



Republic of the Philippines  
SUPREME COURT  
Manila

EN BANC

**MAYOR ABELARDO ABUNDO, SR.,** G.R. No. 201716  
Petitioner,

Present:

SERENO, C.J.,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE, and  
LEONEN, JJ.

- versus -

**COMMISSION ON ELECTIONS and**  
**ERNESTO R. VEGA,**  
Respondents.

Promulgated:

JANUARY 08, 2013

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**DECISION**

**VELASCO, JR., J.:**

**The Case**

In this Petition for Certiorari under Rule 65, petitioner Abelardo Abundo, Sr. (Abundo) assails and seeks to nullify (1) the February 8, 2012 Resolution<sup>1</sup> of the Second Division, Commission on Elections (COMELEC),

<sup>1</sup> *Rollo*, pp. 47-56. Rendered by Presiding Commissioner Lucenito N. Tagle and Commissioner Elias R. Yusoph with Commissioner Augusto C. Lagman, dissenting. Dissenting Opinion, id. at 57-58.

in EAC (AE) No. A-25-2010 and (2) the May 10, 2012 Resolution<sup>2</sup> of the COMELEC *en banc* affirming that division's disposition. The assailed issuances, in turn, affirmed the Decision of the Regional Trial Court (RTC) of Virac, Catanduanes, Branch 43, dated August 9, 2010, in Election Case No. 55 declaring Abundo as ineligible, under the three-term limit rule, to run in the 2010 elections for the position of, and necessarily to sit as, Mayor of Viga, Catanduanes.

The antecedent facts are undisputed.

For four (4) successive regular elections, namely, the 2001, 2004, 2007 and 2010 national and local elections, Abundo vied for the position of municipal mayor of Viga, Catanduanes. In both the 2001 and 2007 runs, he emerged and was proclaimed as the winning mayoralty candidate and accordingly served the corresponding terms as mayor. In the 2004 electoral derby, however, the Viga municipal board of canvassers initially proclaimed as winner one Jose Torres (Torres), who, in due time, performed the functions of the office of mayor. Abundo protested Torres' election and proclamation. Abundo was eventually declared the winner of the 2004 mayoralty electoral contest, paving the way for his assumption of office starting May 9, 2006 until the end of the 2004-2007 term on June 30, 2007, or for a period of a little over one year and one month.

Then came the May 10, 2010 elections where Abundo and Torres again opposed each other. When Abundo filed his certificate of candidacy<sup>3</sup> for the mayoralty seat relative to this electoral contest, Torres lost no time in seeking the former's disqualification to run, the corresponding petition,<sup>4</sup> docketed as SPA Case No. 10-128 (DC), predicated on the three-consecutive term limit rule. On June 16, 2010, the COMELEC First Division issued a

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<sup>2</sup> Id. at 40-46, per Commissioner Elias R. Yusoph and concurred in by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco and Christian Robert S. Lim.

<sup>3</sup> Id. at 134.

<sup>4</sup> Id. at 127-133, dated March 10, 2010.

Resolution<sup>5</sup> finding for Abundo, who in the meantime bested Torres by 219 votes<sup>6</sup> and was accordingly proclaimed 2010 mayor-elect of Vega, Catanduanes.

Meanwhile, on May 21, 2010, or before the COMELEC could resolve the adverted disqualification case Torres initiated against Abundo, herein private respondent Ernesto R. Vega (Vega) commenced a *quo warranto*<sup>7</sup> action before the RTC-Br. 43 in Virac, Catanduanes, docketed as Election Case No. 55, to unseat Abundo on essentially the same grounds Torres raised in his petition to disqualify.

### **The Ruling of the Regional Trial Court**

By Decision<sup>8</sup> of August 9, 2010 in Election Case No. 55, the RTC declared Abundo ineligible to serve as municipal mayor, disposing as follows:

WHEREFORE, Decision is, hereby, rendered GRANTING the petition and declaring Abelardo Abundo, Sr. ineligible to serve as municipal mayor of Vega, Catanduanes.

SO ORDERED.<sup>9</sup>

In so ruling, the trial court, citing *Aldovino, Jr. v. COMELEC*,<sup>10</sup> found Abundo to have already served three consecutive mayoralty terms, to wit, 2001-2004, 2004-2007 and 2007-2010, and, hence, disqualified for another, i.e., fourth, consecutive term. Abundo, the RTC noted, had been declared winner in the aforesaid 2004 elections consequent to his protest and

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<sup>5</sup> Id. at 61-65, *per curiam* by Commissioners Rene V. Sarmiento (Presiding Commissioner), Armando C. Velasco and Gregorio Y. Larrazabal. The Resolution disposed as follows:

WHEREFORE, premises considered, the petition to disqualify filed by petitioner Jose C. Torres against respondent Abelardo M. Abundo, Sr. is hereby DENIED for LACK OF MERIT.

SO ORDERED.

<sup>6</sup> Id. at 76-78, Certificate of Canvass of Votes and Proclamation of Winning Candidates for Vega Mayor and Vice-Mayor, dated May 11, 2010.

<sup>7</sup> Id. at 66-74, Petition dated May 20, 2010.

<sup>8</sup> Id. at 93-99, per Presiding Judge Lelu P. Contreras.

<sup>9</sup> Id. at 99.

<sup>10</sup> G.R. No. 184836, December 23, 2009, 609 SCRA 234.

occupied the position of and actually served as Viga mayor for over a year of the remaining term, i.e., from May 9, 2006 to June 30, 2007, to be exact. To the RTC, the year and a month service constitutes a complete and full service of Abundo's second term as mayor.

Therefrom, Abundo appealed to the COMELEC, his recourse docketed as EAC (AE) No. A-25-2010.

### **The Ruling of the COMELEC**

On February 8, 2012, in EAC (AE) No. A-25-2010, the COMELEC's Second Division rendered the first assailed Resolution, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court Branch 73, Virac, Catanduanes is AFFIRMED and the appeal is DISMISSED for lack of merit.

SO ORDERED.<sup>11</sup>

Just like the RTC, the COMELEC's Second Division ruled against Abundo on the strength of *Aldovino, Jr.* and held that service of the unexpired portion of a term by a protestant who is declared winner in an election protest is considered as service for one full term within the contemplation of the three-term limit rule.

In time, Abundo sought but was denied reconsideration by the COMELEC *en banc* per its equally assailed Resolution of May 10, 2012. The *fallo* of the COMELEC *en banc*'s Resolution reads as follows:

WHEREFORE, premises considered, the motion for reconsideration is DENIED for lack of merit. The Resolution of the Commission (Second Division) is hereby AFFIRMED.

SO ORDERED.<sup>12</sup>

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<sup>11</sup> *Rollo*, pp. 55-56.

<sup>12</sup> *Id.* at 46.

In affirming the Resolution of its Second Division, the COMELEC *en banc* held in essence the following: *first*, there was no involuntary interruption of Abundo's 2004-2007 term service which would be an exception to the three-term limit rule as he is considered never to have lost title to the disputed office after he won in his election protest; and *second*, what the Constitution prohibits is for an elective official to be in office for the same position for more than three consecutive terms and not to the service of the term.

