

Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

SECOND DIVISION

FR. CHRISTIAN B. BUENAFE,
FIDES M. LIM, MA. EDELIZA P.
HERNANDEZ, CELIA LAGMAN
SEVILLA, ROLAND C. VIBAL,
AND JOSEPHINE LASCANO,
Petitioners,



SPA NO. 21-156 (DC)

- versus -

FERDINAND ROMUALDEZ
MARCOS, JR.,
Respondent.

X-----X

**MOTION TO INTERVENE and ADMIT ATTACHED
ANSWER-IN-INTERVENTION**

Intervenors **Reynaldo S. Tamayo, Jr., Victor D. Rodriguez, and Thompson C. Lantion** ("PFP Intervenors"), by counsel, this *Answer-in-Intervention* to the *Petition* dated 2 November 2021 ("*Petition*") and states the following:

1. Intervenor Reynaldo S. Tamayo, Jr. is the President of Partido Federal ng Pilipinas ("PFP"). He may be served with all pleadings, notices, orders resolutions and other papers through the undersigned counsel.
2. Intervenor Victor D. Rodriguez is the Executive Vice President of PFP. He may be served with all pleadings, notices, orders resolutions and other papers through the undersigned counsel.
3. Intervenor Thompson C. Lantion is the Secretary General of PFP. He may be served with all pleadings, notices, orders resolutions and other papers through the undersigned counsel.

4. PFP is a national political party duly accredited by this Honorable Commission.

5. As a national political party, PFP indorsed and nominated respondent Ferdinand Romualdez Marcos, Jr. ("**BBM**") as its official presidential candidate for the 9 May 2022 national elections.

6. **BBM** accepted the nomination and filed his COC as PFP's official presidential candidate.

7. In the Petition, the petitioners claim that **BBM's COC** should be cancelled and/or denied due course because his COC contained a false material representation in violation of the Omnibus Election Code ("**OEC**").¹

8. As PFP Intervenors are the officers of the political party under which **BBM** is fielded as presidential candidate, they undeniably have legal interest in this case. Specifically, PFP Intervenors are interested in the dismissal of the utterly baseless and misleading Petition.

9. As this case has just begun and the Preliminary Conference is set on 26 November 2021, this intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. In fact, this intervention will allow a full discourse on the merits of the Petition and will assist this Honorable Commission to realize the petitioners' deceitful claims in their desperate attempt to disqualify **BBM**.

¹ Section 74, Batas Pambasa Bilang 881 or otherwise known as the "Omnibus Election Code" provides:

"The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge. x x x"

10. It is likewise submitted that PFP Intervenors' rights cannot be fully protected in a separate action or proceeding which makes this intervention as their only remedy.

PRAYER

WHEREFORE, it is respectfully requested that the Motion to Intervene be granted and admit the attached Answer-in-Intervention.

Other just and equitable reliefs are likewise prayed for.

Quezon City for Manila, November 22, 2021.



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ATTY. THEODORE O. TE Counsel for petitioners 2 nd Floor, Eastside Building No. 77 Malakas Street, Diliman Quezon City	Registry Receipt No. : <u>RE 514 592 412 ZZ</u> Date : 22 November 2021 Post Office: SM AURA Taguig Post Office LBC Tracking no. _____
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EXPLANATION

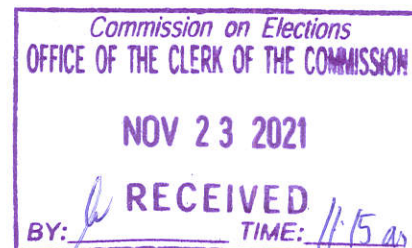
A copy of this *Answer-in-Intervention* will be served on the above addressee by **registered mail** and/or **private courier** since personal service is impracticable due to distance, time and manpower constraints.



GEORGE S. BRIONES

Republic of the Philippines
COMMISSION ON ELECTIONS
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X-----X

REYNALDO S. TAMAYO, JR.,
VICTOR D. RODRIGUEZ, and
THOMPSON C. LANTION,
Intervenors.

X-----X

ANSWER-IN-INTERVENTION
(to the *Petition* dated 2 November 2021)

Intervenors **Reynaldo S. Tamayo, Jr., Victor D. Rodriguez,** and **Thompson C. Lantion** ("PFP Intervenors"), by counsel, respectfully submits this *Answer-in-Intervention* to the *Petition* dated 2 November 2021 ("*Petition*") and states the following:

Prefatory Statement

1. This *Petition* is one of the what will probably be a series of disqualification cases that will be filed against herein respondent Ferdinand Romualdez Marcos, Jr. ("**BBM**").

2. What is surprising is that after being elected into public office eight (8) times¹ and after being a public servant for more than forty (40) years, there suddenly appears to be a concentrated effort to disqualify him from running for the highest position in the country.

3. If we look back, this is not the first time that a frivolous disqualification case such as this has been filed before this Honorable Commission.

4. In 2013, when former President Ejercito Estrada decided to run for Mayor of Manila, his detractors filed a disqualification case against him based on Constitutional grounds. The case went all the way to the Supreme Court and he won.²

5. Similarly, in 2016, when then Senator Grace Poe decided to run for President, her detractors filed a disqualification case against her on the ground that she was not a natural born citizen. Again, the case went all the way to the Supreme Court and she was allowed to run.³

6. Sitting before this Honorable Commission is yet another disqualification case. This time it is against **BBM**, who, if all the latest surveys are to be believed, is the leading contender in the Presidential race.

7. At the onset, it must be emphasized that the *Petition* consists of 50 pages.⁴ **More than half** of what is supposed to be a legal brief talks about matters that have **nothing** to do with **BBM** and why he should be disqualified. To illustrate, the subheadings contain derogatory statements regarding:

> Pre Martial Law Events⁵

> Declaration of Martial Law⁶

¹ **BBM** was elected as Vice Governor of Ilocos Norte [1980 to 1983], Governor of Ilocos Norte [1983 to 1986; 1998 to 2001; 2001 to 2004; 2004 to 2007], Representative of Second District, Ilocos Norte [1992 to 1995; 2007 to 2010] and Senator of the Republic of the Philippines [2010 to 2016].

² *Atty. Alicia Risos-Vidal v. Commission on Elections and Joseph Ejercito Estrada*; G.R. No. 206666, 21 January 2015.

³ *Mary Grace Natividad S. Poe-Llamanzares v. COMELEC*, G.R. Nos. 221697 and 221698-700, March 2016.

⁴ Excluding *Annexes*

⁵ See *Petition*, pp. 6-8, paragraphs 20-24.

⁶ See *Petition*, p. 8, paragraph 25.

- > Martial Law Problems ⁷
- > Human Rights Abuses ⁸
- > Physical Torture ⁹
- > Sexual Torture ¹⁰
- > Murder ¹¹
- > Freedom of Press Issues ¹²
- > Snap Election & And Exile After The EDSA Revolution ¹³
- > Estate Tax Return ¹⁴

8. More importantly, as shown below, the *Petition* is utterly baseless, false, and misleading.

Brief Statement of Relevant Facts

9. BBM was elected as the Vice-Governor of *Ilocos Norte* from 1980 to 1983 and as Governor of *Ilocos Norte* from 1983 to February 1986.

10. As a government official, it was incumbent upon his employer, the *Provincial Government of Ilocos Norte*, to deduct and withhold his income taxes through what is commonly known as the "*withholding tax system*"¹⁵ This was automatically withheld by his employer during the taxable years 1982 to 1985.

