

DOMINADOR G. JALOSJOS, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND AGAPITO J. CARDINO, RESPONDENTS.

G.R. No. 193237. October 09, 2012

Ponente: CARPIO, J.

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CARPIO, J.:

These are two special civil actions for certiorari[1] questioning the resolutions of the Commission on Elections (COMELEC) in SPA No. 09-076 (DC). In G.R. No. 193237, Dominador G. Jalosjos, Jr. (Jalosjos) seeks to annul the 10 May 2010 Resolution[2] of the COMELEC First Division and the 11 August 2010 Resolution[3] of the COMELEC En Banc, which both ordered the cancellation of his certificate of candidacy on the ground of false material representation. In G.R. No. 193536, Agapito J. Cardino (Cardino) challenges the 11 August 2010 Resolution of the COMELEC En Banc, which applied the rule on succession under the Local Government Code in filling the vacancy in the Office of the Mayor of Dapitan City, Zamboanga del Norte created by the cancellation of Jalosjos' certificate of candidacy.

The Facts

Both Jalosjos and Cardino were candidates for Mayor of Dapitan City, Zamboanga del Norte in the May 2010 elections. Jalosjos was running for his third term. Cardino filed on 6 December 2009 a petition under Section 78 of the Omnibus Election Code to deny due course and to cancel the certificate of candidacy of Jalosjos. Cardino asserted that Jalosjos made a false material representation in his certificate of candidacy when he declared under oath that he was eligible for the Office of Mayor.

Cardino claimed that long before Jalosjos filed his certificate of candidacy, Jalosjos had already been convicted by final judgment for robbery and sentenced to prisión mayor by the Regional Trial Court, Branch 18 (RTC) of Cebu City, in Criminal Case No. CCC-XIV-140-CEBU. Cardino asserted that Jalosjos has not yet served his sentence. Jalosjos admitted his conviction but stated that he had already been granted probation. Cardino countered that the RTC revoked Jalosjos' probation in an Order dated 19 March 1987. Jalosjos refuted Cardino and stated that the RTC issued an Order dated 5 February 2004 declaring that Jalosjos had duly complied with the order of probation. Jalosjos further stated that during the 2004 elections the COMELEC denied a petition for disqualification filed against him on the same grounds.[4]

The COMELEC En Banc narrated the circumstances of Jalosjos' criminal record as follows:

As background, [Jalosjos] and three (3) others were accused of the crime of robbery on January 22, 1969 in Cebu City. On April 30, 1970, Judge Francisco Ro. Cupin of the then Circuit Criminal Court of Cebu City found him and his co-accused guilty of robbery and sentenced them to suffer the penalty of prison correccional minimum to prison mayor maximum. [Jalosjos] appealed this decision to the Court of Appeals but his appeal was dismissed on August 9, 1973. It was only after a lapse of several years or more specifically on June 17, 1985 that [Jalosjos] filed a Petition for Probation before the RTC Branch 18 of Cebu City which was granted by the court. But then, on motion filed by his Probation Officer, [Jalosjos'] probation was revoked by the RTC Cebu City on March 19, 1987 and the corresponding warrant for his arrest was issued.

Surprisingly, on December 19, 2003, Parole and Probation Administrator Gregorio F. Bacolod issued a Certification attesting that respondent Jalosjos, Jr., had already fulfilled the terms and conditions of his probation. This Certification was the one used by respondent Jalosjos to secure the dismissal of the disqualification case filed against him by Adasa in 2004, docketed as SPA No. 04-235.

This prompted [Cardino] to call the attention of the Commission on the decision of the Sandiganbayan dated September 29, 2008 finding Gregorio F. Bacolod, former Administrator of the Parole and Probation Administration, guilty of violating Section 3(e) of R.A. 3019 for issuing a falsified Certification on December 19, 2003 attesting to the fact that respondent Jalosjos had fully complied with the terms and conditions of his probation. A portion of the decision of the Sandiganbayan is quoted hereunder:

The Court finds that the above acts of the accused gave probationer Dominador Jalosjos, [Jr.,] unwarranted benefits and advantage because the subject certification, which was issued by the accused without adequate or official support, was subsequently utilized by the said probationer as basis of the Urgent Motion for Reconsideration and to Lift Warrant of Arrest that he filed with the Regional Trial Court of Cebu City, which prompted the said court to issue the Order dated February 5, 2004 in Crim. Case No. CCC-XIV-140-CEBU, declaring that said probationer has complied with the order of probation and setting aside its Order of January 16, 2004 recalling the warrant or [sic] arrest; and that said Certification was also used by the said probationer and became the basis for the Commission on Elections to deny in its Resolution of August 2, 2004 the petition or [sic] private complainant James Adasa for the disqualification of the probationer from running for re-election as Mayor of Dapitan City in the National and Local Elections of 2004.[5]

The COMELEC's Rulings

On 10 May 2010, the COMELEC First Division granted Cardino's petition and cancelled Jalosjos' certificate of candidacy. The COMELEC First Division concluded that "Jalosjos has indeed committed material misrepresentation in his certificate of candidacy when he declared, under oath, that he is eligible for the office he seeks to be elected to when in fact he is not by reason of a final judgment in a criminal case, the sentence of which he has not yet served." [6] The COMELEC First Division found that Jalosjos' certificate of compliance of probation was fraudulently issued; thus, Jalosjos has not yet served his sentence. The penalty imposed on Jalosjos was the indeterminate sentence of one year, eight months and twenty days of *prisión correccional* as minimum, to four years, two months and one day of *prisión mayor* as maximum. The COMELEC First Division ruled that Jalosjos "is not eligible by reason of his disqualification as provided for in Section 40(a) of Republic Act No. 7160." [7]

On 11 August 2010, the COMELEC En Banc denied Jalosjos' motion for reconsideration. The pertinent portions of the 11 August 2010 Resolution read:

With the proper revocation of [Jalosjos'] earlier probation and a clear showing that he has not yet served the terms of his sentence, there is simply no basis for [Jalosjos] to claim that his civil as well as political rights have been violated. Having been convicted by final judgment, [Jalosjos] is disqualified to run for an elective position or to hold public office. His proclamation as the elected mayor in the May 10, 2010 election does not deprive the Commission of its authority to resolve the present petition to its finality, and to oust him from the office he now wrongfully holds.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is denied for utter lack of merit. [Jalosjos] is hereby OUSTED from office and ordered to CEASE and DESIST from occupying and discharging the functions of the Office of the Mayor of Dapitan City, Zamboanga. Let the provisions of the Local Government Code on succession apply.

SO ORDERED.[8]

Jalosjos filed his petition on 25 August 2010, docketed as G.R. No. 193237, while Cardino filed his petition on 17 September 2010, docketed as G.R. No. 193536.

On 22 February 2011, this Court issued a Resolution dismissing G.R. No. 193237.

WHEREFORE, the foregoing premises considered, the Petition for Certiorari is DISMISSED. The assailed Resolution dated May 10, 2010 and Resolution dated August 11, 2010 of the Commission on Elections in SPA Case No. 09-076 (DC) are hereby AFFIRMED.[9]

Cardino filed a Manifestation on 17 March 2011 praying that this Court take judicial notice of its resolution in G.R. No. 193237. Jalosjos filed a Motion for Reconsideration[10] on 22 March 2011. On 29 March 2011, this Court resolved[11] to consolidate G.R. No. 193536 with G.R. No. 193237.

Jalosjos then filed a Manifestation on 1 June 2012 which stated that “he has resigned from the position of Mayor of the City of Dapitan effective 30 April 2012, which resignation was accepted by the Provincial Governor of Zamboanga del Norte, Atty. Rolando E. Yebes.”[12] Jalosjos’ resignation was made “[i]n deference with the provision of the Omnibus Election Code in relation to [his] candidacy as Provincial Governor of Zamboanga del Sur in May 2013.”[13]

These cases are not rendered moot by Jalosjos’ resignation. In resolving Jalosjos’ Motion for Reconsideration in G.R. No. 193237 and Cardino’s Petition in G.R. No. 193536, we address not only Jalosjos’ eligibility to run for public office and the consequences of the cancellation of his certificate of candidacy, but also COMELEC’s constitutional duty to enforce and administer all laws relating to the conduct of elections.

The Issues

In G.R. No. 193237, Jalosjos argues that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it (1) ruled that Jalosjos’ probation was revoked; (2) ruled that Jalosjos was disqualified to run as candidate for Mayor of Dapitan City, Zamboanga del Norte; and (3) cancelled Jalosjos’ certificate of candidacy without making a finding that Jalosjos committed a deliberate misrepresentation as to his qualifications, as Jalosjos relied in good faith upon a previous COMELEC decision declaring him eligible for the same position from which he is now being ousted. Finally, the Resolutions dated 10 May 2010 and 11 August 2010 were issued in violation of the COMELEC Rules of Procedure.

In G.R. No. 193536, Cardino argues that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it added to the dispositive portion of its 11 August 2010 Resolution that the provisions of the Local Government Code on succession should apply.

This Court’s Ruling

The perpetual special disqualification against Jalosjos arising from his criminal conviction by final judgment is a material fact involving eligibility which is a proper ground for a petition under Section 78 of the Omnibus Election Code. Jalosjos’ certificate of candidacy was void from the start since he was not eligible to run for any public office at the time he filed his certificate of candidacy. Jalosjos was never a candidate at any time, and all votes for Jalosjos were stray votes. As a result of Jalosjos’ certificate of candidacy being void ab initio, Cardino, as the only qualified candidate, actually garnered the highest number of votes for the position of Mayor.

The dissenting opinions affirm with modification the 10 May 2010 Resolution of the COMELEC First Division and the 11 August 2010 Resolution of the COMELEC En Banc. The dissenting opinions erroneously limit the remedy against Jalosjos to disqualification under Section 68 of the Omnibus Election Code and apply the rule on succession under the Local Government Code.

A false statement in a certificate of candidacy that a candidate is eligible to run for public office is a false material representation which is a ground for a petition under Section 78 of the same Code. Sections 74 and 78 read:

Sec. 74. Contents of certificate of candidacy. — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

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

Section 74 requires the candidate to state under oath in his certificate of candidacy “that he is eligible for said office.” A candidate is eligible if he has a right to run for the public office.[14] If a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78.

A sentence of *prisión mayor* by final judgment is a ground for disqualification under Section 40 of the Local Government Code and under Section 12 of the Omnibus Election Code. It is also a material fact involving the eligibility of a candidate under Sections 74 and 78 of the Omnibus Election Code. Thus, a person can file a petition under Section 40 of the Local Government Code or under either Section 12 or Section 78 of the Omnibus Election Code. The pertinent provisions read:

Section 40, Local Government Code:

Sec. 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) Fugitives from justice in criminal or non-political cases here or abroad;
- (f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
- (g) The insane or feeble-minded.

Section 12, Omnibus Election Code:

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

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.

Section 68, Omnibus Election Code:

Sec. 68. Disqualifications. — Any candidate who, in an action or protest in which he is a party is declared by final decision by 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.

Revised Penal Code:

Art. 27. Reclusion perpetua. — x x x

Prisión mayor and temporary disqualification. — The duration of the penalties of prisión mayor and temporary disqualification shall be from six years and one day to twelve years, except when the penalty of disqualification is imposed as an accessory penalty, in which case, it shall be that of the principal penalty.

x x x x

Art. 30. Effects of the penalties of perpetual or temporary absolute disqualification. — The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held, even if conferred by popular election.
2. The deprivation of the right to vote in any election for any popular elective office or to be elected to such office.
3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held.

Art. 31. Effects of the penalties of perpetual or temporary special disqualification. — The penalties of perpetual or temporary special disqualification for public office, profession or calling shall produce the following effects:

1. The deprivation of the office, employment, profession or calling affected.
2. The disqualification for holding similar offices or employments either perpetually or during the term of the sentence, according to the extent of such disqualification.

Art. 32. Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage. — The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.

Art. 42. Prisión mayor — its accessory penalties. — The penalty of prisión mayor shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon. (Emphasis supplied)

The penalty of prisión mayor automatically carries with it, by operation of law,^[15] the accessory penalties of temporary absolute disqualification and perpetual special disqualification. Under Article 30 of the Revised Penal Code, temporary absolute disqualification produces the effect of “deprivation of the right to vote in any election for any popular elective office or to be elected to such office.” The duration of the temporary absolute disqualification is the same as that of the principal penalty. On the other hand, under Article 32 of the Revised Penal Code perpetual special disqualification means that “the offender shall not be permitted to hold any public office during the period of his disqualification,” which is perpetually. Both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. A person suffering from these ineligibilities is ineligible to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run.

In *Lacuna v. Abes*,^[16] the Court, speaking through Justice J.B.L. Reyes, explained the import of the accessory penalty of perpetual special disqualification:

On the first defense of respondent-appellee Abes, it must be remembered that appellee’s conviction of a crime penalized with prisión mayor which carried the accessory penalties of temporary absolute disqualification and perpetual special disqualification from the right of suffrage (Article 42, Revised Penal Code); and Section 99 of the Revised Election Code disqualifies a person from voting if he had been sentenced by final judgment to suffer one year or more of imprisonment.

The accessory penalty of temporary absolute disqualification disqualifies the convict for public office and for the right to vote, such disqualification to last only during the term of the sentence (Article 27, paragraph 3, & Article 30, Revised Penal Code) that, in the case of Abes, would have expired on 13 October 1961.

But this does not hold true with respect to the other accessory penalty of perpetual special disqualification for the exercise of the right of suffrage. This accessory penalty deprives the convict of the right to vote or to be elected to or hold public office perpetually, as distinguished from temporary special disqualification, which lasts during the term of the sentence. Article 32, Revised Penal Code, provides:

Art. 32. Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage. — The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of disqualification.

The word “perpetually” and the phrase “during the term of the sentence” should be applied distributively to their respective antecedents; thus, the word “perpetually” refers to the perpetual kind of special disqualification, while

the phrase “during the term of the sentence” refers to the temporary special disqualification. The duration between the perpetual and the temporary (both special) are necessarily different because the provision, instead of merging their durations into one period, states that such duration is “according to the nature of said penalty” — which means according to whether the penalty is the perpetual or the temporary special disqualification. (Emphasis supplied)

Clearly, Lacuna instructs that the accessory penalty of perpetual special disqualification “deprives the convict of the right to vote or to be elected to or hold public office perpetually.”

The accessory penalty of perpetual special disqualification takes effect immediately once the judgment of conviction becomes final. The effectivity of this accessory penalty does not depend on the duration of the principal penalty, or on whether the convict serves his jail sentence or not. The last sentence of Article 32 states that “the offender shall not be permitted to hold any public office during the period of his [perpetual special] disqualification.” Once the judgment of conviction becomes final, it is immediately executory. Any public office that the convict may be holding at the time of his conviction becomes vacant upon finality of the judgment, and the convict becomes ineligible to run for any elective public office perpetually. In the case of Jalosjos, he became ineligible perpetually to hold, or to run for, any elective public office from the time his judgment of conviction became final.

Perpetual special disqualification is a ground for a petition under Section 78 of the Omnibus Election Code because this accessory penalty is an ineligibility, which means that the convict is not eligible to run for public office, contrary to the statement that Section 74 requires him to state under oath. As used in Section 74, the word “eligible” means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for public office. As this Court held in *Fermin v. Commission on Elections*,^[17] the false material representation may refer to “qualifications or eligibility.” One who suffers from perpetual special disqualification is ineligible to run for public office. If a person suffering from perpetual special disqualification files a certificate of candidacy stating under oath that “he is eligible to run for (public) office,” as expressly required under Section 74, then he clearly makes a false material representation that is a ground for a petition under Section 78. As this Court explained in *Fermin*:

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a “Section 78” petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the winning candidate.^[18] (Emphasis supplied)

Conviction for robbery by final judgment with the penalty of *prisión mayor*, to which perpetual special disqualification attaches by operation of law, is not a ground for a petition under Section 68 because robbery is not one of the offenses enumerated in Section 68. Insofar as crimes are concerned, Section 68 refers only to election offenses under the Omnibus Election Code and not to crimes under the Revised Penal Code. For ready reference, we quote again Section 68 of the Omnibus Election Code:

Sec. 68. Disqualifications. — Any candidate who, in an action or protest in which he is a party is declared by final decision by 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 supplied)

There is absolutely nothing in the language of Section 68 that will justify including the crime of robbery as one of the offenses enumerated in this Section. All the offenses enumerated in Section 68 refer to offenses under the Omnibus Election Code. The dissenting opinion of Justice Reyes gravely errs when it holds that Jalosjos' conviction for the crime of robbery under the Revised Penal Code is a ground for "a petition for disqualification under Section 68 of the OEC and not for cancellation of COC under Section 78 thereof." This Court has already ruled that offenses punished in laws other than in the Omnibus Election Code cannot be a ground for a petition under Section 68. In *Codilla, Sr. v. de Venecia*,^[19] the Court declared:

[T]he jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the Omnibus Election Code. All other election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature. (Emphasis supplied)

A candidate for mayor during the 2010 local elections certifies under oath four statements: (1) a statement that the candidate is a natural born or naturalized Filipino citizen; (2) a statement that the candidate is not a permanent resident of, or immigrant to, a foreign country; (3) a statement that the candidate is eligible for the office he seeks election; and (4) a statement of the candidate's allegiance to the Constitution of the Republic of the Philippines.^[20]

We now ask: Did Jalosjos make a false statement of a material fact in his certificate of candidacy when he stated under oath that he was eligible to run for mayor? The COMELEC and the dissenting opinions all found that Jalosjos was not eligible to run for public office. The COMELEC concluded that Jalosjos made a false material representation that is a ground for a petition under Section 78. The dissenting opinion of Justice Reyes, however, concluded that the ineligibility of Jalosjos is a disqualification which is a ground for a petition under Section 68 and not under Section 78. The dissenting opinion of Justice Brion concluded that the ineligibility of Jalosjos is a disqualification that is not a ground under Section 78 without, however, saying under what specific provision of law a petition against Jalosjos can be filed to cancel his certificate of candidacy.

What is indisputably clear is that the false material representation of Jalosjos is a ground for a petition under Section 78. However, since the false material representation arises from a crime penalized by *prisión mayor*, a petition under Section 12 of the Omnibus Election Code or Section 40 of the Local Government Code can also be properly filed. The petitioner has a choice whether to anchor his petition on Section 12 or Section 78 of the Omnibus Election Code, or on Section 40 of the Local Government Code. The law expressly provides multiple remedies and the choice of which remedy to adopt belongs to the petitioner.

