

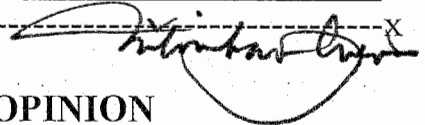
EN BANC

G.R. Nos. 260219 & 260231 – DATU PAX ALI S. MANGUDADATU, Petitioner, v. THE COMMISSION ON ELECTIONS, SHARIFA AKEEL MANGUDADATU, AZEL V. MANGUDADATU, and BAI ALI A. UNTONG, Respondents.

Promulgated:

April 22, 2025

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SEPARATE CONCURRING OPINION

CAGUIOA, J.:

The *ponencia*:

- 1) dismisses the present Petition for *Certiorari*<sup>1</sup> (Petition) and affirms the assailed Resolutions of the Commission on Elections (COMELEC) which cancelled the Certificate of Candidacy (CoC) for Governor of Sultan Kudarat province of petitioner Datu Pax Ali S. Mangudadatu (Pax Ali) due to false material representations made therein as regards the latter's residency in the said locality and, therefore, his eligibility for office; and
- 2) declares that the Vice Governor shall serve the remaining duration of the term of Pax Ali as Governor of Sultan Kudarat.

**I concur in the *ponencia*'s rulings to: 1) dismiss the Petition and affirm the assailed Resolutions of COMELEC cancelling the CoC of Pax Ali for Governor of Sultan Kudarat in the 2025 National and Local Elections (NLE), and 2) declare that the Vice Governor should serve the remaining duration of the term of Pax Ali in the subject position.**

That said, I respectfully take exception to the *ponencia*'s *rationale* that because Pax Ali was the incumbent Mayor of the Municipality of Datu Ali Sangki (DAS), Province of Maguindanao, he could not have established a new residence in Sultan Kudarat province as he lacked an intention to abandon DAS and to stay in Sultan Kudarat, while he was incumbent Mayor of DAS, and that such intentions, which are requisites in changing domiciles, could have only arisen when Pax Ali resigned as Mayor of DAS on November 15, 2021, and so it is only from this date that his domicile in Sultan Kudarat could have begun.<sup>2</sup> I submit that an incumbent official may, in fact, acquire another

<sup>1</sup> With Extremely Urgent Application for the Issuance of a Temporary Restraining Order or Status Quo Order for the Conduct of a Special Raffle of this Case.

<sup>2</sup> *Ponencia*, pp. 14–16.



domicile of choice outside of the locality where he serves, only that he thereby risks forfeiting his local seat for losing a continuing requirement to hold such position.

Nonetheless, under the circumstances of the case, Pax Ali did *not* acquire domicile in Lutayan, Sultan Kudarat and he therefore did *not* satisfy the one-year residency requirement to run for Governor of said province under the Local Government Code of 1991<sup>3</sup> (LGC). I submit that Pax Ali is estopped from denying his domicile in DAS, Maguindanao while he was incumbent Mayor thereof, insofar as qualifying for Governor of Sultan Kudarat is concerned. Thus, while I agree that Pax Ali could have, as a matter of fact, changed his domicile to Sultan Kudarat while he was the incumbent Mayor of DAS, and thereby expose to challenge his title to the mayoralty office, this cannot be used as basis for his qualifications for Sultan Kudarat Governor under the principles of equitable estoppel. Simply put, he cannot benefit from his own wrongdoing. Accordingly, Pax Ali's domicile in Sultan Kudarat should be, as it was rightly counted by COMELEC and the *ponencia*, as beginning only after he resigned as Mayor of DAS.

Finally, I thank the *ponente* for adopting the position I had consistently put forward, that it is high time for the Court to abandon the second placer rule and for the Court to now follow the rules on succession under Chapter II, Section 44<sup>4</sup> of the LGC in determining who must fill in a vacancy. As applied to Pax Ali, the *ponencia* thus correctly holds that it is the incumbent Vice Governor Raden Sakaluran (Sakaluran)—who incidentally has a pending motion for intervention with the Court—who should succeed and be proclaimed Governor.

As explained in the *ponencia*, as well as in this Separate Concurring Opinion, the second placer rule lacks any basis in law and is, in fact, contrary to the very essence of our republican democracy and the axiomatic doctrine that in determining who the rightful elected leaders are, the guiding principle must always be the will of the electorate.

*Pax Ali is estopped from claiming that he had abandoned his domicile in DAS, Maguindanao*

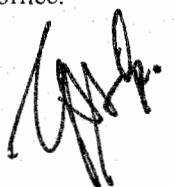
<sup>3</sup> Republic Act No. 7160.

<sup>4</sup>

#### CHAPTER II Vacancies and Succession

**SECTION 44. Permanent Vacancies in the Offices of the Governor, [Vice Governor], Mayor, and [Vice Mayor].** — If a permanent vacancy occurs in the office of the governor or mayor, the [vice governor] or vice-mayor concerned shall become the governor or mayor. . .

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 [or her] office. (Emphasis supplied)



I submit that Pax Ali could, as a matter of fact, have changed his domicile from DAS to Sultan Kudarat even while he was incumbent Mayor of DAS, Maguindanao.

A change in domicile for purposes of satisfying the residency requirements for local elective positions has three requisites: 1) residence or bodily presence in the new locality; 2) intent to remain therein; and 3) intent to abandon the old domicile.<sup>5</sup>

The *ponencia* rules that in the case of Pax Ali, the last two requisites are missing because “clinging to his position as Mayor meant that Pax Ali *must comply* with the continuing requirement of remaining as a resident of DAS during his entire tenure.”<sup>6</sup> The *ponencia* rejects Pax Ali’s submission that his transfer of domicile to Sultan Kudarat simply opens to challenge his title as Mayor of DAS. The *ponencia* reasons that such argument undermines the continuing requirements for qualification to public office and would create the ludicrous situation where a local elected official could disregard the required eligibility so long as no one challenges him or her.<sup>7</sup>

I fully understand the *ponencia*’s strong aversion to allowing unscrupulous politicians to abandon their residences in localities in which they are serving as elected leaders. Unfortunately, I cannot subscribe to, and respectfully disagree with, the *ponencia*’s sweeping declaration that the continuing requirement of residency under the LGC “prevents” local leaders from transferring their residence during their tenure. Rather, I submit that public officers, may, as a matter of fact, lose a continuing requirement, with the consequence that they will then be risking their hold to their office for becoming unqualified to maintain the same.

In *Piccio v. COMELEC*<sup>8</sup> (*Piccio*), it was declared that qualifications for public office are continuing requirements and must be possessed, not only at the time of election or assumption of office, but during the officer’s entire tenure. However, the Court, in *Piccio*, continued to illustrate the effect of losing such a continuing requirement by citing *Limkaichong v. COMELEC*,<sup>9</sup> wherein the Court pronounced that once any of the required qualifications is lost, the concerned public official’s title to the office may be seasonably challenged.

Thus, in *Frivaldo v. Commission on Elections*<sup>10</sup> (*Frivaldo*), a petition which challenged the election of Juan G. Frivaldo (Frivaldo) as Governor of Sorsogon for not being a Filipino citizen, was allowed by the Court even if

<sup>5</sup> *Limbona v. COMELEC*, 578 Phil. 364, 374 (2008) [Per J. Ynares-Santiago, *En Banc*].

<sup>6</sup> *Ponencia*, p. 15. Emphasis supplied.

<sup>7</sup> *Id.* at 16.

<sup>8</sup> 921 Phil. 189 (2021) [Per J. Caguioa, *En Banc*].

<sup>9</sup> 601 Phil. 751 (2009) [Per J. Peralta, *En Banc*].

<sup>10</sup> 255 Phil. 934 (1989) [Per J. Cruz, *En Banc*].



the same was filed beyond the periods under the Omnibus Election Code<sup>11</sup> (OEC) to challenge one's candidacy for the elections or for *quo warranto*. The Court ruled that challenges to a public official's qualifications or eligibility can be filed at any time during their tenure because their qualifications to run for and hold office are continuing requirements.

The sad truth is that a requirement to hold public office is a matter of the *law* whereas domicile and residency are matters of *fact*. The fact may not necessarily conform with the law's requirements, at which point a violation of such law is committed. However, it is presumed that a person holding public office was regularly appointed or elected to it,<sup>12</sup> that official duty was regularly performed,<sup>13</sup> and that a person is innocent of a wrong doing.<sup>14</sup> All these presumptions in the rules of evidence require that the title of a duly elected official first be successfully challenged before he or she can lose such title to the office. Thus, as "ludicrous" the situation may be with a sitting local official who had already abandoned his or her domicile in a locality can still remain the local chief executive therein until he or she is legally removed therefrom by a court or tribunal of jurisdiction, our laws indeed allow the same.

All this, however, is not to say that a scheming local politician who deliberately abandons his or her domicile in a town where he or she is serving as an elected leader can legally acquire another domicile for the selfish purpose of qualifying to run for a local office in the new domicile. Our laws do not reward such malicious violations of our qualification laws, to the detriment of the abandoned constituents.

Public office is a public trust. No less than the Constitution<sup>15</sup> sanctifies this principle when it enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty, and efficiency.<sup>16</sup> Pax Ali was entrusted by the people of DAS, Maguindanao, with the power and duty to lead them as chief executive, but this power is held by him in trust to be used only for the benefit of his constituents and not of himself or of a chosen few. Pax Ali's abandonment of the people of DAS by moving to another locality while being incumbent Mayor of DAS betrays the trust that his constituents placed in him as their local leader.

Moreover, the Constitution requires the taking of an oath of office of all public officers and employees before assuming their respective posts.<sup>17</sup> To

<sup>11</sup> Batas Pambansa Blg. 881 (1985).

<sup>12</sup> REVISED RULES ON EVIDENCE, rule 131, sec. 3(l).

<sup>13</sup> *Id.* at sec. 3(m).

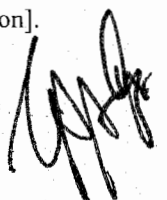
<sup>14</sup> *Id.* at sec. 3(a).

<sup>15</sup> CONSTITUTION, art. XI, sec. 1, provides:

Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.

<sup>16</sup> *Trinidad, Jr. v. Office of the Ombudsman*, 891 Phil. 268, 273 (2020) [Per J. Lopez, Second Division].

<sup>17</sup> See CONSTITUTION, art. IX-B, sec. 4.



implement the same, the Administrative Code of 1987<sup>18</sup> provides for the details of a public officer's or employee's Oath of Office, thus:

#### Chapter 10 OFFICIAL OATHS

SECTION. 40. *Oaths of Office for Public Officers and Employees.*—All public officers and employees of the government including every member of the armed forces shall, before entering upon the discharge of his [or her] duties, take an oath or affirmation to uphold and defend the Constitution; that he [or she] will bear true faith and allegiance to it; obey the laws, legal orders and decrees promulgated by the duly constituted authorities; will well and faithfully discharge to the best of his [or her] ability the duties of the office or position upon which he [or she] is about to enter; and that he [or she] voluntarily assumes the obligation imposed by his [or her] oath of office, without mental reservation or purpose of evasion. Copies of the oath shall be deposited with the Civil Service Commission and the National Archives.

Before Pax Ali assumed his position as Mayor of DAS, Maguindanao, he swore an oath to uphold and defend the Constitution and bear true faith and allegiance to it, obey the laws, legal orders, and decrees promulgated by duly constituted authorities, and that he would faithfully discharge the duties of his office as Mayor of DAS.

Section 3, Article X of the Constitution<sup>19</sup> mandates Congress to provide for a local government code that shall outline, among others, the qualifications of local officials. Pursuant to this mandate, the LGC was passed, which provides that candidates for Mayor must be a resident of the locality concerned for at least one year prior to the elections.<sup>20</sup> Moreover, it is settled law that qualifications for elective positions are continuing and must be possessed not only at the time of election but likewise throughout the entire

<sup>18</sup> Executive Order No. 292.

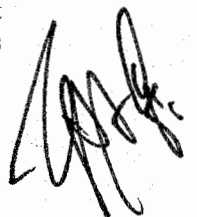
<sup>19</sup> SECTION 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

<sup>20</sup> LGC, Title Two, Chapter I, sec. 39 provides:

SECTION 39. *Qualifications.* — (a) An elective local official must be a citizen of the Philippines; a registered voter in the Barangay, municipality, city, or province or, in the case of a member of the Sangguniang Panlalawigan, Sangguniang Panlungsod, or Sangguniang Bayan, the district where he or she intends to be elected; **a resident therein for at least one (1) year immediately preceding the day of the election**; and able to read and write Filipino or any other local language or dialect.

(b) Candidates for the position of governor, [vice governor] or member of the Sangguniang Panlalawigan, or mayor, [vice mayor] or member of the Sangguniang Panlungsod of highly urbanized cities must be at least twenty-three (23) years of age on election day.

(c) Candidates for the position of mayor or [vice mayor] of independent component cities, component cities, municipalities must be at least twenty-one (21) years of age on election day. (Emphasis supplied)



term of office of such elected official.<sup>21</sup> The term of office of a local elective official is three years from his or her assumption thereto.<sup>22</sup>

In other words, when Pax Ali deliberately abandoned his domicile in the Municipality of DAS while he was the incumbent Mayor thereof, he violated the qualifications for the office which he swore to uphold until the end of his term as provided under the law and as mandated by the Constitution, and which qualifications were necessary to discharge his duties as Mayor of DAS. By so doing, he willingly and deliberately violated the oath of office that he swore to upon assuming the office of the Mayor of DAS in 2022.

Indeed, Pax Ali, in seeking the position of Mayor of DAS, represented to the people of DAS that he will serve as local chief executive with utmost fidelity if elected. The people of DAS relied upon this representation when they elected him to the position of Mayor. Such representation is bolstered and further cast in stone by Pax Ali's act of later swearing to his oath of office before finally assuming the position of Mayor of DAS. **There is no doubt, therefore, that his act of physically abandoning the municipality of DAS and becoming a Mayor in *absentia*, for the selfish purpose of qualifying for office in another province, is a betrayal of his representations to his constituents and the oath of office that he swore to uphold.**

Public policy dictates that Pax Ali be deemed *estopped* from benefitting and taking advantage of such malicious maneuverings, which not only violate the Constitution and our laws, but worst of all, compromise the general welfare of, and betray the trust placed upon him by the people of DAS. Article 1431 of the Civil Code of the Philippines<sup>23</sup> (Civil Code) provides: "through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." This will not be the first time that the Court will apply the concept of equitable estoppel against public officials.<sup>24</sup>

Thus, Pax Ali cannot deny his domicile in DAS, Maguindanao during the time that he was incumbent Mayor thereof. While he could have been removed from office for changing his domicile during his incumbency, the fact that he was not should not inure to his benefit so as to allow him to count the period of time that he gained domicile in Sultan Kudarat while still sitting as Mayor of DAS for purposes of qualifying to run for governorship in Sultan Kudarat.

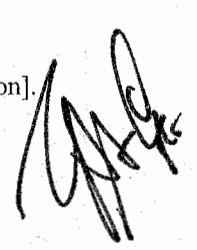
In sum, insofar as the main issue in this case is concerned—whether Pax Ali satisfied the minimum residency of one year from the May 2, 2022 elections—I submit that he did not satisfy the requirement and therefore had

<sup>21</sup> See, among others, *Piccio v. COMELEC*, *supra* note 8, at 198–199 and *Frivaldo v. COMELEC*, *supra* note 10, at 944.

<sup>22</sup> See LGC, sec. 43.

<sup>23</sup> Republic Act No. 386 (1949).

<sup>24</sup> See *Laurel v. Civil Service Commission*, 280 Phil. 212 (1991) [Per J. Davide, Jr., Third Division].





falsely represented in his CoC that he was eligible for office. Pax Ali was estopped from changing his domicile from DAS to Sultan Kudarat prior to resigning as Mayor of DAS on November 15, 2021. This is regardless if the three requisites for a change of domicile under our laws are satisfied.

Reckoning his residence from November 15, 2021, Pax Ali became a resident of Sultan Kudarat for only five months and 22 days and was thus ineligible to run for Governor thereof. This means that he knowingly made false representations in his CoC when he declared therein that he was eligible for such position, warranting the cancellation of such CoC under Section 78 of the OEC.<sup>25</sup>

*In all cases in which the disqualification or cancellation of CoC of an elected official became final only after they had already assumed office, a permanent vacancy is created which must then be filled by applying the rules on succession under Section 44 of the LGC*

The *ponencia* rules that the Vice Governor must succeed Pax Ali as Governor following the rules on succession under the LGC. In so concluding, the *ponencia* adopts my view and categorically abandons altogether the so-called second placer rule and declares that in all cases of removal from elective public office of one who was declared disqualified or ineligible from office—regardless of the nature of the action filed that led to such declaration—then the rules on succession should apply.

As stated at the outset, I thank the *ponente* for adopting my position. I write this Separate Concurring Opinion only to expound further on the reasons why rejecting the second placer rule and applying the rules on succession “*across the board*” is the proper route in determining the official to replace the removed candidate.

As expounded below, relevant jurisprudence over the years is largely characterized by judicial instability caused by seesawing rulings that go back and forth between two outcomes with respect to the question of who replaces the removed candidate: 1) the application of the rules on succession, or 2) the application of the second placer rule. The flipflopping is caused mainly by the distinction that the Court often tries to draw among the different actions to challenge an elected official’s qualifications and eligibility, for the purpose of determining who must replace the disqualified or ineligible elected official

<sup>25</sup> 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.



who was only removed when they had already assumed office. However, making a distinction for such purpose was, to my mind, completely unnecessary and, in fact, had, as seen in jurisprudence, only caused confusion because in each one of these cases, a permanent vacancy will always necessarily be left by the disqualified or ineligible official. Why distinguish as to the next step?

Ultimately, I agree that the second placer rule must be completely abandoned by the Court, not just to finally put an end to the flipflopping of jurisprudence, but more importantly, to be consistent with the Constitution and the LGC as to how to fill up permanent vacancies in elective positions.<sup>26</sup> Most importantly, finally discarding the second placer rule and upholding the rule of succession, is more in consonance with the very essence of our republican democracy and the primacy of the will of the people in determining which election candidates be installed as their leaders.

*Actions assailing the qualification or eligibility of candidates—before and after proclamation of the winning candidate*

The different remedies assailing a candidate's eligibility or qualifications for office are: (1) a petition to deny due course to/cancel a CoC; (2) a petition for disqualification; and (3) a petition for *quo warranto*.

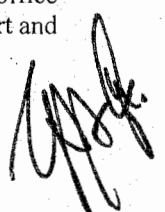
*Petitions to deny due course to or cancel a CoC* are governed by Section 78 of the OEC, which provides:

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.

Existing jurisprudence holds that for a petition to deny due course to/cancel a CoC to prosper, 1) the CoC must bear a material representation of the candidate's qualification or eligibility, specifically those pertaining to the matters enumerated under Section 74<sup>27</sup> of the OEC, 2) such representation is

<sup>26</sup> For filling up of permanent vacancies in local elective offices, LGC, secs. 44 and 45 provide that **succession** applies. For filling up of permanent vacancies in the offices of the President and the Vice President, CONSTITUTION, secs. 7 and 8 provide for **succession**.

<sup>27</sup> SECTION 74. *Contents of certificate of candidacy.* — The certificate of candidacy shall state that the person filing it is announcing his [or her] candidacy for the office stated therein and that he [or she] is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he [or she] seeks to represent; the political party to which he [or she] belongs; civil status; his [or her] date of birth; residence; his [or her] post office address for all election purposes; his [or her] profession or occupation; that he [or she] will support and





false, and 3) the representation was made with a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.<sup>28</sup>

Meanwhile, *petitions to disqualify* are provided under Sections 12 and 68 of the OEC, as well as under Section 40 of the LGC for local government officials. These laws provide:

[OEC] SECTION 12. *Disqualifications*. — Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he [or she] has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he [or she] has been given plenary pardon or granted amnesty.

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

[OEC] SECTION 68. *Disqualifications*. — Any candidate who, in an action or protest in which he [or she] is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his [or her] candidacy; (c) spent in his [or her] election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he [or she] has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his [or her] status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

[LGC] 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;

defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he [or she] will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he [or she] is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his [or her] oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his [or her] knowledge.

<sup>28</sup> *Gonzalez v. COMELEC*, 660 Phil. 225, 244–245 (2011) [Per J. Villarama, Jr., *En Banc*].



- (b) Those removed from office as a result of an administrative case;
- (c) Those convicted by final judgment for violating the oath of allegiance to the Republic;
- (d) Those with dual citizenship;
- (e) Fugitives from justice in criminal or non-political cases here or abroad;
- (f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
- (g) The insane or feeble-minded.

In *Buenafe v. COMELEC*,<sup>29</sup> the Court distinguished between a petition for disqualification and a petition to deny due course to/cancel a CoC in this wise:

*First*, the two remedies are anchored on *distinct grounds*: whereas an action under Section 78 of the OEC is concerned with the false representation by a candidate as to material information in the COC, a petition for disqualification relates to the declaration of a candidate as ineligible or lacking in quality or accomplishment fit for the elective position said candidate is seeking. To prosper, the former requires proof of deliberate attempt to mislead, misinform, or hide a fact relating to the candidate's requisite residency, age, citizenship, or any other legal qualification necessary to run for elective office; the latter, possession of a disqualification as declared by a final decision of a competent court, or as found by the Commission.

*Second*, they have *different prescriptive periods*: a petition to deny due course to or cancel a COC may be filed within five days from the last day of filing of COCs, but not later than 25 days from the filing of the COC sought to be canceled; a petition for disqualification may be filed any day after the last day of the filing of COC, but not later than the date of the proclamation.

*Third*, both have *markedly distinct effects*: **a disqualified person is merely prohibited to continue as a candidate, while the person whose certificate is canceled or denied due course is not treated as a candidate at all.** Moreover, a disqualified candidate may still be substituted if they had a valid COC in the first place. However, one whose COC was denied due course or canceled cannot be substituted because the law considers him or her to not have been a candidate at all.<sup>30</sup> (Emphasis supplied)

Finally, *a petition for quo warranto* is provided under Section 253 of the OEC, which states:

<sup>29</sup> 924 Phil. 201 (2022) [Per J. Zalameda, *En Banc*].

<sup>30</sup> *Id.* at 230–231.



SECTION 253. *Petition for quo warranto*. — Any voter contesting the election of any Member of the *Batasang Pambansa*, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the Commission within ten days after the proclamation of the results of the election.

Any voter contesting the election of any municipal or *barangay* officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the regional trial court or metropolitan or municipal trial court, respectively, within ten days after the proclamation of the results of the election.

For a *quo warranto* petition to prosper, it must be grounded on the “ineligibility or disloyalty to the Republic of the Philippines” of the elected candidate. A *quo warranto* petition has often been likened to a petition to deny due course to/cancel a CoC in the sense that both tackle the eligibility of a candidate but with the distinction that the latter is a pre-proclamation remedy and the former is filed after the proclamation of the winning candidate.<sup>31</sup>

Both petitions to deny due course to or cancel a CoC and petitions to disqualify are pre-proclamation remedies—they are filed before the proclamation of the elected candidate whose eligibility or qualification is challenged. On the other hand, a petition for *quo warranto* is filed after the challenged candidate had already been elected and proclaimed.

*How winning candidates in elections  
become incumbent public officials*

A candidate who has attained the highest number of votes or, in the case of multi-seat positions—the number of votes necessary to secure a seat, must still go through three processes before he or she can be considered as the incumbent holder of the elective office: 1) a valid proclamation; 2) the taking of oath of office before a duly-authorized officer; and 3) an actual assumption to the office won.<sup>32</sup>

These three requisites are more often used to determine whether a winning candidate for positions falling under the jurisdiction of the electoral tribunals under the Constitution<sup>33</sup> are already holders of such positions, so as to trigger the exclusive jurisdictions of such electoral tribunals. Usual examples of these cases are those involving winning congressional candidates, to whom the three requisites are applied to determine if they have already become “Members” of the House of Representatives (HoR), thus, giving rise to the exclusive Constitutional jurisdiction of the House of Representatives Electoral Tribunal (HRET) and thereby precluding other

<sup>31</sup> *Fermin v. COMELEC*, 595 Phil. 449, 465–467 (2008) [Per J. Nachura, *En Banc*].

<sup>32</sup> *See Gonzalez v. COMELEC*, *supra* note 28, at 266; *Guerrero v. COMELEC*, 391 Phil. 344, 352 (2000) [Per J. Quisumbing, *En Banc*].

<sup>33</sup> The Senate and House of Representative Electoral Tribunals as provided under art. VI, sec. 17 and the Presidential Electoral Tribunal under art. VII, sec. 4.



bodies, including COMELEC and this Court, from assuming the same jurisdiction.<sup>34</sup>

Nevertheless, the three requisites may also apply to determine whether candidates for elective offices, in general, who received the winning number of votes in the elections had already assumed office. This is relevant in discussing the consequences of the granting of an action challenging the qualifications and eligibility of elected candidates because the effects thereof vary depending on the time when the decision had attained finality. Specifically, there can only be succession when the elected winning candidate is already the incumbent holder of the contested office.<sup>35</sup>

*Consequences of actions assailing the  
qualifications or eligibility of candidates*

The consequences of pre-proclamation remedies such as a petition to deny due course to/cancel a CoC and a petition to disqualify, whenever decided **prior** to the conduct of the elections, are provided under the law or easily discernible therefrom.<sup>36</sup> A candidate whose CoC is cancelled or denied due course under Section 78, necessarily must be removed from the official List of Candidates and must not be included in the official ballots, having lost a legal basis—his or her CoC—to be so included. In a petition to deny due course to/cancel a CoC, a candidate whose CoC is cancelled is removed from the Certified List of Candidates issued by COMELEC and such candidate can no longer participate in the elections. In a petition to disqualify, a candidate who was disqualified before the elections may be substituted in accordance with Section 77<sup>37</sup> of the OEC, provided that the substitution complies with the requirements set forth in the said section.

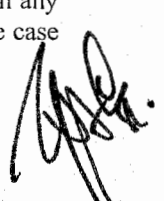
It is only when actions assailing the qualifications or eligibility of a candidate, whether through a pre-proclamation action or a post-proclamation remedy, are decided **after** the election, do proclamation and assumption to office give rise to most controversies, largely due to the conflicting decisions of the Court as to their effects.

<sup>34</sup> See, for example, *Ongsiako Reyes v. COMELEC*, 712 Phil. 192, 211–212 (2013) [Per J. Perez, *En Banc*]; *Vinzons-Chato v. COMELEC*, 548 Phil. 712, 725–726 (2007) [Per J. Callejo, Sr., *En Banc*]; *Aggabao v. COMELEC*, 490 Phil. 285, 290 (2005) [Per J. Ynares-Santiago, *En Banc*].

<sup>35</sup> For succession in local elective offices, see LGC, sec. 44 for succession in case of permanent vacancies in the Offices of the Governor, [Vice Governor], Mayor and [Vice Mayor]; sec. 45 in case of permanent vacancies in the Sanggunian. For succession in the offices of the President and the [Vice President], see CONSTITUTION, art. VII, secs. 7 and 8.

<sup>36</sup> See OEC, secs. 72 and 78.

<sup>37</sup> SECTION 77. *Candidates in case of death, disqualification or withdrawal of another.* — If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his [or her] certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he [or she] is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission.



Historically, there have been two paths taken by the Court in determining who must replace a local official removed by virtue of a challenge to his or her qualification and eligibility which prospered after he or she had already assumed office—1) the rules on succession provided under Section 44 of the LGC and 2) the so-called second placer rule.

*The rules on succession under the LGC*

Section 44 of the LGC categorically provides that in case of a permanent vacancy in the offices of the Governor, Vice Governor, Mayor, and Vice Mayor, the rules on succession outlined therein must be observed, thus:

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

For national elective positions, it is the Constitution which, in Sections 7 and 8, Article VII, provides specifically for the application of the rules on



succession in the case of permanent vacancies in the positions of the President and the Vice President.<sup>38</sup>

For purposes of the present case and to avoid a sweeping ruling on the matter of succession in these instances, the discussion below shall be limited to the filling up of vacancies in local elective positions only.

### *The Second Placer Rule*

The second placer rule is a doctrine that flows only from the Court's interpretation of the effects of an elected official's ineligibility from office and is often the outcome of the cancellation of such elected official's CoC. The rule provides that the person who obtained the second highest number of votes in the elective position must replace the removed candidate whose CoC was cancelled and therefore, be proclaimed winner of the office. The rationale behind this jurisprudentially provided rule is that in cancelling or denying due course to the removed official's CoC, the same is rendered "void *ab initio*" and so the disqualified or ineligible official is deemed to have never become a candidate at all.<sup>39</sup>

The two rules in replacing a candidate who is declared ineligible or disqualified after his or her proclamation and assumption to office, as well as the movements in relevant Court decisions over the decades, are discussed in length in the review of relevant jurisprudence below.

### *Review of jurisprudence on actions assailing the qualifications or eligibility of a candidate granted after the assumption to office of such candidate*

<sup>38</sup> SECTION 7. The President-elect and the [Vice President-elect] shall assume office at the beginning of their terms.

If the President-elect fails to qualify, the [Vice President-elect] shall act as President until the President-elect shall have qualified.

If a President shall not have been chosen, the [Vice President-elect] shall act as President until a President shall have been chosen and qualified.

If at the beginning of the term of the President, the President-elect shall have died or shall have become permanently disabled, the [Vice President-elect] shall become President.

Where no President and [Vice President] shall have been chosen or shall have qualified, or where both shall have died or become permanently disabled, the President of the Senate or, in case of his [or her] inability, the Speaker of the House of Representatives, shall act as President until a President or a [Vice President] shall have been chosen and qualified.

The Congress shall, by law, provide for the manner in which one who is to act as President shall be selected until a President or a [Vice President] shall have qualified, in case of death, permanent disability, or inability of the officials mentioned in the next preceding paragraph.

SECTION 8. In case of death, permanent disability, removal from office, or resignation of the President, the [Vice President] shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and [Vice President], the President of the Senate or, in case of his [or her] inability, the Speaker of the House of Representatives, shall then act as President until the President or [Vice President] shall have been elected and qualified.

<sup>39</sup> See, among others, *Maquiling v. COMELEC*, 709 Phil. 408, 457 (2013) [Per C.J. Sereno, *En Banc*]; *Jalosjos v. COMELEC*, 696 Phil. 601, 622–623 (2012) [Per J. Carpio, *En Banc*].





Rulings prior to the enactment of  
the OEC (Pre-1985)

In the 1949 case of *Llamoso v. Ferrer*,<sup>40</sup> the Court held that the disqualification of a winning candidate does not entitle the candidate receiving the next highest number of votes to the office. This, it appears, is the earliest case that rejected the so-called second placer rule. Citing the case of *Topacio v. Paredes*,<sup>41</sup> the Court maintained 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.”<sup>42</sup> In justifying this ruling, the Court therein cited United States (US) jurisprudence which held:

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 she] 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 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.)

...[A]lthough the candidate voted for by a majority cannot be declared elected because of his [or her] 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.)<sup>43</sup> (Emphasis supplied)

This was the ruling adopted in the subsequent cases of *Vilar v. Paraiso*,<sup>44</sup> *Luison v. Garcia*,<sup>45</sup> and *Geronimo v. Ramos*<sup>46</sup> (*Geronimo*). However, the Court also had outlier cases wherein the candidate with the next highest number of votes was declared entitled to the office after the disqualification of the winning candidate. These are the cases of *Sandalo v. COMELEC*<sup>47</sup> and *Santos v. COMELEC*.<sup>48</sup>

Rulings after the enactment of the  
OEC (Post-1985)

Upon the enactment of the OEC on December 3, 1985, jurisprudence on the matter became even more diverse. The Court began to distinguish the

<sup>40</sup> 84 Phil. 490, 492–493 (1949) [Per J. Bengzon, *En Banc*].

<sup>41</sup> 23 Phil. 238, 255 (1912) [Per J. Trent, *En Banc*].

<sup>42</sup> *Llamoso v. Ferrer*, *supra* note 40, at 492.

<sup>43</sup> *Id.* at 492–493.

<sup>44</sup> 96 Phil. 659 (1955) [Per J. Bautista Angelo, *En Banc*].

<sup>45</sup> 103 Phil. 453 (1958) [Per J. Bautista Angelo, *En Banc*].

<sup>46</sup> 221 Phil. 130 (1985) [Per J. Gutierrez, Jr., *En Banc*].

<sup>47</sup> 194 Phil. 122 (1981) [Per J. Aquino, *En Banc*].

<sup>48</sup> 222 Phil. 246 (1985) [Per J. Cuevas, *En Banc*].



consequences based on the actions filed assailing the qualifications or eligibility of the winning candidate, or, in worse cases, distinguished among the *grounds* for each action filed, regardless if the nature of the action is the same.

In petitions for disqualification, the relevant cases that established doctrinal rulings are the cases of *Frivaldo*, *Maquiling v. COMELEC*<sup>49</sup> (*Maquiling*), and *Chua v. COMELEC*<sup>50</sup> (*Chua*).

In *Frivaldo*, Frivaldo was elected Governor of the province of Sorsogon and thereafter assumed office. Eight months from his assumption, a “petition for the annulment of [his] election and proclamation” was filed by the League of Municipalities of Sorsogon on the ground that Frivaldo was not a Filipino citizen, having been naturalized as an American citizen.

Despite the confusing nomenclature of the action filed, coupled with its filing that was far beyond the period to file any of the remedies to challenge the qualifications or eligibility of an elected official, the Court still allowed and, in fact, granted the action. Thus, Frivaldo was removed from office and the Vice Governor was ordered to succeed as Governor of Sorsogon, in accordance with the rules on succession.

The ruling in *Frivaldo* was adopted in subsequent disqualification/cancellation of CoC cases, including *Abella v. COMELEC*<sup>51</sup> (*Abella*), *Reyes v. COMELEC*<sup>52</sup> (*Reyes*), *Nolasco v. COMELEC*<sup>53</sup> (*Nolasco*), and *Kare v. COMELEC*.<sup>54</sup>

On the other hand, in *Maquiling*, the Court took the opposite route. In that case, a petition “to disqualify/cancel or deny due course to [CoC]” was filed against Rommel Arnado (Arnado), a candidate for Mayor of Kauswagan, Lanao del Norte in the 2010 NLE, alleging that he (Arnado) remained to be a foreign citizen as he continued to use his US passport. Arnado won the mayoralty elections pending the action.

COMELEC treated the petition as one for disqualification under Section 40(d)<sup>55</sup> of the LGC and granted the same on the merits. It annulled Arnado’s proclamation and ordered the application of the rules on succession, with then the Vice Mayor succeeding to the position of Mayor.

<sup>49</sup> *Supra* note 39.

<sup>50</sup> 783 Phil. 876 (2016) [Per J. Leonen, *En Banc*].

<sup>51</sup> 278 Phil. 275 (1991) [Per J. Gutierrez, Jr., *En Banc*].

<sup>52</sup> 324 Phil. 813 (1996) [Per J. Mendoza, *En Banc*].

<sup>53</sup> 341 Phil. 761 (1997) [Per J. Puno, *En Banc*].

<sup>54</sup> 472 Phil. 258 (2004) [Per C.J. Panganiban, *En Banc*].

<sup>55</sup> SECTION 40. *Disqualifications*. — The following persons are disqualified from running for any elective local position:

(d) Those with dual citizenship[.]

On appeal, however, the Court, while affirming COMELEC's ruling that Arnado was disqualified under Section 40(d), nevertheless proceeded to declare such disqualification as an ineligibility and ruled that an ineligible candidate such as Arnado was no candidate at all, as well as declared the latter's CoC as "void *ab initio*." This led the Court to proclaim the mayoralty candidate who received the second highest number of votes—Casan Maquiling.

This ruling in *Maquiling* was adopted in the case of *Chua*, which involved Arlene Chua (Chua), who placed sixth and last of the six proclaimed winning candidates for Councilor in the Fourth District of Manila during the 2013 NLE. However, a "petition to declare [her] as a nuisance candidate and to deny due course to and/or cancel [CoC]" was filed against Chua for her alleged lack of Filipino citizenship and the required residency. Krystle Bacani (Bacani), the seventh placer in the elections, intervened.

COMELEC considered the petition as one for disqualification and granted the same. Following the Court in *Maquiling*, COMELEC declared void *ab initio* Chua's CoC and all votes cast in her favor were considered stray. Thus, Bacani was declared to have garnered the sixth highest number of votes and thereby proclaimed a Member of the *Sanggunian*.

The Court, affirming COMELEC, and applying its ruling in *Maquiling*, held that Chua's failure to renounce her US citizenship rendered her a disqualified dual citizen under Section 40(d) of the LGC. The Court ruled that because this is a "substantive disqualifying circumstance"<sup>56</sup> which existed prior to the filing of her CoC, her CoC is to be considered void *ab initio*. Thus, the person legally entitled to the vacant position created is the candidate who garnered the second highest number of votes during the elections, being the *eligible candidate who obtained the highest number of votes*.

Notably, while cases of *Maquiling* and *Chua* were squarely treated as petitions for disqualification, they cite as basis the Court's ruling in *Jalosjos Jr. v. COMELEC*<sup>57</sup> (*Jalosjos*)—a case involving a petition to deny due course to or cancel CoC.

In *Jalosjos*, Dominador Jalosjos, Jr. (*Jalosjos*) and Agapito Cardino (*Cardino*) were candidates for Mayor of Dapitan City, Zamboanga del Norte in the 2010 NLE. Cardino filed a petition to deny due course to/cancel the CoC of Jalosjos for falsely declaring in his CoC that he was eligible for Mayor when in truth, he was previously convicted by final judgment of robbery and sentenced to *prision mayor*, thus making him disqualified for office under Section 40(a)<sup>58</sup> of the LGC. Pending the case, Jalosjos won the elections.

<sup>56</sup> *Maquiling v. COMELEC*, *supra* note 39, at 900.

<sup>57</sup> *Supra* note 39.

<sup>58</sup> SECTION 40. *Disqualifications*. — The following persons are disqualified from running for any elective local position:



COMELEC later granted the petition, proceeded to order Jalosjos to vacate the mayoralty office and then applied the rules on succession. On appeal, the Court modified COMELEC's ruling and held that Jalosjos made false material representations in his CoC regarding his eligibility, thus warranting the cancellation thereof. This meant that Jalosjos never became a candidate in the elections and so Cardino, the one who came in second to Jalosjos, garnered the highest number of votes. The Court thus overturned COMELEC's application of the rules on succession and, instead, proclaimed the second placer.

The Court, in *Jalosjos*, likewise notably pronounced that the rejection of the second placer rule is "limited to situations where the [CoC] 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 [CoC]."<sup>59</sup>

Prior to *Jalosjos*, it had already been settled by the Court that in petitions for denial of due course to/cancellation of CoC, the candidate whose CoC was cancelled is deemed not having become a candidate at all; but that this did **not** result in the second placer being declared the winner in the elections **because of the simple fact that the latter was unequivocally rejected by either a majority or plurality of voters.**<sup>60</sup>

This route that rejects the second placer rule even in cancellation of CoC cases was taken in *Miranda v. Abaya*<sup>61</sup> (*Miranda*) which followed the Court's disquisitions in *Frivaldo*, *Abella*, *Reyes*, and *Nolasco*.

In *Miranda*, Jose "Pempe" Miranda (Pempe) and Antonio Abaya (Abaya) ran for Mayor of Santiago City, Isabela in the 1998 NLE. Abaya filed with COMELEC a petition to deny due course to/cancel the CoC of Pempe. Pending the case, Pempe was substituted by his son, Joel Miranda (Joel). Later, the petition against Pempe was granted.

Meanwhile, Joel, as substitute of Pempe, won the elections. Abaya thereafter filed a petition to declare null and void the substitution of Joel in place of Pempe by virtue of the cancelled CoC of the latter. Abaya alleged that Pempe could not have been legally substituted by Joel because he (Pempe) never became a candidate. COMELEC, acting on this latter petition by Abaya, nullified the substitution between the father and son Miranda, and proclaimed Abaya as the duly elected Mayor of Santiago City.

On appeal, the Court, while agreeing that the substitution was void, found COMELEC to have nevertheless committed grave abuse of discretion

(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[.]

<sup>59</sup> *Jalosjos v. COMELEC*, *supra* note 39, at 633.

<sup>60</sup> See *Reyes v. COMELEC*, *supra* note 52, at 831; *Nolasco v. COMELEC*, *supra* note 53, at 779.