11. In fact, there is a *Certification* from the Local Finance Committee of *Ilocos Norte* stating that "*taxes due were withheld against the salary of the Honorable Ferdinand R. Marcos, Jr. during his term as Governor for the year 1982-1985.*"¹⁶

⁷ See *Petition*, pp. 8-14, paragraphs 26-48.

⁸ See *Petition*, pp. 14-15, paragraphs 49-52.

⁹ See *Petition*, pp. 15-17, paragraph 53.

¹⁰ See *Petition*, pp. 17-18, paragraph 54.

¹¹ See *Petition*, pp. 18-20, paragraph 55.

¹² See *Petition*, pp. 20-21, paragraphs 56-58.

¹³ See *Petition*, pp. 21-25, paragraphs 59-73.

¹⁴ See *Petition*, pp. 25-26, paragraphs 74-78.

¹⁵ Paragraph (a), Section 91, Presidential Decree 1158, otherwise known as "1977 NIRC".

¹⁶ A copy of the Certificate from the Provincial Government of *Ilocos Norte* is attached hereto as Annex "A"

12. In February 1986, as a result of the so-called EDSA Revolution, **BBM** and his family were unceremoniously removed from office and flown to Hawaii, USA against their will. **BBM** and his family were barred from returning to the Philippines and were forced to remain in exile until 1991.

13. As shall be demonstrated below, it would appear that six (6) years of "forced exile" in a foreign country wasn't enough punishment for **BBM** and his family.

14. Even prior to his being allowed to return to his motherland 1991¹⁷, the "powers that be" had several "surprises" in store for **BBM** and his family.

15. From the period covering 20 September 1991 to 20 October 1991, eight (8) Criminal Information for violations of Sections 45 (non-filing of income tax returns) and 50 (non-payment of deficiency taxes) of the national internal Revenue Code were filed against **BBM** at the Quezon City RTC, Branch 105.¹⁸

16. On 27 July 1995, the trial court found **BBM** guilty of violating the 1977 NIRC as follows :

17. **BBM** then appealed the trial Court's *Decision* to the Court of Appeals.

18. In its *Decision* ("**CA Decision**") dated 31 October 1997, the appellate Court acquitted **BBM** of the criminal charges involving non-payment of deficiency taxes for the taxable years 1982 to 1985 but ordered him to pay a fine plus interest for his failure to file income tax returns for the years in question, thus :

"WHEREFORE, the *Decision* of the trial court is hereby
MODIFIED as follows :

¹⁷ Marcos' Son Returns to Manila in Advance of Mother's Arrival - Los Angeles Times (latimes.com)

¹⁸ QC-RTC Criminal Cases No. Q-92-29213, Q-92-29212, Q-92-29217, Q-92-2916, Q-92-29215, Q-92-29214, Q-91-24391 and Q-91-24390.

1. **ACQUITTING** the accused-appellant of the charges of violation of Section 50 of the NIRC for non-payment of deficiency taxes for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-92-29216, Q-92-29215, Q-92-29214 and Q-91-24390; and **FINDING** him **guilty** beyond reasonable doubt of violation of Section 45 of the NIRC **for failure to file income tax returns** for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-91-24391, Q-92-29212, Q-92-29213 and Q-92-292171;

2. Ordering the appellant to **pay to the BIR the deficiency income taxes due with interest** at the legal rate until fully paid;

3. Ordering the appellant to pay a **fine of Php 2,000.00 for each charge** in Criminal Cases Nos. Q-92-29213, Q-92-29212 and Q-92-2917 for failure to file income tax returns for the years 1982, 1983 and 1984; and the **fine of Php 30,000.00** in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, with surcharges.”¹⁹ [Emphasis Supplied]

19. **BBM** appealed the **CA Decision** to the Supreme Court. On 8 August 2001, he decided to withdraw his appeal and opted to just pay the fine plus interest and surcharges which amounted to sixty-seven thousand one hundred thirty-seven and twenty-seven centavos (Php 67,137.27). Thus, the **CA Decision** became final and executory on 31 August 2001.²⁰ **BBM** paid the fine on 27 December 2001.²¹

20. This all happened over twenty (20) years ago.

21. In the last twenty (20) years, **BBM** filed his *Certificate of Candidacy* for various government positions :

- a. from 1998 to 2007, he ran and served as Governor of *Ilocos Norte*.
- b. From 2007 to 2010, he ran and served as Representative of the Second District of *Ilocos Norte*.
- c. From 2010 to 2016, he ran and served as Senator of the Republic of the Philippines.
- d. In 2016, he ran as Vice President of the Republic of the Philippines.

¹⁹ CA-G.R. CR No. 18569.

²⁰ A copy of the Supreme Court’s Entry of Judgment is attached hereto as *Annex 2*.

²¹ See *Annex 3*.

22. On 6 October 2021, **BBM** filed his *Certificate of Candidacy for President* ("**COC**") with this Honorable Commission in *Pasay City*.

23. Barely a month later, on 2 November 2021, petitioners filed the within *Petition*. According to them, **BBM's COC** should be cancelled and/or denied due course because his COC contained a false material representation in violation of the Omnibus Election Code ("**OEC**").²²

24. According to petitioners, when **BBM** stated in his **COC** that he was eligible to run for public office, the same constituted a "false material misrepresentation" because :

24.1 he is perpetually disqualified from holding any public office, to vote and to participate in any election;

24.2 he was convicted of a crime involving moral turpitude which disqualifies him from holding any public office;²³

24.3 the conviction of **BBM** in the *CA Decision* carries with it a mandatory penalty of imprisonment of more than 18 months which in turn disqualifies him from running for any public office;²⁴ and

²² Section 74, *Batas Pambasa Bilang 881* or otherwise known as the "Omnibus Election Code" provides:

"The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the *Batasang Pambansa*, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge. x x x"

²³ Section 12 of the *OEC*.

²⁴ Section 254 of the 1977 *NIRC* (As Amended) states :

"Any person required under this Code or by regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or regulations shall, in addition to other penalties provided by law, upon conviction thereof, be fined not less than ten thousand pesos (P10,000) and imprisonment of not less than one (1) year but not more than ten (10) years."

24.4 BBM's false assertion under oath that he is eligible to run for public office was made with deliberate intent to mislead, misinform and deceive the electorate.²⁵

25. As shall be demonstrated below, the *Petition* is based entirely on inappropriate, irrelevant, baseless and misleading statements. It is an affront to our judicial process and should be dismissed forthwith.

Grounds for the Dismissal of the Petition

I

Petitioners failed to prove that the COC contains false material representation and that BBM is disqualified to run for public office.

II

BBM is not perpetually disqualified to hold public office.

A

BBM's conviction for failure to file his tax returns did not perpetually disqualify him from holding any public office, to vote and to participate in any election.

B

BBM was not convicted of a crime involving moral turpitude. And even assuming arguendo that the offense of failure to file returns is a crime involving moral turpitude, BBM cannot be disqualified from holding public office.

²⁵ See *Petition*, pp. 48-50.

C

BBM's conviction for failure to file tax returns did not have a mandatory penalty of imprisonment of more than 18 months.

D

There is no crime of failure to file tax returns for purely compensation income earners.

III

There is no false material representation contained in BBM's COC.

IV

The people have the right to choose their next leader. This basic right is enshrined in our Constitution.

Discussion

Petitioners failed to prove that the COC contained any false material representation. Neither did they prove that BBM is disqualified to run for public office.

26. The petitioners allege that **BBM's COC** contained false material representations because he represented himself as being eligible to run as President of the Republic of the Philippines and that he had never been found liable for any offense which carried the accessory penalty of perpetual disqualification. According to petitioners, **BBM** is disqualified to run for public office because he was convicted in the *CA Decision*.