Hence, the instant petition with prayer for the issuance of a temporary restraining order (TRO) and/or preliminary injunction.

### **Intervening Events**

In the meantime, following the issuance by the COMELEC of its May 10, 2012 Resolution denying Abundo's motion for reconsideration, the following events transpired:

1. On June 20, 2012, the COMELEC issued an Order<sup>13</sup> declaring its May 10, 2012 Resolution final and executory. The following day, June 21, 2012, the COMELEC issued an Entry of Judgment.<sup>14</sup>

2. On June 25, 2012, Vega filed a Motion for Execution<sup>15</sup> with the RTC-Br. 43 in Virac, Catanduanes.

3. On June 27, 2012, the COMELEC, acting on Vega's counsel's motion<sup>16</sup> filed a day earlier, issued an Order<sup>17</sup> directing the bailiff of ECAD (COMELEC) to personally deliver the entire records to said RTC.

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<sup>13</sup> Id. at 347-348, Annex "A" of Abundo's Most Extremely Urgent Manifestation with Sixth (6<sup>th</sup>) Reiterative Motion to Resolve the Application for the Immediate Issuance of an Injunctive Writ Due to Supervening Event, dated June 22, 2012.

<sup>14</sup> Id. at 349, Annex "A-1" of Abundo's Most Extremely Urgent Manifestation with Sixth (6<sup>th</sup>) Reiterative Motion to Resolve the Application for the Immediate Issuance of an Injunctive Writ Due to Supervening Event, dated June 22, 2012.

<sup>15</sup> Id. at 390, Annex "C" of Vega's Manifestation with Leave to Admit, dated July 5, 2012.

<sup>16</sup> Filed on June 26, 2012.

<sup>17</sup> *Rollo*, p. 389, Annex "C" of Vega's Manifestation with Leave to Admit, dated July 5, 2012.

On June 29, 2012, the COMELEC ECAD Bailiff personally delivered the entire records of the instant case to, and were duly received by, the clerk of court of RTC-Br. 43.

4. On June 29, 2012, or on the same day of its receipt of the case records, the RTC-Br. 43 in Virac, Catanduanes granted Vega's Motion for Execution through an Order<sup>18</sup> of even date. And a Writ of Execution<sup>19</sup> was issued on the same day.

5. On July 2, 2012, Sheriff Q. Tador, Jr. received the Writ of Execution and served the same at the office of Mayor Abundo on the same day via substituted service.

6. On July 3, 2012, the Court issued a TRO<sup>20</sup> enjoining the enforcement of the assailed COMELEC Resolutions.

7. On July 4, 2012, Vega received the Court's July 3, 2012 Resolution<sup>21</sup> and a copy of the TRO. On the same day, Vice-Mayor Emeterio M. Tarin and First Councilor Cesar O. Cervantes of Vega, Catanduanes took their oaths of office<sup>22</sup> as mayor and vice-mayor of Vega, Catanduanes, respectively.

8. On July 5, 2012, Vega received a copy of Abundo's Seventh (7<sup>th</sup>) Most Extremely Urgent Manifestation and Motion<sup>23</sup> dated June 28, 2012 praying for the issuance of a TRO and/or *status quo ante* Order. On the same day, Vice-Mayor Emeterio M. Tarin and First Councilor Cesar O.

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<sup>18</sup> Id. at 390-391, Annex "D" of Vega's Manifestation with Leave to Admit, dated July 5, 2012.

<sup>19</sup> Id. at 392, Annex "E" of Vega's Manifestation with Leave to Admit, dated July 5, 2012.

<sup>20</sup> Id. at 356-357.

<sup>21</sup> Id. at 357.

<sup>22</sup> Id. at 462, *Panunumpa sa Katungkulan* of Emeterio M. Tarin done on July 4, 2012, Annex "B" of Abundo's Most Urgent Manifestation and Motion to Convert the July 3, 2012 Temporary Restraining Order into a *Status Quo Ante* Order (In View of the Unreasonable and Inappropriate Progression of Events), dated July 4, 2012.

<sup>23</sup> Id. at 367.

Cervantes—who had taken their oaths of office the day before—assumed the posts of mayor and vice-mayor of Viga, Catanduanes.<sup>24</sup>

9. On July 6, 2012, Vega interposed a Motion (To Admit Attached Manifestation)<sup>25</sup> and Manifestation with Leave to Admit<sup>26</sup> dated July 5, 2012 stating that the TRO thus issued by the Court has become *functus officio* owing to the execution of the RTC’s Decision in Election Case No. 55.

10. On July 10, 2012, Vega filed his Comment/Opposition with Leave to the Petitioner’s Prayer for the Issuance of a *Status Quo Ante* Order<sup>27</sup> reiterating the argument that since Vice-Mayor Emeterio M. Tarin and First Councilor Cesar O. Cervantes already assumed the posts of Mayor and Vice-Mayor of Viga, Catanduanes, then a *Status Quo Ante* Order would serve no purpose.

11. On July 12, 2012, Abundo filed his Most Urgent Manifestation and Motion to Convert the July 3, 2012 TRO into a *Status Quo Ante* Order (In View of the Unreasonable and Inappropriate Progression of Events).<sup>28</sup>

It is upon the foregoing backdrop of events that Abundo was dislodged from his post as incumbent mayor of Viga, Catanduanes. To be sure, the speed which characterized Abundo’s ouster despite the supervening issuance by the Court of a TRO on July 3, 2012 is not lost on the Court. While it is not clear whether Vice-Mayor Tarin and First Councilor Cervantes knew of or put on notice about the TRO either before they took their oaths of office on July 4, 2012 or before assuming the posts of mayor and vice-mayor on July 5, 2012, the confluence of events following the issuance of the assailed COMELEC *en banc* irresistibly tends to show that

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<sup>24</sup> Id. at 463, 464, Certifications of the OIC, Provincial Director of the DILG, Annexes “B-1” and “B-2” of Abundo’s Most Urgent Manifestation and Motion to Convert the July 3, 2012 Temporary Restraining Order into a *Status Quo Ante* Order (In View of the Unreasonable and Inappropriate Progression of Events), dated July 4, 2012.

<sup>25</sup> Id. at 369-373, dated July 5, 2012.

<sup>26</sup> Id. at 374-420, dated July 5, 2012.

<sup>27</sup> Id. at 421-437, dated July 9, 2012.

<sup>28</sup> Id. at 438-482, dated July 4, 2012.

the TRO—issued as it were to maintain the status quo, thus averting the premature ouster of Abundo pending this Court’s resolution of his appeal—appears to have been trivialized.