The COMELEC properly cancelled Jalosjos' certificate of candidacy. A void certificate of candidacy on the ground of ineligibility that existed at the time of the filing of the certificate of candidacy can never give rise to a valid candidacy, and much less to valid votes.^[21] Jalosjos' certificate of candidacy was cancelled because he was ineligible from the start to run for Mayor. Whether his certificate of candidacy is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a valid candidate from the

very beginning, his certificate of candidacy being void ab initio. Jalosjos' ineligibility existed on the day he filed his certificate of candidacy, and the cancellation of his certificate of candidacy retroacted to the day he filed it. Thus, Cardino ran unopposed. There was only one qualified candidate for Mayor in the May 2010 elections – Cardino – who received the highest number of votes.

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible^[22] should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void ab initio, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void ab initio is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes.^[23] If a certificate of candidacy void ab initio is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void ab initio. Otherwise, a certificate of candidacy void ab initio can operate to defeat one or more valid certificates of candidacy for the same position.

Even without a petition under either Section 12 or Section 78 of the Omnibus Election Code, or under Section 40 of the Local Government Code, the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from the accessory penalty of perpetual special disqualification to run for public office by virtue of a final judgment of conviction. The final judgment of conviction is notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification is part of the final judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law.

Whether or not the COMELEC is expressly mentioned in the judgment to implement the disqualification, it is assumed that the portion of the final judgment on disqualification to run for elective public office is addressed to the COMELEC because under the Constitution the COMELEC is duty bound to “[e]nforce and administer all laws and regulations relative to the conduct of an election.”^[24] The disqualification of a convict to run for public office under the Revised Penal Code, as affirmed by final judgment of a competent court, is part of the enforcement and administration of “all laws” relating to the conduct of elections.

To allow the COMELEC to wait for a person to file a petition to cancel the certificate of candidacy of one suffering from perpetual special disqualification will result in the anomaly that these cases so grotesquely exemplify. Despite a prior perpetual special disqualification, Jalosjos was elected and served twice as mayor. The COMELEC will be grossly remiss in its constitutional duty to “enforce and administer all laws” relating to the conduct of elections if it does not *motu proprio* bar from running for public office those suffering from perpetual special disqualification by virtue of a final judgment.

WHEREFORE, the Motion for Reconsideration in G.R. No. 193237 is DENIED, and the Petition in G.R. No. 193536 is GRANTED. The Resolutions dated 10 May 2010 and 11 August 2010 of the COMELEC First Division and the COMELEC En Banc, respectively, in SPA No. 09-076 (DC), are AFFIRMED with the MODIFICATION that Agapito J. Cardino ran unopposed in the May 2010 elections and thus received the highest number of votes for Mayor. The COMELEC En Banc is DIRECTED to constitute a Special City Board of Canvassers to proclaim Agapito J. Cardino as the duly elected Mayor of Dapitan City, Zamboanga del Norte.

Let copies of this Decision be furnished the Secretaries of the Department of Justice and the Department of Interior and Local Government so they can cause the arrest of, and enforce the jail sentence on, Dominador G. Jalosjos, Jr. due to his conviction for the crime of robbery in a final judgment issued by the Regional Trial Court (Branch 18) of Cebu City in Criminal Case No. CCC-XIV-140-CEBU.

SO ORDERED.

Sereno, C.J., Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and Perlas-Bernabe, JJ., concur.

Velasco, Jr., J., join the dissent of J. B. Reyes.

Leonardo-De Castro, J., no part due to prior participation in a related case.

Brion, J., see my dissenting opinion.

Peralta, J., no part due to prior participation in a related case.

Bersamin, J., please see concurring opinion.

Reyes, J., with my dissenting opinion.

[1] Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

[2] Rollo (G.R. No. 193237), pp. 40-48; rollo (G.R. No. 193536), pp. 29-37. Signed by Presiding Commissioner Rene V. Sarmiento, and Commissioners Armando C. Velasco and Gregorio Y. Larrazabal.

[3] Rollo (G.R. No. 193237), pp. 49-56; rollo (G.R. No. 193536), pp. 22-28. Signed by Chairman Jose A.R. Melo, and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, and Gregorio Y. Larrazabal.

[4] James A. Adasa v. Dominador Jalosjos, Jr., SPA No. 04-235. The Resolution of the COMELEC Second Division was promulgated on 2 August 2004, while the Resolution of the COMELEC En Banc was promulgated on 16 December 2006. Rollo (G.R. No. 193536), pp. 45-46.

[5] Rollo (G.R. No. 193237), pp. 50-51.

[6] Id. at 46; rollo (G.R. No. 193536), p. 35.

[7] Id. at 47; id. at 36.

[8] Id. at 55-56; id. at 27-28.

[9] Rollo (G.R. No. 193237), p. 360.

[10] Id. at 373-393.

[11] Rollo (G.R. No. 193536), p. 178.

[12] Id. at 215.

[13] Id. at 218.

[14] The Oxford Dictionary of English (Oxford University Press 2010) defines the word “eligible” as “having a right to do or obtain something.”

[15] People v. Silvallana, 61 Phil. 636 (1935).

[16] 133 Phil. 770, 773-774 (1968).

[17] G.R. Nos. 179695 and 182369, 18 December 2008, 574 SCRA 782.

[18] Id. at 792-794.

[19] 442 Phil. 139, 177-178 (2002).

[20] I will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto. I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities. I impose this obligation upon myself voluntarily, without mental reservation or purpose of evasion.

[21] *Bautista v. Commission on Elections*, 359 Phil. 1, 16 (1998). See *Miranda v. Abaya*, 370 Phil. 642 (1999); *Gador v. Commission on Elections*, 184 Phil. 395 (1980).

[22] *Aquino v. Commission on Elections*, 318 Phil. 467 (1995); *Labo, Jr. v. Commission on Elections*, 257 Phil. 1 (1989).

[23] *Cayat v. Commission on Elections*, G.R. Nos. 163776 and 165736, 24 April 2007, 522 SCRA 23.

[24] Constitution, Art. IX-C, Sec. 2(1).

DISSENTING OPINION

BRION, J.:

Dominador G. Jalosjos, Jr. and Agapito Cardino were rivals in the mayoralty race in Dapitan City, Zamboanga del Norte in the May 2010 elections.

Before election day, Cardino filed with the Commission on Elections (COMELEC) a Petition to Deny Due Course and/or Cancel the Certificate of Candidacy against Jalosjos, alleging that the latter made a material misrepresentation in his Certificate of Candidacy (CoC) when he declared that he was eligible for the position of mayor when, in fact, he was disqualified under Section 40 of the Local Government Code for having been previously convicted by a final judgment for a crime (robbery) involving moral turpitude.

In his defense, Jalosjos admitted his previous conviction but argued that he had been admitted to probation, which allegedly restored him to all his political rights. Cardino rebutted Jalosjos' defense, citing a court order revoking the grant of probation for Jalosjos' failure to comply with the terms and conditions of the grant of probation.

On the very day of the election, the COMELEC resolved to grant Cardino's petition and ordered the cancellation of Jalosjos' CoC. The COMELEC ruled that the rules on succession would then apply. Both Cardino and Jalosjos came to the Court for redress.

On February 22, 2011, the Court denied Jalosjos' petition, prompting Jalosjos to move for reconsideration. During the pendency of his motion, Jalosjos manifested that he had already tendered his resignation from his office and that the same was duly accepted by the governor of the province of Zamboanga del Norte.

I dissent from the majority's (i) position that the present case involves a cancellation of a certificate of candidacy (CoC) rather than a case of disqualification and (ii) conclusion that Cardino, the "second placer" in the 2010 elections for the mayoralty post of Dapitan City, Zamboanga del Norte, should be the rightful Mayor. I submit that while Cardino intended to cancel Jalosjos' CoC, his petition alleged acts constituting disqualification as its ground. Thus, the case should be resolved under the rules of disqualification, not from the point of a cancellation of a CoC.

I point out in this Dissenting Opinion, as I did in the cases of *Mayor Barbara Ruby C. Talaga v. Commission on*

Elections, et al.[1] and *Efren Racel Aratea v. Commission on Elections, et al.*,[2] that this case is best resolved through an analytical approach that starts from a consideration of the nature of a CoC; the distinctions between eligibility or lack of it and disqualification; the effects of cancellation and disqualification; and the applicable remedies.

The CoC and the Qualifications
for its Filing.

As I discussed in *Talaga and Aratea*, a basic rule and one that cannot be repeated often enough is that the CoC is the document that creates the status of a candidate. In *Sinaca v. Mula*,[3] the Court described the nature of a CoC as follows –

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

Both the 1973 and 1987 Constitutions left to Congress the task of providing the qualifications of local elective officials. Congress undertook this task by enacting *Batas Pambasa Bilang (B.P. Blg.) 337 (Local Government Code or LGC)*, *B.P. Blg. 881 (Omnibus Election Code or OEC)* and, later, *Republic Act (R.A.) No. 7160 (Local Government Code of 1991 or LGC 1991)*. [4]

Under Section 79 of the OEC, a political aspirant legally becomes a “candidate” only upon the due filing of his sworn CoC.[5] In fact, Section 73 of the OEC makes the filing of the CoC a condition sine qua non for a person to “be eligible for any elective public office”[6] – i.e., to be validly voted for in the elections. Section 76 of the OEC makes it a “ministerial duty” for a COMELEC official “to receive and acknowledge receipt of the certificate of candidacy”[7] filed.

COMELEC Resolution No. 8678 provides what a CoC must contain or state:[8]

Section 2. Contents of certificate of candidacy. - The certificate of candidacy shall be under oath and shall state that the person filing it is announcing his candidacy for the office and constituency stated therein; that he is eligible for said office, his age, sex, civil status, place and date of birth, his citizenship, whether natural-born or naturalized; the registered political party to which he belongs; if married, the full name of the spouse; his legal residence, giving the exact address, the precinct number, barangay, city or municipality and province where he is registered voter; his post office address for election purposes; his profession or occupation or employment; that he is not a permanent resident or an immigrant to a foreign country; that he will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, decrees, resolution, rules and regulations promulgated and issued by the duly-constituted authorities; that he assumes the foregoing obligations voluntarily without mental reservation or purpose of evasion; and that the facts stated in the certificate are true and correct to the best of his own knowledge. [italics supplied]

From the point of view of the common citizen who wants to run for a local elective office, the above recital contains all the requirements that he must satisfy; it contains the basic and essential requirements applicable to all citizens to qualify for candidacy for a local elective office. These are their formal terms of entry to local politics. A citizen must not only possess all these requirements; he must positively represent in his CoC application that he possesses them. Any falsity on these requirements constitutes a material misrepresentation that can lead to the cancellation of the CoC. On this point, Section 78 of the OEC provides:

Sec. 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, emphases and underscores ours]

A necessarily related provision is Section 39 of LGC 1991 which states:

Sec. 39. Qualifications. – (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sanggunian bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

x x x x

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

Notably, Section 74 of the OEC does not require any negative qualification except only as expressly required therein. A specific negative requirement refers to the representation that the would-be candidate is not a permanent resident nor an immigrant in another country. This requirement, however, is in fact simply part of the positive requirement of residency in the locality for which the CoC is filed and, in this sense, is not strictly a negative requirement. Neither does Section 74 require any statement that the would-be candidate does not possess any ground for disqualification specifically enumerated by law, as disqualification is a matter that the OEC and LGC 1991 separately deal with, as discussed below.

With the accomplishment of the CoC and its filing, a political aspirant officially acquires the status of a candidate and, at the very least, the prospect of holding public office; he, too, formally opens himself up to the complex political environment and processes. The Court cannot be more emphatic in holding “that the importance of a valid certificate of candidacy rests at the very core of the electoral process.”[9]

Pertinent laws[10] provide the specific periods when a CoC may be filed; when a petition for its cancellation may be brought; and the effect of its filing. These measures, among others, are in line with the State policy or objective of ensuring “equal access to opportunities for public service,”[11] bearing in mind that the limitations on the privilege to seek public office are within the plenary power of Congress to provide.[12]

The Concept of Disqualification vis-a-vis
Remedy of Cancellation; and Effects of
Disqualification.

To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules.[13] It is in these senses that the term is understood in our election laws.

Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens (Section 74 of the OEC) may be deprived of the right to be a candidate or may lose the right to be a candidate (if he has filed his CoC) because of a trait or characteristic that applies to him or an act that can be imputed to him as an individual, separately from the general qualifications that must exist for a citizen to run for a local public office.

In a disqualification situation, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC.[14]

Sections 68 and 12 of the OEC (together with Section 40 of LGC 1991, outlined below) cover the following as traits, characteristics or acts of disqualification: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

Section 40 of LGC 1991, on the other hand, essentially repeats those already in the OEC under the following disqualifications:

- 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;
- Those removed from office as a result of an administrative case;
- Those convicted by final judgment for violating the oath of allegiance to the Republic;
- Those with dual citizenship;
- Fugitives from justice in criminal or non-political cases here or abroad;
- 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
- The insane or feeble-minded.

Together, these provisions embody the disqualifications that, by statute, can be imputed against a candidate or a local elected official to deny him of the chance to run for office or of the chance to serve if he has been elected.

A unique feature of “disqualification” is that under Section 68 of the OEC, it refers only to a “candidate,” not to one who is not yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification. The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.

To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts applicable to specific individuals that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate’s CoC.

When the law allows the cancellation of a candidate’s CoC, the law considers the cancellation from the point of view of those positive requirements that every citizen who wishes to run for office must commonly satisfy. Since the elements of “eligibility” are common, the vice of ineligibility attaches to and affects both the candidate and

his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the “eligibility” requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.

Distinctions among (i) denying due course to or cancellation of a CoC, (ii) disqualification, and (iii) quo warranto

The nature of the eligibility requirements for a local elective office and the disqualifications that may apply to candidates necessarily create distinctions on the remedies available, on the effects of lack of eligibility and on the application of disqualification. The remedies available are essentially: the cancellation of a CoC, disqualification from candidacy or from holding office, and quo warranto, which are distinct remedies with varying applicability and effects. For ease of presentation and understanding, their availability, grounds and effects are topically discussed below.

As to the grounds:

In the denial of due course to or cancellation of a CoC, the ground is essentially lack of eligibility under the pertinent constitutional and statutory provisions on qualifications or eligibility for public office;[15] the governing provisions are Sections 78 and 69 of the OEC.[16]

In a disqualification case, as mentioned above, the grounds are traits, conditions, characteristics or acts of disqualification,[17] individually applicable to a candidate, as provided under Sections 68 and 12 of the OEC; Section 40 of LGC 1991; and Section 8, Article X of the Constitution. As previously discussed, the grounds for disqualification are different from, and have nothing to do with, a candidate’s CoC although they may result in disqualification from candidacy whose immediate effect upon finality before the elections is the same as a cancellation. If they are cited in a petition filed before the elections, they remain as disqualification grounds and carry effects that are distinctly peculiar to disqualification.

In a quo warranto petition, the grounds to oust an elected official from his office are ineligibility and disloyalty to the Republic of the Philippines. This is provided under Section 253 of the OEC and governed by the Rules of Court as to procedures. While quo warranto and cancellation share the same ineligibility grounds, they differ as to the time these grounds are cited. A cancellation case is brought before the elections, while a quo warranto is filed after and may still be filed even if a CoC cancellation case was not filed before elections.

The only difference between the two proceedings is that, under section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for quo warranto under section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under section 253, a candidate is ineligible if he is disqualified to be elected to office, and he is disqualified if he lacks any of the qualifications for elective office.[18]

Note that the question of what would constitute acts of disqualification – under Sections 68 and 12 of the OEC and Section 40 of LGC 1991 – is best resolved by directly referring to the provisions involved. The approach is not as straight forward in a petition to deny due course to or cancel a CoC and also to a quo warranto petition, which similarly covers the ineligibility of a candidate/elected official. In *Salcedo II v. COMELEC*,[19] we ruled that –

[I]n order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein pertain to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate — the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court has interpreted this phrase in a line of decisions applying Section 78 of the Code.

x x x x

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake. [emphases ours, citation omitted]

Thus, in addition to the failure to satisfy or comply with the eligibility requirements, a material misrepresentation must be present in a cancellation of CoC situation. The law apparently does not allow material divergence from the listed requirements to qualify for candidacy and enforces its edict by requiring positive representation of compliance under oath. Significantly, where disqualification is involved, the mere existence of a ground appears sufficient and a material representation assumes no relevance.

As to the period for filing:

The period to file a petition to deny due course to or cancel a CoC depends on the provision of law invoked. If the petition is filed under Section 78 of the OEC, the petition must be filed within twenty-five (25) days from the filing of the CoC.[20] However, if the petition is brought under Section 69 of the same law, the petition must be filed within five (5) days from the last day of filing the CoC.[21]

On the other hand, the period to file a disqualification case is at any time before the proclamation of a winning candidate, as provided in COMELEC Resolution No. 8696,[22] while a quo warranto petition must be filed within ten (10) days from proclamation.[23]

As to the effects of a successful suit:

A candidate whose CoC was denied due course or cancelled is not considered a candidate at all. Note that the law fixes the period within which a CoC may be filed.[24] After this period, generally no other person may join the election contest. A notable exception to this general rule is the rule on substitution. The application of the exception, however, presupposes a valid CoC. Unavoidably, a "candidate" whose CoC has been cancelled or denied due course cannot be substituted for lack of a CoC, to all intents and purposes.[25] Similarly, a successful quo warranto suit results in the ouster of an already elected official from office; substitution, for obvious reasons, can no longer apply.

On the other hand, a candidate who was simply disqualified is merely prohibited from continuing as a candidate or from assuming or continuing to assume the functions of the office; substitution can thus take place under the terms of Section 77 of the OEC.[26]

As to the effects of a successful suit on
the right of the second placer in the elections:

In any of these three remedies, the doctrine of rejection of the second placer applies for the simple reason that –

To simplistically assume that the second placer would have received the other votes would be to substitute our

judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under such circumstances.[27]

With the disqualification of the winning candidate and the application of the doctrine of rejection of the second placer, the rules on succession under the law accordingly apply, as provided under Section 44 of LGC 1991.