27. Unfortunately, petitioners failed to attach any evidence proving the existence of the conviction and the alleged disqualification.

28. A conviction of an offense does not automatically mean that a person is disqualified from running for public office. Stated otherwise, not all convictions result in perpetual disqualification from running for public office. Thus, it is incumbent upon the petitioners to prove that **BBM** is disqualified because the penalty of perpetual disqualification was actually imposed upon him.

29. As stated earlier, the *CA Decision* merely stated that **BBM** failed to file his tax returns. Hence, he was only meted a **fine of Php 2,000.00 for each charge** in Criminal Cases Nos. Q-92-29213, Q-92-29212 and Q-92-2917 for failure to file income tax returns for the years 1982, 1983 and 1984; and the **fine of Php 30,000.00** in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, which he paid more than twenty (20) years ago.

30. It is a well-settled rule in jurisprudence that a petitioner has the burden of proving his cause of action. Time and again, our Courts have stated, "*he who asserts, not he who denies, must prove*".

31. In *Spouses Boyboy V. Atty. Yabut, Jr.*,²⁶ the Supreme Court held that sufficient evidence is necessary to support a charge, to wit :

Accusation is not synonymous to guilt. There must always be sufficient evidence to support the charge. This brings to the fore the application of the age-old but familiar rule that **he who alleges must prove his allegations**. In the case before us, **it is enough for Respondent to deny complicity** in the alleged blackmail or extortion, **without more, for he is not under obligation to prove his negative averment, much less to disprove what has not been proved by complainants**. [Emphasis supplied]

32. In *Castilex Industrial Corporation V. Vicente Vasquez, Jr.*,²⁷ the Supreme Court made this clear :

²⁶ A.C. No. 5225, 29 April 2003.

²⁷ G.R. No. 132266, 21 December 1991.

The Court has consistently applied the ancient rule that if the plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner facts which he bases his claim, the defendant is under no obligation to prove his exception or defense. [Emphasis supplied]

33. Similarly, in the more recent case of *People Vs. Nenita B. Hu*,²⁸ the High Court, applying the legal maxim "*El incumbit probation qui dicit non qui negat*", held that :

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged. *El incumbit probation qui dicit non qui negat*; i.e., "he who asserts, not he who denies, must prove." The conviction of appellant must rest not on the weakness of his defense, but on the strength of the prosecution's evidence. [Emphasis supplied]

34. BBM's COC does not contain any false material representation. His statement that he is eligible to run for the position of President is not false as he is truthfully eligible to be a Presidential candidate.

35. If truth be told, if there is anyone who should be found guilty of providing this Honorable Commission with false representations, it is the petitioners themselves.

36. The Code of Judicial Ethics prohibits lawyers from making impertinent accusations and using foul language in their pleadings. And yet, the opening salvo of this inutile *Petition* starts off with the following statements :

36.1 "*Bongbong Marcos, ang kapal ng mukha mo naman.*

36.2 *Bago ka mag-ambisyon na maging pangulo ng kinawawa ninyong ating bayan.*

²⁸ G.R. No. 182232, 6 October 2008.

36.3 *Isauli mo muna ang ninakaw na bilyon-bilyong dolyares ng iyong mga kawatang magulang mula sa ating taong bayan."*

This was then followed by a litany of irrelevant narrations from page 5 to page 26 which comprised over half of the entire *Petition*.

37. This just shows the inherent weakness of their arguments and how petitioners and their counsel are purposely trying to confuse and mislead this Honorable Commission.

38. In the case of *Jose Bordador v. Brigida Luz*²⁹, the Supreme Court ruled against *ad hominem* imputations and admonished the petitioners therein to refrain from indulging in unbecoming and unprofessional conduct when litigating by :

The regrettably irresponsible attempt to tarnish the image of the intermediate appellate tribunal and its judicial officers through *ad hominem* imputations could well be contumacious, but we are inclined to let that pass with a strict admonition that petitioner refrain from indulging in such conduct in litigations.

BBM is not perpetually disqualified to hold public office.

A. *BBM's failure to file his tax returns did not perpetually disqualify him from holding any public office, to vote and to participate in any election.*

39. According to the petitioners, "[u]nder Section 252 of the 1977 NIRC (now 253 of the 1997 NIRC), the mere fact that Marcos, Jr. was convicted of violating the NIRC perpetually disqualifies him from holding any public office, to vote and to participate in any election."³⁰ This is misleading.

²⁹ G.R. No. 130148, 15 December 1991.

³⁰ See *Petition*, p. 31.

- i. *Section 252 of the 1977 NIRC (now 253 of the 1997 NIRC) is not applicable in the case at bar.*

40. Section 252 of the 1977 NIRC, which the petitioners cite as basis for BBM's alleged disqualification, was not in the original 1977 NIRC. The said section was merely introduced by *Presidential Decree No. 1994 ("PD 1994")* which took effect in 1 January 1986.

41. Article 4 of the Civil Code of the Philippines provides that, "[l]aws shall have no retroactive effect, unless the contrary is provided." More importantly, Section 22, Article III of the 1987 Constitution states that, "no ex post facto law or bill of attainder shall be enacted."

42. In the case of *In Re: Kay Villegas Kami*,³¹ the Supreme Court defined an *ex post facto* law as one :

42.1 which makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or

42.2 which aggravates a crime or makes it greater than it was when committed; or

42.3 which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or

42.4 which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant; or

42.5 that which assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful; or

42.6 that which deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

³¹ G.R. No. L-32485 October 22, 1970.

43. In the case at bar, **BBM** simply failed to file his tax returns for taxable years 1982 to 1985. In their *Petition*,³² however, the petitioners provided the following timetable for the mandatory filing of tax returns:

Taxable Year	Date of Mandatory Filing
1982	April 15, 1983
1983	April 15, 1984
1984	April 15, 1985
1985	April 15, 1986

44. Based on the abovementioned table of petitioners, the dates for the commission of the alleged offenses were as follows :

Taxable Year	Date of Mandatory Filing	Consummation of Offense of Failure to File Returns
1982	April 15, 1983	April 16, 1983
1983	April 15, 1984	April 16, 1984
1984	April 15, 1985	April 16, 1985
1985	April 15, 1986	April 16, 1986

45. It is clear that for the taxable years 1982 to 1984, **BBM** failed to file his tax returns before the effectivity of PD 1994. Therefore, the penalty of perpetual disqualification which was introduced by PD 1994³³ cannot be applied to **BBM**'s failure to file his tax returns for taxable years 1982 to 1984. To rule otherwise would be tantamount to a violation of the Constitutional prohibition on *ex post facto* laws.

³² See *Petition*, p. 38.

³³ as the alleged Section 252 of the 1977 NIRC

46. In the same manner, Section 252 of the 1977 NIRC cannot **cannot** be applied to **BBM**'s failure to file his tax return for taxable year **1985**. The petitioners cite the alleged Section 252 of the 1977 NIRC as follows :

Section 252. (a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: Provided, that payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

x x x

x x x

x x x

(c) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. **If he is a public officer or employee**, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and **perpetually disqualified from holding any public office, to vote and to participate in any election**. If the offender is a Certified Public Accountant, his certificate as a Certified Public Accountant shall, upon conviction, be automatically revoked or cancelled. (Emphasis and underscoring supplied)

47. It is not difficult to understand that the perpetual disqualification from holding office applies only to an offender who is a public officer.

