

SIMON B. ALDOVINO, JR., DANILO B. FALLER AND FERDINAND N. TALABONG, PETITIONERS, VS. COMMISSION ON ELECTIONS AND WILFREDO F. ASILO, RESPONDENTS.

G.R. No. 184836. December 23, 2009

Ponente: BRION, J.

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BRION, J.:

Is the preventive suspension of an elected public official an interruption of his term of office for purposes of the three-term limit rule under Section 8, Article X of the Constitution and Section 43(b) of Republic Act No. 7160 (RA 7160, or the Local Government Code)?

The respondent Commission on Elections (COMELEC) ruled that preventive suspension is an effective interruption because it renders the suspended public official unable to provide complete service for the full term; thus, such term should not be counted for the purpose of the three-term limit rule.

The present petition[1] seeks to annul and set aside this COMELEC ruling for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

THE ANTECEDENTS

The respondent Wilfredo F. Asilo (Asilo) was elected councilor of Lucena City for three consecutive terms: for the 1998-2001, 2001-2004, and 2004-2007 terms, respectively. In September 2005 or during his 2004-2007 term of office, the Sandiganbayan preventively suspended him for 90 days in relation with a criminal case he then faced. This Court, however, subsequently lifted the Sandiganbayan's suspension order; hence, he resumed performing the functions of his office and finished his term.

In the 2007 election, Asilo filed his certificate of candidacy for the same position. The petitioners Simon B. Aldovino, Jr., Danilo B. Faller, and Ferdinand N. Talabong (the petitioners) sought to deny due course to Asilo's certificate of candidacy or to cancel it on the ground that he had been elected and had served for three terms; his candidacy for a fourth term therefore violated the three-term limit rule under Section 8, Article X of the Constitution and Section 43(b) of RA 7160.

The COMELEC's Second Division ruled against the petitioners and in Asilo's favour in its Resolution of November 28, 2007. It reasoned out that the three-term limit rule did not apply, as Asilo failed to render complete service for the 2004-2007 term because of the suspension the Sandiganbayan had ordered.

The COMELEC en banc refused to reconsider the Second Division's ruling in its October 7, 2008 Resolution; hence, the PRESENT PETITION raising the following ISSUES:

1. Whether preventive suspension of an elected local official is an interruption of the three-term limit rule; and
2. Whether preventive suspension is considered involuntary renunciation as contemplated in Section 43(b) of

RA 7160

Thus presented, the case raises the direct issue of whether Asilo's preventive suspension constituted an interruption that allowed him to run for a 4th term.

THE COURT'S RULING

We find the petition meritorious.

General Considerations

The present case is not the first before this Court on the three-term limit provision of the Constitution, but is the first on the effect of preventive suspension on the continuity of an elective official's term. To be sure, preventive suspension, as an interruption in the term of an elective public official, has been mentioned as an example in *Borja v. Commission on Elections*.^[2] Doctrinally, however, *Borja* is not a controlling ruling; it did not deal with preventive suspension, but with the application of the three-term rule on the term that an elective official acquired by succession.

a. The Three-term Limit Rule:

The Constitutional Provision Analyzed

Section 8, Article X of the Constitution 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.

Section 43 (b) of RA 7160 practically repeats the constitutional provision, and any difference in wording does not assume any significance in this case.

As worded, the constitutional provision fixes the term of a local elective office and limits an elective official's stay in office to no more than three consecutive terms. This is the first branch of the rule embodied in Section 8, Article X.

Significantly, this provision refers to a "term" as a period of time - three years - during which an official has title to office and can serve. *Appari v. Court of Appeals*,^[3] a Resolution promulgated on November 28, 2007, succinctly discusses what a "term" connotes, as follows:

The word "term" in a legal sense means a fixed and definite period of time which the law describes that an officer may hold an office. According to *Mechem*, the term of office is the period during which an office may be held. Upon expiration of the officer's term, unless he is authorized by law to holdover, his rights, duties and authority as a public officer must ipso facto cease. In the law of public officers, the most and natural frequent method by which a public officer ceases to be such is by the expiration of the terms for which he was elected or appointed. [Emphasis supplied].

A later case, *Gaminde v. Commission on Audit*,^[4] reiterated that "[T]he term means the time during which the officer may claim to hold office as of right, and fixes the interval after which the several incumbents shall succeed one another."

The "limitation" under this first branch of the provision is expressed in the negative - "no such official shall serve for more than three consecutive terms." This formulation - no more than three consecutive terms - is a clear command suggesting the existence of an inflexible rule. While it gives no exact indication of what to "serve. . .

three consecutive terms" exactly connotes, the meaning is clear - reference is to the term, not to the service that a public official may render. In other words, the limitation refers to the term.

The second branch relates to the provision's express initiative to prevent any circumvention of the limitation through voluntary severance of ties with the public office; it expressly states that voluntary renunciation of office "shall not be considered as an interruption in the continuity of his service for the full term for which he was elected." This declaration complements the term limitation mandated by the first branch.

A notable feature of the second branch is that it does not textually state that voluntary renunciation is the only actual interruption of service that does not affect "continuity of service for a full term" for purposes of the three-term limit rule. It is a pure declaratory statement of what does not serve as an interruption of service for a full term, but the phrase "voluntary renunciation," by itself, is not without significance in determining constitutional intent.

The word "renunciation" carries the dictionary meaning of abandonment. To renounce is to give up, abandon, decline, or resign.[5] It is an act that emanates from its author, as contrasted to an act that operates from the outside. Read with the definition of a "term" in mind, renunciation, as mentioned under the second branch of the constitutional provision, cannot but mean an act that results in cutting short the term, i.e., the loss of title to office. The descriptive word "voluntary" linked together with "renunciation" signifies an act of surrender based on the surenderee's own freely exercised will; in other words, a loss of title to office by conscious choice. In the context of the three-term limit rule, such loss of title is not considered an interruption because it is presumed to be purposely sought to avoid the application of the term limitation.

The following exchanges in the deliberations of the Constitutional Commission on the term "voluntary renunciation" shed further light on the extent of the term "voluntary renunciation":

MR. MAAMBONG. Could I address the clarificatory question to the Committee? This term "voluntary renunciation" does not appear in Section 3 [of Article VI]; it also appears in Section 6 [of Article VI].

MR DAVIDE. Yes.

MR. MAAMBONG. It is also a recurring phrase all over the Constitution. Could the Committee please enlighten us exactly what "voluntary renunciation" mean? Is this akin to abandonment?

MR. DAVIDE. Abandonment is voluntary. In other words, he cannot circumvent the restriction by merely resigning at any given time on the second term.

MR. MAAMBONG. Is the Committee saying that the term "voluntary renunciation" is more general than abandonment and resignation?

MR. DAVIDE. It is more general, more embracing.[6]

From this exchange and Commissioner Davide's expansive interpretation of the term "voluntary renunciation," the framers' intent apparently was to close all gaps that an elective official may seize to defeat the three-term limit rule, in the way that voluntary renunciation has been rendered unavailable as a mode of defeating the three-term limit rule. Harking back to the text of the constitutional provision, we note further that Commissioner Davide's view is consistent with the negative formulation of the first branch of the provision and the inflexible interpretation that it suggests.

This examination of the wording of the constitutional provision and of the circumstances surrounding its formulation impresses upon us the clear intent to make term limitation a high priority constitutional objective whose terms must be strictly construed and which cannot be defeated by, nor sacrificed for, values of less than

equal constitutional worth. We view preventive suspension vis-à-vis term limitation with this firm mindset.

b. Relevant Jurisprudence on the
Three-term Limit Rule

Other than the above-cited materials, jurisprudence best gives us a lead into the concepts within the provision's contemplation, particularly on the "interruption in the continuity of service for the full term" that it speaks of.

Lonzanida v. Commission on Elections[7] presented the question of whether the disqualification on the basis of the three-term limit applies if the election of the public official (to be strictly accurate, the proclamation as winner of the public official) for his supposedly third term had been declared invalid in a final and executory judgment. We ruled that the two requisites for the application of the disqualification (viz., 1. that the official concerned has been elected for three consecutive terms in the same local government post; and 2. that he has fully served three consecutive terms) were not present. In so ruling, we said:

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. The petitioner vacated his post a few months before the next mayoral elections, not by voluntary renunciation but in compliance with the legal process of writ of execution issued by the COMELEC to that effect. Such involuntary severance from office is an interruption of continuity of service and thus, the petitioner did not fully serve the 1995-1998 mayoral term. [Emphasis supplied]

Our intended meaning under this ruling is clear: it is severance from office, or to be exact, loss of title, that renders the three-term limit rule inapplicable.

