



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines

Supreme Court

Baguio City

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SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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JUN 19 2025

DATU PAX ALI S. MANGUDADATU,
Petitioner,

G.R. Nos. 260219 & 260231

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,*
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, Y.,
DIMAAMPAO,*
MARQUEZ,
KHO, JR., *and*
SINGH,** *JJ.*

- versus -

**THE COMMISSION ON ELECTIONS,
SHARIFA AKEEL MANGUDADATU,
AZEL V. MANGUDADATU, and BAI
ALI A. UNTONG,**

Respondents.

Promulgated:

April 22, 2025

X-----X

DECISION

GAERLAN, J.:

Does an elected public official's incumbency and continuous discharge of his or her duties in a different locality preclude him or her from validly acquiring a new domicile of choice in another locality for purposes of satisfying the residency requirement under the Local Government Code?

* No part.

** On leave but left her concurring vote.

Before the Court is a Petition for *Certiorari*¹ under Rule 64 in relation to Rule 65 of the Rules of Court assailing the Resolution² dated January 18, 2022 of the Commission on Elections (COMELEC) First Division and the Resolution³ dated May 2, 2022 of the COMELEC *En Banc*. The COMELEC *En Banc* canceled the Certificate of Candidacy (COC) of Datu Pax Ali S. Mangudadatu (Pax Ali) for the position of Governor of Sultan Kudarat due to false material representation.

Antecedents

On October 7, 2021, Pax Ali, who was then incumbent Mayor of the municipality of Datu Abdullah Sangki (DAS), Maguindanao, filed his COC⁴ for Provincial Governor of Sultan Kudarat for the May 9, 2022 elections. In Item 5 of his COC, he indicated that his residence is Purok Garden, Tamnag, Lutayan, Sultan Kudarat. In Item 7, he declared that his period of residence in the said province up to the day before May 9, 2022 is one year and eight months.⁵

On October 13, 2021, Sharifa Akeel Mangudadatu (Sharifa), another gubernatorial candidate, filed before the COMELEC, via electronic mail, a Petition to Deny Due Course or Cancel the COC of Pax Ali⁶ (Sharifa's Petition) docketed as SPA No. 21-078 (DC). She alleged that there is no way for Pax Ali to comply with items 5, 7, 11, and 21 of his COC without categorically declaring his lack of qualification, considering that he is the current mayor of DAS, Maguindanao. To qualify for the position of Governor of Sultan Kudarat, Pax Ali had to purposely lie, state, and affirm under oath that he is a resident of Sultan Kudarat. However, Pax Ali never abandoned his position as Mayor, thus, he never deserted his residence in DAS. Sharifa argued that the mere fact that Pax Ali continued to perform his duties as Mayor contradicts his declaration that he is a resident of another municipality in another province. This is a blatant mockery of the election process. Sharifa averred that there is no other reason for Pax Ali to lie relative to his residency but to mislead the electorate of Sultan Kudarat and the COMELEC as to his qualification. Pax Ali cannot feign a lack of malice or intent to deceive as he belongs to a family of politicians who know fully well the residency requirements for an elective local position.⁷

¹ *Rollo* (vol.1), pp. 3–58. With Extremely Urgent Application for the Issuance of a Temporary Restraining Order or Status Quo Order and for the Conduct of a Special Raffle of this Case.

² *Id.* at 65–75.

³ *Id.* at 86–93.

⁴ *Id.* at 296, Certificate of Candidacy for Provincial Governor.

⁵ *Id.*

⁶ *Id.* at 161–171.

⁷ *Id.* at 165–167, Sharifa's Petition.

4

As proof, Sharifa attached to her petition printouts of (1) the directory of DAS found on the web page of the Department of Interior of Local Government (DILG) and (2) Pax Ali's Facebook page.⁸

On October 27, 2021, Azel Mangudadatu (Azel) and Bai Ali A. Untong (Bai Ali) filed before the COMELEC a Petition to Deny Due Course or to Cancel the Certificate of Candidacy of Pax Ali (Azel and Bai Ali's Petition) docketed as SPA No. 21-114 (DC).⁹ They claimed that Pax Ali misrepresented in his COC that he had been residing in Sultan Kudarat for at least one year immediately preceding the elections. In truth, Pax Ali is still a resident of DAS. The acts undertaken by Pax Ali in discharging his duties, performing his functions, and exercising his rights as Mayor of DAS clearly and unmistakably negate any claim of bona fide intent to transfer his residence to Lutayan, Sultan Kudarat. Pax Ali did not resign from his position indicating that he had no intention to abandon his residence in DAS.¹⁰ In support thereof, Azel and Bai Ali attached to their petition screenshots of photos showing Pax Ali's discharge of his functions as Mayor, such as: (1) attendance to the Municipal Peace and Order Council Meeting held in DAS on July 12, 2021 (2) attendance at the ceremonial loan signing of the municipality of DAS with Landbank of the Philippines on August 24, 2021; and (3) giving speech during the opening ceremony of the Sili Plantation in Barangay Talisawa, DAS.¹¹

On December 7, 2021, Pax Ali filed his Verified Answer¹² to Sharifa's Petition stating among others, that:

- (1) his domicile of origin is Purok Garden, Tamnag, Lutayan, Sultan Kudarat where he grew up in the family's ancestral home together with family members;
- (2) he belongs to a long line of public servants, and exposure to public service made him naturally inclined to be immersed in the community and help the less fortunate;
- (3) while he temporarily transferred his residence to Barangay Talisawa, DAS, Maguindanao, in compliance with the residency requirement for the position of Mayor, he always had the inherent intention to return to his roots in Sultan Kudarat;
- (4) through a series of acts that began around July 2020, [Pax Ali] increased his bodily presence in his house and surrounding

⁸ *Id.*

⁹ *Id.* at 208–233.

¹⁰ *Id.* at 229–230. Azel and Bai Ali's Petition.

¹¹ *Id.* at 67. Resolution dated January 18, 2022 of the COMELEC First Division. *See also id.* at 239–241 showing the screenshots of photographs.

¹² *Id.* at 262–291.

community in Purok Garden. By September 2, 2020, all his personal effects and belongings were already back in his home. Since October 2020, [Pax Ali] has gone home to Purok Garden daily and has been away only to attend to his work and official functions;

- (5) he resigned as Mayor of DAS on November 15, 2012 as yet another evidence “ultimately showing his total abandonment of his house and occupation in Maguindanao.”¹³

Pax Ali attached in his Verified Answer several photos of the celebrations/occasions and socio-civic activities that he attended while growing up in his residence at Sultan Kudarat. He also submitted copies of his government-issued identification documents (e.g. Philhealth, Bureau of Internal Revenue registration, driver’s license, police clearance, NBI clearance, Municipal Mayor ID, etc.) showing his address as Barangay Tamnag, Lutayan, Sultan Kudarat. Pax Ali presented a Certification from the Mayor of Lutayan declaring that he is a bona fide resident of Purok Garden, Barangay Tamnag, bearing the Community Tax Certificate No. 13127421. Similarly, the Barangay Chairperson of Tamnag issued a Certification that Pax Ali had been a resident of the said barangay since August 2020. Pax Ali showed a Certification from the Election Officer of DAS stating that he had transferred his voter’s registration in Lutayan, Sultan Kudarat on May 17, 2021 and that his registration in Maguindanao has been deleted. He submitted a copy of his resignation letter as Mayor of DAS, as well as the acceptance thereof. In addition, he presented the affidavits of his family members, barangay officials and neighbors in Purok Garden, socio-civic organizations in Sultan Kudarat, and his colleagues to prove that he has abandoned his former residence in Barangay Talisawa, DAS, Maguindanao, and re-established his residence in Purok Garden, Barangay Tamnag, Lutayan, Sultan Kudarat beginning October 2020. Pax Ali prayed that Sharifa’s Petition be summarily dismissed for utter lack of merit.¹⁴

On December 9, 2021, Pax Ali filed his Verified Answer¹⁵ to Azel and Bai Ali’s Petition containing the same arguments and pieces of evidence as his Verified Answer to Sharifa’s Petition. On even date, a preliminary conference was held wherein the COMELEC First Division directed the parties to submit their respective memoranda within three days, after which the case would be deemed submitted for resolution.¹⁶

¹³ *Id.* at 267–268, Verified Answer.

¹⁴ *Id.* at 269–280, Pax Ali’s Verified Answer to the Sharifa’s Petition.

¹⁵ *Id.* at 444–473.

¹⁶ *Id.* at 69, Resolution dated January 18, 2022 of the COMELEC First Division.

Ruling of the COMELEC First Division

In its Resolution dated January 18, 2022, the COMELEC First Division granted the consolidated petitions and canceled Pax Ali's COC. The decretal portion of which reads:

WHEREFORE, premises considered, the Petition is **GRANTED**. Respondent **DATU PAX ALI S. MANGUDADATU**'s Certificate of Candidacy for Governor of Sultan Kudarat for the 09 May 2022 National and Local Elections is hereby **CANCELLED**.

Let the records of the case be forwarded to the Law Department of this Commission for the conduct of a preliminary investigation relative to the election offense aspect of this case.

SO ORDERED.¹⁷ (Emphasis in the original)

The COMELEC First Division held that Pax Ali failed to comply with the necessary requisites for a valid transfer of residence back to his domicile of origin in Purok Garden, Barangay Tamnag, Lutayan, Sultan Kudarat. The evidence adduced by Pax Ali, albeit numerous, lacked materiality and significance. The COMELEC First Division noted that when Pax Ali filed his COC, he was the incumbent Mayor of DAS. As a continuing requirement or qualification, he must remain a resident there for the rest of his term. The fact that Pax Ali continued to faithfully discharge the functions of his office bolsters the claim that his actual residence in DAS remains. Pax Ali's intent to remain permanently in Lutayan, Sultan Kudarat at the time he filed his COC, and to abandon his domicile in DAS, Maguindanao is negated by his constant presence in the latter.¹⁸

Further, the COMELEC First Division agreed with Sharifa that if indeed Pax Ali resides in Sultan Kudarat while actively reporting to work in DAS, Maguindano as Mayor, he would be subjected to travel protocols due to the COVID-19 pandemic. However, Pax Ali failed to present proof that he had been an authorized person outside of his residence. There is no trace of his supposed constant inter-regional travel. Hence, the COMELEC First Division found that Pax Ali is ineligible to run for Governor of Sultan Kudarat for his failure to comply with the residency requirement.¹⁹

Under Section 74 of the Omnibus Election Code (OEC), a candidate must certify under oath that he is eligible for the public office he seeks election. Pax Ali stated in his COC that he is a resident of Purok Garden,

¹⁷ *Id.* at 75.