48. It is already public knowledge that the so called EDSA Revolution or EDSA I transpired in February 1986 where **BBM** and his family were forced into exile in Hawaii, USA. In *Estrada vs. Desierto*,³⁴ the Supreme Court *En Banc* declared that "**EDSA I involves the exercise of the people power of revolution which overthrew the whole government. EDSA I is extra constitutional** and the legitimacy of the **new government** that resulted from it cannot be the subject of judicial review..."

³⁴ G.R. No. 146710-15, March 2, 2001.

49. Therefore, in February 1986, **BBM** was officially removed as the Governor of Ilocos Norte. Stated otherwise, **BBM** was no longer a public officer or employee in April 16, 1986 or at the time when he failed to file his income tax return for taxable year 1985. And since **BBM** was not a public officer or employee at that time, the penalty of perpetual disqualification is not applicable to **BBM**.

ii. *Both the trial court and the Court of Appeals did not impose the principal penalty of perpetual disqualification.*

50. Even assuming that **BBM** was a public officer at that time, his conviction of failure to file returns did not result in perpetual disqualification from holding public office for the simple reason that **neither the trial court nor the Court of Appeals imposed the said penalty on him**. This is clear from the petitioners' own quotation of the decisions of both the trial court and Court of Appeals.³⁵ The only **penalty that was ultimately meted out was fine**.

51. Nevertheless, in a desperate attempt to apply the penalty of perpetual disqualification, the petitioners argue that, "the accessory penalty of perpetual disqualification from holding any public office, to vote and participate in any election lies solely in the fact of conviction, without regard to the actual penalty imposed." Again, the petitioners mislead.

52. The penalty of perpetual disqualification from holding a public office in the NIRC is **not an accessory penalty but a principal penalty**. An accessory penalty is unique to the Revised Penal Code's penalty system. Article 73 of the Revised Penal Code categorically provides for the concept of accessory penalties which are deemed imposed together with the respective principal penalties, thus :

"Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of Articles 40, 41, 42, 43, 44, and 45 of this Code, it must be understood that the accessory penalties are also imposed upon the convict."

³⁵ See *Petition*, pp. 27-28.

53. The NIRC has no equivalent provision defining and providing for accessory penalties and their automatic imposition. The penalty of permanent disqualification is simply a principal penalty that has to be categorically adjudged in order to be imposable. And there is undeniably no basis in fact and in law to say that the penalty of permanent disqualification is an accessory penalty that is automatically deemed imposed. The petitioners' mischaracterization of the penalty is obviously a desperate attempt to mislead this Honorable Commission.

54. Further, the petitioners' cited provision uses the phrase "shall be imposed", as opposed to the Revised Penal Code's "it must be understood that the accessory penalties are also imposed", which clearly shows that a positive act of imposition is necessary in order that the additional penalties of dismissal from public service and perpetual disqualification from holding a public office to be operative.

55. More importantly, and as shown above, the penalty of absolute disqualification is not applicable to **BBM**. This is why the trial court and the Court of Appeals correctly **did not impose** the said penalty on **BBM**. The penalty of perpetual disqualification simply cannot, by any stretch of imagination, be applied to **BBM**.

56. It is also worth pointing out that, in addition to being officially removed from public office, **BBM** and his family were barred by then President Corazon Aquino from returning to the Philippines. Her decision to bar **BBM** and his family from returning to the Philippines was affirmed by the Supreme Court in *Marcos v. Manglapus*.³⁶ **BBM** and his family were allowed to return to the Philippines only on 4 November 1991.

57. Considering the foregoing, it was impossible for **BBM** to file his income tax return on 15 April 1986 because he was barred by the government from returning to the Philippines. In other words, it was the government that barred **BBM** from performing the act for which he was charged and convicted which further makes the imposition of perpetual disqualification extremely unjustified.

³⁶ G.R. No. 88211 October 27, 1989.

58. Considering all the foregoing, it is simply a quantum leap in logic to conclude that **BBM's** conviction of failure to file tax returns carried with it the penalty of perpetual disqualification.

59. In any case, that **BBM's** conviction did not perpetually disqualify him from running for public office is evident from the fact that he was repeatedly allowed to do so.

B. BBM was not convicted of a crime involving moral turpitude. And even if the offense of failure to file returns is a crime involving moral turpitude, BBM is still not disqualified to hold public office.

60. The petitioners contend that **BBM's** conviction of failure to file returns under the NIRC was a conviction of a crime involving moral turpitude. The petitioners err.

61. It is glaring that the petitioners failed to explain why an act of omission of failure to file tax returns, which is merely a *malum prohibitum* and not *malum in se*, involves moral turpitude. Again, the petitioners have the burden of proving that the offense of failure to file tax returns is a crime involving moral turpitude. Having failed to do so, the *Petition* must be denied.

62. To be sure, as explained below, **BBM's** conviction of failure to file tax returns is not one involving moral turpitude. And that even if it involves moral turpitude, **BBM** is still not disqualified to hold public office.

i. BBM's conviction of failure to file tax returns is not one involving moral turpitude.

63. In the 1920 case of *In Re : Carlos S. Basa*³⁷, the Supreme Court, finding no exact definition in the statutes, resorted to the definition provided in *Bouviere's Law Dictionary* and defined "moral turpitude" in the context of Section 21 of the Code of Civil Procedure on the disbarment of a lawyer as follows:

³⁷ G.R. No. 15398, 10 August 1920.

“Moral turpitude,” it has been said, “includes everything which is done contrary to justice, honesty, modesty, or good morals.” (Bouvier’s Law Dictionary, cited by numerous courts.) Although no decision can be found which has decided the exact question, it cannot admit of doubt that crimes of this character involve moral turpitude. The inherent nature of the act is such that it is against good morals and the accepted rule of right conduct.”

64. In the case of *Remegio E. Zari v. Diosdado S. Flores*³⁸, the Supreme Court elucidated the general rule that **crimes *mala in se* involve moral turpitude while crimes *mala prohibita* do not, to wit:**

It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited.

65. Furthermore, it was opined³⁹ that the determination of existence of moral turpitude can be made from at least three perspectives or approaches:

- (a) The first approach is the Objective Approach which looks into the act itself – acts intrinsically immoral involve moral turpitude regardless of whether the same is punishable or not;
- (b) The second approach looks into the perspective of the crime itself – crimes which fraud is an element are looked on as a crime involving moral turpitude;

³⁸ A.M. No. (2170-MC) P-1356, 21 November 1979.

³⁹ Concurring Opinion, J. Brion, Edgar V. Teves v. Commission on Election, G.R. No. 180363, 28 April 2009.

(c) The third approach is the Subjective Approach which essentially takes into account the moral depravity of the perpetrator when the crime was committed – whether or not the perpetrator was motivated by ill-will indicating depravity.

66. Applying all the foregoing standards here, there can be no other conclusion except that the offense of failure to file tax returns does not involve moral turpitude.

67. To reiterate, **BBM** was the Vice-Governor of Ilocos Norte from 1982 to 1983 and Governor of Ilocos Norte from 1983 to February 1986. During these years, **BBM**'s income was purely from compensation as an elected official of the Government of the Philippines.

68. Being a purely compensation income earner, it was the duty of **BBM**'s employer (the Provincial Government of Ilocos Norte) to deduct and pay his taxes under the withholding tax system pursuant to the 1977 NIRC.⁴⁰

69. In this connection, **BBM**'s employer, the Provincial Government of Ilocos, deducted and withheld the income taxes due to the government for the taxable years 1982 to 1985 from **BBM**'s gross salaries. This is clear from the Certification issued by the Local Finance Committee where it was certified that, "taxes due were withheld against the salary of the Honorable Ferdinand R. Marcos, Jr. during his term as Governor for the year 1982-1985." Therefore, it is clear that **BBM** paid the corresponding taxes during those periods.