Ong v. Alegre[8] and Rivera v. COMELEC,[9] like Lonzanida, also involved the issue of whether there had been a completed term for purposes of the three-term limit disqualification. These cases, however, presented an interesting twist, as their final judgments in the electoral contest came after the term of the contested office had expired so that the elective officials in these cases were never effectively unseated.

Despite the ruling that Ong was never entitled to the office (and thus was never validly elected), the Court concluded that there was nevertheless an election and service for a full term in contemplation of the three-term rule based on the following premises: (1) the final decision that the third-termers lost the election was without practical and legal use and value, having been promulgated after the term of the contested office had expired; and (2) the official assumed and continuously exercised the functions of the office from the start to the end of the term. The Court noted in Ong the absurdity and the deleterious effect of a contrary view - that the official (referring to the winner in the election protest) would, under the three-term rule, be considered to have served a term by virtue of a veritably meaningless electoral protest ruling, when another actually served the term pursuant to a proclamation made in due course after an election. This factual variation led the Court to rule differently from Lonzanida.

In the same vein, the Court in Rivera rejected the theory that the official who finally lost the election contest was merely a "caretaker of the office" or a mere "de facto officer." The Court observed that Section 8, Article X of the Constitution is violated and its purpose defeated when an official fully served in the same position for three consecutive terms. Whether as "caretaker" or "de facto" officer, he exercised the powers and enjoyed the perquisites of the office that enabled him "to stay on indefinitely."

Ong and Rivera are important rulings for purposes of the three-term limitation because of what they directly

imply. Although the election requisite was not actually present, the Court still gave full effect to the three-term limitation because of the constitutional intent to strictly limit elective officials to service for three terms. By so ruling, the Court signalled how zealously it guards the three-term limit rule. Effectively, these cases teach us to strictly interpret the term limitation rule in favor of limitation rather than its exception.

Adormeo v. Commission on Elections[10] dealt with the effect of recall on the three-term limit disqualification. The case presented the question of whether the disqualification applies if the official lost in the regular election for the supposed third term, but was elected in a recall election covering that term. The Court upheld the COMELEC's ruling that the official was not elected for three (3) consecutive terms. The Court reasoned out that for nearly two years, the official was a private citizen; hence, the continuity of his mayorship was disrupted by his defeat in the election for the third term.

Socrates v. Commission on Elections[11] also tackled recall vis-à-vis the three-term limit disqualification. Edward Hagedorn served three full terms as mayor. As he was disqualified to run for a fourth term, he did not participate in the election that immediately followed his third term. In this election, the petitioner Victorino Dennis M. Socrates was elected mayor. Less than 1 ½ years after Mayor Socrates assumed the functions of the office, recall proceedings were initiated against him, leading to the call for a recall election. Hagedorn filed his certificate of candidacy for mayor in the recall election, but Socrates sought his disqualification on the ground that he (Hagedorn) had fully served three terms prior to the recall election and was therefore disqualified to run because of the three-term limit rule. We decided in Hagedorn's favor, ruling that:

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.

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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.[12]

Latasa v. Commission on Elections[13] presented the novel question of whether a municipal mayor who had fully served for three consecutive terms could run as city mayor in light of the intervening conversion of the municipality into a city. During the third term, the municipality was converted into a city; the cityhood charter provided that the elective officials of the municipality shall, in a holdover capacity, continue to exercise their powers and functions until elections were held for the new city officials. The Court ruled that the conversion of the municipality into a city did not convert the office of the municipal mayor into a local government post different from the office of the city mayor - the territorial jurisdiction of the city was the same as that of the

municipality; the inhabitants were the same group of voters who elected the municipal mayor for 3 consecutive terms; and they were the same inhabitants over whom the municipal mayor held power and authority as their chief executive for nine years. The Court said:

This Court reiterates that the framers of the Constitution specifically included an exception to the people's freedom to choose those who will govern them in order to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office. To allow petitioner Latasa to vie for the position of city mayor after having served for three consecutive terms as a municipal mayor would obviously defeat the very intent of the framers when they wrote this exception. Should he be allowed another three consecutive terms as mayor of the City of Digos, petitioner would then be possibly holding office as chief executive over the same territorial jurisdiction and inhabitants for a total of eighteen consecutive years. This is the very scenario sought to be avoided by the Constitution, if not abhorred by it.[14]

Latasa instructively highlights, after a review of Lonzanida, Adormeo and Socrates, that no three-term limit violation results if a rest period or break in the service between terms or tenure in a given elective post intervened. In Lonzanida, the petitioner was a private citizen with no title to any elective office for a few months before the next mayoral elections. Similarly, in Adormeo and Socrates, the private respondents lived as private citizens for two years and fifteen months, respectively. Thus, these cases establish that the law contemplates a complete break from office during which the local elective official steps down and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit.

Seemingly differing from these results is the case of *Montebon v. Commission on Elections*,^[15] where the highest-ranking municipal councilor succeeded to the position of vice-mayor by operation of law. The question posed when he subsequently ran for councilor was whether his assumption as vice-mayor was an interruption of his term as councilor that would place him outside the operation of the three-term limit rule. We ruled that an interruption had intervened so that he could again run as councilor. This result seemingly deviates from the results in the cases heretofore discussed since the elective official continued to hold public office and did not become a private citizen during the interim. The common thread that identifies *Montebon* with the rest, however, is that the elective official vacated the office of councilor and assumed the higher post of vice-mayor by operation of law. Thus, for a time he ceased to be councilor - an interruption that effectively placed him outside the ambit of the three-term limit rule.

c. Conclusion Based on Law and Jurisprudence

From all the above, we conclude that the "interruption" of a term exempting an elective official from the three-term limit rule is one that involves no less than the involuntary loss of title to office. The elective official must have involuntarily left his office for a length of time, however short, for an effective interruption to occur. This has to be the case if the thrust of Section 8, Article X and its strict intent are to be faithfully served, i.e., to limit an elective official's continuous stay in office to no more than three consecutive terms, using "voluntary renunciation" as an example and standard of what does not constitute an interruption.

Thus, based on this standard, loss of office by operation of law, being involuntary, is an effective interruption of service within a term, as we held in *Montebon*. On the other hand, temporary inability or disqualification to exercise the functions of an elective post, even if involuntary, should not be considered an effective interruption of a term because it does not involve the loss of title to office or at least an effective break from holding office; the office holder, while retaining title, is simply barred from exercising the functions of his office for a reason provided by law.

An interruption occurs when the term is broken because the office holder lost the right to hold on to his office, and

cannot be equated with the failure to render service. The latter occurs during an office holder's term when he retains title to the office but cannot exercise his functions for reasons established by law. Of course, the term "failure to serve" cannot be used once the right to office is lost; without the right to hold office or to serve, then no service can be rendered so that none is really lost.

To put it differently although at the risk of repetition, Section 8, Article X - both by structure and substance - fixes an elective official's term of office and limits his stay in office to three consecutive terms as an inflexible rule that is stressed, no less, by citing voluntary renunciation as an example of a circumvention. The provision should be read in the context of interruption of term, not in the context of interrupting the full continuity of the exercise of the powers of the elective position. The "voluntary renunciation" it speaks of refers only to the elective official's voluntary relinquishment of office and loss of title to this office. It does not speak of the temporary "cessation of the exercise of power or authority" that may occur for various reasons, with preventive suspension being only one of them. To quote *Latasa v. Comelec*:^[16]

Indeed, [T]he law contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit. [Emphasis supplied].

Preventive Suspension and the Three-Term Limit Rule

a. Nature of Preventive Suspension

Preventive suspension - whether under the Local Government Code,^[17] the Anti-Graft and Corrupt Practices Act,^[18] or the Ombudsman Act^[19] - is an interim remedial measure to address the situation of an official who have been charged administratively or criminally, where the evidence preliminarily indicates the likelihood of or potential for eventual guilt or liability.

Preventive suspension is imposed under the Local Government Code "when the evidence of guilt is strong and given the gravity of the offense, there is a possibility that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence." Under the Anti-Graft and Corrupt Practices Act, it is imposed after a valid information (that requires a finding of probable cause) has been filed in court, while under the Ombudsman Act, it is imposed when, in the judgment of the Ombudsman, the evidence of guilt is strong; and (a) the charge involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; or (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

Notably in all cases of preventive suspension, the suspended official is barred from performing the functions of his office and does not receive salary in the meanwhile, but does not vacate and lose title to his office; loss of office is a consequence that only results upon an eventual finding of guilt or liability.