<sup>61</sup> 370 Phil. 642 (1999) [Per J. Melo, *En Banc*].



in proclaiming Abaya, the second placer in the elections which ignored the doctrines in *Reyes* and *Nolasco*. The Court declared that the election results point to the fact that Abaya was **not** the choice of the people and that the Court has no authority under any law to impose upon and compel the people of Santiago City to accept Abaya as their mayor. Thus, the Court applied the law on succession under Section 44 of the LGC.

*Miranda* was thereafter consistently adopted in a long line of cases involving petitions for denial of due course to/cancellation of CoC, such as in *Bautista v. COMELEC*,<sup>62</sup> *Gonzalez v. COMELEC*,<sup>63</sup> and *Talaga v. COMELEC*.<sup>64</sup> It was only in the case of *Jalosjos* that the Court digressed from its steady rejection of the second placer doctrine. *Jalosjos*, in turn, became the precedent for some cases of the same issue that came after it—notably, the rulings in *Maquiling* and *Chua*.

Even in petitions for *quo warranto*, the Court has had diverging rulings on the matter of the replacement candidate.

In *Labo v. COMELEC*<sup>65</sup> (*Labo*), the Court established the rejection of the second placer doctrine. In said case, Ramon Labo, Jr. (*Labo*) was a candidate for Baguio City Mayor in the 1998 NLE. He won. After his proclamation, a petition for *quo warranto* was filed against him assailing his ineligibility for being an Australian citizen. The Court therein ruled that Labo is ineligible to hold public office since he was not a Philippine citizen on the day of the elections. In deciding who must become Mayor of Baguio City, the Court reiterated its ruling in *Geronimo* and held that:

[I]t 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 [or her].

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 government that no one can be declared elected and no measure can be declared carried unless he[*she*] or it receives a majority or plurality of the legal votes cast in the election. (20 Corpus Juris 2<sup>nd</sup>, 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 [or she] 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

<sup>62</sup> 460 Phil. 459 (2003) [Per J. Carpio, *En Banc*].

<sup>63</sup> *Supra* note 28.

<sup>64</sup> 696 Phil. 786 (2012) [Per J. Bersamin, *En Banc*].

<sup>65</sup> 257 Phil. 1 (1989) [Per J. Cruz, *En Banc*].



maintain him [or her] 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.”<sup>66</sup> (Emphasis supplied)

The case of *Sobejana-Condon v. Commission on Elections, et al.*<sup>67</sup> (*Sobejana-Condon*) further reiterates the ruling in *Labo*. In *Sobejana-Condon*, Teodora Sobejana-Condon (Teodora) ran for and was proclaimed Vice Mayor of Caba, La Union in the 2010 NLE. A petition for *quo warranto* was thereafter filed against her before the Regional Trial Court (RTC), questioning her eligibility on the ground that she was a dual citizen for her failure to renounce her foreign citizenship. The RTC granted the petition for *quo warranto* and declared Teodora disqualified and ineligible to hold the office of Vice Mayor and proceeded to nullify her proclamation as well as to declare the position of Vice Mayor as vacant, presumably leading to the application of the rules on succession. The RTC Decision was affirmed *in toto* by COMELEC. When elevated, this Court upheld COMELEC.

On the other hand, the Court in *Ty-Delgado v. COMELEC*<sup>68</sup> (*Ty-Delgado*) proclaimed the second placer as the winner after granting the petition for *quo warranto* against the candidate who first won in the elections.

In *Ty-Delgado*, a petition for disqualification was filed against Philip Arreza Pichay (Pichay), a candidate for Representative of the First District of Surigao del Sur in the 2013 NLE. The petition alleged that Pichay was disqualified under Section 12 of the OEC as he was previously convicted of a crime involving moral turpitude. When Pichay won and became a Member of the HoR, COMELEC dismissed the petition for lack of jurisdiction. Mary Elizabeth Ty-Delgado (Ty-Delgado), the second placer during the elections, filed a *quo warranto* petition before the HRET raising the same ground. The petition was dismissed. On *certiorari*, the Court reversed the HRET decision, found Pichay ineligible to hold office and his CoC void *ab initio*, and finally declared Ty-Delgado, the second placer, as the winning candidate.

The Court considered Pichay’s declaration that he is eligible to run for public office despite his conviction of a crime involving moral turpitude as a material misrepresentation, which is a ground for a petition for cancellation of CoC under Section 78 of the OEC, despite the fact that the action filed was clearly one for *quo warranto* and not for cancellation of Pichay’s CoC.

*The need to abandon the practice of distinguishing among the remedies filed in determining how to fill up permanent vacancies left by elected officials found*

<sup>66</sup> *Geronimo v. Ramos*, *supra* note 46, at 141–142.

<sup>67</sup> 692 Phil. 407 (2012) [Per J. Reyes, *En Banc*].

<sup>68</sup> 779 Phil. 268 (2016) [Per J. Carpio, *En Banc*].





*to be disqualified or ineligible after their assumption to office*

There is no doubt that relevant jurisprudence is far from settled. In fact, the flipflopping of rulings goes back to as early as before the OEC was passed in 1985. A careful review of these rulings shows that the cause of the seesawing of doctrines is the constant attempt of the Court to distinguish among the remedies filed in order to determine how to fill up the vacancy left by the removed candidate found to be ineligible or disqualified.

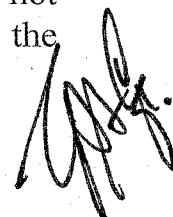
One problem with this approach is that the remedies themselves have overlapping grounds and nature. For example, a ground for disqualification in any of the laws providing for such action—Sections 12 and 68 of the OEC and Section 40 of the LGC—can be material facts which can be falsely represented and therefore become a ground for false material representation under Section 78 of the OEC. Thus, a disqualification can actually lead to the cancellation of the challenged candidate's CoC and the application of the doctrine that as the CoC was cancelled and therefore "void *ab initio*," the second placer was actually the first placer because the one who garnered the most votes and whose CoC was cancelled never actually became a candidate.

This phenomenon becomes true even if the specific ground for disqualification is not one of the specific facts required to be declared in the CoC under Section 74 of the OEC, because Section 74 includes the declaration that the person vying for elective office is "eligible" for said position. As seen in a plethora of cases, "eligibility" has become this sweeping malleable word which can encompass virtually any defect in one's candidacy or title to the office.

This is precisely why in *Maquiling* and *Chua*—cases involving petitions for disqualification under Section 40(d) of the LGC—the Court nevertheless ended up cancelling the challenged candidates' CoCs for falsely representing their eligibilities and proclaiming the second placer as winner.

As to the post-proclamation remedy of *quo warranto*, the confusion brought about by the Court's adherence to distinguishing outcomes based on the remedies filed and/or their nature and the grounds therefor, is best demonstrated in *Ty-Delgado*. As earlier discussed, this case involved a petition for *quo warranto* filed with the HRET after the proclamation and assumption to office of Pichay. The ground invoked was one for disqualification under Section 12 of the OEC. But after what appears to be some legal gymnastics, the Court ended up cancelling Pichay's CoC, ruling him to have never become a candidate, and thereby gifting the second placer with the office of First District Representative of Surigao del Sur.

On the other hand are those cases which applied the rules on succession: 1) exclusively as to petitions for disqualification because these actions do not involve the cancellation of one's CoC and therefore the treatment of the



removed candidate as a non-candidate at the outset, or 2) to all actions that led to the removal of a sitting elective official, regardless of their nature, because of a rejection, *across the board*, of the second placer rule for being repugnant to the people's right of suffrage. The latter group of cases espouse the belief that the second placer can never be entitled to the office because he or she was rejected by the electorate and therefore lacks the mandate of the people.

Given all these nuances and technicalities of the different relevant remedies, and given the fact that each and every one of these cases lead to one and the same thing—a permanent vacancy in office left by the removed elected official, the Court should finally abandon the several and often conflicting distinctions that it has been trying to draw over the years among the remedies, their nature and their grounds for purposes of filling up such permanent vacancy.

This is not to say that there should be no more distinctions among the electoral remedies under the OEC. Their distinctions remain the same. A petition for disqualification, decided before the elections, shall disqualify such candidate but shall allow his or her substitution in accordance with Section 77 of the OEC. A petition to deny due course to/cancel a CoC, decided before the elections, shall result in the removal of such candidate's name among the list of official candidates. No substitution is allowed for a candidate whose CoC was denied due course to/cancelled.