70. More importantly, for government employees, Section 94 of the 1977 NIRC provides that **the return of the amount withheld and paid shall be made by the officer having control of such payment, to wit:**

⁴⁰ SECTION 91. *Income tax collected at source.* — (a) *Requirement of withholding.* — Every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with a withholding table to be prepared by the Secretary of Finance.

SECTION 94. *Return and payment in case of Government employees.* — If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, the return of the amount deducted and withheld upon any wages shall be made by the officer or employee having control of the payment of such wages, or by any officer or employee duly designated for that purpose.

71. Hence, **BBM**'s failure to file his tax returns for the taxable years 1982 to 1985 is not only fully attributable to him, but also to the Government and the officer or employee having control of the payment of such wages.

72. In sum, the offense of failure to file tax returns cannot, in any way, be considered a crime involving moral turpitude. This is true even if we use all the three approaches mentioned above in determining whether a crime involves moral turpitude. First, the offense of failure to file tax returns is not intrinsically immoral. In fact, today, it is no longer a crime when a purely compensation income earner does not file a tax return. Second, the offense of failure to file tax returns is *malum prohibitum* or a crime by omission. Fraud is not an element of the offense. And lastly, **BBM** was not motivated by criminal intent or ill will as **BBM**'s taxes were paid.

73. In *In RE : Brian D. Rohan*,⁴¹ the Supreme Court of California held that the petitioner's **conviction of willful failure to file income tax returns for years 1967 until 1970 did not involve moral turpitude**, thus:

xxx the conviction of a willful failure to file a federal income tax return does not establish, on the face thereof, the involvement of moral turpitude and, if moral turpitude is to be established, it must be based on special circumstances which are not necessarily present whenever the offense is committed.

74. The Supreme Court of California further mentioned that there was no basis for departing from the conclusion that no moral turpitude was involved in petitioner's failure to timely file his income tax returns as there was no evidence that the petitioner sought to

⁴¹ U.S. Case, S.F. 23458, 3 May 1978, Supreme Court of California.

achieve personal financial gain by not filing his tax returns.⁴² This is likewise true here because **BBM** did not have any financial gain by not filing the income tax returns because taxes were withheld by the local government of *Ilocos Norte*.

75. The Philippine Supreme Court further opined that, in resolving cases involving moral turpitude, “useful caveat in the evaluation is to resolve any doubt in favor of the perpetrator, as conclusion of moral turpitude invariably signifies a worse consequence for him or for her.”⁴³

76. In this particular case, adjudging the conviction of failure to file a tax return as a crime involving moral turpitude has a much greater consequence not only for **BBM** who will be ineligible to exercise his constitutional right to vote and be voted, but more so to the millions of Filipino people who will be deprived of their right to choose the President of the Philippines.

ii. The Supreme Court has already ruled with finality that BBM's conviction of the offense of failure to file tax returns is not a conviction of a crime involving moral turpitude.

77. In *Republic of the Philippines v. Ferdinand R. Marcos II and Imelda R. Marcos*,⁴⁴ the Republic questioned **BBM**'s qualification to act and serve as the executor of the estate of the deceased former President Ferdinand E. Marcos. According to the Republic, **BBM** was disqualified to act and serve as executor because of his conviction of failure to file income tax returns, or the very same offenses involved in this Petition.

78. In ruling that **BBM**'s conviction of failure to file tax returns for taxable years 1982 to 1985 (which are again the very same cases involved in this Petition) does not involve moral turpitude, the Supreme Court held:

The "failure to file an income tax return" is not a crime involving moral turpitude as the mere omission is already a violation regardless of the fraudulent intent or

⁴² In RE : Brian D. Rohan, U.S. Case, S.F. 23458, 3 May 1978.

⁴³ Edgar Y. Teves vs. COMELEC, G.R. No. 180363, 28 April 2009.

⁴⁴ G.R. Nos. 130371 and 130855, 4 August 2009.

willfulness of the individual. This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return. The same is illustrated in Section 51(b) of the NIRC which reads :

(b) Assessment and payment of deficiency tax – xxx

In case a person fails to make and file a return or list at the time prescribed by law, or makes willfully or otherwise, false or fraudulent return or list x x x.

Likewise, in *Aznar v. Court of Tax Appeals*,⁴¹ this Court observed:

To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, and (3) omission. **Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, "falsity," "fraud" and "omission."**

Applying the foregoing considerations to the case at bar, the filing of a "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual. The same, however, cannot be said for "failure

to file a return" where the mere omission already constitutes a violation. Thus, this Court holds that even if the conviction of BBM Marcos II is affirmed, the same not being a crime involving moral turpitude cannot serve as a ground for his disqualification. [Emphasis and underscoring supplied]

79. It is basic that a conclusion reached in one case should be applied to subsequent cases if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations, like cases ought to be decided alike.**⁴⁵

80. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, **the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.**⁴⁶

81. Here, considering that the issue of whether BBM's conviction of failure to file tax returns for the years 1982 to 1985 involves moral turpitude has already been ruled by the Supreme Court in the negative, there is no other recourse in this case but to adopt that ruling in this case pursuant to the rule of *stare decisis*.

iii. Even if the offense of failure to file tax returns is a crime involving moral turpitude, BBM is still not disqualified from holding public office because the said disqualification has long been automatically removed.

82. Assuming *arguendo* that the offense of failure to file return is a crime involving moral turpitude, Section 12 of the OEC provides that the disqualification to be a candidate shall be automatically removed after the period of five (5) years from service of sentence, thus:

SECTION 12. Disqualifications. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for

⁴⁵ *Chinese Young Men's Christian Association v. Remington Steel Corporation*, G.R. No. 159422, 28 March 2008.

⁴⁶ *Id.*

subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

This disqualifications to be a candidate herein provided **shall be deemed removed** upon the declaration by competent authority that said insanity or incompetence had been removed or **after the expiration of a period of five years from his service of sentence**, unless within the same period he again becomes disqualified. [Emphasis supplied]

83. In the *CA Decision*, the Court of Appeals ordered **BBM** to pay a fine of Php2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212 and Q-92-2917 for failure to file income tax returns for the years 1982, 1983 and 1984; and the fine of Php30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, with surcharges.

84. **BBM** initially intended to appeal the foregoing *CA Decision* and filed a *Motion for Extension of Time* to file a *Petition for Review on Certiorari* with the Supreme Court. However, **BBM** subsequently withdrew the motion which was granted by the Supreme Court in its *Resolution* dated 8 August 2001. Thereafter, an *Entry of Judgement* was issued on 31 August 2001.

85. On 27 December 2001, **BBM** paid the fines and penalties pursuant to the *CA Decision*.⁴⁷ Clearly, even assuming that **BBM's** conviction for failure to file tax returns involves moral turpitude, any disqualification has been automatically removed upon the lapse of five years from the payment of fines and penalties on 27 December 2001. Thus, as early as 28 December 2006, **BBM** was no longer disqualified to be a candidate and hold public office.

⁴⁷ A copy of the proof of payment of fines and penalties on 27 December 2001 is attached hereto as Annex 2.

C. BBM's conviction of failure to file tax returns did not have a mandatory penalty of imprisonment for more than 18 months.

86. The petitioners assert that the Court of Appeals illegally modified the decision of the Regional Trial Court by merely imposing fine and unlawfully deleting the penalty of imprisonment.⁴⁸ According to the petitioners, Section 254 of the 1977 NIRC mandates the imposition of both fine and imprisonment.⁴⁹ Thus, the deletion of the penalty of imprisonment rendered the *CA Decision* void. Again, the petitioners mislead in bad faith.