¹⁸ *Id.* at 71–72.

¹⁹ *Id.* at 72.

Tamnag, Lutayan, Sultan Kudarat, and eligible for public office, but it turned out that he is a non-resident thereof. Thus, he committed a false representation in his COC on a material fact, which is a ground for the cancellation of his COC under Section 78 of the OEC.²⁰

The COMELEC First Division furthermore found that Pax Ali deliberately committed material misrepresentation in his COC.²¹

Meanwhile, Commissioner Marlon S. Casquejo (Commissioner Casquejo) filed a dissent, noting that the pivotal issue in the case is whether Pax Ali's period of residence in Sultan Kudarat qualifies him to run for and be elected as Governor of the said province, not whether he could have continued to qualify as Mayor of Maguindanao. He opined that Pax Ali did not lose his domicile of origin, which is Sultan Kudarat, even though the latter was elected and served as Mayor of DAS, Maguindanao. He claimed that Pax Ali presented numerous evidence proving his intention to remain in Sultan Kudarat. He was convinced that Pax Ali satisfied the residency requirement as he remained a domiciliary of Lutayan.²²

Ruling of the COMELEC *En Banc*

Pax Ali sought reconsideration of the ruling of the COMELEC First Division which was denied. In its Resolution dated May 2, 2022, the COMELEC *En Banc* ruled that Pax Ali merely reiterated his arguments before the COMELEC First Division. It held that the First Division correctly found that Pax Ali committed false material representation under Section 78 of the OEC. Pax Ali signed his COC, and sworn to the veracity of his declarations therein, indicating that his false representations are deliberate, and will effectively mislead the electorate on his qualifications as Governor of Sultan Kudarat.²³

Commissioner Casquejo again filed a dissent reiterating that Pax Ali remained a domiciliary of Lutayan, Sultan Kudarat.²⁴

Commissioner Aimee Torre Franca-Neri also filed a dissent, averring that Pax Ali was able to prove his change of domicile from DAS, Maguindanao to Lutayan, Sultan Kudarat. She alleged that Pax Ali is not precluded from electing a different domicile after the election, or as in this case, from reverting to his domicile of origin as long as he demonstrates his

²⁰ *Id.* at 73.

²¹ *Id.* at 74.

²² *Id.* at 78–85, Dissenting Opinion of Commissioner Casquejo.

²³ *Id.* at 92, Resolution dated May 2, 2022 of the COMELEC *En Banc*.

²⁴ *Id.* at 96, Dissenting Opinion of Commissioner Casquejo.

intention to reside in a fixed place by his personal presence in the place, coupled with conduct indicative of such intention. She stated that Pax Ali's tenure as Mayor alone cannot defeat the fact of actual residence proven by Pax Ali. Thus, there is no material misrepresentation on the part of Pax Ali as regards his residence.²⁵

The Petition

On May 5, 2022, Pax Ali filed the present Petition for *Certiorari* with Extremely Urgent Application for the Issuance of a Temporary Restraining Order (TRO) or Status Quo Order and for the Conduct of a Special Raffle of this Case.²⁶ He repleaded the arguments found in his Verified Answers, Memorandum, and Motion for Reconsideration before the COMELEC First Division. He argued that the COMELEC *En Banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it:

- (1) disregarded the numerous pieces of evidence proving his residency in Sultan Kudarat;
- (2) failed to apply prevailing jurisprudence on residency for election purposes including *Torayno, Sr. v. Commission on Elections, Sabili v. COMELEC, et al.*, and *Mitra v. COMELEC, et al. (Mitra)*;
- (3) disregarded his deep immersion in the communities in Sultan Kudarat which satisfies the rationale behind the one-year residency requirement;
- (4) granted Sharifa, Azel and Bai Ali's Petitions despite their failure to establish Pax Ali's deliberate intent to mislead the electorate which is the most important element of Section 78 of the OEC; and
- (5) denied Pax Ali's motion for reconsideration on the ground that it was a mere rehash of his arguments before the COMELEC First Division.²⁷

In support of his prayer for TRO, Pax Ali alleged that the assailed Resolutions of the COMELEC will become final after five days from his receipt of the Resolutions, or on May 7, 2022. As news of the assailed Resolutions had been given much publicity by Pax Ali's political opponents, it is expected that COMELEC will immediately execute or implement the resolutions.²⁸

²⁵ *Id.* at 104–105. Dissenting Opinion of Commissioner Torrefranca-Neri.

²⁶ *Id.* at 3–58.

²⁷ *Id.* at 15–16. Petition for *Certiorari*.

²⁸ *Id.* at 56.

On May 6, 2022, the Court issued a TRO enjoining the COMELEC from enforcing its assailed Resolutions. It also directed the COMELEC, Sharifa, Azel, and Bai Ali to comment on the petition within a non-extendible period of 10 days from notice.²⁹

On May 16, 2022, Pax Ali filed a Manifestation³⁰ stating that he was proclaimed as the duly elected Governor of Sultan Kudarat by the Provincial Board of Canvassers. He alleged that all doubts in relation to his residence in Sultan Kudarat should now be resolved in his favor in view of his overwhelming victory. He invoked Our ruling in *Frivaldo v. COMELEC* that when the voters had already manifested their own judgment and verdict by electing a candidate whose disqualification had been raised prior to the elections, all doubts should be in favor of his qualifications.³¹

On May 18, 2022, Azel and Bai Ali filed a Motion for Reconsideration on the Grant of TRO and Motion to Lift the Same.³²

On May 3, 2022, the COMELEC, through the office of the Solicitor General filed a Comment³³ on the petition. It alleged that Pax Ali changed his residence when he ran for Mayor in DAS, unmistakably pointing to the intention of abandoning Lutayan, Sultan Kudarat as his domicile of origin. Pax Ali's residence in DAS cannot be considered temporary, otherwise he could not have validly qualified for the position of Mayor which requires residency of at least one year before the elections. The COMELEC asserted that Pax Ali failed to re-acquire his domicile in Lutayan at the time of the filing of his COC. Pax Ali failed to prove his intention to remain in Lutayan and his intention to abandon DAS. Despite Pax Ali's incremental moves to transfer to Lutayan, his true intentions to abandon DAS became manifest only after his resignation as Mayor on November 15, 2021.³⁴

The COMELEC maintained that Pax Ali deliberately misrepresented the duration of his residence in Sultan Kudarat to mislead the electorate that he was qualified as Governor. It insisted that Pax Ali could not be unaware that his incumbency as Mayor of DAS was an obstacle to his residency requirement for the position of Governor in Sultan Kudarat. Pax Ali's nonchalance in claiming to be a resident of Lutayan, Sultan Kudarat, as of the filing of his COC, even as he was Mayor of DAS, Maguindanao, offends

²⁹ *Rollo* (vol. 2), pp. 854–855.

³⁰ *Id.* at 869–872.

³¹ *Id.* at 871. Manifestation Re: Proclamation of Petitioner as The Duly Elected Governor of the Province of Sultan Kudarat.

³² *Id.* at 882–898.

³³ *Id.* at 904–934.

³⁴ *Id.* at 918–922. COMELEC's Comment on the Petition.

standards of decency and honesty as he boldly flouts the spirit and letter of Section 39 of the Local Government Code (LGC).³⁵

Subsequently, the COMELEC contended that Pax Ali's reliance on *Torayno* and *Mitra* is misplaced as the factual milieu of these cases is not on all fours with the case at bar.³⁶

On May 23, 2022, Azel and Bai Ali filed their Comment³⁷ on the Petition, replying the arguments in their Petition and Memorandum³⁸ before the COMELEC First Division. They alleged that the affidavits and documents adduced by Pax Ali do not prove his intention to abandon his residence at DAS, Maguindanao. While Pax Ali allegedly resigned from his position as Mayor, the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) certified that there is no record of the said resignation.³⁹ Azel and Bai Ali stated that Pax Ali was registered as voter of Lutayan, Sultan Kudarat, only on May 17, 2021. This means that Pax Ali lacks the one-year residency period to be qualified as Governor of Sultan Kudarat. Pax Ali was eight days late considering that the election was held on May 9, 2022.⁴⁰ Like the COMELEC, Azel and Bai Ali claimed that *Torayno* and *Mitra* are inapplicable in this case.⁴¹

On May 30, 2022, Sharifa filed her Comment/Opposition to the Petition for *Certiorari* with Extremely Urgent Motion to Lift TRO and to Resolve the Instant Petition.⁴² She reiterated her arguments before the COMELEC First Division that Pax Ali is a domiciliary of DAS, Maguindanao. She emphasized that Pax Ali was very vocal in his resolve not to abandon his constituents in DAS as he publicly stated in his interview on October 1, 2021, "*hindi ko iniwan ang Datu Abdullah Sangki*." Sharifa maintained that Pax Ali uttered the foregoing words not only once but twice, which clearly reflects his state of mind at the time that he filed his COC.⁴³ Consequently, since Pax Ali committed false material representation, his COC should be canceled. When a COC is canceled, it is as if the person was never a candidate. Hence, Sharifa prayed that We declare her the lone candidate for the position of Governor of Sultan Kudarat.⁴⁴

³⁵ *Id.* at 927–929.

³⁶ *Id.* at 929.

³⁷ *Id.* at 941–978.

³⁸ *Id.* at 685.

³⁹ *Id.* at 964. Azel and Bai Ali's Comment on the Petition.

⁴⁰ *Id.* at 968.

⁴¹ *Id.* at 965–970.

⁴² *Id.* at 983–1019.

⁴³ *Id.* at 1015. Sharifa's Comment on the Petition.

⁴⁴ *Id.* at 1016.

On July 28, 2022, Pax Ali filed a Consolidated Reply and Consolidated Comment on Sharifa, Azel, and Bai Ali's motion to lift the TRO.⁴⁵ Pax Ali asserted that the will of the people of Sultan Kudarat cannot be set aside on a mere summary proceeding before the COMELEC. Instead, any doubts about his qualifications should be tried and tested before the proper tribunal having jurisdiction on petitions for quo warranto. Pax Ali highlighted that no election protest was filed against him after his proclamation as Governor. He then repleaded and adopted all the allegations in his Petition and Manifestation before Us.⁴⁶

On August 5, 2022, Sharifa filed a Counter-Manifestation,⁴⁷ arguing that the principle of the "will of the people" does not apply to Pax Ali because he was never a candidate in the first place. Pax Ali was proclaimed the winner when no TRO was received by the Provincial Board of Canvassers or any directive from the COMELEC on the alleged TRO, which was then only existing on Facebook.

