

**EFREN RACEL ARATEA, PETITIONER, VS. COMMISSION ON ELECTIONS AND ESTELA D. ANTIPOLLO, RESPONDENTS.***G.R. No. 195229. October 09, 2012*

Ponente: CARPIO, J.

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This is a special civil action for certiorari[1] seeking to review and nullify the Resolution[2] dated 2 February 2011 and the Order[3] dated 12 January 2011 of the Commission on Elections (COMELEC) En Banc in *Dra. Sigrid S. Rodolfo v. Romeo D. Lonzanida*, docketed as SPA No. 09-158 (DC). The petition asserts that the COMELEC issued the Resolution and Order with grave abuse of discretion amounting to lack or excess of jurisdiction.

**The Facts**

Romeo D. Lonzanida (Lonzanida) and Estela D. Antipollo (Antipollo) were candidates for Mayor of San Antonio, Zambales in the May 2010 National and Local Elections. Lonzanida filed his certificate of candidacy on 1 December 2009.[4] On 8 December 2009, Dra. Sigrid S. Rodolfo (Rodolfo) filed a petition under Section 78 of the Omnibus Election Code to disqualify Lonzanida and to deny due course or to cancel Lonzanida's certificate of candidacy on the ground that Lonzanida was elected, and had served, as mayor of San Antonio, Zambales for four (4) consecutive terms immediately prior to the term for the May 2010 elections. Rodolfo asserted that Lonzanida made a false material representation in his certificate of candidacy when Lonzanida certified under oath that he was eligible for the office he sought election. Section 8, Article X of the 1987 Constitution[5] and Section 43(b) of the Local Government Code[6] both prohibit a local elective official from being elected and serving for more than three consecutive terms for the same position.

The COMELEC Second Division rendered a Resolution[7] on 18 February 2010 cancelling Lonzanida's certificate of candidacy. Pertinent portions of the 18 February 2010 Resolution read:

Respondent Lonzanida never denied having held the office of mayor of San Antonio, Zambales for more than nine consecutive years. Instead he raised arguments to forestall or dismiss the petition on the grounds other than the main issue itself. We find such arguments wanting. Respondent Lonzanida, for holding the office of mayor for more than three consecutive terms, went against the three-term limit rule; therefore, he could not be allowed to run anew in the 2010 elections. It is time to infuse new blood in the political arena of San Antonio.

WHEREFORE, premises considered, the instant petition is hereby GRANTED. The Certificate of Candidacy of Respondent Romeo D. Lonzanida for the position of mayor in the municipality of San Antonio, Zambales is hereby CANCELLED. His name is hereby ordered STRICKEN OFF the list of Official Candidates for the position of Mayor of San Antonio, Zambales in May 10, 2010 elections.

SO ORDERED.[8]

Lonzanida's motion for reconsideration before the COMELEC En Banc remained pending during the May 2010 elections, Lonzanida and Efren Racel Aratea (Aratea) garnered the highest number of votes and were respectively proclaimed Mayor and Vice-Mayor.

Aratea took his oath of office as Acting Mayor before Regional Trial Court (RTC) Judge Raymond C. Viray of Branch 75, Olongapo City on 5 July 2010.[9] On the same date, Aratea wrote the Department of Interior and Local Government (DILG) and requested for an opinion on whether, as Vice-Mayor, he was legally required to assume the Office of the Mayor in view of Lonzanida's disqualification. DILG Legal Opinion No. 117, S. 2010[10] stated that Lonzanida was disqualified to hold office by reason of his criminal conviction. As a consequence of Lonzanida's disqualification, the Office of the Mayor was deemed permanently vacant. Thus, Aratea should assume the Office of the Mayor in an acting capacity without prejudice to the COMELEC's resolution of Lonzanida's motion for reconsideration. In another letter dated 6 August 2010, Aratea requested the DILG to allow him to take the oath of office as Mayor of San Antonio, Zambales. In his response dated 24 August 2010, then Secretary Jesse M. Robredo allowed Aratea to take an oath of office as "the permanent Municipal Mayor of San Antonio, Zambales without prejudice however to the outcome of the cases pending before the [COMELEC]."[11]

On 11 August 2010, the COMELEC En Banc Issued a Resolution[12] disqualifying Lonzanida from running for Mayor in the May 2010 elections. The COMELEC En Banc's resolution was based on two grounds: first, Lonzanida had been elected and had served as Mayor for more than three consecutive terms without interruption; and second, Lonzanida had been, convicted by final judgment of ten (10) counts of falsification under the Revised Penal Code. Lonzanida was sentenced for each count of falsification to imprisonment of four (4) years and one (1) day of *prisi&ocuten correccional* as minimum, to eight (8) years and one (1) day of *prisi&ocuten mayor* as maximum. The judgment of conviction became final on 23 October 2009 in the Decision of this Court in *Lonzanida v. People*,[13] before. Lonzanida filed his certificate of candidacy on 1 December Pertinent portions of the 11 August 2010 Resolution read:

Prescinding from the foregoing premises, Lonzanida, for having served as Mayor of San Antonio, Zambales for more than three (3) consecutive terms and for having been convicted by a final judgment of a crime punishable by more than one (1) year of imprisonment, is clearly disqualified to run for the same position in the May 2010 Elections.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is hereby DENIED.

SO ORDERED.[14]

On 25 August 2010, Antipolo filed a Motion for Leave to Intervene and to Admit Attached Petition-in-Intervention.[15] She claimed her right to be proclaimed as Mayor of San Antonio, Zambales because Lonzanida ceased to be a candidate when the COMELEC Second Division, through its 18 February 2010 Resolution, ordered the cancellation of his certificate of candidacy and the striking out of his name from the list of official candidates for the position of Mayor of San Antonio, Zambales in the May 2010 elections.

In his Comment filed on 26 January 2011, Aratea asserted that Antipolo, as the candidate who received the second highest number of votes, could not be proclaimed as the winning candidate. Since Lonzanida's disqualification was not yet final during election day, the votes cast in his favor could not be declared stray. Lonzanida's subsequent disqualification resulted in a permanent vacancy in the Office of Mayor and Aratea, as the duly-elected Vice-Mayor, was mandated by Section 44[16] of the Local Government Code to succeed as Mayor.

