The Court may have therefore ingeniously, yet fallaciously, argued against Jimenez's case but in the face of subsequent events, the Court had successfully vindicated itself. Notwithstanding this, it bears emphasis that while *Purganan* was a case of first impression as regards the novel issue of a potential extraditee's rights pending extradition case, such decision does not establish a sweeping and precedent-setting rule in all extradition proceedings, clashes between a treaty and the Constitution, and conflicts between the individual's rights and pursuit of governmental interests.

Extradition, by and large, is a matter of factual circumstance and political consideration. As such, *Purganan* is distinctly the law in Jimenez's case only. While Jimenez might have thus left his mark, it would not be so much on Philippine jurisprudence but on domestic politics.

attention of this Court that respondent (Muñoz in this case) appears to be affluent and possesses of sufficient resources to facilitate an escape from jurisdiction.

Id. at 553.

The Three-Term Limit Rule in Review and the Confusion between Term and Tenure

Clarence Rommel C. Nanquil[*]

I. INTRODUCTION

Ideas and opinions are not spontaneously "born" in each individual brain: they have had a center of formation, of irradiation, of dissemination, of persuasion — a group of men, or a single individual even, which has developed them in the political form of existing reality.

- Antonio Gramsci[1]

* '05 J.D., cand., Ateneo de Manila University School of Law. Editor, *Ateneo Law Journal.*

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1. ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 192-93 (Quintin Hoare and Geoffrey Nowell Smith eds. and trans., 1971).

The Constitution provides that the Philippines is a democratic and republican state; sovereignty resides in the people and all government authority emanates from them.[2] A democratic and republican state does not mean rule of the people. Rather, it connotes supremacy of the people – that all powers of the State reside in the people and in turn, people delegate these powers to a selected few to run the government. This is the doctrine of republicanism or representative democracy as contrasted from pure democracy or even anarchy. As Justice Cruz aptly puts it:

> A republic is a representative government, a government run by the people and for the people. It is not pure democracy where the people govern themselves directly. The essence of republicanism is representation and renovation, the selection by the citizenry of a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained at the option of their principal.[3]

The idea behind this framework is to allow the people to decide what they deem to be most beneficial to them. They have the choice in how the State should be run. The purpose of a republican government, needless to state, is the promotion of the common welfare according to the will of the people themselves.[4] As the maxim goes, it is a government of the people, by the people, and for the people. For this reason, public officers are said to be servants of the people and not their rulers. Thus, it is provided in the Constitution that public office is a public trust.[5]

A public office is a public agency created in the interest and for the benefit of the people; through this, an incumbent of a public office is vested with certain powers and charged with certain duties pertinent to sovereignty, and the powers delegated are held in trust for the people and to be exercised in behalf of the government or of all citizens who may need the intervention of the officer.[6] A public office is not a contract; therefore, an appointment or election to a public office does not establish a contractual relationship between the person appointed or elected and the public.[7] Public office is to be conceived as a responsibility and not a right.[8]

2. PHIL. CONST. art. II, § 1.

3. ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 49 (1991 ed.).

4. *Id.*

5. PHIL. CONST. art. XI, § 1. The provision states, "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."

6. 63A AM. JUR. 2d *Public Officers and Employees* § 7 (1989).

7. *Id.*

8. 63A AM. JUR. 2d *Public Officers and Employees* § 6 (1989).

No man in this country is so high that he is above the law. No officer of the law may set the law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it.[9] No one is indispensable in public office. It is up to the people to decide whether or not to choose, retain or reject certain individuals aspiring for public office, through the election process.

For this reason, the right to vote and be elected to a public office are said to be among the more important political rights. The manner of enjoying political and civil liberties hinges upon these rights. Thus, the need to safeguard these sacred rights from corruption and abuse is essential for the promotion of an orderly state. These safeguards are now enshrined in the Constitution, the most important of which is the protection against the prolonged stay in public office.

II. THE THREE-TERM RULE

The Marcos dictatorship was an eye-opener, not only for the Filipino people, but for all ardent constitutionalists. The experience of an iron-man rule and its correlative abuse of power made it an imperative to curb the perils of extended tenure in public office. The temptation to corrupt power lies if a public official's right to hold an office has no limits. Power that knows no boundaries is power doomed to go astray. As the famous line goes, absolute power corrupts absolutely. Thus, the concept of term limits is the philosophical scaffold viewed by the framers of the 1987 Constitution that will prevent the rise of another strongman. It is the bedrock that supports current concepts in Philippine Political Law.

Under the Constitution, it is a declared State policy to grant equal access to public service and to prohibit monopolization of power.[10] The thrust of this provision is to impose an obligation upon the State to guarantee equal access to public office,[11] the purpose of which is to infuse new blood into the public service and infuse dynamism in government. The prolonged possession of public office is an antithesis to the declared policy of the State to prohibit political dynasties, which monopolizes and perpetuates power.[12] Thus, safeguards must be established to avoid monopoly of political power. However, it is important to remember that *the prevention of the establishment of*

9. RUPERTO G. MARTIN, LAW AND JURISPRUDENCE ON THE FREEDOM CONSTITUTION OF THE PHILIPPINES 90 (1986).

10. PHIL. CONST. art. II, § 26. The provision states, "The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law."

11. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 92 (1996 ed.).

12. *Id.*

political dynasties is not the only policy embodied in the constitutional provision in question. The other policy is that of enhancing the freedom of choice of the people.[13]

The local government is one sector of the political institution that could easily succumb to political monopoly. There is a need to limit a local elective official's term of office.[14] Thus, the idea of limiting a local elective official's term of office to three consecutive terms is now found in the Constitution.[15]

An examination of the deliberations of the framers of the Constitution reveals that the philosophy behind limiting it to three consecutive terms is to ensure dynamism in the local government. As Commissioner Garcia stated that, there are four reasons why local elective officials are barred from pursuing further election after three terms or a total of nine years. These are:

1. Prevent monopoly of political power – *Prolonged stay in public office* can lead to the creation of entrenched *preserves of political dynasties.*
2. Broaden the choice of the people – There is a *need* to *create* structures *that will enable more aspirants to offer to serve and to provide the people a broader choice* so that more and more people can be enlisted to the cause of public service. It should not be limited only to those who may have an advantage due to their position.
3. No one is indispensable in running the affairs of the country - After nearly a decade of occupying the same public office, the public official should try to encourage a more team-oriented consensual approach to governance favored by a proposal that will limit public servants to occupy the same office for three terms.
4. Create a reserve of statesmen both in the national and local levels. - *Turnovers in public office after nine years will ensure that new ideas and new approaches will be welcome. Public office will no longer be a preserve of conservatism and tradition.* The concept of public service, if political dynasty symbolized by prolonged stay in particular public offices is barred will have fuller meaning. It will not be limited only to those who directly hold public office, but also to consultative bodies organized by the people, among whom could be counted those who have served in public office with accomplishment and distinction, for public service must no longer be limited only to public office.[16]

However, even if it is settled that there is indeed a necessity to limit the term of office to three consecutive terms, there is a divergence of ideas as to how the term limit rule should be applied. During the deliberations of the Constitutional Commission, two schools of thought emerged. The first

13. Borja v. COMELEC, 295 SCRA 157, 162 (1998) (emphasis supplied).
14. The concept of term of office will be explained in later discussions.
15. PHIL. CONST. art. X, § 8.
16. 2 Record of the Constitutional Commission 236 (1986) [hereinafter 2 Record].

school of thought contends that a local elective official will no longer be allowed to run after a service of three consecutive terms, or a service of nine years. This argument preaches a *perpetual bar* after a service of three consecutive terms such that after service of three terms, even if not consecutively, *local elective officials will be barred for life from running for the same position again.*[17] On the other hand, the other school of thought differs, contending that *the three-term limit rule should never be a lifetime ban on local elective officials.* This preaches a *temporary bar* after a service of three consecutive terms. The three-term limit rule should never be applied to bar a local elective official for life. What is prohibited is a fourth consecutive term. He may run again for the same position and hold it again for a maximum of three consecutive terms after a rest period. After which, he is once again required to rest for the next election or if he desires, run for another elective position.[18] What is prohibited is serving for more than three *consecutive* terms.

In the end, the proponents of the temporary bar principle won. Local elective officials are eligible to run again after a required rest period since the Constitution merely prohibits a fourth consecutive term. Even if elected for a fourth term, this will not be illegal for as long as such term is not immediately succeeding the three consecutive terms.

In voting on the term limit of local officials, except barangay officials, the scheme allowing two re-elections received an absolute majority of 30 votes.[19] This was not among the Committee's proposals but then Commissioner Hilario Davide (now the incumbent Chief Justice) proposed it as an amendment.[20] It was readily accepted without much discussion and was formally approved.[21] This can now be found in the Constitution which states that:

> 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.[22]

17. *Id.* at 239.
18. *Id.* at 237-40.
19. JOAQUIN G. BERNAS, S.J., INTENT OF THE 1986 CONSTITUTION AUTHORS 335 (1995) [hereinafter BERNAS INTENT].
20. 3 Record of the Constitutional Commission 406-08 (1986).
21. BERNAS INTENT, *supra* note 19, at 699.
22. PHIL. CONST. art. X, § 8 (emphasis supplied).

Moreover, this rule is likewise adopted in the Local Government Code of 1991, which states that:

> Sec. 43. *Term of Office.* – (a) The *term of office* of all elective officials 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, except that of elective barangay officials and members of the sangguniang kabataan: Provided, That all local officials first elected during the local elections immediately following the ratification of the 1987 Constitution shall serve until noon of June 30, 1992.
>
> (b) *No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation* of the office for any length of time *shall not be considered as an interruption* in the continuity of service for the full term for which the elective official was elected.[23]

Thus, as can be seen from the above provisions, there are three principles governing the three-term limit rule. These are as follows:

1. The term of office of local elective officials is for three years;
2. No local elective official shall serve for more than three consecutive terms; and
3. Voluntary renunciation of the office for any period during the service of the term shall not be considered as an interruption in the continuity of service for the full term of that local elective official.

Simply put, what the three-term limit rule means is that the term of office of local elective officials would be for three years. They are eligible for re-election; however, their right to hold office is limited to three consecutive terms. They are prohibited from serving for four consecutive terms. Thereafter the third consecutive term, local elective officials are required to rest during their would-be fourth term, or run for other elective positions. Moreover, a voluntary renunciation of the office for any length of time during the service of the term shall not be considered as an interruption in the continuity of his service for the term he was elected. This means that if a local elective official is already serving his third consecutive term, his resignation from office will not entitle him to run again for another consecutive term.[24] Partial service, if through the officer's volition, will not be considered as interruption for the service of a full term.

23. The Local Government Code of the Philippines [LOCAL GOVERNMENT CODE] § 43 (emphasis supplied).
24. PHIL. CONST. art. X, § 8.

All these are part of the three-term limit rule that applies to both local elective officials and members of the House of Representatives.[25]

From the foregoing, it appears that the application of the three-term limit rule is clear-cut. Once elected, local elective officials are entitled to a term of office of three years. They are entitled to re-election but cannot serve for more than three consecutive terms.

However, deeper analysis and application of the rule to certain peculiar situations would reveal otherwise. The truth is, however, that not all local elective officials assume their respective offices through regular elections alone. Some assume their offices through the principle of succession. Moreover, some are elected into office, not through the regular election, but rather through an innovative principle in the Local Government Code – recall elections.[26] The question that is now asked is whether or not accession into the office, other than through the regular elections, should be counted as one term in applying the three-term limit rule.

Basically, there are two issues that have to be solved in order to comprehend the meaning of the three-term limit rule. First, when would service for a term be counted as one term under the three-term limit rule? And second, after serving three consecutive terms, how long should the public official "hibernate" before he may validly run again for the same office?

Let us take the following three scenarios to illustrate the problem:

1. Scenario 1: The duly elected governor died and the vice-governor succeeded into office by operation of law and served the unexpired term of the elected, but now deceased, governor. Will service for the unexpired term of the deceased governor be counted as one term in counting three consecutive terms?
2. Scenario 2: Mayor A was elected into office through the regular elections. However, midway in his term, he was removed from his office via recall election and Mayor B

25. PHIL. CONST. art. VI, § 7. The provision states:

> The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.
>
> *No member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected* (emphasis supplied).

26. The principles of Succession and Recall Elections will be discussed more extensively later.

succeeded in serving Mayor A's unexpired term. He was later on elected for two more consecutive terms. Is Mayor B barred by the three-term limit rule? Will the recall term be considered as one term for the purpose of the three-term limit rule?

3. Scenario 3: As an opposite of the above scenario, Mayor A had already served three consecutive terms. He did not run for re-election immediately after the third consecutive term. Mayor B won in the elections. Midway through Mayor B's term of office, recall proceedings were instituted against him. Mayor A ran as mayor during the recall elections and won the same. Is his election valid?

The jurisprudential response to these problems, however, leaves a lot to be desired. Recent doctrines on the three term limit rule raises the doctrine to a very complex level, whereas, the rule ought to be simple. Reviewing the decisions of the Supreme Court regarding the three-term limit rule will reflect this sentiment.