On September 5, 2022, Sharifa filed a Motion for Early Resolution⁴⁸ of the case. On November 29, 2022, Azel and Bai Ali also filed a motion of similar import with an additional prayer to set the case for oral argument.⁴⁹

In Our Resolution⁵⁰ dated February 14, 2023, We denied the motion for reconsideration on the grant of TRO filed by Azel and Bai Ali for lack of merit.

Issue

The issue in this case is whether the COMELEC committed grave abuse of discretion in cancelling Pax Ali's COC on the ground that he made a false representation as to his residency qualification.

The Court's Ruling

The Petition is dismissed for lack of merit.

⁴⁵ *Id.* at 1114–1158.


⁴⁶ *Id.* at 1117–118. COMELEC Division.

⁴⁷ *Id.* at 1166–1167.

⁴⁸ *Id.* at 1174–1185. Sharifa also filed a Second and Third Motion for Early Resolution of the Case, *see id.* at 1207–1208 and 1218–1220.

⁴⁹ *Id.* at 1190–1198. Motion for Early Resolution And/Or Motion to Set the Case for Oral Argument. Azel and Bai Ali filed a Second and Most Respectful Urgent Motion for Early Resolution on October 16, 2023, *see id.* at 1224–1232.

⁵⁰ *Id.* at 1205.



Section 78 of the OEC authorizes the COMELEC to deny due course to or cancel a COC on the exclusive ground of false material representation. The provision reads:

Section 78. *Petition to deny due course to or cancel a certificate of candidacy.* — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

In *Atty. Francisco v. COMELEC, et al.*,⁵¹ the Court held that the material misrepresentation contemplated under Section 78 of the OEC involves a candidate's eligibility or qualification for the office to which he or she seeks election, such as the requisite residency, age, citizenship, or any other legal qualification necessary to run for elective office enumerated under Section 74 of the OEC. This must be so because the consequences imposed upon a candidate guilty of having made a false representation in his or her COC are grave – to prevent the candidate from running or, if elected, from serving, or to prosecute him or her for violation of the election laws.⁵²

Although Section 78 of the OEC is silent on the element of deceit, the Court has repeatedly ruled that, false representation must also consist of a “deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.”⁵³

Accordingly, for a petition under Section 78 of the OEC to prosper, the following requisites must concur: (1) a candidate made a material representation in his or her COC, that is, a representation relating to his or her qualification for the position he or she is vying for; (2) such representation is false; and (3) he or she made the representation with the intent to deceive the electorate that he or she is eligible to run and be voted for.

Undoubtedly, the assailed representation in this case passed the test of materiality. Sharifa, Azel, and Bai Ali Petitions are anchored on Pax Ali's alleged false representation that he complied with the residency requirement

⁵¹ 831 Phil. 106 (2018) [Per J. Velasco, Jr., *En Banc*].

⁵² *Salcedo II v. COMELEC*, 371 Phil. 377, 389 (1999) [Per J. Gonzaga-Reyes, *En Banc*].

⁵³ *Sibuma v. Commission on Elections*, 934 Phil. 463, 495 (2023) [Per J. Inting, *En Banc*], citing *Mayor Hayudini v. Commission on Elections*, 733 Phil. 822, 845 (2014) [Per J. Peralta, *En Banc*]; *Fr. Buenafe v. Commission on Elections*, 924 Phil. 201 (2022) [Per Zalameda, *En Banc*]; *Atty. Francisco v. COMELEC, et al.*, 831 Phil. 106, 125–126 (2018) [Per J. Velasco, Jr., *En Banc*]; *Dano v. COMELEC, et al.*, 794 Phil. 573, 595 (2016) [Per C.J. Sereno, *En Banc*]; see also, *Salcedo II v. COMELEC*, 371 Phil. 377, 389 (1999) [Per J. Gonzaga-Reyes, *En Banc*].

under the LGC for the position of Governor of Sultan Kudarat. Section 39(a) of the LGC provides, among others, that an elective local official must be a resident of the barangay, municipality, city, or province where he or she intends to be elected for at least one year immediately preceding the day of the election. When Pax Ali stated in his COC that he has been a resident of Purok Garden, Tamnag, Lutayan, Sultan Kudarat for one year and eight months before the May 9, 2022 National and Local Elections, he made a material representation on his eligibility to run and hold elective office. This representation, if proved false, falls within the ambit of Section 78 of the OEC.⁵⁴

The remaining threshold issues to be resolved are (1) whether Pax Ali's declaration that he is a resident of Lutayan, Sultan Kudarat, for at least one year before the May 9, 2022 elections is false; and (2) if in the affirmative, whether Pax Ali deliberately lied on his COC to feign eligibility and misled the voters that he is qualified for Governor.

Pax Ali is a resident of DAS, Maguindanao

Well-settled is the rule that residence, for election purposes, is used synonymously with domicile. Domicile denotes a fixed permanent residence to which, when absent, one has the intention of returning.⁵⁵ It could be classified into three, namely: (1) domicile of origin, which is acquired by every person at birth; (2) domicile of choice, which is acquired upon abandonment of the domicile of origin; and (3) domicile by operation of law, which the law attributes to a person independently of his residence or intention.⁵⁶ Domicile of origin is usually the place where the child's parents reside and continues until the same is abandoned by the acquisition of a new domicile.⁵⁷

Here, it is undisputed that Pax Ali's domicile of origin is at Purok Garden, Tamnag, Lutayan, Sultan Kudarat where he was raised in his family's ancestral home. It is also uncontroverted that Pax Ali effected a change of domicile when he ran as Municipal Mayor of DAS, Maguindanao, in 2018. Thus, per his Affidavit, Pax Ali narrated that:

9. Sometime in 2018, I decided to run as Municipal Mayor of Datu Abdullah Sangki, Maguindanao, and to comply with the residency requirement set, I transferred my residence to Barangay Talisawa, Datu Abdullah Sangki, Maguindanao on (sic) April 2018.

....

⁵⁴ *Fr. Buenafe v. Commission on Elections*, *id.*

⁵⁵ *Romualdez-Marcos v. Commission on Elections*, 318 Phil. 329, 333 (1995) [Per J. Kapunan, *En Banc*].

⁵⁶ *Mayor Ugdonacion, Jr. v. COMELEC, et al.*, 575 Phil. 253, 263 (2008) [Per J. Nachura, *En Banc*].

⁵⁷ *Japzon v. COMELEC, et al.*, 596 Phil. 354, 369 (2009) [Per J. Chico-Nazario, *En Banc*].

17. In 2020, I started to make known **my intention to re-establish** my residence at Lutayan, Sultan Kudarat to close family members and friends.

....

33. That I am executing this affidavit to attest to the truthfulness of the foregoing facts to prove that **I re-established my residence** in Purok Garden, Barangay Poblacion Tamnag, Lutayan, Sultan Kudarat since October 2020.⁵⁸ (Emphasis supplied)

Prescinding from the foregoing, Pax Ali admits and acknowledges that he had abandoned his domicile of origin when he ran for Mayor of DAS, Maguindanao. Otherwise, he would not have used the word “re-establish” relative to his residence at Purok Garden. DAS, Maguindano then became Pax Ali’s domicile by choice. Also, in all of Pax Ali’s pleadings and/or submissions⁵⁹ before the Court and the COMELEC, he seeks to prove that he had satisfied the requisites of valid transfer of residence from DAS, Maguindanao to Lutayan, Sultan Kudarat.

In *Limbona v. Commission on Elections, et al.*,⁶⁰ the Court held that in order to acquire a domicile by choice, there must concur: (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. A person’s “domicile” once established is considered to continue and will not be deemed lost until a new one is established.⁶¹

If one wishes to successfully effect a change of domicile, he or she must demonstrate an actual removal or an actual change of domicile, a bona fide intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose.⁶² Simply put, there must be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.⁶³ The quantum of proof necessary to establish a change in domicile in election cases is substantial evidence or such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.⁶⁴

⁵⁸ *Rollo* (vol. 1), pp. 301–304. Affidavit of Pax Ali.

⁵⁹ *Id.* at 267, Verified Answer to Sharifa’s Petition; *id.* at 449–450, Verified Answer to Azel and Bai Ali’s Petition; *id.* at 738 and 818, Petitioner’s Memorandum; *id.* at 42, Petition for *Certiorari* before the SC; and *id.* at 450, Consolidated Reply before the SC.

⁶⁰ 578 Phil. 364, 377 (2008) [Per J. Ynares-Santiago, *En Banc*].

⁶¹ *Id.* at 374.

⁶² *Pundaodaya v. Commission on Elections, et al.*, 616 Phil. 167, 172–173 (2009) [Per J. Ynares-Santiago, *En Banc*].

⁶³ *Limbona v. Commission on Elections, et al.*, 578 Phil. 364, 374–375 (2008) [Per J. Ynares-Santiago, *En Banc*].

⁶⁴ *Sabili v. Commission on Elections, et al.*, 686 Phil. 649, 670–671 (2012) [Per J. Sereno, *En Banc*].

Tested through the abovementioned parameters, the Court rules that Pax Ali failed to effect a change of domicile from DAS, Maguindanao to Lutayan, Sultan Kudarat, one year immediately preceding the May 9, 2022 elections. While there is substantial evidence that Pax Ali had bodily or physical presence in Lutayan, Sultan Kudarat, his intent to remain there for an indefinite period, and to abandon DAS, Maguindanao are missing.

First, Pax Ali's physical presence in Purok Garden, Tamnag, Lutayan Sultan Kudarat is supported by evidence on record. Pax Ali presented the Affidavit⁶⁵ dated November 16, 2021 of Calicol M. Hadjiesmael, the *Punong Barangay* of Tamnag, Lutayan, Sultan Kudarat, confirming his (Pax Ali's) physical presence in Purok Garden since August 2020. The Affidavit further stated that the *Punong Barangay* regularly spoke with Pax Ali regarding the issues and concerns of the residents in their barangay and how he (Pax Ali) could help them. Pax Ali also submitted in evidence a Certificate of Residency⁶⁶ issued by the Barangay Secretary of Tamnag and approved by the *Punong Barangay* indicating that Pax Ali "has been residing in the barangay since August 2020." In *Sabili*, the Court considered a barangay's certification of residence as evidence of therein petitioner's bodily presence in the locality in which he seeks election.⁶⁷ Similarly, in *Mitra*, the Court noted that it is the business of the *Punong Barangay* to know who the residents are in his or her barangay.⁶⁸

Several neighbors of Pax Ali or those living near or adjacent to his house in Purok Garden also executed sworn statements attesting to his physical presence in the area starting August 2020.⁶⁹ In *Jalosjos v. COMELEC*,⁷⁰ the Court opined that the affidavits of next-door neighbors attesting to the physical presence of therein Pax Ali are more credible than the affidavits of other people who just sporadically passed by the subject residence.