The COMELEC's Rulings

The COMELEC En Bane issued an Order dated 12 January 2011, stating:

Acting on the "Motion for Leave to Intervene and to Admit Attached Petition-in-Intervention" filed by Eslela D. Aniipolo (Antipolo) and pursuant to the power of this Commission to suspend its Rules or any portion thereof in the interest of justice, this Commission hereby RESOLVES to:

1. GRANT the aforesaid Motion;
2. ADMIT the Petition-in-Intervention filed by Antipolo;
3. REQUIRE the Respondent, ROMEO DUMLAO LONZANIDA, as well as EFREN RACEL ARATEA, proclaimed Vice-Mayor of San Antonio, Zambales, to file their respective Comments on the Petition-in-Intervention within a non-extendible period of five (5) days from receipt thereof;
4. SET the above mentioned Petition-in-Intervention for hearing on January 26, 2011 at 10:00 a.m. COMELEC Session Hall, 8[th] Floor, Palacio del Gobernador, Intramuros, Manila.

WHEREFORE, furnish copies hereof the parties for their information and compliance.

SO ORDERED.[17]

In its Resolution dated 2 February 2011, the COMELEC En Banc no longer considered Lonzanida's qualification as an issue: "It is beyond cavil that Lonzanida is not eligible to hold and discharge the functions of the Office of the Mayor of San Antonio, Zambales. The sole issue to be resolved at this juncture is how to fill the vacancy resulting from Lonzanida's disqualification." [18] The Resolution further stated:

We cannot sustain the submission of Oppositor Aratea that Intervenor Aniipolo could never be proclaimed as the duly elected Mayor of Antipolo [sic] for being a second placer in the elections. The teachings in the cases of Codilla vs. De Venecia and Nazareno and Domino vs. COMELEC, et al., while they remain sound jurisprudence find no application in the case at bar. What sets this case apart from the cited jurisprudence is that the notoriety of Lonzanida's disqualification and ineligibility to hold public office is established both in fact and in law on election day itself. Hence, Lonzanida's name, as already ordered by the Commission on February 18, 2010 should have been stricken off from the list of official candidates for Mayor of San Antonio, Zambales.

WHEREFORE, in view of the foregoing, the Commission hereby:

1. Declares NULL and VOID the proclamation of respondent ROMEO D. LONZANIDA;
2. GRANTS the Petition for Intervention of Estela D. Antipolo;
3. Orders the immediate CONSTITUTION of a Special Municipal Board of Canvassers to PROCLAIM Intervenor Estela D. Antipolo as the duly elected Mayor of San Antonio, Zambales;
4. Orders Vice-Mayor Efren Racel Aratea to cease and desist from discharging the functions of the Office of the Mayor, and to cause a peaceful turn-over of the said office to Antipolo upon her proclamation; and
5. Orders the Office of the Executive Director as well as the Regional Election Director of Region HI to cause the implementation of this Resolution and disseminate it to the Department of Interior and Local Government.

SO ORDERED.[19]

Aratea filed the present petition on 9 February 2011.

The Issues

The manner of filling up the permanent vacancy in the Office of the Mayor of San Antonio, Zambales is

dependent upon the determination of Lonzanida's removal. Whether Lonzanida was disqualified under Section 68 of the Omnibus Election Code, or made a false material representation under Section 78 of the same Code that resulted in his certificate of candidacy being void ab initio, is determinative of whether Aratea or Antipolo is The rightful occupant to the Office of the Mayor of San Antonio, Zambales.

The dissenting opinions reverse the COMELEC's 2 February 2011 Resolution and 12 January 2011 Order. They hold that Aratea, the duly elected Vice-Mayor of San Antonio, Zambales, should be declared Mayor pursuant to the Local Government Code's rule on succession.

The dissenting opinions make three grave errors: first, they ignore prevailing jurisprudence that a false representation in the certificate of candidacy as to eligibility in the number of terms elected and served is a material fact that is a ground for a petition to cancel a certificate of candidacy under Section 78; second, they ignore that a false representation as to eligibility to run for public office due to the fact that the candidate suffers from perpetual special disqualification is a material fact that is a ground for a petition to cancel a certificate of candidacy under Section 78; and third, they resort to a strained statutory construction to conclude that the violation of the three-term limit rule cannot be a ground for cancellation of a certificate of candidacy under Section 78, even when it is clear and plain that violation of the three-term limit rule is an ineligibility affecting the qualification of a candidate to elective office.

The dissenting opinions tread on dangerous ground when they assert that a candidate's eligibility to the office he seeks election must be strictly construed to refer only to the details, i.e., age, citizenship, or residency, among others, which the law requires him to state in his COC, and which he must swear under oath to possess. The dissenting opinions choose to view a false certification of a candidate's eligibility on the three-term limit rule not as a ground for false material representation under Section 78 but as a ground for disqualification under Section 68 of the same Code. This is clearly contrary to well-established jurisprudence.

#### The Court's Ruling

We hold that Antipolo, the alleged "second placer," should be proclaimed Mayor because Lonzanida's certificate of candidacy was void ab initio. In short, Lonzanida was never a candidate at all. All votes for Lonzanida were stray votes. Thus, Antipolo, the only qualified candidate, actually garnered the highest number of votes for the position of Mayor.

#### Qualifications and Disqualifications

Section 65 of the Omnibus Election Code points to the Local Government Code for the qualifications of elective local officials. Paragraphs (a) and (c) of Section 39 and Section 40 of the Local Government Code provide in pertinent part:

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 x x x; a resident therein for at least one (i) 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.

x x x x.

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 ease;
- (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. (Emphasis supplied)

Section 12 of the Omnibus Election Code provides:

Sec. 12. Disqualification. — 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. (Emphasis supplied)

The grounds for disqualification for a petition under Section 68 of the Omnibus Election Code are specifically enumerated:

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; (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. (Emphasis supplied)

A petition for disqualification under Section 68 clearly refers to "the commission of prohibited acts and possession of a permanent resident status in a foreign country." [20] All the offenses mentioned in Section 68 refer to election offenses under the Omnibus Election Code, not to violations of other penal laws. There is absolutely nothing in the language of Section 68 that would justify including violation of the three-term limit rule, or conviction by final judgment of the crime of falsification under the Revised Penal Code, as one of the grounds or offenses covered under Section 68. In *Codilla, Sr. v. de Venecia*, [21] this Court ruled:

[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, x x x

Clearly, the violation by Lonzanida of the three-term limit rule, or his conviction by final judgment of the crime of falsification under the Revised Penal Code, does not constitute a ground for a petition under Section 68.

#### False Material Representation

Section 78 of the Omnibus Election Code slates that a certificate of candidacy may be denied or cancel led when there is false material representation of the contents of the certificate of candidacy:

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 of the Omnibus Election Code details the contents of the certificate of candidacy:

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.

x x x x (Emphasis supplied)

A candidate for mayor in the 2010 local elections, was thus required to provide 12 items of information in the certificate of candidacy:[22] name; nickname or stage name; gender; age; place of birth; political party that nominated the candidate; civil status; residence/address; profession or occupation; post office address for election purposes; locality of which the candidate is a registered voter; and period of residence in the Philippines before 10 May 2010. The candidate also certifies four statements: a statement that the candidate is a natural born or naturalized Filipino citizen; a statement that the candidate is not a permanent resident of, or immigrant to, a foreign country; a statement that the candidate is eligible for the office he seeks election; and a statement of the candidate's allegiance to the Constitution of the Republic of the Philippines.[23] The certificate of candidacy should also be under oath, and filed within the period prescribed by law.

The conviction of Lonzanida by final judgment, with the penalty of prison mayor, disqualifies him perpetually from holding any public office, or from being elected to any public office. This perpetual disqualification took effect upon the finality of the judgment of conviction, before Lonzanida filed his certificate of candidacy. The pertinent provisions of the Revised Penal Code are as follows:

Art. 27. Reclusion perpetua. — x x x

Prison mayor and temporary disqualification. — The duration of the penalties of prison 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. 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. (Emphasis supplied)

The penalty of prison mayor automatically carries with it, by operation of law,<sup>[24]</sup> 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 temporary absolute disqualification is the same as that of the principal penalty of prison mayor. 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* (Lacuna),<sup>[25]</sup> 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 prison 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 Lonzanida, he became ineligible perpetually to hold, or to run for, any elective public office from the time the judgment of conviction against him became final. The judgment of conviction was promulgated on 20 July 2009 and became final on 23 October 2009, before Lonzanida filed his certificate of candidacy on 1 December 2009.[26]

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 in his certificate of candidacy. As this Court held in *Fermin v. Commission on Elections*,<sup>[21]</sup> 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.[28] (Emphasis supplied)

Latasa, Rivera and Ong:

#### The Three-Term Limit Rule as a Ground for Ineligibility

Section 74 requires the candidate to certify that he is eligible for the public office he seeks election. Thus, Section 74 states that "the certificate of candidacy shall state that the person filing x x x is eligible for said office." The three-term limit rule, enacted to prevent the establishment of political dynasties and to enhance the electorate's freedom of choice,[29] is found both in the Constitution[30] and the law.[31] After being elected and serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next regular election[32] because he is ineligible. One who has an ineligibility to run for elective public office is not "eligible for [the] office." As used in Section 74, the word "eligible"[33] means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office.

In *Latasa v. Commission on Elections*,[34] petitioner Arsenio Latasa was elected mayor of the Municipality of Digos, Davao del Sur in 1992, 1995, and 1998. The Municipality of Digos was converted into the City of Digos during Latasa's third term. Latasa filed his certificate of candidacy for city mayor for the 2001 elections. Romeo Sunga, Latasa's opponent, filed before the COMELEC a "petition to deny due course, cancel certificate of candidacy and/or disqualification" under Section 78 on the ground that Latasa falsely represented in his certificate of candidacy that he is eligible to run as mayor of Digos City. Latasa argued that he did not make any false representation. In his certificate of candidacy, Latasa inserted a footnote after the phrase "I am eligible" and indicated "\*Having served three (3) term[s] as municipal mayor and now running for the first time as city mayor." The COMELEC First Division cancelled Latasa's certificate of candidacy for violation of the three-term limit rule but not for false material representation. This Court affirmed the COMELEC En Banc's denial of Latasa's motion for reconsideration.

We cancelled Marino Morales' certificate of candidacy in *Rivera III v. Commission on Elections (Rivera)*. [35] We held that Morales exceeded the maximum three-term limit, having been elected and served as Mayor of Mabalacat for four consecutive terms (1995 to 1998, 1998 to 2001, 2001 to 2004, and 2004 to 2007). We declared him ineligible as a candidate for the same position for the 2007 to 2010 term. Although we did not explicitly rule that Morales' violation of the three-term limit rule constituted false material representation, we nonetheless granted the petition to cancel Morales' certificate of candidacy under Section 78. We also affirmed the cancellation of Francis Ong's certificate of candidacy in *Ong v. Alegre*, [36] where the "petition to disqualify, deny due course and cancel" Ong's certificate of candidacy under Section 78 was predicated on the violation of the three-term limit rule.

Loong, Fermin and Munder:

#### When Possession of a Disqualifying Condition

#### is Not a Ground for a Petition for Disqualification

It is obvious from a reading of the laws and jurisprudence that there is an overlap in the grounds for eligibility and

ineligibility vis-a-vis qualifications and disqualifications. For example, a candidate may represent that he is a resident of a particular Philippine locality[37] when he is actually a permanent resident of another country.[38] In cases of such overlap, the petitioner should not be constrained in his choice of remedy when the Omnibus Election Code explicitly makes available multiple remedies.[39] Section 78 allows the filing of a petition to deny due course or to cancel a certificate of candidacy before the election, while Section 253 allows the filing of a petition for quo warranto after the election. Despite the overlap of the grounds, one should not confuse a petition for disqualification using grounds enumerated in Section 68 with a petition to deny due course or to cancel a certificate of candidacy under Section 78.

The distinction between a petition under Section 68 and a petition under Section 78 was discussed in *Loong v. Commission on Elections*[40] with respect to the applicable prescriptive period. Respondent Nur Hussein Ututalum filed a petition under Section 78 to disqualify petitioner Benjamin Loong for the office of Regional Vice-Governor of the Autonomous Government of Muslim Mindanao for false representation as to his age. The petition was filed 16 days after the election, and clearly beyond the prescribed 25 day period from the last day of filing certificates of candidacy. This Court ruled that Ututalum's petition was one based on false representation under Section 78, and not for disqualification under Section 68. Hence, the 25-day prescriptive period provided in Section 78 should be strictly applied. We recognized the possible gap in the law:

It is true that the discovery of false representation as to material facts required to be stated in a certificate of candidacy, under Section 74 of the Code, may be made only after the lapse of the 25-day period prescribed by Section 78 of the Code, through no fault of the person who discovers such misrepresentations and who would want the disqualification of the candidate committing the misrepresentations. It would seem, therefore, that there could indeed be a gap between the time of the discovery of the misrepresentation, (when the discovery is made after the 25-day period under Sec. 78 of the Code has lapsed) and the time when the proclamation of the results of the election is made. During this so-called "gap" the would-be petitioner (who would seek the disqualification of the candidate) is left with nothing to do except to wait for the proclamation of the results, so that he could avail of a remedy against the misrepresenting candidate, that is, by filing a petition for quo warranto against him. Respondent Commission sees this "gap" in what it calls a procedural gap which, according to it, is unnecessary and should be remedied.

At the same time, it can not be denied that it is the purpose and intent of the legislative branch of the government to fix a definite time within which petitions of protests related to eligibility of candidates for elective offices must be filed, as seen in Sections 78 and 253 of the Code. Respondent Commission may have seen the need to remedy this so-called "procedural gap", but it is not for it to prescribe what the law does not provide, its function not being legislative. The question of whether the time to file these petitions or protests is too short or ineffective is one for the Legislature to decide and remedy.[41]

In *Vermin v. Commission on Elections*[42] the issue of a candidate's possession of the required one-year residency requirement was raised in a petition for disqualification under Section 68 instead of a petition to deny due course or to cancel a certificate of candidacy under Section 78. Despite the question of (he one-year residency being a proper ground under Section 78, *Dilangalen*, the petitioner before the COMELEC in *Fermin*, relied on Section 5(C)(1) and 5(C)(3)(a)(4) of COMELEC Resolution No. 7800[43] and filed the petition under Section 68. In *Fermin*, we ruled that "a COMELEC rule or resolution cannot supplant or vary legislative enactments that distinguish the grounds for disqualification from those of ineligibility, and the appropriate proceedings to raise the said grounds." [44] A petition for disqualification can only be premised on a ground specified in Section 12 or 68 of the Omnibus Election Code or Section 40 of the Local Government Code. Thus, a petition questioning a candidate's possession of the required one-year residency requirement, as distinguished from permanent residency or immigrant status in a foreign country, should be Hied under Section 78, and a petition under Section 68 is the wrong remedy.

In *Munder v. Commission on Elections*[45] petitioner Alfais Munder filed a certificate of candidacy for Mayor of Bubong, Lanao del Sur on 26 November 2009. Respondent Atty. Tago Sarip filed a petition for Munder's disqualification on 13 April 2010. Sarip claimed that Munder misrepresented that he was a registered voter of Bubong, Lanao del Sur, and that he was eligible to register as a voter in 2003 even though he was not yet 18 years of age at the time of the voter's registration. Moreover, Munder's certificate of candidacy was not accomplished in full as he failed to indicate his precinct and did not affix his thumb-mark. The COMELEC Second Division dismissed Sarip's petition and declared that his grounds are not grounds for disqualification under Section 68 but for denial or cancellation of Munder's certificate of candidacy under Section 78. Sarip's petition was filed out of time as he had only 25 days after the filing of Munder's certificate of candidacy, or until 21 December 2009, within which to file his petition.

The COMELEC En Banc, however, disqualified Munder. In reversing the COMELEC Second Division, the COMELEC En Banc did not rule on the propriety of Sarip's remedy but focused on the question of whether Munder was a registered voter of Bubong, Lanao del Sur. This Court reinstated the COMELEC Second Division's resolution. This Court ruled that the ground raised in the petition, lack of registration as voter in the locality where he was running as a candidate, is inappropriate for a petition for disqualification. We further declared that with our ruling in *Fermin*, we had already rejected the claim that lack of substantive qualifications of a candidate is a ground for a petition for disqualification under Section 68. The only substantive qualification the absence of which is a ground for a petition under Section 68 is the candidate's permanent residency or immigrant status in a foreign country.

The dissenting opinions place the violation of the three-term limit rule as a disqualification under Section 68 as the violation allegedly is "a status, circumstance or condition which bars him from running for public office despite the possession of all the qualifications under Section 39 of the [Local Government Code]." In so holding the dissenting opinions write in the law what is not found in the law. Section 68 is explicit as to the proper grounds for disqualification under said Section. The grounds for filing a petition for disqualification under Section 68 are specifically enumerated in said Section. However, contrary to the specific enumeration in Section 68 and contrary to prevailing jurisprudence, the dissenting opinions add to the enumerated grounds the violation of the three-term limit rule and falsification under the Revised Penal Code, which are obviously not found in the enumeration in Section 68.

The dissenting opinions equate Lonzanida's possession of a disqualifying condition (violation of the three-term limit rule) with the grounds for disqualification under Section 68. Section 68 is explicit as to the proper grounds for disqualification: the commission of specific prohibited acts under the Omnibus Election Code and possession of a permanent residency or immigrant status in a foreign country. Any other false representation regarding a material fact should be filed under Section 78, specifically under the candidate's certification of his eligibility. In rejecting a violation of the three-term limit as a condition for eligibility, the dissenting opinions resort to judicial legislation, ignoring the *verba legis* doctrine and well-established jurisprudence on this very issue.

In a certificate of candidacy, the candidate is asked to certify under oath his eligibility, and thus qualification, to the office he seeks election. Even though the certificate of candidacy does not specifically ask the candidate for the number of terms elected and served in an elective position, such fact is material in determining a candidate's eligibility, and thus qualification for the office. Election to and service of the same local elective position for three consecutive terms renders a candidate ineligible from running for the same position in the succeeding elections. Lonzanida misrepresented his eligibility because he knew full well that he had been elected, and had served, as mayor of San Antonio, Zambales for more than three consecutive terms yet he still certified that he was eligible to run for mayor for the next succeeding term. Thus, Lonzanida's representation that he was eligible for the office

that he sought election constitutes false material representation as to his qualification or eligibility for the office.

#### Legal Duty of COMELEC

##### to Enforce Perpetual Special Disqualification

Even without a petition under Section 78 of the Omnibus Election Code, the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from perpetual special disqualification to run for public office by virtue of a final judgment of conviction. The final judgment of conviction is judicial 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 "enforce and administer all laws and regulations relative to the conduct of an election." [46] The disqualification of a convict to run for elective 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 the laws" relating to the conduct of elections.

#### Effect of a Void Certificate of Candidacy

A cancelled certificate of candidacy void ab initio cannot give rise to a valid candidacy, and much less to valid votes. [47] We quote from the COMELEC's 2 February 2011 Resolution with approval:

As early as February 18, 2010, the Commission speaking through the Second Division had already ordered the cancellation of Lonzanida's certificate of candidacy, and had stricken off his name in the list of official candidates for the mayoralty post of San Antonio, Zambales. Thereafter, the Commission En Banc in its resolution dated August 11, 2010 unanimously affirmed the resolution disqualifying Lonzanida. Our findings were likewise sustained by the Supreme Court no less. The disqualification of Lonzanida is not simply anchored on one ground. On the contrary, it was emphasized in our En Banc resolution that Lonzanida's disqualification is two-pronged: first, he violated the constitutional fiat on the three-term limit; and second, as early as December 1, 2009, he is known to have been convicted by final judgment for ten (10) counts of Falsification under Article 171 of the Revised Penal Code. In other words, on election day, respondent Lonzanida's disqualification is notoriously known in fact and in law. Ergo, since respondent Lonzanida was never a candidate for the position of Mayor [of] San Antonio, Zambales, the votes cast for him should be considered stray votes. Consequently, Intervenor Antipolo, who remains as the sole qualified candidate for the mayoralty post and obtained the highest number of votes, should now be proclaimed as the duly elected Mayor of San Antonio, Zambales. (Boldfacing and underscoring in the original; italicization supplied).

