

IMELDA ROMUALDEZ-MARCOS, PETITIONER, VS. COMMISSION ON ELECTIONS AND CIRILO ROY MONTEJO, RESPONDENTS.*G.R. No. 119976. September 18, 1995*

Ponente: KAPUNAN, J.

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A constitutional provision should be construed as to give it effective operation and suppress the mischief at which it is aimed.[1] The 1987 Constitution mandates that an aspirant for election to the House of Representatives be "a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the election." [2] The mischief which this provision — reproduced verbatim from the 1973 Constitution — seeks to prevent is the possibility of a "stranger or newcomer unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community." [3]

Petitioner Imelda Romualdez-Marcos filed her Certificate of Candidacy for the position of Representative of the First District of Leyte with the Provincial Election Supervisor on March 8, 1995, providing the following information in item no. 8: [4]

RESIDENCE IN THE CONSTITUENCY WHERE I SEEK TO BE ELECTED IMMEDIATELY PRECEDING THE ELECTION: _____ Years and seven Months

On March 23, 1995, private respondent Cirilo Roy Montejo, the incumbent Representative of the First District of Leyte and a candidate for the same position, filed a "Petition for Cancellation and Disqualification" [5] with the Commission on Elections alleging that petitioner did not meet the constitutional requirement for residency. In his petition, private respondent contended that Mrs. Marcos lacked the Constitution's one year residency requirement for candidates to the House of Representatives on the evidence of declarations made by her in Voter Registration Record 94-No. 3349772 [6] and in her Certificate of Candidacy. He prayed that "an order be issued declaring (petitioner) disqualified and canceling the certificate of candidacy." [7]

On March 29, 1995, petitioner filed an Amended/Corrected Certificate of Candidacy, changing the entry "seven" months to "since childhood" in item no. 8 of the amended certificate. [8] On the same day, the Provincial Election Supervisor of Leyte informed petitioner that:

[T]his office cannot receive or accept the aforementioned Certificate of Candidacy on the ground that it is filed out of time, the deadline for the filing of the same having already lapsed on March 20, 1995. The Corrected/Amended Certificate of Candidacy should have been filed on or before the March 20, 1995 deadline. [9]

Consequently, petitioner filed the Amended/Corrected Certificate of Candidacy with the COMELEC's Head Office in Intramuros, Manila on March 31, 1995. Her Answer to private respondent's petition in SPA No. 95-009 was likewise filed with the head office on the same day. In said Answer, petitioner averred that the entry of the word "seven" in her original Certificate of Candidacy was the result of an "honest misinterpretation" [10] which

she sought to rectify by adding the words "since childhood" in her Amended/Corrected Certificate of Candidacy and that "she has always maintained Tacloban City as her domicile or residence." [11] Impugning respondent's motive in filing the petition seeking her disqualification, she noted that:

When respondent (petitioner herein) announced that she was intending to register as a voter in Tacloban City and run for Congress in the First District of Leyte, petitioner immediately opposed her intended registration by writing a letter stating that "she is not a resident of said city but of Barangay Olot, Tolosa, Leyte. After respondent had registered as a voter in Tolosa following completion of her six month actual residence therein, petitioner filed a petition with the COMELEC to transfer the town of Tolosa from the First District to the Second District and pursued such a move up to the Supreme Court, his purpose being to remove respondent as petitioner's opponent in the congressional election in the First District. He also filed a bill, along with other Leyte Congressmen, seeking the creation of another legislative district to remove the town of Tolosa out of the First District, to achieve his purpose. However, such bill did not pass the Senate. Having failed on such moves, petitioner now filed the instant petition for the same objective, as it is obvious that he is afraid to submit along with respondent for the judgment and verdict of the electorate of the First District of Leyte in an honest, orderly, peaceful, free and clean elections on May 8, 1995. [12]

On April 24, 1995, the Second Division of the Commission on Elections (COMELEC), by a vote of 2 to 1, [13] came up with a Resolution 1) finding private respondent's Petition for Disqualification in SPA 95-009 meritorious; 2) striking off petitioner's Corrected/Amended Certificate of Candidacy of March 31, 1995; and 3) canceling her original Certificate of Candidacy. [14] Dealing with two primary issues, namely, the validity of amending the original Certificate of Candidacy after the lapse of the deadline for filing certificates of candidacy, and petitioner's compliance with the one year residency requirement, the Second Division held:

"Respondent raised the affirmative defense in her Answer that the printed word "Seven" (months) was a result of an "honest misinterpretation or honest mistake" on her part and, therefore, an amendment should subsequently be allowed. She averred that she thought that what was asked was her "actual and physical" presence in Tolosa and not residence of origin or domicile in the First Legislative District, to which she could have responded "since childhood." In an accompanying affidavit, she stated that her domicile is Tacloban City, a component of the First District, to which she always intended to return whenever absent and which she has never abandoned. Furthermore, in her memorandum, she tried to discredit petitioner's theory of disqualification by alleging that she has been a resident of the First Legislative District of Leyte since childhood, although she only became a resident of the Municipality of Tolosa for seven months. She asserts that she has always been a resident of Tacloban City, a component of the First District, before coming to the Municipality of Tolosa.

Along this point, it is interesting to note that prior to her registration in Tolosa, respondent announced that she would be registering in Tacloban City so that she can be a candidate for the District. However, this intention was rebuffed when petitioner wrote the Election Officer of Tacloban not to allow respondent since she is a resident of Tolosa and not Tacloban. She never disputed this claim and instead implicitly acceded to it by registering in Tolosa.

This incident belies respondent's claim of 'honest misinterpretation or honest mistake.' Besides, the Certificate of Candidacy only asks for RESIDENCE. Since on the basis of her Answer, she was quite aware of 'residence of origin' which she interprets to be Tacloban City, it is curious why she did not cite Tacloban City in her Certificate of Candidacy. Her explanation that she thought what was asked was her actual and physical presence in Tolosa is not easy to believe because there is none in the question that insinuates about Tolosa. In fact, item no. 8 in the Certificate of Candidacy speaks clearly of 'Residency in the CONSTITUENCY where I seek to be elected immediately preceding the election.' thus, the explanation of respondent fails to be persuasive.

From the foregoing, respondent's defense of an honest mistake or misinterpretation, therefore, is devoid of merit.

To further buttress respondent's contention that an amendment may be made, she cited the case of *Alialy v. COMELEC* (2 SCRA 957). The reliance of respondent on the case of *Alialy* is misplaced. The case only applies to the 'inconsequential deviations which cannot affect the result of the election, or deviations from provisions intended primarily to secure timely and orderly conduct of elections.' The Supreme Court in that case considered the amendment only as a matter of form. But in the instant case, the amendment cannot be considered as a matter of form or an inconsequential deviation. The change in the number of years of residence in the place where respondent seeks to be elected is a substantial matter which determines her qualification as a candidacy, specially those intended to suppress, accurate material representation in the original certificate which adversely affects the filer. To admit the amended certificate is to condone the evils brought by the shifting minds of manipulating candidate, to the detriment of the integrity of the election.

Moreover, to allow respondent to change the seven (7) month period of her residency in order to prolong it by claiming it was 'since childhood' is to allow an untruthfulness to be committed before this Commission. The arithmetical accuracy of the 7 months residency the respondent indicated in her certificate of candidacy can be gleaned from her entry in her Voter's Registration Record accomplished on January 28, 1995 which reflects that she is a resident of Brgy Olot, Tolosa, Leyte for 6 months at the time of the said registration (Annex A, Petition). Said accuracy is further buttressed by her letter to the election officer of San Juan, Metro Manila, dated August 24, 1994, requesting for the cancellation of her registration in the Permanent List of Voters thereat so that she can be re-registered or transferred to Brgy. Olot, Tolosa, Leyte. The dates of these three (3) different documents show the respondent's consistent conviction that she has transferred her residence to Olot, Tolosa, Leyte from Metro Manila only for such limited period of time, starting in the last week of August 1994 which on March 8, 1995 will only sum up to 7 months. The Commission, therefore, cannot be persuaded to believe in the respondent's contention that it was an error.

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Based on these reasons the Amended/Corrected Certificate of Candidacy cannot be admitted by this Commission.

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Anent the second issue, and based on the foregoing discussion, it is clear that respondent has not complied with the one year residency requirement of the Constitution.

In election cases, the term 'residence' has always been considered as synonymous with 'domicile' which imports not only the intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. Domicile denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return. (*Perfecto Fayon v. Eliseo Quirino*, 96 Phil 294; *Romualdez v. RTC-Tacloban*, 226 SCRA 408). In respondent's case, when she returned to the Philippines in 1991, the residence she chose was not Tacloban but San Juan, Metro Manila. Thus, her *animus revertendi* is pointed to Metro Manila and not Tacloban.

This Division is aware that her claim that she has been a resident of the First District since childhood is nothing more than to give her a color of qualification where she is otherwise constitutionally disqualified. It cannot hold ground in the face of the facts admitted by the respondent in her affidavit. Except for the time that she studied and worked for some years after graduation in Tacloban City, she continuously lived in Manila. In 1959, after her husband was elected Senator, she lived and resided in San Juan, Metro Manila where she was a registered voter. In 1965, she lived in San Miguel, Manila where she was again a registered voter. In 1978, she served as member of the Batasang Pambansa as the representative of the City of Manila and later on served as the Governor of Metro Manila. She could not have served these positions if she had not been a resident of the

City of Manila. Furthermore, when she filed her certificate of candidacy for the office of the President in 1992, she claimed to be a resident of San Juan, Metro Manila. As a matter of fact on August 24, 1994, respondent wrote a letter with the election officer of San Juan, Metro Manila requesting for the cancellation of her registration in the permanent list of voters that she may be re-registered or transferred to Barangay Olot, Tolosa, Leyte. These facts manifest that she could not have been a resident of Tacloban City since childhood up to the time she filed her certificate of candidacy because she became a resident of many places, including Metro Manila. This debunks her claim that prior to her residence in Tolosa, Leyte, she was a resident of the First Legislative District of Leyte since childhood.

In this case, respondent's conduct reveals her lack of intention to make Tacloban her domicile, she registered as a voter in different places and on several occasions declared that she was a resident of Manila. Although she spent her school days in Tacloban, she is considered to have abandoned such place when she chose to stay and reside in other different places. In the case of *Romualdez v. RTC* (226 SCRA 408) the Court explained how one acquires a new domicile by choice. There must concur: (1) residence or bodily presence in the new locality; (2) intention to remain there; and (3) intention to abandon the old domicile. In other words there must basically be *animus manendi* with *animus non revertendi*. When respondent chose to stay in Ilocos and later on in Manila, coupled with her intention to stay there by registering as a voter there and expressly declaring that she is a resident of that place, she is deemed to have abandoned Tacloban City, where she spent her childhood and school days, as her place of domicile.

Pure intention to reside in that place is not sufficient, there must likewise be conduct indicative of such intention. Respondent's statements to the effect that she has always intended to return to Tacloban, without the accompanying conduct to prove that intention, is not conclusive of her choice of residence. Respondent has not presented any evidence to show that her conduct, one year prior the election, showed intention to reside in Tacloban. Worse, what was evident was that prior to her residence in Tolosa, she had been a resident of Manila.

It is evident from these circumstances that she was not a resident of the First District of Leyte "since childhood."

To further support the assertion that she could have not been a resident of the First District of Leyte for more than one year, petitioner correctly pointed out that on January 28, 1995; respondent registered as a voter at precinct No. 18-A of Olot, Tolosa, Leyte. In doing so, she placed in her Voter Registration Record that she resided in the municipality of Tolosa for a period of six months. This may be inconsequential as argued by the respondent since it refers only to her residence in Tolosa, Leyte. But her failure to prove that she was a resident of the First District of Leyte prior to her residence in Tolosa leaves nothing but a convincing proof that she had been a resident of the district for six months only."^[15]

In a Resolution promulgated a day before the May 8, 1995 elections, the COMELEC en banc denied petitioner's Motion for Reconsideration^[16] of the April 24, 1995 Resolution declaring her not qualified to run for the position of Member of the House of Representatives for the First Legislative District of Leyte.^[17] The Resolution tersely stated:

After deliberating on the Motion for Reconsideration, the Commission RESOLVED to DENY it, no new substantial matters having been raised therein to warrant re-examination of the resolution granting the petition for disqualification.^[18]

On May 11, 1995, the COMELEC issued a Resolution allowing petitioner's proclamation should the results of the canvass show that she obtained the highest number of votes in the congressional elections in the First District of Leyte. On the same day, however, the COMELEC reversed itself and issued a second Resolution directing that the proclamation of petitioner be suspended in the event that she obtains the highest number of votes.^[19]

In a Supplemental Petition dated 25 May, 1995, petitioner averred that she was the overwhelming winner of the elections for the congressional seat in the First District of Leyte held May 8, 1995 based on the canvass completed by the Provincial Board of Canvassers on May 14, 1995. Petitioner alleged that the canvass showed that she obtained a total of 70,471 votes compared to the 36,833 votes received by Respondent Montejo. A copy of said Certificate of Canvass was annexed to the Supplemental Petition.

On account of the Resolutions disqualifying petitioner from running for the congressional seat of the First District of Leyte and the public respondent's Resolution suspending her proclamation, petitioner comes to this court for relief.

Petitioner raises several issues in her Original and Supplemental Petitions. The principal issues may be classified into two general areas:

I. The Issue of Petitioner's qualifications

Whether or not petitioner was a resident, for election purposes, of the First District of Leyte for a period of one year at the time of the May 9, 1995 elections.

II. The Jurisdictional Issue

a) Prior to the elections

Whether or not the COMELEC properly exercised its jurisdiction in disqualifying petitioner outside the period mandated by the Omnibus Election Code for disqualification cases under Article 78 of the said Code.

b) After the Elections

Whether or not the House of Representatives Electoral Tribunal assumed exclusive jurisdiction over the question of petitioner's qualifications after the May 8, 1995 elections.

I. Petitioner's qualification

A perusal of the Resolution of the COMELEC's Second Division reveals a startling confusion in the application of settled concepts of "Domicile" and "Residence" in election law. While the COMELEC seems to be in agreement with the general proposition that for the purposes of election law, residence is synonymous with domicile, the Resolution reveals a tendency to substitute or mistake the concept of domicile for actual residence, a conception not intended for the purpose of determining a candidate's qualifications for election to the House of Representatives as required by the 1987 Constitution. As it were, residence, for the purpose of meeting the qualification for an elective position, has a settled meaning in our jurisdiction.

Article 50 of the Civil Code decrees that "[f]or the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is their place of habitual residence." In *Ong vs Republic*[20] this court took the concept of domicile to mean an individual's "permanent home", "a place to which, whenever absent for business or for pleasure, one intends to return, and depends on facts and circumstances in the sense that they disclose intent." [21] Based on the foregoing, domicile includes the twin elements of "the fact of residing or physical presence in a fixed place" and *animus manendi*, or the intention of returning there permanently.

Residence, in its ordinary conception, implies the factual relationship of an individual to a certain place. It is the physical presence of a person in a given area, community or country. The essential distinction between residence and domicile in law is that residence involves the intent to leave when the purpose for which the resident has taken up his abode ends. One may seek a place for purposes such as pleasure, business, or health. If a person's intent be to remain, it becomes his domicile; if his intent is to leave as soon as his purpose is established it is residence.[22] It is thus, quite perfectly normal for an individual to have different residences in various places.

However, a person can only have a single domicile, unless, for various reasons, he successfully abandons his domicile in favor of another domicile of choice. In *Uytengsu vs Republic*[23], we laid this distinction quite clearly:

"There is a difference between domicile and residence. Residence is used to indicate a place of abode, whether permanent or temporary; 'domicile' denotes a fixed permanent residence to which, when absent, one has the intention of returning. A man may have a residence in one place and a domicile in another. Residence is not domicile, but domicile is residence coupled with the intention to remain for an unlimited time. A man can have but one domicile for the same purpose at any time, but he may have numerous places of residence. His place of residence is generally his place of domicile, but it is not by any means necessarily so since no length of residence without intention of remaining will constitute domicile."

For political purposes the concepts of residence and domicile are dictated by the peculiar criteria of political laws. As these concepts have evolved in our election law, what has clearly and unequivocally emerged is the fact that residence for election purposes is used synonymously with domicile.

In *Nuval vs Guray*[24], the Court held that "the term residence. . . is synonymous with domicile which imports not only intention to reside in a fixed place, but also personal presence in that place, coupled with conduct indicative of such intention." [25] *Larena vs Teves*[26] reiterated the same doctrine in a case involving the qualifications of the respondent therein to the post of Municipal President of Dumaguete, Negros Oriental. *Faypon vs Quirino*, [27] held that the absence from residence to pursue studies or practice a profession or registration as a voter other than in the place where one is elected does not constitute loss of residence.[28] So settled is the concept (of domicile) in our election law that in these and other election law cases, this Court has stated that the mere absence of an individual from his permanent residence without the intention to abandon it does not result in a loss or change of domicile.

The deliberations of the 1987 Constitution on the residence qualification for certain elective positions have placed beyond doubt the principle that when the Constitution speaks of "residence" in election law, it actually means only "domicile" to wit:

Mr. Nollado: With respect to Section 5, I remember that in the 1971 Constitutional Convention, there was an attempt to require residence in the place not less than one year immediately preceding the day of the elections. So my question is: What is the Committee's concept of residence of a candidate for the legislature? Is it actual residence or is it the concept of domicile or constructive residence?

Mr. Davide: Madame President, insofar as the regular members of the National Assembly are concerned, the proposed section merely provides, among others, 'and a resident thereof', that is, in the district for a period of not less than one year preceding the day of the election. This was in effect lifted from the 1973 Constitution, the interpretation given to it was domicile.[29]

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Ms. Rosario Braid: The next question is on Section 7, page 2. I think Commissioner Nollado has raised the same point that "resident" has been interpreted at times as a matter of intention rather than actual residence.

Mr. De los Reyes: Domicile

Ms. Rosario Braid: Yes, So, would the gentleman consider at the proper time to go back to actual residence rather than mere intention to reside?

Mr. De los Reyes: But we might encounter some difficulty especially considering that a provision in the Constitution in the Article on Suffrage says that Filipinos living abroad may vote as enacted by law. So, we have

to stick to the original concept that it should be by domicile and not physical residence.[30]

In *Co vs. Electoral Tribunal of the House of Representatives*,[31] this Court concluded that the framers of the 1987 Constitution obviously adhered to the definition given to the term residence in election law, regarding it as having the same meaning as domicile.[32]

In the light of the principles just discussed, has petitioner Imelda Romualdez Marcos satisfied the residency requirement mandated by Article VI, Sec. 6 of the 1987 Constitution? Of what significance is the questioned entry in petitioner's Certificate of Candidacy stating her residence in the First Legislative District of Leyte as seven (7) months?