As an exceptional situation, however, the candidate with the second highest number of votes (second placer) may be validly proclaimed as the winner in the elections should the winning candidate be disqualified by final judgment before the elections, as clearly provided in Section 6 of R.A. No. 6646.[28] The same effect obtains when the electorate is fully aware, in fact and in law and within the realm of notoriety, of the disqualification, yet they still voted for the disqualified candidate. In this situation, the electorate that cast the plurality of votes in favor of the notoriously disqualified candidate is simply deemed to have waived their right to vote.[29]

In a CoC cancellation proceeding, the law is silent on the legal effect of a judgment cancelling the CoC and does not also provide any temporal distinction. Given, however, the formal initiatory role a CoC plays and the standing it gives to a political aspirant, the cancellation of the CoC based on a finding of its invalidity effectively results in a vote for an inexistent “candidate” or for one who is deemed not to be in the ballot. Although legally a misnomer, the “second placer” should be proclaimed the winner as the candidate with the highest number of votes for the contested position. This same consequence should result if the cancellation case becomes final after elections, as the cancellation signifies non-candidacy from the very start, i.e., from before the elections.

Application of Above Rulings and Principles to the Case.

While it is apparent from the undisputed facts that Cardino did indeed file a petition for denial and/or the cancellation of Jalosjos’ CoC, it is obvious as well, based on the above discussions, that the ground he cited was not appropriate for the cancellation of Jalosjos’ CoC but for his disqualification. Conviction for a crime involving moral turpitude is expressly a ground for disqualification under Section 12 of the OEC. As a ground, it applies only to Jalosjos; it is not a standard of eligibility that applies to all citizens who may be minded to run for a local political position; its non-possession is not a negative qualification that must be asserted in the CoC. Hence, there can be no doubt that what Cardino filed was effectively a petition for disqualification. This conclusion, of course, follows the rule that the nature of a petition is determined not by its title or by its prayers, but by the acts alleged as basis for the petition.

Unfortunately for Cardino, the position of a second placer is not given preference, both in law and in jurisprudence with respect to the consequences of election disputes (except with well-defined exceptional circumstances discussed above), after election has taken place.[30] This approach and its consequential results are premised on the general principle that the electorate is supreme; it registers its choice during the election and, after voting, effectively rejects the candidate who comes in as the second placer. Under the rule that a disqualified candidate can still stand as a candidate unless his disqualification has been ruled upon with finality before the elections,[31] Jalosjos validly stood as a candidate in the elections of May 2010 and won, although he was subsequently disqualified. With his disqualification while already sitting as Mayor, the winning vice-mayor, not Cardino as a mere defeated second placer, should rightfully be seated as mayor under Section 44 of LGC 1991 on the law on succession.

[1] G.R. Nos. 196804 and 197015.

[2] G.R. No. 195229.

[3] 373 Phil. 896, 908 (1999).

[4] Prior to these laws, the applicable laws were the Revised Administrative Code of 1917, R.A. No. 2264 (An Act Amending the Laws Governing Local Governments by Increasing Their Autonomy and Reorganizing Provincial Governments); and B.P. Blg. 52 (An Act Governing the Election of Local Government Officials).

[5] See, however, Section 15 of R.A. No. 8436, as amended. *Penera v. Commission on Elections*, G.R. No. 181613, November 25, 2009, 605 SCRA 574, 581-586, citing *Lanot v. COMELEC*, G.R. No. 164858, November 16, 2006, 507 SCRA 114.

[6] Section 73 of the OEC reads:

Section 73. Certificate of candidacy. - No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.

No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them.

However, before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.

The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred. *[italics supplied]*

Section 13 of R.A. No. 9369, however, adds that “[a]ny person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: Provided, That, unlawful acts or omissions applicable to a candidate shall effect only upon that start of the aforesaid campaign period[.]” *(italics supplied)*

[7] See *Cipriano v. Commission on Elections*, 479 Phil. 677, 689 (2004).

[8] The statutory basis is Section 74 of the OEC which provides:

Section 74. Contents of certificate of candidacy. - The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious

pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

[9] *Miranda v. Abaya*, 370 Phil. 642, 658 (1999). See also *Bautista v. Commission on Elections*, 359 Phil. 1 (1998).

[10] Section 13 of R.A. No. 9369, COMELEC Resolution No. 8678 and Section 78 of OEC.

[11] 1987 Constitution, Article II, Section 26.

[12] See *Pamatong v. Commission on Elections*, G.R. No. 161872, April 13, 2004, 427 SCRA 96, 100-103.

[13] Merriam-Webster's 11[th] Collegiate Dictionary, p. 655.

[14] If at all, only two grounds for disqualification under the Local Government Code may as well be considered for the cancellation of a CoC, viz.: those with dual citizenship and permanent residence in a foreign country, or those who have acquired the right to reside abroad and continue to avail of the same right after January 1, 1992. It may be argued that these two disqualifying grounds likewise go into the eligibility requirement of a candidate, as stated under oath by a candidate in his CoC.

[15] *Fermin v. Commission on Elections*, G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782, 792-794.

[16] See Section 7 of R.A. No. 6646.

[17] Sections 68 and 12 of the OEC cover these acts: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) over spending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

[18] *Salcedo II v. COMELEC*, 371 Phil. 377, 387 (1999), citing *Aznar v. Commission on Elections*, 185 SCRA 703 (1990).

[19] *Supra*, at 386-389.

[20] *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760, 765-766.

[21] Section 5(a) of R.A. No. 6646.

[22] Section 4(B) of COMELEC Resolution No. 8696 reads:

SEC. 4. Procedure in filing petitions. - For purposes of the preceding sections, the following procedure shall be observed:

x x x x

B. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SECTION 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF QUALIFICATIONS OR POSSESSING SOME GROUNDS FOR DISQUALIFICATION

1. A verified petition to disqualify a candidate pursuant to Section 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation[.]

[23] Section 253 of the OEC.

[24] Section 15 of R.A. No. 9369.

[25] *Miranda v. Abaya*, supra note 9, at 658-660.

[26] Section 77 of the OEC expressly allows substitution of a candidate who is “disqualified for any cause.”

[27] *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 424.

[28] *Cayat v. Commission on Elections*, G.R. Nos. 163776 and 165736, April 24, 2007, 522 SCRA 23, 43-47; Section 6 of R.A. No. 6646.

[29] *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

[30] See: discussions at pp. 14-15.

[31] Section 6 of R.A. No. 6646.

CONCURRING OPINION

BERSAMIN, J.:

The all-important concern here is the effect of the conviction for robbery by final judgment of and the probation allegedly granted to Dominador G. Jalosjos, petitioner in G.R. No. 193237, on his candidacy for the position of Mayor of Dapitan City; and the determination of the rightful person to assume the contested elective position upon the ineligibility of Jalosjos.

I easily CONCUR with the insightful opinion delivered for the Majority by our esteemed colleague, Senior Associate Justice Carpio. As I see it, these consolidated cases furnish to the Court the appropriate occasion to look again into the candidacy of a clearly ineligible candidate garnering the majority of the votes cast in an election and being proclaimed as the winning candidate to the detriment of the valid candidacy of his rival who has all the qualifications and suffers none of the disqualifications. The ineligible candidate thereby mocks the sanctity of the ballot and reduces the electoral exercise into an expensive joke.

G.R. No. 193237 is a special civil action for certiorari brought by Jalosjos to assail the Resolution dated August 11, 2010,[1] whereby the Commission on Elections (COMELEC) En Banc affirmed the Resolution dated May 10, 2010[2] issued by the COMELEC First Division in SPC No. 09-076 (DC). Both Resolutions declared Jalosjos ineligible to run as Mayor of Dapitan City, Zamboanga Del Norte in the May 10, 2010 national and local elections pursuant to Section 40(a) of The Local Government Code (LGC), viz:

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

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence; (b) Those removed from office as a result of an administrative case;

xxx

Additionally, the COMELEC cancelled Jalosjos' certificate of candidacy (CoC) on the ground of material misrepresentation made therein.

Jalosjos charges the COMELEC En Banc with committing grave abuse of discretion when it ruled that he was disqualified to run as Mayor of Dapitan City in view of the revocation of his probation; and when it cancelled his CoC without finding that he had deliberately misrepresented his qualifications to run as Mayor.

G.R. No. 193536 is a special civil action for certiorari commenced by Agapito J. Cardino, the only other candidate against Jalosjos, in order to set aside the COMELEC En Banc's Resolution dated August 11, 2010,[3] to the extent that the Resolution directed the application of the rule of succession as provided in the LGC. Cardino challenges the COMELEC En Banc's application of the rule of succession under the LGC, contending that he should be considered elected as Mayor upon the cancellation of Jalosjos' CoC because he had been the only bona fide candidate for the position of Mayor of Dapitan City.[4] Cardino insists that the cancellation of Jalosjos' CoC retroacted to the date of its filing, thereby reducing him into a non-candidate.[5]

The special civil actions were consolidated on March 29, 2011.[6]

Antecedents

The antecedents are narrated in the Resolution the Court has promulgated on February 22, 2011 in G.R. No. 193237, to wit:

On December 6, 2009, private respondent Agapito J. Cardino filed a Petition to Deny Due Course to and Cancel Certificate of Candidacy of petitioner before respondent Comelec. Petitioner and private respondent were both candidates for Mayor of Dapitan City, Zamboanga del Norte during the 2010 Elections. Private respondent alleged that petitioner misrepresented in his CoC that he was eligible to run for Mayor, when, in fact, he was not, since he had been convicted by final judgment of robbery, a crime involving moral turpitude, and he has failed to serve a single day of his sentence.

The final judgment for robbery stems from the following factual antecedents:

On April 30, 1970, the then Circuit Criminal Court (now Regional Trial Court [RTC]) of Cebu City convicted petitioner of the crime of robbery and sentenced him to suffer the penalty of one (1) year, eight (8) months, and twenty (20) days of prison correccional, as minimum, to four (4) years, two (2) months, and one (1) day of prison mayor, as maximum. Petitioner appealed his conviction to the Court of Appeals (CA). He later abandoned the appeal, which was thus dismissed on August 9, 1973. Sometime in June 1985, petitioner filed a petition for probation.

On July 9, 1985, Gregorio F. Bacolod (Bacolod), who was then the Supervising Probation Officer of the Parole and Probation Office, recommended to the RTC the grant of petitioner's application for probation. On the same day, the RTC issued an Order granting the probation for a period of one year subject to the terms and conditions stated therein.

However, on August 8, 1986, Bacolod filed a Motion for Revocation of the probation on the ground that petitioner failed to report to him, in violation of the condition of the probation. Accordingly, the RTC issued an

Order dated March 19, 1987, revoking the probation and ordering the issuance of a warrant of arrest. A warrant of arrest was issued but remained unserved.

More than 16 years later, or on December 19, 2003, petitioner secured a Certification from the Central Office of the Parole and Probation Administration (PPA), which was signed by Bacolod, now Administrator of the PPA, attesting that petitioner had fulfilled the terms and conditions of his probation.

At this time, the prosecution also decided to stir the case. It filed a motion for the issuance of an alias warrant of arrest. The RTC granted the motion on January 16, 2004 and issued an Order for the Issuance of an Alias Warrant of Arrest against petitioner.

On January 23, 2004, Bacolod submitted to the RTC a Termination Report stating that petitioner had fulfilled the terms and conditions of his probation and, hence, his case should be deemed terminated. On the same day, petitioner filed an Urgent Motion to Reconsider its January 16, 2004 Order and to Lift the Warrant of Arrest.

On January 29, 2004, James A. Adasa (Adasa), petitioner's opponent for the mayoralty position during the 2004 Elections, filed a Petition for Disqualification against petitioner, based on Section 40(a) of Republic Act (R.A.) No. 7160, the Local Government Code of 1991, on the ground that the latter has been convicted of robbery and failed to serve his sentence. Adasa later amended his petition to include Section 40(e) of the same law, claiming that petitioner is also a "fugitive from justice."

Meanwhile, acting on petitioner's urgent motion, the RTC issued an Order dated February 5, 2004, declaring that petitioner had duly complied with the order of probation, setting aside its January 16, 2004 Order, and recalling the warrant of arrest.

Thus, in resolving Adasa's petition, the Comelec Investigating Officer cited the February 5, 2004 RTC Order and recommended that petitioner be declared qualified to run for Mayor. In the Resolution dated August 2, 2004, the Comelec-Second Division adopted the recommendation of the Investigating Officer and denied the petition for disqualification. It held that petitioner has amply proven that he had complied with the requirements of his probation as shown by the Certification from the PPA dated December 19, 2003, which was the basis of the February 5, 2004 RTC Order.

Adasa filed a motion for reconsideration, which the Comelec En Banc denied on December 13, 2006.

Adasa then filed a petition for certiorari with the Supreme Court (G.R. No. 176285). In a Resolution dated June 3, 2008, the Court dismissed the petition for being moot and academic, the three-year term of office having expired.

In a related incident, Bacolod, who issued the Certification dated December 19, 2003 to petitioner, was charged with violation of Section 3(e) of R.A. No. 3019 and falsification of public document under the Revised Penal Code for issuing said Certification. On September 29, 2008, the Sandiganbayan rendered a decision finding Bacolod guilty as charged. It held that the Certification he issued was definitely false because petitioner did not actually fulfill the conditions of his probation as shown in the RTC Order dated March 19, 1987, which states that the probation was being revoked. Hence, at the time the Certification was issued, there was no longer a probation order to be fulfilled by petitioner.

On May 10, 2010, the elections were held, and petitioner won as Mayor of Dapitan City.

On the same day, the Comelec-First Division issued a resolution granting the Petition to Deny Due Course and cancelling petitioner's CoC. The Comelec noted that the dismissal of Adasa's petition for disqualification hinged on the presumption of regularity in the issuance of the PPA Certification dated December 19, 2003, declaring that petitioner had complied with the requirements of his probation. It opined that, with the decision of the Sandiganbayan convicting Bacolod, it would now appear that the December 19, 2003 Certification was fraudulently issued and that petitioner had not actually served his sentence; thus, the ruling on Adasa's petition

is “left with no leg to stand on.”

Petitioner moved for reconsideration. The Comelec En Banc denied the motion in a resolution dated August 11, 2010. The Comelec ordered him to cease and desist from occupying and discharging the functions of the Office of the Mayor of Dapitan City.[7]

Through the Resolution promulgated on February 22, 2011,[8] the Court dismissed G.R. No. 193237, disposing:

WHEREFORE, the foregoing premises considered, the Petition for Certiorari is DISMISSED. The assailed Resolution dated May 10, 2010 and Resolution dated August 11, 2010 of the Commission on Elections in SPA Case No. 09-076 (DC) are hereby AFFIRMED.

On March 22, 2011, Jalosjos moved for the reconsideration of the February 22, 2011 Resolution,[9] raising the same issues he had averred in his petition.

On June 1, 2012, however, Jalosjos filed a manifestation dated May 30, 2012, informing the Court that he had meanwhile tendered his resignation as Mayor of Dapitan City effective April 30, 2012; that his resignation had been accepted by Governor Rolando E. Yebes of Zamboanga del Norte; and that Vice Mayor Patri Bajamunde-Chan had taken her oath of office as the new Mayor of Dapitan City.

Disposition

I vote to affirm the disqualification of Jalosjos as a candidate for Mayor of Dapitan City; and to sustain the Resolution of the COMELEC En Banc cancelling his CoC.

I agree with the Majority that the rule of succession provided by the LGC does not apply to determine who should now sit as Mayor of Dapitan City. Thus, I hold that Cardino, the only other candidate with a valid CoC for Mayor of Dapitan City in the May 10, 2010 elections, had the legal right to assume the position of City Mayor.

Let me specify the reasons for this humble concurrence.

1.

Cardino’s petition in SPA Case No. 09-076 (DC)

was a petition to deny due course to
or cancel a CoC under Section 78 of the
Omnibus Election Code

The COMELEC En Banc correctly held that the petition of Cardino in SPA Case No. 09-076 (DC) was in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the Omnibus Election Code.

In *Salcedo II v. Commission on Elections*,[10] the Court pointed out that there are two remedies available to challenge the qualifications of a candidate, namely:

(1) Before the election, pursuant to Section 78 of the Omnibus Election Code, to wit:

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 misrepresentation 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.

and -

(2) After the election, pursuant to Section 253 of the Omnibus Election Code, viz:

Section 253. Petition for quo warranto. - Any voter contesting the election of any Member of the Batasang

Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for quo warranto with the Commission within ten days after the proclamation of the results of the election.

The Court has explained that the only difference between the two remedies is that, under Section 78, the qualifications for elective office are misrepresented in the CoC, and the proceedings must be initiated prior to the elections, while under Section 253, a petition for quo warranto may be brought within ten days after the proclamation of the election results on either of two grounds, to wit: (a) ineligibility; or (b) disloyalty to the Republic of the Philippines. A candidate is ineligible under Section 253 if he is disqualified to be elected to office; and he is disqualified if he lacks any of the qualifications for elective office.[11]

In describing the nature of a Section 78 petition, the Court said in *Fermin v. Commission on Elections*:[12]

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the winning candidate.[13]

Clearly, the only instance where a petition assailing the qualifications of a candidate for elective office can be filed prior to the elections is when the petition is filed under Section 78.[14]

A Section 78 petition is not to be confused with a Section 12 or Section 68 petition. The two are different remedies, are based on different grounds, and can result in different eventualities.[15] A person who is disqualified under either Section 12[16] or Section 68[17] is prohibited to continue as a candidate, but a person whose CoC is cancelled or denied due course under Section 78 is not considered a candidate at all because his status is that of a person who has not filed a CoC.[18]

To ascertain whether *Cardino's* petition against *Jaloslos* was a petition under Section 78, on one hand, or under Section 12 or Section 68, on the other hand, it is necessary to look at its averments and relief prayed for, viz:

- Petitioner is of legal age, Filipino citizen, married, able to read and write, a registered voter of Precinct No. 0019A, and is and has been a resident of Dapitan City, continuously since birth up to the present;
- Petitioner duly filed his certificate of candidacy for the position of City Mayor of Dapitan for the election on May 10, 2010, with the Office of the Commission on Election, Dapitan City, on December 1, 2009, which accepted and acknowledged the same, a copy of which is hereto attached as Annex A;
- Respondent is also of legal age, a resident of Dapitan City, a registered voter of Precinct No. 0187B, likewise filed his certificate of candidacy for the same position with the Office of the Comelec, Dapitan City, as that for which petitioner duly filed a certificate of candidacy, for the May 10, 2010 national and local elections on December 1, 2009, a certified true copy of said COC is hereto attached as Annex B;
- Respondent's certificate of candidacy under oath contains material misrepresentation, when he declared under oath, that respondent is eligible for the office he seeks to be elected, [par. 16, COC for Mayor], considering that he is not eligible for the position for which he filed a certificate of candidacy because respondent was convicted by final judgment by the Regional Trial Court of Cebu City in Crim. Case No.

CCC-XIV-140-Cebu for Robbery, an offense involving moral turpitude and he was sentenced to suffer the penalty of “one [1] year, eight [8] Months and Twenty [20] Days of prison correctional, as minimum, to Four [4] years, Two [2] months and One [1] day of prison mayor as maximum, a certified true [copy] of which decision is hereto attached as Annex C;

- Respondent failed to serve even a single day of his sentence. The position requires that a candidate be eligible and/or qualified to aspire for the position as required under Section 74 of the Omnibus Election Code;
- This petition is being filed within the reglementary period of within five days following the last day for the filing of certificate of candidacy.

WHEREFORE, it is most respectfully prayed of this Honorable Commission:

- Declaring respondent, Dominador G. Jalosjos, Jr. ineligible for the position for which he filed certificate of candidacy and to deny due course to such filing and to cancel the certificate of candidacy [Annex B]; x x x[19] (Emphasis supplied)

The foregoing make it evident that Cardino’s petition contained the essential allegations pertaining to a Section 78 petition, namely: (a) Jalosjos made a false representation in his CoC; (b) the false representation referred to a material matter that would affect the substantive right of Jalosjos to run in the elections for which he filed his CoC; and (c) Jalosjos made the false representation with the intention to deceive the electorate as to his qualification for public office or to deliberately attempt to mislead, misinform, or hide a fact that would otherwise render him ineligible.[20]

Worthy of noting is that the specific reliefs prayed for by the petition, supra, were not only for the declaration that Jalosjos was “ineligible for the position for which he filed certificate of candidacy” but also for denying “due course to such filing and to cancel the certificate of candidacy.” Thereby, Cardino’s petition attacked both Jalosjos’ qualifications to run as Mayor of Dapitan City and the validity of Jalosjos’ CoC based on the latter’s assertion of his eligibility despite knowledge of his conviction and despite his failure to serve his sentence. The petition was properly considered to be in all respects as a petition to deny due course to or cancel Jalosjos’ CoC under Section 78 of the Omnibus Election Code.

2.

Jalosjos materially misrepresented his eligibility as a candidate for Mayor of Dapitan City; hence, the COMELEC properly cancelled his CoC

The denial of due course to or the cancellation of the CoC under Section 78 of the Omnibus Election Code involves a finding not only that a person lacked the qualifications but also that he made a material representation that was false.[21] In *Mitra v. Commission on Elections*, [22] the Court added that there must also be a deliberate attempt to mislead, thus:

The false representation under Section 78 must likewise be a “deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible.” Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate’s qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.[23]

A petition for the denial of due course to or cancellation of a CoC that is short of the requirements should not be

granted.

Based on the antecedents narrated herein, I consider to be warranted the COMELEC En Banc's conclusion to the effect that, firstly, his conviction for robbery absolutely disqualified Jalosjos from running as Mayor of Dapitan City, and, secondly, Jalosjos deliberately misrepresented his eligibility when he filed his CoC.

First of all, the records show that the erstwhile Circuit Criminal Court in Cebu City had convicted Jalosjos of the felony of robbery on April 30, 1970 and had sentenced him to suffer the indeterminate penalty of one year, eight months and 20 days of prision correccional, as minimum, to four years, two months and one day of prision mayor, as maximum. Although he had appealed, his appeal was turned down on August 9, 1973. In June 1985, or more than 15 years after his conviction by the Circuit Criminal Court, he filed a petition for probation.

Pursuant to Section 40(a) of the LGC,[24] his having been sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one year or more of imprisonment rendered Jalosjos ineligible to run for Mayor of Dapitan City. There is no quibbling about the felony of robbery being an offense involving moral turpitude. As the Court has already settled, "embezzlement, forgery, robbery, and swindling are crimes which denote moral turpitude and, as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude." [25]

Anent moral turpitude for purposes of the election laws, the Court has stated in *Teves v. Commission on Elections*: [26]

Moral turpitude has been defined as everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general.

x x x

Thus, in *Dela Torre v. Commission on Elections*, the Court clarified that:

Not every criminal act, however, involves moral turpitude. It is for this reason that "as to what crime involves moral turpitude, is for the Supreme Court to determine." In resolving the foregoing question, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, the rationale of which was set forth in "*Zari v. Flores*," to wit:

"It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited." [27]

It is relevant to mention at this juncture that the ineligibility of a candidate based on his conviction by final judgment for a crime involving moral turpitude is also dealt with in Section 12 of the Omnibus Election Code, which specifically states: –

Section 12. Disqualifications. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he 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.

This 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.

(Emphasis supplied.)

Pursuant to Section 12, Jalosjos remained ineligible to run for a public office considering that he had not been granted plenary pardon for his criminal offense. The expiration of the five-year period defined in Section 12 counted from his service of sentence did not affect the ineligibility, it being indubitable that he had not even served his sentence at all.

It is relevant to clarify, moreover, that the five-year period defined in Section 12 is deemed superseded by the LGC, whose Section 40(a) expressly sets two years after serving sentence as the period of disqualification in relation to local elective positions. To reconcile the incompatibility between Section 12 and Section 40(a), the Court has discoursed in *Magno v. Commission on Elections*:^[28]

It should be noted that the Omnibus Election Code (BP 881) was approved on December 3, 1985 while the Local Government Code (RA 7160) took effect on January 1, 1992. It is basic in statutory construction that in case of irreconcilable conflict between two laws, the later enactment must prevail, being the more recent expression of legislative will. *Legis posteriores priores contrarias abrogant*. In enacting the later law, the legislature is presumed to have knowledge of the older law and intended to change it. Furthermore, the repealing clause of Section 534 of RA 7160 or the Local Government Code states that:

(f) All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any provisions of this Code are hereby repealed or modified accordingly.

In accordance therewith, Section 40 of RA 7160 is deemed to have repealed Section 12 of BP 881. Furthermore, Article 7 of the Civil Code provides that laws are repealed only by subsequent ones, and not the other way around. When a subsequent law entirely encompasses the subject matter of the former enactment, the latter is deemed repealed.

In *David vs. COMELEC*, we declared that RA 7160 is a codified set of laws that specifically applies to local government units. Section 40 thereof specially and definitively provides for disqualifications of candidates for elective local positions. It is applicable to them only. On the other hand, Section 12 of BP 881 speaks of disqualifications of candidates for any public office. It deals with the election of all public officers. Thus, Section 40 of RA 7160, insofar as it governs the disqualifications of candidates for local positions, assumes the nature of a special law which ought to prevail.

The intent of the legislature to reduce the disqualification period of candidates for local positions from five to two years is evident. The cardinal rule in the interpretation of all laws is to ascertain and give effect to the intent of the law. The reduction of the disqualification period from five to two years is the manifest intent. (Bold emphases supplied)^[29]

Regardless of whether the period applicable was five years or two years, Jalosjos was still ineligible to run for any public office in any election by virtue of his having been sentenced to suffer *prision mayor*. That sentence perpetually disqualified him from running for any elective office considering that he had not been meanwhile granted any plenary pardon by the Chief Executive.

Indeed, in accordance with the express provisions of the Revised Penal Code, the penalty of *prision mayor* imposed on Jalosjos for the robbery conviction carried the accessory penalties of temporary absolute disqualification and of perpetual special disqualification from the right of suffrage. The effects of the accessory penalty of temporary absolute disqualification included the deprivation during the term of the sentence of the right to vote in any election for any popular elective office or to be elected to such office.^[30] The effects of the accessory penalty of perpetual special disqualification from the right of suffrage was to deprive the convict

perpetually of the right to vote in any popular election for any public office or to be elected to such office; he was further prohibited from holding any public office perpetually.[31] These accessory penalties would remain even though the convict would be pardoned as to the principal penalty, unless the pardon expressly remitted the accessory penalties.[32]

Secondly, Jalosjos had no legal and factual bases to insist that he became eligible to run as Mayor of Dapitan City because he had been declared under the RTC order dated February 5, 2004 to have duly complied with the order of his probation. His insistence has no merit whatsoever.

Probation, by its legal definition, is only “a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer.”[33] The grant of probation cannot by itself remove a person’s disqualification to be a candidate or to hold any office due to its not being included among the grounds for the removal of the disqualification under Section 12 of the Omnibus Election Code, *supra*. Although the original text of Section 4 of Presidential Decree No. 968 (Probation Law of 1976) stated that: ?

xxx [a]n application for probation shall be filed with the trial court, with notice to the appellate court if an appeal has been taken from the sentence of conviction. The filing of the application shall be deemed a waiver of the right to appeal, or the automatic withdrawal of a pending appeal.

the amendment of Presidential Decree No. 968 by Presidential Decree No. 1990[34] has made more explicit that probation only suspends the execution of the sentence under certain conditions set by the trial court, viz:

Section 4. Grant of Probation. — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; Provided, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall not be appealable.

For sure, probation or its grant has not been intended to relieve the convict of all the consequences of the sentence imposed on his crime involving moral turpitude. Upon his final discharge as a probationer, the convict is restored only to “all civil rights lost or suspended as a result of his conviction.” This consequence is according to the second paragraph of Section 16 of the Probation Law of 1976, which states: “The final discharge of the probationer shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted.” There is no question that civil rights are distinct and different from political rights, like the right of suffrage or the right to run for a public office.

Even assuming that Jalosjos had been validly granted probation despite his having appealed his conviction (considering that the amendment stating that an appeal barred the application for probation took effect only on October 5, 1985 but his application for probation was earlier made in June 1985), his disqualification pursuant to Section 40(a) of the LGC would have still attached simply because the legal effect of a validly-granted probation was only to suspend the execution of sentence,[35] not to obliterate the consequences of the sentence on his political rights.

In reality, Jalosjos could not even legitimately and sincerely rely on his supposed final discharge from probation. He was fully aware that he did not at all satisfy the conditions of his probation,[36] contrary to what Section 10 and Section 16 of the Probation Law definitely required, to wit:

Section 10. Conditions of Probation. — Every probation order issued by the court shall contain conditions requiring that the probationer shall:

(a) present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within seventy-two hours from receipt of said order; .

(b) report to the probation officer at least once a month at such time and place as specified by said officer. x x x

Section 16. Termination of Probation. — After the period of probation and upon consideration of the report and recommendation of the probation officer, the court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation and thereupon the case is deemed terminated.

The final discharge of the probationer shall operate to restore to him all civil rights lost or suspend as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted.

The probationer and the probation officer shall each be furnished with a copy of such order.

The records indicate that the RTC revoked the order of probation on March 19, 1987 upon a motion filed by one Gregorio Bacolod, the Supervising Probation Officer who had recommended the approval of the application for probation. The revocation was premised on Jalosjos' failure to report to Bacolod in violation of the conditions of his probation. Following the revocation, the RTC issued a warrant for the arrest of Jalosjos, but the warrant has remained unserved until this date. With the revocation of his probation and in the absence of an order of final discharge, Jalosjos was still legally bound to serve the sentence for robbery.

I point out for emphasis that the February 5, 2004 order of the RTC declaring that Jalosjos had duly complied with the order of probation deserved no consideration for the following reasons, namely: (a) the certification attesting that Jalosjos had fulfilled the terms and conditions of his probation was secured by and issued to him only on December 19, 2003, more than 16 years from the issuance of the RTC order revoking his probation; (b) the certification was issued by Bacolod, the same Supervising Probation Officer who had moved for the revocation of the probation; and (c) the Sandiganbayan later on found the certification to have been falsified by Bacolod considering that at the time of its issuance there was no longer a probation order to be fulfilled by Jalosjos.[37]

And, thirdly, Jalosjos argues that he acted in good faith in representing in his CoC that he was qualified to run as Mayor of Dapitan City,[38] having relied on the previous ruling of the COMELEC adjudging him eligible to run and to be elected as Mayor of Dapitan City;[39] and that it cannot then be said that he deliberately attempted to mislead or to deceive the electorate as to his eligibility.

The argument is devoid of merit.

The COMELEC Resolution dated August 2, 2004, on which Jalosjos has anchored his claim of good faith, was rendered on the basis of the RTC order dated February 5, 2004 that had declared Jalosjos to have sufficiently complied with the conditions of his probation based on the certification dated December 19, 2003. As earlier emphasized, however, the issuance of the certification dated December 19, 2003 that became the basis for the RTC order dated February 5, 2004 proved to be highly irregular, and culminated in the Sandiganbayan convicting Bacolod of falsification in relation to his issuance of the certification.

Clearly, Jalosjos' reliance on the COMELEC Resolution dated August 2, 2004 was definitely not in good faith, but was contrary to every juridical conception of good faith, which, according to *Heirs of the Late Joaquin Limense v. Vda. De Ramos*,^[40] is —

xxx an intangible and abstract quality with no technical meaning or statutory definition; and it encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another.^[41]

In contrast, Jalosjos had knowledge of the circumstances surrounding the finality of his conviction and the revocation of his probation. He never denied and cannot now dispute his failure to comply with the conditions of his probation, for he fully knew that he had never duly reported to Bacolod during the period of his probation. The following findings rendered by the Sandiganbayan in its Decision dated September 29, 2008 convicting Bacolod of falsification of a public document and violation of Republic Act No. 3019 sustained the fact that Jalosjos had been unable to fulfil the terms of his probation: —

xxx [T]he subject Certification of the accused [Bacolod] attesting that "as per records" Mr. Jalosjos "has fulfilled the terms and conditions of his probation and his case is deemed terminated," is nevertheless false because the PPA Central Office had no records of an order of final discharge issued by the court to support the facts narrated in the subject certification that Mr. Jalosjos has fulfilled the terms and conditions of his probation and that his case is deemed terminated.

Besides, the accused failed to submit any oral or documentary evidence to establish that at the time he issued the subject Certification on December 19, 2003, Mr. Jalosjos has already fulfilled the terms and conditions of his probation. His belated submission on January 23, 2004 of a termination report dated January 12, 2004 does not cure or remedy the falsity of the facts narrated in the subject certification. Rather, it strengthens the theory of the prosecution that at the time the accused issued the subject Certification on December 19, 2003, probationer Jalosjos had not yet fulfilled the terms and conditions of his probation because, if it were so, his submission of the said termination report would no longer be necessary. Since the PPA Central Office had no record of a court order of final discharge of the probationer from probation, then he should have been truthful and certified to that effect.^[42]

Nor could Jalosjos even feign a lack of awareness of the issuance of the warrant for his arrest following the revocation of his probation by the RTC on March 19, 1987. This is because he filed an Urgent Motion for Reconsideration and to Lift Warrant of Arrest in the RTC upon obtaining the falsified certification issued by Bacolod.^[43] The absurdity of his claim of good faith was well-known even to him because of his possession at the time he filed his CoC of all the information material to his conviction and invalid probation. Being presumed to know the law, he knew that his conviction for robbery and his failure to serve his sentence rendered him ineligible to run as Mayor of Dapitan City. As a result, his affirmation of his eligibility in his CoC was truly nothing but an act tainted with bad faith.

3.

Jalosjos did not file a valid CoC for the May 10, 2010 elections; not being an official candidate, votes cast in his favor are considered stray

The filing of a CoC within the period provided by law is a mandatory requirement for any person to be considered a candidate in a national or local election. This is clear from Section 73 of the Omnibus Election Code, to wit:

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

In turn, Section 74 of the Omnibus Election Code specifies the contents of a CoC, viz:

Section 74. Contents of certificate of candidacy.—The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge. x x x (Emphasis supplied)

A CoC, according to *Sinaca v. Mula*,^[44] “is in the nature of a formal manifestation to the whole world of the candidate’s political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.”

Accordingly, a person’s declaration of his intention to run for public office and his declaration that he possesses the eligibility for the position he seeks to assume, followed by the timely filing of such declaration, constitute a valid CoC that render the declarant an official candidate.

In *Bautista v. Commission on Elections*,^[45] the Court stated that a cancelled CoC does not give rise to a valid candidacy. A person without a valid CoC cannot be considered a candidate in much the same way as any person who has not filed any CoC cannot at all be a candidate.^[46] Hence, the cancellation of *Jalosjos’* CoC rendered him a non-candidate in the May 10, 2010 elections.

But, even without the cancellation of his CoC, *Jalosjos* undeniably possessed a disqualification to run as Mayor of *Dapitan City*. The fact of his ineligibility was by itself adequate to invalidate his CoC without the necessity of its express cancellation or denial of due course by the COMELEC. Under no circumstance could he have filed a valid CoC. The accessory penalties that inhered to his penalty of prison mayor perpetually disqualified him from the right of suffrage as well as the right to be voted for in any election for public office. The disqualification was by operation of a mandatory penal law. For him to be allowed to ignore the perpetual disqualification would be to sanction his lawlessness, and would permit him to make a mockery of the electoral process that has been so vital to our democracy. He was not entitled to be voted for, leaving all the votes cast for him stray and legally non-existent.

In contrast, *Cardino*, the only remaining candidate, was duly elected and should legally assume the position of Mayor of *Dapitan City*. According to the Court in *Santos v. Commission on Elections*:^[47]

Anent petitioner’s contention that his disqualification does not ipso facto warrant the proclamation of private respondent, We find the same untenable and without legal basis since votes cast for a disqualified candidate fall within the category of invalid non-existent votes because a disqualified candidate is no candidate at all in the eyes of the law. Section 155 of the Election Code provides —
“Any vote cast in favor of a candidate who has been disqualified shall be considered as stray and shall not be counted but it shall not invalidate the ballot.” (Italics supplied)

Considering that all the votes garnered by the petitioner are stray votes and therefore should not be counted, We find no error, much less any grave abuse of discretion on the part of the Comelec, in proclaiming private respondent Ricardo J. Rufino the duly elected Mayor of Taytay, Rizal, he having obtained the highest number of votes as appearing and certified in the canvass of votes submitted by the Municipal Board of Canvassers petitioner having been legally disqualified. Such a proclamation finds legal support from the case of *Ticzon vs. Comelec* 103 SCRA 671, wherein disqualified candidate Ticzon likewise questioned the legality of the Resolution of the Comelec which not only disqualified him but further proclaimed Dizon, the only candidate left for the disputed position, and this Court upheld the proclamation of Cesar Dizon as Mayor of San Pablo City.[48]

Although the doctrine of the sovereign will has prevailed several times in the past to prevent the nullification of an election victory of a disqualified candidate, or of one whose CoC was cancelled, the Court should not now be thwarted from enforcing the law in its letter and spirit by any desire to respect the will of the people expressed in an election. The objective of prescribing disqualifications in the election laws as well as in the penal laws is obviously to prevent the convicted criminals and the undeserving from running and being voted for. Unless the Court leads the way to see to the implementation of the unquestionable national policy behind the prescription of disqualifications, there would inevitably come the time when many communities of the country would be electing convicts and misfits. When that time should come, the public trust would be trivialized and the public office degraded. This is now the appropriate occasion, therefore, to apply the law in all its majesty in order to enforce its clear letter and underlying spirit. Thereby, we will prevent the electoral exercise from being subjected to mockery and from being rendered a travesty.