III. The Three-Term Limit Rule Cases

A. Borja v. COMELEC *and* Lonzanida v. COMELEC*: Term is Not Equivalent to Tenure*

The first case that questioned the application of the three-term limit rule was the landmark case of *Borja v. COMELEC.*[27] The issue was whether a vice-mayor who became the mayor by operation of law and served the remainder of the term should be considered to have served a term in that office for the purpose of the three-term limit under the 1987 Constitution.

The facts of the case show that Jose Capco, the elected vice-mayor of Pateros became the mayor, by operation of law, when the incumbent mayor died. He served the unexpired term of the deceased mayor. He was twice elected, thereafter, as mayor (*see* Table 1).

Near the end of his second term, he once again filed a certificate of candidacy for mayor of Pateros for the upcoming May 1998 elections. However, his opponent Benjamin Borja, Jr. sought to disqualify him on the ground that he had already served as mayor for three consecutive terms, the third term of which was to end on 30 June 1998. Thus, he would be ineligible to serve for another term.

27. Borja v. COMELEC, 295 SCRA 157 (1998).

TABLE 1

Borja v. COMELEC

YEARS	MANNER OF ASSUMPTION
1989 – 1992	• Succeeded as mayor by operation of law
1992 - 1995	• Elected as mayor during the regular elections
1995 - 1998	• Elected as mayor during the regular elections

In deciding the issue presented, the Supreme Court analyzed Article X, Sec. 8 of the Constitution,[28] in relation to Sec. 43(b) of the Local Government Code.[29] The Court looked at the deliberations of the Constitutional Commission in order to determine the intent of the framers of the Constitution. It was noted that two ideas were considered during the deliberatons. The first was the idea of *service of term*, which was concerned with the accumulation of power as a result of prolonged stay in office. The second was the idea of *election*, which was concerned about the right of the people to freely choose those whom they wish to govern them.[30]

Moreover, in the analysis of the term of office of a local government official compared with term of office of members of the House of Representatives, the Court noted that there exists a huge discrepancy. It was contended that under the Constitution, if one was elected a Representative to serve the unexpired term of another, that unexpired term, no matter how short, will be counted as one term for the purpose of computing the number of terms. However, such is not the case in local elective officials. Thus, there is a difference between the case of a vice-mayor and that of a member of the House of Representatives who succeeds another who dies, resigns, becomes incapacitated, or is removed from office. *The vice-mayor succeeds as mayor by*

28. 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.

29. 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.

30. *Borja*, 295 SCRA at 162.

operation of law while the Representative is elected to fill the vacancy. Thus, such Representative serves a term for which he was elected.[31]

For this reason, the Supreme Court ruled in favor of respondent Capco, stating that he was not barred from running for the same position under the three-term limit rule. He was thus eligible to run for another term.

The Court stated that the term limit for local elective officials should mean the *right to be elected* as well as the *right to serve in the same elective position.* The mere fact that an individual has *served* three consecutive terms in an elective local office is not enough. The said official should likewise be *elected* to the same position for the same number of times before the three-term limit bar can apply.[32]

Thus, *Borja* teaches that in order for service of a term of office to be counted as one term under the three-term limit rule, two requisites must be present: (1) the officer concerned should be *duly elected* for three consecutive terms in the same local government position and, (2) the officer concerned has *fully served* three consecutive terms. If one of the two requisites is absent, the service of that term will not be counted as one term in applying the three-term limit rule.

However, this gives rise to the following questions: When would service of a term be considered full service in contemplation of the law? Would the said service of the term, whether it be legitimate or illegitimate, be counted as one term under the three-term limit rule? These questions were answered in the case of *Lonzanida v. COMELEC.*[33]

The case of *Lonzanida* was a novel one since the *Borja* doctrine was applied, not in a situation of succession to office, but rather, in removal from office. The issue in *Lonzanida* was whether or not an illegal assumption to office and the service thereof is considered a single term in contemplation of law.

The facts of the case show that Romeo Lonzanida was elected and has served for two consecutive terms as municipal mayor of San Antonio, Zambales before the May 1995 elections. He ran for mayor during the May 1995 elections, won and later discharged the duties of the said office.

However, his opponent Juan Alvez contested his proclamation and filed an election protest with the Regional Trial Court, which ruled that there was a failure of elections and further ruled that the office of the mayor be declared vacant.

31. *Id.* at 166-67 (emphasis supplied).

32. *Id* (emphasis supplied).

33. 311 SCRA 602, 605 (1999).

Both parties appealed the RTC decision with the COMELEC. The Commission, upon re-appreciation of the contested ballots, declared that Alvez won during the 1995 mayoralty elections. It ordered Lonzanida to vacate the office of the mayor. Lonzanida acceded to the order and Alvez served as mayor for the remainder of the term.

During the May 1998 elections, Lonzanida once again filed his certificate of candidacy for the position of mayor. However, his opponent Eufemio Muli filed for a petition to disqualify Lonzanida on the ground that the latter had already served three consecutive terms (see Table 2).

TABLE 2

Lonzanida v. COMELEC

YEARS	MANNER OF ASSUMPTION
1988 – 1992	• Elected as mayor during the regular elections
1992 – 1995	• Elected as mayor during the regular elections
1995 – 1998	• Occupied the office but was later unseated

After Lonzanida was proclaimed as the winner, the COMELEC First Division issued a resolution disqualifying him, stating that he had already served three consecutive terms. He was thus barred from running for a fourth consecutive term for the same position. Lonzanida's assumption in May 1995, even though he was removed from office before the expiration of the term, should be counted as service of one full term in applying the three-term bar rule. This decision was later affirmed by a COMELEC *en banc* resolution.

Lonzanida challenged the COMELEC resolution claiming that he was qualified to run because he was duly elected mayor for only two consecutive terms. He contended that his assumption in 1995 cannot be counted as one term in applying the three-term limit rule because he was not the duly elected mayor at that time. His void assumption into office in 1995 cannot be considered as a term. Moreover, Lonzanida contended that he could not be considered to have served one-full term from 1995 to 1998 because he was unseated before the expiration of the term. The fact that he had served a greater part of the term should not be enough to consider it as service for a full term.

The Supreme Court ruled that Lonzanida's arguments were meritorious. Applying the doctrinal pronouncements in *Borja*, Lonzanida could not be

considered as having served for three consecutive terms as mayor of San Antonio, Zambales. As stated by the Supreme Court:

> The two requisites for the application of the three-term rule are absent. *First*, the petitioner cannot be considered as having been duly elected to the post in the May 1995 elections, and second, the petitioner did not fully serve the 1995-1998 mayoral term by reason of involuntary relinquishment of office. After a re-appreciation and revision of the contested ballots the COMELEC itself declared by final judgment that petitioner Lonzanida lost in the May 1995 mayoral elections ad his previous proclamation as winner was declared null and void. His assumption of office as mayor cannot be deemed to have been by reason of a valid election but by reason of a void proclamation. It has been repeatedly held by this court that a proclamation subsequently declared void is no proclamation at all and while a proclaimed candidate may assume office on the strength of the proclamation of the Board of Canvassers he is only a presumptive winner who assumes office subject to the final outcome of the election protest. Petitioner Lonzanida did not serve a term as mayor of San Antonio, Zambales from May 1995 to March 1998 because he was not duly elected to the post; he merely assumed office as presumptive winner, which presumption was later overturned by the COMELEC when it decided with finality that Lonzanida lost in the May 1995 mayoral elections.
>
> *Second*, the petitioner cannot be deemed to have served the May 1995 to 1998 term because he was ordered to vacate his post before the expiration of the term. The respondents' contention that the petitioner should be deemed to have served the greater portion of that term has no legal basis to support it; it disregards the second requisite for the application of the disqualification, i.e., that he has fully served three consecutive terms... The clear intent of the framers of the constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term is evident... Voluntary renunciation of a term does not cancel the renounced term in the computation of the three term limit; conversely, involuntary severance from office for any length of time short of a full term provided by law amounts to an interruption of continuity of service. The petitioner vacated his post a few months before the next mayoral elections, not by voluntary renunciation but in compliance with the legal process of a writ of execution issued by the COMELEC to that effect. Such involuntary severance from office is an interruption of continuity of service and thus, the petitioner did not fully serve the 1995-1998 mayoral term.[34]

Because he was never the duly elected mayor and did not hold office for a full term, Lonzanida's assumption from May 1995 to March 1998 was not counted as one term under the three-term limit rule. This prevailed despite

34. *Id.* at 611-13 (citations omitted).

the fact that his tenure lasted for all but the last three months of the term of office.

From the foregoing, it can be seen that the twin requirements of *election for three consecutive terms for the same post* and *full service* of the same, which was enunciated in *Borja*, must be present before it can be considered as service for one term. If any one of requirements is absent, the public officer cannot be considered as having served for a full term.

Thus, *Borja* teaches us that *term is not equivalent to tenure.* The mere fact that a local elective official served the remainder of the term by operation of law does not mean term in applying the three-term limit rule. *The actual service of the unexpired term is tenure and not term.* The two are unlike in their technical meanings.

Inversely, *tenure is not equivalent to a term*, as one can deduce in *Lonzanida.* As stated in that case, a void assumption of office will never be considered since it is required that the local elective official must be duly elected. Even if Lonzanida had practically served the whole of the term of office, the fact that he was not the lawfully elected mayor already removes him within the realm of the term limit rule. A void assumption is no assumption at all. *Lonzanida* settles the issue as to whether a void assumption and the consequential service thereof will be considered as service for a full term with a resounding no.

However, in spite of *Borja* and *Lonzanida*, there still appears to be a gap in the melding of law and jurisprudential doctrines. The question that still lingers is: *What is the precise meaning of duly elected to the office in the context of the three-term limit rule*? Specifically, *if a local official assumes into office through a recall election, will his assumption be considered as one term*?

The Supreme Court, in the Judicial Year of 2002, decided three cases on the above stated issues. The first of which was the landmark case of *Adormeo v. COMELEC.*[35]

B. Adormeo v. COMELEC: *Recall Term is Not One Term*

The case of Adormeo is unique because it applied the *Borja* requisites in construing the consequence of a recall election. The Court was confronted with the issue of whether an assumption to office through a recall election should be considered as one term in applying the three-term limit rule.

The facts of the case show that Ramon Talaga, Jr. was elected mayor of Lucena City in the May 1992 elections. He fully served that term. In the May 1995 elections, he was re-elected and fully served his term of office. However, in the May 1998 elections, his would-be third term as mayor, he

35. G.R. No. 147927, Feb. 4, 2002.

lost to his opponent, Bernard Tagarao. Tagarao assumed office as mayor in June 1998, a term that would expire on June 2001. However, Tagarao faced recall proceedings and in the recall elections of May 2000, Talaga won and served Tagarao's unexpired term (*see* Table 3).

For the May 2001 elections, Talaga filed his certificate of candidacy, once again, for the office of mayor. He and Raymundo Adormeo were the only candidates.

Adormeo believed that Talaga already served as mayor for three consecutive terms, falling within the ambit of the three-term limit rule. He filed a petition with the Office of the Provincial Election Supervisor of Lucena City to Deny Due Course to or Cancel Certificate of Candidacy and/or Disqualification of Talaga.

TABLE 3

Adormeo v. COMELEC

YEARS	MANNER OF ASSUMPTION
1992 – 1995	• Elected as mayor during the regular election
1995 – 1998	• Elected as mayor during the regular elections
2000 – 2001	• Elected as mayor during the *recall* elections

On the other hand, Talaga contended that he was not elected as mayor for three consecutive terms but only for two consecutive terms because of his defeat in the 1998 election. This defeat interrupted the consecutiveness of his terms as mayor. Moreover, his recall term, from May 2000 until June 2001, or a period of 13 months, was not a service of a full term as stated in the Constitution. Talaga relied on the Court's pronouncement in *Lonzanida* as authority.

The COMELEC First Division, ruled that private respondent Talaga was disqualified for the position of city mayor on the ground that he had already served three consecutive terms.

Talaga filed a motion for reconsideration reiterating that "three consecutive terms" means continuous service for nine years and that Tagarao's service from 1998 to 2000 prevented him from having three consecutive years of service. It should not be considered as a continuation of his mayorship. Furthermore, he contended that the recall election was not a regular election, but a separate special election aimed at removing incompetent local officials.

Adormeo opposed this contention stating that service for the unexpired term of office is considered as one term. Moreover, the Constitution speaks of "term" and not "tenure." Election to serve the unexpired term in the recall election should be considered as one full term, *i.e.*, from 30 June 1998 to 30 June 2001.

The COMELEC *en banc* ruled in favor of respondent Talaga and reversed the First Division's ruling. It held that Talaga was not elected for three consecutive terms because he did not win in the May 1998 elections. His victory in the recall elections was not considered a term of office and is not included in the 3-term disqualification rule. Thus, he did not fully serve three consecutive terms since his loss in the May 1998 elections should be considered as an interruption in the continuity of his service as Mayor of Lucena City.