It is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement. The said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. It would be plainly ridiculous for a candidate to deliberately and knowingly make a statement in a certificate of candidacy which would lead to his or her disqualification.

It stands to reason therefore, that petitioner merely committed an honest mistake in jotting down the word "seven" in the space provided for the residency qualification requirement. The circumstances leading to her filing the questioned entry obviously resulted in the subsequent confusion which prompted petitioner to write down the period of her actual stay in Tolosa, Leyte instead of her period of residence in the First district, which was "since childhood" in the space provided. These circumstances and events are amply detailed in the COMELEC's Second Division's questioned resolution, albeit with a different interpretation. For instance, when herein petitioner announced that she would be registering in Tacloban City to make her eligible to run in the First District, private respondent Montejo opposed the same, claiming that petitioner was a resident of Tolosa, not Tacloban City. Petitioner then registered in her place of actual residence in the First District, which was Tolosa, Leyte, a fact which she subsequently noted down in her Certificate of Candidacy. A close look at said certificate would reveal the possible source of the confusion: the entry for residence (Item No. 7) is followed immediately by the entry for residence in the constituency where a candidate seeks election thus:

7. RESIDENCE (complete Address): Brgy. Olot, Tolosa, Leyte

POST OFFICE ADDRESS FOR ELECTION PURPOSES: Brgy. Olot, Tolosa, Leyte

8. RESIDENCE IN THE CONSTITUENCY WHERE I SEEK TO BE ELECTED IMMEDIATELY PRECEDING THE ELECTION: _____ Years and Seven Months.

Having been forced by private respondent to register in her place of actual residence in Leyte instead of petitioner's claimed domicile, it appears that petitioner had jotted down her period of stay in her actual residence in a space which required her period of stay in her legal residence or domicile. The juxtaposition of entries in Item 7 and Item 8 - the first requiring actual residence and the second requiring domicile - coupled with the circumstances surrounding petitioner's registration as a voter in Tolosa obviously led to her writing down an unintended entry for which she could be disqualified. This honest mistake should not, however, be allowed to negate the fact of residence in the First District if such fact were established by means more convincing than a mere entry on a piece of paper.

We now proceed to the matter of petitioner's domicile.

In support of its asseveration that petitioner's domicile could not possibly be in the First District of Leyte, the

Second Division of the COMELEC, in its assailed Resolution of April 24, 1995 maintains that "except for the time when (petitioner) studied and worked for some years after graduation in Tacloban City, she continuously lived in Manila." The Resolution additionally cites certain facts as indicative of the fact that petitioner's domicile ought to be any place where she lived in the last few decades except Tacloban, Leyte. First, according to the Resolution, petitioner, in 1959, resided in San Juan, Metro Manila where she was also registered voter. Then, in 1965, following the election of her husband to the Philippine presidency, she lived in San Miguel, Manila where she registered as a voter. In 1978 and thereafter, she served as a member of the Batasang Pambansa and Governor of Metro Manila. "She could not, have served these positions if she had not been a resident of Metro Manila," the COMELEC stressed. Here is where the confusion lies.

We have stated, many times in the past, that an individual does not lose his domicile even if he has lived and maintained residences in different places. Residence, it bears repeating, implies a factual relationship to a given place for various purposes. The absence from legal residence or domicile to pursue a profession, to study or to do other things of a temporary or semi-permanent nature does not constitute loss of residence. Thus, the assertion by the COMELEC that "she could not have been a resident of Tacloban City since childhood up to the time she filed her certificate of candidacy because she became a resident of many places" flies in the face of settled jurisprudence in which this Court carefully made distinctions between (actual) residence and domicile for election law purposes. In *Larena vs Teves*[33], *supra*, we stressed:

[T]his court is of the opinion and so holds that a person who has his own house wherein he lives with his family in a municipality without having ever had the intention of abandoning it, and without having lived either alone or with his family in another municipality, has his residence in the former municipality, notwithstanding his having registered as an elector in the other municipality in question and having been a candidate for various insular and provincial positions, stating every time that he is a resident of the latter municipality.

More significantly, in *Faypon vs. Quirino*,[34] we explained that:

A citizen may leave the place of his birth to look for "greener pastures," as the saying goes, to improve his lot, and that, of course includes study in other places, practice of his avocation, or engaging in business. When an election is to be held, the citizen who left his birthplace to improve his lot may desire to return to his native town to cast his ballot but for professional or business reasons, or for any other reason, he may not absent himself from his professional or business activities; so there he registers himself as voter as he has the qualifications to be one and is not willing to give up or lose the opportunity to choose the officials who are to run the government especially in national elections. Despite such registration, the animus revertendi to his home, to his domicile or residence of origin has not forsaken him. This may be the explanation why the registration of a voter in a place other than his residence of origin has not been deemed sufficient to constitute abandonment or loss of such residence. It finds justification in the natural desire and longing of every person to return to his place of birth. This strong feeling of attachment to the place of one's birth must be overcome by positive proof of abandonment for another.

From the foregoing, it can be concluded that in its above-cited statements supporting its proposition that petitioner was ineligible to run for the position of Representative of the First District of Leyte, the COMELEC was obviously referring to petitioner's various places of (actual) residence, not her domicile. In doing so, it not only ignored settled jurisprudence on residence in election law and the deliberations of the constitutional commission but also the provisions of the Omnibus Election Code (B.P. 881).[35]

What is undeniable, however, are the following set of facts which establish the fact of petitioner's domicile, which we lift verbatim from the COMELEC's Second Division's assailed Resolution:[36]

In or about 1938 when respondent was a little over 8 years old, she established her domicile in Tacloban, Leyte

(Tacloban City). She studied in the Holy Infant Academy in Tacloban from 1938 to 1949 when she graduated from high school. She pursued her college studies in St. Pauls College, now Divine Word University in Tacloban, where she earned her degree in Education. Thereafter, she taught in the Leyte Chinese School, still in Tacloban City. In 1952 she went to Manila to work with her cousin, the late speaker Daniel Z. Romualdez in his office in the House of Representatives. In 1954, she married ex-President Ferdinand E. Marcos when he was still a congressman of Ilocos Norte and registered there as a voter. When her husband was elected Senator of the Republic in 1959, she and her husband lived together in San Juan, Rizal where she registered as a voter. In 1965, when her husband was elected President of the Republic of the Philippines, she lived with him in Malacanang Palace and registered as a voter in San Miguel, Manila.

[I]n February 1986 (she claimed that) she and her family were abducted and kidnapped to Honolulu, Hawaii. In November 1991, she came home to Manila. In 1992, respondent ran for election as President of the Philippines and filed her Certificate of Candidacy wherein she indicated that she is a resident and registered voter of San Juan, Metro Manila.

Applying the principles discussed to the facts found by COMELEC, what is inescapable is that petitioner held various residences for different purposes during the past four decades. None of these purposes unequivocally point to an intention to abandon her domicile of origin in Tacloban, Leyte. Moreover, while petitioner was born in Manila, as a minor she naturally followed the domicile of her parents. She grew up in Tacloban, reached her adulthood there and eventually established residence in different parts of the country for various reasons. Even during her husband's presidency, at the height of the Marcos Regime's powers, petitioner kept her close ties to her domicile of origin by establishing residences in Tacloban, celebrating her birthdays and other important personal milestones in her home province, instituting well-publicized projects for the benefit of her province and hometown, and establishing a political power base where her siblings and close relatives held positions of power either through the ballot or by appointment, always with either her influence or consent. These well-publicized ties to her domicile of origin are part of the history and lore of the quarter century of Marcos power in our country. Either they were entirely ignored in the COMELEC'S Resolutions, or the majority of the COMELEC did not know what the rest of the country always knew: the fact of petitioner's domicile in Tacloban, Leyte.

Private respondent in his Comment, contends that Tacloban was not petitioner's domicile of origin because she did not live there until she was eight years old. He avers that after leaving the place in 1952, she "abandoned her residency (sic) therein for many years and ... (could not) re-establish her domicile in said place by merely expressing her intention to live there again." We do not agree.

First, a minor follows the domicile of his parents. As domicile, once acquired is retained until a new one is gained, it follows that in spite of the fact of petitioner's being born in Manila, Tacloban, Leyte was her domicile of origin by operation of law. This domicile was not established only when she reached the age of eight years old, when her father brought his family back to Leyte contrary to private respondent's averments.

Second, domicile of origin is not easily lost. To successfully effect a change of domicile, one must demonstrate:[37]

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.[38] In the case at bench, the evidence adduced by private respondent plainly lacks the degree of persuasiveness required to convince this court that an abandonment of domicile of origin in favor of a domicile of choice indeed occurred. To effect an abandonment requires the voluntary act of relinquishing petitioner's former domicile with an intent to supplant the former domicile with one of her own choosing (*domicilium voluntarium*).

In this connection, it cannot be correctly argued that petitioner lost her domicile of origin by operation of law as a result of her marriage to the late President Ferdinand E. Marcos in 1952. For there is a clearly established distinction between the Civil Code concepts of "domicile" and "residence." [39] The presumption that the wife automatically gains the husband's domicile by operation of law upon marriage cannot be inferred from the use of the term "residence" in Article 110 of the Civil Code because the Civil Code is one area where the two concepts are well delineated. Dr. Arturo Tolentino, writing on this specific area explains:

In the Civil Code, there is an obvious difference between domicile and residence. Both terms imply relations between a person and a place; but in residence, the relation is one of fact while in domicile it is legal or juridical, independent of the necessity of physical presence.[40]

Article 110 of the Civil Code provides:

Article 110. - The husband shall fix the residence of the family. But the court may exempt the wife from living with the husband if he should live abroad unless in the service of the Republic.

A survey of jurisprudence relating to Article 110 or to the concepts of domicile or residence as they affect the female spouse upon marriage yields nothing which would suggest that the female spouse automatically loses her domicile of origin in favor of the husband's choice of residence upon marriage.

Article 110 is a virtual restatement of Article 58 of the Spanish Civil Code of 1889 which states:

La mujer esta obligada a seguir a su marido donde quiera que fije su residencia. Los Tribunales, sin embargo, podran con justa causa eximirla de esta obligacion cuando el marido transende su residencia a ultramar o' a pais extranjero.

Note the use of the phrase "donde quiera su fije de residencia" in the aforequoted article, which means wherever (the husband) wishes to establish residence. This part of the article clearly contemplates only actual residence because it refers to a positive act of fixing a family home or residence. Moreover, this interpretation is further strengthened by the phrase "cuando el marido translade su residencia" in the same provision which means, "when the husband shall transfer his residence," referring to another positive act of relocating the family to another home or place of actual residence. The article obviously cannot be understood to refer to domicile which is a fixed, fairly-permanent concept when it plainly connotes the possibility of transferring from one place to another not only once, but as often as the husband may deem fit to move his family, a circumstance more consistent with the concept of actual residence.

The right of the husband to fix the actual residence is in harmony with the intention of the law to strengthen and unify the family, recognizing the fact that the husband and the wife bring into the marriage different domiciles (of origin). This difference could, for the sake of family unity, be reconciled only by allowing the husband to fix a single place of actual residence.

Very significantly, Article 110 of the Civil Code is found under Title V under the heading: RIGHTS AND OBLIGATIONS BETWEEN HUSBAND AND WIFE. Immediately preceding Article 110 is Article 109 which

oblige the husband and wife to live together, thus:

Article 109. The husband and wife are obligated to live together, observe mutual respect and fidelity and render mutual help and support.

The duty to live together can only be fulfilled if the husband and wife are physically together. This takes into account the situations where the couple has many residences (as in the case of petitioner). If the husband has to stay in or transfer to any one of their residences, the wife should necessarily be with him in order that they may "live together." Hence, it is illogical to conclude that Art. 110 refers to "domicile" and not to "residence." Otherwise, we shall be faced with a situation where the wife is left in the domicile while the husband, for professional or other reasons, stays in one of their (various) residences. As Dr. Tolentino further explains:

Residence and Domicile. - Whether the word "residence" as used with reference to particular matters is synonymous with "domicile" is a question of some difficulty, and the ultimate decision must be made from a consideration of the purpose and intent with which the word is used. Sometimes they are used synonymously, at other times they are distinguished from one another.

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Residence in the civil law is a material fact, referring to the physical presence of a person in a place. A person can have two or more residences, such as a country residence and a city residence. Residence is acquired by living in a place; on the other hand, domicile can exist without actually living in the place. The important thing for domicile is that, once residence has been established in one place, there be an intention to stay there permanently, even if residence is also established in some other place.[41]

In fact, even the matter of a common residence between the husband and the wife during the marriage is not an iron-clad principle. In cases applying the Civil Code on the question of a common matrimonial residence, our jurisprudence has recognized certain situations[42] where the spouses could not be compelled to live with each other such that the wife is either allowed to maintain a residence different from that of her husband or, for obviously practical reasons, revert to her original domicile (apart from being allowed to opt for a new one). In *De la Vina vs Villareal*[43] this Court held that "[a] married woman may acquire a residence or domicile separate from that of her husband during the existence of the marriage where the husband has given cause for divorce." [44] Note that the Court allowed the wife either to obtain new residence or to choose a new domicile in such an event. In instances where the wife actually opts, under the Civil Code, to live separately from her husband either by taking new residence or reverting to her domicile of origin, the Court has held that the wife could not be compelled to live with her husband on pain of contempt. In *Arroyo vs Vasques de Arroyo*[45] the Court held that:

Upon examination of the authorities, we are convinced that it is not within the province of the courts of this country to attempt to compel one of the spouses to cohabit with, and render conjugal rights to, the other. Of course where the property rights of one of the pair are invaded, an action for restitution of such rights can be maintained. But we are disinclined to sanction the doctrine that an order, enforceable (sic) by process of contempt, may be entered to compel the restitution of the purely personal right of consortium. At best such an order can be effective for no other purpose than to compel the spouses to live under the same roof; and the experience of those countries where the courts of justice have assumed to compel the cohabitation of married people shows that the policy of the practice is extremely questionable. Thus in England, formerly the Ecclesiastical Court entertained suits for the restitution of conjugal rights at the instance of either husband or wife; and if the facts were found to warrant it, that court would make a mandatory decree, enforceable by process of contempt in case of disobedience, requiring the delinquent party to live with the other and render conjugal rights. Yet this practice was sometimes criticized even by the judges who felt bound to enforce such orders, and in *Weldon vs. Weldon* (9 P.D.

52), decided in 1883, Sir James Hannen, President in the Probate, Divorce and Admiralty Division of the High Court of Justice, expressed his regret that the English law on the subject was not the same as that which prevailed in Scotland, where a decree of adherence, equivalent to the decree for the restitution of conjugal rights in England, could be obtained by the injured spouse, but could not be enforced by imprisonment. Accordingly, in obedience to the growing sentiment against the practice, the Matrimonial Causes Act (1884) abolished the remedy of imprisonment; though a decree for the restitution of conjugal rights can still be procured, and in case of disobedience may serve in appropriate cases as the basis of an order for the periodical payment of a stipend in the character of alimony.

In the voluminous jurisprudence of the United States, only one court, so far as we can discover, has ever attempted to make a preemptory order requiring one of the spouses to live with the other; and that was in a case where a wife was ordered to follow and live with her husband, who had changed his domicile to the City of New Orleans. The decision referred to (*Bahn vs. Darby*, 36 La. Ann., 70) was based on a provision of the Civil Code of Louisiana similar to article 56 of the Spanish Civil Code. It was decided many years ago, and the doctrine evidently has not been fruitful even in the State of Louisiana. In other states of the American Union the idea of enforcing cohabitation by process of contempt is rejected. (21 Cyc., 1148).

In a decision of January 2, 1909, the Supreme Court of Spain appears to have affirmed an order of the Audiencia Territorial de Valladolid requiring a wife to return to the marital domicile, and in the alternative, upon her failure to do so, to make a particular disposition of certain money and effects then in her possession and to deliver to her husband, as administrator of the ganancial property, all income, rents, and interest which might accrue to her from the property which she had brought to the marriage. (113 Jur. Civ., pp. 1, 11) But it does not appear that this order for the return of the wife to the marital domicile was sanctioned by any other penalty than the consequences that would be visited upon her in respect to the use and control of her property; and it does not appear that her disobedience to that order would necessarily have been followed by imprisonment for contempt.

Parenthetically when Petitioner was married to then Congressman Marcos, in 1954, petitioner was obliged- by virtue of Article 110 of the Civil Code- to follow her husband's actual place of residence fixed by him. The problem here is that at that time, Mr. Marcos had several places of residence, among which were San Juan, Rizal and Batac, Ilocos Norte. There is no showing which of these places Mr. Marcos did fix as his family's residence. But assuming that Mr. Marcos had fixed any of these places as the conjugal residence, what petitioner gained upon marriage was actual residence. She did not lose her domicile of origin.

On the other hand, the common law concept of "matrimonial domicile" appears to have been incorporated, as a result of our jurisprudential experiences after the drafting of the Civil Code of 1950, into the New Family Code. To underscore the difference between the intentions of the Civil Code and the Family Code drafters, the term residence has been supplanted by the term domicile in an entirely new provision (Art. 69) distinctly different in meaning and spirit from that found in Article 110. The provision recognizes revolutionary changes in the concept of women's rights in the intervening years by making the choice of domicile a product of mutual agreement between the spouses.[46]

Without as much belaboring the point, the term residence may mean one thing in civil law (or under the Civil Code) and quite another thing in political law. What stands clear is that insofar as the Civil Code is concerned-affecting the rights and obligations of husband and wife the term residence should only be interpreted to mean "actual residence." The inescapable conclusion derived from this unambiguous civil law delineation therefore, is that when petitioner married the former President in 1954, she kept her domicile of origin and merely gained a new home, not a domicilium necessarium.

Even assuming for the sake of argument that petitioner gained a new "domicile" after her marriage and only acquired a right to choose a new one after her husband died, petitioner's acts following her return to the country clearly indicate that she not only impliedly but expressly chose her domicile of origin (assuming this was lost by operation of law) as her domicile. This "choice" was unequivocally expressed in her letters to the Chairman of the PCGG when petitioner sought the PCGG's permission to "rehabilitate (our) ancestral house in Tacloban and Farm in OIot, Leyte...to make them livable for the Marcos family to have a home in our homeland." [47] Furthermore, petitioner obtained her residence certificate in 1992 in Tacloban, Leyte, while living in her brother's house, an act which supports the domiciliary intention clearly manifested in her letters to the PCGG Chairman. She could not have gone straight to her home in San Juan, as it was in a state of disrepair, having been previously looted by vandals. Her "homes" and "residences" following her arrival in various parts of Metro Manila merely qualified as temporary or "actual residences," not domicile. Moreover, and proceeding from our discussion pointing out specific situations where the female spouse either reverts to her domicile of origin or chooses a new one during the subsistence of the marriage, it would be highly illogical for us to assume that she cannot regain her original domicile upon the death of her husband absent a positive act of selecting a new one where situations exist within the subsistence of the marriage itself where the wife gains a domicile different from her husband.