On September 11, 2012, Vega filed his Comment on Abundo’s petition, followed not long after by public respondent COMELEC’s Consolidated Comment.<sup>29</sup>

### **The Issues**

Abundo raises the following grounds for the allowance of the petition:

- 6.1 The Commission En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared the arguments in Abundo’s motion for reconsideration as mere rehash and reiterations of the claims he raised prior to the promulgation of the Resolution.
- 6.2 The Commission En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that Abundo has consecutively served for three terms despite the fact that he only served the remaining one year and one month of the second term as a result of an election protest.<sup>30</sup>

### **First Issue: Arguments in Motion for Reconsideration Not Mere Reiteration**

The COMELEC *en banc* denied Abundo’s motion for reconsideration on the basis that his arguments in said motion are mere reiterations of what he already brought up in his appeal Brief before the COMELEC Second Division. In this petition, petitioner claims otherwise.

Petitioner’s assertion is devoid of merit.

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<sup>29</sup> Id. at 639-665 (Vega’s Comment); id. at 668-687, 697-719 (public respondent’s Comment and Consolidated Comment, respectively).

<sup>30</sup> Id. at 25-27.



A comparison of Abundo's arguments in the latter's Brief vis-à-vis those in his Motion for Reconsideration (MR) reveals that the arguments in the MR are elucidations and amplications of the same issues raised in the brief. *First*, in his Brief, Abundo raised the *sole issue of lack of jurisdiction* of the RTC to consider the *quo warranto* case since the alleged violation of the three-term limit has already been rejected by the COMELEC First Division in SPA Case No. 10-128 (DC), while in his MR, Abundo raised the similar ground of the conclusiveness of the COMELEC's finding on the issue of his qualification to run for the current term. *Second*, in his Brief, Abundo assailed RTC's reliance on *Aldovino, Jr.*, while in his MR, he argued that the Court's pronouncement in *Aldovino, Jr.*, which dealt with preventive suspension, is not applicable to the instant case as it involves only a partial service of the term. Abundo argued in his Brief that his situation cannot be equated with the case of preventive suspension as held in *Aldovino, Jr.*, while in his MR, he argued before that the almost two years which he did not sit as mayor during the 2004-2007 term is an interruption in the continuity of his service for the full term.

Thus, COMELEC did not err in ruling that the issues in the MR are a rehash of those in the Brief.

**Core Issue:**  
**Whether or not Abundo is deemed**  
**to have served three consecutive terms**

The pivotal determinative issue then is whether the service of a term less than the full three years by an elected official arising from his being declared as the duly elected official upon an election protest is considered as full service of the term for purposes of the application of the three consecutive term limit for elective local officials.

On this core issue, We find the petition *meritorious*. The consecutiveness of what otherwise would have been Abundo's three

successive, continuous mayorship was effectively broken during the 2004-2007 term when he was initially deprived of title to, and was veritably disallowed to serve and occupy, an office to which he, after due proceedings, was eventually declared to have been the rightful choice of the electorate.

The three-term limit rule for elective local officials, a disqualification rule, is found in Section 8, Article X of the 1987 Constitution, which provides:

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

and is reiterated in Sec. 43(b) of Republic Act No. (RA) 7160, or the Local Government Code (LGC) of 1991, thusly:

Sec. 43. *Term of Office.* —

x 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 Ours.)

To constitute a disqualification to run for an elective local office pursuant to the aforequoted constitutional and statutory provisions, the following requisites must concur:

(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*.<sup>31</sup>

Judging from extant jurisprudence, the three-term limit rule, as applied to the different factual milieus, has its complicated side. We shall revisit and analyze the various holdings and relevant pronouncements of the Court on the matter.

As is clearly provided in Sec. 8, Art. X of the Constitution as well as in Sec. 43(b) of the LGC, voluntary renunciation of the office by the incumbent elective local official for any length of time shall NOT, in determining service for three consecutive terms, be considered an interruption in the continuity of service for the full term for which the elective official concerned was elected. In *Aldovino, Jr.*, however, the Court stated the observation that the law “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.”<sup>32</sup>

As stressed in *Socrates v. Commission on Elections*,<sup>33</sup> the principle behind the three-term limit rule covers only *consecutive terms* and that what the Constitution prohibits is a ***consecutive fourth term***. Put a bit differently, an elective local official cannot, following his third consecutive term, seek immediate reelection for a fourth term,<sup>34</sup> albeit he is allowed to seek a fresh term for the same position after the election where he could have sought his fourth term but prevented to do so by reason of the prohibition.

There has, in fine, to be a break or interruption in the successive terms of the official after his or her third term. An interruption usually occurs when the official does not seek a fourth term, immediately following the third. Of course, the basic law is unequivocal that a “*voluntary renunciation*

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<sup>31</sup> *Lonzanida v. Commission on Elections*, G.R. No. 135150, July 28, 1999, 311 SCRA 602.

<sup>32</sup> *Aldovino Jr.*, supra note 10.

<sup>33</sup> G.R. No. 154512, November 12, 2002, 391 SCRA 457.

<sup>34</sup> *Id.*

*of the office for any length of time shall NOT be considered an interruption in the continuity of service for the full term for which the elective official concerned was elected.”* This qualification was made as a deterrent against an elective local official intending to skirt the three-term limit rule by merely resigning before his or her third term ends. This is a voluntary interruption as distinguished from involuntary interruption which may be brought about by certain events or causes.

While appearing to be seemingly simple, the three-term limit rule has engendered a host of disputes resulting from the varying interpretations applied on local officials who were elected and served for three terms or more, but whose terms or service was punctuated by what they view as involuntary interruptions, thus entitling them to a, but what their opponents perceive as a proscribed, fourth term. Involuntary interruption is claimed to result from any of these events or causes: succession or assumption of office by operation of law, preventive suspension, declaration of the defeated candidate as the winner in an election contest, declaration of the proclaimed candidate as the losing party in an election contest, proclamation of a non-candidate as the winner in a recall election, removal of the official by operation of law, and other analogous causes.

This brings us to an examination of situations and jurisprudence wherein such consecutive terms were considered or not considered as having been “*involuntarily interrupted or broken.*”

### **(1) Assumption of Office by Operation of Law**

In *Borja, Jr. v. Commission on Elections and Jose T. Capco, Jr.*<sup>35</sup> (1998) and *Montebon v. Commission on Elections*<sup>36</sup> (2008), the Court delved on the effects of “*assumption to office by operation of law*” on the three-term limit rule. This contemplates a situation wherein an elective local official

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<sup>35</sup> G.R. No. 133495, September 3, 1998, 295 SCRA 157.

<sup>36</sup> G.R. No. 180444, April 8, 2008, 551 SCRA 50.

fills by succession a higher local government post permanently left vacant due to any of the following contingencies, i.e., when the supposed incumbent refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns or is otherwise permanently incapacitated to discharge the functions of his office.<sup>37</sup>

In *Borja, Jr.*, Jose T. Capco, Jr. (Capco) was elected vice-mayor of Pateros on January 18, 1988 for a term ending June 30, 1992. On September 2, 1989, Capco became mayor, by operation of law, upon the death of the incumbent mayor, Cesar Borja. Capco was then elected and served as mayor for terms 1992-1995 and 1995-1998. When Capco expressed his intention to run again for the mayoralty position during the 1998 elections, Benjamin U. Borja, Jr., who was then also a candidate for mayor, sought Capco's disqualification for violation of the three-term limit rule.