87. It is important to be accurate of the law that was applicable during the commission of the offense. In this case, it was Section 73 of the 1977 NIRC that was effective during the period 1982 to 1985, which provides :

Section 73. *Penalty for failure to file return or to pay tax.* — **Any one liable** to pay the tax, **to make a return** or to supply information required under this Code, **who refuses or neglects** to pay such tax, to make such return or to supply such information at the time or times herein specified in each year, **shall be punished by a fine** of not more than two thousand pesos **or by imprisonment** for not more than six months, or both.

[Emphasis and underscoring supplied]

88. Even Section 288 of PD 1994, which amended the 1977 NIRC, provides :

Section 288. *Failure to file return, supply information, pay tax, withhold and remit tax.* - Any person required under this Code or by regulations promulgated thereunder to pay any tax, make a return, keep any records, or supply any information, who willfully fails to pay such tax, make such return, keep such records, or supply such information, or withhold or remit taxes withheld, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, upon conviction thereof, **be fined** not less than five thousand pesos nor more than fifty thousand pesos, **or imprisoned** for not less

⁴⁸ See Petition, p. 47.

⁴⁹ *Id.*

than six months and one day but not more than five years, or **both**. [Emphasis supplied]

89. It is clear that the law allows the imposition of fine or imprisonment. Moreover, the law only provides imprisonment of not more than six months. Therefore, the Court of Appeals was legally justified in modifying the penalty imposed by the trial court.

90. It is a shame that the petitioners resort to such reckless citation of inapplicable provision of law in their desperate attempt to mislead this Honorable Commission and defeat the democratic election process.

D. There is no more crime of failure to file tax returns for purely compensation income earner. Any penalty should therefore be removed.

91. Section 51-A of the 1997 NIRC provides that “[i]ndividual taxpayers receiving purely compensation income, regardless of amount, from only one employer in the Philippines for the calendar year, the income tax of which has been withheld correctly by the said employer (tax due equals tax withheld) shall not be required to file an annual income tax return.” Thus, today, **there is no more crime of failure to file tax returns for purely compensation income earner.**

92. At the risk of belaboring a point, **BBM was a purely compensation income earner.** He received income from a single employer in the Philippines, the Province of Ilocos Norte. Taxes due were withheld against his salaries and wages by the Provincial Government of Ilocos Norte.⁵⁰

93. Article 22 of the Revised Penal Code (RPC) provides that penal laws shall have a retroactive effect insofar as they are beneficial to the accused, to wit:

Article 22. Retroactive effect of penal laws. - Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as

⁵⁰ See *Annex 1*.

this term is defined in Rule 5 of Article 62 of this code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same. (Emphasis supplied)

94. In *Ophelia Hernan vs. The Sandiganbayan*,⁵¹ the Supreme Court ruled:

Said recent legislation shall find application in cases where the imposable penalties of the affected crimes such as theft, qualified theft, estafa, robbery with force upon things, malicious mischief, malversation and such other crimes, the penalty of which is dependent upon the value of the object in consideration thereof, have been reduced, as in the case at hand, taking into consideration the presence of existing circumstances attending its commission. **For as long as it is favorable to the accused, said recent legislation shall find application regardless of whether its effectivity comes after the time when the judgment of conviction is rendered and even if service of sentence has already begun.** The accused, in these applicable instances, **shall be entitled to the benefits of the new law** warranting him to serve a lesser sentence, or to his release, if he has already begun serving his previous sentence, and said service already accomplishes the term of the modified sentence.

95. Further, in *The United States v. EL CHINO CUNA*,⁵² the Supreme Court ruled :

xxx the repeal of a law prescribing penalties has the effect of remitting or extinguishing any penalty, loss or rights, or responsibility incurred under such law as to all persons who have not been convicted and sentenced under the provisions of such law prior to the enactment of the repealing law; the Supreme Court of the United States declaring that "under the general principles of the common law, the repeal of a penal statute operates as a remission of all penalties for violations of it committed before its repeal, and a release from prosecution therefor after said repeal, unless there be either a clause in the repealing

⁵¹ G.R. No. 217874, December 5, 2017.

⁵² G.R. No. L-4504 - December 15, 1908.

statute, or a provision of some other statute, expressly authorizing such prosecution.

xxx

Article 1 of the Penal Code in force in these Islands defines crimes and misdemeanors as voluntary acts or omissions penalized by the law; and complementary to this provision, article 21 provides that no crime or misdemeanor shall be punished with a penalty of which has not been prescribed by law prior to its commission. In accordance with these provisions the question whether an act is punishable or not depends upon the question whether or not at the time of its commission, there was a law in force which penalized it; this rule being modified, however, by article 22 of the same code, which provides that penal laws shall have a retroactive effect in so far as they favor persons convicted of a crime or misdemeanor, and **this notwithstanding the fact that at the time of the enactment of such laws, final and judgment may have been pronounced and the convict may entered upon the execution of his sentence.** [Emphasis supplied]

96. Based on the foregoing, **BBM's** conviction of failure to file returns is already of no significance because any penalty, be it imprisonment or perpetual disqualification, has been extinguished by virtue of its decriminalization.

There is no false material representation contained in BBM's COC.

97. The petitioners allege that **BBM's** COC should be cancelled or denied due course because it contains false material representation required under Section 74 of the OEC. According to the petitioners, **BBM's** representation that he is eligible to run for public office is false because:

(a) the mere fact that **BBM** was convicted of violating the NIRC perpetually disqualifies him from holding any public office;

(b) **BBM** was convicted of a crime involving moral turpitude thereby disqualifying him under the OEC to be a candidate and to hold any public office;

(c) **BBM's** conviction carries the mandatory penalty of imprisonment of more than 18 months; and

(d) the false assertion under oath was made with deliberate intent to mislead, misinform, and deceive the electorate.

These are all baseless and misleading assertions.

98. In a petition for cancellation of a certificate of candidacy under Section 78 of the OEC, it is essential to establish three essential elements:

a) The candidate made a representation in his certificate of candidacy;

b) The representation pertains to a material matter which would affect the substantive rights of the candidate — the right to run for the election for which he filed his certificate of candidacy;

c) The candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempts to mislead, misinform, or hide a fact which would otherwise render him ineligible.⁵³

99. In *Jalover v. Osmeña*,⁵⁴ citing *Velasco v. COMELEC*⁵⁵, the Supreme Court ruled that, separate from the requirement of materiality, a false representation under Section 78 of the OEC must consist of a “deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render a candidate ineligible.”

100. In *Mitra v. COMELEC*,⁵⁶ the Supreme Court emphasized that the misrepresentation that Section 78 of the OEC addresses cannot be the result of a mere innocuous mistake, and cannot exist in a

⁵³ *Tecson v. Commission on Elections*, G.R. Nos. 161434, 161634 & 161824, 3 March 2004.

⁵⁴ *Jalover v. Osmeña*, G.R. No. 209286, 23 September 2014, 743 PHIL 833-845.

⁵⁵ *Velasco v. Commission on Elections*, G.R. No. 180051, 24 December 2008, 595 PHIL 1172-1196.

⁵⁶ *Mitra v. Cemelec*, G.R. No. 191938, 2 July 2010, 622 SCRA744.

situation where the intent to deceive is patently absent, or where no deception of the electorate results.

101. To begin with, **BBM**'s representation that he is eligible to run for the position of president is not false. **BBM** is truthfully eligible to be a presidential candidate. Consequently, **BBM** has not misled, misinformed and deceived the electorate.