In the light of all the principles relating to residence and domicile enunciated by this court up to this point, we are persuaded that the facts established by the parties weigh heavily in favor of a conclusion supporting petitioner's claim of legal residence or domicile in the First District of Leyte.

II. The jurisdictional issue

Petitioner alleges that the jurisdiction of the COMELEC had already lapsed considering that the assailed resolutions were rendered on April 24, 1995, fourteen (14) days before the election in violation of Section 78 of the Omnibus Election Code. [48] Moreover, petitioner contends that it is the House of Representatives Electoral Tribunal and not the COMELEC which has jurisdiction over the election of members of the House of Representatives in accordance with Article VI, Sec. 17 of the Constitution. This is untenable.

It is a settled doctrine that a statute requiring rendition of judgment within a specified time is generally construed to be merely directory, [49] "so that non-compliance with them does not invalidate the judgment on the theory that if the statute had intended such result it would have clearly indicated it." [50] The difference between a mandatory and a directory provision is often made on grounds of necessity. Adopting the same view held by several American authorities, this court in *Marcelino v Cruz* held that: [51]

The difference between a mandatory and directory provision is often determined on grounds of expediency, the reason being that less injury results to the general public by disregarding than enforcing the letter of the law.

In *Trapp v. Mc Cormick*, a case calling for the interpretation of a statute containing a limitation of thirty (30) days within which a decree may be entered without the consent of counsel, it was held that 'the statutory provisions which may be thus departed from with impunity, without affecting the validity of statutory proceedings, are usually those which relate to the mode or time of doing that which is essential to effect the aim and purpose of the Legislature or some incident of the essential act.' Thus, in said case, the statute under examination was construed merely to be directory.

The mischief in petitioner's contending that the COMELEC should have abstained from rendering a decision after the period stated in the Omnibus Election Code because it lacked jurisdiction, lies in the fact that our courts and other quasi-judicial bodies would then refuse to render judgments merely on the ground of having failed to reach a decision within a given or prescribed period.

In any event, with the enactment of Sections 6 and 7 of R.A. 6646 in relation to Section 78 of B.P. 881[52], it is evident that the respondent Commission does not lose jurisdiction to hear and decide a pending disqualification case under Section 78 of B.P. 881 even after the elections.

As to the House of Representatives Electoral Tribunal's supposed assumption of jurisdiction over the issue of petitioner's qualifications after the May 8, 1995 elections, suffice it to say that HRET's jurisdiction as the sole judge of all contests relating to the elections, returns and qualifications of members of Congress begins only after a candidate has become a member of the House of Representatives.[53] Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.

It would be an abdication of many of the ideals enshrined in the 1987 Constitution for us to either to ignore or deliberately make distinctions in law solely on the basis of the personality of a petitioner in a case. Obviously a distinction was made on such a ground here. Surely, many established principles of law, even of election laws were flouted for the sake perpetuating power during the pre-EDSA regime. We renege on these sacred ideals, including the meaning and spirit of EDSA by ourselves bending established principles of law to deny an individual what he or she justly deserves in law. Moreover, in doing so, we condemn ourselves to repeat the mistakes of the past.

WHEREFORE, having determined that petitioner possesses the necessary residence qualifications to run for a seat in the House of Representatives in the First District of Leyte, the COMELEC's questioned Resolutions dated April 24, May 7, May 11, and May 25, 1995 are hereby SET ASIDE. Respondent COMELEC is hereby directed to order the Provincial Board of Canvassers to proclaim petitioner as the duly elected Representative of the First District of Leyte.

SO ORDERED.

Narvasa, C.J., joins J. Mendoza in his separate opinion and, for the reasons therein stated, votes to grant the petition.

Puno and Francisco, JJ., please see concurring opinion

Bellosillo and Melo, JJ., joins J. Puno in his concurring opinion

Romero, Vitug and Mendoza, JJ., please see separate opinion

Padilla Regalado, and Davide, Jr., JJ., see dissenting opinion.

Hermosisima, J., joins Justice padilla's dissent

Feliciano, J., on official leave.

[1] Jarrolt v. Mabberly, 103 U.S. 580 (1881).

[2] CONST, art. VI, states:

Sec. 6. No person shall be a member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

See, Jarrolt v. Mabberly, supra, note 1.

[3] Gallego vs. Vera, 73 Phil. 453 (1941).

[4] Rollo, p. 114, Annex "D."

[5] Rollo, p. 110, Annex "D."

[6] Rollo, p. 113.

[7] Rollo, p. 111.

[8] Rollo, p. 115, Annex "E."

[9] Signed by Virgilo S. Oledan, Provincial Election Supervisor IV, Leyte; Rollo, p. 116, Annex "F."

[10] Rollo, p. 117, Annex "G." Petitioner explained the circumstances surrounding the filling up of the original certificate thus:

"1. On March 8, 1995, I filed my certificate of candidacy for Member of the House of Representatives (Congresswoman) of the First Legislative District of the province of Leyte, which was drafted by Mr. Filomeno A. Zeta.

"2. I learned lately that Congressman Cirilo Montejo wants to disqualify me as I allegedly lack residence in the constituency because of the entry of the word 'SEVEN' in Item No. 8 of my certificate of candidacy.

"3. I read my certificate of candidacy before signing it and I thought of the word 'RESIDENCE' to mean actual or physical residence, and the word 'SEVEN' merely reflected my actual and physical residence in Barangay Olot, Tolosa, Leyte.

"3.I. The word 'SEVEN' was placed on my certificate of candidacy to indicate that at least one (1) month had passed from my registration as voter of Tolosa, Leyte, on January 28, 1995, when I wrote '06' months under 'PERIOD OF RESIDENCE' as my actual or physical residence in the town.

"4. I thought then that the sense in Item No. 10 of my certificate of candidacy stating 'THAT I AM eligible for said Office' was sufficient to affirm that I possess all the qualifications, including my residence, for Member of the House of Representatives for which I am aspiring in the May 8, 1995 elections.

"5. The fact, however, is that my domicile or residence of origin is Tacloban City, a component city of the First Legislative District of Leyte. I never intended to abandon this domicile or residence of origin to which I always intended to return whenever absent; indeed in 1992, I returned to Tacloban City to live and stay there. On November 5, 1992, I bought my Residence Certificate No. 15226186L there, which is made an integral part hereof as Annex "I" (Annex '2" hereof).

[11] *Id.*, at p. 120. See also, Rollo, p. 130-133, Annex "I", petitioner's Affidavit explaining her residence:

"13. I, established my domicile, however in Tacloban, Leyte (Tacloban City in 1938, when I was little over eight (8) years old. Shortly after my mother died on April 7, 1938, my widowed father, Vicente Orestes Romualdez, brought me and my brothers...and my sisters to Tacloban, Leyte (now Tacloban City) his hometown.

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"18. I have always considered Tacloban City as my permanent residence or residence of origin. I have not abandoned and have never intended to abandon my permanent residence or residence of origin there. To it I always intend to return whenever absent."

"19. In 1952, I went to Manila to work with my cousin, the late speaker Daniel Z. Romualdez in his office in the House of Representatives."

"20. In May, 1954, I married President Ferdinand E. Marcos when he was still the congressman of Ilocos, Norte.

"21 As a dutiful wife who loved him deeply, I lived with him in Batac, Ilocos Norte and registered as a voter there."

"22. In 1965, my husband .was elected President of the Republic of the Philippines. Together, we lived in Malacanang Palace and I registered as a voter in San Miguel, Manila."

"23. My registration as voter in Batac, Ilocos Norte; San Juan, Rizal (now San Juan, Metro Manila); and San Miguel, Manila, was for convenience because I had to live with my husband to serve him when he was congressman, Senator and President of the Republic of the Philippines. During those years however, I never intended nor desired to abandon my domicile or residence of origin in Tacloban City, which I established since I was a child."

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"33. Throughout the Marcos Presidency, I spent most of my birthday anniversaries and attended the Sto. Nini Fiesta in Tacloban City. I regularly visited my domicile or residence of origin in Leyte and even held important functions and entertained guests and foreign dignitaries there."

"34. After President Ferdinand Ferdinand E. Marcos and I, together with our children and innocent grandchildren were abducted and kidnapped to Honolulu, Hawaii, in February, 1986, my Leyte properties were sequestered by the PCGG, and were destroyed and cannibalized."

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"38. Upon my return to the country, I wanted to immediately live and reside in Tacloban City or in Olot, Tolosa Leyte even if my residences there were not livable as they had been destroyed and cannibalized. The PCGG, however, did not permit and allow me.

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"40. After the 1992 Presidential Elections, I lived and resided in the residence of my brother in San Jose, Tacloban City, and pursued my negotiations with PCGG to recover my sequestered residences in Tacloban City and Barangay Olot, Tolosa, Leyte."

[12] Rollo, p. 122.

[13] Commissioners Manolo B. Gorospe and Teresita Dy-Liaco Flores formed the majority opinion. Commissioner Remedios A. Salazar-Fernando dissented.

[14] Rollo, p. 64.

[15] Rollo, p. 57-64.

[16] Petitioner filed a "Motion to Recall Resolution Promulgated on April 24, 1995 and to Dismiss the Petition Because of Lapse of Jurisdiction; Alternatively, Motion for Reconsideration." The Commission's May 7, 1995 Resolution treated the same simply as a Motion for Reconsideration.

[17] Commissioners Regalado E. Maambong, Remedios A. Salazar Fernando and Julio F. Desamito dissented. All filed separate dissenting opinions. In disqualifying petitioner, the majority held:

"As it stands now, only the Certificate of Candidacy respondent filed on March 8, 1995, stands, and on the basis of the entries therein, she is disqualified to run for the House of Representatives for failure to meet the constitutional requirement of one (1) year of residence in the place where she wanted to be elected."

[18] Rollo, p. 78, Annex "B."

[19] Rollo, p., Annex "D."

[20] 19 SCRA 966 (1967). See also, *Corre v. Corre*, 100 Phil. 221 (1956).

[21] *Id.*, at 969.

[22] *Uytensu v. Republic*, 95 Phil. 890 (1954).

[23] *Id.*

[24] 52 Phil. 645 (1928).

[25] Citing *People v. Bender* 144 N.Y.S., 145.

[26] 61 Phil. 36 (1934).

[27] 96 Phil. 294 (1954).

[28] *Id.*, see also *Ujano v. Republic*, 17 SCRA 147 (1966); *Nuval v. Guray*, *supra* note 22.

[29] II RECORD OF THE 1987 CONSTITUTIONAL CONVENTION, 110 (July 22, 1986).

[30] *Id.*

[31] 199 SCRA 692 (1991).

[32] *Id.*, at 714.

[33] 61 Phil. 36 (1934).

[34] 96 Phil. 294, 299-300 (1954).

[35] B.P. 881, sec. 117 states:

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"Any person who transfers residence to another city, municipality or country solely by reason of his occupation; profession; employment in private or public service; educational activities; work in military or naval reservations; service in the army, navy or air force; the constabulary or national police force; or confinement or detention in government institutions in accordance with law shall not be deemed to have lost his original residence.

[36] Rollo, p. 38.

[37] 18 Am Jur 219-220.

[38] 20 Am Jur 71.

[39] TOLENTINO, 1 COMMENTARIES & JURISPRUDENCE ON THE CIVIL CODE, 220 (1987).

[40] *Id.*

[41] TOLENTINO, 1 COMMENTARIES AND JURISPRUDENCE ON CIVIL CODE, 220 (1987).

[42] "Under modern laws, it is clear that many exceptions to the rule that the domicile of the wife is determined by that of her husband must obtain. Accordingly, the wife may acquire another and separate domicile from that of her husband where the theoretical unity of the husband and wife is dissolved, as it is by the institution of divorce proceedings; or where the husband has given cause for divorce; or where there is a separation of the parties by

agreement, or a permanent separation due to desertion of the wife by the husband or attributable to cruel treatment on the part of the husband; or where there has been a forfeiture by the wife of the benefit of the husband's domicile." 9 R.C.L., 545, cited in *De La Vina*, supra. If the law allows the wife to automatically revert to her original domicile or acquire a new domicile under these situations, all the more should it sanction a reversion- or the acquisition of a new domicile by the wife- upon the death of her husband.

[43] 41 Phi. 13 (1920).

[44] The rule that the wife automatically acquires or follows her husband's domicile is not an absolute one. A specific situation recognized in Spanish jurisprudence involves the one in which husband acquiesces (1 Manresa 223) or gives his tacit consent (Scaevola, (Civil Code, 354.)

[45] 42 Phil. 54 (1921).

[46] Justice Alicia Sempio-Diy recognizes the same Civil Code distinction. However, taking another approach, she writes:

(6) The above Article (Article 69, FC) uses the term "family domicile" instead of family residence because the spouses may have multiple residences, and the wife may elect to remain in one of such residences, which may destroy the duty of the spouses to live together and its corresponding benefits. SEMPIO-DIY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES, 102 (1988).

[47] Rollo, pp. 132-133.

[48] The provision reads: Section 78. Petition to deny due course or to cancel a certificate of candidacy. - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any 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 filing of the certificate of candidacy and shall be decided after due notice and hearing, not later than fifteen days before the election.

[49] *Marcelino vs. Cruz*, 121 SCRA 51 (1983).

[50] *American Tupe Founders Co. v. Justice's Court*, 133 Cal. 819, 65 Pac. 742; *Heillen v. Phillipps*, 88 Cal. 557, 26 Pac. 366; *Drake v. Bagley*, 69 Mo. App. 39; *State v. Davis*, 194 Mo. 585.

[51] Supra, note 39, citing *Huffines v. Gold* 154 Tenn. 583, 588; 288 S.W. 353, 354.

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

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

[53] CONST., art. VI, sec. 11 states:

The Senate and the House of Representatives shall have an Electoral Tribunal which shall be the sole judge of all questions relating to the election, returns, and qualifications of their respective Members. xxx.

CONCURRING OPINION

PUNO, J.:

It was Aristotle who taught mankind that things that are alike should be treated alike, while things that are unlike should be treated unlike in proportion to their unalikehood.^[1] Like other candidates, petitioner has clearly met the residence requirement provided by Section 6, Article VI of the Constitution.^[2] We cannot disqualify her and treat her unlike, for the Constitution guarantees equal protection of the law. I proceed from the following factual and legal propositions:

First. There is no question that petitioner's original domicile is in Tacloban Leyte. Her parents were domiciled in Tacloban. Their ancestral house is in Tacloban. They have vast real estate in the place. Petitioner went to school, and thereafter worked there. I consider Tacloban as her initial domicile, both her domicile of origin and her domicile of choice. Her domicile of origin as it was the domicile of her parents when she was a minor; and her domicile of choice, as she continued living there even after reaching the age of majority.

Second. There is also no question that in May 1954, petitioner married the late President Ferdinand E. Marcos. By contracting marriage, her domicile became subject to change by law, and the right to change it was given by Article 110 of the Civil Code to her husband. Article 110 of the Civil Code provides:

"Art. 110. The husband shall fix the residence of the family. But the court may exempt the wife from living with the husband if he should live abroad unless in the service of the Republic."^[3] (Italics supplied)

In *De la Villa v. Villareal and Geopano*,^[4] this Court explained why the domicile of the wife ought to follow that of the husband. We held: "The reason is founded upon the theoretic identity of person and interest between the husband and the wife, and the presumption that, from the nature of the relation, the home of one is the home of the other. It is intended to promote, strengthen, and secure their interests in this relation, as it ordinarily exists, where union and harmony prevail."^[5] In accord with this objective, Article 109 of the Civil Code also obligated the husband and wife "to live together."

Third. The difficult issues start as we determine whether petitioner's marriage to former President Marcos ipso facto resulted in the loss of her Tacloban domicile. I respectfully submit that her marriage by itself alone did not cause her to lose her Tacloban domicile. Article 110 of the Civil Code merely gave the husband the right to fix the domicile of the family. In the exercise of the right, the husband may explicitly choose the prior domicile of his wife, in which case, the wife's domicile remains unchanged. The husband can also implicitly acquiesce to his wife's prior domicile even if it is different. So we held in *de la Vina*, ^[6]

"x x x. When married women as well as children subject to parental authority live, with the acquiescence of their husbands or fathers, in a place distinct from where the latter live, they have their own independent domicile.

x x x"

It is not, therefore, the mere fact of marriage but the deliberate choice of a different domicile by the husband that will change the domicile of a wife from what it was prior to their marriage. The domiciliary decision made by the husband in the exercise of the right conferred by Article 110 of the Civil Code binds the wife. Any and all acts of a wife during her coverture contrary to the domiciliary choice of the husband cannot change in any way the domicile legally fixed by the husband. These acts are void not only because the wife lacks the capacity to choose her domicile but also because they are contrary to law and public policy.

In the case at bench, it is not disputed that former President Marcos exercised his right to fix the family domicile and established it in Batac, Ilocos Norte, where he was then the congressman. At that particular point of time and throughout their married life, petitioner lost her domicile in Tacloban, Leyte. Since petitioner's Batac domicile has been fixed by operation of law, it was not, affected in 1959 when her husband was elected as Senator, when they lived in San Juan, Rizal and where she registered as a voter. It was not also affected in 1965 when her husband was elected President, when they lived in Malacañang Palace, and when she registered as a voter in San Miguel, Manila. Nor was it affected when she served as a member of the Batasang Pambansa Minister of Human Settlements and Governor of Metro Manila during the incumbency of her husband as President of the nation. Under Article 110 of the Civil Code, it was only her husband who could change the family domicile in Batac and the evidence shows he did not effect any such change. To a large degree, this follows the common law that "a woman on her marriage loses her own domicile and by operation of law, acquires that of her husband, no matter where the wife actually lives or what she believes or intends." [7]

Fourth. The more difficult task is how to interpret the effect of the death on September 28, 1989 of former President Marcos on petitioner's Batac domicile. The issue is of first impression in our jurisdiction and two (2) schools of thought contend for acceptance. One is espoused by our distinguished colleague, Mr. Justice Davide, Jr., heavily relying on American authorities. [8] He echoes the theory that after the husband's death, the wife retains the last domicile of her husband until she makes an actual change.