In closing, I consider to be appropriate and fitting the Court's following pronouncement in *Velasco v. Commission on Elections*:[49]

x x x [W]e have ruled in the past that a candidate's victory in the election may be considered a sufficient basis to rule in favor of the candidate sought to be disqualified if the main issue involves defects in the candidate's certificate of candidacy. We said that while provisions relating to certificates of candidacy are mandatory in terms, it is an established rule of interpretation as regards election laws, that mandatory provisions requiring certain steps before elections will be construed as directory after the elections, to give effect to the will of the people. We so ruled in *Quizon v. COMELEC* and *Saya-ang v. COMELEC*.

The present case perhaps presents the proper time and opportunity to fine-tune our above ruling. We say this with the realization that a blanket and unqualified reading and application of this ruling can be fraught with dangerous significance for the rule of law and the integrity of our elections. For one, such blanket/unqualified reading may provide a way around the law that effectively negates election requirements aimed at providing the electorate with the basic information to make an informed choice about a candidate's eligibility and fitness for office.

The first requirement that may fall when an unqualified reading is made is Section 39 of the LGC which specifies the basic qualifications of local government officials. Equally susceptible of being rendered toothless is Section 74 of the OEC that sets out what should be stated in a COC. Section 78 may likewise be emasculated as mere delay in the resolution of the petition to cancel or deny due course to a COC can render a Section 78 petition useless if a candidate with false COC data wins. To state the obvious, candidates may risk falsifying their COC qualifications if they know that an election victory will cure any defect that their COCs may have. Election victory then becomes a magic formula to bypass election eligibility requirements.

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

In the present case, Velasco is not only going around the law by his claim that he is registered voter when he is

not, as has been determined by a court in a final judgment. Equally important is that he has made a material misrepresentation under oath in his COC regarding his qualification. For these violations, he must pay the ultimate price – the nullification of his election victory. He may also have to account in a criminal court for making a false statement under oath, but this is a matter for the proper authorities to decide upon.

We distinguish our ruling in this case from others that we have made in the past by the clarification that COC defects beyond matters of form and that involve material misrepresentations cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken. A mandatory and material election law requirement involves more than the will of the people in any given locality. Where a material COC misrepresentation under oath is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will. The balance must always tilt in favor of upholding and enforcing the law. To rule otherwise is to slowly gnaw at the rule of law.[50]

ACCORDINGLY, I JOIN the Majority in granting the petition in G.R. No. 193536; in dismissing the petition in G.R. No. 193237 for lack of merit; and in affirming the COMELEC En Banc Resolution dated February 22, 2011 subject to the modification that Agapito J. Cardino be proclaimed as the duly elected Mayor of Dapitan City, Zamboanga during the May 10, 2010 national and local elections, and thus entitled to assume the office of Mayor of Dapitan City.

[1] Rollo, G.R. No. 193237, pp. 49-56.

[2] Id. at 40-48.

[3] Id. at 49-56.

[4] Rollo, G.R. No. 193536, p. 9.

[5] Id.

[6] Id. at 177.

[7] Rollo, G.R. No. 193237, pp. 355-358.

[8] Id. at 355-360.

[9] Id. at. 373-391.

[10] G.R. No. 135886, August 16, 1999, 312 SCRA 447.

[11] Id. at 457.

[12] G.R. No. 179695 & 182369, December 18, 2008, 574 SCRA 782.

[13] Id., pp. 792-794; emphases are part of the original text.

[14] *Gonzales v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 777.

[15] *Fermin v. Commission on Elections*, *supra*, note 12, p. 794.

[16] Section 12. Disqualifications. - Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he 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.

This disqualification 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.

[17] Section 68. Disqualifications. — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (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, subparagraph 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.

[18] *Fermin v. Commission on Elections*, supra, note 12, at pp. 794-796, to wit:

x x x [A] petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code], or Section 40 of the [Local Government Code]. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.

[19] *Rollo*, G.R. No. 193237, pp. 58-59.

[20] See *Fermin v. Commission on Elections*, supra, note 12; *Salcedo II v. Commission on Elections*, supra, note 10.

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

[22] G.R. No. 191938, July 2, 2010, 622 SCRA 744.

[23] *Id.* at 769.

[24] Section 40. Disqualifications. - The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence; (b) Those removed from office as a result of an administrative case;

xxx

[25] *Republic v. Marcos*, G.R. Nos. 130371 & 130855, August 4, 2009, 595 SCRA 43, 63; see also *De Jesus-Paras v. Vailoces*, A.C. No. 439, April 12, 1961, 1 SCRA 954, 956.

[26] G.R. No. 180363, April 28, 2009, 587 SCRA 1.

[27] *Id.* at 12-13.

[28] G.R. No. 147904, October 4, 2002, 390 SCRA 495.

[29] *Id.* at 500-501.

[30] Article 30 of the Revised Penal Code gives the effects of the accessory penalties of perpetual or temporary absolute disqualification, to wit:

Article 30. Effects of the penalties of perpetual or temporary absolute disqualification. — The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

- The deprivation of the public offices and employments which the offender may have held even if conferred by popular election.
- The deprivation of the right to vote in any election for any popular office or to be elected to such office.
- The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held.

[31] Article 32 of the Revised Penal Code expressly declares:

Article 32. Effect of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage. — The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.

[32] Article 42 of the Revised Penal Code reads:

Article 42. Prison mayor; Its accessory penalties. — The penalty of prison mayor shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

[33] Section 3(a), Presidential Decree No. 968.

[34] Approved on October 5, 1985.

[35] Section 4, Presidential Decree No. 968, states:

Section 4. Grant of Probation. — Subject to the provisions of this Decree, the court may, after it shall have convicted and sentenced a defendant and upon application at any time of said defendant, suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

[36] *Rollo*, G.R. No. 193237, pp. 159-160.

[37] On that basis, the Sandiganbayan convicted Bacolod of two crimes, one, for a violation of Section 3(e) of Republic Act No. 3019, and, two, for falsification of public document under the Revised Penal Code.

- [38] Id. at 28.
- [39] Id. at 27-28.
- [40] G.R. No. 152319, October 28, 2009, 604 SCRA 599.
- [41] Id. at 612; emphasis is supplied.
- [42] Rollo, G.R. No. 193237, pp. 159-160.
- [43] Id. at 153.
- [44] G.R. No. 135691, September 27, 1999, 315 SCRA 266, 276.
- [45] G.R. No. 133840, November 13, 1998, 298 SCRA 480, 493.
- [46] *Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617, 624.
- [47] G.R. No. L-58512, July 23, 1985, 137 SCRA 740.
- [48] Id. at 749.
- [49] G.R. No. 180051, December 24, 2008, 575 SCRA 590.
- [50] Id. at 614-615.

CONCURRING OPINION

BERSAMIN, J.:

The all-important concern here is the effect of the conviction for robbery by final judgment of and the probation allegedly granted to Dominador G. Jalosjos, petitioner in G.R. No. 193237, on his candidacy for the position of Mayor of Dapitan City; and the determination of the rightful person to assume the contested elective position upon the ineligibility of Jalosjos.

I easily CONCUR with the insightful opinion delivered for the Majority by our esteemed colleague, Senior Associate Justice Carpio. As I see it, these consolidated cases furnish to the Court the appropriate occasion to look again into the candidacy of a clearly ineligible candidate garnering the majority of the votes cast in an election and being proclaimed as the winning candidate to the detriment of the valid candidacy of his rival who has all the qualifications and suffers none of the disqualifications. The ineligible candidate thereby mocks the sanctity of the ballot and reduces the electoral exercise into an expensive joke.

G.R. No. 193237 is a special civil action for certiorari brought by Jalosjos to assail the Resolution dated August 11, 2010,[1] whereby the Commission on Elections (COMELEC) En Banc affirmed the Resolution dated May 10, 2010[2] issued by the COMELEC First Division in SPC No. 09-076 (DC). Both Resolutions declared Jalosjos ineligible to run as Mayor of Dapitan City, Zamboanga Del Norte in the May 10, 2010 national and local elections pursuant to Section 40(a) of The Local Government Code (LGC), viz:

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

- (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence; (b) Those removed from office as a result of an administrative case;

xxx

Additionally, the COMELEC cancelled Jalosjos' certificate of candidacy (CoC) on the ground of material misrepresentation made therein.

Jalosjos charges the COMELEC En Banc with committing grave abuse of discretion when it ruled that he was disqualified to run as Mayor of Dapitan City in view of the revocation of his probation; and when it cancelled his CoC without finding that he had deliberately misrepresented his qualifications to run as Mayor.

G.R. No. 193536 is a special civil action for certiorari commenced by Agapito J. Cardino, the only other candidate against Jalosjos, in order to set aside the COMELEC En Banc's Resolution dated August 11, 2010,[3] to the extent that the Resolution directed the application of the rule of succession as provided in the LGC. Cardino challenges the COMELEC En Banc's application of the rule of succession under the LGC, contending that he should be considered elected as Mayor upon the cancellation of Jalosjos' CoC because he had been the only bona fide candidate for the position of Mayor of Dapitan City.[4] Cardino insists that the cancellation of Jalosjos' CoC retroacted to the date of its filing, thereby reducing him into a non-candidate.[5]

The special civil actions were consolidated on March 29, 2011.[6]

Antecedents

The antecedents are narrated in the Resolution the Court has promulgated on February 22, 2011 in G.R. No. 193237, to wit:

On December 6, 2009, private respondent Agapito J. Cardino filed a Petition to Deny Due Course to and Cancel Certificate of Candidacy of petitioner before respondent Comelec. Petitioner and private respondent were both candidates for Mayor of Dapitan City, Zamboanga del Norte during the 2010 Elections. Private respondent alleged that petitioner misrepresented in his CoC that he was eligible to run for Mayor, when, in fact, he was not, since he had been convicted by final judgment of robbery, a crime involving moral turpitude, and he has failed to serve a single day of his sentence.

The final judgment for robbery stems from the following factual antecedents:

On April 30, 1970, the then Circuit Criminal Court (now Regional Trial Court [RTC]) of Cebu City convicted petitioner of the crime of robbery and sentenced him to suffer the penalty of one (1) year, eight (8) months, and twenty (20) days of prision correccional, as minimum, to four (4) years, two (2) months, and one (1) day of prision mayor, as maximum. Petitioner appealed his conviction to the Court of Appeals (CA). He later abandoned the appeal, which was thus dismissed on August 9, 1973. Sometime in June 1985, petitioner filed a petition for probation.

On July 9, 1985, Gregorio F. Bacolod (Bacolod), who was then the Supervising Probation Officer of the Parole and Probation Office, recommended to the RTC the grant of petitioner's application for probation. On the same day, the RTC issued an Order granting the probation for a period of one year subject to the terms and conditions stated therein.

However, on August 8, 1986, Bacolod filed a Motion for Revocation of the probation on the ground that petitioner failed to report to him, in violation of the condition of the probation. Accordingly, the RTC issued an Order dated March 19, 1987, revoking the probation and ordering the issuance of a warrant of arrest. A warrant of arrest was issued but remained unserved.

More than 16 years later, or on December 19, 2003, petitioner secured a Certification from the Central Office of the Parole and Probation Administration (PPA), which was signed by Bacolod, now Administrator of the PPA, attesting that petitioner had fulfilled the terms and conditions of his probation.

At this time, the prosecution also decided to stir the case. It filed a motion for the issuance of an alias warrant of arrest. The RTC granted the motion on January 16, 2004 and issued an Order for the Issuance of an Alias Warrant of Arrest against petitioner.

On January 23, 2004, Bacolod submitted to the RTC a Termination Report stating that petitioner had fulfilled the terms and conditions of his probation and, hence, his case should be deemed terminated. On the same day, petitioner filed an Urgent Motion to Reconsider its January 16, 2004 Order and to Lift the Warrant of Arrest.

On January 29, 2004, James A. Adasa (Adasa), petitioner's opponent for the mayoralty position during the 2004 Elections, filed a Petition for Disqualification against petitioner, based on Section 40(a) of Republic Act (R.A.) No. 7160, the Local Government Code of 1991, on the ground that the latter has been convicted of robbery and failed to serve his sentence. Adasa later amended his petition to include Section 40(e) of the same law, claiming that petitioner is also a "fugitive from justice."

Meanwhile, acting on petitioner's urgent motion, the RTC issued an Order dated February 5, 2004, declaring that petitioner had duly complied with the order of probation, setting aside its January 16, 2004 Order, and recalling the warrant of arrest.

Thus, in resolving Adasa's petition, the Comelec Investigating Officer cited the February 5, 2004 RTC Order and recommended that petitioner be declared qualified to run for Mayor. In the Resolution dated August 2, 2004, the Comelec-Second Division adopted the recommendation of the Investigating Officer and denied the petition for disqualification. It held that petitioner has amply proven that he had complied with the requirements of his probation as shown by the Certification from the PPA dated December 19, 2003, which was the basis of the February 5, 2004 RTC Order.

Adasa filed a motion for reconsideration, which the Comelec En Banc denied on December 13, 2006.

Adasa then filed a petition for certiorari with the Supreme Court (G.R. No. 176285). In a Resolution dated June 3, 2008, the Court dismissed the petition for being moot and academic, the three-year term of office having expired.

In a related incident, Bacolod, who issued the Certification dated December 19, 2003 to petitioner, was charged with violation of Section 3(e) of R.A. No. 3019 and falsification of public document under the Revised Penal Code for issuing said Certification. On September 29, 2008, the Sandiganbayan rendered a decision finding Bacolod guilty as charged. It held that the Certification he issued was definitely false because petitioner did not actually fulfill the conditions of his probation as shown in the RTC Order dated March 19, 1987, which states that the probation was being revoked. Hence, at the time the Certification was issued, there was no longer a probation order to be fulfilled by petitioner.

On May 10, 2010, the elections were held, and petitioner won as Mayor of Dapitan City.

On the same day, the Comelec-First Division issued a resolution granting the Petition to Deny Due Course and cancelling petitioner's CoC. The Comelec noted that the dismissal of Adasa's petition for disqualification hinged on the presumption of regularity in the issuance of the PPA Certification dated December 19, 2003, declaring that petitioner had complied with the requirements of his probation. It opined that, with the decision of the Sandiganbayan convicting Bacolod, it would now appear that the December 19, 2003 Certification was fraudulently issued and that petitioner had not actually served his sentence; thus, the ruling on Adasa's petition is "left with no leg to stand on."

Petitioner moved for reconsideration. The Comelec En Banc denied the motion in a resolution dated August 11, 2010. The Comelec ordered him to cease and desist from occupying and discharging the functions of the Office of the Mayor of Dapitan City.[7]

Through the Resolution promulgated on February 22, 2011,[8] the Court dismissed G.R. No. 193237, disposing:

WHEREFORE, the foregoing premises considered, the Petition for Certiorari is DISMISSED. The assailed Resolution dated May 10, 2010 and Resolution dated August 11, 2010 of the Commission on Elections in SPA Case No. 09-076 (DC) are hereby AFFIRMED.

On March 22, 2011, Jalosjos moved for the reconsideration of the February 22, 2011 Resolution,[9] raising the same issues he had averred in his petition.

On June 1, 2012, however, Jalosjos filed a manifestation dated May 30, 2012, informing the Court that he had meanwhile tendered his resignation as Mayor of Dapitan City effective April 30, 2012; that his resignation had been accepted by Governor Rolando E. Yebes of Zamboanga del Norte; and that Vice Mayor Patri Bajamunde-Chan had taken her oath of office as the new Mayor of Dapitan City.

Disposition

I vote to affirm the disqualification of Jalosjos as a candidate for Mayor of Dapitan City; and to sustain the Resolution of the COMELEC En Banc cancelling his CoC.

I agree with the Majority that the rule of succession provided by the LGC does not apply to determine who should now sit as Mayor of Dapitan City. Thus, I hold that Cardino, the only other candidate with a valid CoC for Mayor of Dapitan City in the May 10, 2010 elections, had the legal right to assume the position of City Mayor.

Let me specify the reasons for this humble concurrence.

1.

Cardino's petition in SPA Case No. 09-076 (DC) was a petition to deny due course to or cancel a CoC under Section 78 of the Omnibus Election Code

The COMELEC En Banc correctly held that the petition of Cardino in SPA Case No. 09-076 (DC) was in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the Omnibus Election Code.