Preventive suspension is a remedial measure that operates under closely-controlled conditions and gives a premium to the protection of the service rather than to the interests of the individual office holder. Even then, protection of the service goes only as far as a temporary prohibition on the exercise of the functions of the official's office; the official is reinstated to the exercise of his position as soon as the preventive suspension is lifted. Thus, while a temporary incapacity in the exercise of power results, no position is vacated when a public official is preventively suspended. This was what exactly happened to Asilo.

That the imposition of preventive suspension can be abused is a reality that is true in the exercise of all powers and prerogative under the Constitution and the laws. The imposition of preventive suspension, however, is not an

unlimited power; there are limitations built into the laws^[20] themselves that the courts can enforce when these limitations are transgressed, particularly when grave abuse of discretion is present. In light of this well-defined parameters in the imposition of preventive suspension, we should not view preventive suspension from the extreme situation - that it can totally deprive an elective office holder of the prerogative to serve and is thus an effective interruption of an election official's term.

Term limitation and preventive suspension are two vastly different aspects of an elective officials' service in office and they do not overlap. As already mentioned above, preventive suspension involves protection of the service and of the people being served, and prevents the office holder from temporarily exercising the power of his office. Term limitation, on the other hand, is triggered after an elective official has served his three terms in office without any break. Its companion concept - interruption of a term - on the other hand, requires loss of title to office. If preventive suspension and term limitation or interruption have any commonality at all, this common point may be with respect to the discontinuity of service that may occur in both. But even on this point, they merely run parallel to each other and never intersect; preventive suspension, by its nature, is a temporary incapacity to render service during an unbroken term; in the context of term limitation, interruption of service occurs after there has been a break in the term.

b. Preventive Suspension and the Intent of the Three-Term Limit Rule

Strict adherence to the intent of the three-term limit rule demands that preventive suspension should not be considered an interruption that allows an elective official's stay in office beyond three terms. A preventive suspension cannot simply be a term interruption because the suspended official continues to stay in office although he is barred from exercising the functions and prerogatives of the office within the suspension period. The best indicator of the suspended official's continuity in office is the absence of a permanent replacement and the lack of the authority to appoint one since no vacancy exists.

To allow a preventively suspended elective official to run for a fourth and prohibited term is to close our eyes to this reality and to allow a constitutional violation through sophistry by equating the temporary inability to discharge the functions of office with the interruption of term that the constitutional provision contemplates. To be sure, many reasons exist, voluntary or involuntary - some of them personal and some of them by operation of law - that may temporarily prevent an elective office holder from exercising the functions of his office in the way that preventive suspension does. A serious extended illness, inability through force majeure, or the enforcement of a suspension as a penalty, to cite some involuntary examples, may prevent an office holder from exercising the functions of his office for a time without forfeiting title to office. Preventive suspension is no different because it disrupts actual delivery of service for a time within a term. Adopting such interruption of actual service as the standard to determine effective interruption of term under the three-term rule raises at least the possibility of confusion in implementing this rule, given the many modes and occasions when actual service may be interrupted in the course of serving a term of office. The standard may reduce the enforcement of the three-term limit rule to a case-to-case and possibly see-sawing determination of what an effective interruption is.

c. Preventive Suspension and Voluntary Renunciation

Preventive suspension, because it is imposed by operation of law, does not involve a voluntary act on the part of the suspended official, except in the indirect sense that he may have voluntarily committed the act that became the basis of the charge against him. From this perspective, preventive suspension does not have the element of

voluntariness that voluntary renunciation embodies. Neither does it contain the element of renunciation or loss of title to office as it merely involves the temporary incapacity to perform the service that an elective office demands. Thus viewed, preventive suspension is - by its very nature - the exact opposite of voluntary renunciation; it is involuntary and temporary, and involves only the actual delivery of service, not the title to the office. The easy conclusion therefore is that they are, by nature, different and non-comparable.

But beyond the obvious comparison of their respective natures is the more important consideration of how they affect the three-term limit rule.

Voluntary renunciation, while involving loss of office and the total incapacity to render service, is disallowed by the Constitution as an effective interruption of a term. It is therefore not allowed as a mode of circumventing the three-term limit rule.

Preventive suspension, by its nature, does not involve an effective interruption of a term and should therefore not be a reason to avoid the three-term limitation. It can pose as a threat, however, if we shall disregard its nature and consider it an effective interruption of a term. Let it be noted that a preventive suspension is easier to undertake than voluntary renunciation, as it does not require relinquishment or loss of office even for the briefest time. It merely requires an easily fabricated administrative charge that can be dismissed soon after a preventive suspension has been imposed. In this sense, recognizing preventive suspension as an effective interruption of a term can serve as a circumvention more potent than the voluntary renunciation that the Constitution expressly disallows as an interruption.

Conclusion

To recapitulate, Asilo's 2004-2007 term was not interrupted by the Sandiganbayan-imposed preventive suspension in 2005, as preventive suspension does not interrupt an elective official's term. Thus, the COMELEC refused to apply the legal command of Section 8, Article X of the Constitution when it granted due course to Asilo's certificate of candidacy for a prohibited fourth term. By so refusing, the COMELEC effectively committed grave abuse of discretion amounting to lack or excess of jurisdiction; its action was a refusal to perform a positive duty required by no less than the Constitution and was one undertaken outside the contemplation of law.[21]

WHEREFORE, premises considered, we GRANT the petition and accordingly NULLIFY the assailed COMELEC rulings. The private respondent Wilfredo F. Asilo is declared DISQUALIFIED to run, and perforce to serve, as Councilor of Lucena City for a prohibited fourth term. Costs against private respondent Asilo.

SO ORDERED.

Corona, Velasco, Jr., Nachura, Peralta, Bersamin, and Villarama, Jr., JJ., concur.

Puno, C J., concur in the result.

Carpio, J., see dissenting opinion.

Carpio Morales and Del Castillo, JJ., joins the dissent of J. Carpio.

Leonardo-De Castro, J., with separate concurring opinion.

Abad, J., see separate concurring opinion.

[1] Filed under Rule 64, in relation with Rule 65 of the Rules of Court.

[2] 329 Phil. 409 (1996).

[3] G.R. No. L-30057, January 31, 1984, 127 SCRA 231, 240.

- [4] 401 Phil. 77, 88 (2000).
- [5] Webster's Third New International Dictionary (1993), p. 1922.
- [6] II RECORD, Constitutional Commission 591 (August 1, 1986).
- [7] G.R. No. 135150, July 28, 1999, 311 SCRA 602.
- [8] G.R. No. 163295, January 23, 2006, 479 SCRA 473.
- [9] G.R. No. 167591, May 9, 2007, 523 SCRA 41.
- [10] 426 Phil. 472 (2002).
- [11] 440 Phil. 106 (2002).
- [12] Id. at 125-127.
- [13] G.R. No. 154829, December 10, 2003, 417 SCRA 601.
- [14] Id. at 312-313.
- [15] G.R. No. 180444, April 9, 2008, 551 SCRA 50.
- [16] Supra note 12.
- [17] RA 7160, Sections 63 and 64.
- [18] RA 3019, Section 13.
- [19] RA 6770, Sections 24 and 25.
- [20] See: Sec. 24, R.A. No. 6770; Sec. 63, R.A. No. 7160; Sec. 13, R.A. No. 3019.
- [21] Grave abuse of discretion defies exact definition, but it generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction - the abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility; Quintos v. Commission on Elections, 440 Phil. 1045, 1064 (2002), citing Sahali v. Commission on Elections, 381 Phil. 505 (2002).

DISSENTING OPINION

CARPIO, J.:

The ponencia barred Wilfredo F. Asilo (Asilo) from running for office for the 2007-2010 term. The ponencia declared that Asilo's preventive suspension from 16 October to 15 November 2005 did not interrupt, and hence, had no effect, on the application of the three-term limit rule.