Finding for Capco, the Court held that for the disqualification rule to apply, "it is not enough that an individual has *served* three consecutive terms in an elective local office, he must also have been *elected* to the same position for the same number of times before the disqualification can apply."<sup>38</sup> There was, the Court ruled, *no violation of the three-term limit*, for Capco "*was not elected to the office of the mayor in the first term but simply found himself thrust into it by operation of law*"<sup>39</sup> when a permanent vacancy occurred in that office.

The Court arrived at a parallel conclusion in the case of *Montebon*. There, Montebon had been elected for three consecutive terms as municipal councilor of Tuburan, Cebu in 1998-2001, 2001-2004, and 2004-2007. However, in January 2004, or during his second term, Montebon succeeded and assumed the position of vice-mayor of Tuburan when the incumbent vice-mayor retired. When Montebon filed his certificate of candidacy again

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<sup>37</sup> Section 44, Chapter II "Vacancies and Succession," Title II "Elective Officials," Republic Act No. 7160, Local Government Code of 1991.

<sup>38</sup> *Borja, Jr.*, supra note 35, at 169.

<sup>39</sup> *Id.*

as municipal councilor, a petition for disqualification was filed against him based on the three-term limit rule. The Court ruled that Montebon's assumption of office as vice-mayor in January 2004 was an interruption of his continuity of service as councilor. The Court emphasized that ***succession in local government office is by operation of law and as such, it is an involuntary severance from office.*** Since the law no less allowed Montebon to vacate his post as councilor in order to assume office as vice-mayor, his occupation of the higher office cannot, without more, be deemed as a voluntary renunciation of his position as councilor.

## **(2) Recall Election**

With reference to the effects of recall election on the continuity of service, *Adormeo v. Commission on Elections*<sup>40</sup> (2002) and the aforementioned case of *Socrates* (2002) provide guidance.

In *Adormeo*, Ramon Talaga, Jr. (Talaga) was elected and served as mayor of Lucena City during terms 1992-1995 and 1995-1998. During the 1998 elections, *Talaga lost* to Bernard G. Tagarao. However, before Tagarao's 1998-2001 term ended, a *recall election* was conducted in May 2000 wherein Talaga won and served the unexpired term of Tagarao until June 2001. When Talaga ran for mayor in 2001, his candidacy was challenged on the ground he had already served as mayor for three consecutive terms for violation of the three term-limit rule. The Court held therein that the remainder of Tagarao's term after the recall election during which Talaga served as mayor should not be considered for purposes of applying the three-term limit rule. The Court emphasized that ***the continuity of Talaga's mayorship was disrupted by his defeat during the 1998 elections.***

A similar conclusion was reached by the Court in *Socrates*. The petitioners in that case assailed the COMELEC Resolution which declared

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<sup>40</sup> G.R. No. 147927, February 4, 2002, 376 SCRA 90.

Edward Hagedorn qualified to run for mayor in a recall election. It appeared that Hagedorn had been elected and served as mayor of Puerto Princesa City for three consecutive terms: in 1992-1995, 1995-1998 and 1998-2001. Obviously aware of the three-term limit principle, Hagedorn opted not to vie for the same mayoralty position in the 2001 elections, in which Socrates ran and eventually won. However, midway into his term, Socrates faced recall proceedings and in the recall election held, Hagedorn ran for the former's unexpired term as mayor. Socrates sought Hagedorn's disqualification under the three-term limit rule.

In upholding Hagedorn's candidacy to run in the recall election, the Court ruled:

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

From June 30, 2001 until the recall election on September 24, 2002, the mayor of Puerto Princesa was Socrates. During the same period, **Hagedorn was simply a private citizen. This period is clearly an interruption in the continuity of Hagedorn's service as mayor, not because of his voluntary renunciation, but because of a legal prohibition.**<sup>41</sup>

The Court likewise emphasized in *Socrates* that “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 [and, hence], *[a]ny subsequent election, like recall election, is no longer covered* x x x.”<sup>42</sup>

### (3) Conversion of a Municipality into a City

On the other hand, ***the conversion of a municipality into a city does not constitute an interruption of the incumbent official's continuity of service.*** The Court said so in *Latasa v. Commission on Elections*<sup>43</sup> (2003).

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<sup>41</sup> *Socrates*, supra note 33.

<sup>42</sup> *Id.*

<sup>43</sup> G.R. No. 154829, December 10, 2003, 417 SCRA 601.

*Latasa* is cast against the ensuing backdrop: Arsenio A. Latasa was elected and served as mayor of the Municipality of Digos, Davao del Sur for terms 1992-1995, 1995-1998, and 1998-2001. During his third term, Digos was converted into a component city, with the corresponding cityhood law providing the holdover of elective officials. When Latasa filed his certificate of candidacy as mayor for the 2001 elections, the Court declared Latasa as disqualified to run as mayor of Digos City for violation of the three-term limit rule on the basis of the following ratiocination:

This Court believes that (Latasa) did involuntarily relinquish his office as municipal mayor since the said office has been deemed abolished due to the conversion. However, **the very instant he vacated his office as municipal mayor, he also assumed office as city mayor.** Unlike in *Lonzanida*, where petitioner therein, for even just a short period of time, stepped down from office, petitioner **Latasa never ceased from acting as chief executive of the local government unit.** He never ceased from discharging his duties and responsibilities as chief executive of Digos. (Emphasis supplied.)

#### (4) Period of Preventive Suspension

In 2009, in the case *Aldovino Jr.*, the Court espoused the doctrine that **the period during which a local elected official is under preventive suspension cannot be considered as an interruption of the continuity of his service.** The Court explained why so:

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.*<sup>44</sup> (Emphasis supplied.)

#### (5) Election Protest

With regard to the effects of an election protest vis-à-vis the three-term limit rule, jurisprudence presents a more differing picture. The Court's

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<sup>44</sup> Supra note 10.



pronouncements in *Lonzanida v. Commission on Elections*<sup>45</sup> (1999), *Ong v. Alegre*<sup>46</sup> (2006), *Rivera III v. Commission on Elections*<sup>47</sup> (2007) and *Dizon v. Commission on Elections*<sup>48</sup> (2009), all protest cases, are illuminating.

