injunction and Prayer for Temporary

Restraining Order (Petition), pp. 9-10. The Petition-in-Intervention of Mayor Socrates raises similar issues.

[3] 1 L. Tañada and F. Carreon, Political Law of the Philippines 95-96 (1961).

[4] R. Martin, Philippine Political Law 27 (New ed. 1998).

5 J. Bernas, The Intent of the 1986 Constitution Writers 699 (1995); Record of the Constitutional Commission ("Record"), vol. III, pp. 406-408, 451.

6 Record, vol. II, pp. 236-237, 239-240, 243.

7 295 SCRA 157 (1998).

8 Id., pp. 163, 165.

9 311 SCRA 602 (1999).

10 Lonzanida v. COMELEC, et al., 311 SCRA 602 (1999), pp. 612-613.

11 G.R. No. 147927, February 4, 2002.

12 Adormeo v. COMELEC, et al., supra, p. 6.

13 Petition, p. 23, citing Martin and Martin, Administrative Law, Law of Public Officers and Election Law, Revised Edition, p. 173.

14 Local Government Code of 1991, Sec. 44(d).

15 See Schardein v. Harrison, et al., 18 S.W. 2d 316 (1929).

16 Section 71 of the Local Government Code of 1991 provides in relevant part, viz:

"Section 71....The official or officials sought to be recalled shall automatically be considered as duly registered candidate or candidates to the pertinent positions and, like other candidates, shall be entitled to be voted upon."

17 Petition, p. 18, citing Lonzanida v. Comelec, supra, p. 609.

18 Osmena, et al. v. Del Mar, et al., 199 SCRA 750 (1991).

19 II J. Bernas, The Constitution of the Republic of the Philippines: A Commentary 96 (first ed. 1988).

20 Record, vol. II, p. 592.

21 Borja, Jr. v. COMELEC, et al., supra, p. 167.

22 Id., p. 163.

23 Section 70 of the Local Government Code provides, viz:

"Section 70. Initiation of the Recall Process. (a) Recall may be initiated by a preparatory recall assembly or by the registered voters of the local government unit to which the local elective official subject to such recall belongs.

(b) There shall be a preparatory recall assembly in every province, city, district, and municipality which shall be composed of the following:

(1) Provincial level. All mayors, vice-mayors, and sanggunian members of the municipalities and component cities;

(2) City level. All punong barangay and sanggunian barangay members in the city;

(3) Legislative district level. In cases where sangguniang panlalawigan members are elected by district, all elective municipal officials in the district; and in cases where sangguniang panglungsod members are elected by district, all elective barangay officials in the district; and

(4) Municipal level. All punong barangay and sangguniang barangay members in the municipality.

(c) A majority of all the preparatory recall assembly members may convene in session in a public place and initiate a recall proceeding against any elective official in the local government unit concerned. Recall of provincial, city, or municipal officials shall be validly initiated through a resolution adopted by a majority of all the members of the preparatory recall assembly concerned during its session called for the purpose.”

24 331 SCRA 388 (2000).

25 Claudio v. COMELEC, et al., supra, p. 406.

26 Paras v. COMELEC, 264 SCRA 491 (1996).

27 U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 131 L. Ed. 2d 881 (1995).

28 Garcia v. COMELEC, et al., 227 SCRA 100 (1993).

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