

Penera vs. Commission on Elections, et al.
G.R. No. 181613; 25 November 2009

Facts: On 11 September 2009, the Supreme Court affirmed the COMELEC's decision to disqualify petitioner Rosalinda Penera (Penera) as mayoralty candidate in Sta. Monica, Surigao del Norte, for engaging in election campaign outside the campaign period, in violation of Section 80 of Batas Pambansa Blg. 881 (the Omnibus Election Code).

Penera moved for reconsideration, arguing that she was not yet a candidate at the time of the supposed premature campaigning, since under Section 15 of Republic Act No. 8436 (the law authorizing the COMELEC to use an automated election system for the process of voting, counting of votes, and canvassing/consolidating the results of the national and local elections), as amended by Republic Act No. 9369, one is not officially a candidate until the start of the campaign period.

Issue: Whether or not Penera's disqualification for engaging in premature campaigning should be reconsidered.

Holding: Granting Penera's motion for reconsideration, the Supreme Court *En Banc* held that Penera did not engage in premature campaigning and should, thus, not be disqualified as a mayoralty candidate. The Court said –

(A) The Court's 11 September 2009 Decision (or "the assailed Decision") considered a person who files a certificate of candidacy already a "candidate" even before the start of the campaign period. This is contrary to the clear intent and letter of Section 15 of Republic Act 8436, as amended, which states that **a person who files his certificate of candidacy will only be considered a candidate at the start of the campaign period, and unlawful acts or omissions applicable to a candidate shall take effect only upon the start of such campaign period.** Thus, applying said law:

(1) The effective date when partisan political acts become unlawful as to a candidate is when the campaign period starts. **Before the start of the campaign period, the same partisan political acts are lawful.**

(2) Accordingly, **a candidate is liable for an election offense only for acts done during the campaign period, not before.** In other words, election offenses can be committed by a candidate **only** upon the start of the campaign period. Before the start of the campaign period, such election offenses cannot be so committed.

Since the law is clear, the Court has no recourse but to apply it. The forum for examining the wisdom of the law, and enacting remedial measures, is not the Court but the Legislature.

(B) Contrary to the assailed Decision, Section 15 of R.A. 8436, as amended, does not provide that partisan political acts done by a candidate before the campaign period are unlawful, but may be prosecuted only upon the start of the campaign period. Neither does the law state that partisan political acts done by a candidate before the campaign period are temporarily

lawful, but becomes unlawful upon the start of the campaign period. Besides, such a law as envisioned in the Decision, which defines a criminal act and curtails freedom of expression and speech, would be void for vagueness.

(C) That Section 15 of R.A. 8436 does not expressly state that campaigning before the start of the campaign period is lawful, as the assailed Decision asserted, is of no moment. It is a basic principle of law that any act is lawful unless expressly declared unlawful by law. The mere fact that the law does not declare an act unlawful *ipso facto* means that the act is lawful. Thus, there is no need for Congress to declare in Section 15 of R.A. 8436 that partisan political activities before the start of the campaign period are lawful. It is sufficient for Congress to state that **“any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period.”** The only inescapable and logical result is that the same acts, if done before the start of the campaign period, are lawful.

(D) The Court’s 11 September 2009 Decision also reversed **Lanot vs. COMELEC** (G.R. No. 164858; 16 November 2006). *Lanot* was decided on the ground that one who files a certificate of candidacy is not a candidate until the start of the campaign period. This ground was based on the deliberations of the legislators who explained that the early deadline for filing certificates of candidacy under R.A. 8436 was set only to afford time to prepare the machine-readable ballots, and they intended to preserve the existing election periods, such that one who files his certificate of candidacy to meet the early deadline will still not be considered as a candidate.

When Congress amended R.A. 8436, Congress decided to expressly incorporate the *Lanot* doctrine into law, thus, the provision in Section 15 of R.A. 8436 that **a person who files his certificate of candidacy shall be considered a candidate only at the start of the campaign period.** Congress wanted to insure that no person filing a certificate of candidacy under the early deadline required by the automated election system would be disqualified or penalized for any partisan political act done before the start of the campaign period. This provision cannot be annulled by the Court except on the sole ground of its unconstitutionality. The assailed Decision, however, did not claim that this provision is unconstitutional. In fact, the assailed Decision considered the entire Section 15 good law. Thus, the Decision was self-contradictory — reversing *Lanot* but maintaining the constitutionality of the said provision.

Ponente: J. Antonio T. Carpio

Vote: 9-5