In *Lonzanida*, Romeo Lonzanida was elected and had served as municipal mayor of San Antonio, Zambales in terms 1989-1992, 1992-1995 and 1995-1998. However, his proclamation relative to the 1995 election was protested and was eventually declared by the RTC and then by COMELEC null and void on the ground of *failure of elections*. On February 27, 1998, or about *three months before the May 1998 elections*, Lonzanida vacated the mayoralty post in light of a COMELEC order and writ of execution it issued. Lonzanida's opponent assumed office for the remainder of the term. In the May 1998 elections, Lonzanida again filed his certificate of candidacy. His opponent, Efren Muli, filed a petition for disqualification on the ground that Lonzanida had already served three consecutive terms in the same post. The Court, citing *Borja Jr.*, reiterated the two (2) conditions which must concur for the three-term limit to apply: "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."<sup>49</sup>

In view of *Borja, Jr.*, the Court ruled that the foregoing requisites were absent in the case of *Lonzanida*. The Court held that Lonzanida cannot be considered as having been duly elected to the post in the May 1995 elections since his assumption of office as mayor "*cannot be deemed to have been by reason of a valid election but by reason of a void proclamation.*" And as a corollary point, the Court stated that Lonzanida did not fully serve the 1995-1998 mayoral term having been *ordered to vacate his post before the expiration of the term*, a situation which amounts to an *involuntary relinquishment* of office.

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<sup>45</sup> Supra note 31.

<sup>46</sup> G.R. Nos. 163295 & 163354, January 23, 2006, 479 SCRA 473.

<sup>47</sup> G.R. Nos. 167591 & 170577, May 9, 2007, 523 SCRA 41.

<sup>48</sup> G.R. No. 182088, January 30, 2009, 577 SCRA 589.

<sup>49</sup> *Lonzanida*, supra note 31.

This Court deviated from the ruling in *Lonzanida* in *Ong v. Alegre*<sup>50</sup> owing to a variance in the factual situations attendant.

In that case, Francis Ong (Ong) was elected and served as mayor of San Vicente, Camarines Norte for terms 1995-1998, 1998-2001, and 2001-2004. During the 1998 mayoralty elections, or during his supposed second term, the COMELEC nullified Ong's proclamation on the postulate that Ong lost during the 1998 elections. However, the COMELEC's decision became final and executory on July 4, 2001, *when Ong had fully served the 1998-2001 mayoralty term* and was in fact already starting to serve the 2001-2004 term as mayor-elect of the municipality of San Vicente. In 2004, Ong filed his certificate of candidacy for the same position as mayor, which his opponent opposed for violation of the three-term limit rule.

Ong invoked the ruling in *Lonzanida* and argued that he could not be considered as having served as mayor from 1998-2001 because he was not duly elected to the post and merely assumed office as a "presumptive winner." Dismissing Ong's argument, the Court held that his assumption of office as mayor for the term 1998-2001 constitutes "*service for the full term*" and hence, should be counted for purposes of the three-term limit rule. The Court modified the conditions stated in *Lonzanida* in the sense that Ong's service was deemed and counted as service for a full term because *Ong's proclamation was voided only after the expiry of the term*. The Court noted that the COMELEC decision which declared Ong as not having won the 1998 elections was "without practical and legal use and value" promulgated as it was after the contested term has expired. The Court further reasoned:

Petitioner [Francis Ong's] contention that he was only a presumptive winner in the 1998 mayoralty derby as his proclamation was under protest *did not make him less than a duly elected mayor. His proclamation as the duly elected mayor in the 1998 mayoralty election coupled by his assumption of office and his continuous exercise of the functions thereof from start to finish of the term, should legally be taken as service for a full term in contemplation of the three-term rule.*

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<sup>50</sup> Supra note 46.

The absurdity and the deleterious effect of a contrary view is not hard to discern. Such contrary view would mean that Alegre would – under the three-term rule - be *considered as having served a term by virtue of a veritably meaningless electoral protest ruling, when another actually served such term* pursuant to a proclamation made in due course after an election.<sup>51</sup> (Emphasis supplied.)

The Court did not apply the ruling in *Lonzanida* and ruled that the case of Ong was *different*, to wit:

The difference between the case at bench and *Lonzanida* is at once apparent. For one, in *Lonzanida*, *the result of the mayoralty election was declared a nullity for the stated reason of "failure of election"*, and, as a consequence thereof, the proclamation of Lonzanida as mayor-elect was nullified, followed by an order for him to vacate the office of mayor. For another, *Lonzanida did not fully serve the 1995-1998 mayoral term, there being an involuntary severance from office as a result of legal processes*. In fine, there was an effective interruption of the continuity of service.<sup>52</sup> (Emphasis supplied.)

*Ong*'s slight departure from *Lonzanida* would later find reinforcement in the consolidated cases of *Rivera III v. Commission on Elections*<sup>53</sup> and *Dee v. Morales*.<sup>54</sup> Therein, Morales was elected mayor of Mabalacat, Pampanga for the following consecutive terms: 1995-1998, 1998-2001 and 2001-2004. In relation to the 2004 elections, Morales again ran as mayor of the same town, emerged as garnering the majority votes and was proclaimed elective mayor for term commencing July 1, 2004 to June 30, 2007. A petition for quo warranto was later filed against Morales predicated on the ground that he is ineligible to run for a "fourth" term, having served as mayor for three consecutive terms. In his answer, Morales averred that his supposed 1998-2001 term cannot be considered against him, for, although he was proclaimed by the Mabalacat board of canvassers as elected mayor vis-à-vis the 1998 elections and discharged the duties of mayor until June 30, 2001, his proclamation was later nullified by the RTC of Angeles City and his closest rival, Anthony Dee, proclaimed the duly elected mayor. Pursuing his point, Morales parlayed the idea that he only served as a mere caretaker.

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<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Supra note 47.

<sup>54</sup> Id.

The Court found Morales' posture untenable and held that the case of Morales presents a factual milieu similar with *Ong*, not with *Lonzanida*. For ease of reference, the proclamation of Francis Ong, in *Ong*, was nullified, but after he, like Morales, had served the three-year term from the start to the end of the term. Hence, the Court concluded that Morales exceeded the three-term limit rule, *to wit*:

Here, respondent Morales was elected for the term July 1, 1998 to June 30, 2001. He assumed the position. He served as mayor until June 30, 2001. **He was mayor for the entire period notwithstanding the Decision of the RTC in the electoral protest case filed by petitioner Dee ousting him (respondent) as mayor.** To reiterate, as held in *Ong v. Alegre*, such circumstance does not constitute an interruption in serving the full term.

x x x x

Respondent Morales is now serving his fourth term. He has been mayor of Mabalacat continuously without any break since July 1, 1995. *In just over a month, by June 30, 2007, he will have been mayor of Mabalacat for twelve (12) continuous years.*<sup>55</sup> (Emphasis supplied.)

The Court ruled in *Rivera* that *the fact of being belatedly ousted, i.e., after the expiry of the term, cannot constitute an interruption* in Morales' service of the full term; neither can Morales, as he argued, be considered merely a "caretaker of the office" or a mere "de facto officer" for purposes of applying the three-term limit rule.

In a related 2009 case of *Dizon v. Commission on Elections*,<sup>56</sup> the Court would again find the same Mayor Morales as respondent in a disqualification proceeding when he ran again as a mayoralty candidate during the 2007 elections for a term ending June 30, 2010. Having been unseated from his post by virtue of this Court's ruling in *Rivera*, Morales would argue this time around that the three-term limit rule was no longer applicable as to his 2007 mayoralty bid. This time, the Court ruled in his favor, holding that for purposes of the 2007 elections, the three-term limit

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<sup>55</sup> Id.