Asilo was elected and served as Councilor of Lucena City for three terms: 1998-2001, 2001-2004, and 2004-2007. Asilo was serving his third term when the Fourth Division of the Sandiganbayan ordered Asilo's suspension pendente lite on 3 October 2005. The certification from Ernesto I. Jalbuena, City Government Department Head II and City Secretary, reads:

THIS IS TO CERTIFY that Councilor Wilfredo F. Asilo [has] served the City Government of Lucena as a duly

elected member of the Office of the Sangguniang Panlungsod on the basis of the local elections:

- July 1, 1998-June30, 2001

- July 1,2001-June30, 2004

- July 1: 2004-June 30, 2007

However, the Sandiganbayan, 4th Division, Quezon City in a Resolution dated October 3, 2005 issued a Suspension Order of all accused *pendente lite* under Criminal Case No. 27738, entitled *People of the Philippines vs. Ramon Y. Talaga, Jr., et. al, City Officials, Lucena City* for a total period of 90 days. Said suspension is further covered by DILG Memo dated 10 October 2005. Said respondents including Councilor Wilfredo F. Asilo did not receive any salary and other benefits during the period from October 16-31 and November 1-15,2005.

However, on 14 November 2005, the Department of the Interior and Local Government thru Secretary Angelo T. Reyes served a certified true copy of a Resolution dated 9 November 2005 from the Honorable Supreme Court, 2nd Division, restraining public respondents from implementing the resolution dated October 3, 2005 of the Sandiganbayan, 4th Division effective immediately.[1]

This Court lifted Asilo's suspension on 9 November 2005. The lifting of the suspension prompted Department of Interior and Local Government (DILG) Secretary Angelo T. Reyes to issue a memorandum directing Asilo and his co-accused to reassume their respective offices. Secretary Reyes' memorandum reads:

It may be recalled that on 03 October 2005, the Sandiganbayan 4th Division in Criminal Case No. 27738, promulgated a Resolution suspending you *pendente lite*, and Sangguniang Panlungsod Members Godofredo V. Faller, Danilo R. Zaballero, Salome S. Dato, Simon N. Aldovino, Wilfredo F. Asilo and Aurora C. Garcia, all of Lucena City, wherein the undersigned was directed to implement the same.

Accordingly, the Department, on 10 October 2005, issued implementation orders in compliance with the Sandiganbayan Resolution, which were duly served to all of you on 13 October 2005.

On 11 November 2005, we received a certified true copy of a Resolution dated 09 November 2005, issued by the Honorable Supreme Court 2nd Division, in G.R. No. 169888, entitled: "*Ramon Y. Tafaga, Jr., City Mayor, Lucena City, Petitioner, vs. Hon. Sandiganbayan 4th Division and People of the Philippines, Respondents,*" restraining public respondents from implementing the Resolution dated 03 October 2005 of the Sandiganbayan 4th Division, effective immediately and continuing until further orders from said court.

Accordingly, this Department's implementation orders issued in furtherance of the 03 October 2005 Resolution of the Sandiganbayan 4th Division is hereby recalled. You may now reassume your respective offices in Lucena City, immediately effective upon receipt hereof.[2]

Asilo then reassumed office and continued his duties as City Councilor.

Asilo filed his certificate of candidacy as Councilor of Lucena City for the 2007-2010 term. On 18 April 2007, Simon B. Aldovino, Jr., Danilo B. Faller, and Ferdinand N. Talabong (petitioners) filed before the Office of the Provincial Election Supervisor of Quezon a petition to deny due course and/ or cancel the candidacy of Asilo for violating the three-term limit rule in relation to Section 78 of the Omnibus Election Code. Asilo filed his answer on 25 April 2007. Petitioners filed their reply on 30 April 2007. Asilo filed his position paper on 3 May 2007 while petitioners filed their Memorandum the next day.

The COMELEC Second Division, in a Resolution promulgated on 28 November 2007, ruled against petitioners and in favor of Asilo. The COMELEC Second Division held that the three-term limit rule did not apply in Asilo's case. Asilo was unable to render complete service for the 2004- 2007 term because of the suspension ordered by

the Sandiganbayan. The COMELEC Second Division dismissed the petition for lack of merit.

Petitioners filed a motion for reconsideration before the COMELEC En Banc, Petitioners argued that there was no effective renunciation of office, whether voluntary or involuntary, as Asilo was merely the subject of preventive suspension. Asilo allegedly remained a Councilor of Lucena City and did not become a private citizen.

The COMELEC En Banc, in a Resolution promulgated on 7 October 2008, denied petitioners' motion for reconsideration for utter lack of merit. The COMELEC En Banc found that there was "no established or discernible error in the earlier Resolution of the Second Division"[3] of the COMELEC.

The ponencia reversed the COMELEC's rulings.

I submit that the ponencia erred in its application of the concept of [voluntary renunciation to the three-term limit rule.

Section 8, Article X of the Constitution, the application of which is at [issue in the present case, reads:

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. (Emphasis supplied)

The first sentence prescribes that the term limit of elective local officials shall not be more than "three consecutive terms." The second sentence states that voluntary renunciation of office does not interrupt the continuity of service for the full term of an elective local official. While the first sentence limits an elective local official's term of office to a maximum of "three consecutive terms," the second sentence prescribes that each of the three consecutive terms must be served for the "full term" for the three-term limit rule to apply. Any break "in the continuity of his service for the full term" due to voluntary renunciation will not prevent the application of the three-term limit rule. The clear implication is that any break in the continuity of his service due to involuntary renunciation or severance from office prevents the application of the three-term limit rule.

Thus, it cannot be disputed that any involuntary act depriving an elective local official of his office constitutes an interruption in the continuity of service for the full term for which he was elected. The "three consecutive terms" may be broken by "an interruption in the continuity of service for the full term for which he was elected," provided such interruption is involuntary. Once there is "an interruption" in the continuity of service of any of his three consecutive terms, there results a break in his continuity of service, unless the interruption is caused by voluntary renunciation.

In short, a plain reading of Section 8, Article X of the Constitution clearly provides that with the exception of voluntary renunciation, "an interruption in the continuity of [an elective official's] service for the full term for which he was elected" constitutes a break in the continuity of his service for purposes of determining whether he has fully served "three consecutive terms."

In this case, Asilo's preventive suspension, as it currently stands, is an indisputably involuntary act, which interrupted his term for purposes of the three-term limit rule. However, we clarify that, subject to certain conditions, preventive suspension may eventually result in voluntary renunciation of office and may not interrupt an elected official's continuity of service.

The Three-Term Limit Rule

The three-term limit rule was borne out of the awareness of the Bribers of the Constitutional Commission of the possibility of excessive accumulation of power as a result of "continuous service and frequent re-elections." [4]

The members of the Constitutional Commission sought to balance the preservation of the people's freedom of choice and the prevention of the monopolization of political power. They chose between two proposals, that of Commissioner Edmundo Garcia, who proposed to prohibit reelection after serving three consecutive terms or nine years; and that of Commissioner Christian Monsod, who proposed that elected officials be merely barred from running for the same position in the immediately succeeding election following the expiration of the third consecutive term.

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; and (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 of those who will serve them; in other words, to broaden the 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 who, 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.

x x x x

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's 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 haired 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 are limited. Their skills may be only 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 that 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.[5]

The Constitution has provisions for term limits of the Legislative[6] and Executive[7] which are similarly worded to term limits of elective local officials. Section 8 of Article X of the Constitution, quoted above, is repeated in Section 43(b) of the Local Government Code. Section 43(b) reads:

Term of Office. — 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 concerned was elected. (Emphasis supplied)

The Effect of Preventive Suspension on the Three-Term Limit Rule

An elective local official is not barred from running again for the same [local government post unless two conditions concur: one, that the official has been elected to the same local government post for three consecutive terms, and two, that he has fully served three consecutive terms.[8] Any service short of full service of three consecutive terms, save for voluntary renunciation of the office, does not bar an elective local official from running again for the same local government post. If voluntary renunciation is not considered a break in the continuity of service, then the converse should be true: involuntary renunciation should be considered a break in the continuity of service. And there can be no more illustrative case of involuntary renunciation from service than removal from office by suspension or dismissal.

We illustrated the concurrence of the two conditions of being elected and having fully served in *Borja, Jr. v. COMELEC*:^[9]

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 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 he was elected, A cannot be considered to have completed one term. His resignation constitutes an interruption of the full term.

Case No. 2. Suppose B is elected Mayor and, during his first term, he is twice suspended for misconduct for a total of one year. If he is twice reelected after that, can he run for one more term in the next election?

Yes, because he has served only two full terms successively.

(Emphasis supplied)

We qualify Case No. 2 above. Suspension of an elective local official may either be preventive or punitive, and is covered by different laws. In the Local Government Code (Republic Act [R.A.] No. 7160), preventive suspension is governed by Sections 63 and 64:

Section 63. Preventive Suspension. — (a) Preventive suspension may be imposed:

- (1) By the President, if the respondent is an elective official of a province, a highly urbanized or an independent component city;
- (2) By the governor, if the respondent is an elective official of a component city or municipality; or
- (3) By the mayor, if the respondent is an elective official of the Barangay.

