

G.R. No. 237330 — ALDRIN MADREO, petitioner, versus LUCILO R. BAYRON, respondent; and **G.R. No. 237579 — OFFICE OF THE OMBUDSMAN, petitioner, versus LUCILO R. BAYRON, respondent.**

Promulgated:

November 3, 2020

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CONCURRING OPINION

CAGUIOA, J.:

I concur.

I share the *ponente*'s view that respondent Lucilo R. Bayron (Mayor Bayron) may still invoke the condonation doctrine as a defense in the administrative complaint subject of these consolidated petitions for review.

My concurrence is based on the following reasons: *first*, the condonation doctrine extends to re-election through both regular and recall elections; and *second*, the condonation doctrine can be invoked as a defense if the misconduct and subsequent re-election occurred prior to April 12, 2016, or the finality of the Court's decision in *Carpio-Morales v. Court of Appeals*¹ (*Carpio-Morales*).

The condonation doctrine applies to re-election through recall.

The condonation doctrine was incorporated into our body of jurisprudence in 1959, through the Court's ruling in *Pascual v. Honorable Provincial Board of Nueva Ecija*² (*Pascual*). There, the Court held that "[t]he weight of authority [in American jurisprudence] x x x seems to incline to the rule denying the right to remove one from office because of misconduct during a prior term."³

Based on the language of the Court in *Pascual*, my esteemed colleague Justice Bernabe opines that the version of the condonation doctrine adopted in this jurisdiction envisions an election at the end of a term (*i.e.*, general election) and not an election within a term in office (*i.e.*, recall election) since a recall election is a method of removing a local official from office before the expiration of said official's original term due to loss of

¹ 772 Phil. 672 (2015).

² 106 Phil. 466 (1959).

³ Id. at 471.

confidence. Hence, the condonation doctrine cannot be applied in the context of a recall election where there is no “prior term” to speak of.⁴

With utmost respect, I am constrained to disagree.

The system of recall of local elective officials was introduced in this jurisdiction through Presidential Decree No. 1577⁵ issued on June 11, 1978, nearly two decades after *Pascual*. Thus, when the Court spoke of re-election in *Pascual*, it referred to re-election held at the end of an official’s original elective term simply by default, since there was no other method of re-election existing at the time.

In my view, this should not preclude the application of the condonation doctrine in cases of re-election through recall, since a contrary ruling effectively defeats the rationale of the condonation doctrine as declared in *Pascual* — to uphold the people’s right to elect their officers. Thus:

The underlying theory is that each term is separate from other terms, and that the [re-election] to office operates as a condonation of the officer’s previous misconduct to the extent of cutting off the right to remove him therefor x x x. As held in Conant vs. Brogan x x x —

“The Court should never remove a public officer for acts done prior to his present term of office. **To do otherwise would be to deprive the people of their right to elect their officers.** When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. **It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people.**”⁶ (Emphasis and underscoring supplied)

The operation of the condonation doctrine is triggered by the concerned officer’s re-election, since re-election serves as the manifestation of the electorate’s desire to condone the officer’s previous acts of misconduct.

On this score, I submit that re-election through recall and regular elections should be treated similarly, since both have the effect of affirming the electorate’s trust and confidence in the incumbent. This is confirmed by Section 72 of the Local Government, which states:

SECTION 72. *Effectivity of Recall.* — The recall of an elective local official shall be effective only upon the election and proclamation of

⁴ See Concurring and Dissenting Opinion of J. Bernabe, p. 9.

⁵ PRESCRIBING THE MANNER OF CALLING A PLEBISCITE OR A REFERENDUM AND THE MANNER OF RECALL OF LOCAL ELECTIVE OFFICIALS, June 11, 1978.

⁶ *Pascual v. Honorable Provincial Board of Nueva Ecija*, supra note 2, at 471-472.

a successor in the person of the candidate receiving the highest number of votes cast during the election on recall. **Should the official sought to be recalled receive the highest number of votes, confidence in him is thereby affirmed, and he shall continue in office.** (Emphasis supplied)

Hence, I submit that the scope of the condonation doctrine extends to both regular and recall elections.

Notwithstanding its abandonment in Carpio-Morales, the condonation doctrine may still be invoked if the misconduct and subsequent re-election occurred prior to April 12, 2016.

As the electorate's desire to condone past misconduct is manifested through the erring officer's re-election, the defense of condonation attaches only at the point of re-election, and not anytime sooner. Thus, to invoke the condonation doctrine, the concerned officer must establish that both the misconduct *and* re-election occurred prior to April 12, 2016, or the finality of the Court's decision in *Carpio-Morales*.

Here, Mayor Bayron first assumed office as city mayor on June 30, 2013.⁷ The assailed act was committed on July 1, 2013.⁸

On November 22, 2013, Aldrin Madreo (Madreo) filed his Complaint-Affidavit (Complaint) with the Office of the Ombudsman.⁹ In response, Mayor Bayron filed his Consolidated Counter-Affidavit, praying for the outright dismissal of Madreo's Complaint.¹⁰

On May 8, 2015, a recall election was held where Mayor Bayron won with a margin of 5,297 votes. **Thus, on June 22, 2015, Mayor Bayron filed a Motion to Dismiss, arguing that his re-election by way of recall operates as a condonation of the misconduct he allegedly committed in 2013.**¹¹

Based on these established facts, the defense of condonation attached on May 8, 2015, when Mayor Bayron won in the recall elections. Clearly, Mayor Bayron may still invoke the doctrine to evade administrative liability in this case.

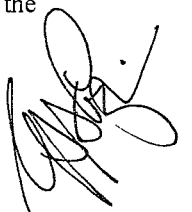
⁷ *Ponencia*, p. 2.

⁸ *Id.*

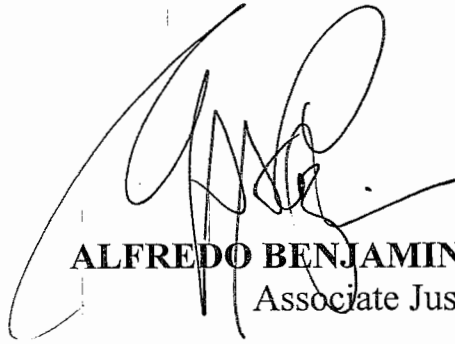
⁹ *Id.*

¹⁰ The grounds relied upon in Mayor Bayron's Consolidated Counter-Affidavit are summarized by the *ponencia*, as follows: "(1) failure to comply with Administrative Order No. 07, as amended, which requires that a criminal and/or administrative complaint should be under oath; (2) lack of jurisdiction of the OMB since administrative complaints against local elective officials should be filed before the Office of the President; and (3) Madreo's lack of personal interest in the subject matter of the complaint as he was not a resident nor a taxpayer of Puerto Princesa City." See *ponencia*, p. 3.

¹¹ See *ponencia*, pp. 3-4.



Proceeding from the foregoing, I vote to **DENY** the consolidated petitions for review.

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by several loops and a long horizontal stroke extending to the right.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice