

EN BANC

G.R. No. 260219 & 260231 (DATU PAX ALI S. MANGUDADATU, Petitioner, v. COMMISSION ON ELECTIONS, SHARIFA AKEEL MANGUDADATU, AZEL V. MANGUDADATU, and BAI ALI A. UNTONG, Respondents).

Promulgated:

April 22, 2025

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DISSENTING OPINION

LOPEZ, J., J.:

This Court faces an interesting question, as opened by the draft *ponencia*: “[d]oes 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?”¹

The *ponencia* responds with a resounding affirmative, thereby answering the question:

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.² (Emphasis supplied, citation omitted)

After carefully considering the relevant facts and circumstances of the case, I dissent in: (1) the dismissal of the present Petition for *Certiorari* (Petition) of petitioner Datu Pax Ali S. Mangudadatu (Pax Ali) and (2) the cancellation of Pax Ali’s Certificate of Candidacy (COC).

¹ *Ponencia*, p. 1.

² *Id.* at 20.

To recall, *Pax Ali's domicile of origin is Purok Garden, Tamnag, Lutayan, Sultan Kudarat*—the place where he grew up in the family's ancestral home, together with family members. Then in 2018, he decided to run as mayor of Datu Abdullah Sangki (DAS), and transferred his residence to the said municipality. In July 2020, Pax Ali started a series of *positive acts* that increased his physical presence in his house and the surrounding community in Purok Garden. In fact, Pax Ali's physical presence in Purok Garden was confirmed around August 2020. By September 2, 2020, all his personal belongings had already been returned to his home. Since October 2020, Pax Ali has been returning to Purok Garden daily and has only been away to attend to his work and official duties.³ In November 2021, he resigned as mayor of DAS. He then filed his certificate of candidacy for Provincial Governor of Sultan Kudarat.

Domicile of Origin is Easily Regained

Section 39 of the Local Government Code (LGC) provides the qualifications for an elective local official, which includes a residency requirement:

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 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 language or dialect. (Emphasis supplied)

As explained in *Torayno, Jr. v. Commission on Elections (COMELEC)*,⁴ the residency requirement in the law is aimed to prevent a stranger governing the constituents, thus:

Generally, in requiring candidates to have a minimum period of residence in the area in which they seek to be elected, the Constitution or the law intends to *prevent the possibility of a "stranger or newcomer unacquainted with the conditions and needs of a community and not identified with the latter from [seeking] an elective office to serve that community."* Such provision is *aimed at excluding outsiders* "from taking advantage of favorable circumstances existing in that community for electoral gain."⁵ (Emphasis supplied, citation omitted)

³ Ponencia, pp. 4–5, 14.

⁴ 392 Phil. 342 (2000) [Per J. Panganiban, *En Banc*].

⁵ *Id.* at 352–353.

The Court, in *Papandayan, Jr. v. COMELEC*,⁶ explained what is required for the residency requirement:

Our decisions have applied certain tests and concepts in resolving the issue of whether or not a candidate has complied with the residency requirement for elective positions. The principle of *animus revertendi* has been used to determine whether a candidate has an “intention to return” to the place where he seeks to be elected. Corollary to this is a determination whether there has been an “abandonment” of his former residence which signifies an intention to depart therefrom[.]⁷

Therefore, considering that the residency requirement requires an analysis and review of whether a candidate has an intention to return to a place, coupled with determining that the candidate has an intention to abandon the former residence, the Court held that “it is the *fact of residence* that is the decisive factor in determining whether or not an individual has satisfied the Constitution’s residency qualification requirement.”⁸

As concluded by the Court, in *Japzon v. COMELEC*,⁹ “the issue of whether [the candidate] complied with the one-year residency requirement for running for public office is a question of fact.”¹⁰

In this case, the facts show that Pax Ali changed his residency in compliance with the residency requirement. The *ponencia*’s findings itself support this conclusion:

First, *Pax Ali’s physical presence in Purok Garden, Tamnag, Lutayan Sultan Kudarat is supported by evidence on record.* Pax Ali presented the Affidavit 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 Residency 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. 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.¹¹

⁶ 430 Phil. 754 (2002) [Per J. Mendoza, *En Banc*].