In *Salcedo II v. Commission on Elections*,[10] the Court pointed out that there are two remedies available to challenge the qualifications of a candidate, namely:

(1) Before the election, pursuant to Section 78 of the Omnibus Election Code, to wit:

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 misrepresentation 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.

and -

(2) After the election, pursuant to Section 253 of the Omnibus Election Code, viz:

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

The Court has explained that the only difference between the two remedies is that, under Section 78, the qualifications for elective office are misrepresented in the CoC, and the proceedings must be initiated prior to the

elections, while under Section 253, a petition for quo warranto may be brought within ten days after the proclamation of the election results on either of two grounds, to wit: (a) ineligibility; or (b) disloyalty to the Republic of the Philippines. A candidate is ineligible under Section 253 if he is disqualified to be elected to office; and he is disqualified if he lacks any of the qualifications for elective office.[11]

In describing the nature of a Section 78 petition, the Court said in *Fermin v. Commission on Elections*: [12]

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the winning candidate.[13]

Clearly, the only instance where a petition assailing the qualifications of a candidate for elective office can be filed prior to the elections is when the petition is filed under Section 78.[14]

A Section 78 petition is not to be confused with a Section 12 or Section 68 petition. The two are different remedies, are based on different grounds, and can result in different eventualities.[15] A person who is disqualified under either Section 12[16] or Section 68[17] is prohibited to continue as a candidate, but a person whose CoC is cancelled or denied due course under Section 78 is not considered a candidate at all because his status is that of a person who has not filed a CoC.[18]

To ascertain whether Cardino's petition against Jaloslos was a petition under Section 78, on one hand, or under Section 12 or Section 68, on the other hand, it is necessary to look at its averments and relief prayed for, viz:

- Petitioner is of legal age, Filipino citizen, married, able to read and write, a registered voter of Precinct No. 0019A, and is and has been a resident of Dapitan City, continuously since birth up to the present;
- Petitioner duly filed his certificate of candidacy for the position of City Mayor of Dapitan for the election on May 10, 2010, with the Office of the Commission on Election, Dapitan City, on December 1, 2009, which accepted and acknowledged the same, a copy of which is hereto attached as Annex A;
- Respondent is also of legal age, a resident of Dapitan City, a registered voter of Precinct No. 0187B, likewise filed his certificate of candidacy for the same position with the Office of the Comelec, Dapitan City, as that for which petitioner duly filed a certificate of candidacy, for the May 10, 2010 national and local elections on December 1, 2009, a certified true copy of said COC is hereto attached as Annex B;
- Respondent's certificate of candidacy under oath contains material misrepresentation, when he declared under oath, that respondent is eligible for the office he seeks to be elected, [par. 16, COC for Mayor], considering that he is not eligible for the position for which he filed a certificate of candidacy because respondent was convicted by final judgment by the Regional Trial Court of Cebu City in Crim. Case No. CCC-XIV-140-Cebu for Robbery, an offense involving moral turpitude and he was sentenced to suffer the penalty of "one [1] year, eight [8] Months and Twenty [20] Days of prision correctional, as minimum, to Four years, Two [4][2] months and One [1] day of prision mayor as maximum, a certified true [copy] of which decision is hereto attached as Annex C;
- Respondent failed to serve even a single day of his sentence. The position requires that a candidate be eligible

and/or qualified to aspire for the position as required under Section 74 of the Omnibus Election Code;

- This petition is being filed within the reglementary period of within five days following the last day for the filing of certificate of candidacy.

WHEREFORE, it is most respectfully prayed of this Honorable Commission:

- Declaring respondent, Dominador G. Jalosjos, Jr. ineligible for the position for which he filed certificate of candidacy and to deny due course to such filing and to cancel the certificate of candidacy [Annex B]; x x x[19] (Emphasis supplied)

The foregoing make it evident that Cardino's petition contained the essential allegations pertaining to a Section 78 petition, namely: (a) Jalosjos made a false representation in his CoC; (b) the false representation referred to a material matter that would affect the substantive right of Jalosjos to run in the elections for which he filed his CoC; and (c) Jalosjos made the false representation with the intention to deceive the electorate as to his qualification for public office or to deliberately attempt to mislead, misinform, or hide a fact that would otherwise render him ineligible.[20]

Worthy of noting is that the specific reliefs prayed for by the petition, supra, were not only for the declaration that Jalosjos was "ineligible for the position for which he filed certificate of candidacy" but also for denying "due course to such filing and to cancel the certificate of candidacy." Thereby, Cardino's petition attacked both Jalosjos' qualifications to run as Mayor of Dapitan City and the validity of Jalosjos' CoC based on the latter's assertion of his eligibility despite knowledge of his conviction and despite his failure to serve his sentence. The petition was properly considered to be in all respects as a petition to deny due course to or cancel Jalosjos' CoC under Section 78 of the Omnibus Election Code.

2.

Jalosjos materially misrepresented his eligibility as a candidate for Mayor of Dapitan City; hence, the COMELEC properly cancelled his CoC

The denial of due course to or the cancellation of the CoC under Section 78 of the Omnibus Election Code involves a finding not only that a person lacked the qualifications but also that he made a material representation that was false.[21] In *Mitra v. Commission on Elections*,[22] the Court added that there must also be a deliberate attempt to mislead, thus:

The false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.[23]

A petition for the denial of due course to or cancellation of a CoC that is short of the requirements should not be granted.

Based on the antecedents narrated herein, I consider to be warranted the COMELEC En Banc's conclusion to the effect that, firstly, his conviction for robbery absolutely disqualified Jalosjos from running as Mayor of Dapitan City, and, secondly, Jalosjos deliberately misrepresented his eligibility when he filed his CoC.

First of all, the records show that the erstwhile Circuit Criminal Court in Cebu City had convicted Jalosjos of the felony of robbery on April 30, 1970 and had sentenced him to suffer the indeterminate penalty of one year, eight months and 20 days of prision correccional, as minimum, to four years, two months and one day of prision mayor, as maximum. Although he had appealed, his appeal was turned down on August 9, 1973. In June 1985, or more than 15 years after his conviction by the Circuit Criminal Court, he filed a petition for probation.

Pursuant to Section 40(a) of the LGC,[24] his having been sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one year or more of imprisonment rendered Jalosjos ineligible to run for Mayor of Dapitan City. There is no quibbling about the felony of robbery being an offense involving moral turpitude. As the Court has already settled, “embezzlement, forgery, robbery, and swindling are crimes which denote moral turpitude and, as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude.”[25]

Anent moral turpitude for purposes of the election laws, the Court has stated in *Teves v. Commission on Elections*: [26]

Moral turpitude has been defined as everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general.

x x x

Thus, in *Dela Torre v. Commission on Elections*, the Court clarified that:

Not every criminal act, however, involves moral turpitude. It is for this reason that “as to what crime involves moral turpitude, is for the Supreme Court to determine.” In resolving the foregoing question, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, the rationale of which was set forth in “*Zari v. Flores*,” to wit:

“It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited.”[27]

It is relevant to mention at this juncture that the ineligibility of a candidate based on his conviction by final judgment for a crime involving moral turpitude is also dealt with in Section 12 of the Omnibus Election Code, which specifically states: –

Section 12. Disqualifications. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he 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.

This 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. (Emphasis supplied.)

Pursuant to Section 12, Jalosjos remained ineligible to run for a public office considering that he had not been granted plenary pardon for his criminal offense. The expiration of the five-year period defined in Section 12 counted from his service of sentence did not affect the ineligibility, it being indubitable that he had not even

served his sentence at all.

It is relevant to clarify, moreover, that the five-year period defined in Section 12 is deemed superseded by the LGC, whose Section 40(a) expressly sets two years after serving sentence as the period of disqualification in relation to local elective positions. To reconcile the incompatibility between Section 12 and Section 40(a), the Court has discoursed in *Magno v. Commission on Elections*:^[28]

It should be noted that the Omnibus Election Code (BP 881) was approved on December 3, 1985 while the Local Government Code (RA 7160) took effect on January 1, 1992. It is basic in statutory construction that in case of irreconcilable conflict between two laws, the later enactment must prevail, being the more recent expression of legislative will. *Legis posteriores priores contrarias abrogant*. In enacting the later law, the legislature is presumed to have knowledge of the older law and intended to change it. Furthermore, the repealing clause of Section 534 of RA 7160 or the Local Government Code states that:

(f) All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any provisions of this Code are hereby repealed or modified accordingly.

In accordance therewith, Section 40 of RA 7160 is deemed to have repealed Section 12 of BP 881. Furthermore, Article 7 of the Civil Code provides that laws are repealed only by subsequent ones, and not the other way around. When a subsequent law entirely encompasses the subject matter of the former enactment, the latter is deemed repealed.

In *David vs. COMELEC*, we declared that RA 7160 is a codified set of laws that specifically applies to local government units. Section 40 thereof specially and definitively provides for disqualifications of candidates for elective local positions. It is applicable to them only. On the other hand, Section 12 of BP 881 speaks of disqualifications of candidates for any public office. It deals with the election of all public officers. Thus, Section 40 of RA 7160, insofar as it governs the disqualifications of candidates for local positions, assumes the nature of a special law which ought to prevail.

The intent of the legislature to reduce the disqualification period of candidates for local positions from five to two years is evident. The cardinal rule in the interpretation of all laws is to ascertain and give effect to the intent of the law. The reduction of the disqualification period from five to two years is the manifest intent. (Bold emphases supplied)^[29]

Regardless of whether the period applicable was five years or two years, Jalosjos was still ineligible to run for any public office in any election by virtue of his having been sentenced to suffer *prision mayor*. That sentence perpetually disqualified him from running for any elective office considering that he had not been meanwhile granted any plenary pardon by the Chief Executive.

Indeed, in accordance with the express provisions of the Revised Penal Code, the penalty of *prision mayor* imposed on Jalosjos for the robbery conviction carried the accessory penalties of temporary absolute disqualification and of perpetual special disqualification from the right of suffrage. The effects of the accessory penalty of temporary absolute disqualification included the deprivation during the term of the sentence of the right to vote in any election for any popular elective office or to be elected to such office.^[30] The effects of the accessory penalty of perpetual special disqualification from the right of suffrage was to deprive the convict perpetually of the right to vote in any popular election for any public office or to be elected to such office; he was further prohibited from holding any public office perpetually.^[31] These accessory penalties would remain even though the convict would be pardoned as to the principal penalty, unless the pardon expressly remitted the accessory penalties.^[32]

Secondly, Jalosjos had no legal and factual bases to insist that he became eligible to run as Mayor of Dapitan City because he had been declared under the RTC order dated February 5, 2004 to have duly complied with the order of his probation. His insistence has no merit whatsoever.

Probation, by its legal definition, is only “a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer.”[33] The grant of probation cannot by itself remove a person’s disqualification to be a candidate or to hold any office due to its not being included among the grounds for the removal of the disqualification under Section 12 of the Omnibus Election Code, *supra*. Although the original text of Section 4 of Presidential Decree No. 968 (Probation Law of 1976) stated that: ?

xxx [a]n application for probation shall be filed with the trial court, with notice to the appellate court if an appeal has been taken from the sentence of conviction. The filing of the application shall be deemed a waiver of the right to appeal, or the automatic withdrawal of a pending appeal.

the amendment of Presidential Decree No. 968 by Presidential Decree No. 1990[34] has made more explicit that probation only suspends the execution of the sentence under certain conditions set by the trial court, viz:

Section 4. Grant of Probation. — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; Provided, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall not be appealable.

For sure, probation or its grant has not been intended to relieve the convict of all the consequences of the sentence imposed on his crime involving moral turpitude. Upon his final discharge as a probationer, the convict is restored only to “all civil rights lost or suspended as a result of his conviction.” This consequence is according to the second paragraph of Section 16 of the Probation Law of 1976, which states: “The final discharge of the probationer shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted.” There is no question that civil rights are distinct and different from political rights, like the right of suffrage or the right to run for a public office.

Even assuming that Jalosjos had been validly granted probation despite his having appealed his conviction (considering that the amendment stating that an appeal barred the application for probation took effect only on October 5, 1985 but his application for probation was earlier made in June 1985), his disqualification pursuant to Section 40(a) of the LGC would have still attached simply because the legal effect of a validly-granted probation was only to suspend the execution of sentence,[35] not to obliterate the consequences of the sentence on his political rights.

In reality, Jalosjos could not even legitimately and sincerely rely on his supposed final discharge from probation. He was fully aware that he did not at all satisfy the conditions of his probation,[36] contrary to what Section 10 and Section 16 of the Probation Law definitely required, to wit:

Section 10. Conditions of Probation. — Every probation order issued by the court shall contain conditions

requiring that the probationer shall:

(a) present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within seventy-two hours from receipt of said order; .

(b) report to the probation officer at least once a month at such time and place as specified by said officer. x x x

Section 16. Termination of Probation. — After the period of probation and upon consideration of the report and recommendation of the probation officer, the court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation and thereupon the case is deemed terminated.

The final discharge of the probationer shall operate to restore to him all civil rights lost or suspend as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted.

The probationer and the probation officer shall each be furnished with a copy of such order.

The records indicate that the RTC revoked the order of probation on March 19, 1987 upon a motion filed by one Gregorio Bacolod, the Supervising Probation Officer who had recommended the approval of the application for probation. The revocation was premised on Jalosjos' failure to report to Bacolod in violation of the conditions of his probation. Following the revocation, the RTC issued a warrant for the arrest of Jalosjos, but the warrant has remained unserved until this date. With the revocation of his probation and in the absence of an order of final discharge, Jalosjos was still legally bound to serve the sentence for robbery.

I point out for emphasis that the February 5, 2004 order of the RTC declaring that Jalosjos had duly complied with the order of probation deserved no consideration for the following reasons, namely: (a) the certification attesting that Jalosjos had fulfilled the terms and conditions of his probation was secured by and issued to him only on December 19, 2003, more than 16 years from the issuance of the RTC order revoking his probation; (b) the certification was issued by Bacolod, the same Supervising Probation Officer who had moved for the revocation of the probation; and (c) the Sandiganbayan later on found the certification to have been falsified by Bacolod considering that at the time of its issuance there was no longer a probation order to be fulfilled by Jalosjos.[37]

And, thirdly, Jalosjos argues that he acted in good faith in representing in his CoC that he was qualified to run as Mayor of Dapitan City,[38] having relied on the previous ruling of the COMELEC adjudging him eligible to run and to be elected as Mayor of Dapitan City;[39] and that it cannot then be said that he deliberately attempted to mislead or to deceive the electorate as to his eligibility.

The argument is devoid of merit.

The COMELEC Resolution dated August 2, 2004, on which Jalosjos has anchored his claim of good faith, was rendered on the basis of the RTC order dated February 5, 2004 that had declared Jalosjos to have sufficiently complied with the conditions of his probation based on the certification dated December 19, 2003. As earlier emphasized, however, the issuance of the certification dated December 19, 2003 that became the basis for the RTC order dated February 5, 2004 proved to be highly irregular, and culminated in the Sandiganbayan convicting Bacolod of falsification in relation to his issuance of the certification.

Clearly, Jalosjos' reliance on the COMELEC Resolution dated August 2, 2004 was definitely not in good faith, but was contrary to every juridical conception of good faith, which, according to *Heirs of the Late Joaquin Limense v. Vda. De Ramos*,[40] is —

xxx an intangible and abstract quality with no technical meaning or statutory definition; and it encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another.[41]

In contrast, Jalosjos had knowledge of the circumstances surrounding the finality of his conviction and the revocation of his probation. He never denied and cannot now dispute his failure to comply with the conditions of his probation, for he fully knew that he had never duly reported to Bacolod during the period of his probation. The following findings rendered by the Sandiganbayan in its Decision dated September 29, 2008 convicting Bacolod of falsification of a public document and violation of Republic Act No. 3019 sustained the fact that Jalosjos had been unable to fulfil the terms of his probation: –

xxx [T]he subject Certification of the accused [Bacolod] attesting that “as per records” Mr. Jalosjos “has fulfilled the terms and conditions of his probation and his case is deemed terminated,” is nevertheless false because the PPA Central Office had no records of an order of final discharge issued by the court to support the facts narrated in the subject certification that Mr. Jalosjos has fulfilled the terms and conditions of his probation and that his case is deemed terminated.

Besides, the accused failed to submit any oral or documentary evidence to establish that at the time he issued the subject Certification on December 19, 2003, Mr. Jalosjos has already fulfilled the terms and conditions of his probation. His belated submission on January 23, 2004 of a termination report dated January 12, 2004 does not cure or remedy the falsity of the facts narrated in the subject certification. Rather, it strengthens the theory of the prosecution that at the time the accused issued the subject Certification on December 19, 2003, probationer Jalosjos had not yet fulfilled the terms and conditions of his probation because, if it were so, his submission of the said termination report would no longer be necessary. Since the PPA Central Office had no record of a court order of final discharge of the probationer from probation, then he should have been truthful and certified to that effect.[42]

Nor could Jalosjos even feign a lack of awareness of the issuance of the warrant for his arrest following the revocation of his probation by the RTC on March 19, 1987. This is because he filed an Urgent Motion for Reconsideration and to Lift Warrant of Arrest in the RTC upon obtaining the falsified certification issued by Bacolod.[43] The absurdity of his claim of good faith was well-known even to him because of his possession at the time he filed his CoC of all the information material to his conviction and invalid probation. Being presumed to know the law, he knew that his conviction for robbery and his failure to serve his sentence rendered him ineligible to run as Mayor of Dapitan City. As a result, his affirmation of his eligibility in his CoC was truly nothing but an act tainted with bad faith.

3.

Jalosjos did not file a valid CoC for the May 10, 2010 elections; not being an official candidate, votes cast in his favor are considered stray

The filing of a CoC within the period provided by law is a mandatory requirement for any person to be considered a candidate in a national or local election. This is clear from Section 73 of the Omnibus Election Code, to wit:

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

In turn, Section 74 of the Omnibus Election Code specifies the contents of a CoC, viz:

Section 74. Contents of certificate of candidacy.—The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge. x x x (Emphasis supplied)

A CoC, according to *Sinaca v. Mula*,^[44] “is in the nature of a formal manifestation to the whole world of the candidate’s political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.”

Accordingly, a person’s declaration of his intention to run for public office and his declaration that he possesses the eligibility for the position he seeks to assume, followed by the timely filing of such declaration, constitute a valid CoC that render the declarant an official candidate.

In *Bautista v. Commission on Elections*,^[45] the Court stated that a cancelled CoC does not give rise to a valid candidacy. A person without a valid CoC cannot be considered a candidate in much the same way as any person who has not filed any CoC cannot at all be a candidate.^[46] Hence, the cancellation of *Jalosjos’* CoC rendered him a non-candidate in the May 10, 2010 elections.

But, even without the cancellation of his CoC, *Jalosjos* undeniably possessed a disqualification to run as Mayor of *Dapitan City*. The fact of his ineligibility was by itself adequate to invalidate his CoC without the necessity of its express cancellation or denial of due course by the COMELEC. Under no circumstance could he have filed a valid CoC. The accessory penalties that inhered to his penalty of prison mayor perpetually disqualified him from the right of suffrage as well as the right to be voted for in any election for public office. The disqualification was by operation of a mandatory penal law. For him to be allowed to ignore the perpetual disqualification would be to sanction his lawlessness, and would permit him to make a mockery of the electoral process that has been so vital to our democracy. He was not entitled to be voted for, leaving all the votes cast for him stray and legally non-existent.