Second, Pax Ali's resolve to maintain residence in Lutayan, Sultan Kudarat, and to abandon DAS, Maguindanao became manifest only when he resigned as Mayor of DAS on November 15, 2021. The question of residence for purposes of election law is mainly one of intention.⁷¹ This may be inferred from a person's acts, activities, and utterances.⁷² Pax Ali was the incumbent Mayor of DAS, Maguindanao when he filed his COC on October 7, 2021. As

⁶⁵ *Rollo* (vol. 1), p. 592.

⁶⁶ *Id.* at 571.

⁶⁷ *Sabili v. Commission on Elections, et al.*, 686 Phil. 649, 678–679 (2012) [Per J. Sereno, *En Banc*].

⁶⁸ *Mitra v. Commission on Elections, et al.*, 636 Phil. 753, 783 (2010) [Per J. Brion, *En Banc*].

⁶⁹ *Rollo* (vol. 1), pp. 608–613.

⁷⁰ *Jalosjos v. Commission on Elections, et al.*, 686 Phil. 563 (2012) [Per J. Abad, *En Banc*].

⁷¹ *Limbona v. Commission on Elections*, 578 Phil. 364 (2008) [Per J. Ynares-Santiago, *En Banc*].

⁷² *Faypon v. Quirino*, 96 Phil. 294, 298–299 (1954) [Per J. Padilla, *En Banc*].

such, he is deemed to be the representative of the locality and the people therein. Staying as Mayor of DAS is a positive and voluntary act reflecting Pax Ali's choice of residence. Remaining as the local chief executive of DAS is antithetical to a claim of *animus non-revertendi*. Likewise, clinging to his position as Mayor meant that Pax Ali must comply with the continuing requirement of remaining a resident of DAS during his entire tenure. In *Atty. Lico, et al. v. COMELEC En Banc, et al.*,⁷³ the Court declared that qualifications for public office, whether elective or not, are continuing requirements. These qualifications must be possessed not only at the time of appointment or election, or of assumption of office, but during the officer's entire tenure.⁷⁴ This renders questionable Pax Ali's bona fide intent to remain at Lutayan, Sultan Kudarat for an indefinite period of time. Since Pax Ali failed to show that he had established a new domicile at the time of the filing of his COC, his residency in DAS continues. He remained a resident of DAS, Maguindanao as of October 7, 2021.

To the Court's mind, Pax Ali's resignation as Mayor was a mere afterthought. It was done after two (2) petitions for cancellation of his COC were filed before the COMELEC. Pax Ali resigned to foreclose any issue with his compliance with the residency requirement. Paragraph 1.3.2 of Pax Ali's Verified Answer to Azel and Bai Ali's Petition reads:

1.3.2 Respondent [herein Pax Ali] admits the allegations as regards the fact that respondent was still mayor of the Municipality of Datu Abdullah Sangki, Maguindanao at the time he filed his Certificate of Candidacy ("CoC") for Governor of Sultan Kudarat. **Presently, however, respondent is no longer the Mayor of the said Municipality, as he resigned on [November 15,] 2021. This clearly shows respondent's intention to abandon his former residence and occupation as Mayor of the Municipality of Datu Abdullah Sangki, Maguindanao, and to re-establish, as he has already re-established, his domicile in Sultan Kudarat.**⁷⁵ (Emphasis supplied)

A statement of the same tenor is also found in Pax Ali's Verified Answer to Sharifa's Petition, viz.:

(g) On November 15, 2021, respondent [herein Pax Ali] tendered his resignation as Mayor of Datu Abdullah Sangki, Maguindanao, as yet another evidence **ultimately showing his total abandonment of his house and occupation in Maguindanao.**" (Emphasis supplied)

Pax Ali is, thus, aware of the import or effect of his resignation on the question of his residency. However, his resignation was done too late. He fell

⁷³ 770 Phil. 445 (2015) [Per C.J. Sereno, *En Banc*].

⁷⁴ *Id.* at 457-458.

⁷⁵ *Rollo* (vol. 1), p. 446.

short of the one-year residency requirement under the LGC. The concurrence of the three requisites for the acquisition of a new domicile of choice may be reckoned only from the time that Pax Ali resigned as Mayor of DAS or, to be exact, on November 15, 2021. Counted from said date, Pax Ali has been a resident of Lutayan, Sultan Kudarat for only five months and 22 days immediately preceding the day of the elections. His representation in his COC that he would be a resident of the province for one year and eight months the day before the May 9, 2022 elections is false. Necessarily, his declaration under oath in his COC that he is eligible for the position of Governor is false.

The Court cannot reckon the starting period of the one-year residency requirement from the time that Pax Ali made “incremental moves” to transfer his belongings to Lutayan in July/August 2020. Nor in October 2020 when he claimed to have gone home daily to the said place. This is because, during this period, Pax Ali was still fulfilling his duties and responsibilities as Mayor of DAS, Maguindanao, negating any intent to abandon DAS as his domicile.

Pax Ali questions the application in this case of the doctrine that qualifications for public office are continuing requirements that must be possessed not only at the time of appointment but during the officer’s entire tenure. He argues that when an elective official loses his or her qualification, his or her eligibility to continuously hold office is simply open to challenge nothing more, nothing less.⁷⁶

The Court cannot subscribe to Pax Ali’s theory because this would effectively undermine the continuing requirements for qualification to public office. This would also result in a ludicrous situation where a local elected official could disregard the required eligibility for his or her position so long as no one challenges him or her.

**Pax Ali’s reliance in the cases of *Torayno*,
Mitra, and *Sabili* is misplaced**

Pax Ali insists that his incumbency as Mayor of DAS does not preclude him from acquiring a bona fide domicile of choice in a different locality. He relies on the cases of *Torayno* and *Mitra* which are allegedly on all fours with his case. Pax Ali is mistaken.

In *Torayno*, therein respondent Vicente Emano (Emano) is the governor of Misamis, Oriental. During his incumbency, he filed a COC for Mayor of Cagayan De Oro (CDO) City, which is geographically located in the province of Misamis Oriental. Torayno and the others sought Emano’s disqualification

⁷⁶ *Rollo* (vol. 2), p. 1126. Consolidated Reply.

on the ground that he failed to meet the one-year residency requirement. The COMELEC denied the petition for disqualification after finding that Emano is a resident of CDO. The COMELEC explained that:

... private respondent and his family had actually been residing in Capistrano Subdivision, Gusa, Cagayan de Oro City, in a house he had bought in 1973. **Furthermore, during the three terms (1988-1998) that he was governor of Misamis Oriental, he physically lived in that city, where the seat of the provincial government was located.** In June 1997, he also registered as voter of the same city. Based on our ruling in *Mamba-Perez*, these facts indubitably prove that Vicente Y. Emano was a resident of Cagayan de Oro City for a period of time sufficient to qualify him to run for public office therein. Moreover, the Comelec did not find any bad faith on the part of Emano in his choice of residence.

Petitioners put much emphasis on the fact that Cagayan de Oro City is a highly urbanized city whose voters cannot participate in the provincial elections. Such political subdivisions and voting restrictions, however, are simply for the purpose of parity in representation. **The classification of an area as a highly urbanized or independent component city, for that matter, does not completely isolate its residents, politics, commerce and other businesses from the entire province — and vice versa — especially when the city is located at the very heart of the province itself, as in this case.**⁷⁷ (Emphasis supplied)

The Court sustained the COMELEC's ruling and noted that CDO was at the center of the province of Misamis Oriental. CDO is itself the seat of the provincial government. The provincial officials who carry out their functions in the city cannot avoid residing therein, much less get acquainted with its concerns and interests. Emano was actually and physically residing in CDO while discharging his duties as Governor of Misamis Oriental. He owned a house in the City and resided there with his family. Thus, for all intents and purposes, he is a resident of CDO and eligible to run as Mayor thereof.⁷⁸

In *Mitra*, Mitra was the incumbent representative of the Second District of Palawan, which includes Aborlan and Puerto Princesa. Before the end of Mitra's term, Puerto Princesa was reclassified as a highly urbanized city. Hence, Puerto Princesa residents became ineligible to vote for candidates for elective provincial officials. Since Mitra intends to run as Governor, he transferred his voter registration record from Puerto Princesa to Aborlan. Thereafter, he filed a COC for the position of Governor of Palawan as a resident of Aborlan. The COMELEC canceled Mitra's COC for non-compliance with the residency requirement. The Court reversed the COMELEC and held that Mitra was able to prove his required physical presence in the province of Palawan. It noted the incremental moves that Mitra

⁷⁷ *Torayno, Sr. v. Commission on Elections*, 392 Phil. 342 (2000) [Per J. Panganiban, *En Banc*].

⁷⁸ *Id.* at 354-355.

undertook to establish his new domicile in Aborlan beginning in 2008, concluding his transfer in 2009. It also explained that:

... Mitra who is no stranger to Palawan has merely been compelled — after serving three terms as representative of the congressional district that includes Puerto Princesa City and Aborlan — by legal developments to transfer his residence to Aborlan to qualify as a Province of Palawan voter. **To put it differently, were it not for the reclassification of Puerto Princesa City from a component city to a highly urbanized city, Mitra would not have encountered any legal obstacle to his intended gubernatorial bid** based on his knowledge of and sensitivity to the needs of the Palawan electorate.⁷⁹ (Emphasis supplied)

In both *Torayno* and *Mitra*, the incumbency of the elected public officials did not hinder them from transferring to another residence, simply because the new residence formed part or is a component of the province or district that they are currently representing. In *Torayno*, CDO is part of Misamis Oriental, the province where Emano was the incumbent Governor when he filed his COC for Mayor of CDO. Emano was actually residing in CDO during the three terms that he was a Governor of Misamis Oriental. CDO is the provincial seat of power. In *Mitra*, Aborlan is one of the territories included in the Second District of Palawan where Mitra was the incumbent representative when he filed his COC for Governor. Evidently, in *Torayno* and *Mitra*, the rule that the elected public official must remain a resident there for the rest of his or her tenure was complied with. Not so in the case of Pax Ali. The municipality of DAS does not form part of or is not geographically located in the province of Sultan Kudarat. DAS is in the province of Maguindanao. Pax Ali cannot comply with the residency requirement in Sultan Kudarat while discharging his duties as Mayor of DAS, Maguindanao.