On appeal to the Supreme Court, the validity of Talaga's assumption to office was upheld. Citing *Borja* and *Lonzanida* as bases, the Court maintained that private Talaga's term of office does not fall within the realm of the three-term limit rule. As stated by the Supreme Court:

> Accordingly, COMELEC's ruling that private respondent was not elected for three (3) consecutive terms should be upheld. For nearly two years he was a private citizen. The continuity of his mayorship was disrupted by his defeat in the 1998 elections.
>
> Patently untenable is petitioner's contention that COMELEC in allowing respondent Talaga, Jr. to run in the May 1998 election violates Article X, Section 8 of 1987 Constitution. To bolster his case, respondent adverts to the comment of Fr. Joaquin Bernas, a Constitutional Commission member, stating that in interpreting said provision that "if one is elected representative to serve the unexpired term of another, that unexpired, no matter how short, will be considered one term for the purpose of computing the number of successive terms allowed."
>
> As pointed out by the COMELEC *en banc*, Fr. Bernas' comment is pertinent only to members of the House of Representatives. Unlike local government officials, there is no recall election provided for members of Congress.
>
> Neither can respondent's victory in the recall election be deemed a violation of Section 8, Article X of the Constitution as "voluntary renunciation" for clearly it is not. In *Lonzanida vs. COMELEC*, we said:
>
> > The second sentence of the constitutional provision under scrutiny states, "Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which he was elected." The clear intent of the framers of the constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term is evident in this

> provision. Voluntary renunciation of a term does not cancel the renounced term in the computation of the three term limit; conversely, involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service. The petitioner vacated his post a few months before the next mayoral elections, not by voluntary renunciation but in compliance with the legal process of writ of execution issued by the COMELEC to that effect. Such involuntary severance from office is an interruption of continuity of service and thus, the petitioner did not fully serve the 1995-1998 mayoral term.[36]

Simply put, the Supreme Court is saying that the recall term is not one term in the context of the three-term limit rule because essentially, the recall term in itself amounts to a broken term. It is only the unexpired portion of the original term. Thus, it can never be considered as one-full term. The time when Talaga lost in the 1998 mayoralty elections until the time he assumed office through the recall election is an interruption of service. Since it is required, in applying the three-term limit rule, that the local elective official has *fully served* the term of office, this involuntary interruption is considered as a break in the consecutiveness of the terms. Thus, in Talaga's case, it only amounted to service for two consecutive terms since the lull brought by the interruption prevented the service of a third consecutive term.

Finally, the Supreme Court debunked the argument of applying the special election rule peculiar to members of Congress and refused to apply the same to recall election proceedings. The rule states "half-term is a full-term" applies only to members of the House of Representatives. Unlike local government officials, there is no recall election provided for members of Congress. A special election is a different species as compared with recall election.

Though this case appears to have settled the issue as to the consequence of a recall term in relation to the three-term limit rule, the next case of *Socrates v. COMELEC* [37] appears to have overturned established jurisprudence. This case, which was decided by the Supreme Court *en banc*, states that *a recall term is counted as one term in applying the three-term limit rule.* The Court added a new twist to jurisprudence, but. as will be seen later, will produce erroneous consequences.

36. *Adormeo*, G.R. No. 147927 at 5-8 (citations omitted).

37. G.R. No. 154512, Nov. 12, 2002.

C. Socrates v. COMELEC: *Disqualification is "Involuntary Severance"*

The facts of the case show that on 2 July 2002, members of the barangay officials of Puerto Princesa convened themselves into a Preparatory Recall Assembly (PRA) to initiate the recall of Victorino Dennis M. Socrates. Socrates assumed office as Puerto Princesa's mayor only on 30 June 2001. The Preparatory Recall Assembly passed a recall resolution declaring loss of confidence in Socrates and called for his recall.

Socrates filed with the COMELEC a petition to nullify and deny due course to the Recall Resolution. However, the COMELEC *en banc* dismissed his petition and proceeded with the recall election.

On 23 August 2002, Edward M. Hagedorn filed his certificate of candidacy for mayor in the recall election. Because of this development, two petitions for disqualification were filed before the COMELEC, which sought to disqualify him from running in the recall election and for the cancellation of his certificate of candidacy.

The petitions were based on the argument that Hagedorn had been duly elected and had fully served three consecutive terms as mayor from 1992 until 2001. He cannot run as mayor during the recall election for he was disqualified from running for a fourth consecutive term.

The COMELEC First Division dismissed the petitions for lack of merit and declared that Hagedorn was qualified to run in the recall election. On 23 September 2002, the COMELEC *en banc* affirmed the First Division resolution.

A petition for *certiorari* was filed with the Supreme Court and sought for the issuance of a temporary restraining order to enjoin the proclamation of the winning candidate in the recall election. It was argued that the COMELEC gravely abused its discretion in allowing Hagedorn to run for mayor in the recall election despite the constitutional and statutory prohibitions against a fourth consecutive term for local elective officials. In the meantime, Hagedorn won during the recall elections. He filed motions to lift the restaining order and to allow him to assume office.

The principal issue in this case was whether or not Hagedorn was qualified to run during the recall election.

The Supreme Court, in deciding the issue presented, tried to extract the principles behind the three-term limit rule for local elective officials in order to come up with an appropriate response to the issue of the case.

> These constitutional and statutory provisions (three-term limit rule) have two parts. The first part provides that an elective local official cannot serve for more than three consecutive terms. The clear intent is that only ***consecutive terms*** count in determining the three-term limit rule. The second part states that voluntary renunciation of office for any length of

> time does not interrupt the continuity of service. The clear intent is that *involuntary severance* from office *for any length of time* interrupts continuity of service and prevents the service before and after the interruption from being joined together to form a continuous service or consecutive terms.
>
> After three consecutive terms, an elective local official cannot seek *immediate reelection* for a fourth term. The prohibited election refers to the next regular election for the same office following the end of the third consecutive term. Any *subsequent election*, like a recall election, is no longer covered by the prohibition for two reasons. First, a subsequent election like a recall election is no longer an immediate reelection after three consecutive terms. Second, the intervening period constitutes an involuntary interruption in the continuity of service.[38]

According to the Supreme Court, the principle behind the three-term limit rule is to prevent consecutiveness of the service of terms. The Court adds, as second premise, that if a local elective official has been involuntarily severed from his office, this severance from the office breaks the consecutiveness of the terms.

This second premise changes the whole picture completely. The said premise cannot be found anywhere, either in the Constitution or any statute. This is merely an inverse construction of the second part of Article X, Sec. 8 of the Constitution, which states that any voluntary renunciation of the office for any length of time shall not be considered as an interruption in the consecutiveness of the service the terms.

Because of this reasoning, the Court necessarily had to rule in favor of Hagedorn. It said that the time when Hagedorn did not run[39] until the time of his ascension to the office, via the recall election, in itself is an interruption of consecutiveness of the terms. The Constitution merely prohibits an immediate re-election after three consecutive terms. Because of the break, the recall election cannot be considered an immediate re-election after three consecutive terms. Thus, he is no longer within the ambit of the constitutional prohibition. He is therefore qualified to run in the recall election. To quote the Supreme Court:

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

38. *Socrates*, G.R. No. 154512 at 5 (emphasis supplied).

39. He ran for Governor instead. However, he lost in the election.

> Neither does the Constitution prohibit one barred from seeking immediate reelection to run in any other subsequent election involving the same term of office. What the Constitution prohibits is a *consecutive* fourth term. The debates in the Constitutional Commission evidently show that the prohibited election referred to by the framers of the Constitution is the *immediate reelection* after the third term, not any other subsequent election.
>
> If the prohibition on elective local officials is applied to any election within the three-year full term following the three-term limit, then Senators should also be prohibited from running in any election within the six-year full term following their two-term limit. The constitutional provision on the term limit of Senators is worded exactly like the term limit of elective local officials.[40]

Because of this pronouncement, the Supreme Court thus ruled that any interruption in the service would be sufficient as a rest period. May it be for a full three years to as short as only one day, for as long as there is an intervening period from the end of the third consecutive term until the time the local elective official begins the service of the new term, the local elective official would no longer be barred from occupying the position because of the three-term limit rule.

In the case of Hagedorn, his 15-month stint as a private citizen was sufficient. This lull qualified him to run during the recall election since the service of the terms was no longer consecutive. Moreover, the Supreme Court said that Socrates's tenure cannot be stitched with Hagedorn's recall term. Citing *Adormeo* as basis, the Supreme Court reasoned as follows:

> In *Adormeo*, the recall term of Talaga began only from the date he assumed office after winning the recall election. Talaga's recall term did not retroact to include the tenure in office of his predecessor. If Talaga's recall term was made to so retroact, then he would have been disqualified to run in the 2001 elections because he would already have served three consecutive terms prior to the 2001 elections. One who wins and serves a recall term does not serve the full term of his predecessor but only the unexpired term. The period of time prior to the recall term, when another elective official holds office, constitutes an interruption in continuity of service. *Clearly, Adormeo established the rule that the winner in the recall election cannot be charged or credited with the full term of three years for purposes of counting the consecutiveness of an elective official's terms in office.*
>
> In the same manner, Hagedorn's recall term does not retroact to include the tenure in office of Socrates. Hagedorn can only be disqualified to run in the September 24, 2002 recall election if the recall term is made to retroact to June 30, 2001, for only then can the recall term constitute a fourth consecutive term. But to consider Hagedorn's recall term as a full term of three years, retroacting to June 30, 2001, despite the fact that he won his recall term only last September 24, 2002, is to ignore reality. This

40. *Socrates*, G.R. No. 154512 at 16-17 (emphasis supplied).

> Court cannot declare as consecutive or successive terms of office which historically and factually are not.[41]

The necessary consequence of this pronouncement is that the recall term itself will become a separate term. Otherwise, if the Court will maintain that a recall term is intended merely to serve the unexpired term of the predecessor, this recall term will be stitched together with the predecessor's term to form one single term. If this happens, Hagedorn should not have been able to run in the recall election since this would still be within the sphere of the fourth consecutive term, precise the evil sought to be avoided by the three-term limit rule. In order to accommodate their earlier premises and the conclusion they yielded, the Court had to make a declaration that the recall term itself is one term under the three-term limit rule. Thus, the Supreme Court closed the door against any argument that would hinder Hagedorn's assumption to office via the recall election. As clincher, it said:

> A necessary consequence of the interruption of continuity of service is the start of a new term following the interruption. An official elected in recall election serves the unexpired term of the recalled official. *This unexpired term is in itself one term for purposes of counting the three-term limit... Otherwise, an elective local official who serves a recall term can serve for more than nine consecutive years comprising of the recall term plus the regular three full terms. A local official who serves a recall term should know that the recall term is in itself one term although less than three years.* This is the inherent limit he takes by running and winning in the recall election.[42]

This audacious declaration is contrary to the pronouncement in *Adormeo* that a recall term is not one term with respect to the three-term limit rule. It is but merely the unexpired portion of the original term. It is not considered as one-full term. *Socrates* abandoned a pronouncement laid down as recently as only nine months before the case was decided.

Because of *Socrates*, the Supreme Court has, impliedly, overturned established jurisprudence. Impliedly, because the case does not expressly state that it was overturning the ruling in *Adormeo*, which was decided just a few month before.

In fact, the Supreme Court even used *Adormeo* as basis even if the two rulings are completely in contrast with one another. In *Adormeo*, it was held that the recall term is not one term in applying the three-term limit rule because it is a broken term. The "half-term is a full-term" doctrine in congressional special elections is not the same in nature as that of recall election in the local government. In this case, the Court held that a recall term is a full term because of the break in the continuation of service, *i.e.*,

41. *Id.* at 21-22.

42. *Id.* at 23-24.

the time when he last served until the time he occupied the office through the backdoor of the recall.

Thus, it is evident that the doctrines in *Adormeo* and *Socrates* are completely irreconcilable with one another. The Court's attempt to settle the two is simply sophistry. Since *Socrates* is the latest between the two cases, and since the same was decided *en banc*, *Socrates* has impliedly reversed *Adormeo*. It is now the leading case. It can only be reversed by another *en banc* decision since the Constitution provides that no doctrine or principle of law laid down by the Supreme Court in a decision rendered, either by division or *en banc*, can be modified or reversed except by a case decided by the Court sitting *en banc*.[43]

Because of principle of precedence, the Supreme Court ought to apply the doctrines laid down in Socrates to cases to be decided subsequent to it. However, in the case of *Mendoza and Ibarra v. COMELEC*,[44] decided in December 17 of the same year, just several weeks after Socrates was promulgated, the Supreme Court *en banc* issued a resolution that did not apply the Socrates doctrines.

D. Mendoza and Ibarra v. COMELEC: Resolution of a Confused Court

The Supreme Court in this case did not decide on the merits. Instead, it was merely a resolution upholding the legality of the assumption of a local elective official to the position of governor who was elected twice after his assumption to office in recall election. Nonetheless, the separate opinions of the Justices were attached to form part of the resolution. From these opinions, one can see that the resolution rests on shaky grounds. It was a confused resolution from an obviously confused court.[45]

The facts were nearly the same as that of *Socrates*. The only difference was that the recall term was served at the beginning and not at the end. Yet, the doctrines in *Socrates* were not applied.