⁷ *Id.* at 768.

⁸ *Id.*

⁹ *Japzon v. COMELEC*, 596 Phil. 354 (2009) [Per J. Chico-Nazario, *En Banc*].

¹⁰ *Id.* at 372.

¹¹ *Ponencia*, p. 14.

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. In Jalosjos v. COMELEC, 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.¹² (Emphasis supplied, citation omitted)

This physical presence was supported by the fact that Pax Ali returned to his domicile of origin daily since October 2020.¹³ Further, the *ponencia* found that indeed, the domicile of origin of Pax Ali is in Sultan Kudarat, the province where he ran for governor:

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[.]¹⁴ (Emphasis supplied)

Further, the facts show that Pax Ali made multiple moves to enact his *positive act of returning to his domicile of origin*. Imperatively, the case of *Romualdez-Marcos v. COMELEC*¹⁵ is instructive as to the domicile of origin:

Second, domicile of origin is not easily lost. To successfully effect a change of domicile, one must demonstrate:

- 1. An actual removal or an actual change of domicile;*
- 2. A bona fide intention of abandoning the former place of residence and establishing a new one; and*
- 3. Acts which correspond with the purpose.*

In the absence of clear and positive proof based on these criteria, the residence of origin should be deemed to continue. Only with evidence showing concurrence of all three requirements can the presumption of continuity or residence be rebutted, for a change of residence requires an actual and deliberate abandonment, and one cannot have two legal residences at the same time[.]¹⁶ (Emphasis supplied, citation omitted)

Domicile of origin is not easily lost. The underlying principle behind this rule is that domicile of origin is acquired at birth and is considered to have a strong adhesive character. The place where a person is born and raised typically shapes their core identity—their cultural values, social circles, family ties, and overall worldview are all influenced by this domicile of origin. More, there is often a psychological bond to one's place of origin that persists even after long absences. Thus, in the same way that a *domicile of origin is*

¹² *Id.* at 14–15.

¹³ *Id.* at 5.

¹⁴ *Id.* at 13.

¹⁵ 318 Phil. 329 (1995) [Per J. Kapunan, *En Banc*].

¹⁶ *Id.* at 466.

not easily lost, it can easily be regained even if a domicile of choice was preferred by a person, especially if coupled with evidence of a positive act of a return to the domicile of origin, as in this case.

Notably, the danger that the residency requirement seeks to prevent is not present when it is a person who merely regains their domicile of origin. To recall, the purpose of the residency requirement is “best met by individuals who have either had actual residence in the area for a given period or who have been domiciled in the same area either by origin or by choice.”¹⁷ In cases where persons regain their domicile of origin, the very purpose and spirit of the residency requirement has already been met. There is no danger of a stranger governing the locality if the candidate was “of that locality.”

According to the *ponencia*, there was no longer any *animus revertendi* on the part of Pax Ali as he held and exercised the office of the Mayor of DAS. However, Pax Ali’s discharge of the office must not be considered as a hindrance in determining the positive acts he performed to show his intention and actualize his purpose of regaining his domicile of origin.

Notably, there are provisions under the law, such as the Revised Penal Code, which punishes the failure to discharge the duties of an elected official, including abandonment of office, thus:

Article 233. *Refusal of assistance.* — The penalties of *arresto mayor* in its medium period to *prision correccional* in its minimum period, perpetual special disqualification and a fine not exceeding 1,000 pesos, shall be imposed upon a public officer who, upon demand from competent authority, shall fail to lend his cooperation towards the administration of justice or other public service, if such failure shall result in serious damage to the public interest, or to a third party; otherwise, *arresto mayor* in its medium and maximum periods and a fine not exceeding 500 pesos shall be imposed.

Article 234. *Refusal to discharge elective office.* — The penalty of *arresto mayor* or a fine not exceeding 1,000 pesos, or both, shall be imposed upon any person who, having been elected by popular election to a public office, shall refuse without legal motive to be sworn in or to discharge the duties of said office.

Article 238. *Abandonment of office or position.* — Any public officer who, before the acceptance of his resignation, shall abandon his office to the detriment of the public service shall suffer the penalty of *arresto mayor*.