Here, even if the Court considers Pax Ali's transfer of his voter's registration from DAS, Maguindanao to Sultan Kudarat as proof of his intention to change his domicile, Pax Ali would still not be able to comply with the one-year residency requirement. Counting from May 17, 2021 or the date of Pax Ali's transfer of his voter's registration, Pax Ali would be a resident of Sultan Kudarat for 11 months and 21 days before the day of the elections. In *Pundaodaya v. Commission on Elections*,⁸⁰ the Court opined that a person's registration as a voter in one district is not proof that he or she is not domiciled in another district. The registration of a voter in a place other than his or her residence of origin is not sufficient to consider him or her to have abandoned or lost his or her residence.⁸¹

⁷⁹ *Mitra v. COMELEC, et al.*, 636 Phil. 753, 790 (2010) [Per J. Brion, *En Banc*].

⁸⁰ *Pundaodaya v. Commission on Elections, et al.*, 616 Phil. 167 (2009) [Per J. Ynares-Santiago, *En Banc*].

⁸¹ *Id.* at 174.

***Pax Ali deliberately committed
misrepresentation***

In the sphere of election laws, a material misrepresentation pertains to a candidate's act done with the intention to gain an advantage by deceitfully claiming possession of all the qualifications and none of the disqualifications when, in fact, the contrary is true.⁸²

Here, Pax Ali knew at the time of the filing of his COC that he could not be a resident of Sultan Kudarat as he was the incumbent Mayor of DAS, Maguindanao. The LGC requires him to be a resident of DAS during his entire tenure. As Pax Ali stated in his Verified Answer before the COMELEC, he belongs to a long line of public servants. It is impossible for him not to know the requirements under the LGC as regards residency. To rectify the situation, he resigned as Mayor. However, this belated posturing could no longer cure his material misrepresentation.

In declaring in his COC that he is a resident of Lutayan, Sultan Kudarat, despite being the incumbent Mayor of DAS, Maguindanao, Pax Ali misled the electorate of Sultan Kudarat into thinking that he is eligible for the position of Governor. The Court agrees with the observation of the COMELEC that had Pax Ali believed in good faith that he could validly transfer to his residence in Sultan Kudarat while discharging his functions as Mayor of DAS, Maguindanao, he could have maintained the position instead of resigning therefrom after two petitions to deny due course/cancel his COC was filed before the COMELEC.⁸³

An incumbent public official who continuously exercises the rights and duties of his or her office in the locality where he or she is elected cannot claim *animus non-revertendi* relative to such place and *animus manendi* in a different locality without making a mockery of the electorate who voted for him or her and deceiving the electorate of the new locality where he or she seeks a new election.

It is the height of absurdity to continue representing a locality/place as its local chief executive and at the same time declare under oath that you are a resident of another province, that is, that you are no longer a resident of the place where you are currently at the helm of the seat of power. A person cannot have two domiciles at the same time.⁸⁴

⁸² *Dano v. COMELEC, et al.*, 794 Phil. 573, 629 (2016) [Per C.J. Sereno, *En Banc*].

⁸³ *Rollo* (vol. 2), p. 928. Comment of the COMELEC.

⁸⁴ *Mayor Ugdoracion, Jr. v. Commission on Elections, et al.*, 575 Phil. 253, 264 (2008) [Per J. Nachura, *En Banc*].

Section 74 of the OEC requires a candidate to state under oath in his or her COC that he or she is eligible for the office he or she seeks election. If the candidate declares that he or she is eligible to run for public office when in truth he or she is not, such misrepresentation is a ground for a Section 78 petition.⁸⁵

In this case, Pax Ali made a false material representation in his COC when he declared that he would be a resident of Lutayan, Sultan Kudarat for one year and eight months immediately before the day of the elections. He deliberately misrepresented that he was eligible for Governor of Sultan Kudarat when in fact he was not. Thus, the COMELEC did not commit grave abuse of discretion in denying due course to or canceling Pax Ali's COC.

There is a need to revisit the second placer rule

Jurisprudence is settled regarding the effects of cancellation of, or denial of due course to, a person's COC. A cancelled COC does not give rise to a valid candidacy. It is as if the person has not filed any COC. A person whose COC is cancelled or denied due course is no candidate at all.⁸⁶

In *Rivera III v. Commission on Elections*,⁸⁷ the Court noted that the effect of cancellation of a COC is provided under Sections 6 and 7 of Republic Act No. 6646 or The Electoral Reforms Law of 1987 in relation to Section 211 of the OEC, to wit:

SECTION 6. *Effect of Disqualification Case.* — Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

⁸⁵ *Sibuma v. Commission on Elections*, 934 Phil. 463, 479 (2023) [Per J. Inting, *En Banc*].

⁸⁶ *Rosal v. Commission on Elections*, G.R. Nos. 264125, 266775, 266796 & 269274, October 22, 2024 [Per J. Caguioa, *En Banc*]; *Fr. Buenafe v. Commission on Elections*, 924 Phil. 201 (2022) [Per J. Zalameda, *En Banc*]; *Mayor Hayundini v. Commission on Elections*, 733 Phil. 822 (2014) [Per J. Peralta, *En Banc*]; *Aratea v. Commission on Elections*, 696 Phil. 700 (2012) [Per J. Carpio, *En Banc*]; *Jalosjos, Jr. v. Commission on Elections*, 696 Phil. 601 (2012) [Per J. Carpio, *En Banc*]; *Fermin v. Commission on Elections*, 595 Phil. 449 (2008) [Per J. Nachura, *En Banc*]; and *Miranda v. Abaya*, 370 Phil. 642 (1999) [Per J. Melo, *En Banc*].

⁸⁷ 551 Phil. 37 (2007) [Per J. Sandoval-Gutierrez, *En Banc*].

SECTION 7. *Petition to Deny Due Course To or Cancel a Certificate of Candidacy.* — The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

....

SEC. 211. *Rules for the appreciation of ballots.* — In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

....

19. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot. (Emphasis supplied)

In *Aquino v. Commission on Elections*,⁸⁸ the Court emphasized that, as stated in Section 7 of Republic Act No. 6646, Section 6 thereof is applicable not only to disqualification cases under Section 68 of the OEC but also to petitions to deny due course to or cancel a COC under Section 78 of the same Code.

Section 6 of Republic Act No. 6646 covers two situations. First is when the disqualification (or denial/cancellation of COC) becomes final *before* the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification (or denial/cancellation of COC) becomes final *after* the elections, which is the situation covered in the second sentence of Section 6.⁸⁹ Under the first situation, a candidate disqualified by final judgment before an election cannot be voted for, and the votes cast for him shall not be counted⁹⁰ and shall be considered as stray.⁹¹ In the second situation, since the disqualification or COC cancellation/denial case is not resolved before election day, the proceedings shall continue even after the election and the proclamation of the winner. In the interim, the candidate may be voted for and be proclaimed if he or she wins, but the COMELEC's jurisdiction to deny due course and cancel his or her COC continues.⁹² The only exception to this is in the case of congressional or senatorial candidates with unresolved disqualification or COC denial/cancellation cases after the


⁸⁸ 318 Phil. 467 (1995) [Per J. Kapunan, *En Banc*].

⁸⁹ *Rev. Fr. Cayat v. Commission on Elections*, 550 Phil. 209, 229 (2007) [Per J. Carpio, *En Banc*].

⁹⁰ *Id.*

⁹¹ See Section 211 (24), OEC, which states that: Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray and shall not be counted but it shall not invalidate the ballot.

⁹² *Velasco v. Commission on Elections*, 595 Phil. 1172, 1193 (2008) [Per J. Brion, *En Banc*].



elections. Pursuant to Article VI, Section 17 of the Constitution, the COMELEC *ipso jure* loses jurisdiction over these unfinished cases in favor of the respective Senate or the House of Representatives electoral tribunals after the candidates take their oath of office.⁹³

Meanwhile, Section 6 of Republic Act No. 6646 is silent as to the treatment and status of the votes cast in favor of candidate whose disqualification or denial/cancellation of COC became final only after the elections. Thus, when candidate's COC is cancelled after they have already won and assumed office, a question arises on how to fill the vacancy caused by their removal from office. A quick survey of case law yields two divergent results.

The *first group* advances the application of the rule on succession under Section 44 of the LGC with respect to vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor, viz.:

SECTION 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* — (a) 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. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

(b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.

(c) A tie between or among the highest ranking sanggunian members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

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 functions of his office.

For purposes of succession as provided in this Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes

⁹³ *Id.*

obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.

This is on the premise that the second placer (or the candidate who obtained the second highest number of votes) may not be proclaimed winner in case the candidate who receives the majority votes is disqualified (“rejection of the second placer”). The law only authorizes a declaration of election in favor of the person who obtained a plurality of votes.⁹⁴ The jurisprudential spring of the doctrine of rejection of the second placer is allegedly *Topacio v. Paredes*⁹⁵ where the Court stated that “the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots.”⁹⁶

Quite the contrary, the *second group*, which is the prevailing jurisprudence, favors the proclamation of the second placer as a result of the cancellation of the winning candidate’s COC. The second placer is considered as the qualified candidate who gathered the highest number of votes (“the second placer rule”). The rationale, as stated in the leading case of *Jalosjos, Jr. v. COMELEC*⁹⁷ is: “[i]f the certificate of candidacy is void *ab initio* [due to the cancellation of the COC], then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections.”

The present case is an opportune time for the Court to revisit the second placer rule, which, as correctly observed by Associate Justice Benjamin Caguioa,⁹⁸ has no basis in law and is inconsistent with the very essence of republicanism.

A discussion of the relevant jurisprudence is in order starting with cases decided before the enactment of the OEC.

⁹⁴ *Domino v. Commission on Elections*, 369 Phil. 798 (1999) [Per C.J. Davide, Jr., *En Banc*].

⁹⁵ 23 Phil. 238 (1912) [Per J. Trent, *En Banc*].

⁹⁶ *Id.* But see *Maquiling v. COMELEC*, 709 Phil. 408 (2013) [Per C.J. Sereno, *En Banc*] where it was explained that this phrase in *Topacio* does not have any legal basis. The phrase is not even the ratio decidendi but a mere *obiter dictum*.

⁹⁷ 696 Phil. 601 (2012) [Per J. Carpio, *En Banc*].

⁹⁸ See Separate Concurring and Dissenting Opinion of Associate Justice Caguioa, pp. 23–24.