In this case, Leonardo B. Roman was the Governor of Bataan province for several terms (*see* Table 4). His tenure as Governor began when he was appointed as the OIC Governor in 1986 by then President Corazon Aquino. He served until 1988. During the 1988 elections, he won and served as Governor until 1992. His next tenure came when he won in the recall election of then Governor Enrique Garcia in 1993, and thereafter, served Garcia's unexpired term, from 28 June 1994 up to 30 June 1995. Later, he

43. PHIL. CONST. art. VIII, § 4 (2).

44. G.R. 149736, Dec. 17, 2002.

45. The Supreme Court, in this resolution, voted eight against seven in dismissing of the petition for *certiorari*.

was elected during the May 1995 elections. His term of office expired on 11 May 1998. During the May 1998 elections, he was once again re-elected and served until 2001. Finally, during the May 2001 regular elections, he ran for re-election unopposed and won by a landslide, receiving 183,730 votes.

TABLE 4

Mendoza & Ibarra v. COMELEC

YEARS	MANNER OF ASSUMPTION
1986 – 1988	• Appointed as OIC Governor by the President
1988 – 1992	• Elected as governor during the regular elections
1994 - 1995	• Elected as governor during the *recall* elections
1995 - 1998	• Elected as governor during the regular elections
1998 - 2001	• Elected as governor during the regular elections
2001 - 2004	• Elected as governor; he is currently the incumbent

However, Melanio Mendoza and Mario Ibarra, residents and registered voters of Bataan, filed with the COMELEC *en banc* a petition for *quo warranto*, and alleged that Roman had already served as governor for three consecutive terms counted from his assumption into office through the 1993 recall election. Thus, Mendoza and Ibarra contended that under the three-term limit rule, Roman was constitutionally barred from seeking a re-election in 2001. Mendoza and Ibarra asked that Roman's proclamation as the elected governor of Bataan during the 2001 elections be declared void.

In a resolution, the COMELEC dismissed the petition for *quo warranto*. The Commission rejected the theory that Roman's 2001 assumption violated the three-term limit rule because, as the COMELEC posits, Roman's recall term cannot be counted as a full term and should not be counted in applying the three-term limit. It was an interruption in the service of the full term of three years, which a local elective official should fully serve for purposes of counting the term limit. Because of the interruption, the reckoning point then was his 1995 to 1998 term since the 1995 elections was the first regular election from the interruption brought forth by the recall elections. For this reason, the first term of Roman was from 1995–1998, the second

consecutive term, from 1998–2001, and finally, the third term was to commence from June 2001 to June 2004.

Mendoza and Ibarra filed a petition for *certiorari* with the Supreme Court. For their part, they contended that Roman violated the three-term limit rule when he ran for reelection as governor in the 2001 elections, and prayed that his proclamation be set aside.

On the other hand, Roman contended that he was eligible to run as Bataan Governor in the May 2001 elections since he did not fully serve the 1992–1995 term. He served only the unexpired portion of Garcia's 1992 to 1995 term. He cited *Lonzanida* as basis for the legality of his assumption. Since the twin requisites of election and full service were not met, the recall term should not be counted as one term.

After due deliberation, the Supreme Court, voting eight to seven, submitted a resolution dismissing the petition for *certiorari*. The separate opinions of the Justices were attached as part of the resolution.

In his separate opinion, Justice Jose Vitug reiterated the *Borja* doctrine in order to determine whether the local elective official is barred because of the constitutional limit on three consecutive terms. He contended that the constitutional limit appears to be clear in its application. The law evidently contemplates a continuous full three-year term before the proscription can apply. As can be gleaned from the deliberations of the Constitutional Commission, the framers referred to a full nine years of service for each elective local government official in the application of the three-term limit rule. They foresaw a continuous and uninterrupted period of nine years. It is only when the incumbent voluntarily gives up the office that the interruption will still be considered a full service.

For this reason, Justice Vitug opined that a winner who replaced an incumbent elective local official in a recall election merely serves the unexpired term of office. This cannot be considered as a full three-year term. Moreover, an incumbent elective local official against whom a recall election was initiated but still won must be viewed as merely continuing his term of office and there was no break in counting the three consecutive terms. Thus, Justice Vitug stated:

> If involuntary severance from the service which results in the incumbent's being unable to finish his term of office because of his ouster through valid recall proceedings negates "one term" for purposes of applying the three-term limit, as so intimated in *Lonzanida*, it stands to reason that the balance of the term assumed by the newly elected local official in a recall election should not also be held to be one term in reckoning the three-term limit. In both situations, neither the elective local official who is unable to finish his term nor the elected local official who only assumes the balance of the term of the ousted local official following the recall election could be considered to have served a full three-year term set by the Constitution.

> This view is not inconsistent, but indeed in line, with the conclusion ultimately reached in *Socrates vs. Commission on Elections*, where the Court has considered Hagedorn, following his three full terms of nine years, still qualified to run in a recall election conducted about a year and a half after the most recent regular local elections. A recall election term then, not being a full three-year term, is not to be counted or used as a basis for disqualification whether it is held prior or subsequent to the nine-year full three-term limit.[46]

For this reason, Roman was merely serving his third consecutive term. Thus, his latest re-election was not prohibited under the Constitution.

On the other hand, Justice Vicente Mendoza reiterated the principle established in several cases upholding the *Borja* requisites. A survey of the cases, from *Borja* to *Adormeo*, reveal that in all these cases, the Supreme Court did not count the term during which succession happened or a recall election was held in applying the twin requisites to determine the barring effect of the three-term limit rule. However, in the *Socrates* case, Justice Mendoza noted that the Supreme Court appears to have overruled these precedents in ruling that a city mayor who was barred to run in the regular election because of the three-term limit rule was qualified to run in a recall election held after the commencement of the incumbent's term. This is due to an interruption in the service caused by the holding of the regular election.

Nonetheless, Justice Mendoza was quick to point out that even he had reached the same result as the majority in *Socrates*, he dissented because of his thesis that the local official was qualified to run in the recall election, not because of any interruption or break in the continuity of his service, but rather, the term for which he was elected was less than the prescribed three years. He maintains his view up to this case. Justice Mendoza said:

> Indeed, it is error to think that, because a regular election is held between the end of three terms and the term during which a recall election is held, there occurs thereby "an interruption in the continuity of the service for the full term for which [the official concerned] was elected" within the meaning of Art. X, § 8. But it is "the continuity of the service for the full term" — not "the continuity of a full term" — that is in question. We are talking here of "interruption in the continuity of service," which can only refer to service which is being rendered. For after service for three consecutive terms has been rendered there can be no more interruption of service. The local official concerned, who has served for three consecutive terms, can run in a recall election not because of any break in his service but because the term to which he is elected is less than three years.[47]

In the application of the three-term limit rule, the term during which succession took place or a recall election was held must not be counted,

46. *Mendoza*, G.R. No. 149736.

47. *Id.*

either before or after the three consecutive terms, not because of any interruption in the continuity of the service but because such term is for less than three years. It cannot be considered one full term. This reasoning was in line with his separate opinion in *Socrates*.

Hence, Roman's last re-election was valid because his first election in 1993 was the consequence of a recall election. It should never be considered in applying the three-term rule. Roman is currently serving only his third consecutive term as Bataan Governor.

Meanwhile, Justice Artemio Panganiban expressed the view that Roman was qualified since his last re-election was only his third consecutive term. It is not in dispute that if one assumed to the office through succession to serve the unexpired term of the predecessor, this service was not considered in counting the three-term limit rule. For this reason, the same should be applied to a recall term since it was merely service for the unexpired term. Otherwise, it would be maintaining "an apparent distinction that does not make a real difference." He stressed that the *Borja* doctrine should apply equally to succession and recall since they were of the same species.

Also, the pronouncement in *Socrates* that a recall term is considered one full term in applying the three-term limit rule was merely an obiter dictum. The main issue in that case was whether a recall election that took place after the fourth consecutive election had taken place was to be deemed an immediate reelection to a fourth term. The Court gave an emphatic *nay* since the Constitution does not prohibit a subsequent re-election for a fourth term as long as the re-election was not immediately preceded by three consecutive terms. Since the recall election was midway in the term after the third consecutive term, it ought to be considered as a subsequent election. The case of *Socrates* did not rule on the issue as to whether a recall term should be considered one term in determining term limits. Thus, the pronouncement that a recall term equaled one full term was mere an *obiter*.

Finally, he opined that in construing election laws, "obscure legalisms must yield to popular sovereignty."[48] The guiding principle in election law was that in every election, the people's choice was the paramount consideration. They must be liberally construed "to give fullest effect to the manifest will of our people, for in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate freely expressed through the ballot."[49] Since Roman was unquestionably the people's choice, a strict application should not be allowed for it would be an impediment in resolving of the true will of the electorate.[50] For this reason, he stressed that

48. *Id.*

49. *Id.*

50. *Id.*

since Roman's ineligibility was never proven to be patently antagonistic to the Constitution, the law should yield to the people's will.

Meanwhile, Justice Adolfo Azcuna points out that the adoption of term limits is a new concept in Constitutional Law. It is an exception to the general rule that in a representative democracy, the people should be allowed to freely choose the people that will govern them. Being an exception, it must be strictly construed against the will of the sovereign. Thus, it should only apply if the local elective official has served three consecutive terms in full. Anything less than that, either through succession or recall election, should never be counted in applying the three-term limit rule.

> There was a clear intent to require the person who has served in full the number of consecutive terms, in this case three, to rest until the election for the term not immediately following the last of the consecutive terms served. Hence, in *Socrates* I joined in the separate opinion of the Chief Justice, as I agreed with him that once an elected local official, in that case a mayor, has served three consecutive terms in full, that person cannot serve for any time during the immediately following term, whether by immediate reelection or by recall election.
>
> In the present case, respondent Roman's election as governor in the recall election of 1992 should not be counted as one full term. For the disqualification to attach, three consecutive terms must be served in full. This is the exception to the rule, so it must be strictly complied with. Service for less than a full term, except only in case of voluntary renunciation, should not be counted to determine the existence of the disqualification.[51]

Because of these reasons, Justice Azcuna held that Roman is qualified in his last re-election. He is not prohibited to hold office under the three-term limit rule.

On the other hand, Justice Angelina Sandoval-Gutierrez led the dissenters in this case. The dissenters argued that the *Borja* requisites were present, since Roman's recall term was counted as one term. Thus, his last re-election, with a term of office from 2001 to 2004, was void since he was barred from running at the time.

The dissenters contend that constitutional and statutory provisions on term limits made no distinction as to the nature of the election, *i.e.*, regular, special or recall elections. For this reason, the Court should never distinguish one from the other in applying the three-term limit rule. This is not limited to regular elections only but includes any election for the same position. Moreover, the case of *Claudio vs. Commission on Elections*[52] was cited, which

51. *Id.*

52. 331 SCRA 388 (2000).

stated that the term "election" includes recall election since it decides whether the local official will be retained or elect for the replacement.

Moreover, Justice Sandoval-Gutierrez stressed that the principle in legislative special elections that a special election is for one term, or as more popularly stated, "half-term is a full term," equally applies in a recall election. The Constitution is explicit in limiting the service of elective local officials to only a total of nine consecutive years. Excluding the service of a recall term would certainly be a circumvention of the three-term rule, because the local elective official may hold the same elective position longer than three consecutive terms, or more than the maximum nine consecutive years.

For this reason, the Court, in the case of *Socrates*, declared that even if the local elective official serves only the unexpired term of the recalled official, this unexpired term, is in itself one term for purposes of counting the three-term limit though it may be less than three years. This is the inherent limit in a recall election. Thus, Justice Sandoval-Gutierrez was puzzled why the majority made a complete turn-around and totally disregarded this significant pronouncement.

In addition, Justice Sandoval-Gutierrez distinguished between a term and tenure. She stated:

> [T]erm means the time during which the officer may claim to hold the office as a matter of right. Upon the other hand, tenure represents the period during which the incumbent actually holds office. Tenure may be shorter than term for reasons within or beyond the power of the incumbent.[53]

Because of this distinction, Justice Sandoval-Gutierrez opined that Roman is ineligible to run during his last re-election:

> In the case of herein respondent who was elected in a recall election, his tenure was only for the remaining term of the recalled official, then Governor Garcia. Be that as it may, his election is still for a particular term inasmuch as during the unserved period of the recalled official, he has a claim to hold such office as a matter of right. In short, his service for the remaining period is considered tenure for the full term for which he was elected....
>
> Thus, although respondent only served the unexpired term of then Governor (now Congressman) Enrique T. Garcia, Jr., the former's recall term as governor of Bataan from 1994 to 1995 is rightly counted as his first term for purposes of applying the three-term limit. This was immediately followed by his election to the same position for three more consecutive terms, to wit: 1995 to 1998; 1998 to 2001; and 2001 to 2004. Considering that his recall term is his first term, his reelections in the 1995 and the 1998

53. *Mendoza*, G.R. No. 149736 (citing Estrada vs. Desierto, 356 SCRA 108, 150 (2001); Gaminde vs. Commission on Audit, 347 SCRA 655, 663 (2000)).

elections are his second and third terms, respectively. Consequently, he is disqualified to run as governor in the 2001 elections, as that would already be his fourth consecutive term.