In contrast, *Cardino*, the only remaining candidate, was duly elected and should legally assume the position of Mayor of *Dapitan City*. According to the Court in *Santos v. Commission on Elections*:^[47]

Anent petitioner’s contention that his disqualification does not ipso facto warrant the proclamation of private respondent, We find the same untenable and without legal basis since votes cast for a disqualified candidate fall within the category of invalid non-existent votes because a disqualified candidate is no candidate at all in the eyes of the law. Section 155 of the Election Code provides —

“Any vote cast in favor of a candidate who has been disqualified shall be considered as stray and shall not be counted but it shall not invalidate the ballot.” (Italics supplied)

Considering that all the votes garnered by the petitioner are stray votes and therefore should not be counted, We find no error, much less any grave abuse of discretion on the part of the Comelec, in proclaiming private respondent *Ricardo J. Rufino* the duly elected Mayor of *Taytay, Rizal*, he having obtained the highest number of votes as appearing and certified in the canvass of votes submitted by the Municipal Board of Canvassers

petitioner having been legally disqualified. Such a proclamation finds legal support from the case of *Ticzon vs. Comelec* 103 SCRA 671, wherein disqualified candidate Ticzon likewise questioned the legality of the Resolution of the Comelec which not only disqualified him but further proclaimed Dizon, the only candidate left for the disputed position, and this Court upheld the proclamation of Cesar Dizon as Mayor of San Pablo City.[48]

Although the doctrine of the sovereign will has prevailed several times in the past to prevent the nullification of an election victory of a disqualified candidate, or of one whose CoC was cancelled, the Court should not now be thwarted from enforcing the law in its letter and spirit by any desire to respect the will of the people expressed in an election. The objective of prescribing disqualifications in the election laws as well as in the penal laws is obviously to prevent the convicted criminals and the undeserving from running and being voted for. Unless the Court leads the way to see to the implementation of the unquestionable national policy behind the prescription of disqualifications, there would inevitably come the time when many communities of the country would be electing convicts and misfits. When that time should come, the public trust would be trivialized and the public office degraded. This is now the appropriate occasion, therefore, to apply the law in all its majesty in order to enforce its clear letter and underlying spirit. Thereby, we will prevent the electoral exercise from being subjected to mockery and from being rendered a travesty.

In closing, I consider to be appropriate and fitting the Court's following pronouncement in *Velasco v. Commission on Elections*: [49]

x x x [W]e have ruled in the past that a candidate's victory in the election may be considered a sufficient basis to rule in favor of the candidate sought to be disqualified if the main issue involves defects in the candidate's certificate of candidacy. We said that while provisions relating to certificates of candidacy are mandatory in terms, it is an established rule of interpretation as regards election laws, that mandatory provisions requiring certain steps before elections will be construed as directory after the elections, to give effect to the will of the people. We so ruled in *Quizon v. COMELEC* and *Saya-ang v. COMELEC*.

The present case perhaps presents the proper time and opportunity to fine-tune our above ruling. We say this with the realization that a blanket and unqualified reading and application of this ruling can be fraught with dangerous significance for the rule of law and the integrity of our elections. For one, such blanket/unqualified reading may provide a way around the law that effectively negates election requirements aimed at providing the electorate with the basic information to make an informed choice about a candidate's eligibility and fitness for office.

The first requirement that may fall when an unqualified reading is made is Section 39 of the LGC which specifies the basic qualifications of local government officials. Equally susceptible of being rendered toothless is Section 74 of the OEC that sets out what should be stated in a COC. Section 78 may likewise be emasculated as mere delay in the resolution of the petition to cancel or deny due course to a COC can render a Section 78 petition useless if a candidate with false COC data wins. To state the obvious, candidates may risk falsifying their COC qualifications if they know that an election victory will cure any defect that their COCs may have. Election victory then becomes a magic formula to bypass election eligibility requirements.

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

In the present case, Velasco is not only going around the law by his claim that he is registered voter when he is not, as has been determined by a court in a final judgment. Equally important is that he has made a material misrepresentation under oath in his COC regarding his qualification. For these violations, he must pay the ultimate price – the nullification of his election victory. He may also have to account in a criminal court for making a false statement under oath, but this is a matter for the proper authorities to decide upon.

We distinguish our ruling in this case from others that we have made in the past by the clarification that COC defects beyond matters of form and that involve material misrepresentations cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken. A mandatory and material election law requirement involves more than the will of the people in any given locality. Where a material COC misrepresentation under oath is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will. The balance must always tilt in favor of upholding and enforcing the law. To rule otherwise is to slowly gnaw at the rule of law.[50]

ACCORDINGLY, I JOIN the Majority in granting the petition in G.R. No. 193536; in dismissing the petition in G.R. No. 193237 for lack of merit; and in affirming the COMELEC En Banc Resolution dated February 22, 2011 subject to the modification that Agapito J. Cardino be proclaimed as the duly elected Mayor of Dapitan City, Zamboanga during the May 10, 2010 national and local elections, and thus entitled to assume the office of Mayor of Dapitan City.

[1] Rollo, G.R. No. 193237, pp. 49-56.

[2] Id. at 40-48.

[3] Id. at 49-56.

[4] Rollo, G.R. No. 193536, p. 9.

[5] Id.

[6] Id. at 177.

[7] Rollo, G.R. No. 193237, pp. 355-358.

[8] Id. at 355-360.

[9] Id. at. 373-391.

[10] G.R. No. 135886, August 16, 1999, 312 SCRA 447.

[11] Id. at 457.

[12] G.R. No. 179695 & 182369, December 18, 2008, 574 SCRA 782.

[13] Id., pp. 792-794; emphases are part of the original text.

[14] *Gonzales v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 777.

[15] *Fermin v. Commission on Elections*, *supra*, note 12, p. 794.

[16] Section 12. Disqualifications. - Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he 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.

This disqualification 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.

[17] Section 68. Disqualifications. — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (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, subparagraph 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.

[18] *Fermin v. Commission on Elections*, supra, note 12, at pp. 794-796, to wit:

x x x [A] petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code], or Section 40 of the [Local Government Code]. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.

[19] *Rollo*, G.R. No. 193237, pp. 58-59.

[20] See *Fermin v. Commission on Elections*, supra, note 12; *Salcedo II v. Commission on Elections*, supra, note 10.

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

[22] G.R. No. 191938, July 2, 2010, 622 SCRA 744.

[23] *Id.* at 769.

[24] Section 40. Disqualifications. - The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence; (b) Those removed from office as a result of an administrative case;

xxx

[25] *Republic v. Marcos*, G.R. Nos. 130371 & 130855, August 4, 2009, 595 SCRA 43, 63; see also *De Jesus-Paras v. Vailoces*, A.C. No. 439, April 12, 1961, 1 SCRA 954, 956.

[26] G.R. No. 180363, April 28, 2009, 587 SCRA 1.

[27] *Id.* at 12-13.

[28] G.R. No. 147904, October 4, 2002, 390 SCRA 495.

[29] *Id.* at 500-501.

[30] Article 30 of the Revised Penal Code gives the effects of the accessory penalties of perpetual or temporary absolute disqualification, to wit:

Article 30. Effects of the penalties of perpetual or temporary absolute disqualification. — The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held even if conferred by popular election.
2. The deprivation of the right to vote in any election for any popular office or to be elected to such office.
3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held.

[31] Article 32 of the Revised Penal Code expressly declares:

Article 32. Effect of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage. — The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.

[32] Article 42 of the Revised Penal Code reads:

Article 42. Prison mayor; Its accessory penalties. — The penalty of prison mayor shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

[33] Section 3(a), Presidential Decree No. 968.

[34] Approved on October 5, 1985.

[35] Section 4, Presidential Decree No. 968, states:

Section 4. Grant of Probation. — Subject to the provisions of this Decree, the court may, after it shall have convicted and sentenced a defendant and upon application at any time of said defendant, suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

[36] Rollo, G.R. No. 193237, pp. 159-160.

[37] On that basis, the Sandiganbayan convicted Bacolod of two crimes, one, for a violation of Section 3(e) of Republic Act No. 3019, and, two, for falsification of public document under the Revised Penal Code.

[38] *Id.* at 28.

[39] *Id.* at 27-28.

- [40] G.R. No. 152319, October 28, 2009, 604 SCRA 599.
- [41] Id. at 612; emphasis is supplied.
- [42] Rollo, G.R. No. 193237, pp. 159-160.
- [43] Id. at 153.
- [44] G.R. No. 135691, September 27, 1999, 315 SCRA 266, 276.
- [45] G.R. No. 133840, November 13, 1998, 298 SCRA 480, 493.
- [46] *Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617, 624.
- [47] G.R. No. L-58512, July 23, 1985, 137 SCRA 740.
- [48] Id. at 749.
- [49] G.R. No. 180051, December 24, 2008, 575 SCRA 590.
- [50] Id. at 614-615.

DISSENTING OPINION

REYES, J.:

With all due respect, I dissent from the majority opinion.

Subject of this case are two (2) consolidated Petitions for Certiorari under Rule 65 of the Rules of Court. In G.R. No. 193237, petitioner Dominador G. Jalosjos, Jr. (Jalosjos) seeks to annul and set aside the Resolutions dated May 10, 2010[1] and August 11, 2010[2] issued by the Commission on Elections (COMELEC), which respectively ordered for the cancellation of his Certificate of Candidacy (COC) and denied his Motion for Reconsideration.

In G.R. No. 193536, petitioner Agapito J. Cardino (Cardino) likewise assails the Resolution dated August 11, 2010, particularly the dispositive portion thereof which contained the directive to apply the provision of the Local Government Code (LGC) on succession in filling the vacated office of the mayor.

Jalosjos attributes grave abuse of discretion on the COMELEC en banc in (1) ruling that the grant of his probation was revoked, hence, he is disqualified to run as Mayor of Dapitan City, Zamboanga Del Norte, (2) cancelling his COC without a finding that he committed a deliberate misrepresentation as to his qualifications, considering that he merely relied in good faith upon a previous decision of the COMELEC wherein he was declared eligible to run for public office, and (3) issuing the Resolutions dated May 10, 2010 and August 11, 2010 in violation of the COMELEC Rules of Procedure.

On February 22, 2011, this Court issued a Resolution[3] dismissing G.R. No. 193237, the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, the Petition for Certiorari is DISMISSED. The assailed Resolution dated May 10, 2010 and Resolution dated August 11, 2010 of the Commission in (sic) Elections in SPA Case No. 09-076 (DC) are hereby AFFIRMED.[4]

This Court ruled that Jalosjos could not have qualified to run for any public office as the grant of his probation was revoked by the RTC, as early as March 19, 1987 and that he could not rely on the Certification dated

December 19, 2003 issued by former Parole and Probation Administrator Gregorio F. Bacolod to assert his eligibility. We ratiocinated:

It must be remembered that by the time Bacolod submitted his Termination Report on January 23, 2004, there was no longer a probation to speak of, the same having been revoked more than 16 years earlier. Under the Probation Law of 1976, the order of revocation is not appealable. There is no showing that the RTC ever issued a subsequent order suspending the execution of petitioner's sentence and granting him probation again. In fact, the RTC issued an alias warrant of arrest on January 17, 2004 pursuant to the March 19, 1987 Order of revocation.

Thus, the same order revoking the grant of probation was valid and subsisting at the time that petitioner supposedly completed his probation. Petitioner could not have validly complied with the conditions of his probation and there would have been no basis for any probation officer to accept petitioner's compliance with a non-existent probation order.

This, plus the cloud of doubt created by Bacolod's conviction for falsification of the certification relied upon by petitioner, the Court cannot now rely on the presumption of regularity in the issuance of said certification in order for us to conclude that petitioner has in fact completed his probation. Considering that petitioner likewise has not served the sentence of his conviction for the crime of robbery, he is disqualified to run for and hold his current position as Mayor of Dapitan City.[5] (Citation omitted)

Undeterred, Jalosjos filed a Motion for Reconsideration[6] on March 22, 2011, raising the same issues stated in his petition. Subsequently, he filed a Manifestation dated May 30, 2012, informing this Court that he had already tendered his resignation from his position as Mayor of Dapitan City, Zamboanga del Norte and that the same was accepted by the Governor of the province, Atty. Rolando E. Yebes.

I will deliberate on the Motion for Reconsideration filed by Jalosjos in G.R. No. 193237 despite his resignation from office, in conjunction with the merits of G.R. No. 193536, with which it shares identical factual background.

The allegations in the petition filed by Cardino in SPA No. 09-076 (DC) bespeak of its characterization as one for disqualification.

It is well to remember that G.R. Nos. 193237 and 193536 stemmed from the Petition to Deny Due Course and to Cancel Certificate of Candidacy of Respondent filed by Cardino against Jalosjos, docketed as SPA No. 09-076 (DC). In the said petition, Cardino alleged:

3. Respondent [Jalosjos] is also of legal age, a resident of Dapitan City, a registered voter of Precinct No. 0187B, likewise filed his certificate of candidacy for the same position with the Office of the Comelec, Dapitan City, as that for which petitioner duly filed a certificate of candidacy, for the May 10, 2010 national and local elections on December 1, 2009, a certified true copy of said COC is hereto attached as Annex B;

4. Respondent's [Jalosjos] certificate of candidacy under oath contains material misrepresentation, when he declared under oath, that respondent [Jalosjos] is eligible for the office he seeks to be elected, [par. 16, COC for Mayor], considering that he is not eligible for the position for which he filed a certificate of candidacy because respondent was convicted by final judgment by the Regional Trial Court of Cebu City in Crim. Case No. CCC-XIV-140-Cebu for Robbery, an offense involving moral turpitude and he was sentenced to suffer the penalty of "one [1] year, eight [8] Months and Twenty [20] days of prision correctional, as minimum, to Four [4] years, Two [2] months and One [1] day of prision mayor as maximum,["] a certified true (sic) of which decision is hereto attached as Annex C.

5. Respondent [Jalosjos] failed to serve even a single day of his sentence. The position requires that a candidate

be eligible and/or qualified to aspire for the position as required under Section 74 of the Omnibus Election Code[.][7]

On the basis of the foregoing allegations, Cardino prayed (1) that Jalosjos be declared ineligible for the position for which he filed a COC or that his COC be cancelled or denied due course, (2) that the Board of Election Inspectors of Dapitan City be directed to exclude all the votes cast in Jalosjos' name, (3) that the City Board of Canvassers be ordered to suspend or hold in abeyance Jalosjos' proclamation as the winning candidate, and (4) that Jalosjos be held liable for damages.[8]

Subsequently, the COMELEC First Division issued its Resolution dated May 10, 2010, granting Cardino's petition and cancelling Jalosjos' COC. The COMELEC First Division ratiocinated that Jalosjos "is not eligible by reason of his disqualification as provided for in Section 40(a) of Republic Act (R.A.) No. 7160." [9]

Jalosjos promptly filed his Motion for Reconsideration but the COMELEC en banc denied the same in its Resolution dated August 11, 2010. Introductory to the ratio decidendi of its ruling, the COMELEC en banc stated:

It is long settled that for [a] material representation to serve as ground for the cancellation of a candidate's certificate of candidacy, it must refer to his qualifications for elective office. Sections 39 and 40 of the Local Government Code or Republic Act No. 7160 prescribes the qualifications and disqualifications for elective municipal officials, x x x[.][10]

Thereafter, the COMELEC en banc correlated Sections 39 and 40 of the LGC and proceeded to conclude that since Jalosjos was convicted by final judgment for the crime of robbery, he is disqualified to run for any elective position or to hold office.

I fully agree with the COMELEC's ruling that Jalosjos cannot run for any public office by reason of possession of a ground for disqualification. However, the COMELEC laid the predicate of said conclusion on a muddled discussion of the nature of the petition filed by Cardino and the effects of a judgment on the same on the status of candidacy.

Verily, a candidate may be prevented from participating in the electoral race either because he is ineligible or he suffers from any of the grounds for disqualification. Ineligibility refers to the lack of the qualifications prescribed in Sections 3[11] and 6[12] of Article VI, and Sections 2[13] and 3[14] of Article VII of the 1987 Constitution for senatorial, congressional, presidential and vice-presidential candidates, or under Section 39[15] of the LGC for local elective candidates. On the other hand, disqualification pertains to the commission of acts which the law perceives as unbecoming of a local servant, or to a circumstance, status or condition rendering said candidate unfit for public service. To question the eligibility of a candidate before the elections, the remedy is to file a petition to deny due course or cancel the COC under Section 78 of the Omnibus Election Code (OEC). If, on the other hand, any ground for disqualification exists, resort can be made to the filing of a petition for disqualification against the candidate thought to be unqualified for public service under Section 68 of the same Code.

Pertinently, Section 78 of OEC states:

Sec. 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.

To be clear, it is not the mere ineligibility or lack of qualification which warrants the filing of a petition to deny due course or cancel the COC but the material representation of his qualifications. Material misrepresentation as a

ground to deny due course or cancel a COC refers to the falsity of a statement required to be entered therein, as enumerated in Section 74 of the OEC,[16] which reads:

Sec. 74. Contents of certificate of candidacy. – The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Succinctly, the material misrepresentation contemplated by Section 78 of the OEC refers to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his COC are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.[17]

Aside from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform or hide a fact which would otherwise render a candidate ineligible. In other words, it must be with an intention to deceive the electorate as to one's qualification for public office.[18]

On the other hand, a petition for disqualification may be filed if the candidate committed any of the acts considered as an election offense stated in Section 68 of the OEC which reads:

Sec. 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.

The same petition may be filed on the ground of possession of a status or condition which makes the candidate incapable of assuming the stern demands of public service or which places him in serious contradiction with his oath of office, as enumerated in Section 12 of the OEC and Section 40 of the LGC:

Section 12 of the OEC

Sec. 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.

Section 40 of the LGC

Sec. 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) Fugitives from justice in criminal or non[-]political cases here or abroad;
- (f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
- (g) The insane or feeble-minded.

The petition filed by Cardino in SPA No. 09-076 (DC) is a confusion of the remedies of petition to deny due course or cancel a COC and petition for disqualification. It must be remembered that while both remedies aim to prevent a candidate from participating in the elections, they are separate and distinct from one another. They are embraced by distinct provisions of law, which provide for their respective prescriptive periods and particular sets of grounds. Further, each remedy entails diverging effects on the status of candidacy of the concerned candidate thus subsuming one remedy within the coverage of the other is a dangerous feat.

In *Fermin v. Commission on Elections*,^[19] we had the occasion to ponder on the substantial differences between the two remedies, thus:

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a “Section 78” petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the winning candidate.