I do not subscribe to this submission. The American case law that the wife still retains her dead husband's domicile is based on ancient common law which we can no longer apply in the Philippine setting today. The common law identified the domicile of a wife as that of the husband and denied to her the power of acquiring a domicile of her own separate and apart from him. [9] Legal scholars agree that two (2) reasons support this common law doctrine. The first reason as pinpointed by the legendary Blackstone is derived from the view that "the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband." [10] The second reason lies in "the desirability of having the interests of each member of the family unit governed by the same law." [11] The presumption that the wife retains the domicile of her deceased husband is an extension of this common law concept. The concept and its extension have provided some of the most iniquitous jurisprudence against women. It was under common law that the 1873 American case of *Bradwell v. Illinois* [12] was decided where women were denied the right to practice law. It was unblushingly ruled that the "natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life ... This is the law of the Creator." Indeed, the rulings relied upon by Mr. Justice Davide in CJS [13] and AM JUR 2d [14] are American state court decisions handed down between the years 1917 [15] and 1938 [16] or before the time when women were accorded equality of rights with men. Undeniably, the women's liberation movement resulted in far-ranging state legislations in the United States to eliminate gender inequality. [17] Starting in the decade of the seventies, the courts likewise liberalized their rulings as they started invalidating laws infected with gender-bias. It was in 1971 when the US Supreme Court in *Reed v. Reed*, [18] struck a big blow for women equality when it declared as unconstitutional an Idaho law that required probate courts to choose male family members over females as estate administrators. It held that mere administrative inconvenience cannot justify a sex-based distinction. These significant changes both in law and in case law on the status of women virtually obliterated the iniquitous common law surrendering the rights of married women to their husbands based on the dubious theory of the parties' theoretic oneness. The *Corpus Juris Secundum* editors did not miss the relevance of this revolution on women's right as they observed: "However; it has been declared that under modern statutes changing the status of married women and departing from the common law theory of marriage, there is no reason why a wife may not acquire a separate domicile for every purpose known to the law." [19] In publishing in 1969 the *Restatement of the Law, Second (Conflict of Laws 2d)*,

the reputable American Law Institute also categorically stated that the view of Blackstone "x x x is no longer held. As the result of statutes and court decisions, a wife now possesses practically the same rights and powers as her unmarried sister." [20]

In the case at bench, we have to decide whether we should continue clinging to the anachronistic common law that demeans women, especially married women. I submit that the Court has no choice except to break away from this common law rule, the root of the many degradations of Filipino women. Before 1988, our laws particularly the Civil Code, were full of gender discriminations against women. Our esteemed colleague, Madam Justice Florida Ruth Romero, cited a few of them as follows: [21]

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"Legal Disabilities Suffered by Wives

"Not generally known is the fact that under the Civil Code, wives suffer under certain restrictions or disabilities. For instance, the wife cannot accept gifts from others, regardless of the sex of the giver or the value of the gift, other than from her very close relatives, without her husband's consent. She may accept only from, say, her parents, parents-in-law, brothers, sisters and the relatives within the so-called fourth civil degree. She may not exercise her profession or occupation or engage in business if her husband objects on serious grounds or if his income is sufficient to support their family in accordance with their social standing. As to what constitutes 'serious grounds' for objecting, this is within the discretion of the husband.

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"Because of the present inequitable situation, the amendments to the Civil Law being proposed by the University of the Philippines Law Center would allow absolute divorce which severs the matrimonial ties, such that the divorced spouses are free to get married a year after the divorce is decreed by the courts. However, in order to place the husband and wife on an equal footing insofar as the bases for divorce are concerned, the following are specified as the grounds for absolute divorce: (1) adultery or having a paramour committed by the respondent in any of the ways specified in the Revised Penal Code; or (2) an attempt by the respondent against the life of the petitioner which amounts to attempted parricide under the Revised Penal Code; (3) abandonment of the petitioner by the respondent without just cause for a period of three consecutive years; or (4) habitual maltreatment.

"With respect to property relations, the husband is automatically the administrator of the conjugal property owned in common by the married couple even if the wife may be the more astute or enterprising partner. The law does not leave it to the spouses to decide who shall act as such administrator. Consequently, the husband is authorized to engage in acts and enter into transactions beneficial to the conjugal partnership. The wife, however, cannot similarly bind the partnership without the husband's consent.

"And while both exercise joint parental authority over their children, it is the father whom the law designates as the legal administrator of the property pertaining to the unemancipated child."

Taking the lead in Asia, our government exerted efforts, principally through legislations, to eliminate inequality between men and women in our land. The watershed came on August 3, 1988 when our Family Code took effect which, among others, terminated the unequal treatment of husband and wife as to their rights and responsibilities. [22]

The Family Code attained this elusive objective by giving new rights to married women and by abolishing sex-based privileges of husbands. Among others, married women are now given the joint right to administer the family property, whether in the absolute community system or in the system of conjugal partnership; [23] joint parental authority over their minor children, both over their persons as well as their properties; [24] joint

responsibility for the support of the family;[25] the right to jointly manage the household;[26] and, the right to object to their husband's exercise of profession, occupation, business or activity.[27] Of particular relevance to the case at bench is Article 69 of the Family Code which took away the exclusive right of the husband to fix the family domicile and gave it Jointly to the husband and the wife, thus:

"Art: 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family." (Italics supplied)

Article 69 repealed Article 110 of the Civil Code. Commenting on the duty of the husband and wife to live together, former Madam Justice Alice Sempio-Diy of the Court of Appeals specified the instances when a wife may now refuse to live with her husband, thus:[28]

"(2) The wife has the duty to live with her husband, but she may refuse to do so in certain cases like:

- (a) If the place chosen by the husband as family residence is dangerous to her life;
- (b) If the husband subjects her to maltreatment or abusive conduct or insults, making common life impossible;
- (c) If the husband compels her to live with his parents, but she cannot get along with her mother-in-law and they have constant quarrels (Del Rosario v. Del Rosario, CA, 46 OG 6122);
- (d) Where the husband has continuously carried illicit relations for 10 years with different women and treated his wife roughly and without consideration (Dadivas v. Villanueva, 54 Phil. 92);
- (e) Where the husband spent his time in gambling, giving no money to his family for food and necessities, and at the same time insulting his wife and laying hands on her (Panuncio v. Sula, CA, 34 OG 129);
- (f) If the husband has no fixed residence and lives a vagabond life as a tramp (1 Manresa 329);
- (g) If the husband is carrying on a shameful business at home (Gahn v. Darby, 36 La. Ann. 70)."

The inescapable conclusion is that our Family Code has completely emancipated the wife from the control of the husband, thus abandoning the parties' theoretic identity of interest. No less than the late revered Mr. Justice J.B.L. Reyes who chaired the Civil Code Revision Committee of the UP Law Center gave this insightful view in one of his rare lectures after retirement:[29]

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"The Family Code is primarily intended to reform the family law so as to emancipate the wife from the exclusive control of the husband and to place her at parity with him insofar as the family is concerned. The wife and the husband are now placed on equal standing by the Code. They are now joint administrators of the family properties and exercise joint authority over the persons and properties of their children. This means a dual authority in the family. The husband will no longer prevail over the wife but she has to agree on all matters concerning the family." (Italics supplied)

In light of the Family Code which abrogated the inequality between husband and wife as started and perpetuated by the common law, there is no reason in espousing the anomalous rule that the wife still retains the domicile of her dead husband. Article 110 of the Civil Code which provides the statutory support for this stance has been repealed by Article 69 of the Family Code. By its repeal, it becomes a dead letter law, and we are not free to resurrect it by giving it further effect in any way or manner such as by ruling that the petitioner is still bound by the domiciliary determination of her dead husband.

Aside from reckoning with the Family Code, we have to consider our Constitution and its firm guarantees of due process and equal protection of law.[30] It can hardly be doubted that the common law imposition on a married woman of her dead husband's domicile even beyond his grave is patently discriminatory to women. It is a gender-based discrimination and is not rationally related to the objective of promoting family solidarity. It cannot survive a constitutional challenge. Indeed, compared with our previous fundamental laws, the 1987 Constitution is more concerned with equality between sexes as it explicitly commands that the State "x x x shall ensure fundamental equality before the law of women and men." To be exact, section 14, Article II provides: "The State recognizes the role of women in nation building, and shall ensure fundamental equality before the law of women and men." We shall be transgressing the sense and essence of this constitutional mandate if we insist on giving our women the caveman's treatment.

Prescinding from these premises, I respectfully submit that the better stance is to rule that petitioner reacquired her Tacloban domicile upon the death of her husband in 1989. This is the necessary consequence of the view that petitioner's Batac dictated domicile did not continue after her husband's death; otherwise, she would have no domicile and that will violate the universal rule that no person can be without a domicile at any point of time. This stance also restores the right of petitioner to choose her domicile before it was taken away by Article 110 of the Civil Code, a right now recognized by the Family Code and protected by the Constitution. Likewise, I cannot see the fairness of the common law requiring petitioner to choose again her Tacloban domicile before she could be released from her Batac domicile. She lost her Tacloban domicile not through her act but through the act of her deceased husband when he fixed their domicile in Batac. Her husband is dead and he cannot rule her beyond the grave. The law disabling her to choose her own domicile has been repealed. Considering all these, common law should not put the burden on petitioner to prove she has abandoned her dead husband's domicile. There is neither rhyme nor reason for this gender-based burden.

But even assuming arguendo that there is need for convincing proof that petitioner chose to reacquire her Tacloban domicile, still, the records reveal ample evidence to this effect. In her affidavit submitted to the respondent COMELEC petitioner averred:

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"36. In November, 1991, I came home to our beloved country, after several requests for my return were denied by President Corazon C. Aquino, and after I filed suits for our Government to issue me my passport.

37. But I came home without the mortal remains of my beloved husband, President Ferdinand E. Marcos, which the Government unreasonably considered a threat to the national security and welfare.

38. Upon my return to the country, I wanted to immediately live and reside in Tacloban City or in Olot, Tolosa, Leyte, even if my residences there were not livable as they had been destroyed and cannibalized. The PCGG, however, did not permit and allow me.

39. As a consequence, I had to live at various times in the Westin Philippine Plaza in Pasay City, a friend's apartment on Ayala Avenue, a house in South Forbes Park which my daughter rented, and Pacific Plaza, all in Makati.

40. After the 1992 Presidential Elections, I lived and resided in the residence of my brother in San Jose, Tacloban City, and pursued my negotiations with PCGG to recover my sequestered residences in Tacloban City and Barangay Olot, Tolosa, Leyte.

40.1 In preparation for my observance of All Saints' Day and All Souls' Day that year, I renovated my parents' burial grounds and entombed their bones which had been excavated, unearthed and scattered.

41. On November 29, 1993, I formally wrote PCGG Chairman Magtanggol Gunigundo for permissions to -

'x x x rehabilitate x x x (o)ur ancestral house in Tacloban and farm house in Olot, Leyte x x x to make them livable for us the Marcos family to have a home in our own motherland.'

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42. It was only on 06 June 1994, however, when PCGG Chairman Gunigundo, in his letter to Col. Simeon Kempis, Jr., PCGG Region 8 Representative, allowed me to repair and renovate my Leyte residences. I quote part of his letter:

`Dear Col. Kempis,

Upon representation by Mrs. Imelda R. Marcos to this Commission that she intends to visit our sequestered properties in Leyte, please allow her access thereto. She may also cause repairs and renovation of the sequestered properties, in which event, it shall be understood that her undertaking said repairs is not authorization for her to take over said properties, and that all expenses shall be for her account and not reimbursable. Please extend the necessary courtesy to her.'

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43. I was not permitted, however, to live and stay in the Sto. Niño Shrine residence in Tacloban City where I wanted to stay and reside, after repairs and renovations were completed. In August 1994, I transferred from San Jose, Tacloban City, to my residence in Barangay Olot, Tolosa, Leyte, when PCGG permitted me to stay and live there."

It is then clear that in 1992 petitioner reestablished her domicile in the First District of Leyte. It is hot disputed that in 1992, she first lived at the house of her brother in San Jose, Tacloban City and later, in August 1994, she transferred her residence in Barangay Olot, Tolosa, Leyte. Both Tacloban City and the municipality of Olot are within the First District of Leyte. Since petitioner reestablished her old domicile in 1992 in the First District of Leyte, she more than complied with the constitutional requirement of residence "x x x for a period of not less than one year immediately preceding the day of the election," i.e., the May 8, 1995 elections.

The evidence presented by the private respondent to negate the Tacloban domicile of petitioner is nil. He presented petitioner's Voter's Registration Record filed with the Board of Election Inspectors of Precinct 10-A of Barangay Olot, Tolosa, Leyte wherein she stated that her period of residence in said barangay was six (6) months as of the date of her filing of said Voter's Registration Record on January 28, 1995.[31] This statement in petitioner's Voter's Registration Record is a non-prejudicial admission. The Constitution requires at least one (1) year residence in the district in which the candidate shall be elected. In the case at bench, the reference is the First District of Leyte. Petitioner's statement proved that she resided in Olot six (6) months before January 28, 1995 but did not disprove that she has also resided in Tacloban City starting 1992. As aforesaid, Olot and Tacloban City are both within the First District of Leyte, hence, her six (6) months residence in Olot should be counted not against, but in her favor. Private respondent also presented petitioner's Certificate of Candidacy filed on March 8, 1995[32] where she placed seven (7) months after Item No. 8 which called for information regarding "residence in the constituency where I seek to be elected immediately preceding the election." Again, this original certificate of Candidacy has no evidentiary value because on March 1, 1995 it was corrected by petitioner. In her Amended/Corrected Certificate of Candidacy,[33] petitioner wrote "since childhood" after Item No. 8. The amendment of a certificate of candidacy to correct a bona fide mistake has been allowed by this Court as a matter of course and as a matter of right. As we held in *Alialy v. COMELEC*,[34] viz.:

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"The absence of the signature of the Secretary of the local chapter N.P in the original certificate of candidacy presented before the deadline September 11, 1959, did not render the certificate invalid. The amendment of the

certificate, although at a date after the deadline, but before the election, was substantial compliance with the law, and the defect was cured."

It goes without saying that petitioner's erroneous Certificate of Candidacy filed on March 8, 1995 cannot be used as evidence against her. Private respondent's petition for the disqualification of petitioner rested alone on these two (2) brittle pieces of documentary evidence - petitioner's Voter's Registration Record and her original Certificate of Candidacy. Ranged against the evidence of the petitioner showing her ceaseless contacts with Tacloban, private respondent's two (2) pieces of evidence are too insufficient to disqualify petitioner, more so, to deny her the right to represent the people of the First District of Leyte who have overwhelmingly voted for her.

Fifth. Section 10, Article IX-C of the Constitution mandates that "bona fide candidates for any public office shall be free from any form of harassment and discrimination." [35] A detached reading of the records of the case at bench will show that all forms of legal and extra-legal obstacles have been thrown against petitioner to prevent her from running as the people's representative in the First District of Leyte. In petitioner's Answer to the petition to disqualify her, she averred: [36]

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"10. Petitioner's (herein private respondent Montejo) motive in filing the instant petition is devious. When respondent (petitioner herein) announced that she was intending to register as a voter in Tacloban City and run for Congress in the First District of Leyte, petitioner (Montejo) immediately opposed her intended registration by writing a letter stating that 'she is not a resident of said city but of Barangay Olot, Tolosa, Leyte.' (Annex "2" of respondent's affidavit, Annex "2"). After respondent (petitioner herein) had registered as a voter in Tolosa following completion of her six-month actual residence therein, petitioner (Montejo) filed a petition with the COMELEC to transfer the town of Tolosa from the First District to the Second District and pursued such move up to the Supreme Court in G.R. No. 118702, his purpose being to remove respondent (petitioner herein) as petitioner's (Montejo's) opponent in the congressional election in the First District. He also filed a bill, along with other Leyte Congressmen, seeking to create another legislative district, to remove the town of Tolosa out of the First District and to make it a part of the new district, to achieve his purpose. However, such bill did not pass the Senate. Having failed on such moves, petitioner now filed the instant petition, for the same objective, as it is obvious that he is afraid to submit himself along with respondent (petitioner herein) for the judgment and verdict of the electorate of the First District of Leyte in an honest, orderly, peaceful, free and clean elections on May 8, 1995."

These allegations which private respondent did not challenge were not lost to the perceptive eye of Commissioner Maambong who in his Dissenting Opinion, [37] held:

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"Prior to the registration date - January 28, 1995 - the petitioner (herein private respondent Montejo) wrote the Election Officer of Tacloban City not to allow respondent (petitioner herein) to register thereat since she is a resident of Tolosa and not Tacloban City. The purpose of this move of the petitioner (Montejo) is not lost to (sic) the Commission. In UND No. 95-001 (In the matter of the Legislative Districts of the Provinces of Leyte, Iloilo, and South Cotabato, Out of Which the New Provinces of Biliran, Guimaras and Saranggani Were Respectively Created), x x x Hon. Cirilo Roy G. Montejo, Representative, First District of Leyte, wanted the Municipality of Tolosa, in the First District of Leyte, transferred to the Second District of Leyte. The Hon. Sergio A.F. Apostol, Representative of the Second District of Leyte, opposed the move of the petitioner (Montejo). Under Comelec Resolution No. 2736 (December 29, 1994), the Commission on Elections refused to make the proposed transfer. Petitioner (Montejo) filed 'Motion for Reconsideration of Resolution No. 2736' which the Commission denied in a Resolution promulgated on February 1, 1995. Petitioner (Montejo) filed a petition for certiorari before the Honorable Supreme Court (Cirilo Roy G. Montejo vs. Commission on

Elections, G.R. No. 118702) questioning the resolution of the Commission. Believing that he could get a favorable ruling from the Supreme Court, petitioner (Montejo) tried to make sure that the respondent (petitioner herein) will register as a voter in Tolosa so that she will be forced to run as Representative not in the First but in the Second District.

"It did not happen. On March 16, 1995, the Honorable Supreme Court unanimously promulgated a 'Decision,' penned by Associate Justice Reynato S. Puno, the dispositive portion of which reads:

'IN VIEW WHEREOF, Section 1 of Resolution No. 2736 insofar as it transferred the municipality of Capoocan of the Second District and the municipality of Palompon of the Fourth District to the Third District of the province of Leyte, is annulled and set aside. We also deny the Petition praying for the transfer of the Municipality of Tolosa from the First District to the Second District of the province of Leyte. No costs.'

"Petitioner's (Montejo's) plan did not work. But the respondent (petitioner herein) was constrained to register in the Municipality of Tolosa where her house is instead of Tacloban City, her domicile. In any case, both Tacloban City and Tolosa are in the same First Legislative District."

All these attempts to misuse our laws and legal processes are forms of rank harassments and invidious discriminations against petitioner to deny her equal access to a public office. We cannot commit any hermeneutic violence to the Constitution by torturing the meaning of equality, the end result of which will allow the harassment and discrimination of petitioner who has lived a controversial life, a past of alternating light and shadow. There is but one Constitution for all Filipinos. Petitioner cannot be adjudged by a "different" Constitution, and the worst way to interpret the Constitution is to inject in its interpretation, bile and bitterness.