(b) Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence; Provided, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days: Provided, further, That in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension.

(c) Upon expiration of the preventive suspension, the suspended elective official shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him, which shall be terminated within one hundred twenty (120) days from the time he was formally notified of the case against him. However, if the delay in the proceedings of the case is due to his fault, neglect, or request, other than the appeal duly filed, the duration of such delay shall not be counted in computing the time of termination of the case.

(d) Any abuse of the exercise of the power of preventive suspension shall be penalized as abuse of authority.

Section 64. Salary of Respondent Pending Suspension. — The respondent official preventively suspended from office shall receive no salary or compensation during such suspension; but, upon subsequent exoneration and reinstatement, he shall be paid full salary or compensation including such emoluments accruing during such suspension.

The Anti-Graft and Corrupt Practices Act: (R.A. No. 3019) and the Ombudsman Act of 1989 (R.A. No. 6770) have provisions for both preventive and punitive suspensions. Section 13 of R.A. No. 3019 reads:

Section 13. Suspension and loss of benefits. — Any public officer against whom any criminal prosecution under

a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

Sections 24 and 25 of R.A. No. 6770 read:

Section 24. Preventive Suspension. — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

Section 25. Penalties.— (1) In administrative proceedings under Presidential Decree No. 807. the penalties and rules provided therein shall be applied.

(2) In other administrative proceedings, the penalty ranging from suspension without pay for one year to dismissal with forfeiture of benefits or a fine ranging from five thousand pesos (P5,000.00) to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charges. (Emphasis supplied)

Preventive suspension has a limited duration: not more than 60 days for a single offense or not more than 90 days in a year for offenses that fulfill certain conditions under the Local Government Code; and not more than 6 months under the Ombudsman Act of 1989. A 60-day suspension cuts into 1/13 of a term; a 90-day suspension into 1/12 of a term; and a 6-month suspension into 1/6 of a term. Preventive suspension can be imposed consecutively for different offenses filed separately, although under the local Government Code, an elective official cannot be preventively suspended for more than 90 days within a single year "on the same ground or grounds existing and known at the time of the first suspension." If the grounds for suspension are different, then an elective official can be suspended for more than 90 days in a single year. Thus, under the Local Government Code, preventive suspension can cut an elective official's term of office to less than a year.

Under the Ombudsman Act, however, the Ombudsman can preventively suspend an elective official more than once in the same year during the elective official's term of office, regardless of the grounds for suspension, provided that the cases are filed separately. Such cumulative preventive suspension can also cut the term of office of an elective official to less than a year. This will subject elective local officials to harassment through successive suspensions. If we follow the majority opinion, an elective local official who is successively preventively suspended will still be deemed to have completed his term. The disciplining authority may suspend any elective local official who is not aligned with the desires of the ruling party and keep him suspended by filing different cases until his term is over. Preventive suspension can be used as a tool to frustrate the will of the people, and there is no effective counter-check for this abuse.

An elective local official may have two months left in his term but can be preventively suspended for three months. This preventive suspension cuts short his term and he cannot go back to assume office, effectively resulting in loss of title to his office.

Several Metro Manila mayors faced graft charges before the Office of the Ombudsman prior to the 2007 elections. Consider the data in the following table:[10]

Mayor

City / Municipality

Number of Charges Filed

Suspended or Dismissed

Lito Atienza

Manila

12

No

James Fresnedi

Muntinlupa

14

No

Enrico Echiverri

Caloocan

16

No

Lourdes Fernando

Marikina

14

No

Fiorencio Bernabe

Paranaque

8

No

Sigfrido Tinga

Taguig

5

No

Sherwin Gatchalian

Valenzuela

4

No

Vicente Eusebio

Pasig

4

No

Almeida Aguilar

Las Pinas

2

No

Jejomar Binay

Makati

4

Yes

Wenceslao Trinidad

Pasay

7

Yes

Preventive suspension is often resorted to prior to the elections.[11] The DILG suspended Makati Mayor Jejomar Binay, Vice Mayor Ernesto Mercado and 16 councilors on 17 October 2006 pending the outcome of a graft case filed against them by former Makati Vice Mayor Roberto Brillante In August 2006 for allegedly hiring ghost employees.[12] Mayor Binay received yet another suspension order a few days before the 2007 elections. Be suspension order, based on a complaint by former Councilor Oscar Ibay for alleged unremitted withholding taxes, was served at 11:30 p.m. on 4 May J007.[13] The Ombudsman issued both suspension and dismissal orders on the Ive of the 2007 election period.

Mayor Binay, however, was not the sole recipient of orders adverse to his continued administration.

On 14 January 2007, the DILG served the Ombudsman's suspension order upon Batangas Governor Armando Sanchez.[14] Prior to this, the DILG also suspended for six months Cavite Governor Erineo Maliksi; Mamburao, Occidental Mindoro Mayor Joel Panaligan; Aguilar, Pangasinan Mayor Ricardo Evangelista; Vallehermoso, Negros Occidental Mayor Joniper Villegas; and Panglao, Bohol Mayor Doloreich Dumaluan. The DILG also implemented dismissal orders issued by the Office of the Ombudsman against certain local elective officials, such as Iloilo Governor Niel Tupas and Sangguniang Panlalawigan member Cecilia Capadosa; Jaen, Nueva Ecija Mayor Antonio Esquivel; and Pasay City Mayor Wenceslao "Peewee" Irinidad, Vice Mayor Antonio Calixto and eight city councilors.[15] On 12 January 2007, the Office of the Ombudsman meted out the penalty of dismissal from service to Governor Tupas and Sangguniang Panlalawigan member Capadosa; Mayor Esquivel; and Mayor

Trinidad, Vice Mayor Calixto and eight city councilors which carries with it the cancellation of Bgibility, forfeiture of retirement benefits and perpetual disqualification from reemployment for government service, upon these elective officials.

Of course, it goes without saying that the elective local official who is under preventive suspension can avail of remedies under the law. In defending the Executive Department's suspension of Mayor Binay, Executive Secretary Eduardo Ermita stated, "That is the beauty of our laws, beauty in the sense that there are times that we know it's supposed to be applied in a standard manner equally to everybody...but then there are people with better contacts, better resources, that's how it is but still within the bounds of the law." [16] In that statement, Secretary Ermita effectively admitted that connections, political or otherwise, can make the difference in the security of tenure of an incumbent elected official.

The elective local official who is under preventive suspension shall not receive any salary or compensation during his suspension. Preventive suspension, however, has effects which go beyond the financial and even beyond the person of the suspended elective official. The electorate is deprived of the services of the person they elected.

An elective official, elected by popular vote, is directly responsible to the community that elected him. The official has a definite term of office fixed by law which is relatively of short duration. Suspension and removal from office definitely affects and shortens this term of office. When an elective official is suspended or removed, the people are deprived of the services of the man they had elected. Implicit in the right of suffrage is that the people are entitled to the services of the elective official of their choice. [17] (Emphasis supplied)

A rest period during which a local official steps down from office and becomes a private citizen is not a necessary element of involuntary interruption of service of term of office. [18] In *Montebon v. Commission on Elections*, [19] service of a term as councilor was involuntarily interrupted when, by operation of law, the highest ranking municipal councilor succeeded as vice mayor. We ruled in *Montebon* that the highest ranking municipal councilor's assumption of office as vice mayor was an involuntary interruption of his term of office as councilor. There was no interim rest period in *Montebon* because the elective official concerned did not become a private citizen at any time. In *Montebon*, even without an interim rest period as a private citizen, the elective officer concerned was considered not to have fully served his three consecutive terms and, thus, was eligible to run for the immediately succeeding term after his third term of office.

Most importantly, neither is loss of title to the office a necessary element of involuntary interruption of service of "three consecutive terms." The second sentence of Section 8, Article X of the Constitution provides: "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." There is a break in an elective official's "three consecutive terms" if there is "an interruption in the continuity of his service." Voluntary renunciation, like resignation or abandonment, is not deemed an interruption. However, the opposite must necessarily be true; otherwise Section 8 will not make sense. Thus, involuntary cessation from the exercise of functions of the office, brought about by preventive suspension or removal, is an interruption in the continuity of service. The ponencia stresses that there is no such thing as an "involuntary" renunciation. However, if that is so, then why is there a need to qualify "renunciation" with "voluntary" when "renunciation" will do? Any form of renunciation will then interrupt the continuity of service of an elective official for the full term for which he was elected.