On the other hand, when the challenged candidate has already won, been proclaimed, has taken his or her oath of office and has assumed the contested position when the action—regardless if the same is one for cancellation/denial of due course to a CoC or one for disqualification—the winning candidate is removed, the contested office is vacated, and a permanent vacancy arises therein.

Now, in picking a path that would then apply to *all* cases involving removed officials who left permanent vacancies, the Court should choose that path which the law squarely provides and which is consistent with the primacy of the will of the people—that is, the **rules on succession**.

*The LGC clearly provides for the rules on succession to apply in cases of permanent vacancies in the offices of local chief executives such as the office of the Governor*

Indeed, the manner of filling up permanent vacancies in local offices such as that of the Governor is clearly provided in the LGC. Being so clear, there is no need for statutory construction. Section 44 of the law provides:

SECTION 44. *Permanent Vacancies in the Offices of the Governor, [Vice Governor], Mayor, and [Vice Mayor].* — If a permanent vacancy



occurs in the office of the governor or mayor, the vice governor or [vice mayor] concerned shall become the governor or mayor. 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 [or her] 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 [or her] 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.

Moreover, "permanent vacancy" is defined in a language broad enough as to undeniably encompass a situation in which the official who once held the subject office was removed by reason of his or her disqualification or ineligibility:

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 [or her] office.**<sup>69</sup> (Emphasis supplied)

On the other hand, there is nothing expressed in our statutes or the Constitution that sanctions the second placer doctrine. It is but a creation of the Court in the course of its attempts to interpret and apply the provisions of the OEC and other relevant election laws. **However, the truth is that there is nothing expressed in these laws that can be taken to mean allowing a candidate who had not garnered the plurality of votes in an election to be proclaimed and assume the contested position.**

The advocates of the second placer rule reason that a winning candidate whose CoC is cancelled should be considered as never to have become a candidate at all, and that, therefore, the votes cast in his or her favor must be rendered stray. While this reasoning appears sound *conceptually*, it does not have any footing in law.

In fact, what is expressed in the OEC is that a vote cast in favor of a candidate who has been *disqualified* by final judgment shall be considered

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<sup>69</sup> LGC, sec. 44.



stray.<sup>70</sup> Following the language of the law, and adopting this Court's interpretation of the meaning of "stray votes," then candidates who were removed by virtue of disqualification cases—like cancellation of/ denial of due course to CoC cases—must likewise be replaced by the second placer in the elections. If we take this route, however, then the provisions of the Constitution and the LGC on succession would be rendered futile.

Senior Associate Justice Marvic M.V.F. Leonen (SAJ Leonen) opined in the deliberations of the case that in determining who shall take the place of a disqualified or ineligible candidate that has already been elected and proclaimed, it is best to examine when they possessed their lack of qualification or disqualification; that an ineligible candidate who is unqualified from the very beginning should be treated as if he or she did not run for office, even if he or she were proclaimed as duly elected because the constitutional and statutory qualifications and disqualifications of candidates should not be overridden by the votes of the electorate; and that in these cases, it is the proclamation that is the nullity and so there is no removal from office or vacancy arising from such nullity as the position was not occupied at all. SAJ Leonen concludes that it would be a stretch to apply Section 44 of the LGC on succession in these cases. Instead, the position should go to the duly elected candidate who is both eligible and had obtained the highest number of votes.<sup>71</sup>

I respectfully disagree.

The language of Section 44 of the LGC clearly defines a "permanent vacancy" that should trigger the rules on succession therein provided: "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 reigns, or is otherwise permanently incapacitated to discharge the functions of his [or her] office."<sup>72</sup> The phrase "fails to qualify" does not distinguish when such failure to qualify must have taken place.

Moreover, it is unclear when SAJ Leonen submits the reckoning point should be for the elective official's failure to qualify—is it when his or her CoC was filed? Or when he or she was proclaimed? Or when he or she assumed the elective office? It appears that the reckoning point should be the assumption to office because the position must have been first "validly occupied" but that a subsequent circumstance intervened which caused the official's removal therefrom, thus:

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<sup>70</sup> SECTION 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 voters' will:

....  
24. 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.

<sup>71</sup> See J. Leonen, Concurring and Dissenting Opinion, pp. 5–9.

<sup>72</sup> Emphasis supplied.



A commonality among these grounds [for permanent vacancy under Section 44 of the LGC] is that the elective local official *initially qualified for and validly occupied the position*, but a later circumstance supervened. They were initially fit for the position, but a subsequent act occurred rendering them unable to hold the office, causing their removal from the position, and resulting in a permanent vacancy.<sup>73</sup> (Emphasis in the original)

However, SAJ Leonen thereafter supports this submission by citing the case of *Chua* which held that the reckoning point when the elected official must have suffered from a disqualification or lack of qualification should be the filing of the CoC, thus:

The permanent vacancies referred to in Section 45 are those arising “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 [or her] office.” In these situations, the vacancies were *caused by those whose certificates of candidacy were valid at the time of the 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.”*<sup>74</sup> (Emphasis in the original)

With all due respect, to my mind, the inconsistency as to when a disqualification or ineligibility must have arisen to determine whether the rules on succession under the LGC can apply demonstrates further the need to avoid making any distinction at all. As mentioned—and as clearly provided in Section 44 of the LGC—if a person fails to qualify to an elective local office, a permanent vacancy arises and the rules on succession therein laid must be observed. Section 44 *clearly* makes its language expansive enough to apply to all situations in which after an elected candidate is proclaimed to the office, such office is vacated for any reason whatsoever.

*In reconciling the conflicting decisions  
of the Court, paramount consideration  
must be given to the “will of the people”*

The Philippines is a democratic and republican State where sovereignty resides in the people and all government authority emanates from them.<sup>75</sup> The essence of republicanism is representation, the selection by the citizenry of a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained, at the option of their principal.<sup>76</sup>

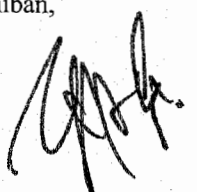
The electoral process is one of the linchpins of a democratic and republican framework because it is through the act of voting that government by consent is secured. Through the ballot, people express their will on the

<sup>73</sup> J. Leonen, Concurring and Dissenting Opinion, p. 7.

<sup>74</sup> *Id.* at 8.

<sup>75</sup> CONSTITUTION, art. II, sec. 1.

<sup>76</sup> J. Puno, Concurring Opinion in *Frivaldo v. COMELEC*, 327 Phil. 521, 579 (1996) [Per J. Panganiban, *En Banc*], as cited in *Naval v. COMELEC*, 738 Phil. 506, 522 (2014) [Per J. Reyes, *En Banc*].



defining issues of the day and they are able to choose their leaders in accordance with the fundamental principle of representative democracy that the people should elect only those they please to govern them. Voting has an important instrumental value in preserving the viability of constitutional democracy. It has traditionally been taken as a prime indicator of democratic participation.<sup>77</sup> **Thus, to maintain the essence of our democracy, it is important that the will of the people is given paramount consideration.** This is why, over the years, the Court has been mindful in resolving electoral controversies in a way that the will of the people as expressed in their ballots be given effect.<sup>78</sup>

On the other hand, the Court has likewise declared that the will of the people—or at least that of the plurality of the voters—cannot make a disqualified or ineligible candidate qualified or eligible. Not even the people can overturn the requirements to run for and hold public office under the Constitution and our laws. Hence, the challenge in resolving qualification or cancellation of CoC cases is that it is always a balancing act between the choice of the electorate, on the one hand, and the requirements and limitations to public office as mandated under the Constitution and statutes, on the other.

**In any case, once an elected official is already found to be ineligible or disqualified, the next task becomes the determination of who replaces the departing winning candidate. Here, at this stage, there is no more balancing act to speak of because all that is left in the equation is the task of enforcing the voice of the people as reflected in their ballots.**

The route of casting aside the votes of the people who elected the removed winning candidate is the opposite of giving effect to the will of the people. Following the very essence of representative democracy, the votes of the people cast in favor of the winning candidate who is later removed from office because of being disqualified or ineligible cannot just be rendered meaningless or be invalidated, regardless of the nature of the petition filed that led to the removal of such winning candidate. The Court cannot simply avoid the voice of the plurality of voters that clearly pointed to their leader of choice—the candidate who won and not the second placer.