Sixth. In *Gallego v. Vera*, [38] we explained that the reason for this residence requirement is "to exclude a stranger or newcomer, unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community x x x." Petitioner's lifetime contacts with the First District of Leyte cannot be contested. Nobody can claim that she is not acquainted with its problems because she is a stranger to the place. None can argue she cannot satisfy the intent of the Constitution.

Seventh. In resolving election cases, a dominant consideration is the need to effectuate the will of the electorate. The election results show that petitioner received Seventy Thousand Four Hundred Seventy-One (70,471) votes, while private respondent got only Thirty--Six Thousand Eight Hundred Thirty-Three (36,833) votes. Petitioner is clearly the overwhelming choice of the electorate of the First District of Leyte and this is not a sleight of statistics. We cannot frustrate this sovereign will on highly arguable technical considerations. In case of doubt, we should lean towards a rule that will give life to the people's political judgment.

A final point. The case at bench provides the Court with the rare opportunity to rectify the inequality of status between women and men by rejecting the iniquitous common law precedents on the domicile of married women and by redefining domicile in accord with our own culture, law, and Constitution. To rule that a married woman is eternally tethered to the domicile dictated by her dead husband is to preserve the anachronistic and anomalous balance of advantage of a husband over his wife. We should not allow the dead to govern the living even if the glories of yesteryears seduce us to shout long live the dead! The Family Code buried this gender-based discrimination against married women and we should not excavate what has been entombed. More importantly, the Constitution forbids it.

I vote to grant the petition.

[1] Aristotle, *Ethica Nichomachea*, bk., v. 3, 1131(a) (W. Ross translation, 1925 ed).

[2] It provides: "No person shall be a member of the House of Representatives unless he is a natural born citizen of the Philippines and on the day of the election, is at least twenty-five years of age, able to read and write, and except the party list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election." (Emphasis supplied)

[3] There are two (2) other instances when a married woman may have a domicile different from the husband: (1) if they are legally separated pursuant to par. 1, Art. 106 of the Civil Code, and (2) if the husband forcibly ejects the wife from the conjugal home to have illicit relations with another. (*De la Viña v. Villareal and Geopano*, 41 Phil. 13 [1920]).

[4] *Op cit.*

[5] *Id.*, at pp. 16-17.

[6] *Id.*, at p. 20, citing 1 Manresa 223.

[7] 25 AM JUR 2nd S. 48, p.37.

[8] 28 CJS on Domicile, S. 12, 27; 25 AM JUR 2nd on Domiciles S. 62, 46.

[9] 28 CJS, S. 12, p. 24.

[10] Restatement of the Law, 2d, Conflict of Laws 2d., S. 21, p. 84.

[11] *Ibid.*

[12] 83 U.S. 442; 21 Law Ed. 442: S.C. 16 Wall 130.

[13] *Supra.*

[14] *Supra.*

[15] *In re Green's Estate*, 191 N.Y.S. 757, 117 Misc. 800, 165 N.Y.S. 1063, 99 Misc. 582.

[16] *Clark et al. v. Baker et al.*, 196 SE 750, 186 Ga 65.

[17] Lefcourt, *Women and The Law*, 1990 ed.

[18] 404 US 71.

[19] 28 CJS S. 12, p. 25 citing *Shute v. Sargent*, 36 A 282, 67 N.H. 305.

[20] *Op cit.*, p. 84.

[21] *Women's Status in Philippine Society*, UP Law Center, 1979, pp. 4-6.

[22] In submitting the draft of the Family Code to President Corazon Aquino, the Civil Code Revision Committee stated:

"Close to forty years of experience under the Civil Code adopted in 1949 and changes and developments in all aspects of Filipino life since then have revealed the unsuitability of certain provisions of that Code, implanted from foreign sources, to Philippine culture; the unfairness, unjustness, and gaps or inadequacies of others; and the need to attune them to contemporary developments and trends.

In particular - to cite only a few instances - (1) the property regime of conjugal partnership of gains is not in accord with Filipino custom, especially in the rural areas, which is more congenial to absolute community of property; (2) there have considerably been more grounds for annulment of marriage by the Church than those

provided by the Code, thus giving rise to the absurd situation of several marriages already annulled under Canon Law but still considered subsisting under the Civil Law and making it necessary to make the grounds for annulment under both laws to coincide; (3) unequal treatment of husband and wife as to rights and responsibilities, which necessitates a response to the long-standing clamor for equality between men and women now mandated as a policy to be Implemented under the New Constitution; (4) the inadequacy of the safeguards for strengthening marriage and the family as basic social institutions recognized as such by the New Constitution; (5) recent developments have shown the absurdity of limiting the grounds for legal separation to the antiquated two grounds provided under the Civil Code; (6) the need for additional safeguards to protect our children in the matter of adoption by foreigners; and (7) to bring our law on paternity and filiation in step with or abreast of the latest scientific discoveries." (Italics supplied)

[23] Article 96, Family Code.

[24] Article 225, Family Code.

[25] Article 70, Family Code.

[26] Article 71, Family Code.

[27] Article 73, Family Code.

[28] Op cit., Handbook on the Family Code of the Philippines, pp. 98-99.

[29] As cited in Diy, Handbook on the Family Code of the Philippines, pp 184-185.

[30] Section 1, Article III of the Constitution provides: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

[31] Exhibit "E"; see also Exhibit "B" in SPA No. 95-001.

[32] Exhibit "A" in SPA No. 95-009.

[33] Exhibit "2" in SPA No. 95-009.

[34] 2 SCRA 957, 960 (1961); See *Canceran v. COMELEC*, 107 Phil. 607 (1960); *Gabaldon v. COMELEC*, 99 Phil. 898 (1956).

[35] Section 26, Article II of the Constitution also provides: "The State shall guarantee equal access to opportunities for public service x x x."

[36] Annex "G," Petition.

[37] Petition, Annex "B-1," pp. 6-7.

[38] 73 Phil. 453, 459 (1951).

CONCURRING OPINION

FRANCISCO, J.:

I concur with Mr. Justice Kapunan's ponencia finding petitioner qualified for the position of Representative of the First Congressional District of Leyte. I wish, however, to express a few comments on the issue of petitioner's domicile.

Domicile has been defined as that place in which a person's habitation is fixed, without any present intention of

removing therefrom, and that place is properly the domicile of a person in which he has voluntarily fixed his abode, or habitation, not for a mere special or temporary purpose, but with a present intention of making it his permanent home (28 C.J. S. §1). It denotes a fixed permanent residence to which when absent for business, or pleasure, or for like reasons one intends to return, and depends on facts and circumstances, in the sense that they disclose intent. (*Ong Huan Tin v. Republic*, 19 SCRA 966, 969)

Domicile is classified into domicile of origin and domicile of choice. The law attributes to every individual a domicile of origin, which is the domicile of his parents, or of the head of his family, or of the person on whom he is legally dependent at the time of his birth. While the domicile of origin is generally the place where one is born or reared, it maybe elsewhere (28 C.J.S. §5). Domicile of choice, on the other hand, is the place which the person has elected and chosen for himself to displace his previous domicile; it has for its true basis or foundation the intention of the person (28 C.J.S., § 6). In order to hold that a person has abandoned his domicile and acquired a new one called domicile of choice, the following requisites must concur, namely, (a) residence or bodily presence in the new locality, (b) intention to remain there or *animus manendi*, and (c) an intention to abandon the old domicile or *animus non revertendi* (*Romualdez v. RTC*, Br. 7, Tacloban City, 226 SCRA 408, 415). A third classification is domicile by operation of law which attributes to a person a domicile independent of his own intention or actual residence, ordinarily resulting from legal domestic relations, as that of the wife arising from marriage, or the relation of a parent and a child (28 C.J.S. § 7).

In election law, when our Constitution speaks of residence for election purposes it means domicile (*Co v. Electoral Tribunal of the House of Representatives*, 199 SCRA 692, 713; *Nuval v. Guray*, 52 Phil. 645, 651). To my mind, public respondent Commission on Elections misapplied this concept of domicile which led to petitioner's disqualification by ruling that petitioner failed to comply with the constitutionally mandated one-year residence requirement. Apparently, public respondent Commission deemed as conclusive petitioner's stay and registration as voter in many places as conduct disclosing her intent to abandon her established domicile of origin in Tacloban, Leyte. In several decisions, though, the Court has laid down the rule that registration of a voter in a place other than his place of origin is not sufficient to constitute abandonment or loss of such residence (*Faypon v. Quirino*, 96 Phil. 294, 300). Respondent Commission offered no cogent reason to depart from this rule except to surmise petitioner's intent of abandoning her domicile of origin.

It has been suggested that petitioner's domicile of origin was supplanted by a new domicile due to her marriage, a domicile by operation of law. The proposition is that upon the death of her husband in 1989 she retains her husband's domicile, i.e., Batac, Ilocos Norte, until she makes an actual change thereof. I find this proposition quite untenable.

Tacloban, Leyte, is petitioner's domicile of origin which was involuntarily supplanted with another, i.e., Batac, Ilocos Norte, upon her marriage in 1954 with then Congressman Marcos. By legal fiction she followed the domicile of her husband. In my view, the reason for the law is for the spouses to fully and effectively perform their marital duties and obligations to one another.^[1] The question of domicile, however, is not affected by the fact that it was the legal or moral duty of the individual to reside in a given place (28 C.J.S. § 11). Thus, while the wife retains her marital domicile so long as the marriage subsists, she automatically loses it upon the latter's termination, for the reason behind the law then ceases. Otherwise, petitioner, after her marriage was ended by the death of her husband, would be placed in a quite absurd and unfair situation of having been freed from all wifely obligations yet made to hold on to one which no longer serves any meaningful purpose.

It is my view therefore that petitioner reverted to her original domicile of Tacloban, Leyte upon her husband's death without even signifying her intention to that effect. It is for the private respondent to prove, not for petitioner to disprove, that petitioner has effectively abandoned Tacloban, Leyte for Batac, Ilocos Norte or for

some other place/s. The clear rule is that it is the party (herein private respondent) claiming that a person has abandoned or lost his residence of origin who must show and prove preponderantly such abandonment or loss (Faypon v. Quirino, supra at 298; 28 C.J.S. § 16), because the presumption is strongly in favor of an original or former domicile, as against an acquired one (28 C.J.S. § 16). Private respondent unfortunately failed to discharge this burden as the record is devoid of convincing proof that petitioner has acquired, whether voluntarily or involuntarily, a new domicile to replace her domicile of origin.

The records, on the contrary, clearly show that petitioner has complied with the constitutional one-year residence requirement. After her exile abroad, she returned to the Philippines in 1991 to reside in Olot, Tolosa, Leyte, but the Presidential Commission on Good Government which sequestered her residential house and other properties forbade her necessitating her transient stay in various places in Manila (Affidavit p.6, attached as Annex I of the Petition). In 1992, she ran for the position of president writing in her certificate of candidacy her residence as San Juan, Metro Manila. After her loss therein, she went back to Tacloban City, acquired her residence certificate[2] and resided with her brother in San Jose. She resided in San Jose, Tacloban City until August of 1994 when she was allowed by the PCGG to move and reside in her sequestered residential house in Olot, Tolosa, Leyte (Annex I, p. 6).[3] It was in the same month of August when she applied for the cancellation of her previous registration in San Juan, Metro Manila in order to register anew as voter of Olot, Tolosa, Leyte, which she did on January 28, 1995. From this sequence of events, I find it quite improper to use as the reckoning period of the one-year residence requirement the date when she applied for the cancellation of her previous registration in San Juan, Metro Manila. The fact which private respondent never bothered to disprove is that petitioner transferred her residence after the 1992 presidential election from San Juan, Metro Manila to San Jose, Tacloban City, and resided therein until August of 1994. She later transferred to Olot, Tolosa, Leyte (Annex I, p. 7). It appearing that both Tacloban City and Tolosa, Leyte are within the First Congressional District of Leyte, it indubitably stands that she had more than a year of residence in the constituency she sought to be elected. Petitioner, therefore, has satisfactorily complied with the one-year qualification required by the 1987 Constitution.

I vote to grant the petition.

[1] See Articles 68-73 of E.O. 209, as amended, otherwise known as The Family Code of the Philippines.

[2] Residence Certificate No. 15226186L, dated Nov. 5, 1992.

[3] PCGG Chairman Gunigundo's letter addressed to Col. Kempis.

DISSENTING OPINION

PADILLA, J.:

I regret that I cannot join the majority opinion as expressed in the well-written ponencia of Mr. Justice Kapunan.

As in any controversy arising out of a Constitutional provision, the inquiry must begin and end with the provision itself. The controversy should not be blurred by what, to me, are academic disquisitions. In this particular controversy, the Constitutional provision on point states that - "no person shall be a member of the House of Representatives unless he is a natural-born citizen of the Philippines, and on the day of the election, is at least twenty-five (25) years of age, able to read and write, and except the party list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election." (Article VI, section 6)

It has been argued that for purposes of our election laws, the term residence has been understood as synonymous with domicile. This argument has been validated by no less than the Court in numerous cases^[1] where significantly the factual circumstances clearly and convincingly proved that a person does not effectively lose his domicile of origin if the intention to reside therein is manifest with his personal presence in the place, coupled with conduct indicative of such intention.

With this basic thesis in mind, it would not be difficult to conceive of different modalities within which the phrase "a resident thereof (meaning, the legislative district) for a period of not less than one year" would fit.

The first instance is where a person's residence and domicile coincide in which case a person only has to prove that he has been domiciled in a permanent location for not less than a year before the election.

A second situation is where a person maintains a residence apart from his domicile in which case he would have the luxury of district shopping, provided of course, he satisfies the one-year residence period in the district as the minimum period for eligibility to the position of congressional representative for the district.

In either case, one would not be constitutionally disqualified for abandoning his residence in order to return to his domicile of origin, or better still, domicile of choice; neither would one be disqualified for abandoning altogether his domicile in favor of his residence in the district where he desires to be a candidate.

The most extreme circumstance would be a situation wherein a person maintains several residences in different districts. Since his domicile of origin continues as an option as long as there is no effective abandonment (*animus non revertendi*), he can practically choose the district most advantageous for him.

All these theoretical scenarios, however, are tempered by the unambiguous limitation that "for a period of not less than one year immediately preceding the day of the election", he must be a resident in the district where he desires to be elected.

To my mind, the one year residence period is crucial regardless of whether or not the term "residence" is to be synonymous with "domicile." In other words, the candidate's intent and actual presence in one district must in all situations satisfy the length of time prescribed by the fundamental law. And this, because of a definite Constitutional purpose. He must be familiar with the environment and problems of a district he intends to represent in Congress and the one-year residence in said district would be the minimum period to acquire such familiarity, if not versatility.

In the case of petitioner Imelda R. Marcos, the operative facts are distinctly set out in the now assailed decision of the Comelec 2nd Division dated 24 April 1995 (as affirmed by the Comelec en banc) -

"In or about 1938 when respondent was a little over 8 years old, she established her domicile in Tacloban, Leyte (Tacloban City). She studied in the Holy Infant Academy in Tacloban from 1938 to 1948 when she graduated from high school. She pursued her college studies in St. Paul's College, now Divine Word University of Tacloban, where she earned her degree in Education. Thereafter, she taught in the Leyte Chinese High School, still in Tacloban City. In 1952 she went to Manila to work with her cousin, the late Speaker Daniel Z. Romualdez in his office in the House of Representatives. In 1954, she married ex-President Ferdinand Marcos when he was still a congressman of Ilocos Norte. She lived with him in Batac, Ilocos Norte and registered there as a voter. When her husband was elected Senator of the Republic in 1959, she and her husband lived together in San Juan, Rizal where she registered as a voter. In 1965 when her husband was elected President of the Republic of the Philippines, she lived with him in Malacanang Palace and registered as a voter in San Miguel, Manila.

"During the Marcos presidency, respondent served as a Member of the Batasang Pambansa, Minister of Human Settlements and Governor of Metro Manila. She claimed that in February 1986, she and her family

were abducted and kidnapped to Honolulu, Hawaii. In November 1991, she came home to Manila. In 1992 respondent ran for election as President of the Philippines and filed her Certificate of Candidacy wherein she indicated that she is a resident and registered voter of San Juan, Metro Manila. On August 24, 1994, respondent filed a letter with the election officer of San Juan, Metro Manila, requesting for cancellation of her registration in the Permanent List of Voters in Precinct No. 157 of San Juan, Metro Manila, in order that she may be re-registered or transferred to Brgy. Olot, Tolosa, Leyte. (Annex 2-B, Answer). On August 31, 1994, respondent filed her Sworn Application for Cancellation of Voter's Previous Registration (Annex 2-C, Answer) stating that she is a duly registered voter in Precinct No. 157-A, Brgy. Maytunas, San Juan, Metro Manila and that she intends to register at Brgy. Olot, Tolosa, Leyte.

"On January 28, 1995 respondent registered as a voter at Precinct No. 18-A of Olot, Tolosa, Leyte. She filed with the Board of Election Inspectors CE Form No. I, Voter Registration Record No. 94-3349772, wherein she alleged that she has resided in the municipality of Tolosa for a period of 6 months (Annex A, Petition).

"On March 8, 1995, respondent filed with the Office of the Provincial Election Supervisor, Leyte, a Certificate of Candidacy for the position of Representative of the First District of Leyte wherein she also alleged that she has been a resident in the constituency where she seeks to be elected for a period of 7 months. The pertinent entries therein are as follows:

7. PROFESSION OR OCCUPATION: House-wife/Teacher/Social Worker.

8. RESIDENCE (complete address): Brgy. Olot, Tolosa, Leyte

Post Office Address for election purposes: Brgy. Olot, Toloso, Leyte

9. RESIDENCE IN THE CONSTITUENCY WHEREIN I SEEK TO BE ELECTED IMMEDIATELY PRECEDING ELECTION: ____ Years Seven Months

10. I AM NOT A PERMANENT RESIDENT OF, OR IMMIGRANT TO, A FOREIGN COUNTRY.

THAT I AM ELIGIBLE for said office; That I will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto; That I will obey the laws, legal orders and decrees promulgated by the duly-constituted authorities; That the obligation imposed by my oath is assumed voluntarily, without mental reservation or purpose of evasion; and That the facts stated herein are true to the best of my knowledge.

(Sgd.) Imelda Romualdez-Marcos

(Signature of Candidate)"[2]

Petitioner's aforestated certificate of candidacy filed on 8 March 1995 contains the decisive component or seed of her disqualification. It is contained in her answer under oath of "seven months" to the query of "residence in the constituency wherein I seek to be elected immediately preceding the election."

It follows from all the above that the Comelec committed no grave abuse of discretion in holding that petitioner is disqualified from the position of representative for the 1st congressional district of Leyte in the elections of 8 May 1995, for failure to meet the "not less than one-year residence in the constituency (1st district, Leyte) immediately preceding the day of election (8 May 1995)."