An elected officer who is preventively suspended is forbidden from rendering service to the people who elected him. Loss of title to the office is, therefore, irrelevant as the elective local official is already emasculated and left with an empty shell of a title. One may have the title of a Mayor but cannot perform the duties of a Mayor. Preventive suspension frustrates the will of the people. The proposed additional requirement of loss of title I to the office emphasizes only the formality of the elected office and ignores the substance of rendering service to the

electorate. And what did the Constitutional Commission say about the three-term limit? "...[T]hose who have served a period of nine years are barred from running for the same position." Aside from Borja, this Court, in the cases of Lonzanida v. Commission on Elections[20] Ong v. Alegre,[21] Rivera v. COMELEC,[22] Adorneo v. Commission on Elections,[25] Socrates v. Commission on Elections[24] and Latasa v. Commission on Elections,[25] stressed that it is service rather than title to the office which determines the definition of "full service of three consecutive terms." In Lonzanida, compliance with the writ of execution issued by the COMELEC was considered an involuntary [severance from office. In Ong as well as in Rivera, assumption of office for the full term despite a contrary COMELEC ruling constituted one full term service in the context of the three-term limit rule. Both Adorneo and Socrates ruled that service of a recall term is a full term for purposes of counting the consecutiveness of an elective official's terms in office because "term limits must be strictly construed to give the fullest effect to the sovereign will of the people." In Latasa, service rendered to the same Inhabitants in the same territorial jurisdiction, and not service rendered to a different local government unit, was a deciding factor against the petition.

The definition of "full service of three consecutive terms" is linked to the concepts of "interruption of service" and "voluntary renunciation." In Ong v. Alegre,[26] we stated that service for a full term in contemplation of the three-term rule consists of proclamation as winner by the Board of Canvassers, coupled by assumption of office and continuous exercise of the functions thereof from start to finish of the term. There is no interruption or break in the continuity of service when the elected official is never unseated during the term in question or never ceases discharging his duties and responsibilities for the entire period covering his term.

The term "voluntary renunciation" caught the attention of Commissioner Regalado Maambong during the deliberations of the Constitutional Commission. Commissioner Hilario G. Davide, Jr. explained the concept of voluntary renunciation, thus:

MR. MAAMBONG. Could I address the clarificatory question to the Committee? This term "voluntary renunciation" does not only appear in Section 3 [of Article VI]; it [also] appears in Section 6 [of Article VI].

MR. DAVIDE. Yes.

MR. MAAMBONG. It is also a recurring phrase all over the Constitution. Could the Committee please enlighten us exactly what "voluntary renunciation" means? Is this akin to abandonment?

MR. DAVIDE. Abandonment is voluntary. In other words, he cannot circumvent the restriction by merely resigning at any given time on the second term.

MR. MAAMBONG. Is the Committee saying that the term "voluntary renunciation" is more general than abandonment and resignation?

MR. DAVIDE. It is more general, more embracing.[27]

We see that Commissioners leaned toward a broad interpretation of the term "voluntary renunciation," such that it encompasses the concepts of abandonment and resignation. In the same manner, the interpretation of its converse, being the opposite side of the same coin, "involuntary renunciation," should likewise be broad and encompass concepts which are not abandonment and not resignation.

Preventive suspension may result in either voluntary or involuntary renunciation of office. The term "voluntary" implies "freedom from any compulsion that constrains one's choice." [28] The presence and impact of a constraining compulsion is what makes the ponencia's examples of force majeure and sickness absurd. The choice of an elective official as to where he may be, as well as to when to take a leave, is voluntary. This is also the reason why Asilo, if eventually convicted by final judgment, is deemed to be disqualified from running for a

fourth term.

Renunciation of office results in a cessation of the exercise of power or authority. Preventive suspension is, by default, an involuntary renunciation of an elective local official's term of office. An elective local official does not actively choose to be preventively suspended. Although the laws provide for preventive suspension, its operation is not automatic unlike that of succession of office. Preventive suspension is a double-edged sword. On one hand, any person can use preventive suspension not only as a way to deprive the electorate of an elected official, but also as a tool to restrain a particular elective local official from the performance of his duties. On the other hand, preventive suspension lessens the possibility that the accused would intimidate witnesses or otherwise hamper his prosecution. Preventive suspension also prevents the accused from committing other acts of malfeasance while in office.[29]

We quote with approval the resolution of the COMELEC En Banc:

We have to understand that when a candidate is elected to office, his election is the embodiment of the will of the people; it is the expression of their sovereign will. Any act that will defeat the choice of the people as to the personalities they want to lead them must not be countenanced. The interruption of service thwarted the people's will, and [Asilo's] new term (as it should now be properly treated) is the only appropriate recompense for what the electorate may have already lost owing to [Asilo's] unjustified suspension from public office.[30]

Fr. Joaquin G. Bernas, a noted constitutionalist, was cited to support the opinion that a preventively suspended elected official should not be allowed to tack to his term of office the period of service lost by reason of preventive suspension. Fr. Bernas stated that "[t]o reward [the suspended elected official] with another Hill term would seem to reward wrong-doing." However, Fr. Bernas was not only quoted out of context but it was also conveniently forgotten that an accused is innocent until proven guilty. This is the reason why an elective local official's preventive suspension may be considered, for purposes of the application of the three-term limit rule, a voluntary renunciation of office only upon conviction by final judgment of the official for the offense for which he was preventively suspended. Let us suppose that X, like Asilo, was elected for three terms to the same office and was preventively suspended during his third term. Because preventive suspension is, by default, an involuntary renunciation of office, X is given a fresh three-term limit and can file a certificate of candidacy for the fourth consecutive term. The interruption caused by his preventive suspension cut I service of his third term. X gets reelected for a fourth term. However, while X is serving his "fourth" term, there is a final judgment convicting X for the offense for which he was preventively suspended. The final judgment converts X's prior preventive suspension from involuntary to voluntary renunciation. The presumption of X's innocence has been overturned, and X's preventive suspension was the consequence of X's voluntary act of committing an offense. X should now be removed from office because he was disqualified from running a fourth time.

The effect of disqualification from being a candidate should not be equated with that of commission of a crime by an elective local official during his term. The uncertainty in the qualifications of a candidate exists in all disqualification cases, and is par for the course during elections. As applied in the present case, the effect of X's conviction by final judgment retroacts to the time X filed his certificate of candidacy and disqualifies X from running for office for the fourth term because of X's voluntary renunciation.

The effect of a final judgment against a person in a criminal or administrative case is laid down in Section 40 of the Local Government Code, which provides:

Section 40. Disqualification. - The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by

one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b) Those removed from office as a result of an administrative case;

xxx.

The finality of the judgment results in the disqualification of a person from running for any elective local office. The local official cannot be disqualified prior to the finality of the judgment on the sole ground that he has been charged with a criminal or administrative case.[31] However, upon finality of the judgment, the disqualification attaches and the elective local official cannot claim that he has not fully completed his "three consecutive terms." There is no escaping from disqualification if an elective local official is found guilty in a final judgment. Thus, ultimately, a guilty elective local official cannot profit from his own wrongdoing.

At present, Asilo should not be barred from running for office for the 2007-2010 term. Although Asilo was elected to the same local government post for three consecutive terms, he has not fully served three consecutive terms. Under the present circumstances, Asilo's failure to fully serve three consecutive terms is not a voluntary renunciation of office. However, should Asilo be convicted by final judgment for the offense for which he was preventively suspended, Asilo has to step down from office because he was actually disqualified when he filed his certificate of candidacy.

WHEREFORE, I vote to DISMISS the petition. I vote to AFFIRM the Resolution of the Commission on Elections En Banc dated 7 October 2008 as well as the Resolution of the Commission on Elections Second Division dated 28 November 2007.

[1] Rollo, p. 37.

[2] Id. at 37-38.

[3] Id. at 32.

[4] II RECORD, CONSTITUTIONAL COMMISSION 239 (25 July 1986).

[5] II RECORD, CONSTITUTIONAL COMMISSION 236-237 (25 July 1986).

Section 4 of Article VI reads:

The term of office of the Senators shall be six years and shall commence, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

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 of which he was elected. Section 7 of Article VI reads:

The Members of the House of Representatives shall be ejected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

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. Section 4 of Article VII reads in part:

The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has

succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for 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, x x x x

[8] Lonzanida v. COMELEC, 370 Phil. 625, 636 (1999).

[9] 356 Phil. 467,478 (1998).

[10] Ombudsman: Other Metro mayors also facing graft charges, 19 October 2006 (accessed 13 October 2009).