The doctrine of rejection of the second placer is supported by law and public policy

The earliest case where the Court rejected the second placer rule due to lack of legal basis is the 1929 case of *Nuval v. Guray*.⁹⁹ Nuval filed an action for *quo warranto* against Guray, the municipal president of Luna, on the ground that the latter lacked the one-year residency requirement under Section 2174 of the Administrative Code. The Court ruled in favor of Nuval. It declared that Nuval is “the one legally elected to the office with a right to take possession thereof, having secured the second place in the elections.” Upon motion for reconsideration, the Court modified its earlier ruling, eliminating from the dispositive part the holding that Nuval is the one legally elected. It clarified that in *quo warranto* proceedings referring to offices filled by election, “when the person elected is ineligible, the court cannot declare that the candidate occupying the second place has been elected, even if he were eligible, since the law only authorizes a declaration of election in favor of the person who has obtained a plurality of votes, and has presented his certificate of candidacy.”¹⁰⁰

Nuval is followed by *Llamoso v. Ferrer*.¹⁰¹ *Llamoso* raised the issue of whether the candidate receiving the next highest number of votes is entitled to the office when the winning candidate turns out to be disqualified. Llamoso filed a *quo warranto* case against Ferrer, alleging that the latter is disqualified as Mayor of Laguna for lack of legal residence. The Court of First Instance of Laguna declared the position vacant, stating that Ferrer did not have the legal requisites necessary to be validly elected. The Court of Appeals (CA) confirmed Ferrer’s ineligibility but declined to proclaim Llamoso as the winner since he did not receive the popular vote. On *certiorari*, the Court foremost held that Section 173 of Republic Act No. 180 or the “Revised Election Code” does not provide that if the contestee is declared ineligible, the contestant will be proclaimed. The provision permits the filing of the contest by any registered candidate regardless of whether he or she occupies the next highest place or the lowest in the election returns. Citing American Jurisprudence, the Court stated that only the candidate who received the majority or plurality of votes shall be declared elected, and the ineligibility of the winning candidate results in a vacancy in the office. Thus:

It is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried, unless he or it receives a majority or a plurality of the legal votes cast in the election. Accordingly, the general rule is that the fact that a plurality or a majority of the votes are cast for an ineligible candidate at a popular election does not entitle the candidate receiving

⁹⁹ 52 Phil. 645 (1928) [Per J. Villa-Real, *En Banc*].

¹⁰⁰ *Id.*

¹⁰¹ 84 Phil. 488 (1949) [Per J. Bengzon, *En Banc*].

the next highest number of votes to be declared elected. In such case the electors have failed to make a choice and the election is a nullity. (29 Corpus Juris Secundum, 353.)

... although the candidate voted for by a majority cannot be declared elected because of his ineligibility and the majority vote is thereby rendered ineffective for such purpose, such majority vote is effective to forbid the election of the candidate having the next highest number of votes. The effect is to render the purported election nugatory and to leave a vacancy in the office thus attempted to be filled. (18 American Jurisprudence, 353.)¹⁰² (Emphasis supplied)

The Court's ruling in *Nuval* and *Llamoso* was reiterated in *Vilar v. Paraiso*,¹⁰³ another *quo warranto* proceeding. Vilar argued that Paraiso, then mayor of Rizal, Nueva Ecija, is an ecclesiastic, ineligible to hold office under section 2175 of the Revised Administrative Code. After finding that Paraiso was indeed ineligible, the Court stated the second placer in the elections cannot be declared the winner in the absence of an express provision authorizing such declaration. "Our law not only does not contain any such provision but apparently seems to prohibit it."¹⁰⁴

Subsequently, in *In re Geronimo v. Ramos*,¹⁰⁵ (*Geronimo*) the Court ruled that when the winning candidate is not qualified and cannot qualify for the office to which he was elected, a permanent vacancy is created, which calls for application of the rule on succession under then Section 48 of Local Government Code or then Batas Pambansa Blg 337. In *Geronimo*, petitioner Geronimo was disqualified in the mayoralty elections on the ground that he was a political turncoat. The COMELEC proclaimed the defeated candidate Ferrera mayor. The Court reversed the COMELEC and ordered that the vice-mayor assume the office.

Notably, the foregoing cases all involved *quo warranto* proceedings since the remedy of cancellation of COC was not yet provided in the Revised Election Code.

Meanwhile, after the enactment of the OEC, the Court continued to reject the second placer rule in *Frivaldo v. Commission on Elections*¹⁰⁶ and *Labo, Jr. v. Commission on Elections* (*Labo 1989*).¹⁰⁷ Frivaldo involved a petition for annulment of Frivaldo's election and proclamation on the ground that he was not a Filipino citizen. Though the Court did not discuss the second

¹⁰² *Llamoso v. Ferrer*, 84 Phil. 488 (1949) [Per J. Bengzon, *En Banc*].

¹⁰³ 96 Phil. 659 (1955) [Per J. Bautista-Angelo, *En Banc*].

¹⁰⁴ *Id.*

¹⁰⁵ 221 Phil. 130 (1985) [Per J. Gutierrez, Jr., *En Banc*].

¹⁰⁶ 255 Phil. 934 (1989) [Per J. Cruz, *En Banc*].

¹⁰⁷ 257 Phil. 1 (1989) [Per J. Cruz, *En Banc*].

placer rule, it ordered Frivaldo to surrender the gubernatorial position to the duly elected Vice-Governor of Sorsogon.

Labo 1989 involved a *quo warranto* proceeding filed by Lardizabal against Labo, Jr., the mayor-elect of Baguio City. Lardizabal argued that Labo, Jr. is an Australian citizen and, hence ineligible to hold public office. The Court confronted the issue of whether Lardizabal can replace Labo, Jr. as mayor. It ruled in the negative since Lardizabal only obtained the second highest number of votes. He was obviously not the choice of the people of Baguio. The Court re-examined its previous ruling in *Santos v. Commission on Elections* where the second placer won by default. It held that the earlier case of *Geronimo* represents a more logical and democratic rule. Thus, it ordered Labo, Jr. to vacate his office and surrender the same to the Vice-Mayor of Baguio.

Following *Frivaldo* and *Labo 1989* is the case of *Abella v. Commission on Elections*.¹⁰⁸ *Abella* appears to be the first instance where the rejection of the second placer rule was applied in a cancellation proceeding under Section 78 of the OEC. Therein petitioners Abella and Dela Cruz claimed that private respondent Larrazabal misrepresented that she was a resident and a registered voter of Kanaga, Leyte. During the pendency of the case, Larrazabal won and was proclaimed governor. Thereafter, the COMELEC disqualified Larrazabal and disallowed the proclamation of Abella, the second placer in the elections, as governor of Leyte. In his petition before the Court, Abella argued that the COMELEC misapplied *Frivaldo* and *Labo 1989* in the case since those involved *quo warranto* proceedings under Section 253 of the OEC. The Court held that the nature of the proceedings is immaterial. What matters is that despite the ineligibility of the winning candidate, the candidate who obtains the second highest number of votes for the same position cannot assume the vacated position. This is because the latter lost in the elections and was, therefore, repudiated by the electorate. The whole text of the Court's ruling reads:

While it is true that SPC No. 88-546 was originally a petition to deny due course to the certificate of candidacy of Larrazabal and was filed before Larrazabal could be proclaimed the fact remains that the local elections of February 1, 1988 in the province of Leyte proceeded with Larrazabal considered as a bona-fide candidate. The voters of the province voted for her in the sincere belief that she was a qualified candidate for the position of governor. Her votes were counted and she obtained the highest number of votes. **The net effect is that the petitioner lost in the election. He was repudiated by the electorate. In the *Frivaldo* and *Labo* cases, this is precisely the reason why the candidates who obtained the second highest number of votes were not allowed to assume the positions vacated by *Frivaldo* — the governorship of Sorsogon, and Labo, the**

¹⁰⁸ 278 Phil. 275 (1991) [Per J. Gutierrez, Jr., *En Banc*].

position of mayor in Baguio City. The nature of the proceedings therefore, is not that compelling. What matters is that in the event a candidate for an elected position who is voted for and who obtains the highest number of votes is disqualified for not possessing the eligibility requirements at the time of the election as provided by law, the candidate who obtains the second highest number of votes for the same position can not assume the vacated position.¹⁰⁹ (Emphasis supplied)

Next to *Abella* is the 1992 case of *Labo, Jr. v. COMELEC*¹¹⁰ (*Labo 1992*). Private respondent Ortega sought to cancel Labo, Jr.'s COC as mayor on the ground that he made a false representation that he is a natural-born citizen of the Philippines. Ortega presented the Court's ruling in the 1989 case of Labo that disqualified Labo, Jr. as mayor in a *quo warranto* proceeding upon a finding that he is an Australian citizen. Meantime, Labo, Jr. won the elections during the pendency of cancellation case. Ortega, the second placer in the elections, argued that he should be proclaimed as mayor as he was the candidate receiving the next highest number of votes. The Court ruled that a minority or defeated candidate cannot be deemed elected, notwithstanding the ineligibility of the candidate.¹¹¹ It stated that similar to *Abella*, Ortega lost the election. He was repudiated by the electorate. He was obviously not the choice of the people of Baguio City.

The Court further declared in *Labo 1992* that it is incorrect to argue that since a candidate has been disqualified, the votes intended for him or her should, in effect, be considered null and void as this would amount to disenfranchising the electorate in whom sovereignty resides.¹¹² *Labo 1992* furthermore laid down the exception to the doctrine of the rejection of the second placer. The exception provides that the eligible candidate obtaining the next higher of votes may be deemed elected only "if the electorate fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate."¹¹³ In this scenario, the electorate is considered to have waived the validity of their votes or thrown away their votes.¹¹⁴

Considering that it was not proved that the electorate knew of Labo Jr.'s ineligibility, i.e., he was an alien barred from elective office, Ortega, the second placer, was not proclaimed as mayor of Baguio City. Instead, the Court

¹⁰⁹ *Id.*

¹¹⁰ 286 Phil. 397 (1992) [Per J. Bidin, *En Banc*].

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

held that a permanent vacancy in the contested office has occurred, which should be filled by the vice-mayor under Section 44 of the LGC.¹¹⁵

Consequently, the Court's ruling in *Abella and Labo 1992* was adopted on this string of cases involving cancellation of COC—*Aquino, Reyes v. COMELEC*,¹¹⁶ *Domino v. Commission on Elections*,¹¹⁷ *Miranda v. Abaya*,¹¹⁸ *Bautista v. Commission on Elections*,¹¹⁹ *Rivera III v. Commission on Elections*,¹²⁰ and *Talaga v. Commission on Elections*.¹²¹

At this juncture, it is worth mentioning that the Court applied the doctrine of rejection of the second placer not only in *quo warranto* and cancellation of COC proceedings but also in disqualification cases under Sections 12 and 68 of the OEC and Section 40 of the LGC.