Respondent Roman cites *Lonzanida vs. Comelec.* In this case, the two requisites for the application of the three-term rule were absent so that the ban against holding a further term did not apply to Lonzanida. To recall, Mayor Lonzanida was ordered by the COMELEC to vacate his post on the ground that he was not duly elected. Thus, his severance from office was involuntary and constituted an interruption of the continuity of his service under the Constitution and the law. His renunciation being involuntary, this Court ruled that he could not be considered to have served a full term for the purpose of applying the three-term rule. As can be seen, the factual backdrop and the *ratio decidendi* of *Lonzanida* are not on all fours with the present case. Respondent, therefore, cannot invoke this Court's ruling in *Lonzanida.*[54]

Finally, Justice Antonio Carpio points that the recall term should be considered as one full term in applying the three-term limit rule. Citing the debates concerning congressional special elections, Justice Carpio points out that the principle in legislative officials, that election in a special election is considered as one term, must likewise apply to local elective official. Otherwise, it would allow a local elective official to serve for more than nine consecutive years in the same position, which, according to him, is what the framers intended to avoid. Thus, service for nine consecutive years in the same position ought to be the maximum limit.

Indisputably, the framers of the Constitutional Commission intended the three-term limit to mean a maximum service of nine consecutive years. This intent is clear, definite and unequivocal. To rule that a recall term should be totally ignored in counting the three-term limit will allow local officials to be elected to serve for more than nine consecutive years contrary to the manifest intent of the framers of the Constitution. This is exactly what will happen if respondent Roman's recall term is not counted in computing the three-term limit, for Roman will then serve as Governor for more than ten consecutive years.

The framers of the Constitution have fixed the term limit of elective local officials at three consecutive terms, with a clear intention that the total shall not exceed nine years. They have also intended that election to an unexpired term shall be considered as one term for purposes of counting the three-term limit. The intention of the framers of the Constitution, just like the intention of legislators who draft a statute, certainly deserves great weight. When such intention is clear, definite and unequivocal, the intention becomes controlling as it expresses the true spirit of the Constitution or the law.[55]

54. *Mendoza*, G.R. No. 149736.

55. *Id.*

Moreover, he contends that the consequence of a recall election is not the same as succession by operation of law. A recall term stems from an election with a fixed term of office, that is, the unexpired term of the predecessor. The recall term is a legal and political fact that cannot just be dismissed as a stray term.[56]

[T]o consider a recall term as a stray term will encourage a person disqualified because of the three-term limit to agitate for the recall of his immediate successor. We held in *Socrates* that such a person can run in a recall election. If he wins and his recall term is not counted in computing the three-term limit, then he has nothing to lose and everything to gain by agitating for a recall election. This will remove the stability of the term of office of his immediate successor, and subject the people to too many elections within a short period. But if the recall term is counted as one term, then the truncated term serves as an inherent limit and natural disincentive to those who would otherwise agitate for a recall election because they cannot wait for the next regular elections.[57]

Thus, as can be seen from their respective separate opinions, the justices seem to be conflicting as to when the recall term should be counted under the three-term limit rule. In *Socrates*, a recall term after the service of three consecutive terms was considered as one term. On the other hand, in *Mendoza*, a recall term immediately preceding the service of three consecutive terms was not considered as one term. One may ask then, why the distinction? What is the difference between a recall term at the start and at the end of the service of the terms of office? It appears that the Supreme Court is making a distinction where no such distinction exists. There is thus a need to reconcile the conflicting rulings of the Court.

IV. SUMMATION OF THE JURISPRUDENTIAL RULINGS

To recapitulate, *Borja* laid down the twin requirements in determining whether the service for the term can be considered as one term in applying the three-term limit rule which are *valid election* and *full service of the term.* These requisites were likewise applied in *Lonzanida* where it was ruled that a void assumption is not considered as one term under the three-term limit rule. Moreover, the requisites were likewise upheld in *Adormeo*, where the Court ruled that a recall term is not one term in applying the three-term limit rule.

However, *Socrates*, which was decided *en banc*, appears to have abandoned the ruling in *Adormeo*. In that case, the Supreme Court, in construing the meaning of the second sentence of the three-term limit rule, stated that a disqualification from running, during the immediately preceding

56. *Id.*

57. *Id.*

election after the service of the third consecutive term, amounts to involuntary severance from office. Any severance will entitle the local elective official in question to run in any election after a hibernation period, no matter how long or how short the same may be. Thus, by logical inference, a recall term is one term under the three-term limit rule.

Nonetheless, this pronouncement was not applied in *Mendoza*, a resolution issued by the Supreme Court. In their separate opinions, majority of the Justices were of the view that a recall term is not one term in applying the three-term limit rule. However, *Mendoza* was not decided on the merits of the case. Thus, as jurisprudence currently stands, *Socrates* stands as the leading case. *Thus, a recall term is one term in applying the three-term limit rule.*

V. ANALYSIS

A. Term and Tenure Distinguished

From the discussed cases, it can be seen that prevailing jurisprudence seems to be conflicting as to how the three-term limit rule should be applied in different settings. The Supreme Court, however, applied this rule flexibly, most especially in the later cases. However, term limit rules should never be construed liberally since the law is clear and explicit when it states *that the term of office of local elective officials is for three years and that no local elective official can serve for more than three consecutive terms.*[58] It is a watertight principle – unambiguous and unequivocal.

But the Court has been inconsistent in its application. This inconsistency can be traced to the apparent confusion between term and tenure. Thus, the first step to understanding the rule is to distinguish term from tenure since *the Constitution provides for a three-term limit rule and not a three-tenure limit rule.* Comprehending these concepts should enlighten one as to the true and precise meaning of the three-term limit rule.

Under the Law on Public Officers, a distinction is drawn between the two concepts. American jurisprudence, states that "term" and "tenure" are not synonymous words although they are sometimes synonymously considered.[59] "Term of office" is generally the fixed period of time for which the office may be held, and it is not synonymous with "tenure."[60] The duration of the term of many public offices is fixed either by constitutional provisions or by statutes.[61] In fact, it has been said that public interest requires certainty in the election of officers and the beginning and

58. PHIL. CONST. art. X, § 8; LOCAL GOVERNMENT CODE § 43.

59. 67 C.J.S. *Officers* § 42 (1963).

60. *Id.*

61. 63A AM. JUR. 2d *Public Officers and Employees* § 155 (1989) (citations omitted).

expiration of their terms of office.[62] Thus, there is a general tendency in the direction of a fixed and definite term of office, the very idea of which means a fixed and definite period of time. However, the duration of the service for the same necessarily varies in different cases.

Term of office has been defined as the period during which an elected officer or appointee may hold office, perform its functions, and enjoy its privileges and emoluments.[63] The phrase "term of office" is one generally used to mean the fixed period of time for which the office may be held. It is the period designated by law which the office may be held rather than the time an individual holds an office, although it is also used to designate the period for which the office is actually held.[64] The words "term of office" may indicate the statutory period for which an officer is elected, but may also mean a period much shorter than that for which the particular officer was elected, as when his term of office may be terminated before the expiration of the statutory period for which he was elected, by impeachment, death or resignation.[65]

On the other hand, "tenure in office" pertains to the right to perform duties and receive emoluments thereof, and, as used in statute providing that tenure of officers in classified service shall be during good behavior and efficient service, must be presumed to have been used by general assembly deliberately in sense of right to hold office.[66] Tenure for a fixed term is not permanent, although the office may be.[67] It refers generally to the right to hold office subject to its termination by some contingency such as age limit, resignation, death, removal, among others.[68] Tenure has a more extended meaning than term, and is the right to hold office for an indefinite time. In its general sense, tenure is a mode of holding or occupying, and tenure of an office means the manner in which it is held, especially with regard to time.[69]

Thus, *term of office relates to the office and not to the incumbent*, and should not be confused with *tenure of office*, of which there may be several in one term, and is not affected by holding over of an incumbent beyond expiration of term.[70] The term of office is not affected by the holding over of an

62. *Id.*

63. Black's Law Dictionary 1483 (7th Ed., 1990).

64. 67 C.J.S. *Officers* § 42.

65. *Id.* (citing Marvel v. Camden County, 57 A.2d 455, 137 N.J.Law 47, followed in Cowgill v. Camden County, 57 A.2d 458, 137 N.J.Law 51).

66. *Id.* (citing State ex rel. Daly v. City of Toledo, 50 N.E.2d 338).

67. *Id.*

68. *Id.* (citing People ex rel. Bagshaw v. Thompson, 130 P.2d 237).

69. 63A AM. JUR. 2d *Public Officers and Employees* § 154.

70. *Id.*

incumbent after the expiration of his lawful term. The holding over does not change the length of the term but merely shortens the term of the successor.

These American law concepts are likewise adopted in our jurisdiction. The difference between term and tenure can be seen in the landmark case of *Nueno v. Angeles*.[71] This case provides for the dileanating line that separates the synonymously used terms, albeit erroneously, of "term of office" and "tenure in office."

This case involved a *quo warranto* proceeding instituted to oust certain local officials from their offices as members of the Municipal Board of the city of Manila. It was contended that Jose Topacio Nueno, Manuel dela Fuente, Eustaquio Balagtas and Delia Dino, petitioners in this case, were entitled to occupy the contended positions, and that Gerardo Angeles, Agaton Evangelista, Andreas Sta. Maria, Vicente Cruz, Amado Hernandez and Felicidad Manuel, the respondents herein, illegally held them.

The facts of the case show that Jose Topacio Nueno, Manuel de la Fuente, Eustaquio Balagtas, Carmen Planas, and six others were elected as members of the municipal board in the general election held in 1940. Later on, Nueno and Planas resigned from their posts to run for seats in the House of Representatives in the national election held in 1941, but lost. After the election, the President of the Commonwealth appointed Nueno to fill the vacancy created by his own resignation, and Delia C. Diño to fill the vacancy in of Planas.

However, on 3 January 1942, Japanese Forces occupied the City of Manila. The Commander in Chief of the Japanese Army proclaimed military administration under martial law over all districts that they occupied, and proclaimed that "so far as military administration permits, all the laws now in force in the Commonwealth, as well as executive and judicial institutions shall continue to be effective as in the past," and that "all public officials shall remain in their present posts and carry on faithfully their duties as before."[72]

By virtue of Order No. 1, a central administrative organization or government under the name of Philippine Executive Commission was organized, and Jorge Vargas was appointed Chairman of the said committee. Vargas, by virtue of Executive Order No. 4 which provided that "the provincial boards and the boards or councils of cities, municipalities and specially-organized local governments shall merely serve in an advisory capacity to their respective governor and mayors."[73] Under the Puppet Republic inaugurated on 14 October 1943, no material change was introduced in so far as the City of Manila was concerned.

71. 76 Phil. 12 (1946).

72. *Id.* at 18.

73. *Id.* at 19.

The regular election under the Election Code should have been held on the second Tuesday in December 1943 in order to elect the members of the Municipal Board of the City of Manila who would assume office on the first of January 1944.

However, the same could not be held since Manila was still under Japanese control. Moreover, due to physical impossibility after the restoration of the Commonwealth Government in 1945, the special election could not also be held. For this reason, the President of the Commonwealth, on 18 July 1945, appointed the six respondents and four of those elected in December 1940, as members of the Board.

In view of the above facts the four petitioners, Nueno, De la Fuente, Balagtas and Diño, instituted the *quo warranto* proceedings against the respondents, those who were appointed by the President to sit as members of the board. They contended that since they were elected as members of the Municipal Board of Manila in the general election held in 1940 for a three-year term, their term of office has not yet expired because they were unable to serve their three-year term completely due to the Japanese occupation.

On the other hand, the respondents contend that petitioners have no right to hold the public offices because their term of office had already expired on 31 December 1943. Whether or not they have completely served their term is immaterial, for the term of office must be distinguished from the tenure of the incumbent.

In ruling in favor of the respondents, the Supreme Court held that there is a difference between term and tenure. The Court reasoned as follows:

> The term of an office must be distinguished from the tenure of the incumbent. The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent. There is no principle, law or doctrine by which the term of an office may be extended by reason of war.[74]

Thus, the Court reasoned that regardless of whether or not the petitioners had actually occupied the position is immaterial. After the lapse of the fixed period in the term of office, their right to the office had already expired.

> The fact that the petitioners were elected in 1940 cannot be advanced as a reason for their claim. They were elected in 1940 only for the three-year term of 1941-1943, ending on December 31, 1943, which cannot be confused with the following other three-year term of 1944-1946. The first

74. *Id.* at 21-22.

> belongs to the past; the second, to the present. The past is dead. The present is alive. It is impossible to engraft the dead in the living. Life and death are metaphysical opposites. There is no possible meeting between the two horns of the dilemma: to be or not to be. They are conclusively uninterchangeable.[75]

Term of office cannot be confused with tenure of office. The latter may be contemporaneous with the former. It may be shorter or it may never take place at all. However, the said fact alone will not change the duration of the term of office.