<sup>56</sup> Supra note 48.

rule was no longer a disqualifying factor as against Morales. The Court wrote:

**Our ruling in the *Rivera* case served as Morales' involuntary severance from office with respect to the 2004-2007 term.** 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. Our decision in the *Rivera* case was promulgated on 9 May 2007 and was effective immediately. The next day, Morales notified the vice mayor's office of our decision. The vice mayor assumed the office of the mayor from 17 May 2007 up to 30 June 2007. **The assumption by the vice mayor of the office of the mayor, no matter how short it may seem to Dizon, interrupted Morales' continuity of service.** *Thus, Morales did not hold office for the full term of 1 July 2004 to 30 June 2007.*<sup>57</sup> (Emphasis supplied)

To summarize, hereunder are the prevailing jurisprudence on issues affecting consecutiveness of terms and/or involuntary interruption, viz:

1. When a permanent vacancy occurs in an elective position and the official merely assumed the position pursuant to the rules on succession under the LGC, then his service for the unexpired portion of the term of the replaced official cannot be treated as one full term as contemplated under the subject constitutional and statutory provision that service cannot be counted in the application of any term limit (*Borja, Jr.*). If the official runs again for the same position he held prior to his assumption of the higher office, then his succession to said position is by operation of law and is considered an involuntary severance or interruption (*Montebon*).

2. An elective official, who has served for three consecutive terms and who did not seek the elective position for what could be his fourth term, but later won in a recall election, had an interruption in the continuity of the official's service. For, he had become in the interim, i.e., from the end of the 3<sup>rd</sup> term up to the recall election, a private citizen (*Adormeo and Socrates*).

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<sup>57</sup> Id.

3. The abolition of an elective local office due to the conversion of a municipality to a city does not, by itself, work to interrupt the incumbent official's continuity of service (*Latasa*).

4. Preventive suspension is not a term-interrupting event as the elective officer's continued stay and entitlement to the office remain unaffected during the period of suspension, although he is barred from exercising the functions of his office during this period (*Aldovino, Jr.*).

5. When a candidate is proclaimed as winner for an elective position and assumes office, his term is interrupted when he loses in an election protest and is ousted from office, thus disabling him from serving what would otherwise be the unexpired portion of his term of office had the protest been dismissed (*Lonzanida and Dizon*). The break or interruption need not be for a full term of three years or for the major part of the 3-year term; an interruption for any length of time, provided the cause is involuntary, is sufficient to break the continuity of service (*Socrates*, citing *Lonzanida*).

6. When an official is defeated in an election protest and said decision becomes final after said official had served the full term for said office, then his loss in the election contest *does not* constitute an interruption since he has managed to serve the term from start to finish. His full service, despite the defeat, should be counted in the application of term limits because the nullification of his proclamation came after the expiration of the term (*Ong and Rivera*).

### The Case of Abundo

Abundo argues that the RTC and the COMELEC erred in uniformly ruling that he had already served three consecutive terms and is, thus, barred by the constitutional three-term limit rule to run for the current 2010-2013 term. In gist, Abundo arguments run thusly:

1. *Aldovino, Jr.* is not on all fours with the present case as the former dealt with preventive suspension which does not interrupt the continuity of service of a term;

2. *Aldovino, Jr.* recognizes that the term of an elected official can be interrupted so as to remove him from the reach of the constitutional three-term limitation;

3. The COMELEC misinterpreted the meaning of “term” in *Aldovino, Jr.* by its reliance on a mere portion of the Decision and not on the unified logic in the disquisition;

4. Of appropriate governance in this case is the holding in *Lonzanida*<sup>58</sup> and *Rivera III v. Commission on Elections*.<sup>59</sup>

5. The COMELEC missed the point when it ruled that there was no interruption in the service of Abundo since what he considered as an “interruption” of his 2004-2007 term occurred before his term started; and

6. To rule that the term of the protestee (Torres) whose proclamation was adjudged invalid was interrupted while that of the protestant (Abundo) who was eventually proclaimed winner was not so interrupted is at once absurd as it is illogical.

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<sup>58</sup> Supra note 31.

<sup>59</sup> Supra note 47.

Both respondents Vega and the COMELEC counter that the *ratio decidendi* of *Aldovino, Jr.* finds application in the instant case. The COMELEC ruled that Abundo did not lose title to the office as his victory in the protest case confirmed his entitlement to said office and he was only unable to temporarily discharge the functions of the office during the pendency of the election protest.

We note that this present case of Abundo deals with the effects of an election protest, for which the rulings in *Lonzanida, Ong, Rivera* and *Dizon* appear to be more attuned than the case of *Aldovino Jr.*, the interrupting effects of the imposition of a preventive suspension being the very *lis mota* in the *Aldovino, Jr.* case. But just the same, We find that ***Abundo's case presents a different factual backdrop.***

Unlike in the abovementioned election protest cases wherein the individuals subject of disqualification were *candidates who lost* in the election protest and each declared loser during the elections, ***Abundo was the winner during the election protest and was declared the rightful holder of the mayoralty post.*** Unlike Mayor Lonzanida and Mayor Morales, who were both unseated toward the end of their respective terms, ***Abundo was the protestant who ousted his opponent and had assumed the remainder of the term.***

Notwithstanding, We still find this Court's pronouncements in the past as instructive, and consider several doctrines established from the 1998 case of *Borja, Jr.* up to the most recent case of *Aldovino Jr.* in 2009, as potent aids in arriving at this Court's conclusion.

The intention behind the three-term limit rule was not only to *abrogate the "monopolization of political power"* and *prevent elected*



*officials from breeding “proprietary interest in their position”*<sup>60</sup> but also to “*enhance the people’s freedom of choice.*”<sup>61</sup> In the words of Justice Vicente V. Mendoza, “while people should be protected from the evils that a monopoly of power may bring about, care should be taken that their freedom of choice is not unduly curtailed.”<sup>62</sup>

In the present case, the Court finds Abundo’s case meritorious and declares that *the two-year period during which his opponent, Torres, was serving as mayor should be considered as an interruption, which effectively removed Abundo’s case from the ambit of the three-term limit rule.*

It bears to stress at this juncture that Abundo, for the 2004 election for the term starting July 1, 2004 to June 30, 2007, was the duly elected mayor. Otherwise how explain his victory in his election protest against Torres and his consequent proclamation as duly elected mayor. Accordingly, the first requisite for the application of the disqualification rule based on the three-term limit that the official has been elected is satisfied.

This thus brings us to the second requisite of whether or not Abundo had served for “three consecutive terms,” as the phrase is juridically understood, as mayor of Viga, Catanduanes immediately before the 2010 national and local elections. Subsumed to this issue is of course the question of whether or not there was an effective involuntary interruption during the three three-year periods, resulting in the disruption of the continuity of Abundo’s mayoralty.