To continue to subscribe to the view that the second placer is entitled to the office results in the disenfranchisement of the electorate without any fault on their part and in the undermining of the importance and meaning of democracy and the people's right to elect officials of their choice. It is repugnant to the basic concept of the constitutional right to suffrage if a candidate who clearly did not obtain the mandate of the plurality, and who, in fact, the people has rejected, is proclaimed winner.<sup>79</sup> In our jurisdiction,

<sup>77</sup> J. Puno, Dissenting Opinion in *Tolentino v. COMELEC*, 465 Phil. 385, 433 (2004) [Per J. Carpio, *En Banc*], as cited in *Naval v. COMELEC*, *id.* at 522–523.

<sup>78</sup> See, among others, *Piccio v. COMELEC*, *supra* note 8, at 206–207 and *Frivaldo v. COMELEC*, *supra* note 76, at 574.

<sup>79</sup> See *Sunga v. COMELEC*, 351 Phil. 310, 326 (1998) [Per J. Bellosillo, *En Banc*].





elections are won on the basis of a majority or plurality of votes cast and received by the candidates.<sup>80</sup> **A second placer can never be the choice of the majority.**

*Aquino v. COMELEC*<sup>81</sup> (*Aquino*) astutely discussed the absurdity of simply presuming that the second placer is entitled to the contested office because in the election that was participated in by the winning candidate who was later removed, the former received the *second* highest number of votes. The Court explained in *Aquino* that this reasoning is too simplistic and fails to take into account the nuances of the voting system and the possibilities that would render anomalous the application of the second placer rule: 1) the possibility that the second placer obtained so insignificant a number of votes that would be tantamount to outright rejection by the electorate and 2) the reality that voters are volatile and unpredictable; in a race in which the winning candidate who was later disqualified did not actually join, the “redistribution” of the votes that would have been cast for the winning candidate would have greatly changed the playing field. Quoting *Aquino*:

This, it bears repeating, expresses the more logical and democratic view. We cannot, in another shift of the pendulum, subscribe to the contention that the runner-up in an election in which the winner has been disqualified is actually the winner among the remaining qualified candidates because this clearly represents a minority view supported only by a scattered number of obscure American state and English court decisions. **These decisions neglect the possibility that the runner-up, though obviously qualified, could receive votes so measly and insignificant in number that the votes [he or she] receive would be tantamount to rejection.** Theoretically, the “second placer” could receive just one vote. In such a case, it is absurd to proclaim the totally repudiated candidate as the voters’ “choice.” **Moreover, even in instances where the votes received by the second placer may not be considered numerically insignificant, voters’ preferences are nonetheless so volatile and unpredictable that the result among qualified candidates, should the equation change because of the disqualification of an ineligible candidate, would not be self-evident.** Absence of the apparent though ineligible winner among the choices could lead to a shifting of votes to candidates other than the second placer. By any mathematical formulation, **the runner-up in an election cannot be construed to have obtained a majority or plurality of votes cast where an “ineligible” candidate has garnered either a majority or plurality of the votes.**<sup>82</sup> (Emphasis supplied)

Moreover, the disqualification or ineligibility of the winning candidate was to no fault of the voters, and yet, in the scenario created by the second placer rule, the electorate is made to suffer the consequences as their votes are simply cast aside.

<sup>80</sup> *Carlos v. Angeles*, 400 Phil. 405, 420 (2000) [Per J. Pardo, *En Banc*].

<sup>81</sup> 318 Phil. 467 (1995) [Per J. Kapunan, *En Banc*].

<sup>82</sup> *Id.* at 508–509.



The Court has repeatedly stressed the importance of giving effect to the sovereign will in order to ensure the survival of our democracy. In any action involving the possibility of a reversal of the popular electoral choice, the Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is sound public policy to cause elective offices to be filled by those who are the choice of the majority.<sup>83</sup> The general rule is to uphold the will of the electorate, at all times. It is only in a few exceptional circumstances that the votes of the majority are deemed void.<sup>84</sup>

Finally, in choosing between the second placer and the official next in rank, there must be consideration in giving the people a leader which they not only chose but likewise expected to have, by reason of the very nature of our election system—that the person obtaining the most number of votes win and serve in the office to which they were elected. **There is simply nothing in our voting system that would put the people on notice that a person who they did not vote for, and thus rejected, will become their leader.** Thus, the second placer rule places the people in undue surprise, as they are fed an outcome that they did not expect—having another person than the one they chose as leader.

On the other hand, succession is well engrained in the Constitution and our statutes. In fact, deputy chief executive positions such as the Vice President, Vice Governors and Vice Mayors, are intended by the law creating them precisely as *chief executives-in-waiting*. **Their primary function is to stand guard in case their superiors become unavailable to hold the office of the chief executive, in order to prevent prolonged vacancy in such office considering the importance of such positions.**

*In all cases of removal of local elected public officials, the rules on succession under the LGC must apply*

With these precepts in mind, it is but right that, *as a rule*, **any action** assailing the qualification or eligibility of a local elective candidate that is granted after proclamation and assumption to office, **regardless of whether the grounds for disqualification are under Sections 12, 68, 78, and 253 of the OEC and Section 40 of the LGC, being that the same always results in a permanent vacancy, such vacancy** must then be filled by applying the **rules on succession in accordance with Section 44 of the LGC.**

*The rule as applied in this case*

In this case, Pax Ali unquestionably obtained the highest number of votes in the 2022 Sultan Kudarat gubernatorial race. As a consequence, he was proclaimed Governor of the province and eventually assumed office as such. By virtue of the Court's temporary restraining order issued last May 7,

<sup>83</sup> *Frivaldo v. COMELEC*, *supra* note 76, at 574.

<sup>84</sup> *See Yason v. COMELEC*, 219 Phil. 338 (1985) [Per J. Gutierrez, Jr., *En Banc*].



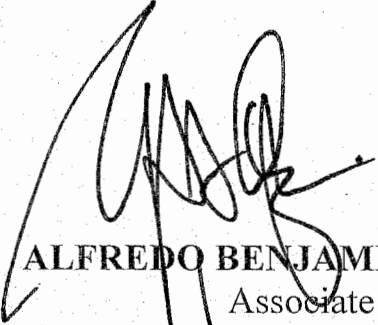
2022, COMELEC's cancellation of Pax Ali's CoC was stayed and therefore, he, to this day, holds the office of Sultan Kudarat Governor.

However, as COMELEC correctly found, Pax Ali falsely represented in his CoC his eligibility for governor, specifically because he lacked the minimum residency requirement therefor. He was estopped from abandoning his domicile in DAS, Maguindanao, during the time that he was Mayor thereof, for purposes of gaining a domicile in Sultan Kudarat so that he could qualify to run as the latter's governor. As such, although he may have already, as a matter of fact, established a residence in Lutayan, Sultan Kudarat much earlier, for purposes of qualifying for Sultan Kudarat Governor, the change in residency can only be legally reckoned from the time that Pax Ali resigned as Mayor of DAS on November 15, 2021—short of the one-year minimum residency requirement from election day of May 9, 2022. Because of Pax Ali's false material representation in his CoC concerning his eligibility, such CoC was rightfully cancelled by COMELEC. As a consequence, Pax Ali is being removed from the office of the Governor.

Anent the question of who must replace Pax Ali: as extensively discussed, I agree with the *ponencia* that Vice Governor Sakaluran, in accordance with the rules on succession under Section 44, must succeed and be proclaimed Governor of Sultan Kudarat.

With this, I likewise agree that Sharifa Akeel Mangudadatu (Sharifa), the second placer, should not be proclaimed to fill up the seat to be vacated by Pax Ali. Sharifa, having been rejected by the people of Sultan Kudarat to be their Governor, lacks the mandate to assume such office. On the other hand, Vice Governor Sakaluran was elected by the people precisely to succeed in office should the office of the Governor become permanently vacant. It is clear that between Sakaluran and Sharifa, the former has the people's mandate to assume as Governor of Sultan Kudarat.

Considering the foregoing, I concur in the *ponencia*.



ALFREDO BENJAMIN S. CAGUIOA  
Associate Justice