Lonzanida's certificate of candidacy was cancelled because he was ineligible or not qualified 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 candidate from the very beginning, his certificate of candidacy being void ab initio. There was only one qualified candidate for Mayor in the May 2010 elections — Antipolo, who therefore received the highest number of votes.

WHEREFORE, the petition is DISMISSED. The Resolution dated 2 February 2011 and the Order dated 12 January 2011 of the COMELEC En Banc in SPA No. 09-1 58 (DC) are AFFIRMED. The COMELEC En Banc is DIRECTED to constitute a Special Municipal Board of Canvassers to proclaim Estela D. Antipolo as the duly elected Mayor of San Antonio, Zambales. Petitioner Efren Racel Afatea is ORDERED to cease and desist from discharging the functions of the Office of the Mayor of San Antonio, Zambales.

**SO ORDERED.**

Sereno, C.J., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and Perlas-Bernabe, JJ., concur.

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

Brion, J., see my dissent.

Reyes, J., with dissenting opinion.

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[1] Under Rule 64 in relation to Rule 65 of the 1907 Rules of Civil Procedure.

[2] Rollo, pp. 34-39. Signed by Chairman Sixto S. Biñanles, Jr. (no part), and Commissioners Rene V. Sarmiento (with dissenting opinion), Nicodemo T. Ferrer, Lucenito N. Tagle, Armando C. Velasco (with dissenting opinion), Elias R. Yusoph, and Gregorio Y. Larrazabal.

[3] Id. at 32-33. Signed by Chairman Jose A.R. Melo, and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Lucenito N. Tagle, Elias R. Yusoph, Armando C. Velasco, and Gregorio Y. Larrazabal.

[4] Id. at 65.

[5] Sec. 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

[6] Sec. 43. Term of Office. - x x x x

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which she elective official concerned was elected.

x x x x

[7] Rollo, pp. 49-59. Penned by Commissioner Elias R. Yusoph, with Presiding Commissioner Nicodemo T. Ferrer and Commissioner Lucenito N. Tagle, concurring.

[8] Id. at 58.

[9] Id. at 96.

[10] Id. at 94-95. Penned by Undersecretary Austere A. Panadero.

[11] Id. at 97.

[12] Id. at 60-67. Penned by Commissioner Armando C. Velasco, with Chairman Jose A. R. Melo and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Lucenito N. Tagle, Elias R. Yusoph, and Gregorio Y. Larrazabal, concurring.

[13] G.R. Nos. 160243-52, 20 July 2000, 593 SCRA 273.

[14] Rollo, p. 66.

[15] Id. at 68-74.

[16] Sec. 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice Mayor. — (a)

if a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor, x x x.

[17] Rollo, pp. 32-33.

[18] Id. at 36.

[19] Id. at 37-38. Citations omitted.

[20] *Fermin v. Commission on Elections*, G.R. Nos. 179695 and 182369, 18 December 2008, 574 SCRA 782,794-795.

[21] 442 Phil. 139, 177-178 (2002).

[22] [http://www.comelec.gov.ph/downloadables/COC%202010/forms\\_filHng\\_candidacy/mayor.pdf](http://www.comelec.gov.ph/downloadables/COC%202010/forms_filHng_candidacy/mayor.pdf) (accessed 21 March 2012).

[23] 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.

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

[25] 133 Phil. 770, 773-774 (1968).

[26] Rollo, p. 66.

[27] *Supra* note 20.

[28] Id. at 792-794.

[29] See *Borja, Jr. v. Commission on Elections*, 356 Phil. 467 (1998).

[30] Text provided in note 1.

[31] Text provided in note 2.

[32] See *Socrates v. Commission on Elections*, 440 Phil. 106 (2002).

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

[34] 463 Phil. 296 (2003).

[35] G.R. Nos. 167591 and 170577, 9 May 2007, 525 SCRA 41.

[36] 515 Phil. 442 (2006).

[37] Under Section 39 of the Local Government Code, one of the "qualifications" for a local elective office is being "a resident therein for at least one (1) year immediately preceding the day of the election."

[38] Under Section 68 of the Omnibus Election Code, one of the "disqualifications" for a candidate is being "a permanent resident of or an immigrant to a foreign country."

[39] See discussion on Hie proceedings provided by the Omnibus Election Code in dealing with the qualifications of a candidate in *Salcedo II v. COMELEC*, 371 Phil. 377 (1999). See also *Aznar v. Commission on Elections*, 264 Phil. 307 (1990).

[40] G.R. No. 93986, 22 December 1992, 216 SCRA 760.

[41] Id. at 768-769.

[42] Supra note 20.

[43] Sec. 5. Procedure in filing petitions.— For purposes of the preceding section, the following procedure shall be observed;

x x x x

C. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SEC. 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 Sec. 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.

x x x x

3) The petition to disqualify a candidate for lack of qualification or possessing some grounds for disqualification, shall be filed in ten (10) legible copies with the concerned office mentioned in Sec. 3 hereof, personally or through a duly authorized representative by any person of voting age, or duly registered political party, organization or coalition of political parties on the grounds that any candidate does not possess all the qualifications of a candidate as provided for by the constitution or by existing law, or who possesses some grounds for disqualification.

3.a. Disqualification under existing election laws;

1. For not being a citizen of the Philippines;
2. For being a permanent resident of or an immigrant to a foreign country;
3. For lack of the required age;
4. For lack of residence;
5. For not being a registered voter;
6. For not being able to read and write;
7. In case of a party-list nominee, for not being a bona fide member of the party or organization which he seeks to represent for at least ninety (90) days immediately preceding the day of the election.

[44] Supra note 20 at 798.

[45] G.R. Nos. 194076 and 194160, 19 October 2011, 659 SCRA 256.

[46] Section 2(1), Article IX-C, 1987 Constitution.

[47] *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).

[48] Rollo, p. 37.