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<sup>60</sup> *Borja, Jr.*, supra note 35, quoting *Commissioner Blas F. Ople*, RECORD OF THE CONSTITUTIONAL COMMISSION, 236-243, Session of July 25, 1986.

<sup>61</sup> *Borja, Jr.*, supra note 35.

<sup>62</sup> *Id.*

The facts of the case clearly point to an involuntary interruption during the July 2004-June 2007 term.

There can be no quibbling that, during the term 2004-2007, and with the enforcement of the decision of the election protest in his favor, Abundo assumed the mayoralty post only on May 9, 2006 and served the term until June 30, 2007 or for a period of a little over **one year and one month**. Consequently, unlike Mayor Ong in *Ong* and Mayor Morales in *Rivera*, it cannot be said that Mayor Abundo was able to serve *fully* the entire 2004-2007 term to which he was otherwise entitled.

A “term,” as defined in *Appari v. Court of Appeals*,<sup>63</sup> means, in a legal sense, “a fixed and definite period of time which the law describes that an officer may hold an office.”<sup>64</sup> It also means the “time during which the officer may claim to hold office as a matter of right, and fixes the interval after which the several incumbents shall succeed one another.”<sup>65</sup> It is the period of time during which a duly elected official has title to and can serve the functions of an elective office. From paragraph (a) of Sec. 43, RA 7160,<sup>66</sup> the term for local elected officials is three (3) years starting from noon of June 30 of the first year of said term.

In the present case, *during the period of one year and ten months*, or from June 30, 2004 until May 8, 2006, **Abundo cannot plausibly claim, even if he wanted to, that he could hold office of the mayor as a matter of right. Neither can he assert title to the same nor serve the functions of the said elective office.** The reason is simple: during that period, title to hold such office and the corresponding right to assume the functions thereof still belonged to his opponent, as proclaimed election winner. Accordingly,

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<sup>63</sup> No. L-30057, January 31, 1984, 127 SCRA 231; cited in *Aldovino, Jr.*

<sup>64</sup> Id. at 240 (citations omitted).

<sup>65</sup> *Gaminde v. Commission on Audit*, G.R. No. 140335, December 13, 2000, 347 SCRA 655, 663; cited in *Aldovino, Jr.*, supra note 10.

<sup>66</sup> Sec. 43. *Term of Office*. —

(a) The term of office of all local elective officials elected after the effectivity of this Code shall be three (3) years, starting from noon of June 30, 1992 or such date as may be provided for by law x x x.

Abundo actually held the office and exercised the functions as mayor only upon his declaration, following the resolution of the protest, as duly elected candidate in the May 2004 elections or for only a little over one year and one month. Consequently, since the legally contemplated full term for local elected officials is three (3) years, it cannot be said that Abundo fully served the term 2004-2007. The reality on the ground is that Abundo actually served less.

Needless to stress, the almost two-year period during which Abundo's opponent actually served as Mayor is and ought to be considered an involuntary interruption of Abundo's continuity of service. An involuntary interrupted term, cannot, in the context of the disqualification rule, be considered as **one term** for purposes of counting the three-term threshold.<sup>67</sup>

The notion of **full service of three consecutive terms** is related to the concepts of **interruption of service** and **voluntary renunciation of service**. The word **interruption** means temporary cessation, intermission or suspension.<sup>68</sup> To interrupt is to obstruct, thwart or prevent.<sup>69</sup> When the Constitution and the LGC of 1991 speak of **interruption**, the reference is to the obstruction to the continuance of the service by the concerned elected official by effectively cutting short the service of a term or giving a hiatus in the occupation of the elective office. On the other hand, the word "renunciation" connotes the idea of waiver or abandonment of a known right. To renounce is to *give up, abandon, decline or resign*.<sup>70</sup> Voluntary renunciation of the office by an elective local official would thus mean to give up or abandon the title to the office and to cut short the service of the term the concerned elected official is entitled to.

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<sup>67</sup> *Socrates*, supra note 33.

<sup>68</sup> WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1192 (1981).

<sup>69</sup> *Id.*

<sup>70</sup> *Aldovino, Jr.*, supra note 10, at 251; citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1992 (1993).

In its assailed Resolution, the COMELEC *en banc*, applying *Aldovino, Jr.*,<sup>71</sup> held:

It must be stressed that involuntary interruption of service which jurisprudence deems an exception to the three-term limit rule, implies that the service of the **term has begun before it was interrupted**. Here, the respondent did not lose title to the office. As the assailed Resolution states:

In the case at bar, respondent cannot be said to have lost his title to the office. On the contrary, he actively sought entitlement to the office when he lodged the election protest case. And respondent-appellant's victory in the said case is a final confirmation that he was validly elected for the mayoralty post of Viga, Catanduanes in 2004-2007. At most, respondent-appellant was only **unable to temporarily discharge the functions of the office to which he was validly elected** during the pendency of the election protest, but he never lost title to the said office.<sup>72</sup> (Emphasis added.)

The COMELEC's Second Division, on the other hand, pronounced that the actual length of service by the public official in a given term is immaterial by reckoning said service for the term in the application of the three-term limit rule, thus:

As emphasized in the case of *Aldovino*, "this formulation—no more than three consecutive terms—is a clear command suggesting the existence of an inflexible rule." Therefore we cannot subscribe to the argument that since respondent Abundo served only a portion of the term, his 2004-2007 "term" should not be considered for purposes of the application of the three term limit rule. When the framers of the Constitution drafted and incorporated the three term limit rule, it is clear that reference is to the term, not the actual length of the service the public official may render. Therefore, one's actual service of term no matter how long or how short is immaterial.<sup>73</sup>

In fine, the COMELEC ruled against Abundo on the theory that the length of the actual service of the term is immaterial in his case as he *was only temporarily unable to discharge his functions as mayor*.

The COMELEC's case disposition and its heavy reliance on *Aldovino, Jr.* do not commend themselves for concurrence. The Court cannot simply

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<sup>71</sup> Id. at 259.

<sup>72</sup> *Rollo*, p. 45.

<sup>73</sup> Id. at 54-55.

find its way clear to understand the poll body's determination *that Abundo was only temporarily unable to discharge his functions as mayor during the pendency of the election protest.*

As previously stated, the declaration of being the winner in an election protest grants the local elected official the right to serve the unexpired portion of the term. Verily, while he was declared winner in the protest for the mayoralty seat for the 2004-2007 term, Abundo's full term has been substantially reduced by the actual service rendered by his opponent (Torres). Hence, there was actual involuntary interruption in the term of Abundo and he cannot be considered to have served the full 2004-2007 term.

This is what happened in the instant case. It cannot be overemphasized that pending the favorable resolution of his election protest, **Abundo was relegated to being an *ordinary constituent*** since his opponent, as presumptive victor in the 2004 elections, was occupying the mayoralty seat. In other words, for almost two years or from July 1, 2004—the start of the term—until May 9, 2006 or during which his opponent actually assumed the mayoralty office, **Abundo was a private citizen warming his heels while awaiting the outcome of his protest.** Hence, even if declared later as having the right to serve the elective position from July 1, 2004, such declaration would not erase the fact that prior to the finality of the election protest, Abundo did not serve in the mayor's office and, in fact, had no legal right to said position.