In *Nolasco v. COMELEC*,¹²² Alarilla filed a petition to disqualify Blanco as mayoralty candidate of Meycauyan, Bulacan, on the ground of vote buying under Section 68 of the OEC. Blanco won the elections during the pendency of the case. He was thereafter disqualified by the COMELEC. Nolasco intervened in the proceedings urging that as the vice-mayor he should be declared mayor in the event that Blanco was finally disqualified. The Court sustained Nolasco's plea and relied on the case of *Reyes v. COMELEC*¹²³ (a cancellation of COC suit) stating that the candidate who obtained the second highest number of votes, in this case Alarilla, cannot be proclaimed winner in case the winning candidate is disqualified.

Likewise, in *Kare v. Commission in Elections*,¹²⁴ the Court affirmed Moll's disqualification as mayor of Malinao, Albay, under Section 40 (a)¹²⁵ of the LGC. Citing *Aquino* and *Miranda* which are both cases on cancellation of COC, the Court ruled that it has no authority under any law to impose upon and compel the people of Malinao to accept Ceriola, the second placer in the elections as their Mayor. Hence, the law on succession under Section 44 of the LGC shall apply. When Moll was adjudged to be disqualified, a permanent vacancy was created for failure of the elected mayor to qualify for the

¹¹⁵ *Id.*

¹¹⁶ 324 Phil. 813 (1996) [Per J. Mendoza, *En Banc*].

¹¹⁷ 369 Phil. 798 (1999) [Per CJ. Davide, Jr., *En Banc*].

¹¹⁸ 370 Phil. 642 (1999) [Per J. Melo, *En Banc*].

¹¹⁹ 460 Phil. 459 (2003) [Per J. Carpio, *En Banc*].

¹²⁰ 551 Phil. 37 (2007) [Per J. Sandoval-Gutierrez, *En Banc*].

¹²¹ 696 Phil. 786 (2012) [Per J. Bersamin, *En Banc*].

¹²² 341 Phil. 761 (1997) [Per J. Puno, *En Banc*].

¹²³ 324 Phil. 813 (1996) [Per J. Mendoza, *En Banc*].

¹²⁴ 472 Phil. 258 (2004). [Per J. Panganiban, *En Banc*].

¹²⁵ Section 40. *Disqualifications*. — The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence; . . .

office. In such eventuality, the duly elected vice mayor shall succeed as provided by law.¹²⁶

The second placer rule has no basis in law

As may be gleaned from the discussion above, the Court even before the enactment of the OEC had almost consistently held that the second placer in the elections cannot be declared winner notwithstanding the ineligibility or disqualification of the candidate receiving the majority vote. The second placer is just that, a second placer who lost the elections.¹²⁷ However, in 2012, the Court starting with *Jalosjos, Jr.*, made a complete turnaround and declared that its previous Decisions applying the second placer rule, citing in the footnotes *Aquino* and *Labo*, should be limited to situations where the COC of the first-placer was valid at the time of the filing. Otherwise, if the COC is *void ab initio*, then the person who filed such was never a candidate. All the votes for the non-candidate are stray votes. The non-candidate can never be a first-placer. For ease of reference, the Court's full disquisition is quoted below:

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void *ab initio*. Otherwise, a certificate of candidacy void *ab initio* can operate to defeat one or more valid certificates of candidacy for the same position.¹²⁸ (Emphasis supplied, citations omitted)

Significantly, the Court, in *Jalosjos, Jr.*, did not provide any legal basis for declaring the second placer the winner upon the disqualification/ineligibility of the candidate receiving the majority votes.

¹²⁶ *Kare v. Commission in Elections*, 472 Phil. 258 (2004) [Per J. Panganiban, *En Banc*].

¹²⁷ *Aquino v. Commission on Elections*, 318 Phil. 467 (1995) [Per J. Kapunan, *En Banc*].

¹²⁸ *Id.*

Jalosjos, Jr. involves a petition to deny due course and cancel the COC of Jalosjos, Jr. as Mayor of Dapitan City, Zamboanga Del Norte, in the May 2010 elections on the ground that he falsely declared that he was eligible for the position. Cardino, another mayoralty candidate, alleged that Jalosjos, Jr. had been convicted by final judgment for robbery and sentenced to *prision mayor*. The Court noted that the penalty of *prision mayor* automatically carries with it, by operation of law, the accessory penalties of temporary absolute disqualification and perpetual special disqualification. The perpetual special disqualification against Jalosjos, Jr. arising from his criminal conviction by final judgment is a material fact involving eligibility which is a proper ground for a Section 78 petition under the OEC. Jalosjos Jr.'s COC was null and void from the start since he was not eligible to run for any public office.¹²⁹ The Court declared that Jalosjos Jr.'s ineligibility existed on the day he filed his COC and the cancellation of his COC retroacted to the day he filed it. Cardino, who was the second placer, was the only qualified candidate for Mayor in the May 2010 election. He therefore received the highest number of votes.¹³⁰

Similar to *Jalosjos, Jr.* is *Aratea v. Commission on Elections*.¹³¹ Rodolfo filed a petition to deny due course or to cancel Lonzanida's COC as Mayor of San Antonio, Zambales. During the pendency of the case, Lonzanida and Aratea garnered the highest number of votes and were respectively proclaimed Mayor and Vice-Mayor.¹³² Thereafter, the COMELEC disqualified Lonzanida. The Court found that Lonzanida falsely represented that he was eligible for the position when, in truth, he was perpetually disqualified from being elected to public office due to his conviction by final judgment of *prision mayor*, and he had already been elected for the same position for four consecutive terms. The Court noted that "the manner of filling up the permanent vacancy in the Office of the Mayor of San Antonio, Zambales is dependent upon the determination of Lonzanida's removal. Whether Lonzanida was disqualified under Section 68 of the OEC or made a false material representation under Section 78 of the same Code that resulted in his COC being void *ab initio*, is determinative of whether Aratea or Antipolo (the second placer) is the rightful occupant to the Office of the Mayor.

Since Lonzanida's COC was cancelled due to false material representation, it meant that Lonzanida was never a candidate from the beginning. His COC is void *ab initio*. There was only one qualified candidate for Mayor, Antipolo, who therefore received the highest number of votes. The Court directed the COMELEC to constitute a Special Municipal Board of

¹²⁹ *Jalosjos, Jr. v. Commission on Elections*, 696 Phil. 601, 610 (2012) [Per J. Carpio, *En Banc*].

¹³⁰ *Id.*

¹³¹ 696 Phil. 700 (2012) [Per J. Carpio, *En Banc*].

¹³² *Id.* at 721.

Canvassers to proclaim Antipolo as the duly elected Mayor of San Antonio, Zambales; while then Vice-Mayor Aratea was ordered to cease and desist from discharging the functions of the Office of the Mayor.¹³³

Interestingly, the Court promulgated *Jalosjos' Jr. and Aratea* on October 9, 2012, the same day it rendered a Decision in *Talaga*. However, in *Talaga*, the Court rejected the second placer rule and declared that the permanent vacancy in the office of Mayor of Lucena City should be filled pursuant to the law on succession under the LGC.¹³⁴

Following *Jalosjos, Jr. and Aratea* is *Maquiling*.¹³⁵ *Maquiling* was originally a petition for cancellation of COC but the COMELEC First Division and *En Banc* treated it as one for disqualification under Section 40(d) of the LGC. It involves the disqualification of Arnaldo as a candidate for municipal mayor of Kauswagan, Lanao Del Norte, on the ground that he was a dual citizen when he filed his COC. Arnaldo's use of his United States passport after renouncing his American citizenship recanted his Oath of Renunciation. The Court held that with Arnaldo being barred from even becoming a candidate, his COC is rendered null and void from the beginning. The votes cast in his favor should not have been counted. Maquiling, the qualified candidate who obtained the highest number of votes, was declared the duly elected Mayor of Kauswagan. The rule on succession under the LGC shall not apply.¹³⁶ Although *Maquiling* is a disqualification case, the Court applied the second placer rule that it created in *Jalosjos, Jr.*, a case for cancellation of COC.

The Court's ruling in *Maquiling* was reiterated in *Chua v. Commission on Elections*,¹³⁷ which is a disqualification case under Section 40 of the LGC, and in *Dimapilis v. Commission on Elections*¹³⁸ and *Halili v. Commission on Election*,¹³⁹ which are both proceedings for cancellation of COC.

Maquiling found its way in a *quo warranto* proceeding in *Ty-Delgado v. House of Representatives Electoral Tribunal*.¹⁴⁰ Ty-Delgado filed a petition for disqualification under Section 12 of the OEC against Pichay on the ground that he was convicted of a crime involving moral turpitude. Pending resolution of the case, Pichay was proclaimed duly elected member of the House of Representatives (HOR) for the First Legislative District of Surigao Del Sur. Ty-Delgado, the second placer in the election, filed an *ad cautelam* petition

¹³³ *Id.*

¹³⁴ *Talaga v. Commission on Elections*, 696 Phil. 786, 842 (2012).

¹³⁵ 709 Phil. 408 (2013), [Per C.J. Sereno, *En Banc*].

¹³⁶ *Id.* at 450.

¹³⁷ 783 Phil. 876 (2016) [Per SAJ Leonen, *En Banc*].

¹³⁸ 808 Phil. 1108 (2017) [Per J. Perlas-Bernabe, *En Banc*].

¹³⁹ 845 Phil. 728 (2019) [Per J. Carpio, *En Banc*].