## DISSENTING OPINION

### BRION, J.:

I dissent from the majority's (i) ruling that the violation of the three-term limit rule is a ground for cancellation or a certificate of candidacy (CoC) and (ii) conclusion that private respondent Estela D. Antipolo, the "second placer" in the 2010 elections for the mayoralty post in San Antonio, Zambales, should be seated as Mayor.

Romeo D. Lonzanida and Antipolo were among the four (4) candidates for the mayoralty position in San Antonio, Zambales in the May 10, 2010 elections. On December 8, 2009, Dr. Sigfrid S. Rodolfo filed a Petition to Disqualify/Deny Due Course or to Cancel CoC against Lonzanida with the Commission on Elections (COMELEC). The core of the petition against Lonzanida was his purported misrepresentation in his CoC by slating that he was eligible to run as mayor of San Antonio, Zambales, when in fact, he had already served for three consecutive terms.[1]

On February 18, 2010, the COMELEC 2<sup>nd</sup> Division issued a Resolution cancelling Lonzanida's CoC and striking out his name from the official list of candidates for mayor on the ground that he had already served for three consecutive terms.[2]

Lonzanida moved for the reconsideration of the ruling, which motion under the Rules of the COMELEC was elevated to the COMELEC en banc. The motion was not resolved before elections and on May 10, 2010, Lonzanida received the highest number of votes for the mayoralty post, while petitioner Efren Racel Aratea won the vice mayoralty position; they were duly proclaimed winners.[3]

Due to the COMELEC Resolution canceling Lonzanida's CoC, Aratea wrote to the Department of the Interior and Local Government (DILG) to inquire whether, by law, he should assume the position of mayor, in view of the permanent vacancy created by the COMELEC 2<sup>nd</sup> Division's ruling. The DILG favorably acted on Aratea's request, and on July 5, 2010, he took his oath of office as mayor of San Antonio, Zambales.[4]

On August 11, 2010, the COMELEC en banc affirmed Lonzanida's disqualification to run for another term. Apart from this ground, the COMELEC en banc also noted that Lonzanida was disqualified to run under Section 40 of the Local Government Code for having been convicted by final judgment for ten counts of falsification.[5]

On August 25, 2010, Antipolo filed a motion for leave to intervene, on the claim that she had a legal interest in the case as she was the only remaining qualified candidate for the position. She argued that she had the right to be proclaimed as the mayor considering that Lonzanida ceased to be a candidate when the COMELEC 2<sup>nd</sup> Division ordered the cancellation of his CoC and the striking out of his name from the official list of candidates for the May 10, 2010 elections.[6]

On January 12, 2011, the COMELEC en banc issued an Order granting Antipolo's motion for leave to intervene. In its February 2, 2012 Resolution, the COMELEC en banc granted Antipolo's petition in intervention; declared null and void Lonzanida's proclamation; ordered the constitution of a special Municipal Board of Canvassers to proclaim Antipolo as the duly elected Mayor; and ordered Aratea to cease and desist from discharging the functions of Mayor of San Antonio, Zambales. This gave rise to the present petition.

### The Issues

The issues for the Court's resolution are as follows:

- (1) What is the nature of the petition filed by Dr. Rodolfo before the COMELEC;
- (2) Did the COMELEC correctly dispose the case in accordance with the nature of the petition filed;

(3) Who should be proclaimed as Mayor of San Antonio, Zambales - the "second placer" or the duly elected Vice-Mayor?

I submit that the violation of the three-term limit rule cannot be a ground for the cancellation of a CoC. It is an appropriate ground for disqualification; thus, Dr. Rodolfo should be deemed to have filed a petition for disqualification, not a petition for the cancellation of Lonzanida's CoC. The COMELEC's cancellation of Lonzanida's CoC was therefore erroneous.

I reach this conclusion by using an approach that starts from a consideration of the nature of the CoC - the document that creates the status of a candidate - and moves on to relevant concepts, specifically, disqualifications and 'tis effects, remedies, effects of successful suits, and ultimately the three-term limit rule. I discussed this fully at length in the case of *Talaga v. COMELEC*.<sup>[7]</sup> hereby reiterate my *Talaga* discussions for ease of presentation.

The CoC and the Qualifications  
for its Filing.

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*,<sup>[6]</sup> 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 officers. Congress undertook this task by enacting Batas Pambansa 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).<sup>[9]</sup>

Under Section 79 of the OEC, a political aspirant legally becomes a "candidate" only upon the due filing of his sworn CoC.<sup>[10]</sup> 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"<sup>[11]</sup> — 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"<sup>[12]</sup> filed.

COMELEC Resolution No. 8678 provides what a CoC must contain or state:<sup>[13]</sup>

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 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 1 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. Notably, Section 74 does not require a would-be candidate to state that he has not served for three consecutive terms in the same elective position immediately prior to the present elections.

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."<sup>[14]</sup>

Pertinent laws<sup>[15]</sup> 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,"<sup>[16]</sup> bearing in mind that the limitations on the privilege to seek public office are within the plenary power of Congress to provide.<sup>[17]</sup>

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.[18] 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 air 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. Notably, the breach of the three-term limit is a trait or condition that can possibly apply only to those who have previously served for three consecutive terms in the same position sought immediately prior to the present elections.

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.[19]

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 ivvo (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;
- These 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 She 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.

While the violation of the three-term rule is properly a ground for disqualification, it is a unique ground, constitutionally anchored at that, that sets it apart from and creates a distinction even from the ordinary grounds of disqualification. The succeeding discussions, incorporate these intra-disqualification distinctions on the grounds for disqualification, which in sum refer to (i) the period to file a petition and (ii) capability of substitution and (iii) on the application of the doctrine of rejection of second placer and the doctrine's exceptions.

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 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;[20] the governing provisions are Sections 78 and 69 of the OEC.[21]

In a disqualification case, as mentioned above, the grounds are traits, conditions, characteristics or acts of disqualification,[22] individually applicable to a candidate, as provided under Sections 68 and 12 of B.P. Blg. 881; Section 40 of LGC 1991; and, as discussed below, 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.[23]

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. On the other hand, what constitutes a violation of the three-term limit rule under the Constitution has been clarified in our case law.[24] 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*,[25] 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 his 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. 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.[27]

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.[28] The three-term limit disqualification, because of its unique characteristics, does not strictly follow this time limitation and is discussed at length below. At the very

least, it should follow the temporal limitations of a quo warranto petition which must be filed within ten (10) days from proclamation.[29] The constitutional nature of the violation, however, argues against the application of this time requirement; the rationale for the rule and the role of the Constitution in the country's legal order dictate that a petition should be allowed while a consecutive fourth-term is in office.