[11] Ombudsman Defends Suspension of Binay, 8 May 2007 (accessed 8 October 2009); 12 local officials ordered dismissed from posts, 16 January 2007 (accessed 9 October 2009).

[12] Mayor Binay was able to obtain a temporary restraining order from the appellate court on 19 October 2006. CA stops Binay's suspension, 20 October 2006 (accessed 13 October 2009).

[13] DILG Secretary Ronaldo Puno deferred the implementation of the second suspension order against Mayor Binay during the election period "in the interest of fair play." DILG chief defers Binay suspension, 7 May 2007 .

[14] On 9 April 2008, this Court denied with finality the preventive suspension order of the Office of the Ombudsman against former Batangas Governor Armando C. Sanchez and other Batangas provincial officials. The Office of the Deputy Ombudsman committed grave abuse of discretion when it issued preventive suspension orders against these officials despite the finding by the Deputy Ombudsman for Luzon that no strong evidence of guilt had been established. Office of the Ombudsman v. Armando C. Sanchez, G.R. No. 179336, 9 April 2008,

[15] Vice Mayor Calixto was able to secure a temporary restraining order preventing his suspension; however, the Ombudsman issued a suspension order against him on yet another case. Pasay City execs remain suspended on 2nd Palace order. 5 October 2006 (accessed 13 October 2009).

[16] Gov't to seek lifting of Binay TRO, 21 October 2006 (accessed 13 October 2009).

[17] Hon. Joson v. Exec. Sec. Torres, 352 Phil. 888, 927 (1998).

[18] See Adorneo v. Commission on Elections, 426 Phil. 472 (2002); Socrates v. Commission on Elections, 440 Phil. 106 (2002).

[19] G.R. No. 180444, 9 April 2008, 551 SCRA 50.

[20] 370 Phil. 625 (1999).

[21] G.R. Nos. 163295 and 163354, 23 January 2006, 479 SCRA 473.

[22] G.R.Nos. 167591 and 170577, 9 May 2007, 523 SCRA 41.

[23] G.R No. 147927, 4 February 2002, 376 SCRA 90.

[24] 440 Phil. 106 (2002).

[25] 463 Phil. 296(2003).

[26] See G.R. Nos. 163295 and 163354, 23 January 2006, 479 SCRA 473. 482-484.

[27] II RECORD, CONSTITUTIONAL COMMISSION 591 (1 August 1986).

[28] Webster's Third New International Dictionary 2564 (1986).

[29] Bolastig v. Sandiganbayan, G.R. No. 110503, 4 August 1994, 235 SCRA 103.

[30] Rollo, p. 32.

[31] In Reyes v. COMELEC, 324 Phil. 813 (1996), we held: "Here, . . . the decision in the administrative case . . . was served on petitioner and it thereafter became final on April 3, 1995, because petitioner failed to appeal to the Office of the President. He was thus validly removed from office and, pursuant to §40(b) of the Local Government Code, he was disqualified from running for reelection." In Lingating v. COMELEC, 440 Phil. 308 (2002), we ruled: "However, Reyes cannot be applied to this case because it appears that the 1992 decision of the Sangguniang Panlalawigan, finding respondent Sulong guilty of dishonesty, falsification and malversation of public funds, has not until now become final. The records of this case show that the Sangguniang Panlalawigan of Zamboanga del Sur rendered judgment in AC No. 12-91 on February 4, 1992, a copy of which was received by respondent Sulong on February 17, 1992; that on February 18, 1992, he filed a 'motion for reconsideration and/or notice of appeal'; that on February- 27, 1992, the Sangguniang Panlalawigan, required Jim Lingating, the complainant in AC No. 12-91, to comment; and that the complainant in AC No. 12-91 has not filed a comment nor has the Sangguniang Panlalawigan resolved respondent's motion. The filing of his motion for reconsideration prevented the decision of Sangguniang Panlalawigan from becoming final."

SEPARATE CONCURRING OPINION

ABAD, J.:

I join the majority opinion and add a few thoughts of my own.

The Facts

Respondent Wilfredo F. Asilo won three consecutive elections as councilor of Lucena City, specifically from 1998 to 2001, from 2001 to 2004, and from 2004 to 2007. During his last term or on October 3, 2005, the Sandiganbayan ordered him placed under preventive suspension for ninety days in connection with a crime of which he had been charged. After about thirty-seven days, however, or on November 9, 2005, this Court lifted the order of suspension and allowed Asilo to resume the duties of his office.

Believing that his brief preventive suspension interrupted his full service in office and allowed him to seek a fourth term as councilor because of it, Asilo filed a certificate of candidacy for the same office in the 2007 elections. When this was questioned, both the Second Division of the Commission on Elections and its En Banc ruled that the three-term limit did not apply to Asilo's case since the Sandiganbayan's order of preventive suspension did not allow him to complete the third term for which he was elected in 2004.

The Issue

The issue in this case is whether or not respondent Asilo's preventive suspension during his third term as councilor, which shortened the length of his normal service by thirty-seven days, allowed him to run for a fourth consecutive term for the same office.

Discussion

The issue in this case revolves around Section 8 of Article X of the 1987 Constitution:

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.

The first part states that no local official shall serve for more than three consecutive terms.

The second, on the other hand, states that voluntary renunciation of office shall not be considered an interruption in the continuity of his service for the full term for which he was elected.[1]

That the first part is a prohibitory rule is not in question. This is quite clear. It says that no local official can serve for more than three terms. Traditionally, politicians find ways of entrenching themselves in their offices and the consensus is that this practice is not ideal for good government. Indeed, the Constitution expresses through the three-term limit rule a determination to open public office to others and bring fresh ideas and energies into government as a matter of policy. The mandate of this Court in this case is to enforce such constitutionally established prohibition.

Actually, what creates the mischief is the statement in the second part of Section 8 that "voluntary renunciation" of office shall not be considered an interruption in the continuity of his service for the full term for which the local official was elected. The dissenting opinion infers from this that "any service short of full service of three consecutive terms, save for voluntary renunciation of office, does not bar an elective local official from running again for the same local government post." In other words, elected politicians whose services are cut in the course of any term by "involuntary renunciation" are eligible for a fourth term.

Relying on its above inference, the dissenting opinion claims that preventive suspension is, by default, an "involuntary renunciation" of an elective official's term of office since he does not choose to be preventively suspended. Preventive suspension cuts into the full term of the elected official and gives him justification for seeking a fourth term.

But, there is in reality no such thing as "involuntary" renunciation. Renunciation is essentially "formal or voluntary." It is the act, says Webster, "of renouncing; a giving up formally or voluntarily, often at a sacrifice, of a right, claim, title, etc." [2] If the dissenting opinion insists on using the term "involuntary renunciation," it could only mean "coerced" renunciation, i.e., renunciation forced on the elected official. With this meaning, any politician can simply arrange for someone to make him sign a resignation paper at gun point. This will justify his running for a fourth term. But, surely, the law cannot be mocked in this way.

Parenthetically, there can be other causes for "involuntary renunciation," interruption of service that is not of the elected official's making. For instance, through the fault of a truck driver, the elected official's car could fall into a ditch and put the official in the hospital for a week, cutting his service in office against his will. Temporary illness can also interrupt service. Natural calamities like floods and earthquakes could produce the same result. Since these are "involuntary renunciations" or interruptions in the elective official's service, it seems that he would, under the dissenting opinion's theory, be exempt from the three-year rule. But surely, Section 8 could not have intended this for it would overwhelm the constitutional ban against election for more than three consecutive terms.

Actually, though, "voluntary renunciation," the term that the law uses simply means resignation from or abandonment of office. The elected official who voluntarily resigns or abandons his duties freely renounces the powers, rights, and privileges of his position. The opposite of "voluntary renunciation" in this context would be "removal from office," a sanction imposed by some duly authorized person or body, not an initiative of or a choice freely made by the elected official. Should "removal from office" be the test, therefore, for determining

interruption of service that will warrant an exception to the three-term limit rule?

Apparently not, since an elected official could be removed from office through recall (a judgment by the electorates that he is unfit to continue serving in office),^[3] criminal conviction by final judgment,^[4] and administrative dismissal.^[5] Surely, the Constitution could not have intended to reward those removed in this way with the opportunity to skip the three-year bar.

The only interruption in the continuity of service of an elected official that does not amount to removal is termination of his service by operation of law. This is exemplified in the case of *Montebon v. COMELEC*,^[6] where this Court deemed the highest-ranking councilor's third term as such "involuntarily" interrupted when he succeeded as vice mayor by operation of law upon the latter's retirement. This Court considered the ranking councilor eligible to run again as councilor for the succeeding term.