*Aldovino Jr.* cannot possibly lend support to respondent's cause of action, or to COMELEC's resolution against Abundo. In *Aldovino Jr.*, the Court succinctly defines what temporary inability or disqualification to exercise the functions of an elective office means, thus:

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.*<sup>74</sup>

We rule that **the above pronouncement on preventive suspension does not apply to the instant case.** Verily, it is erroneous to say that Abundo merely was temporarily unable or disqualified to exercise the functions of an elective post. For one, during the intervening period of almost two years, reckoned from the start of the 2004-2007 term, **Abundo cannot be said to have retained title to the mayoralty office as he was at that time not the duly proclaimed winner** who would have the legal right to assume and serve such elective office. For another, not having been declared winner yet, **Abundo cannot be said to have lost title to the office since one cannot plausibly lose a title which, in the first place, he did not have.** Thus, for all intents and purposes, even if the belated declaration in the election protest accords him title to the elective office from the start of the term, Abundo was not entitled to the elective office until the election protest was finally resolved in his favor.

Consequently, *there was a hiatus of almost two years*, consisting of a break and effective interruption of his service, until he assumed the office and served barely over a year of the remaining term. At this juncture, We observe the apparent similarities of Mayor Abundo's case with the cases of Mayor Talaga in *Adormeo* and Mayor Hagedorn in *Socrates* as Mayors Talaga and Hagedorn were not proclaimed winners since they were non-candidates in the regular elections. They were proclaimed winners during the recall elections and clearly were not able to fully serve the terms of the deposed incumbent officials. Similar to their cases where the Court deemed their terms as involuntarily interrupted, *Abundo also became or was a private citizen during the period over which his opponent was serving as mayor.* If in *Lonzanida*, the Court ruled that there was interruption in Lonzanida's service because of his subsequent defeat in the election protest, then with more reason, Abundo's term for 2004-2007 should be declared

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<sup>74</sup> *Aldovino, Jr.*, supra note 10, at 260.

interrupted since he was not proclaimed winner after the 2004 elections and was able to assume the office and serve only for a little more than a year after winning the protest.

As aptly stated in *Latasa*, to be considered as interruption of service, the “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.*”<sup>75</sup> Applying the said principle in the present case, there is no question that during the pendency of the election protest, **Abundo ceased from exercising power or authority** over the good people of Viga, Catanduanes. Consequently, the period during which Abundo was not serving as mayor should be considered as a rest period or break in his service because, as earlier stated, prior to the judgment in the election protest, it was Abundo’s opponent, Torres, who was exercising such powers by virtue of the still then valid proclamation.

*As a final note*, We reiterate that Abundo’s case differs from other cases involving the effects of an election protest because while Abundo was, in the final reckoning, *the winning candidate*, **he was the one deprived of his right and opportunity to serve his constituents**. To a certain extent, Abundo was a victim of an imperfect election system. While admittedly the Court does not possess the mandate to remedy such imperfections, the Constitution has clothed it with enough authority to establish a fortress against the injustices it may bring.

In this regard, We find that **a contrary ruling would work damage and cause grave injustice to Abundo**—an elected official who was belatedly declared as the winner and assumed office for only a short period of the term. If in the cases of *Lonzanida* and *Dizon*, this Court ruled in favor of a losing candidate—or the person who was adjudged not legally entitled

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<sup>75</sup> *Latasa*, supra note 43.

to hold the contested public office but held it anyway—We find more reason to rule in favor of a winning candidate-protestant who, by popular vote, deserves title to the public office but whose opportunity to hold the same was halted by an invalid proclamation.

Also, more than the injustice that may be committed against Abundo is the injustice that may likewise be committed against the people of Viga, Catanduanes by depriving them of their right to choose their leaders. Like the framers of the Constitution, We bear in mind that We “*cannot arrogate unto ourselves the right to decide what the people want*”<sup>76</sup> and hence, should, as much as possible, “*allow the people to exercise their own sense of proportion and rely on their own strength to curtail the power when it overreaches itself.*”<sup>77</sup> For democracy draws strength from the choice the people make which is the same choice We are likewise bound to protect.

**WHEREFORE**, the instant petition is **PARTLY GRANTED**. Accordingly, the assailed February 8, 2012 Resolution of the Commission on Elections Second Division and May 10, 2012 Resolution of the Commission on Elections *en banc* in EAC (AE) No. A-25-2010 and the Decision of the Regional Trial Court (RTC) of Virac, Catanduanes, Branch 43, dated August 9, 2010, in Election Case No. 55, are hereby **REVERSED** and **SET ASIDE**.

Petitioner Abelardo Abundo, Sr. is **DECLARED ELIGIBLE** for the position of Mayor of Viga, Catanduanes to which he was duly elected in the May 2010 elections and is accordingly ordered **IMMEDIATELY REINSTATED** to said position. Withal, Emeterio M. Tarin and Cesar O. Cervantes are ordered to immediately vacate the positions of Mayor and Vice-Mayor of Viga, Catanduanes, respectively, and shall revert to their

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<sup>76</sup> *Borja, Jr.*, supra note 35, quoting *Commissioner Yusup R. Abubakar*, RECORD OF THE CONSTITUTIONAL COMMISSION, 242, Session of July 25, 1986.

<sup>77</sup> *Id.*, quoting *Commissioner Felicitas S. Aquino*, RECORD OF THE CONSTITUTIONAL COMMISSION, 242, Session of July 25, 1986.




original positions of Vice-Mayor and First Councilor, respectively, upon receipt of this Decision.

The TRO issued by the Court on July 3, 2012 is hereby **LIFTED**.


This Decision is immediately executory.


**SO ORDERED.**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice

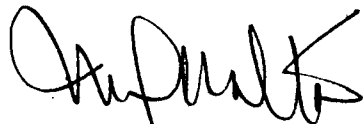
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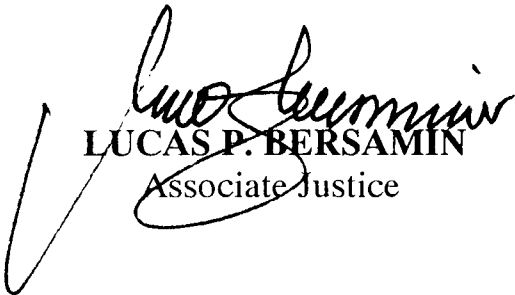
  
**MARIA LOURDES P. A. SERENO**  
Chief Justice


  
**ANTONIO T. CARPIO**  
Associate Justice


*I join the majority opinion subject to the clarification in the separate opinion of Justice Brion.*  
*Teresito Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*See: Separate Opinion*  
  
**ARTURO D. BRION**  
Associate Justice

  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice


  
**ROBERTO A. ABAD**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**MARIA LOURDES P. A. SERENO**  
Chief Justice