Having arrived at petitioner's disqualification to be a representative of the first district of Leyte, the next important issue to resolve is whether or not the Comelec can order the Board of Canvassers to determine and proclaim the winner out of the remaining qualified candidates for representative in said district.

I am not unaware of the pronouncement made by this Court in the case of Labo vs. Comelec, G.R. 86564, August 1, 1989, 176 SCRA 1 which gave the rationale as laid down in the early 1912 case of Topacio vs. Paredes, 23

Phil. 238 that:

"x x x. 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 or it receives a majority or plurality of the legal votes cast in the election. (20 Corpus Juris 2nd, S 243, p. 676)

The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. The votes cast for a dead, disqualified, or non-eligible person may not be valid to vote the winner into office or maintain him there. However, in the absence of a statute which clearly asserts a contrary political and legislative policy on the matter, if the votes were cast in the sincere belief that the candidate was alive, qualified, or eligible, they should not be treated as stray, void or meaningless."

Under Sec. 6 RA 6646, (An Act Introducing Additional Reforms in the Electoral System and for other purposes) (84 O.G. 905, 22 February 1988) it is provided that:

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

There is no need to indulge in legal hermeneutics to sense the plain and unambiguous meaning of the provision quoted above. As the law now stands, the legislative policy does not limit its concern with the effect of a final judgment of disqualification only before the election, but even during or after the election. The law is clear that in all situations, the votes cast for a disqualified candidate SHALL NOT BE COUNTED. The law has also validated the jurisdiction of the Court or Commission on Election to continue hearing the petition for disqualification in case a candidate is voted for and receives the highest number of votes, if for any reason, he is not declared by final judgment before an election to be disqualified.

Since the present case is an after election scenario, the power to suspend proclamation (when evidence of his guilt is strong) is also explicit under the law. What happens then when after the elections are over, one is declared disqualified? Then, votes cast for him "shall not be counted" and in legal contemplation, he no longer received the highest number of votes.

It stands to reason that Section 6 of RA 6646 does not make the second placer the winner simply because a "winning candidate is disqualified," but that the law considers him as the candidate who had obtained the highest number of votes as a result of the votes cast for the disqualified candidate not being counted or considered.

As this law clearly reflects the legislative policy on the matter, then there is no reason why this Court should not re-examine and consequently abandon the doctrine in the Jun Labo case. It has been stated that "the qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility" most especially when it is mandated by no less than the Constitution.

ACCORDINGLY, I vote to DISMISS the petition and to order the Provincial Board of Canvassers of Leyte to proclaim the candidate receiving the highest number of votes, from among the qualified candidates, as the duly elected representative of the 1st district of Leyte.

[1] Nuval vs. Guray, G.R. No. 30241, December 29, 1928; Larena vs. Teves, G.R. No. 42439, December 10, 1934; Gallego vs. Verra, G.R. No. 48641, November 24, 1941; De los Reyes vs. Solidum, G.R. No. 42798. August 31, 1935; but see Romualdez vs. RTC, Br. 7 Tacloban City, where a sudden departure from the country was not deemed "voluntary" so as to constitute abandonment of domicile both in fact and in law.

[2] Annex "A" Petition, pp. 2-4.

DISSENTING OPINION

REGALADO, J.:

While I agree with some of the factual bases of the majority opinion, I cannot arrive conjointly at the same conclusion drawn therefrom. Hence, this dissent which assuredly is not formulated "on the basis of the personality of a petitioner in a case."

I go along with the majority in their narration of antecedent facts, insofar as the same are pertinent to this case, and which I have simplified as follows:

1. Petitioner, although born in Manila, resided during her childhood in the present Tacloban City, she being a legitimate daughter of parents who appear to have taken up permanent residence therein. She also went to school there and, for a time, taught in one of the schools in that city.
2. When she married then Rep. Ferdinand E. Marcos who was then domiciled in Batac, Ilocos Norte, by operation of law she acquired a new domicile in that place in 1954.
3. In the successive years and during the events that happened thereafter, her husband having been elected as a Senator and then as President, she lived with him and their family in San Juan, Rizal and then in Malacanang Palace in San Miguel, Manila.
4. Over those years, she registered as a voter and actually voted in Batac, Ilocos Norte, then in San Juan, Rizal, and also in San Miguel, Manila, all these merely in the exercise of the right of suffrage.
5. It does not appear that her husband, even after he had assumed those lofty positions successively, ever abandoned his domicile of origin in Batac, Ilocos Norte where he maintained his residence and invariably voted in all elections.
6. After the ouster of her husband from the presidency in 1986 and the sojourn of the Marcos family in Honolulu, Hawaii, U.S.A., she eventually returned to the Philippines in 1991 and resided in different places which she claimed to have been merely temporary residences.
7. In 1992, petitioner ran for election as President of the Philippines and in her certificate of candidacy she indicated that she was then a registered voter and resident of San Juan, Metro Manila.
8. On August 24, 1994, she filed a letter for the cancellation of her registration in the Permanent List of Voters in Precinct No. 157 of San Juan, Metro Manila in order that she may "be re-registered or transferred to Brgy. Olot, Tolosa, Leyte." On August 31, 1994, she followed this up with her Sworn Application for Cancellation of Voter's Previous Registration wherein she stated that she was a registered voter in Precinct No. 157-A, Brgy. Maytunas, San Juan, Metro Manila and that she intended to register in Brgy. Olot, Tolosa, Leyte.
9. On January 28, 1995, petitioner registered as a voter at Precinct No. 18-A of Olot, Tolosa, Leyte, for which purpose she filed with the therein Board of Election Inspectors a voter's registration record form alleging that she had resided in that municipality for six months.

10. On March 8, 1995, petitioner filed her certificate of candidacy for the position of Representative of the First District of Leyte wherein she alleged that she had been a resident for "Seven Months" of the constituency where she sought to be elected.

11. On March 29, 1995, she filed an "Amended/Corrected Certificate of Candidacy" wherein her answer in the original certificate of candidacy to item "8. RESIDENCE IN THE CONSTITUENCY WHERE I SEEK, TO BE ELECTED IMMEDIATELY PRECEDING THE ELECTION:" was changed or replaced with a new entry reading "SINCE CHILDHOOD."

The sole issue for resolution is whether, for purposes of her candidacy, petitioner had complied with the residency requirement of one year as mandated by no less than Section 6, Article VI of the 1987 Constitution.

I do not intend to impose upon the time of my colleagues with a dissertation on the difference between residence and domicile. We have had enough of that and I understand that for purposes of political law and, for that matter of international law, residence is understood to be synonymous with domicile. That is so understood in our jurisprudence and in American Law, in contradistinction to the concept of residence for purposes of civil, commercial and procedural laws whenever an issue thereon is relevant or controlling.

Consequently, since in the present case the question of petitioner's residence is integrated in and inseparable from her domicile, I am addressing the issue from the standpoint of the concept of the latter term, specifically its permutations into the domicile of origin, domicile of choice and domicile by operation of law, as understood in American law from which for this case we have taken our jurisprudential bearings.

My readings inform me that the domicile of the parents at the time of birth, or what is termed the "domicile of origin," constitutes the domicile of an infant until abandoned, or until the acquisition of a new domicile in a different place.[1] In the instant case, we may grant that petitioner's domicile of origin,[2] at least as of 1938, was what is now Tacloban City.

Now, as I have observed earlier, domicile is said to be of three kinds, that is, domicile by birth, domicile by choice, and domicile by operation of law. The first is the common case of the place of birth or domicilium originis; the second is that which is voluntarily acquired by a party or domicilium proprio motu, the last which is consequential, as that of a wife arising from marriage[3] is sometimes called domicilium necessarium. There is no debate that the domicile of origin can be lost or replaced by a domicile of choice or a domicile by operation of law subsequently acquired by the party.

When petitioner contracted marriage in 1954 with then Rep. Marcos, by operation of law, not only international or American but of our own enactment,[4] she acquired her husband's domicile of origin in Batac, Ilocos Norte and correspondingly lost her own domicile of origin in Tacloban City.

Her subsequent changes of residence -- to San Juan, Rizal, then to San Miguel, Manila, thereafter to Honolulu, Hawaii, and back to now San Juan, Metro Manila -- do not appear to have resulted in her thereby acquiring new domiciles of choice. In fact, it appears that her having resided in those places was by reason of the fortunes or misfortunes of her husband and his peregrinations in the assumption of new official positions or the loss of them. Her residence in Honolulu and, of course, those after her return to the Philippines were, as she claimed, against her will or only for transient purposes which could not have invested them with the status of domiciles of choice.[5]

After petitioner's return to the Philippines in 1991 and up to the present imbroglio over her requisite residency in Tacloban City or Olot, Tolosa, Leyte, there is no showing that she ever attempted to acquire any other domicile of choice which could have resulted in the abandonment of her legal domicile in Batac, Ilocos Norte. On that score,

we note the majority's own submission[6] that, to successfully effect a change of domicile, one must demonstrate (a) an actual removal or an actual change of domicile, (b) a bona fide intention of abandoning the former place of residence and establishing a new one, and (c) acts which correspond with the purpose.

We consequently have to also note that these requirements for the acquisition of a domicile of choice apply whether what is sought to be changed or substituted is a domicile of origin (*domicilium origins*) or a domicile by operation of law (*domicilium necesarium*). Since petitioner had lost her *domicilium originis* which had been replaced by her *domicilium necesarium*, it is therefore her continuing domicile in Batac, Ilocos Norte which, if at all, can be the object of legal change under the contingencies of the case at bar.

To get out of this quandary, the majority decision echoes the dissenting opinion of Commissioner Regalado E. Maambong in SPA 95-009 of the Commission on Elections,[7] and advances this novel proposition:

"It may be said that petitioner lost her domicile of origin by operation of law as a result of her marriage to the late President Ferdinand E. Marcos in 1952 (sic, 1954). By operation of law (*domicilium necesarium*), her legal domicile at the time of her marriage became Batac, Ilocos Norte although there were no indications of an intention on her part to abandon her domicile of origin. Because of her husband's subsequent death and through the operation of the provisions of the New Family Code already in force at the time, however, her legal domicile automatically reverted to her domicile of origin. x x x" (*Italics supplied*).

Firstly, I am puzzled why although it is conceded that petitioner had acquired a *domicilium necesarium* in Batac, Ilocos Norte, the majority insists on making a qualification that she did not intend to abandon her domicile of origin. I find this bewildering since, in this situation, it is the law that declares where petitioner's domicile is at any given time, and not her self-serving or putative intent to hold on to her former domicile. Otherwise, contrary to their own admission that one cannot have more than one domicile at a time,[8] the majority would be suggesting that petitioner retained Tacloban City as (for lack of a term in law since it does not exist therein) the equivalent of what is fancied as a reserved, dormant, potential, or residual domicile.

Secondly, domicile once lost in accordance with law can only be recovered likewise in accordance with law. However, we are here being titillated with the possibility of an automatic reversion to or reacquisition of a domicile of origin after the termination of the cause for its loss by operation of law. The majority agrees that since petitioner lost her domicile of origin by her marriage, the termination of the marriage also terminates that effect thereof. I am impressed by the ingeniousness of this theory which proves that, indeed, necessity is the mother of inventions. Regretfully, I find some difficulty in accepting either the logic or the validity of this argument.

If a party loses his domicile of origin by obtaining a new domicile of choice, he thereby voluntarily abandons the former in favor of the latter. If, thereafter, he abandons that chosen domicile, he does not per se recover his original domicile unless, by subsequent acts legally indicative thereof, he evinces his intent and desire to establish the same as his new domicile, which is precisely what petitioner belatedly and, evidently just for purposes of her candidacy, unsuccessfully tried to do.

One's subsequent abandonment of his domicile of choice cannot automatically restore his domicile of origin, not only because there is no legal authority therefor but because it would be absurd. Pursued to its logical consequence, that theory of ipso jure reversion would rule out the fact that said party could already very well have obtained another domicile, either of choice or by operation of law, other than his domicile of origin. Significantly and obviously for this reason, the Family Code, which the majority inexplicably invokes, advisedly does not regulate this contingency since it would impinge on one's freedom of choice.

Now, in the instant case, petitioner not only voluntarily abandoned her domicile of choice (unless we assume that she entered into the marital state against her will) but, on top of that, such abandonment was further affirmed

through her acquisition of a new domicile by operation of law. In fact, this is even a case of both voluntary and legal abandonment of a domicile of origin. With much more reason, therefore, should we reject the proposition that with the termination of her marriage in 1989, petitioner had supposedly per se and ipso facto reacquired her domicile of origin which she lost in 1954. Otherwise, this would be tantamount to saying that during the period of marital coverture, she was simultaneously in possession and enjoyment of a domicile of origin which was only in a state of suspended animation.

Thus, the American rule is likewise to the effect that while after the husband's death the wife has the right to elect her own domicile,[9] she nevertheless retains the last domicile of her deceased husband until she makes an actual change.[10] In the absence of affirmative evidence, to the contrary, the presumption is that a wife's domicile or legal residence follows that of her husband and will continue after his death.[11]

I cannot appreciate the premises advanced in support of the majority's theory based on Articles 68 and 69 of the Family Code. All that is of any relevance therein is that under this new code, the right and power to fix the family domicile is now shared by the spouses. I cannot perceive how that joint right, which in the first place was never exercised by the spouses, could affect the domicile fixed by the law for petitioner in 1954 and, for her husband, long prior thereto. It is true that a wife now has the coordinate power to determine the conjugal or family domicile, but that has no bearing on this case. With the death of her husband, and each of her children having gotten married and established their own respective domiciles, the exercise of that joint power was and is no longer called for or material in the present factual setting of this controversy. Instead, what is of concern in petitioner's case was the matter of her having acquired or not her own domicile of choice.

I agree with the majority's discourse on the virtues of the growing and expanded participation of women in the affairs of the nation, with equal rights and recognition by Constitution and statutory conferment. However, I have searched in vain for a specific law or judicial pronouncement which either expressly or by necessary implication supports the majority's desired theory of automatic reacquisition of or reversion to the domicilium originis of petitioner. Definitely, as between the settled and desirable legal norms that should govern this issue, there is a world of difference; and, unquestionably, this should be resolved by legislative articulation but not by the eloquence of the well-turned phrase.

In sum, petitioner having lost Tacloban City as her domicile of origin since 1954 and not having automatically reacquired any domicile therein, she cannot legally claim that her residency in the political constituency of which it is a part continued since her birth up to the present. Respondent commission was, therefore, correct in rejecting her pretension to that effect in her amended/corrected certificate of candidacy, and in holding her to her admission in the original certificate that she had actually resided in that constituency for only seven months prior to the election. These considerations render it unnecessary to further pass upon the procedural issues raised by petitioner.

ON THE FOREGOING PREMISES, I vote to DISMISS the petition for lack of merit.

[1] Struble vs. Struble, Tex. Civ. App., 177 S.W. 2d, 279, 283.

[2] This is also referred to as natural domicile or domicile by birth (Johnson vs. Twenty-One Bales, 13 Fed. Cas. 863).

[3] Story, Conflict of Laws, Sec. 46; Railroad Co. vs. Kimbrough, 115 Ky 512, 74 S.W. 229; and Johnson vs. Harvey, 261 Ky. 522, 88 S.W. 2d 42, 46, 47, as cited in Black's Law Dictionary, 4th ed.

[4] Article 110, Civil Code.

[5] *Towson vs. Towson*, 126 Va. 640, 102 S.E. 48, 52; *Fisher vs. Jordan*, C.C.A. Tex., 116 F. 2d. 183, 186; *Minick vs. Minick*, 111 Fla. 469, 149 So. 483, 488; *Hartzler vs. Radeka*, 265 Mich. 451; 251 N.W. 554.

[6] Citing 18 Am. Jur. 219-220.

[7] *Montejo vs. Marcos*, En Banc, May 10, 1995.

[8] Citing 20 Am. Jur. 71.

[9] *Cheely vs. Clayton*, D.C., 110 U.S. 701, L. Ed. 298.

[10] *In re Gates' Estate*, 191 N.Y.S. 757, 117 Misc. 800 -- *In re Green's Estate*, 164 N.Y.S. 1063, 99 Misc. 582, affirmed 165 N.Y.S. 1088, 179 App. Div. 890, as reported in 28 C.J.S. 27.

[11] *Clark vs. Baker*, 196 S.E. 750, 186 Ga. 65, op. cit. 37.

DISSENTING OPINION

DAVIDE, JR. J.:

I respectfully dissent from the opinion of the majority written by Mr. Justice Santiago M. Kapunan, more particularly on the issue of the petitioner's qualification.

Under Section 7, Subdivision A, Article IX of the Constitution, decisions, orders, or rulings of the COMELEC may be brought to this Court only by the special civil action for certiorari under Rule 65 of the Rules of Court (*Aratuc vs. COMELEC*, 88 SCRA 251 [1979]; *Dario vs. Mison*, 176 SCRA 84 [1989]).

Accordingly, a writ of certiorari may be granted only if the COMELEC has acted without or in excess of jurisdiction or with grave abuse of discretion (Section 1, Rule 65, Rules of Court). Since the COMELEC has, undoubtedly, jurisdiction over the private respondent's petition, the only issue left is whether it acted with grave abuse of discretion in disqualifying the petitioner.

My careful and meticulous perusal of the challenged resolution of 24 April 1995 of the COMELEC Second Division and the En Banc resolution of 7 May 1995 discloses total absence of abuse of discretion, much less grave abuse thereof. The resolution of the Second Division dispassionately and objectively discussed in minute details the facts which established beyond cavil that herein petitioner was disqualified as a candidate on the ground of lack of residence in the First Congressional District of Leyte. It has not misapplied, miscomprehended, or misunderstood facts or circumstances of substance pertinent to the issue of her residence.

The majority opinion, however, overturned the COMELEC's findings of fact for lack of proof that the petitioner has abandoned Tolosa as her domicile of origin, which is allegedly within the First Congressional District of Leyte.

I respectfully submit that the petitioner herself has provided the COMELEC, either by admission or by documentary evidence, overwhelming proof of the loss or abandonment of her domicile of origin, which is Tacloban City and not Tolosa, Leyte. Assuming that she decided to live again in her domicile of origin, that became her second domicile of choice, where her stay, unfortunately, was for only seven months before the day of the election. She was then disqualified to be a candidate for the position of Representative of the First Congressional District of Leyte. A holding to the contrary would be arbitrary.

It may indeed be conceded that the petitioner's domicile of choice was either Tacloban City or Tolosa, Leyte.

Nevertheless, she lost it by operation of law sometime in May 1954 upon her marriage to the then Congressman (later, President) Ferdinand E. Marcos. A domicile by operation of law is that domicile which the law attributes to a person, independently of his own intention or actual residence, as results from legal domestic relations as that of the wife arising from marriage (28 C.J.S. Domicile § 7, 11). Under the governing law then, Article 110 of the Civil Code, her new domicile or her domicile of choice was the domicile of her husband, which was Batac, Ilocos Norte. Said Article reads as follows:

ART. 110. The husband shall fix the residence of the family. But the court may exempt the wife from living with the husband if he should live abroad unless in the service of the Republic.