Succeeding jurisprudence further gives light to the distinction. It was held that "there is a difference between the 'term' of office and the 'right' to hold an office. *A term of office is the period during which an elected officer or appointee is entitled to hold office, perform its functions and enjoy its privileges and emoluments. A right to hold a public office is the just and legal claim to hold and enjoy the powers and responsibilities of the office.* In other words, the 'term' refers to the period, duration of length of time during which the occupant of an office is entitled to stay therein whether such period be definite or indefinite."[76]

The ruling in *Nueno* was likewise affirmed in the more recent case of *Dimaporo v. Mitra*.[77] The issue in that case was whether or not Sec. 67, Article IX of the Omnibus Election Code[78] effectively cut an elective official's term of office. Dimaporo contended that Sec. 67, Article IX of the Omnibus Election Code was no longer applicable under the present Constitution since the term of office of members of the House of Representatives, as well as the grounds by which the same may be shortened, are limited in the instances provided for in the Constitution.[79] He said that the questioned provision of law, which was one of the means by which the

75. *Id.* at 31 (Perfecto, J., concurring opinion).

76. Parades v. Abad, 56 SCRA 522, 527, (1974); Casibang v. Aquino, 92 SCRA 642, 652-53 (1979).

77. 202 SCRA 779 (1991).

78. Sec. 67. Any elective official whether national or local running for any office other than the one which he is holding in a permanent capacity except for President and Vice-President shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

79. Under § 13, Article VI: Forfeiture of his seat by holding any other office or employment in the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or subsidiaries; under Section 16 (3) of the same article: Expulsion as a disciplinary action for disorderly behavior; under Section 17 of the same article: Disqualification as determined by resolution of the Electoral Tribunal in an election contest; and, under Section 7 (2) of the same article: Voluntary renunciation of office.

term of a member of the House of Representatives can be shortened, was no longer applicable since the same was not included in the said exclusive list.

The Supreme Court rejected Dimaporo's contention. *The Court stated the questioned provision of the Omnibus Election Code does not cut short his term of office but rather only his tenure.* The Court cited the ruling in *Nueno*[80] in distinguishing term from tenure.[81] As correctly pointed out by the Supreme Court:

> Under the questioned provision, when an elective official covered thereby files a certificate of candidacy for another office, he is deemed to have voluntarily cut short his tenure, not his term. The term remains and his successor, if any, is allowed to serve its unexpired portion. That the ground cited in Section 67, Article IX of B.P. Blg. 881 is not mentioned in the Constitution itself as a mode of shortening the tenure of office of members of Congress does not preclude its application to present members of Congress. Section 2 of Article XI provides that "(t)he President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment." Such constitutional expression clearly recognizes that the four (4) grounds found in Article VI of the Constitution by which the tenure of a Congressman may be shortened are not exclusive.[82]

Thus, to recapitulate, even if the concepts are used interchangeably, there is a distinction between term and tenure. *Term means the period prescribed by law during which the elective officer may claim the right to hold the office.* This period fixes the intervals as to how several incumbents shall succeed one another. On the other hand, *tenure represents the period during which the incumbent actually holds the office.* The tenure may be shorter than the term. These may be for causes within or beyond the power of the incumbent.

80. The Court held that the term of an office must be distinguished from the tenure of the incumbent. The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent. There is no principle, law or doctrine by which the term of an office may be extended by reason of war.

81. This distinction was also cited in Alba v. Evangelista, 100 Phil. 683 (1957); Paredes v. Abad, 56 SCRA 522 (1974); Aparri v. Court of Appeals, 127 SCRA 240 (1984); Gamanida v. Commission on Audit, 347 SCRA 655 (2000); and more recently, in Estrada v. Desierto, 356 SCRA 108 (2001).

82. *Dimaporo*, 202 SCRA at 791.

Thus, under the Constitution, *the term of office of local elective officials is for three years. Once elected, they are entitled to hold office during this prescribed period as a matter of right. Elections shall be held after this period to determine whether he will be re-elected or a successor is placed as incumbent. His actual occupation during the prescribed period is his tenure in office. Whatever happens during his tenure in office shall not affect the term of office of local elective officials.*

This distinction should enlighten one as to how the three-term limit rule ought to be applied. The question that now arises is whether succession to office and election through recall election is a term or a tenure. An answer to this query shall solve the issues that raises some clouds of doubt in the three-term limit rule. An elucidation on the nature of succession to office and on the effects of a recall election shall provide a complete picture as to how the three-term rule operates.

B. Succession to Office

Succession to office is one of the means of legally occupying a public office because a person who succeeds into the office is considered as a *de jure* officer and not a *de facto* officer nor usurper.

Succession to office happens when there exists a vacancy in office, an individual fills in the vacant office and serves the term of office. Normally, an office is deemed vacant whenever it is unoccupied by a legally qualified incumbent who has a lawful right to continue thereon until the happening of some future event.[83]

In American jurisprudence, from which Philippine Election Law is patterned, it is generally held that the term of an officer appointed to fill a vacancy is determined by law, and in general, is for the unexpired portion remaining when the vacancy occurred.[84] In the absence of statutes providing that, in the case of elective offices, an officer appointed to fill the vacancy shall hold the remainder of the unexpired term until an election is held to fill the office.[85]

A vacancy, if it occurs, is in the term of office as distinct from being in the office itself, and an appointment to fill such a vacancy can be only for the unexpired portion.[86] This is because where both the duration of the term of an office and the time of its commencement of termination are fixed by the Constitution or statute, *a person elected or appointed to fill a vacancy in such office*

83. 67 C.J.S. *Officers* § 50.

84. *Id.* at § 53.

85. *Id.*

86. *Id.*

holds for the unexpired portion of the term and until the qualification of a successor.[87] For this reason, the appointment of a successor does not divide the term nor create a new and distinct one because the successor merely fills out his predecessor's term.[88]

These principles are likewise carried in the Philippine law regarding succession to office of local elective officials. Under the Local Government Code of 1991, it is provided that:

> *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* – If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor.
>
> xxx xxx
>
> (d) The *successors* as defined herein shall *serve only the unexpired terms of their predecessor.*
>
> For purposes of this Chapter, *a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns or is otherwise permanently incapacitated to discharge the function of his office.*[89]

Under our laws, succession occurs by operation of law, when there exists a *permanent vacancy* in the public office. As provided by law, there are seven instances when a permanent vacancy occurs. These are:

1. The local elective official fills a higher vacant office;
2. The local elective official refuses to assume office;
3. The local elective official is disqualified to hold office;
4. Death of the local elective official;
5. The local elective official is removed from office;
6. Voluntarily resignation of the a local elective official; or
7. When the local elective official becomes permanently incapacitated to discharge the function of his office.[90]

When any of these instances arise, the second highest ranking officer to the position automatically steps into the office and serve the unexpired term of the predecessor. The purpose of this automatic system is to ensure that the position is never left vacant for any length of time. Public service requires

87. 63A AM. JUR. 2d *Public Officers and Employees* § 164.

88. *Id.* (citing State v. Rose, 74 Kan 262).

89. LOCAL GOVERNMENT CODE, § 44 (emphasis supplied).

90. *Id.*

that no office shall be left vacant. Otherwise, the performance of public office will be put on halt to the detriment of the local constituents, thus, the need for the succession principle.

As stated earlier, a vacancy occurs in the term of office not in the office itself. The office is not vacated, but rather, there is an absence of a person serving the term of office. Due to this, the appointment to fill the vacancy is only for the unexpired portion of the term of office. The reason for such is that one succeeds to the term of office of the predecessor and not to the public office.

Thus, *vacancies and succession in office are merely included in the tenure of office and not, by themselves, creating different terms of office. There can be as much tenures in one term. Tenure in office can be split but a term of office cannot be split.*

C. *Recall Elections*

The landmark case of *Garcia v. COMELEC*,[91] which held that the recall provision in the Local Government Code is constitutional, gives this definition:

> Recall is a *mode of removal of a public officer* by the people *before the end of his term of office*. The people's prerogative to remove a public officer is an incident of their sovereign power and in the absence of constitutional restraint, the power is implied in all governmental operations. Such power has been held to be indispensable for the proper administration of public affairs. Not undeservedly, it is frequently described as a fundamental right of the people in a representative democracy.[92]

However, this definition needs to be polished further. The above definition does not state how the removal of the public officer shall be done. In this regard, concepts from American law are enlightening.

Recall Election is defined as an election in which voters have the opportunity to remove a public official from office.[93] It is further defined as a procedure by which an elective official may be removed at any time during his term, or after a specified time, by vote of the people at an election called for such purpose.[94]

It can thus be seen that the key concepts in recall elections are (1) removal of a public officer, (2) before the end of the term, (3) through an election called for that purpose. These three concepts comprise the fundamental definition of a recall election, which can be restated as a mode

91. 227 SCRA 100 (1993).

92. *Garcia*, 227 SCRA at 108 (emphasis supplied).

93. Black's Law Dictionary 536 (7th ed., 1990).

94. 63A AM. JUR. 2d *Public Officers and Employees* § 187.

of removal of a local elective official at anytime before the end of his term through an election called for that purpose. Through a recall election, the people, in the exercise of their sovereign power, decide whether or not they will retain an incompetent local elective official, or if they decide to replace him and, to choose from among the candidates whom they want to succeed the recalled local elective official.

The principle underlying the recall of public officers is to provide an effective speedy remedy to remove an official who is not adequately serving the public and whom the electors feel should not remain in office, regardless of whether he was discharging his full duty to the best of his ability and as his conscience dictated.[95]

The power to remove a public officer is an incident of sovereign power resting with the people.[96] A recall provision is intended as a reservation in the people of the power to recall any official without judicial action.[97] The official sought to be recalled is only entitled to determine the sufficiency of the petition for recall and may not inquire into the motive of the proponents of the charges, nor may the court do so, as the motive of the proponents, like the truth of the charges, is triable in the tribunal of the people at the polls.[98]

Hence, the recall statutes do not contemplate a judicial inquiry into the truth of specific charges of misconduct, but are designed to afford relief from popular dissatisfaction with the official conduct of an officer.[99] The public official sought to be recalled cannot file an action in court to invalidate the petition for recall on the sole basis that the proponents are motivated by ill-will against the incumbent. The electorate has an absolute right to recall public officers for any reason or no reason.[100] Mere threat of abuse, however, is not a valid ground to invalidate the recall election provision. As stated by our Supreme Court:

> The fear that a preparatory recall assembly may be dominated by a political party and that it may use its power to initiate the recall of officials of opposite political persuasions, especially those belonging to the minority, is not a ground to strike down the law as unconstitutional. To be sure, this argument has long been in disuse for there can be no escape from the reality that all powers are susceptible of abuse. The mere possibility of abuse cannot, however, infirm *per se* the grant of power to an individual or entity. To deny power simply because it can be abused by the grantee is to render

95. *Id.*

96. 67 C.J.S. *Officers* § 59.

97. *Id.* at § 69.

98. *Id.*

99. 63A AM. JUR. 2d *Public Officers and Employees* § 187.

100. *Id.* at § 192.

> government powerless and no people need an impotent government. There is no democratic government that can operate on the basis of fear and distrust of its officials, especially those elected by the people themselves. On the contrary, all our laws assume that our officials, whether appointed or elected, will act in good faith and will regularly perform the duties of their office. Such a presumption follows the solemn oath that they took after assumption of office, to faithfully execute all our laws.[101]

However, while the sufficiency of the charges for a recall of a public officer to cause the voters to desire his removal is a political question to be determined by the people, the legality of the proceedings and whether they comply with the law is a judicial question for determination by the courts.[102] The only basis for judicial action is failure to observe the formalities prescribed by law.

It has been pointed out that the idea of removing officers at the discretion of the appointing power is not a novel one, and that the concept that this may be done at the direct instance and on the motion of the electors, who are ultimate source of power in a republic, only carries the power of removal one step further. Hence, since it is not improper to allow an elected officer to remove an appointed one, it is not considered a violation of law to allow this to be done by the people themselves.[103]

Though the power to institute a recall election rests on the sole will of the people, the same is not absolute. The law imposes certain prohibitions and limits. For one, the elective local official sought to be recalled is prohibited from resigning while the recall process is in progress.[104] The purpose of the prohibition is to ensure that the will of the people in instituting a recall proceeding will be fulfilled. Moreover, in order to limit the harassment and inconvenience brought about by the recall election proceedings, there are two limits on the part of those who seek a petition for recall:

1. The local elective official may only be subjected once, during his term, to a recall election proceeding for loss of confidence.
2. No recall election shall take place within one year from the date of the official's assumption to office or one year immediately preceding a regular election.[105]

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101. *Garcia*, 227 SCRA at 117.

102. 67 C.J.S. *Officers* § 69.

103. 63A AM. JUR. 2d *Public Officers and Employees* § 188 (citing State ex rel. Topping v. Houston, 94 Neb 445, 143 NW 796; Roberts v. Brown, 43 Tenn App 567, 310 SW2d 197).