102. Section 2 Article VII of the 1987 Constitution provides for the eligibility of a presidential candidate, thus:

Section 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

103. There is no question that **BBM** is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age, and a resident of the Philippines for more than 10 years already. Thus, pursuant to the 1987 Philippine Constitution, **BBM** is undeniably eligible to be a presidential candidate.

104. Further, and contrary to the petitioners' baseless and misleading statements, **BBM**'s conviction of failure to file tax returns **did not perpetually disqualify him** from holding any public office, to vote and to participate in any election. **BBM was not convicted of a crime involving moral turpitude**. And even if the offense of failure to file returns is a crime involving moral turpitude, **BBM** is still not disqualified to hold public office. Moreover, **BBM**'s conviction of failure to file tax returns did not have a mandatory penalty of imprisonment for more than 18 months. These have all been clearly established and proven in the discussions above.

105. Simply put, there is no false material representation contained in **BBM**'s COC, much less, a deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render a candidate ineligible.

The people's right to choose who will succeed as president must be respected.

106. In elections, the first consideration of every democratic polity is to give effect to the expressed will of the majority.⁵⁷ Its purpose is to give the voters a direct participation in the affairs of their government.⁵⁸

107. As enshrined in Article 21 of the Universal Declaration of Human Rights, the will of the people shall be the basis of the authority of government.⁵⁹

108. To guarantee this, Article 25 of the International Covenant on Civil and Political Rights provides that every citizen has a right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections.⁶⁰

109. This same principle has been recognized by the Philippine Supreme Court in a long line of cases where the will of the electorate was given due regard in its decisions.

110. According to the Supreme Court, the importance of the people's choice must be the paramount consideration in every election, for the Constitution has vested in them the right to freely select, by

⁵⁷ *Gelacio I. Yason v. COMELEC*, G.R. No. 52713, 31 January 1985.

⁵⁸ *Id.*

⁵⁹ Article 21 of the Universal Declaration of Human Rights provides:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

⁶⁰ Article 25 of the International Covenant on Civil and Political Rights provides:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

secret-ballot in clean elections, the men and women who shall make laws for them or govern in their name and behalf.⁶¹

111. As shown above, the petitioners are essentially asking this Honorable Commission to cancel or deny due course **BBM's COC** on the basis of inapplicable laws and flawed application and conclusion of laws, not to mention *ad hominem* attacks and numerous irrelevant narrations that are obviously presented to hide the undeniable truth that the Petition utterly lacks merit.

112. The petitioners are effectively asking this Honorable Commission to violate the very essence of democratic process of elections which the Honorable Commission is constitutionally bound to protect.

113. The petitioners are likewise essentially asking this Honorable Commission to defeat the will of the people to vote for **BBM** who emerged in various surveys as the people's top bet for president in 2022.⁶²

114. As the vanguard of free, honest, orderly, credible and peaceful elections,⁶³ it is incumbent upon this Honorable Commission to dismiss the Petition, which lacks both legal and factual basis, in order not to frustrate the essence of elections and true will of the electorate.

115. As held by the Supreme Court in *Alberto v. COMELEC*⁶⁴, it is doctrinal that election cases involve public interest; thus, **laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objection.**

⁶¹ In re Geronimo v. Ramos, G.R. No. L-60504, L-60591, 60732-39, 14 May 1985.

⁶² <https://www.publicusasia.com/executive-summary-phyg-q3/>
<https://www.manilatimes.net/2021/10/18/opinion/columns/rapplers-facebook-poll-shows-marcos-winning-bulletins-by-a-landslide/1818798>
<https://www.manilatimes.net/2021/09/29/news/sara-duterte-remains-top-pick-for-presidentpulse-asia/1816501>
<https://www.rappler.com/nation/despite-drop-sara-duterte-still-leads-pulse-asia-presidential-survey-september-2021>

⁶³ Section 52, Article VII of the 1987 Philippine Constitution.

⁶⁴ Roberto S. Alberto vs COMELEC, G.R. No. 132242, 27 July 1999.

116. The manifest will of the people as expressed through the ballot must be given fullest effect. In case of doubt, political laws must be interpreted to give life and spirit to the popular cases.⁶⁵

117. As declared by the Supreme Court in *Maruhom v. COMELEC*, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms.⁶⁶

118. With due respect, the Honorable Commission should not allow baseless petitions, like the one at hand, trample upon the very foundation of our democracy.

PRAYER

WHEREFORE, premises considered, **Intervenors** respectfully request that this Honorable Commission **DISMISS** the *Petition* dated 2 November 2021 for lack of merit.

Other just and equitable reliefs are likewise prayed for.

Quezon City for Manila, November 22, 2021.



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PTR No. 929-7439; Quezon City; 1-03-2020

⁶⁵ *Rogelio Torayno, Sr. v. COMELEC*, G.R. No. 137329, 9 August 2020.

⁶⁶ *Abdulmabid Maruhom v. COMELEC*, G.R. No. 139357, 5 May 2020, citing *Frisvaldo v. COMELEC*, 257 SCRA 727 [1996].

Copy furnished :

ATTY. THEODORE O. TE <i>Counsel for petitioners</i> 2 nd Floor, Eastside Building No. 77 Malakas Street, Diliman Quezon City	Registry Receipt No. : <u>RE 514 592 412 22</u> Date : 22 November 2021 Post Office: ISM AURA Taguig Post Office LBC Tracking no. _____
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EXPLANATION

A copy of this *Answer-in-Intervention* will be served on the above addressee by **registered mail** and/or **private courier** since personal service is impracticable due to distance, time and manpower constraints.



GEORGE S. BRIONES

VERIFICATION

We, **REYNALDO S. TAMAYO, JR.**, Filipino, of legal age and with address at Purok 10, Poblacion Tupi, South Cotabato; **VICTOR D. RODRIGUEZ**, Filipino, of legal age and with address at 31 EDSA Brgy. Ilaya, Mandaluyong City; **THOMPSON C. LANTION**, Filipino, of legal age and with address at 31 EDSA Brgy. Ilaya, Mandaluyong City; 12 East Road, Cubao, Quezon City; and after having been duly sworn to in accordance with law, hereby depose and state the following :

1. We are the intevenors in the case entitled "*Fr. Christian B. Buenafe et al. v. Ferdinand R. Marcos, Jr.*," filed before the Commission on Elections and docketed as SPA No. 21-156 (DC);

2. We have caused the preparation and filing of the foregoing *Motion to Intervene and Admit attached Answer-In-Intervention* and *Answer in Intervention (to the Petition dated 2 November 2021)*;

3. We have read and understood the contents thereof and we attest that the allegations therein are true and correct based on my personal knowledge, available records and authentic documents on hand;

4. We attest that the foregoing *Motion to Intervene and Admit attached Answer-In-Intervention* and *Answer in Intervention (to the Petition dated 2 November 2021)* is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

5. We further attest that the factual allegations in the foregoing *Motion to Intervene and Admit attached Answer-In-Intervention* and *Answer in Intervention (to the Petition dated 2 November 2021)* have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;

6. We attest to the truth of the foregoing statements.


IN WITNESS WHEREOF, we have hereunto affixed our signature this 22nd day of November 2021 in QUEZON CITY City.

REYNALDO S. TAMAYO, JR
VICTOR D. RODRIGUEZ
THOMPSON C. LANTION

SUBSCRIBED AND SWORN to before me this 22 November 2021 at QUEZON CITY City, affiants exhibiting to me the following identification cards with the corresponding details below. *Affiants* are known to me to be the same person who executed the foregoing instrument and acknowledged to me that the same is his free act and deed.