But Montebon cannot be compared with Asilo's case since Montebon's term as councilor ended by operation of law when the vice mayor retired and Montebon had to step into his shoes.^[7] Asilo's term, on the other hand, did not end when the Sandiganbayan placed him under preventive suspension. He did not vacate his office. It merely enjoined him in the meantime from performing his duties and exercising his powers. His term ran the full course; it was not cut.

It might be correct to say that the will of the electorates is for Asilo to serve the full term of his office. But, given the presumption that the electorates knew of the law governing preventive suspension when they elected him, it must be assumed that they elected him subject to the condition that he can be preventively suspended if the occasion warrants. Such suspension cannot, therefore, be regarded as a desecration of the people's will.

It does not matter that the preventive suspension imposed on the elected official may later on prove unwarranted. The law provides the proper remedy for such error. Here, the Supreme Court supplied that remedy. It set aside the preventive suspension imposed on Asilo by the Sandiganbayan. There is, on the other hand, no law that allows an elected official to tack to his term of office the period of service he had lost by reason of preventive suspension just so he can make up for the loss. The dissenting opinion's position would create a rule that will allow Asilo, who lost thirty-seven days of service because of that suspension, a right to be re-elected to a fourth consecutive term of one thousand ninety-five days (365 days x 3).

In *Borja, Jr. v. COMELEC*,^[8] this Court cited a hypothetical situation where B is elected Mayor and, during his first term, he is twice suspended for misconduct for a total of one year. If he is twice reelected after that, can he run for one more term in the next election? This Court answered in the affirmative, stating as reason that B successfully served only two full terms.^[9]

But such interpretation of the law wounds its very spirit for, in effect, it would reward the elected official for his misconduct. Fr. Joaquin G. Bernas, S.J., a recognized constitutionalist, is also not swayed by it. He points out that when an elected official is suspended, he shortens neither his term nor his tenure. He is still seen as the rightful holder of the office and, therefore, must be considered as having served a full term during the period of suspension.^[10]

ACCORDINGLY, I submit that preventive suspension did not interrupt Asilo's term of office from 2004-2007 and it cannot be considered an exception to the three-term limit rule. Thus, Asilo is disqualified from running in the 2007 elections for violation of that rule pursuant to Section 8, Article X of the Constitution. I vote to GRANT the petition.

[1] *Socrates v. Commission on Elections*, G.R. No. 154512, November 12, 2002, 391 SCRA 457, 467.

[2] Webster's New World College Dictionary, Third Edition, p. 1137.

[3] R.A. No. 7160, Section 69. By Whom Exercised. - The power of recall for loss of confidence shall be exercised by the registered voters of a local government unit to which the local elective official subject to such recall belongs.

[4] There are cases where an official is punished with the penalty of perpetual disqualification from public office and, thus, the three-term rule ceases to be an issue. See R.A. No. 3019, Section 9 (a).

[5] Under Section 40 (b) of R.A. No. 7160, those removed from office as a result of an administrative case are disqualified from running for any elective local position. In this case, the three-term rule also ceases to be an issue.

[6] G.R. No. 180444, April 9, 2008, 551 SCRA 50.

[7] R.A. No. 7160, Section 44. Permanent Vacancies in the Offices of the Governor, Vice Governor, Mayor, and Vice Mayor. - (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice governor or vice mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor or vice mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein. x x x.

[8] G.R. No. 133495, September 3, 1998, 295 SCRA 157.

[9] Id. at 169.

[10] Bernas S.J., Joaquin. The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 Ed., pp. 1092-1093.

CONCURRING OPINION

LEONARDO-DE CASTRO, J.:

I concur with the well-written ponencia of Honorable Justice Arturo D. Brion which holds that "preventive suspension" is not equivalent to an "involuntary renunciation" of a public office for the purpose of applying Section 8, Article X of the Constitution. However, I wish to further elucidate my concurrence to the views of Justice Brion and give my reflections on the implications of the outcome of the case for which an elective public official is suspended *pendente lite*, which I believe is relevant to the issue on hand.

The aforementioned provision of Article X reads as follows:

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.

The minority view considers "preventive suspension" as an "involuntary renunciation" of an elective public official's term of office, such that even if he was elected thrice to serve for three (3) consecutive terms, he may still run for a fourth term because his service was interrupted by his preventive suspension. However, according to this view, his continuation in office for such fourth term will depend on his exoneration in the case where he was

preventively suspended. In other words, the suspended public official will be deemed disqualified to run for a fourth term only upon his conviction which will retroact to the date when he filed his certificate of candidacy for his fourth term. This means that even if he runs and wins a fourth term and thereafter is convicted in the case in which he was previously preventively suspended, he will be deemed to have renounced voluntarily his fourth term.

I concur with Justice Brion's view that *Borja v. Commission on Elections* is not the controlling precedent on preventive suspension because this matter was not squarely raised in the said case and that the consideration of preventive suspension from the perspective of voluntary or involuntary renunciation is inappropriate.

Nonetheless, I would like to venture into the effect of the acquittal or conviction of the preventively suspended public officer to further support my position that "preventive suspension" does not partake of the nature of "involuntary renunciation" of an office.

The language of Section 8, Article X of the Constitution implies that an interruption in the continuity of the service of elective officials is a valid ground for him to run for a fourth consecutive term. The same provision of the Constitution is explicit and categorical in its declaration that "voluntary renunciation" of elective position for any length of time is not to be considered as an interruption in the continuity of service of an elective official. Conversely, "involuntary renunciation of office" can be deemed an interruption in the continuity of the service of the elective official which would render him eligible to run for a fourth term.

In my opinion, preventive suspension cannot be considered as an "involuntary renunciation" of an elective position. One who has been elected to a public office for three (3) consecutive terms is prohibited to run for the same position for a fourth term, notwithstanding his preventive suspension during any of his first three (3) consecutive terms. Since preventive suspension is not akin to involuntary renunciation, the rule should hold true irrespective of his acquittal or conviction in the case in which an elective official was preventively suspended.

There is an inherent difference between "renunciation" and "preventive suspension" even if the former is involuntary. The former connotes an act of abandonment or giving up of a position by a public officer which would result in the termination of his service, whereas the latter means that a public officer is prevented by legal compulsion, not by his own volition, from discharging the functions and duties of his office, but without being removed or separated from his office. The term of office of a preventively suspended public officer subsists because preventive suspension does not create a vacancy in his office. As Justice Brion puts it, he does not become a private citizen while he is under preventive suspension. The continuity of the term of the suspended official during the period of his preventive suspension, whether rendered administrative or court proceedings, is recognized by law and jurisprudence, such that a public officer who is acquitted of the charges against him, is entitled to receive the salaries and benefits which he failed to receive during the period of his preventive suspension (Section 64, Local Government Code of 1991, Republic Act (R.A.) No. 7160; Section 13, R.A. 3019, as amended; *Tan v. Department of Public Works and Highways*, G.R. No. 143289, Nov. 11, 2004, 442 SCRA 192, 202).

If the suspended public officer is convicted of the charges, still there is no interruption of service within the three (3) consecutive terms, within the meaning of the Constitution which will warrant his running for a fourth term. Here, it is not the preventive suspension but his having committed a wrongdoing, which gave ground for his removal from office or for forfeiture of the remainder of his term which can be considered as voluntary renunciation of his office. The commission of a crime or an administrative infraction which is a ground for the removal from office of a public officer is akin to his "voluntary renunciation" of his office. He may be deemed, by his willful wrongdoing, which betrayed public trust, to have thereby voluntarily renounced his office under the

provision of Section 8, Article X of the Constitution.

I beg to disagree with the proposition that the suspended public official should be allowed to run for a fourth time and if convicted, he should be considered to have voluntarily renounced his fourth term. My reason is that the crime was committed not during his fourth term but during his previous term. The renunciation should refer to the term during which the crime was committed. The commission of the crime is tantamount to his voluntary renunciation of the term he was then serving, and not any future term. Besides, the electorate should not be placed in an uncertain situation wherein they will be allowed to vote for a fourth term a candidate who may later on be convicted and removed from office by a judgment in a case where he was previously preventively suspended.

In view of the foregoing, I reiterate my concurrence with the majority opinion that preventive suspension, regardless of the outcome of the case in which an elective public officer has been preventively suspended, should not be considered as an interruption of the service of the said public officer that would qualify him to run for a fourth term.

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