104. LOCAL GOVERNMENT CODE, § 73.

105. *Id.* § 74.

As stated above, the recall of a local elective official will only be effective *after the election and proclamation of a successor*, the successor being the candidate receiving the highest number of votes. Thereafter, the successor will serve the remainder of the recalled official's term. Otherwise, if the official sought to be recalled wins in the recall election, he shall continue serving the remainder of his term of office.

From the foregoing, there is no doubt that the succession principle equally applies in recall election. *It can thus be seen that a recall election is merely a species of removal from office.* It is unlike a special election called to fill in a vacancy in office. In a recall election, there is no vacancy in office before the election. The incumbent will only be removed from his elected position and a successor will be chosen from among the candidates. *Thus, a recall election is more akin to succession in office rather than a special election.*

D. Borja *Doctrine Revisited*

As explained earlier, *Borja* provides the twin requisites before service of a term can be considered as service for one full term in applying the three-term limit rule. These are: (1) The officer concerned should be *duly elected* for three consecutive terms in the same local government position; and (2) The officer concerned has *fully served* three consecutive terms. In the absence of anyone of these twin requisites, the service will not be counted as service for one term under the three-term limit rule.

It is proposed that the *Borja* ruling is a correct ruling. The reason for such is that through *Borja*, one can fully appreciate the distinction between term and tenure. Term is not synonymous to tenure. The service for the unexpired term is not a term but is tenure. For the tenure to be considered as service for a full term, one must be duly elected to serve the full term, and the tenure should last the whole duration of the term of office. The reason is that election to the office is the only means whereby the local elective official is assured to serve the function of the office at the beginning of the term prescribed by law. By serving the full term, the local elective official has served until the conclusion of the term. It is only when the twin requisites of *Borja* are present that the local elective official has served for the whole duration of the term. There can be no more doubt that the local official concerned had already served one full term in applying the three-term limit rule. It is only when the local official has served from the start until the end of three consecutive terms that the constitutional bar will attach. This appears to be what the framers had in mind when they formulated the three-term limit rule in the Constitution.

For this reason, *any partial service of a term, either by choice or by operation of law, should never be considered as service for a full term.* Where the Constitution prescribes that the officer shall hold it for a certain term, and then imposes a

disability to succeed himself, the courts will construe the disability as *attaching only to an officer who has served a full term, with the result that one who has served but a partial term is not rendered ineligible for a subsequent office.*[106] *Disqualification for the next succeeding term has been limited in application to officers who had been elected and had served a full statutory term.*[107] This is not only true in our jurisdiction but is likewise supported by foreign jurisprudence.[108]

E. Succession, Recall and Term of Office

It has been stated earlier that succession to office is one of the means of legally occupying a public office. Under the Local Government Code, this occurs when there exists a permanent vacancy in the office of the governor or mayor. If this vacancy exists, the vice-governor or vice-mayor shall, by operation of law, become the successor of the governor or mayor, as the case may be. These successors, however, shall only serve the unexpired terms of their predecessor. Thus, if the *Borja* requisites will be applied, *succession in office should not be considered as one full term in applying the three-term limit rule* since succession in office affects only tenure in office and not the term of office.

On the other hand, a recall election is only a mode of removal of a local elective official at any time before the end of his term. It becomes effective

106. 63A AM. JUR. 2d *Public Officers and Employees* § 55. (citations omitted)

107. *Id.*

108. An example of this is the case of Ervin v. Collins (59 ALR2d 706). In that case, decided in 1959 by the Florida Supreme Court, Dan McCarty, Governor of Florida, died and was succeed by LeRoy Collins to finish the term of office. On the next election, the right of Collins to be a candidate for Governor was questioned saying that he is barred because of previous tenure. The questioned provision in their Constitution states that:

> Article IV, Sec. 2. The Governor shall be elected by the qualified electors of the State at the time and places of voting for members of the Legislature, and shall hold his office for four years from the time of his installation, but *shall not be eligible for re-election to said office for the next succeeding term.* (emphasis supplied)

In ruling in favor of Collins, the Court held that for the disqualification provision to apply, the officer must have been *elected and served a full statutory term.* As stated by the Court, "It is pertinent to point out that the makers of the constitution imposed ineligibility for re-election only on those elected under Section 2, Article IV and did not impose such a restriction on those who succeeded to the office for the unexpired term as provided by Section 19, Article IV. (at 711)" For this reason, Collins is eligible to run for Governor since he served only the unexpired portion of the predecessor's term. It was a landmark case, since it was the first time the Florida Supreme Court has been confronted with the main question presented.

only after the election and proclamation of a successor. Thereafter, the successor will serve the remainder of the recalled official's term. As such, a recall term will not entitle the successor the right to serve for a full term as recall election affects only tenure of office and not the term of office. Thus, contrary to the position of the Supreme Court in *Socrates*, applying the *Borja* requisites, it can be seen that *a recall term should likewise be considered as not amounting to service for one full term in applying the three-term limit rule.*

VI. PROPOSED SOLUTION

After clarifying that term of office and tenure are not the same but are, technically, different concepts and after an explanation as to the nature of succession in office and recall election, and finally, after concluding that the *Borja* doctrine is the correct doctrine, the complete picture of how the three-term limit rule operates can thus be seen.

A. Chief Justice Davide's dissent in Socrates

In *Socrates*, Chief Justice Davide's dissenting opinion[109] stemmed from the fact that the majority decision failed to make a distinction between term and election resulting to the "involuntary severance" position used to justify Hagedorn's qualification.

> Private respondent Hagedorn was first elected as City Mayor of Puerto Princesa City in the May 1992 election. He was reelected in the May 1995 and May 1998 elections. His third term, by virtue of his election in the May 1998 election, expired on 30 June 2001. *Therefore, he was constitutionally and statutorily barred from seeking reelection in the May 2001 election, which would have been his fourth term.*
>
> The term of office covered by the May 2001 election is up to 30 June 2004. Section 8 of Article X of the Constitution and Section 43(b) of R.A. No. 7160 are clear in what is prohibited, which is the fourth term. Nothing can be clearer from the wordings thereof: "the term of office of elective local officials ... shall be three years and no such official shall serve for more that three consecutive terms." In short, an elective local official who has served three consecutive terms, like Hagedorn, is disqualified from seeking re-election for the succeeding fourth term. The provision bars the holding of four consecutive terms.
>
> The *ponencia* is then correct when it holds that the three-term limit bars an immediate reelection for a fourth term. But I disagree when it rules that in the case of Hagedorn he did not seek an immediate reelection for a fourth term because he was not a candidate for reelection in the May 2001 election. It forgets that what would have been his fourth term by virtue of the May 2001 election was for the period from 30 June 2001 to 30 June

109. Justice Azcuna joined in this dissent.

> 2004. *The flaw in the ruling results from an apparent confusion between term and election, the root cause of which is the attempt to distinguish "voluntary renunciation" of office from "involuntary severance" from office and the term of office to which it relates.*[110]

As a remedy to the apparent confusion, Chief Justice Davide posits that it is contemplated by the three-term limit rule that after a local elective official has served his third consecutive term, he is constitutionally required to rest for the whole of the fourth term. After a hibernation of three years, the term counter will reset back to zero. Immediately after the required rest period, he can run again for a new series of three terms, which in reality will be from the fifth until the seventh term. Afterwards, he is required once more to rest for one term, which will then be the eighth term, and later, he can run again for another series of three terms. This precise system of services and rests is what is contemplated by the three-term limit rule. To quote the Honorable Chief Justice:

> These debates clearly showed the Intent of the Commission that the ban against an immediate reelection after three consecutive terms applies to the fourth term, *i.e.*, the term immediately following the three consecutive terms, to be filled up by the regular election for such fourth term. For one to be able to run again after three consecutive terms, he has to rest for the entire immediately succeeding fourth term. On the next fifth term he can run again to start a new series of three consecutive terms.[111]

As one can see then, the three-term limit rule is essentially a *mechanical system* that ought to be followed with clockwork precision in order for a local elective official to serve his constituents for an extensive time under the 1987 Constitution. In essence then, the period of "involuntary severance" or the time when Hagedorn did not run for his fourth term until the start of the recall term is insufficient as rest period because Hagedorn's recall term still falls within Socrates's original term of office. It is important to remember that under Davide's vision of a mechanical application of the three-term limit rule, Socrates's term is Hagedorn's fourth consecutive term had he run for the same position. Thus, Hagedorn is not qualified to run in the recall election.

Moreover, Chief Justice Davide contends that Hagedorn cannot be said to have suffered an "involuntary severance from office" because there was nothing to be severed in the first place. Hagedorn is constitutionally disqualified from serving a fourth consecutive term. *Disqualification is not the same as involuntary severance.*[112]

110. *Socrates*, G.R. No. 154512 at 4 (Davide, C.J., concurring and dissenting) (emphasis supplied).

111. *Id.* at 11.

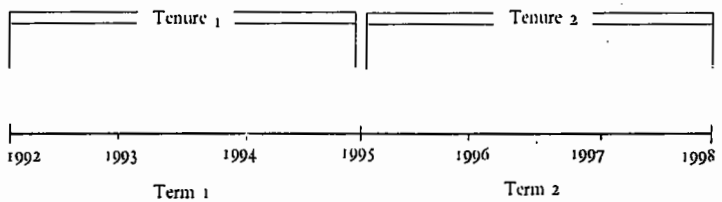
112. *Id* (emphasis supplied).

B. *Three-term Limit Rule as a Mechanical Rule*

The above stated dissent of the Chief Justice appears to be the better view. It is legally sound since his proposal that the three-term limit rule is a mechanical rule clears the ambiguity posited by the confusion of the Supreme Court between term and tenure.

As stated earlier, there is a distinction between "term" and "tenure." "Term" means the period prescribed by law during which the elective officer may claim the right to hold the office. On the other hand, "tenure" represents the period during which the incumbent actually holds the office. Under the Constitution, the term of office of local elective officials is for three years. Once elected, they are entitled to hold office during this prescribed period as a matter of right. To illustrate (*see* Illustration 1), this should appear as such:

ILLUSTRATION 1

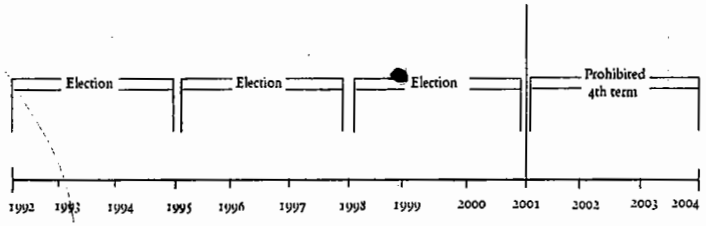


In *Illustration 1*, the term of office is the period prescribed when the incumbent has a right to hold the office. In the figure above, it is the line designated with the years 1992 until 1995, and 1995 until 1998. Since the term of local elective officials is for three years, the period from 1992 until 1995 should be considered as the first term, while the period from 1995 until 1998 should be considered as the second term.

Meanwhile, the period when the incumbent actually holds office is the tenure. In the above illustration, it is signified by the bracket, representing the period the incumbent actually held office. In the illustration, the incumbent held office for the whole first term (his first tenure) and for the whole second term (his second tenure). Thus, this can be considered as service for two consecutive terms.

With this framework in mind, the three-term limit rule can now be easily visualized and understood (*see* Illustration 2).

ILLUSTRATION 2



The Constitution provides that the term of office of local elective officials shall be three years and they shall not serve for more than three consecutive terms. Moreover, applying the *Borja* requisites, the tenure will only be considered as service for one full term if the local elective official was duly elected and has fully served the term. Thus, after election and service for three consecutive terms, the local elective official shall be prohibited for one full term, denominated by the barring line above. When the three-term bar sets in, the local elective official shall be prohibited from occupying the same position for the whole of the prohibited term.

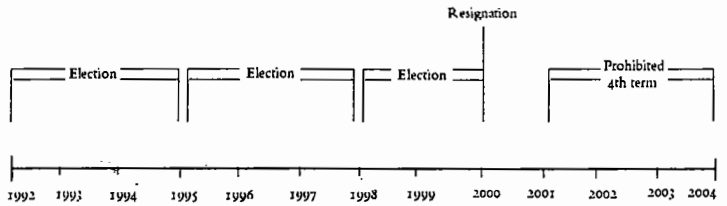
In this illustration, since the local elective official had already served three consecutive terms, he is barred from occupying the same position for the whole period of the prohibited term, in this case from 2001-2004, since it is the prohibited fourth term. He has to rest for the whole of the 2001-2004 term. After this period of rest, he may run again and be eligible for another three consecutive terms. ***Thus, the three-term limit rule is essentially a mechanical rule of services and rests***, as can be seen in Chief Justice Davide's dissenting opinion in *Socrates*. This is the intention of the framers of the Constitution. [113]

113. 2 Record, *supra* note 16, at 233.