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.[30] 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.[31] 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.[32] However, a three-term candidate with a valid and subsisting CoC cannot be substituted if the basis of the substitution is his disqualification on account of his three-term limitation. Disqualification that is based on a breach of the three-term limit rule cannot be invoked as this disqualification can only take place after election where the three-term official emerged as winner. As in a quo warranto, any substitution is too late at this point.

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.[33]

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 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. 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.

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.

#### Violation of the three-term limit rule

##### a. The Three-Term Limit Rule.

The three-term limit rule is a creation of Section 8, Article X of the Constitution. This provision fixes the maximum, limit an elective local official can consecutively serve in office, and at the same time gives the command, in no uncertain terms, that no such official shall serve for more than three consecutive terms. Thus, a three-term local official is barred from serving a fourth and subsequent consecutive terms.

This bar, as a constitutional provision, must necessarily be read into and interpreted as a component part of the OEC under the legal reality that neither this Code nor the Local Government Code provides for the three-term limit rule's operational details; it is not referred to as a ground for the cancellation of a CoC nor for the disqualification of a candidate, much less are its effects provided for. Thus, the need to fully consider, reconcile and harmonize the terms and effects of this rule with our election and other laws.

##### b. Is the Rule an Eligibility Requirement or a Disqualification?

In practical terms, the question - of whether the three-term limit rule is a matter of "eligibility" that must be considered in the filing of a CoC - translates to the need to state in a would-be candidate's CoC application that he is eligible for candidacy because he has not served three consecutive terms immediately before filing his application.

The wording of Section 8, Article X of the Constitution, however, does not justify this requirement as Section 8 simply sets a limit on the number of consecutive terms an official can serve. It does not refer to elections, much less does it bar a three-term's candidacy. As previously discussed, Section 74 of the OEC does not expressly require a candidate to assert the non-possession of any disqualifying trait or condition, much less of a candidate's observance of the three-term limit rule. In fact, the assertion of a would-be candidate's eligibility, as required by the OEC, could not have contemplated making a three-term candidate ineligible for candidacy since that disqualifying trait began to exist only later under the 1987 Constitution.

What Section 8, Article X of the Constitution indisputably mandates is solely a bar against serving for a fourth consecutive term, not a bar against candidacy. Of course, between the filing of a CoC (that gives an applicant the status of a candidate) and assumption to office as an election winner is a wide expanse of election activities whose various stages our election laws treat in various different ways. Thus, if candidacy will be aborted from the very start (i.e., at the initial CoC-filing stage), what effectively takes place - granting that the third-term possessor possesses all the eligibility elements required by law - is a shortcut that is undertaken on the theory that the candidate cannot serve in any way if he wins a fourth term.

I submit that while simple and efficient, essential legal considerations should dissuade the Court from using this approach. To make this shortcut is to incorporate into the law, by judicial fiat, a requirement that is not expressly there. In other words, such shortcut may go beyond allowable interpretation that the Court can undertake, and cross over into prohibited judicial legislation. Not to so hold, on the other hand, does not violate the three-term limit rule even in spirit, since its clear and undisputed mandate is to disallow serving for a fourth consecutive term; this objective is achieved when the local official does not win and can always be attained by the direct application of the law if he does win.

Another reason, and an equally weighty one, is that a shortcut would run counter to the concept of commonality that characterizes the eligibility requirements; it would allow the introduction of an element that does not apply to

all citizens as an entry qualification. Viewed from the prism of the general distinctions between eligibility and disqualification discussed above, the three-term limit is unavoidably a restriction that applies only to local officials who have served for three consecutive terms, not to all would-be candidates at large; it applies only to specific individuals who may have otherwise been eligible if not for the three-term limit rule and is thus a defect that attaches only to the candidate. In this sense, it cannot but be a disqualification and at that, a very specific one.

That the prohibited fourth consecutive term can only take place after a three-term local official wins, his fourth term signifies too that the prohibition (and the resulting disqualification) only takes place after elections. This circumstance, to my mind, supports the view that the three-term limit rule does not at all involve itself with the matter of candidacy; it only regulates service beyond the limits the Constitution has set. Indeed, it is a big extrapolative leap for a prohibition that applies after election, to hark back and affect the initial election process for the filing of CoCs.

Thus, on the whole, I submit that the legally sound view is not to bar a three-term's candidacy for a fourth term if the three-term limit rule is the only reason for the bar. In these lights, the three-term limit rule — as a bar against a fourth consecutive term — is effectively a disqualification against such service rather than an eligibility requirement.[36]

#### c. Filing of Petition and Effects.

As a disqualification that can only be triggered after the elections, it is not one that can be implemented or given effect before such time. The reason is obvious; before that time, the gateway to the 4<sup>th</sup> consecutive term has not been opened because the four-term re-electionist has not won. This reality brings into sharp focus the timing of the filing of a petition for disqualification for breach of the three-term limit rule. Should a petition under the three-term limit rule be allowed only after the four-term official has won on the theory that it is at that point that the Constitution demands a bar?

The timing of the filing of the petition for disqualification is a matter of procedure that primarily rests with the COMELEC. Of course, a petition for disqualification cannot be filed against one who is not yet a candidate as only candidates (and winners) can be disqualified. Hence, the filing should be done after the filing of the CoC. On the matter of the time limitations of its filing, I believe that the petition does not need to be hobbled by the terms of COMCLBC Resolution No. 8696[37] because of the special nature and characteristics of the three-term limit rule - i.e., the constitutional breach involved; the fact that it can be effective only after a candidate has won the election; and the lack of specific provision of the election laws covering it.

To be sure, a constitutional breach cannot be allowed to remain unattended because of the procedures laid down by administrative bodies. While Salcedo considers the remedy of quo warranto as almost the same as the remedy of cancellation on the question of eligibility, the fact that the remedies can be availed of only at particular periods of the election process signifies more than the temporal distinction.

From the point of view of eligibility, one who merely seeks to hold public office through a valid candidacy cannot wholly be treated in the same manner as one who has won and is at the point of assuming or serving the office to which he was elected; the requirements to be eligible as a candidate are defined by the election laws and by the local government code, but beyond these are constitutional restrictions on eligibility to serve. The three-term limit rule serves as the best example of this fine distinction; a local official who is allowed to be a candidate under our statutes but who is effectively in his fourth term should be considered ineligible to serve if the Court were to give life to the constitutional provision, couched in a strong prohibitory language, that "no such official shall serve for more than three consecutive terms."