¹⁴⁰ 779 Phil. 268 (2016) [Per J. Carpio, *En Banc*].

for *quo warranto* in the HOR Electoral Tribunal (HRET). The COMELEC dismissed the petition for disqualification for lack of jurisdiction. Hence, Ty-Delgado converted the *ad cautelam* petition into a regular petition for *quo warranto*, which was dismissed. On *certiorari*, the Court ruled that Pichay is disqualified under Section 12 of the OEC for his conviction for libel, a crime involving moral turpitude. Pichay made a false material representation when he stated in his COC that he is eligible to run for public office for the 2013 elections. Since Pichay's ineligibility existed on the day he filed his COC and he was never a valid candidate for the position of Member of the HOR, the votes cast for him are considered stray votes. Ty-Delgado, the qualified candidate who received the highest number of valid votes, is declared the winner in the elections.¹⁴¹

The second placer rule is hereby abandoned

The second placer rule laid down in *Jalosjos, Jr.* has no legal basis. No law authorizes the proclamation of the second placer in the elections in case the candidate who received the most votes is disqualified or turned out to be ineligible. The second placer rule undermines the people's choice in every election and is repugnant to the people's constitutional right to suffrage. The Court cannot impose upon the electorate to accept as their representative, the candidate whom they did not choose in the elections.¹⁴² The Court's pronouncement in *Geronimo* is enlightening:

The importance of the people's choice must be the paramount consideration in every election, for the Constitution has vested in them the right to freely select, by secret-ballot in clean elections, the men and women who shall make laws for them or govern in their name and behalf. The people have a natural and a constitutional right to participate directly in the form of government under which they live. Such a right is among the most important and sacred of the freedoms inherent in a democratic society and one which must be most vigilantly guarded if a people desires to maintain through self-government for themselves and their posterity a genuinely functioning democracy in which the individual may, in accordance with law, have a voice in the form of his government and in the choice of the people who will run that government for him. (See also *U.S. v. Iturrius*, 37 Phil. 765). **Thus, it would be extremely repugnant to the basic concept of the constitutionally guaranteed right to suffrage if a candidate who has not acquired the majority or plurality of votes is proclaimed a winner and imposed as the representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him.**

Sound policy dictates that public elective offices are filled by those who have received the highest number of votes cast in the election for that office, and it is a fundamental idea in all republican forms of

¹⁴¹ *Id.* at 275.

¹⁴² *In re Geronimo v. Ramos*, 221 Phil. 130 (1985) [Per J. Gutierrez, Jr., *En Banc*].

government that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election. (20 Corpus Juris 2nd, S 243, p. 676.)

The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. **The votes cast for a dead, disqualified, or non-eligible person may not be valid to vote the winner into office or maintain him there. However, in the absence of a statute which clearly asserts a contrary political and legislative policy on the matter, if the votes were cast in the sincere belief that the candidate was alive, qualified, or eligible, they should not be treated as stray, void or meaningless.** This is particularly true where, as in this case, there is only one other candidate who ran for the public office. The votes for the deceased or non-qualified candidate are still expressive of a public clamor that the majority of the voters do not like the losing candidate to be their representative or to hold the reins of government for them.¹⁴³ (Emphasis supplied)

Accordingly, regardless of the nature of the proceedings, whether disqualification (under Sections 12 and 68 of the OEC and Section 40 of the LGC), denial/cancellation of COC (under Section 78 of the OEC), or *quo warranto* (under Section 253 of the OEC), the second placer cannot be proclaimed as winner in lieu of the disqualified first-placer. The Court's attempt to distinguish the effect of a denial/cancellation of a COC from the other remedies (i.e., disqualification and *quo warranto*) merely resulted in conflicting decisions. As noted by Associate Justice Caguioa in his Separate Concurring and Dissenting Opinion, the common denominator among the relevant remedies and cases is that a permanent vacancy is left by the removed elected official.¹⁴⁴

Verily, in *Geronimo*, the Court ruled that a permanent vacancy is created when the winning candidate is not qualified and cannot qualify for the office to which he or she was elected.¹⁴⁵ For local elective officials, the permanent vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor are governed by Section 44 of the LGC, while permanent vacancies in the Sanggunian shall be filled in accordance with Section 45 of the LGC. Section 44 of the LGC enumerates the instances when a permanent vacancy arises such as 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

¹⁴³ *Id.*

¹⁴⁴ See Justice Caguioa's Separate Concurring and Dissenting Opinion, p. 22.

¹⁴⁵ *In re Geronimo v. Ramos*, 221 Phil. 130 (1985) [Per J. Gutierrez, Jr., *En Banc*]. See also *Ocampo v. House of Representatives Electoral Tribunal*, 476 Phil. 116, 126 (2004) [Per J. Sandoval-Gutierrez, *En Banc*].

functions of his office.” The language of the law is clear, explicit, and unequivocal. There is no room for interpretation but merely for application.¹⁴⁶

In fine, the Court hereby abandons the second placer rule and declares that the rules on succession¹⁴⁷ under the LGC shall apply in all cases where a permanent vacancy results from a local elective official’s disqualification from office regardless of the proceedings involved.

The Vice-Governor of Sultan Kudarat shall fill up the permanent vacancy caused by the cancellation of Pax Ali’s COC

As a consequence of the cancellation of Pax Alis’s COC, he cannot be considered a candidate in the May 9, 2022 elections. Not being a candidate, the votes cast for him should not be counted and must be considered stray votes.¹⁴⁸ No amount of votes should entitle him to the elective office aspired for.¹⁴⁹ Due to Pax Ali’s failure to qualify for the position of Governor, a permanent vacancy is created in the office of the Governor of Sultan Kudarat which shall be filled in accordance with Section 44 of the LGC, which reads:

SECTION 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* — **(a) 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.** If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein. (Emphasis supplied)

Therefore, the duly elected Vice-Governor of Sultan Kudarat in the May 9, 2022 elections is hereby declared the Governor thereof. He or she shall serve the remaining duration of the term July 1, 2022 to June 30, 2025.

Meanwhile, in summary, the Members of the Court voted on the two issues in the case in the following manner:

¹⁴⁶ *Kare v. Commission on Elections*, 472 Phil. 258, 276 (2004) [Per J. Panganiban, *En Banc*].

¹⁴⁷ Section 44 of the LGC for permanent vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor and Section 45 of LGC for permanent vacancies in the Sanggunian.

¹⁴⁸ *See Atty. Rivera III v. Commission on Elections* 551 Phil. 37, 67 (2007) [Per J. Sandoval-Gutierrez, *En Banc*].

¹⁴⁹ *Miranda v. Abaya*, 370 Phil. 642 (1999) [Per J. Melo, *En Banc*].


1. As to whether Pax Ali's COC should be cancelled on the ground of false material representation under Section 78 of the OEC, seven Members of the Court namely, Chief Justice Alexander G. Gesmundo, Senior Associate Justice Marvic M.V.F. Leonen, Associate Justices Alfredo Benjamin S. Caguioa, Rodil V. Zalameda, Samuel H. Gaerlan, Jose Midas P. Marquez, and Maria Filomena D. Singh voted in favor of affirming the assailed Resolution of the COMELEC cancelling Pax Ali's COC. The majority agrees that Pax Ali deliberately misrepresented that he was eligible for Governor of Sultan Kudarat when, in fact, he failed to comply with the one-year residency requirement under Section 39 of the LGC. Six Members of the Court namely, Associate Justices Ramon Paul L. Hernando, Amy C. Lazaro-Javier, Mario V. Lopez, Ricardo R. Rosario, Jhosep Y. Lopez, and Antonio T. Kho, Jr. disagreed and voted in favor of the reversal of the challenged Resolution of the COMELEC.
2. As to who should fill the vacancy created by the cancellation of Pax Ali's COC, eight Members of the Court namely, Chief Justice Alexander G. Gesmundo, Associate Justices Alfredo Benjamin S. Caguioa, Rodil V. Zalameda, Samuel H. Gaerlan, Ricardo R. Rosario, Jose Midas P. Marquez, Antonio T. Kho. Jr., and Maria Filomena D. Singh voted in favor of applying the rules on succession under Section 44 of the LGC. The majority abandoned the second placer rule for lack of legal basis and for being inconsistent with the essence of republicanism. Five Members of the Court voted to the contrary, namely Senior Associate Justice Marvic M.V.F Leonen, Associate Justices Ramon Paul L. Hernando, Amy C. Lazaro-Javier, Mario V. Lopez, and Jhosep Y. Lopez.

Associate Justices Henri Jean Paul B. Inting and Japar B. Dimaampao took no part in the case.


ACCORDINGLY, the Petition is **DISMISSED**. The Resolution dated January 18, 2022 of the COMELEC First Division and the Resolution dated May 2, 2022 of the COMELEC *En Banc* in SPA No. 21-078 (DC) and SPA No. 21-114 (DC) are **AFFIRMED**.

Petitioner Datu Pax Ali S. Mangudadatu is **ORDERED** to cease and desist from discharging the functions of the Office of the Governor of Sultan Kudarat and to surrender the same to the duly elected Vice-Governor of the province in the May 9, 2022 elections. The Vice-Governor shall serve the remaining duration of the term July 1, 2022 to June 30, 2025.


SO ORDERED.


SAMUEL H. GAERLAN
Associate Justice

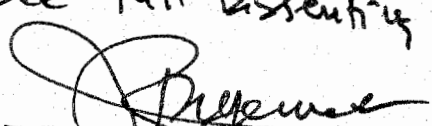
WE CONCUR:

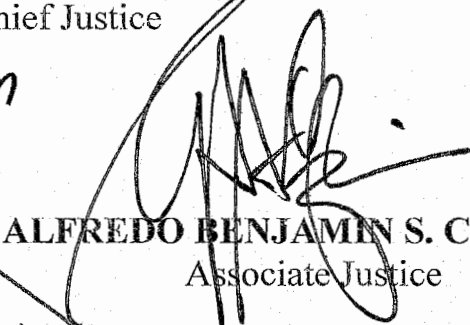

ALEXANDER G. GESMUNDO
Chief Justice

*See separate concurring
and dissenting opinion*

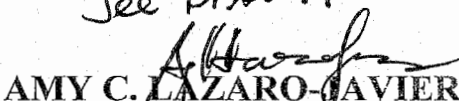

MARVIC M.V.F. LEONEN
Associate Justice

See Full Dissenting Opinion

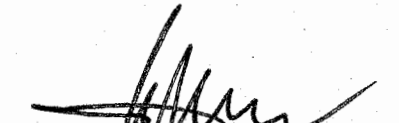

RAMON PAUL L. HERNANDO
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

*See
separate
Opin*

See Dissent

AMY C. LAZARO-JAVIER
Associate Justice


(No part)
HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

*I join the dissent
of J. Hernandez*

MARION. LOPEZ
Associate Justice

See separate dissenting opinion !


JHOSEP Y. LOPEZ
Associate Justice

*Joining the dissent
of J. Hernandez*

RICARDO R. ROSARIO
Associate Justice

(No part)
JAPAR B. DIMAAMPAO
Associate Justice

Midas
JOSE MIDAS P. MARQUEZ
Associate Justice

A separate concurring & dissenting opinion
ANTONIO T. KHO, JR.
Associate Justice

On leave but left for concurring vote
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

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

Alexander G. Gesmundo
ALEXANDER G. GESMUNDO
Chief Justice