If such office shall have been abandoned in order to evade the discharge of the duties of preventing, prosecuting or punishing any of the crime falling within Title One, and Chapter One of Title Three of Book Two of this Code, the offender shall be punished by *prision*

¹⁷ *Torayno, Sr. v. COMELEC*, 392 Phil. 342, 353 (2000) [Per J. Panganiban, *En Banc*].

correccional in its minimum and medium periods, and by *arresto mayor* if the purpose of such abandonment is to evade the duty of preventing, prosecuting or punishing any other crime.

Correlatively, Rule 10 in the 2017 Rules on Administrative Cases in the Civil Service (RACCS) provides:

Section 50. *Classification of Offenses*. Administrative offenses with corresponding penalties are classified into grave, less grave and light, depending on their gravity or depravity and effects on the government service.

....

B. The following grave offenses shall be punishable by suspension of six (5) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

....

10. Conduct Prejudicial to the Best Interest of the Service[.]

The Court, in *Civil Service Commission v. Alonzo*,¹⁸ is enlightening as to what constitutes conduct prejudicial to the best interest of the service:

Conduct prejudicial to the best interest of the service, on the other hand, is said to consist of any act that would tarnish the image and integrity of their public office. These include misappropriation of public funds, *abandonment of office*, failure to report back to work without prior notice, failure to safekeep public records and property, making false entries in public documents, and falsification of court orders.¹⁹ (Emphasis supplied, citation omitted)

Given that there are potential criminal and administrative consequences to abandonment of office, the continued discharge of the duties of Mayor of DAS by Pax Ali cannot be considered an act that should hinder his intention to return to his domicile of origin. Notably, a positive act, is “[t]he process of doing or performing; an occurrence that results from a person’s will being exerted on the external world; ACTION[.]”²⁰ Thus, it must refer to an overt and voluntary action that demonstrates one’s intention or will.

Pax Ali’s incumbency therefore is only one of continuing *status quo*—continuing the existing state of affairs. It is being done especially considering

¹⁸ G.R. No. 255286, November 13, 2023 [Per J. Kho, Jr., Second Division].

¹⁹ *Id.* at 18. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

²⁰ BLACK’S LAW DICTIONARY 27, 1280 (9th ed., 2009).

9

the potential consequences of not continuing the faithful discharge of his duties. On the contrary, his actual and physical actions to revert his residency to his domicile of origin constitute a conscious and deliberate positive act that deserves respect. Pax Ali has been physically present in his domicile of origin at least since August 2020.²¹ Further, all of his personal belongings had already been returned to his home. Since October 2020, Pax Ali has been returning to Purok Garden daily and has only been away for work and official duties.²² Thus, at the point Pax Ali actually returned to his domicile of origin in Sultan Kudarat and regained it, his continuous discharge of the office of Mayor of DAS cannot negate his *animus non revertendi* in DAS. His non-resignation and non-abandonment of his position as Mayor of DAS, considering the potential consequences, is of less consequence as compared to his actions and intention to regain his domicile of origin. To stress, *the domicile of origin, once lost, is easily regained*.

Further, Pax Ali is no stranger to Sultan Kudarat. The danger sought to be prevented by the residency requirement is not present when the candidate, Pax Ali, has his domicile of origin in the very same locality of Sultan Kudarat.

Therefore, in instances where a person returns to his or her domicile of origin—supported by substantial evidence of regaining the domicile of origin—the continuous exercise of the rights and duties of his or her office in the locality, not the domicile of origin where he or she is elected by an official, does not negate the official's claim of *animus non revertendi* relative to that locality. With a strong feeling of attachment to one's place of birth, it must be recognized that the domicile of origin is easily regained.

In this case, Pax Ali clearly made positive acts of returning to his domicile of origin. As even concluded by the *ponencia*, "Pax Ali's physical presence in Purok Garden, Tamnag, Lutayan Sultan Kudarat is supported by evidence on record."²³ Specifically, Pax Ali presented an affidavit from Calicol M. Hadjiesmael, the punong barangay of Tamnag, Lutayan, Sultan Kudarat, which confirmed his physical presence in Purok Garden since August 2020. It further stated that the punong barangay regularly discussed the issues and concerns of the residents with Pax Ali, seeking his assistance in addressing their needs. Additionally, Pax Ali submitted a certificate of residency issued by the barangay secretary of Tamnag, which was approved by the punong barangay. The certificate indicated that Pax Ali had been residing in the barangay since August 2020. Further, several neighbors of Pax Ali, or those living near or adjacent to his house in Purok Garden, also

²¹ *Ponencia*, p. 14.

²² *Id.* at 4–5, 14.

²³ *Id.* at 14.

executed sworn statements attesting to his physical presence in the area from August 2020 onwards.²⁴

Thus, Pax Ali met the residency requirement, having shown proof of returning to his domicile of origin. Consequently, the Petition should be granted.

On the First Qualified Placer Rule

Since the Petition should be granted, there is no need to revisit established doctrine of the “second placer” rule, or more accurately, the *First Qualified Placer Rule*. However, it is submitted that retaining established doctrine, contrary to the position of the *ponencia*, is more in line with democratic principles.

Democracy requires that the elected officials should reflect the expressed will of the voters. Even when complications arise, the guiding principle must be to preserve voter choice to the fullest extent possible. Election law encompasses a multitude of doctrines and remedies aimed at achieving a delicate balance between various competing interests, one of which is ultimately reflecting the will of the electorate. However, another concern of election law is ensuring that the options to choose from are legitimate choices—that is, the choices are qualified and eligible to become part of the marketplace for voters to choose from.

There are two pertinent election provisions on disqualifications that disqualify a person from running at the outset: Section 40 of the LGC and Section 12 of the Omnibus Election Code (OEC). Section 40 of the LGC reads:

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;
- (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;

²⁴ *Id.* at 14–15.

9

- (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. (Emphasis supplied)

Similarly, Section 12 of the OEC provides:

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 was 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 has been given plenary pardon or granted amnesty[.] (Emphasis supplied)

A *prima facie* reading of these provisions would reveal their character as establishing antecedent barriers to candidacy. This presupposes that at the very beginning, candidates who are disqualified under Section 40 of the LGC or Section 12 of the OEC should not have been allowed to run. They were never supposed to be candidates. The statutory language—“disqualified from running” and “disqualified to be a candidate”—operates as a legal preclusion that attaches prior to the electoral process itself. This textual construction establishes what must be properly understood as “pre-electoral qualification requirements” or “threshold eligibility criteria” that necessarily precede a legitimate candidacy and a valid COC. Thus, all individuals falling under the enumerated grounds should be prevented from candidacy at the outset—before they file COCs, before they campaign, and certainly before they appear on the ballot. The law intends that these individuals be screened out during the qualification process—to never have been candidates people should be able to vote for in the specific election.

This construction stands in contrast to disqualifications arising during or subsequent to an election. The temporal dimension is significant—Section 40 of the LGC and Section 12 of the OEC are pre-emptive disqualifications that operate in law to prevent candidacy *in toto* rather than functioning as a mechanism for removal of individuals who have already attained candidate status. Notable is the difference in language in Section 68 of the OEC:

Section 68. *Disqualifications.* — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having [...] *shall be disqualified from continuing as a candidate, or if he 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 status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Emphasis supplied)

What is clear is that disqualifications in Section 68 of the OEC have a different effect from disqualifications in Section 40 of the LGC and Section 12 of the OEC—Section 68 prevents a candidate from *continuing as a candidate* or if having been elected, *from holding office*. This is because a candidate in this situation was never disqualified from running at the outset; they are *valid candidates* that did not possess disqualifications at the time of filing of the COC. Thus, it is only proper that in these cases, if the disqualification of these candidates happens after the election, the proper legal consequence is succession rules.²⁵ This is because a permanent vacancy will result if the candidate is disqualified from “holding the office.” Here, they were not similarly disqualified “from running” or even “disqualified to be a candidate” at the start.

The practical consequence of this interpretation imposes upon the COMELEC an affirmative duty to enforce these provisions at the pre-electoral qualification stage. When this duty remains unexecuted—thereby allowing statutorily disqualified individuals to participate in the electoral process—it creates a legal abnormality wherein an individual who lacks the fundamental eligibilities and qualifications to be a candidate nevertheless participates in the electoral process. Thus, corollary to this is Section 78 of the OEC, which is one of the remedies to prevent ineligible candidates from running as a candidate for the election even before the elections occur on the ground of material misrepresentation contained in the COC:

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.* (Emphasis supplied)

Notable is the directive to decide petitions to deny due course or cancel a COC before the election. However, not all petitions to deny due course reach finality before the elections. This mere delay should not make Section 78 a paper tiger. As succinctly explained in *Velasco v. COMELEC*:²⁶

²⁵ See LOCAL GOV'T CODE, secs. 44–46.

²⁶ 595 Phil. 1172 (2008) [Per J. Brion, *En Banc*].

Section 78 may likewise be emasculated, as mere delay in the resolution of the petition to cancel or deny due course to a COC can render a Section 78 petition useless if a candidate with false COC data wins. *To state the obvious, candidates may risk falsifying their COC qualifications if they know that an election victory will cure any defect that their COCs may have. Election victory then becomes a magic formula to bypass election eligibility requirements.*

In the process, the rule of law suffers; the clear and unequivocal legal command, framed by a Congress representing the national will, is rendered inutile because the people of a given locality has decided to vote a candidate into office despite his or her lack of the qualifications Congress has determined to be necessary.²⁷ (Emphasis supplied)

Thus, when an individual who is statutorily barred from candidacy nevertheless participates and prevails in an election, what legal consequence should attach? The statutory language of Section 40 of the LGC and Section 12 of the OEC suggests that such candidacies were legally void *ab initio*, regardless of when formal recognition or declaration of disqualification occurs. The void *ab initio* doctrine applies to the COC itself, rendering it legally ineffective from the moment of filing. The candidate's ineligibility constitutes a legal fact that exists independently of its formal recognition, attaching on the day the COC was filed. The COMELEC's failure to promptly declare the disqualification that existed at the time of filing the COC should not alter the fundamental nature of the disqualification, which inherently affects the candidate's eligibility from the outset.

Imperatively, Section 74 of the OEC provides for the necessary contents of a COC:

Section 74. *Contents of certificate of candidacy.* — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein *and that he 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 seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his 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 knowledge. (Emphasis supplied)

²⁷ *Id.* at 1195.

9

Interconnected to this is Section 73 of the OEC which requires each person to file the COC under oath:

Section 73. *Certificate of candidacy.* — No person shall be eligible for any elective public office *unless he files a sworn certificate of candidacy* within the period fixed herein. (Emphasis supplied)

Thus, it is mandatory for individuals submitting their COC to truthfully disclose their eligibility in the COC, particularly since the COC is filled out under oath. Notably, “an elective office is a public trust. He who aspires for elective office should not make a mockery of the electoral process by falsely representing himself.”²⁸ Hence, “the importance of a valid [COC] rests at the very core of the electoral process. It cannot be taken lightly, lest there be anarchy and chaos. Verily, this explains why the law provides for grounds for the cancellation and denial of due course to [COCs].”²⁹

Verily, a COC is an important part of the electoral process. It is necessary for one to file a COC before being allowed to run as a candidate in any election:

A [COC] is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned *and that he is eligible for the office*, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.³⁰ (Emphasis supplied)

Thus, a COC is the legal document that clearly states a person's or aspirant's intention to run for a particular elective public office. It confirms that they meet all the qualifications and have none of the disqualifications. A valid COC, in essence, is the demonstrable adherence to the qualification standards set forth in the Constitution and the law.

Further, the primary purposes of the law in requiring the filing of COCs are to provide voters with information about the candidates they are expected to select, and to minimize confusion and inconvenience during the vote tabulation process. If the law did not impose restrictions on voting choices and elections to only the duly registered candidates, it would be possible for an individual to vote for as many candidates as there were registered voters.³¹

²⁸ *Maruhom v. COMELEC*, 611 Phil. 501, 516 (2009) [Per J. Chico-Nazario, *En Banc*].

²⁹ *Miranda v. Abaya*, 370 Phil. 642, 658 (1999) [Per J. Melo, *En Banc*].

³⁰ *Sinaca v. Mula*, 373 Phil. 896, 908 (1999) [Per C.J. Davide, Jr., *En Banc*].

³¹ *Monsale v. Nico*, 83 Phil. 758, 761 (1949) [Per J. Ozaeta, *En Banc*].

Consequently, the proper legal characterization of individuals whose COC should be deemed void *ab initio* is that they were never valid candidates at all—their participation in the electoral process representing a legal nullity rather than a voidable condition requiring subsequent nullification. Peremptorily, when something is void *ab initio* it is considered “null from the beginning, as from the first moment.”³² Thus, it is “[o]f no legal effect.”³³ Similarly, when the COC is a void *ab initio*, the candidacy of a person is deemed to be null from the beginning. No amount of votes can give effect to an inexistent candidacy. Therefore, when the ground of ineligibility or disqualification existed at the time of the filing of the COC, the effect is a void *ab initio* COC.³⁴

Suitably, the Court, in *Maquiling v. COMELEC*,³⁵ explained the interplay of qualifications and eligibility with triumph in election contests, thus:

As in any contest, elections are governed by rules that determine the qualifications and disqualifications of those who are allowed to participate as players. When there are participants who turn out to be ineligible, their victory is voided and the laurel is awarded to the next in rank who does not possess any of the disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates.³⁶

Importantly, the Court, in *Jalosjos, Jr. v. COMELEC*,³⁷ has already clarified the metrics to be considered when the “first placer” is disqualified or declared ineligible, thus:

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

³² BLACK’S LAW DICTIONARY 1709 (9th ed., 2009).

³³ *Id.*

³⁴ See *Jalosjos, Jr. v. COMELEC*, 696 Phil. 601, 632 (2012) [Per J. Carpio, *En Banc*].

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

³⁶ *Id.* at 447–448.

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

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.³⁸ (Emphasis supplied, citation omitted)

Thus, a void *ab initio* COC should not produce any legal effect and, consequently, any votes for an ineligible candidate should be considered as stray votes. The ruling in *Jalosjos, Jr.* was relied upon in *Maquiling*, as follows:

We have ruled in the recent cases of *Aratea v. COMELEC* and *Jalosjos v. COMELEC* that a void COC cannot produce any legal effect. Thus, the votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election.

....

The second-placer in the vote count is actually the first-placer among the qualified candidates.

That the disqualified candidate has already been proclaimed and has assumed office is of no moment. The subsequent disqualification based on a substantive ground that existed prior to the filing of the certificate of candidacy voids not only the COC but also the proclamation.³⁹ (Emphasis supplied, citations omitted))

Jalosjos, Jr. was a case involving a petition to deny due course to or cancel COC. Meanwhile, *Maquiling*, involved a petition for disqualification. *Chua v. COMELEC*,⁴⁰ which also involved a petition for disqualification, further cemented the rule that a void *ab initio* COC produces no legal effect, and clarified, 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 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.”

The rule on succession under Section 45, however, would not apply if the permanent vacancy was caused by one whose certificate of candidacy was void *ab initio*. Specifically with respect to dual citizens, their certificates of candidacy are void *ab initio* because they possess “a

³⁸ *Id.* at 633–634.

³⁹ *Maquiling v. Commission on Elections*, 709 Phil. 408, 447–448 (2013) [Per C.J. Sereno, *En Banc*].

⁴⁰ 783 Phil. 876 (2016) [Per J. Leonen, *En Banc*].

substantive [disqualifying circumstance] . . . [existing] prior to the filing of their certificate of candidacy.” Legally, they should not even be considered candidates. The votes casted for them should be considered stray and should not be counted.⁴¹ (Emphasis supplied, citations omitted)

This rule on void *ab initio* COCs was further applied in a *quo warranto* case in *Ty-Delgado v. House of Representatives Electoral Tribunal*:⁴²

In both *Jalosjos, Jr. v. Commission on Elections* and *Aratea v. Commission on Elections*, we proclaimed the second placer, the only qualified candidate who actually garnered the highest number of votes, for the position of Mayor. We found that since the certificate of candidacy of the candidate with the highest number of votes was void *ab initio*, he was never a candidate at all, and all his votes were considered stray votes.