NAME	GOVERNMENT ID	DATE / PLACE ISSUED
REYNALDO S. TAMAYO, JR	Professional Driver's License No. G06-01-064551	4 March 2021 / LTO
VICTOR D. RODRIGUEZ	Passport ID No. P7012403B	18 June 2021 / DFA Manila
THOMPSON C. LANTION	Non- Professional Driver's License No. N16-92-039825	1 February 2019 / LTO

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Series of 2021.


ATTY. NELLY B. MOLINA
Notary Public for Quezon City
Until December 31, 2022
Commission No. NP-125 (2021-2022)
Roll of Attorney No. 19379
PTR No. SJ 1476110; 1-05-2021
IBP No. 145355; 1-08-2021
MCLE Exemption No. VI-0011303
#12 Natib St., Cubao, Quezon City

REPUBLIC OF THE PHILIPPINES)
) SS.
x- ----- **QUEZON CITY** -----x

AFFIDAVIT OF SERVICE

I, **EDGAR G. ROZON**, of legal age, Filipino, with office address at Suite 507, Xavierville Square Condominium 38 Xavierville Avenue, Loyola Heights, Quezon City 1108, after having been sworn to in accordance with law, depose and state the following :

1. I am one of the liaison officers of **ATTY. GEORGE S. BRIONES**, counsel for intervenors;

2. On 22 November 2021, I mailed one (1) copy of *Motion to Intervene and Admit attached Answer-In-Intervention and Answer in Intervention (to the Petition dated 2 November 2021)* dated 22 November 2021 in the case entitled "*Fr. Christian B. Buenafe et al. v. Ferdinand R. Marcos, Jr.,*" pending before the Commission on Elections, Manila by Registered Mail :

ATTY. THEODORE O. TE <i>Counsel for petitioners</i> 2 nd Floor, Eastside Building No. 77 Malakas Street, Diliman Quezon City	Registry Receipt No. <u>RE 514 592 412 22</u> Date : 22 November 2021 Post Office : SM AURA Taguig Post Office
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3. That the above service was done in Market-Market Taguig Post Office, as evidenced by the Registry Receipt hereto attached wherein the name of the addressee was indicated.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 22 November 2021 in **QUEZON CITY** City.


EDGAR G. ROZON
Affiant

SUBSCRIBED AND SWORN to before me this 22 November 2021 at **QUEZON CITY** City, affiant exhibiting to me his Tax Identification No. 153-253-353 Affiant is known to me to be the same person who executed the foregoing instrument and acknowledged to me that the same is his free act and deed.

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Book No. 247
Series of 2021.


ATTY. NELLY B. MOLINA
Notary Public for Quezon City
Until December 31, 2022
Commission No. NP-125 (2021-2022)
Roll of Attorney No. 19379
PTR No. SJ 1476110; 1-05-2021
IBP No. 145355; 1-08-2021
MCLE Exemption No. VI-0011303
#12 Natib St., Cubao, Quezon City

REPUBLIC OF THE PHILIPPINES)
QUEZON CITY) SS.

AFFIDAVIT OF SERVICE

I, **FRITZIE MAE G. BOLANTE**, of legal age, Filipino, with office address at Suite 507, Xavierville Square Condominium 38 Xavierville Avenue, Loyola Heights, Quezon City 1108, after having been sworn to in accordance with law, depose and state the following :

1. I am one of the secretaries of **ATTY. GEORGE S. BRIONES**, counsel for intervenors;

2. On 22 November 2021 at ^{4:50} **QUEZON CITY** in the afternoon, I emailed to clerkofthecommission@comelec.gov.ph a copy of the of *Motion to Intervene and Admit attached Answer-In-Intervention and Answer in Intervention (to the Petition dated 2 November 2021)* dated 22 November 2021 in the case entitled "*Fr. Christian B. Buenafe et al. v. Ferdinand R. Marcos, Jr.,*" filed before the Commission on Elections and docketed as SPA No. 21-156 (DC);

3. I took a screenshot of the email I sent to the above-mentioned party and printed the same as proof of transmittal; and


4. That I am executing this *Affidavit* to attest to the truth of the foregoing statement and for whatever legal purposes it may serve best.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 22 November 2021 at **QUEZON CITY** City.


FRITZIE MAE G. BOLANTE
Affiant

SUBSCRIBED AND SWORN to before me this 22 November 2021 at **QUEZON CITY** City, affiant exhibiting to me her Non-Professional License ID No. N01-19-021243. Affiant is known to me to be the same person who executed the foregoing instrument and acknowledged to me that the same is her free act and deed.

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Page No. 84
Book No. 247
Series of 2021.


ATTY. NELLY B. MOLINA
Notary Public for Quezon City
Until December 31, 2022
Commission No. NP-125 (2021-2022)
Roll of Attorney No. 15079
PTR No. SJ 1476110; 1-05-2021
IBP No. 145355; 1-08-2021
MCLE Exemption No. VI-0011303
#12 Natib St., Cubao, Quezon City

11/22/21, 4:51 PM

Yahoo Mail - Subject : MOTION TO INTERVENE AND ADMIT ATTACHED ANSWER-IN-INTERVENTION AND ANSWER IN INT...

Subject : MOTION TO INTERVENE AND ADMIT ATTACHED ANSWER-IN-INTERVENTION AND ANSWER IN INTERVENTION (to the Petition dated 2 November 2021) dated 22 November 2021 (Fr. Christian B. Buenafe et al. v. Ferdinand R. Marcos, Jr.) - SPA No. 21-156 (DC)

From: George Briones (motogoosi@yahoo.com)

To: clerkofthecommission@comelec.gov.ph

Cc: vdrodriguez@bongbongmarcos.com; motogoosi@yahoo.com; fgbolante@bongbongmarcos.com

Date: Monday, November 22, 2021, 04:50 PM GMT+8

22 November 2021

COMMISSION ON ELECTIONS

Palacio del Gobernador
General Luna Street
Intramuros, Manila 1002

Re : MOTION TO INTERVENE AND ADMIT ATTACHED ANSWER-IN-INTERVENTION AND ANSWER IN INTERVENTION (to the Petition dated 2 November 2021) dated 22 November 2021

(Fr. Christian B. Buenafe et al. v. Ferdinand R. Marcos, Jr.) - SPA No. 21-156 (DC)

Gentlemen :

For reference, attached please find the following documents in connection with the above-captioned matter :

1. *Motion To Intervene and Admit Attached Answer-In-Intervention and Answer in Intervention (to the Petition dated 2 November 2021) dated 22 November 2021;*
2. *Verification dated 22 November 2021;*
3. *Affidavit of Service by Registered Mail dated 22 November 2021;*
4. *Affidavit of Service by Electronic Mail dated 22 November 2021.*

Other party was furnished with copies of the *Motion To Intervene and Admit Attached Answer-In-Intervention and Answer in Intervention (to the Petition dated 2 November 2021)* by registered mail.


Kindly acknowledge receipt of this email.


Thank you and I look forward to your usual prompt action on this matter.


Kind regards,


Fritzie Mae G. Bolante


Suite 507, Xavierville Square Condominium
38 Xavierville Avenue, Loyola Heights
Quezon City 1108
fgbolante@bongbongmarcos.com
+63 906 722 7772

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1. Motion To Intervene and Admit Attached Answer-In-Intervention.pdf
1.4MB
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2. Answer in Intervention (to the Petition dated 2 November 2021) dated 22 November 2021.pdf
13.2MB
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3. Verification dated 22 November 2021.pdf
396.8kB
- 

4. Affidavit of Service by Registered Mail dated 22 November 2021.pdf
193.7kB
- 

5. Affidavit of Service by Electronic Mail dated 22 November 2021.pdf
170.3kB