Commenting thereon, civilist Arturo M. Tolentino states:

Although the duty of the spouses to live together is mutual, the husband has a predominant right because he is empowered by law to fix the family residence. This right even predominates over some rights recognized by law in the wife. For instance, under article 117 the wife may engage in business or practice a profession or occupation. But because of the power of the husband to fix the family domicile, he may fix it at such a place as would make it impossible for the wife to continue in business or in her profession. For justifiable reasons, however, the wife may be exempted from living in the residence chosen by the husband. The husband cannot validly allege desertion by the wife who refuses to follow him to a new place of residence, when it appears that they have lived for years in a suitable home belonging to the wife, and that his choice of a different home is not made in good faith. (Commentaries and Jurisprudence on the Civil Code of the Philippines, vol. 1, 1985 ed., 339).

Under common law, a woman upon her marriage loses her own domicile and, by operation of law, acquires that of her husband, no matter where the wife actually lives or what she believes or intends. Her domicile is fixed in the sense that it is declared to be the same as his, and subject to certain limitations, he can change her domicile by changing his own (25 Am Jur 2d Domicile § 48, 37).

It must, however, be pointed out that under Article 69 of the Family Code, the fixing of the family domicile is no longer the sole prerogative of the husband, but is now a joint decision of the spouses, and in case of disagreement the court shall decide. The said article uses the term "family domicile," and not family residence, as "the spouses may have multiple residences, and the wife may elect to remain in one of such residences, which may destroy the duty of the spouses to live together and its corresponding benefits" (ALICIA V. SEMPIO-DIY, Handbook on the Family Code of the Philippines, [1988], 102).

The theory of automatic restoration of a woman's domicile of origin upon the death of her husband, which the majority opinion adopts to overcome the legal effect of the petitioner's marriage on her domicile, is unsupported by law and by jurisprudence. The settled doctrine is that after the husband's death the wife has a right to elect her own domicile, but she retains the last domicile of her husband until she makes an actual change (28 C.J.S. Domicile § 12, 27). Or, on the death of the husband, the power of the wife to acquire her own domicile is revived, but until she exercises the power her domicile remains that of the husband at the time of his death (25 Am Jur 2d Domicile § 62, 45). Note that what is revived is not her domicile of origin but her power to acquire her own domicile.

Clearly, even after the death of her husband, the petitioner's domicile was that of her husband at the time of his death — which was Batac, Ilocos Norte, since their residences in San Juan, Metro Manila, and San Miguel, Manila, were their residences for convenience to enable her husband to effectively perform his official duties. Their residence in San Juan was a conjugal home, and it was there to which she returned in 1991 when she was already a widow. In her sworn certificate of candidacy for the Office of the President in the synchronized elections of May 1992, she indicated therein that she was a resident of San Juan, Metro Manila. She also voted in the said

elections in that place.

On the basis of her evidence, it was only on 24 August 1994 when she exercised her right as a widow to acquire her own domicile in Tolosa, Leyte, through her sworn statement requesting the Election Officer of San Juan, Metro Manila, to cancel her registration in the permanent list of voters in Precinct 157 thereat and praying that she be "re-registered or transferred to Brgy. Olot, Tolosa, Leyte, the place of [her] birth and permanent residence" (photocopy of Exhibit "B," attached as Annex "2" of private respondent Montejo's Comment). Notably, she contradicted this sworn statement regarding her place of birth when, in her Voter's Affidavit sworn to on 15 March 1992 (photocopy of Exhibit "C," attached as Annex "3," Id.), her Voter Registration Record sworn to on 28 January 1995 (photocopy of Exhibit "E," attached as Annex "5," Id.), and her Certificate of Candidacy sworn to on 8 March 1995 (photocopy of Exhibit "A," attached as Annex "1," Id.), she solemnly declared that she was born in Manila.

The petitioner is even uncertain as to her domicile of origin. Is it Tacloban City or Tolosa, Leyte? In the affidavit attached to her Answer to the petition for disqualification (Annex "I" of Petition), she declared under oath that her "domicile or residence is Tacloban City." If she did intend to return to such domicile or residence of origin why did she inform the Election Officer of San Juan that she would transfer to Olot, Tolosa, Leyte, and indicate in her Voter's Registration Record and in her certificate of candidacy that her residence is Olot, Tolosa, Leyte? While this uncertainty is not important insofar as residence in the congressional district is concerned, it nevertheless proves that forty-one years had already lapsed since she had lost or abandoned her domicile of origin by virtue of marriage and that such length of time diminished her power of recollection or blurred her memory.

I find to be misplaced the reliance by the majority opinion on *Faypon vs. Quirino* (96 Phil. 294 [1954]), and the subsequent cases which established the principle that absence from original residence or domicile of origin to pursue studies, practice one's profession, or engage in business in other states does not constitute loss of such residence or domicile. So is the reliance on Section 117 of the Omnibus Election Code which provides that transfer of residence to any other place by reason of one's "occupation; profession; employment in private and public service; educational activities; work in military or naval reservations; service in the army, navy or air force, the constabulary or national police force; or confinement or detention in government institutions in accordance with law" is not deemed as loss of original residence. Those cases and legal provision do not include marriage of a woman. The reason for the exclusion is, of course, Article 110 of the Civil Code. If it were the intention of this Court or of the legislature to consider the marriage of a woman as a circumstance which would not operate as an abandonment of domicile (of origin or of choice), then such cases and legal provision should have expressly mentioned the same.

This Court should not accept as gospel truth the self-serving claim of the petitioner in her affidavit (Annex "A" of her Answer in COMELEC SPA No. 95-009; Annex "I" of Petition) that her "domicile or residence of origin is Tacloban City," and that she "never intended to abandon this domicile or residence of origin to which [she] always intended to return whenever absent." Such a claim of intention cannot prevail over the effect of Article 110 of the Civil Code. Besides, the facts and circumstances or the vicissitudes of the petitioner's life after her marriage in 1954 conclusively establish that she had indeed abandoned her domicile of origin and had acquired a new one *animo et facto* (KOSSUTH KENT KENNAN, *A Treatise on Residence and Domicile*, [1934], 214, 326).

Neither should this Court place complete trust on the petitioner's claim that she "merely committed an honest mistake" in writing down the word "seven" in the space provided for the residency qualification requirement in the certificate of candidacy. Such a claim is self-serving and, in the light of the foregoing disquisitions, would be all sound and fury signifying nothing. To me, she did not commit any mistake, honest or otherwise; what she stated was the truth.

The majority opinion also disregards a basic rule in evidence that he who asserts a fact or the affirmative of an issue has the burden of proving it (*Imperial Victory Shipping Agency vs. NLRC*, 200 SCRA 178 [1991]; *P.T. Cerna Corp. vs. Court of Appeals*, 221 SCRA 19 [1993]). Having admitted marriage to the then Congressman Marcos, the petitioner could not deny the legal consequence thereof on the change of her domicile to that of her husband. The majority opinion rules or at least concludes that "[b]y operation of law (*domicilium necesarium*), her legal domicile at the time of her marriage automatically became Batac, Ilocos Norte." That conclusion is consistent with Article 110 of the Civil Code. Since she is presumed to retain her deceased husband's domicile until she exercises her revived power to acquire her own domicile, the burden is upon her to prove that she has exercised her right to acquire her own domicile. She miserably failed to discharge that burden.

I vote to deny the petition.

SEPARATE OPINION

ROMERO, J.:

Petitioner has appealed to this Court for relief after the COMELEC ruled that she was disqualified from running for Representative of her District and that, in the event that she should, nevertheless, muster a majority vote, her proclamation should be suspended. Not by a straightforward ruling did the COMELEC pronounce its decision as has been its unvarying practice in the past, but by a startling succession of "reverse somersaults." Indicative of its shifting stance vis-a-vis petitioner's certificate of candidacy were first, the action of its Second Division disqualifying her and cancelling her original Certificate of Candidacy by a vote of 2-1 on April 24, 1995; then the denial by the COMELEC en banc of her Motion for Reconsideration on May 7, 1995, a day before the election; then because she persisted in running, its decision on May 11, 1995 or three days after the election, allowing her proclamation in the event that the results of the canvass should show that she obtained the highest number of votes (obviously noting that petitioner had won overwhelmingly over her opponent), but almost simultaneously reversing itself by directing that even if she wins, her proclamation should nonetheless be suspended.

Crucial to the resolution of the disqualification issue presented by the case at bench is the interpretation to be given to the one-year residency requirement imposed by the Constitution on aspirants for a Congressional seat.[1]

Bearing in mind that the term "resident" has been held to be synonymous with "domicile" for election purposes, it is important to determine whether petitioner's domicile was in the First District of Leyte and if so, whether she had resided there for at least a period of one year. Undisputed is her domicile of origin, Tacloban, where her parents lived at the time of her birth. Depending on what theory one adopts, the same may have been changed when she married Ferdinand E. Marcos, then domiciled in Batac, by operation of law. Assuming it did, his death certainly released her from the obligation to live with him at the residence fixed by him during his lifetime. What may confuse the layman at this point is the fact that the term "domicile" may refer to "domicile of origin," "domicile of choice," or "domicile by operation of law," which subject we shall not belabor since it has been amply discussed by the ponente and in the other separate opinions.

In any case, what assumes relevance is the divergence of legal opinion as to the effect of the husband's death on the domicile of the widow. Some scholars opine that the widow's domicile remains unchanged; that the deceased husband's wishes perforce still bind the wife he has left behind. Given this interpretation, the widow cannot possibly go far enough to sever the domiciliary tie imposed by her husband.

It is bad enough to interpret the law as empowering the husband unilaterally to fix the residence or domicile of the family, as laid down in the Civil Code,[2] but to continue giving obeisance to his wishes even after the rationale

underlying the mutual duty of the spouses to live together has ceased, is to close one's eyes to the stark realities of the present.

At the other extreme is the position that the widow automatically reverts to her domicile of origin upon the demise of her husband. Does the law so abhor a vacuum that the widow has to be endowed somehow with a domicile? To answer this question which is far from rhetorical, one will have to keep in mind the basic principles of domicile: Everyone must have a domicile. Then one must have only a single domicile for the same purpose at any given time. Once established, a domicile remains until a new one is acquired, for no person lives who has no domicile, as defined by the law he is subject to.

At this juncture, we are confronted with an unexplored legal terrain in this jurisdiction, rendered more murky by the conflicting opinions of foreign legal authorities. This being the state of things, it is as imperative as it is opportune to illumine the darkness with the beacon light of truth, as dictated by experience and the necessity of according petitioner her right to choose her domicile in keeping with the enlightened global trend to recognize and protect the human rights of women, no less than men.

Admittedly, the notion of placing women on par with men, insofar as civil, political and social rights are concerned, is a relatively recent phenomenon that took seed only in the middle of this century. It is a historical fact that for over three centuries, the Philippines had been colonized by Spain, a conservative, Catholic country which transplanted to our shores the Old World culture, mores, attitudes and values. Through the imposition on our government of the Spanish Civil Code in 1889, the people, both men and women, had no choice but to accept such concepts as the husband's being the head of the family and the wife's subordination to his authority. In such role, his was the right to make vital decisions for the family. Many instances easily come to mind, foremost being what is related to the issue before us, namely, that "the husband shall fix the residence of the family."^[3] Because he is made responsible for the support of the wife and the rest of the family,^[4] he is also empowered to be the administrator of the conjugal property, with a few exceptions^[5] and may, therefore, dispose of the conjugal partnership property for purposes specified under the law;^[6] whereas, as a general rule, the wife cannot bind the conjugal partnership without the husband's consent.^[7] As regards the property pertaining to the children under parental authority, the father is the legal administrator and only in his absence may the mother assume his powers.^[8] Demeaning to the wife's dignity are certain strictures on her personal freedoms, practically relegating her to the position of minors and disabled persons. To illustrate a few: The wife cannot, without the husband's consent, acquire any property by gratuitous title, except from her ascendants, descendants, parents-in-law, and collateral relatives within the fourth degree.^[9] With respect to her employment, the husband wields a veto power in case the wife exercises her profession or occupation or engages in business, provided his income is sufficient for the family, according to its social standing and his opposition is founded on serious and valid grounds.^[10] Most offensive, if not repulsive, to the liberal-minded is the effective prohibition upon a widow to get married till after three hundred days following the death of her husband, unless in the meantime, she has given birth to a child.^[11] The mother who contracts a subsequent marriage loses the parental authority over her children, unless the deceased husband, father of the latter, has expressly provided in his will that his widow might marry again, and has ordered that in such case she should keep and exercise parental authority over their children.^[12] Again, an instance of a husband's overarching influence from beyond the grave.

All these indignities and disabilities suffered by Filipino wives for hundreds of years evoked no protest from them until the concept of human rights and equality between and among nations and individuals found hospitable lodgment in the United Nations Charter of which the Philippines was one of the original signatories. By then, the Spanish "conquistadores" had been overthrown by the American forces at the turn of the century. The bedrock of the U.N. Charter was firmly anchored on this credo: "to reaffirm faith in fundamental human rights, in the dignity

and worth of the human person, in the equal rights of men and women." (Underscoring supplied)

It took over thirty years before these egalitarian doctrines bore fruit, owing largely to the burgeoning of the feminist movement. What may be regarded as the international bill of rights for women was implanted in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted by the U.N. General Assembly which entered into force as an international treaty on September 3, 1981. In ratifying the instrument, the Philippines bound itself to implement its liberating spirit and letter, for its Constitution, no less, declared that "The Philippines . . . adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations." [13] One such principle embodied in the CEDAW is granting to men and women "the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile." [14] (Underscoring supplied).

CEDAW's pro-women orientation which was not lost on Filipino women was reflected in the 1987 Constitution of the Philippines and later, in the Family Code, [15] both of which were speedily approved by the first lady President of the country, Corazon C. Aquino. Notable for its emphasis on the human rights of all individuals and its bias for equality between the sexes are the following provisions: "The State values the dignity of every human person and guarantees full respect for human rights" [16] and "The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men." [17]

A major accomplishment of women in their quest for equality with men and the elimination of discriminatory provisions of law was the deletion in the Family Code of almost all of the unreasonable strictures on wives and the grant to them of personal rights equal to that of their husbands. Specifically, the husband and wife are now given the right jointly to fix the family domicile; [18] concomitant to the spouses' being jointly responsible for the support of the family is the right and duty of both spouses to manage the household; [19] the administration and the enjoyment of the community property shall belong to both spouses jointly; [20] the father and mother shall now jointly exercise legal guardianship over the property of their unemancipated common child [21] and several others.

Aware of the hiatus and continuing gaps in the law, insofar as women's rights are concerned, Congress passed a law popularly known as "Women in Development and Nation Building Act." [22] Among the rights given to married women evidencing their capacity to act in contracts equal to that of men are:

- (1) Women shall have the capacity to borrow and obtain loans and execute [23] security and credit arrangements under the same conditions as men;
- (2) Women shall have equal access to all government and private sector programs granting agricultural credit, loans and non material resources and shall enjoy equal treatment in agrarian reform and land resettlement programs;
- (3) Women shall have equal rights to act as incorporators and enter into insurance contracts; and
- (4) Married women shall have rights equal to those of married men in applying for passports, secure visas and other travel documents, without need to secure the consent of their spouses.

As the world draws the curtain on the Fourth World Conference of Women in Beijing, let this Court now be the first to respond to its clarion call that "Women's Rights are Human Rights" and that "All obstacles to women's full participation in decision-making at all levels, including the family" should be removed. Having been herself a Member of the Philippine Delegation to the International Women's Year Conference in Mexico in 1975, this writer is only too keenly aware of the unremitting struggle being waged by women the world over, Filipino

women not excluded, to be accepted as equals of men and to tear down the walls of discrimination that hold them back from their proper places under the sun.

In light of the inexorable sweep of events, local and global, legislative, executive and judicial, according more rights to women hitherto denied them and eliminating whatever pockets of discrimination still exist in their civil, political and social life, can it still be insisted that widows are not at liberty to choose their domicile upon the death of their husbands but must retain the same, regardless?

I submit that a widow like the petitioner and others similarly situated, can no longer be bound by the domicile of the departed husband, if at all she was before. Neither does she automatically revert to her domicile of origin, but exercising free will, she may opt to reestablish her domicile of origin. In returning to Tacloban and subsequently, to Barangay Olot, Tolosa, both of which are located in the First District of Leyte, petitioner amply demonstrated by overt acts, her election of a domicile of choice, in this case, a reversion to her domicile of origin. Added together, the time when she set up her domicile in the two places sufficed to meet the one-year requirement to run as Representative of the First District of Leyte.

In view of the foregoing expatiation, I vote to GRANT the petition.

[1] Art. VI, Sec. 6, Const.: "No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election."

[2] Art. 110: "The husband shall fix the residence of the family. But the court may exempt the wife from living with the husband if he should live abroad unless in the service of the Republic.

[3] Art. 110, Civil Code.

[4] Art. 111, Civil Code.

[5] Art. 112, Civil Code.

[6] Art. 171, Civil Code.

[7] Art. 172, Civil Code.

[8] Art. 320, Civil Code.

[9] Art. 114, Civil Code.

[10] Art. 117, Civil Code.

[11] Art. 84, Civil Code.

[12] Art. 328, Civil Code.

[13] Art. II, Sec. 2, Const.

[14] Part IV, Art. 15, Paragraph 4, CEDAW.

[15] Executive Order No. 209, July 6, 1987, as amended by Executive Order No. 227, July 17, 1987, which took effect on August 3, 1988.

[16] Art. II, Sec. 11, Const.

[17] Art. II, Sec. 14, Const.

[18] Art. 69, Family Code.

[19] Art. 71, Family Code.

[20] Art. 96, Family Code.

[21] Art. 225, Family Code.

[22] Republic Act No. 7192 approved February 12, 1992.

[23] Ibid., Sec. 5.

SEPARATE OPINION

VITUG, J.:

The case at bench deals with explicit Constitutional mandates.

The Constitution is not a pliable instrument. It is a bedrock in our legal system that sets up ideals and directions and render steady our strides hence. It only looks back so as to ensure that mistakes in the past are not repeated. A compliant transience of a constitution belittles its basic function and weakens its goals. A constitution may well become outdated by the realities of time. When it does, it must be changed but while it remains, we owe it respect and allegiance. Anarchy, open or subtle, has never been, nor must it ever be, the answer to perceived transitory needs, let alone societal attitudes, or the Constitution might lose its very essence.