At this point, we must stress that a “Section 78” petition ought not to be interchanged or confused with a “Section 68” petition. They are different remedies, based on different grounds, and resulting in different eventualities. Private respondent’s insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a “Petition for Disqualification,” does not persuade the Court.

x x x x

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC. Thus, in *Miranda v. Abaya*, this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.[20] (Citations omitted)

It is beyond dispute that Jalosjos cannot run for public office because of a prior conviction for a crime involving moral turpitude. While he was granted probation, his failure to comply with the terms and conditions of this privilege resulted to the revocation of the same on March 19, 1987. It bears reiterating that probation is not a right of an accused but a mere privilege, an act of grace and clemency or immunity conferred by the state, which may be granted to a seemingly deserving defendant who thereby escapes the extreme rigors of the penalty imposed by law for the offense for which he was convicted.[21] As a mere discretionary grant, he must pay full obedience to the terms and conditions appertaining thereto or run the risk of the State revoking this privilege. In *Soriano v. Court of Appeals*,[22] this Court underscored the import of the terms and conditions of probation, to wit:

[T]hese conditions are not whims of the trial court but are requirements laid down by statute. They are among the conditions that the trial court is empowered to impose and the petitioner, as probationer, is required to follow. Only by satisfying these conditions may the purposes of probation be fulfilled. These include promoting the correction and rehabilitation of an offender by providing him with individualized treatment, and providing an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence. Failure to comply will result in the revocation of the order granting probation, pursuant to the Probation Law:

Sec. 11. Effectivity of Probation Order. — A probation order shall take effect upon its issuance, at which time the court shall inform the offender of the consequences thereof and explain that upon his failure to comply with any of the conditions prescribed in the said order or his commission of another offense, he shall serve the penalty imposed for the offense under which he was placed on probation.

Probation is not an absolute right. It is a mere privilege whose grant rests upon the discretion of the trial court. Its grant is subject to certain terms and conditions that may be imposed by the trial court. Having the power to grant probation, it follows that the trial court also has the power to order its revocation in a proper case and under appropriate circumstances.[23] (Citations omitted)

On the ground of Jalosjos' failure to comply with the terms and conditions of his probation, the RTC revoked said grant and ordered for the issuance of an alias warrant of arrest against him. Stripped of the privilege, he becomes an ordinary convict who is imposed with restraints in the exercise of his civil and political rights. Specifically, under Section 40(a) of the LGC, he is disqualified to run for any local elective office. His disqualification cannot be defeated by bare allegation that he was earlier granted probation as this does not perfunctorily obliterate the fact of conviction and the corresponding accessory penalties.

Further, in *Baclayon v. Hon. Mutia*,[24] we emphasized that an order placing defendant on "probation" is not a "sentence" but is rather a suspension of the imposition of sentence. It is not a final judgment but is rather an "interlocutory judgment" in the nature of a conditional order placing the convicted defendant under the supervision of the court for his reformation, to be followed by a final judgment of discharge, if the conditions of the probation are complied with, or by a final judgment of sentence if the conditions are violated.[25] With the

revocation of the grant of Jalosjos' probation, the temporary suspension of his sentence is lifted and all the ensuing disqualifications regain full effect.

Remarkably, Cardino's challenge to Jalosjos' candidacy was not based squarely on the fact that there is a final judgment of conviction for robbery against him but on the ground that he made a material misrepresentation in his COC by declaring that he is eligible to run for public office when there is an existing circumstance which renders his candidacy unacceptable. Based on the designation of his petition in SPA No. 09-076 (DC), Cardino intends to file a petition to cancel the COC of Jalosjos, an action which is governed by Section 74, in relation with Section 78 of the OEC. The combined application of these sections requires that the facts stated in the COC by the would-be candidate be true, as any false representation of a material fact is a ground for the COC's cancellation or the withholding of due course.^[26] Essentially, the details required to be stated in the COC are the personal circumstances of the candidate, i.e., name/stage name, age, civil status, citizenship and residency, which serve as basis of his eligibility to become a candidate taking into consideration the standards set under the law. The manifest intent of the law in imposing these qualifications is to confine the right to participate in the elections to local residents who have reached the age when they can seriously reckon the gravity of the responsibility they wish to take on and who, at the same time, are heavily acquainted with the actual state and urgent demands of the community.

A painstaking examination of the petition filed by Cardino with the COMELEC would reveal that while it is designated as a petition to deny due course to or cancel a COC, the ground used to support the same actually partake of a circumstance which is more fittingly used in a petition for disqualification. Section 40(a) of the LGC clearly enumerates a final judgment of conviction for a crime involving moral turpitude as a ground for disqualification. That Cardino employed the term "material misrepresentation" in his disputations cannot give his petition a semblance of what is properly a petition to cancel a COC. It bears reiterating that a petition to deny due course to or cancel a COC and a petition for disqualification are two separate and distinct actions which may be filed based on grounds pertaining to it. Thus, a petition for cancellation of COC cannot be predicated on a ground which is proper only in a petition for disqualification. The legislature would not have found it wise to provide for two different remedies to challenge the candidacy of an aspiring local servant and even provide for an enumeration of the grounds on which they may be based if they were intended to address the same predicament. The fact that the mentioned remedies were covered by separate provisions of law which relate to distinct set of grounds is a manifestation of the intention to treat them severally.

Considering that the core of Cardino's petition in SPA No. 09-076 (DC) is the existence of a final judgment of conviction against Jalosjos, this material allegation is controlling of the characterization of the nature of the petition regardless of the caption used to introduce the same. Cardino's petition must therefore be treated and evaluated as a petition for disqualification and not for cancellation of COC. Well-settled rule is that the caption is not determinative of the nature of the petition. What characterizes the nature of the action or petition are the material allegations therein contained, irrespective of whether the petitioner is entitled to the reliefs prayed for therein.^[27]

In order to conform with existing laws and established jurisprudence, the Resolution dated February 22, 2011 of this Court in G.R. No. 193237 must accordingly be modified to reflect the foregoing clarification on the nature of Cardino's petition in SPA No. 09-076 (DC) and the ensuing consequences of the judgment on the same.

Turning to G.R. No. 193536, it is Cardino's contention that with the cancellation of Jalosjos' COC, he should succeed to the office of the mayor of Dapitan City, Zamboanga del Norte as he was the only remaining qualified candidate for said position. He posits that the cancellation of Jalosjos' COC retroacted to the date of its filing and rendered the latter a non-candidate as if he never filed one at all. Consequently, all the votes cast in his favor are

considered stray and his proclamation as winning candidate did not produce any legal effect.

Further, Cardino imputes grave abuse of discretion on the part of the COMELEC for stating in the dispositive portion of its Resolution dated August 11, 2010 that the provisions on succession in the LGC will apply in filling the post vacated by Jalosjos. To begin with, he argues that Section 44 of the LGC applies only when a permanent vacancy occurs in the office of the mayor. A permanent vacancy contemplates a situation whereby the disqualified mayor was duly elected to the position and lawfully assumed the office before he vacated the same for any legal cause. It does not embrace cancellation of COC since this eventuality has the effect of rendering the individual a non-candidate, who cannot be voted for and much less, be proclaimed winner in the elections.[28]

Cardino's disputations fail to persuade.

Cardino as a mere second placer cannot be proclaimed mayor of Dapitan City, Zamboanga del Norte.

Truly, a judgment on a petition to cancel a COC impinges on the very eligibility of an individual to qualify as a candidate and that its ultimate effect is to render the person a non-candidate as if he never filed a COC at all. The votes in favor of the candidate whose COC was cancelled are considered stray even if he happens to be the one who gathered the majority of the votes. In such case, the candidate receiving the second highest number of votes may be proclaimed the winner as he is technically considered the one who received the highest number of votes. Further, the judgment on a petition to cancel a COC does not distinguish whether the same attained finality before or after the elections since the consequences retroact to the date of filing of the COC. Regardless of the point in time when the cancellation of the COC was adjudged, the effect is nevertheless the same: the person is stripped of his status as an official candidate.

Cardino's disputations could have been tenable if the petition he filed in SPA No. 09-076 (DC) is a petition to cancel a COC. However, the pertinent allegations of his petition bespeak of the fact that the same is actually a petition for disqualification, the effect of which is covered by Section 6 of R.A. No. 6646, which repealed Section 72 of the OEC, to wit:

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. (Italics ours)

Unlike a judgment on a petition to cancel a COC, the effects of a judgment on a petition for disqualification distinguish whether the same attained finality before or after the elections. If the judgment became final before the elections, the effect is identical to that of cancellation of a COC. If, however, the judgment attained finality after the elections, the individual is still considered an official candidate and may even be proclaimed winner should he muster the majority votes of the constituency.

In *Cayat v. Commission on Elections*,[29] we cogitated on the import of Section 6 of R.A. No. 6646, to wit:

Section 6 of the Electoral Reforms Law of 1987 covers two situations. The first is when the disqualification becomes final before the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification becomes final after the elections, which is the situation covered in the second sentence of Section 6.

The present case falls under the first situation. Section 6 of the Electoral Reforms Law governing the first situation is categorical: a candidate disqualified by final judgment before an election cannot be voted for, and

votes cast for him shall not be counted. The Resolution disqualifying Cayat became final on 17 April 2004, way before the 10 May 2004 elections. Therefore, all the 8,164 votes cast in Cayat's favor are stray. Cayat was never a candidate in the 10 May 2004 elections. Palileng's proclamation is proper because he was the sole and only candidate, second to none.[30] (Emphasis supplied)

The instant case falls under the second situation contemplated in Section 6 of R.A. No. 6646. The petition to disqualify Jalosjos was filed on December 6, 2009 and was resolved by the COMELEC on the very day of elections of May 10, 2010. Thus, on the election day, Jalosjos is still considered an official candidate notwithstanding the issuance of the COMELEC Resolution disqualifying him from holding public office. The pendency of a disqualification case against him or even the issuance of judgment of disqualification against him does not forthwith divest him of the right to participate in the elections as a candidate because the law requires no less than a final judgment. Thus, the votes cast in his name were rightfully counted in his favor and, there being no order suspending his proclamation, the City Board of Canvassers lawfully proclaimed him as the winning candidate. However, upon the finality of the judgment of disqualification against him on August 11, 2010, a permanent vacancy was created in the office of the mayor which must be filled in accordance with Section 44 of the LGC, which states:

Sec. 44. Permanent Vacancies in the Offices of the Governor, Vice Governor, Mayor, and Vice-Mayor. – If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x.

x x x x

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

The language of the law is clear, explicit and unequivocal, thus admits no room for interpretation but merely application.[31] Accordingly, when Jalosjos was adjudged to be disqualified, a permanent vacancy was created in the office of the mayor for failure of the elected mayor to qualify for the position. As provided by law, it is the duly-elected vice-mayor of the locality who should succeed to the vacated office.

Following the foregoing ratiocination, Cardino's contention that he should be proclaimed mayor of Dapitan City, Zamboanga del Norte lacks legal basis. That he was the one who received the second highest number of votes does not entitle him to any right or preference to succeeding the vacated post. Unmistakably, he did not have the mandate of the voting populace and this must not be defeated by substituting him, a losing candidate, in place of the disqualified candidate who received the majority votes. In *Benito v. Commission on Elections*,[32] we held:

In every election, the people's choice is the paramount consideration and their expressed will must, at all times, be given effect. When the majority speaks and elects into office a candidate by giving him the highest number of votes cast in the election for that office, no one can be declared elected in his place.

The fact that the candidate who obtained the highest number of votes dies, or 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. For to allow the defeated and repudiated candidate to take over the mayoralty despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people's right to elect officials of their choice.[33] (Citations omitted)

Further, in *Kare v. Commission on Elections*,[34] we further deliberated on the reason behind the doctrine of rejection of the second placer. We enunciated:

Theoretically, the second placer could receive just one vote. In such a case, it would be absurd to proclaim the totally repudiated candidate as the voters' choice. Moreover, there are instances in which the votes received by the second placer may not be considered numerically insignificant. In such situations, if the equation changes because of the disqualification of an ineligible candidate, voters' preferences would nonetheless be so volatile and unpredictable that the results for qualified candidates would not be self-evident. The absence of the apparent though ineligible winner among the choices could lead to a shifting of votes to candidates other than the second placer. Where an "ineligible" candidate has garnered either a majority or a plurality of the votes, by no mathematical formulation can the runner-up in the election be construed to have obtained the majority or the plurality of votes cast.[35] (Citations omitted)

In other words, a second placer cannot bank on a mere supposition that he could have won the elections had the winning candidate, who was eventually adjudged disqualified, been excluded in the roster of official candidates. It is erroneous to assume that the sovereign will could have opted for the candidate who received the second highest number of votes had they known of the disqualification of the winning candidate early on. For in such event, they could have cast their votes in favor of another candidate, not necessarily the one who received the second highest number of votes.

Finally, Cardino impugns the wisdom of the doctrine of rejection of second placer which was first enunciated in *Topacio v. Paredes*[36] on the ground that the doctrine effectively discourages qualified candidates for the same position for which the disqualified candidate was elected, in initiating a disqualification case because the prospect of being proclaimed to the position is nil.[37]

The doctrine of rejection of the second placer was not conceived to suit the selfish interests of losing candidates or arm them with a weapon to retaliate against the prevailing candidates. The primordial consideration in adhering to this doctrine is not simply to protect the interest of the other qualified candidates joining the electoral race but more than that, to safeguard the will of the people in whom the sovereignty resides. The doctrine ensures that only the candidate who has the people's faith and confidence will be allowed to run the machinery of the government. It is a guarantee that the popular choice will not be compromised, even in the occasion that the prevailing candidate is eventually disqualified, by replacing him with the next-in-rank official who was also elected to office by the authority of the electorate.

It is of no moment that, as Cardino surmised, the doctrine of rejection of the second placer dissuades other qualified candidates in filing a disqualification case against the prevailing candidate for lack of expectation of gain. To justify the abandonment of the doctrine following Cardino's asseveration is to reduce its significance and put premium on the interest of the candidate rather than of the electorate for whose interest the election is being conducted. The doctrine was for the protection of the public and not for any private individual's advantage. Thus, the right to file a petition for disqualification is not exclusive to the opposing candidate but may also be pursued by any citizen of voting age, or duly registered political party, organization or coalition of political parties,[38] who are minded to do so.

In ruling therefore that the provisions of the LGC shall apply in determining the rightful successor to the office of the mayor of Dapitan City, Zamboanga del Norte, the COMELEC did not commit any grave abuse of discretion. The application of the provisions of the LGC is the necessary consequence of Jalosjos' disqualification.

In view of the foregoing disquisitions, I respectfully vote to:

(1) DISMISS G.R. No. 193536 for lack of merit.

(2) MODIFY the Resolution dated February 22, 2011 of this Court in G.R. No. 193237. The Resolutions dated May 10, 2010 and August 11, 2010 of the COMELEC in SPA No. 09-076 (DC) should be AFFIRMED with

MODIFICATION in that Dominador G. Jalosjos, Jr. should be declared disqualified to run as Mayor of Dapitan City, Zamboanga del Norte and the provisions of the Local Government Code on succession be applied in filling the vacated office.

[1] G.R. No. 193237 rollo, pp. 40-48.

[2] Id. at 49-56.

[3] Id. at 355-360.

[4] Id. at 360.

[5] Id. at 359-360.

[6] Id. at 373-393.

[7] Id. at 57-58.

[8] Id. at 59.

[9] Id. at 47.

[10] Id. at 53.

[11] Art. VI, Sec. 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

[12] Art. VI, 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.

[13] Art. VII, Sec. 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

[14] Art. VII, Sec. 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He maybe removed from office in the same manner as the President. x x x.

[15] Sec. 39. Qualifications. - (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

(b) Candidates for the position of governor, vice-governor, or member of the sangguniang panlalawigan, or mayor, vice-mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty-three (23) years of age on election day.

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

(d) Candidates for the position of member of the sangguniang panlungsod or sangguniang bayan must be at least eighteen (18) years of age on election day.

(e) Candidates for the position of punong barangay or member of the sangguniang barangay must be at least eighteen (18) years of age on election day.

(f) Candidates for the sangguniang kabataan must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day.

[16] *Justimbaste v. Commission on Elections*, G.R. No. 179413, November 28, 2008, 572 SCRA 736, 740.

[17] *Salcedo II v. COMELEC*, 371 Phil. 377, 389 (1999).

[18] *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 775-776, citing *Salcedo II v. Commission on Elections*, supra note 37, at 390, citing *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, *Abella v. Larrazabal*, 259 Phil. 992 (1989), *Aquino v. Commission on Elections*, 318 Phil. 467 (1995), *Labo, Jr. v. Commission on Elections*, G.R. No. 105111, July 3, 1992, 211 SCRA 297, *Frivaldo v. COMELEC*, 327 Phil. 521 (1996), *Republic v. De la Rosa*, G.R. No. 104654, June 6, 1994, 232 SCRA 785.

[19] G.R. No. 179695, December 18, 2008, 574 SCRA 782.

[20] *Id.* at 792-796.

[21] *Santos v. Court of Appeals*, 377 Phil. 642, 652 (1999), citing *Francisco v. CA*, 313 Phil. 241, 254 (1995).

[22] 363 Phil. 573 (1999).

[23] *Id.* at 583-584.

[24] 214 Phil. 126 (1984).

[25] *Id.* at 132, citing *Commonwealth ex rel. Paige vs. Smith*, 198 A. 812, 813, 815, 130 Pa. Super. 536.

[26] *Velasco v. Commission on Elections*, G.R. No. 180051, December 24, 2008, 575 SCRA 590, 602.

[27] *Guiang v. Co*, 479 Phil. 473, 480 (2004), citing *Ty v. Court of Appeals*, 408 Phil. 792 (2001).

[28] G.R. No. 193536 rollo, pp. 11-12.

[29] G.R. 163776, April 24, 2007, 522 SCRA 23.

[30] *Id.* at 45.

[31] *Sunga v. COMELEC*, 351 Phil. 310, 327 (1998).

[32] 235 SCRA 436 (1994).

[33] *Id.* at 441-442.

[34] G.R. No. 157526, April 28, 2004, 428 SCRA 264.

[35] *Id.* at 274-275.

[36] 23 Phil. 238 (1912).

[37] G.R. No. 193536 rollo, pp. 12-15.

[38] The 1993 COMELEC Rules of Procedure, Rule 25, Section 1.

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