Accordingly, we find that the HRET committed grave abuse of discretion amounting to lack of or excess of jurisdiction when it failed to disqualify Pichay for his conviction for libel, a crime involving moral turpitude. *Since Pichay's ineligibility existed on the day he filed his certificate of candidacy and he was never a valid candidate for the position of Member of the House of Representatives, the votes cast for him were considered stray votes. Thus, the qualified candidate for the position of Member of the House of Representatives for the First Legislative District of Surigao del Sur in the 13 May 2013 elections who received the highest number of valid votes shall be declared the winner[.]* (Emphasis supplied, citations omitted)

It is evident that regardless of the remedy—*whether it be a petition for disqualification, a petition to deny due course or cancel a COC, or a petition for quo warranto—if the ground is on qualifications, disqualifications, or issues on eligibility that existed prior to the filing of the COC—that is, grounds of disqualification under Section 40 of the LGC, Section 12 of the OEC, and Section 78 in relation to Section 74 of the OEC on the ground of material misrepresentation in the COC—the COC is considered void ab initio. Thus, any votes garnered by the “first placer,” who is ineligible, should be stray votes. Consequently, the First Qualified Placer—the qualified candidate who received the highest number of valid votes among the qualified candidates—should be declared the winner.*

Notably, in *Maquiling*, the Court clarified how the *First Qualified Placer Rule* honors the intentions of the voters:

Even when the votes for the ineligible candidate are disregarded, the will of the electorate is still respected, and even more so. The votes cast in favor of an ineligible candidate do not constitute the sole and total

⁴¹ *Id.* at 899–890.

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

expression of the sovereign voice. The votes cast in favor of eligible and legitimate candidates form part of that voice and must also be respected.⁴³

It is further submitted that the *First Qualified Placer Rule* is the closest approximation to the will of the electorate. The *First Qualified Placer Rule* adheres to the original ballot. When all candidates are qualified and eligible, the winner of the contest is the person who garners the most votes—the candidate who gets a plurality of the electorate. The winner is the “first placer” candidate, who is considered the *First Qualified Placer*, because the “first placer,” being qualified and eligible, received the most votes among all qualified and eligible candidates. However, if the “first placer” candidate is disqualified based on a ground that existed prior to the filing of a COC—that is, the candidate was not eligible to be an elective official or even to run as a candidate at the outset—recounting the valid votes for the qualified candidates yields a new outcome where the supposed “*second placer*” *actually receives the highest number of votes among the qualified candidates for a specific position*. It is in this sense that the supposed “second placer” is, in fact, *the first among the qualified candidates*. Therefore, the winner remains the *First Qualified Placer*.

Two key criteria for democracies are effective participation and voting equality.⁴⁴ Political equality, coupled with the participation of the people in voting, means every citizen must have an equal chance to express their choice, which will be counted when making collective decisions. The essence of democratic elections is to convert the collective will of the people into government. In a specific election, like the current one for Governor, voters cast their ballots for a particular position—one that is separate and distinct from other positions.

Hence, if the *First Qualified Placer* is disregarded and succession rules found in the LGC are applied, the election contest for the specific electoral position is, in effect, disregarded and tossed to the side. Elevating the next person in the line of succession—a person who ran for a different office—would disregard the specific choices voters made for a specific office, for the Governorship in the present case. Applying the *First Qualified Placer Rule* more directly reflects the voters’ intent for that office as it considers the election contest as valid and existing. It considers the voice of the electorate in choosing among the qualified and eligible candidates, upholding its legitimacy. It gives effect to the votes cast on election day. On the other hand, the application of succession rules would tend to delegitimize the votes cast for the specific position as it would no longer even consider counting the valid votes cast for the Governorship contest. More, the successor was never even


⁴³ *Maquiling v. Commission on Elections*, 709 Phil. 408, 447 (2013) [Per C.J. Sereno, *En Banc*].

⁴⁴ ROBERT A. DAHL, ON DEMOCRACY 37 (1998); ROBERT A. DAHL, DEMOCRACY AND ITS CRITICS 109 (1989).

9

a *direct* choice for that position. The elevation of the successor over the *First Qualified Placer* overrides voter intent rather than preserving it.

In fine, the *First Qualified Placer Rule* enforces the laws regarding qualifications, disqualifications, and eligibility while closely approximating the electorate's intent as much as possible.


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