Constitutional provisions must be taken to be mandatory in character unless, either by express statement or by necessary implication, a different intention is manifest (see *Marcelino vs. Cruz*, 121 SCRA 51).

The two provisions initially brought to focus are Section 6 and Section 17 of Article VI of the fundamental law. These provisions read:

"Sec. 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election."

"Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman."

The Commission on Election (the "COMELEC") is constitutionally bound to enforce and administer "all laws and regulations relative to the conduct of election x x x" (Art. IX, C, Sec. 2, Constitution) that, there being nothing said to the contrary, should include its authority to pass upon the qualification and disqualification prescribed by law of candidates to an elective office. Indeed, pre-proclamation controversies are expressly placed under the COMELEC's jurisdiction to hear and resolve (Art. IX, C, Sec. 3, Constitution).

The matter before us specifically calls for the observance of the constitutional one-year residency requirement. This issue (whether or not there is here such compliance), to my mind, is basically a question of fact or at least inextricably linked to such determination. The findings and judgment of the COMELEC, in accordance with the long established rule and subject only to a number of exceptions under the basic heading of "grave abuse of discretion," are not reviewable by this Court.

I do not find much need to do a complex exercise on what seems to me to be a plain matter. Generally, the term "residence" has a broader connotation that may mean permanent (domicile), official (place where one's official duties may require him to stay) or temporary (the place where he sojourns during a considerable length of time). For civil law purposes, i.e., as regards the exercise of civil rights and the fulfillment of civil obligations, the domicile of a natural person is the place of his habitual residence (see Article 50, Civil Code). In election cases, the controlling rule is that heretofore announced by this Court in *Romualdez vs. Regional Trial Court, Branch 7, Tacloban City* (226 SCRA 408, 409); thus:

"In election cases, the Court treats domicile and residence as synonymous terms, thus: '(t)he term 'residence' as used in the election law is synonymous with 'domicile,' which imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention.' 'Domicile' denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return. x x x. Residence thus acquired, however, may be lost by adopting another choice of domicile: In order, in turn, to acquire a new domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. In other words, there must basically be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual."

Using the above tests, I am not convinced that we can charge the COMELEC with having committed grave abuse of discretion in its assailed resolution.

The COMELEC's jurisdiction, in the case of congressional elections, ends when the jurisdiction of the Electoral Tribunal concerned begins. It signifies that the protestee must have theretofore been duly proclaimed and has since become a "member" of the Senate or the House of Representatives. The question can be asked on whether or not the proclamation of a candidate is just a ministerial function of the Commission on Elections dictated solely on the number of votes cast in an election exercise. I believe, it is not. A ministerial duty is an obligation the performance of which, being adequately defined, does not allow the use of further judgment or discretion. The COMELEC, in its particular case, is tasked with the full responsibility of ascertaining all the facts and conditions such as may be required by law before a proclamation is properly done.

The Court, on its part, should, in my view at least, refrain from any undue encroachment on the ultimate exercise of authority by the Electoral Tribunals on matters which, by no less than a constitutional fiat, are explicitly within their exclusive domain. The nagging question, if it were otherwise, would be the effect of the Court's peremptory pronouncement on the ability of the Electoral Tribunal to later come up with its own judgment in a contest "relating to the election, returns and qualification" of its members.

Prescinding from all the foregoing, I should like to next touch base on the applicability to this case of Section 6 of Republic Act No. 6646, in relation to Section 72 of Batas Pambansa Blg. 881, each providing thusly:

REPUBLIC ACT NO. 6646

"xxx xxx xxx.

"SEC. 6. Effect of Disqualification Case. - Any candidate who has been declared by final judgment to be

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

BATAS PAMBANSA BLG. 881

"xxx xxx xxx.

"SEC. 72. Effects of disqualification cases and priority. -The Commission and the courts shall give priority to cases of disqualification by reason of violation of this Act to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought.

"Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified, and he is voted for and receives the winning number of votes in such election, his violation of the provisions of the preceding sections shall not prevent his proclamation and assumption to office."

I realize that in considering the significance of the law, it may be preferable to look for not so much the specific instances they ostensibly would cover as the principle they clearly convey. Thus, I will not scoff at the argument that it should be sound to say that votes cast in favor of the disqualified candidate, whenever ultimately declared as such, should not be counted in his or her favor and must accordingly be considered to be stray votes. The argument, nevertheless, is far outweighed by the rationale of the now prevailing doctrine first enunciated in the case of *Topacio vs. Paredes* (23 Phil. 238 [1912]) which, although later abandoned in *Ticzon vs. Comelec* (103 SCRA 687 [1981]), and *Santos vs. COMELEC* (137 SCRA 740 [1985]), was restored, along with the interim case of *Geronimo vs. Ramos* (136 SCRA 435 [1985]), by the *Labo* (176 SCRA 1 [1989]), *AbeIla* (201 SCRA 253 [1991]), *Labo* (211 SCRA 297 [1992]) and, most recently, *Benito* (235 SCRA 436 [1994]) rulings. *Benito vs. Comelec* was a unanimous decision penned by Justice Kapunan and concurred in by Chief Justice Narvasa, Justices Feliciano, Padilla, Bidin, Regalado, Davide, Romero, Melo, Quiason, Puno, Vitug and Mendoza (Justices Cruz and Bellosillo were on official leave). For easy reference, let me quote from the first *Labo* decision:

"Finally, there is the question of whether or not the private respondent, who filed the quo warranto petition, can replace the petitioner as mayor. He cannot. The simple reason is that as he obtained only the second highest number of votes in the election, he was obviously not the choice of the people of Baguio City.

"The latest ruling of the Court on this issue is *Santos v. Commission on Elections*, (137 SCRA 740) decided in 1985. In that case, the candidate who placed second was proclaimed elected after the votes for his winning rival, who was disqualified as a turncoat and considered a non-candidate, were all disregarded as stray. In effect, the second placer won by default. That decision was supported by eight members of the Court then, (Cuevas, J., ponente, with Makasiar, Concepcion, Jr., Escolin, Relova, De la Fuente, Alampay and Aquino, JJ., concurring.) with three dissenting (Teehankee, Acting C.J., Abad Santos and Melencio-Herrera, JJ.) and another two reserving their vote. (Plana and Gutierrez, Jr., JJ.) One was on official leave. (Fernando, C.J.)

"Re-examining that decision, the Court finds, and so holds, that it should be reversed in favor of the earlier case of *Geronimo v. Ramos*, (136 SCRA 435) which represents the more logical and democratic rule. That case, which reiterated the doctrine first announced in 1912 in *Topacio v. Paredes*, (23 Phil. 238) was supported by ten members of the Court, (Gutierrez, Jr., ponente, with Teehankee, Abad Santos, Melencio-Herrera, Escolin, Plana, Relova, De la Fuente, Cuevas and Alampay, JJ., concurring) without any dissent, although one reserved his vote, (Makasiar, J.) another took no part, (Aquino, J.) and two others were on leave. (Fernando,

C.J. and Concepcion, Jr., J.) There the Court held:

"x x x it would be extremely repugnant to the basic concept of the constitutionally guaranteed right to suffrage if a candidate who has not acquired the majority or plurality of votes is proclaimed a winner and imposed as the representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him.

`Sound policy dictates that public elective offices are filled by those who have received the highest number of votes cast in the election for that office, and it is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election. (20 Corpus Juris 2nd, S 243, p. 676.)

`The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. The votes cast for a dead, disqualified, or non-eligible person may not be valid to vote the winner into office or maintain him there. However, in the absence of a statute which clearly asserts a contrary political and legislative policy on the matter, if the votes were cast in the sincere belief that the candidate was alive, qualified, or eligible, they should not be treated as stray, void or meaningless.' (at pp. 20-21)"

Considering all the foregoing, I am constrained to vote for the dismissal of the petition.

SEPARATE OPINION

MENDOZA, J.:

In my view the issue in this case is whether the Commission on Elections has the power to disqualify candidates on the ground that they lack eligibility for the office to which they seek to be elected. I think that it has none and that the qualifications of candidates may be questioned only in the event they are elected, by filing a petition for quo warranto or an election protest in the appropriate forum, not necessarily in the COMELEC but, as in this case, in the House of Representatives Electoral Tribunal. That the parties in this case took part in the proceedings in the COMELEC is of no moment. Such proceedings were unauthorized and were not rendered valid by their agreement to submit their dispute to that body.

The various election laws will be searched in vain for authorized proceedings for determining a candidate's qualifications for an office before his election. There are none in the Omnibus Election Code (B.P. Blg. 881), in the Electoral Reforms Law of 1987 (R.A. No. 6646), or in the law providing for synchronized elections (R.A. No. 7166). There are, in other words, no provisions for pre-proclamation contests but only election protests or quo warranto proceedings against winning candidates.

To be sure, there are provisions denominated for "disqualification," but they are not concerned with a declaration of the ineligibility of a candidate. These provisions are concerned with the incapacity (due to insanity, incompetence or conviction of an offense) of a person either to be a candidate or to continue as a candidate for public office. There is also a provision for the denial or cancellation of certificates of candidacy, but it applies only to cases involving false representations as to certain matters required by law to be stated in the certificates.

These provisions are found in the following parts of the Omnibus Election Code:

§ 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 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 has been given plenary pardon or granted amnesty.

The 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 service of sentence, unless within the same period he again becomes disqualified. (italics added)

§ 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 (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 candidacy; (c) spent in his 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 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 added)

§ 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 any 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. (italics added)

the Electoral Reforms Law of 1987 (R.A. No. 6646):

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

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

and the Local Government Code of 1991 (R.A. No. 7160):

§ 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;
- (e) Fugitive from justice in criminal or nonpolitical 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.

The petition filed by private respondent Cirilo Roy Montejo in the COMELEC, while entitled "For Cancellation and Disqualification," contained no allegation that private respondent Imelda Romualdez--Marcos made material representations in her certificate of candidacy which were false. It sought her disqualification on the ground that "on the basis of her Voter Registration Record and Certificate of Candidacy, [she] is disqualified from running for the position of Representative, considering that on election day, May 8, 1995, [she] would have resided less than ten (10) months in the district where she is seeking to be elected." For its part, the COMELEC's Second Division, in its resolution of April 24, 1995, cancelled her certificate of candidacy and corrected certificate of candidacy on the basis of its finding that petitioner is "not qualified to run for the position of Member of the House of Representatives for the First Legislative District of Leyte" and not because of any finding that she had made false representations as to material matters in her certificate of candidacy.

Montejo's petition before the COMELEC was therefore not a petition for cancellation of certificate of candidacy under § 78 of the Omnibus Election Code, but essentially a petition to declare private respondent ineligible. It is important to note this, because, as will presently be explained, proceedings under § 78 have for their purpose to disqualify a person from being a candidate, whereas quo warranto proceedings have for their purpose to disqualify a person from holding public office. Jurisdiction over quo warranto proceedings involving members of the House of Representatives is vested in the Electoral Tribunal of that body.

Indeed, in the only cases in which this Court dealt with petitions for the cancellation of certificates of candidacy, the allegations were that the respondent candidates had made false representations in their certificates of candidacy with regard to their citizenship,[1] age,[2] or residence.[3] But in the generality of cases in which this Court passed upon the qualifications of respondents for office, this Court did so in the context of election protests[4] or quo warranto proceedings[5] filed after the proclamation of the respondents or protestees as winners.

Three reasons may be cited to explain the absence of an authorized proceeding for determining before election the qualifications of a candidate.

First is the fact that unless a candidate wins and is proclaimed elected, there is no necessity for determining his eligibility for the office. In contrast, whether an individual should be disqualified as a candidate for acts constituting election offenses (e.g., vote buying, over spending, commission of prohibited acts) is a prejudicial question which should be determined lest he wins because of the very acts for which his disqualification is being sought. That is why it is provided that if the grounds for disqualification are established, a candidate will not be voted for; if he has been voted for, the votes in his favor will not be counted; and if for some reason he has been voted for and he has won, either he will not be proclaimed or his proclamation will be set aside.[6]

Second is the fact that the determination of a candidate's eligibility, e.g., his citizenship or, as in this case, his domicile, may take a long time to make, extending beyond the beginning of the term of the office. This is amply demonstrated in the companion case (G.R. No. 120265, *Agapito A. Aquino v. COMELEC*) where the determination of Aquino's residence was still pending in the COMELEC even after the elections of May 8, 1995. This is contrary to the summary character of proceedings relating to certificates of candidacy. That is why the law makes the receipt of certificates of candidacy a ministerial duty of the COMELEC and its officers.[7] The law is satisfied if candidates state in their certificates of candidacy that they are eligible for the position which they seek to fill, leaving the determination of their qualifications to be made after the election and only in the event they are elected. Only in cases involving charges of false representations made in certificates of candidacy is the

COMELEC given jurisdiction.

Third is the policy underlying the prohibition against pre-proclamation cases in elections for President, Vice President, Senators and members of the House of Representatives. (R.A. No. 7166, § 15) The purpose is to preserve the prerogatives of the House of Representatives Electoral Tribunal and the other Tribunals as "sole judges" under the Constitution of the election, returns and qualifications of members of Congress or of the President and Vice President, as the case may be.

By providing in § 253 for the remedy of quo warranto for determining an elected official's qualifications after the results of elections are proclaimed, while being conspicuously silent about a pre-proclamation remedy based on the same ground, the Omnibus Election Code, or OEC, by its silence underscores the policy of not authorizing any inquiry into the qualifications of candidates unless they have been elected.

Apparently realizing the lack of an authorized proceeding for declaring the ineligibility of candidates, the COMELEC amended its rules on February 15, 1993 so as to provide in Rule 25, § 1 the following:

Grounds for disqualification. — Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate.

The lack of provision for declaring the ineligibility of candidates, however, cannot be supplied by a mere rule. Such an act is equivalent to the creation of a cause of action which is a substantive matter which the COMELEC, in the exercise of its rulemaking power under Art. IX, A, § 6 of the Constitution, cannot do. It is noteworthy that the Constitution withholds from the COMELEC even the power to decide cases involving the right to vote, which essentially involves an inquiry into qualifications based on age, residence and citizenship of voters. (Art. IX, C, § 2(3))

The assimilation in Rule 25 of the COMELEC rules of grounds for ineligibility into grounds for disqualification is contrary to the evident intention of the law. For not only in their grounds but also in their consequences are proceedings for "disqualification" different from those for a declaration of "Ineligibility." "Disqualification" proceedings, as already stated, are based on grounds specified in §§ 12 and 68 of the Omnibus Election Code and in § 40 of the Local Government Code and are for the purpose of barring an individual from becoming a candidate or from continuing as a candidate for public office. In a word, their purpose is to eliminate a candidate from the race either from the start or during its progress. "Ineligibility," on the other hand, refers to the lack of the qualifications prescribed in the Constitution or the statutes for holding public office and the purpose of the proceedings for declaration of ineligibility is to remove the incumbent from office.

Consequently, that an individual possesses the qualifications for a public office does not imply that he is not disqualified from becoming a candidate or continuing as a candidate for a public office and vice versa. We have this sort of dichotomy in our Naturalization Law. (C.A. No. 473) That an alien has the qualifications prescribed in § 2 of the law does not imply that he does not suffer from any of disqualifications provided in § 4.

Indeed, provisions for disqualifications on the ground that the candidate is guilty of prohibited election practices or offenses, like other pre-proclamation remedies, are aimed at the detestable practice of "grabbing the proclamation and prolonging the election protest,"[8] through the use of "manufactured" election returns or resort to other trickery for the purpose of altering the results of the election. This rationale does not apply to cases for determining a candidate's qualifications for office before the election. To the contrary, it is the candidate against whom a proceeding for disqualification is brought who could be prejudiced because he could be prevented from assuming office even though in end he prevails.

To summarize, the declaration of ineligibility of a candidate may only be sought in an election protest or action for quo warranto filed pursuant to § 253 of the Omnibus Election Code within 10 days after his proclamation. With respect to elective local officials (e.g., Governor, Vice Governor, members of the Sangguniang Panlalawigan, etc) such petition must be filed either with the COMELEC, the Regional Trial Courts, or Municipal Trial Courts, as provided in Art. IX, C, § 2(2) of the Constitution. In the case of the President and Vice President, the petition must be filed with the Presidential Electoral Tribunal (Art. VII, § 4, last paragraph), and in the case of the Senators, with the Senate Electoral Tribunal, and in the case of Congressmen, with the House of Representatives Electoral Tribunal. (Art. VI, § 17) There is greater reason for not allowing before the election the filing of disqualification proceedings based on alleged ineligibility in the case of candidates for President, Vice President, Senators and members of the House of Representatives, because of the same policy prohibiting the filing of pre-proclamation cases against such candidates.

For these reasons, I am of the opinion that the COMELEC had no jurisdiction over SPA No. 95-009; that its proceedings in that case, including its questioned orders, are void; and that the eligibility of petitioner Imelda Romualdez-Marcos for the office of Representative of the First District of Leyte may only be inquired into by the HRET.

Accordingly, I vote to grant the petition and to annul the proceedings of the Commission on Elections in SPA No. 95-009, including its questioned orders dated April 24, 1995, May 7, 1995, May 11, 1995 and May 25, 1995, declaring petitioner Imelda Romualdez-Marcos ineligible and ordering her proclamation as Representative of the First District of Leyte suspended. To the extent that Rule 25 of the COMELEC Rules of Procedure authorizes proceedings for the disqualification of candidates on the ground of ineligibility for the office, it should be considered void.

The provincial board of canvassers should now proceed with the proclamation of petitioner.

[1] Lobo, Jr. v. COMELEC, 211 SCRA 297 (1992) (for mayor).

[2] Loong v. COMELEC, 216 SCRA 760 (1992) (for regional vice governor).

[3] Abella v. Larrazabal, 180 SCRA 509 (1989); Abella v. COMELEC, 201 SCRA 253 (1991) (for provincial governor).

[4] Co v. HRET, 199 SCRA 692 (1991) (election protest against a Congressman).

[5] Faypon v. Quirino, 96 Phil. 294 (1954) (quo warranto against a governor); Gallego v. Verra, 73 Phil. 453 (1941) (quo warranto against a mayor); Larena v. Teves, 61 Phil. 36 (1934) (quo warranto against a provincial board member); Tanseco v. Arteche, 57 Phil. 227 (1932) (quo warranto against a governor); Yra v. Abaño, 52 Phil. 380 (1928) (quo warranto against a municipal president); Vivero v. Murillo, 52 Phil. 694 (1929) (quo warranto against a municipal president). Cf. Aznar v. COMELEC, 185 SCRA 703 (1990) (quo warranto, although prematurely filed, against a governor-elect).

[6] R.A. No. 6646, § 6; Labo, Jr. v. COMELEC, *supra* note 1.

[7] OEC, § 76.

[8] Lagumbay v. COMELEC, 16 SCRA 175 (1966).

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