> MR. RODRIGO. If the Members of the Lower House can have two reelections, does this mean two immediate reelections, or a term of nine consecutive years? Let us say that a Member of the Lower House has been reelected twice; that means he will serve for nine years. Can he let three years elapse and then run again?
>
> THE PRESIDENT. We will ask the Chairman of the Committee on the Legislative to answer the question.
>
> MR. DAVIDE. That is correct, Madam President, because two reelections mean two successive reelections. So he cannot serve beyond nine consecutive years.

Meanwhile, the second sentence of Article X, Sec. 8 states that 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. What this means is that when a local elective official voluntarily renounces his office for any period during the service of his term, it will still be considered as service for one full term (*see* Illustration 3). The three-term limit rule still applies even if it is not, in reality, service for a full term. By fiction of law, it will still be considered as service for a full term.

ILLUSTRATION 3

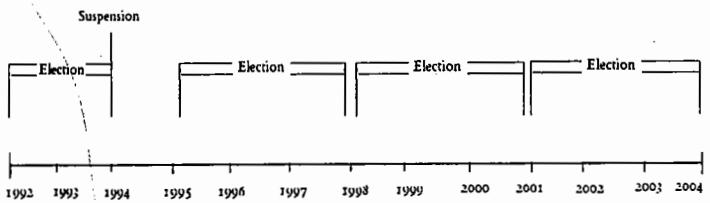


In *Illustration 3*, the local elective official was duly elected for three consecutive terms and had served the whole of his first two terms. Nearing the end of his third term, he resigned from his office. The remainder of his unexpired term, from 2000-2001, was served by his successor. During the 2001 elections, he applied as a candidate for the same position. Is his candidacy valid? No. It is within the prohibited fourth term since the three-term bar had already set-in in this case. This is what the second statement in the three-term limit rule means.

> MR. RODRIGO. Consecutively?
>
> MR. DAVIDE. Consecutively.
>
> MR. RODRIGO. But after nine years he can let one ...
>
> MR. DAVIDE. *He can rest. He can hibernate for three years.*
>
> MR. RODRIGO. And run again.
>
> MR. DAVIDE. *He can run again.*
>
> MR. RODRIGO. *And again have nine years as a maximum.*
>
> MR. DAVIDE. I do not know if that is also the thinking of Commissioner Garcia who is the main proponent of this proposal on two reelections. I would seek the opinion of Commissioner Garcia for the record.
>
> MR. GARCIA. I would actually prefer that after nine years he does not serve anymore. But if the body wishes to get the consensus on this point, we can perhaps divide.

Conversely, if his severance from the office were not of his own volition, this would amount to an interruption of the service of tenure. It will not be service for a full term since the law requires that he has fully served the whole of his elected term (*see* Illustration 4).

ILLUSTRATION 4



In *Illustration 4*, the local elective official concerned won during the 1992 elections. While he was serving his term, however, administrative charges were filed against him. Because of these charges, he was preventively suspended, thereby failing to serve a part of his term. Since his severance from the office was involuntary, his 1992-1995 term is not one full term in applying the three-term limit rule. He is entitled to three more elections since his first election to the office is not counted.

These illustrations show how the three-term limit rule operates and should be the appropriate model when faced with a question regarding the three-term limit rule.

C. *Application to the Cases*

Using the above framework, one now has the appropriate tool in analyzing the facts of the cases and can now recommend the correct answers to the issues of the cases.

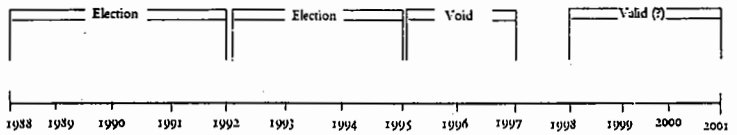
In *Borja*, that facts show that the local elective official's first assumption to the office was by virtue of the succession in office principle. After which he was elected to the same position thrice. The issue now is whether or not his last re-election was valid (*see* Illustration 5).

ILLUSTRATION 5

In this case, his last re-election should be valid. His first assumption into office via the succession principle should not be counted since he was neither elected to that position nor had fully served the same. His 1992-1995 term would only be his first term in the context of the three-term limit rule. His tenure during his predecessor's term will not be considered as his first term. Thus, his 1998-2001 term will be valid since he would only be serving his third consecutive term.

In *Lonzanida*, the local elective official at issue was elected and has served for two consecutive terms as mayor prior to the 1995 elections. He ran for mayor in 1995 and was proclaimed as winner and discharged the duties of his office. With only a year remaining in his term of office, it was shown that his proclamation was void. He vacated his office. In the next election, he filed his certificate of candidacy for mayor. This was opposed on the ground that he had already served three consecutive terms and is thus barred from running since it will constitute a prohibited fourth term. The issue now is whether or not he had already served three consecutive terms (*see* Illustration 6).

ILLUSTRATION 6

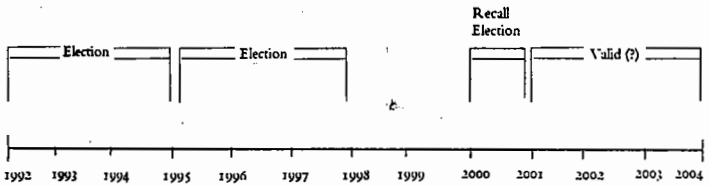


In this case, it is evident that his tenure from 1995-1997 can never be counted as one term. The ruling states that the above tenure will not be counted as one full term since the *Borja* requisites are absent in this case. He was not duly elected and did not serve the whole term. However, the better

view is that the 1995-1997 tenure cannot be counted as one term because it is the fruit of a void assumption. It is a settled rule that a void assumption produces no legal effect. It is legally inexistent. By legal fiction, it is as if the local elective official did not assume office. There is no need to apply the *Borja* requisites to a term of office that is legally inexistent. In view of this, there is a break in the consecutiveness of the service of the terms, *i.e.*, from the 1992-1995 term until the time he filed his candidacy in 1998. Thus, the counting of terms under the three-term limit rule will be reset and the 1998-2001 term will only be his first term in the context of the three-term limit rule. His filing of candidacy would therefore be valid since the 1998-2001 term would not be a prohibited fourth term.

In *Adormeo*, the local elective official was elected and had served for two consecutive terms as mayor, from 1992 until 1998. During the 1998 elections, however, he lost. Nonetheless, the incumbent was recalled in 2000 and the local elective official at issue won and had served the unexpired term of the recalled incumbent. During the 2001 elections, he filed his certificate of candidacy to the same office but this was opposed. His opponents contend that he was barred from running in the 2001 election since this would amount to a prohibited fourth term. The issue now is whether he had already served three consecutive terms (*see* Illustration 7).

ILLUSTRATION 7

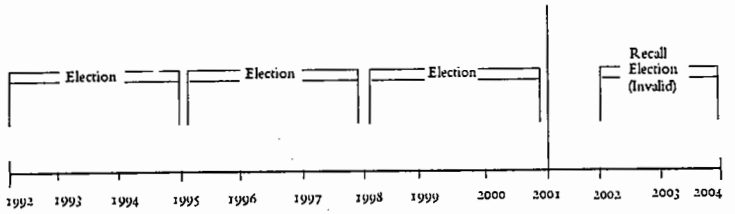


From the above illustration, it can be seen that his tenure during the recall term should not be counted as one full term in applying the three-term limit rule. It is clear that the local elective official concerned did not fully serve the whole of the 1998-2001 term. The recall term is not a term but is only tenure in office. Because of the break in the successiveness of the terms, the counting of terms under the three-term limit rule will be reset and the 2001-2004 term will only be counted as his first term. Thus, he is not barred by the three-term limit rule.

In *Socrates*, the local elective official on issue in this case had already served three consecutive terms as mayor. Thus, during the succeeding election after his third term, he did not run for the same office. During the term of the incumbent, recall proceedings were instituted against the said

incumbent. The local elective official in this case run during the recall elections and had won. The issue in this case is the validity of his assumption via the recall election since his opponents maintain that he was barred from running under the three-term limit rule (*see* Illustration 8).

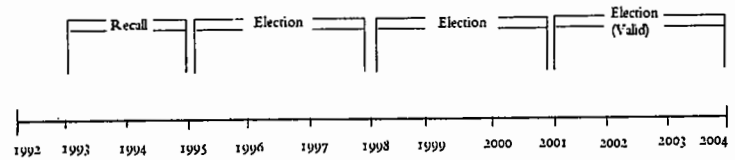
ILLUSTRATION 8



From the foregoing, it is apparent that the local elective official in this case is *prohibited* from running in the recall election. The reason is that his recall term is part of the prohibited fourth term. Having served three consecutive terms from 1992 until 2001, he is barred from occupying the same position for the whole of the 2001-2004 term since this period is the prohibited term. He has to rest for the whole duration of the prohibited term. *There can be no involuntary severance that would entitle him to run in the recall election because he is disqualified from occupying the position in the first place. He cannot be involuntarily severed from an office that he is forbidden to occupy.* Thus, the ruling in this case is erroneous. The local elective official in question is barred from becoming a candidate in the said recall election.

In *Mendoza*, the local elective official in question won in the recall election in 1993 and served the unexpired term of the recalled official. Later on, he was elected twice for the same position. During the 2001 elections, he ran for re-election unopposed and won by a landslide. His opponents question his last re-election since the same was already a prohibited fourth term under the three-term limit rule (*see* Illustration 9).

ILLUSTRATION 9



Based on the above facts, it can be seen that his last re-election is valid. It is only his third consecutive term under the three-term limit rule. The recall term from 1993-1995 is not counted as one term since he did not fully serve the whole of the 1992-1995 term. As stated earlier, a recall term is not a term but is only tenure in office. *A recall term, whether it happened at the start or at the end of the other terms, is not counted as one term in applying the three-term limit rule.* Consequently, his election for the 1995-1998 term will only be his first term under the three-term limit rule. His re-election for the 2001-2004 term does not suffer from any constitutional infirmity since it will only be considered as his third consecutive term. Thus, he can validly serve the 2001-2004 term since he is not barred by the three-term limit rule.

As can be seen from the above applications and critique of the cases, it is clear that the three-term limit rule is indeed a mechanical process of services and rests. It is not flexible and does not depend on a case-to-case basis. It is a hard and fast rule. The qualification and disqualification to serve a term depends on whether one is allowed by this mechanical rule in the Constitution known as the three-term limit rule.

VII. Conclusion

In the construction of election laws, there is a general inclination to construe a vague provision liberally in favor of upholding the will of the electorate.[114] This legal philosophy in the construction of election laws was brilliantly expounded in the case of *Frivaldo v. COMELEC*:[115]

> In any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people, would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.[116]

The basis of this is the State policy that sovereignty resides in the people and that all government authority emanates from them.[117] In order to defeat this basic State policy, the challenger must prove that a greater evil is sought to be avoided in order to impugn the unassailable desire of the voting public.

114. Frivaldo v. COMELEC, 257 SCRA 727 (1996).

115. 257 SCRA 727 (1996).

116. *Frivaldo*, 257 SCRA at 771-72.

117. Phil. Const. art. II, § 1.

However, the three-term limit rule should not be subject to the above liberal philosophy. There is a greater evil sought to be avoided, and that is, to check the powers of local officials and prevent the rise of another strongman in the republic. Moreover, subjecting the three-term limit rule to a liberal construction will subject the constitutionally provided safeguards under threat of abuse. The desire of a thousand people in a particular local electorate must not overcome the will of the millions of Filipinos who ratified the present Constitution.

Because of this, there is a need to bring out a stable rule on how to apply the three-term limit rule. It can never be applied on a case-to-case basis as what the Supreme Court did in the above cases. A new paradigm is needed that can be applied in any context and situation, which would still be capable of producing the desired result of avoiding the evil of political monopolies.

The three-term limit rule, as it is termed, is a rule and not a standard nor a basis. It ought to be strict, rigid and mechanical. It cannot be twisted at will by the magistrates or be determined on a situational basis. It should not depend on the peculiarities of the case for every case is peculiar in itself. Thus, the need for a mechanical application of the three-term limit rule is of utmost importance.

In order to solve the issue in question, it was shown that under constitutional, statutory, and jurisprudential bases, *the three-term limit rule is indeed a mechanical rule based on services of terms and periods of hibernation.* The law itself is explicit when it says that no local elective official could serve for more than three consecutive terms. The only question is what is the precise meaning of the word "term."

As shown in this essay, term and tenure are not synonymous with one another. Both are technical words and have distinct technical meanings. Furthermore, it has been shown that if the confusion as to the meaning of term and tenure can be clarified, the three-term limit rule, as a mechanical process can easily be discerned. There would be no need to base the ruling on the peculiarities of a given case. There would be no need to weigh the will of the electorate in deciding the case. A simpler view was proposed in order to provide an understanding of the intricacies of the three-term limit rule that can be applied in any given set of facts. In comparison with the other complex views on this matter, this author believes that the simpler view is the better view. As a scientific maxim goes, *all things being equal, the simplest explanation tends to be the correct one.*

Term limit rules provide an assurance that new blood is infused in the political landscape so that the voting public will have a wider choice from whom they would elect leaders that will run the government. Term limit rules are principles envisioned as the philosophical framework aimed at insuring a progressive government that will make our dream of a dynamic,