A possible legal stumbling block in allowing the filing of the petition before the election is the existence of a cause of action or prematurity at that point. If disqualification is triggered only after a three-term has won, then it may be argued with some strength that a petition, filed against a respondent three-term local official before he has won a fourth time, has not violated any law and does not give the petitioner the right to file a petition for lack of cause of action or prematurity.

I take the view, however, that the petition does not to be immediately acted upon and can merely be docketed as a cautionary petition reserved for future action if and when the three-term local official wins a fourth consecutive term. If the parties proceed to litigate without raising the prematurity or lack of cause of action as objection, a ruling can be deferred until after cause of action accrues; if a ruling is entered, then any decreed disqualification cannot be given effect and implemented until a violation of the three-term limit rule occurs.

Unlike in an ordinary disqualification case (where a disqualification by final judgment before the elections against the victorious but disqualified candidate can catapult the second placer into office) and in a cancellation case (where the judgment, regardless of when it became final, against the victorious candidate with an invalid CoC similarly gives the "second placer"

a right to assume office), a disqualification based on a violation of the three-term limit rule sets up a very high bar against the second placer unless he can clearly and convincingly show that the electorate had deliberately and knowingly misapplied their votes.

Rodolfo's petition is properly one for disqualification

On the basis of the above discussions, I vote to grant the present petition.

Notwithstanding the caption of Dr. Rodolfo's petition, his petition is properly one for disqualification, since he only alleged a violation of the three-term limit rule - a disqualification, not a cancellation issue. Thus, the nature and consequences of a disqualification petition are what we must recognize and give effect to in this case. This conclusion immediately impacts on Antipolo who, as second placer and in the absence of any of the exceptions, must bow out of the picture under the doctrine of rejection of the second placer.

First, as discussed above, a resulting disqualification based on a violation of the three-term limit rule cannot begin to operate until after the elections, where the three-term official emerged as victorious.[39] There is no way that Antipolo, the second placer in the election, could assume the office of Mayor because no disqualification took effect before the elections against Lonzanida despite the decision rendered then. To reiterate, the prohibition against Lonzanida only look place after his election for his fourth consecutive term. At that point, the election was over and the people had chosen. With Lonzanida ineligible to assume office, the Vice-Mayor takes over by succession.

Second, likewise, it has not been shown that the electorate deliberately and knowingly misapplied their votes in favor of Lonzanida, resulting in their disenfranchisement. Since a disqualification based on a violation of the three-term limit rule does not affect a CoC that is otherwise valid, then Lonzanida remained a candidate who could be validly voted for in the elections.[40] It was only when his disqualification was triggered that a permanent vacancy occurred in the office of the Mayor of San Antonio, Zambales. Under the LGC,[41] it is Aratea, the duly-elected Vice Mayor, who should serve as Mayor in place of the elected but disqualified Lonzanida.

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[1]Rollo, p. 35.[2]Id. at 49-59.[3] Rollo, p.25.

[2] Id. at 49-59.

[3] Id. at 93.

[4] Id at 96-97.

[5] Id at 64-66.

[6] Id at 71-72.

[7] G.R. No. 196804.

[8] 373 Phil. 896, 908 (1999).

[9] 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).

[10] 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. 16-1858, November 16, 2006, 507 SCRA 114.

[11] Section 73 of B.P. Blg. 881 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)*

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

[13] The statutory basis is Section 74 of B.P. Blg. 881 which provides:

Section 14. 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 slated 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 slate 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.

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

[15] Section 13 of R.A. No. 9369, COMELEC Resolution No. 8678 and Section 78 of B.P. Blg. 881.

[16] 1987 Constitution, Article II, Section 26.

[17] See *Pamatong v. Commission on Elections*, G.R. No. 161 872, April 13, 2004, 427 SCRA 96, 100-103.

[18] Merriam-Webster's 11<sup>th</sup> Collegiate Dictionary, p. 655.

[19] 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.

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

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

Sections 68 and 12 of B.P. Big. 881 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.

[23] *Salcedo II v. COMELEC*, 371 Phil. 377, 387 (1909), citing *Aznar v. Commission on Elections*, 185 SCRA

703 (1990).

[24] *Lonzanida v. Commission on Elections*, G.R. No. 135150. July 28, 1999, 311 SCRA 602; *Borja, Jr. v. Commission on Elections*, 295 Phil. 157 (1998); *Socrates v. COMELEC*, 440 Phil. 107 (2002); *Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601; *Montebon v. Commission on Elections*, G.R. No. I 80444, April 9, 2008, 551 SCRA 50; and *Aldovino, Jr. v. Commission on Elections*, G.R. No. 184836, December 23, 2009, 609 SCRA 234..

[25] *Supra* note 23, at 386-389.

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

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

[28] 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[.]

[29] Section 253 of the OEC.

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

[31] *Miranda v. Abaya*, *supra* note 14, at 658-660.

[32] Section 77 of B.P. Blg. 881 expressly allows substitution of a candidate who is "disqualified for any cause."

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

[34] *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.

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

[36] Separate from these considerations is the possibility that the candidacy of a third-termmer may be considered a nuisance candidacy under Section 69 of the OEC. Nuisance candidacy, by itself, is a special situation that has merited its own independent provision that calls for the denial or cancellation of the COC if the bases required by law are proven; thus, it shares the same remedy of cancellation for material misrepresentation on the eligibility requirements. The possibility of being a nuisance candidate is not discussed as it is not in issue in the case.

[37] *Supra* note 28.

[38] See: discussions at pp. 16, 18-20.

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

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## DISSENTING OPINION

**REYES, J.:**

I respectfully dissent from the majority opinion and offer my humble consideration of the issues presented in this case.

### The Issues

In this case, the Court is called upon to resolve the following issues:

- Whether the petition filed before the Commission on Elections (COMELEC) is a petition to cancel a certificate of candidacy (COC) or a petition to disqualify;
- Whether the COMELEC correctly disposed the case in accordance with the nature of the petition filed; and
- Whether private respondent Estela D. Antipolo (Antipole) who obtained the second highest number of Votes may be proclaimed the mayor of San Antonio, Zambales.

The petition filed against Romeo Lonzanida (Lonzanida) is one for disqualification and not for cancellation of COC.

It is my view that the petition filed against Lonzanida is in the nature of a petition for disqualification.

It is significant to note that the challenge to Lonzanida's candidacy originated from a Petition to Disqualify/Deny Due Course to and/or Cancel the Certificate of Candidacy filed by Dra. Sigrid Rodolfo (Dra. Rodolfo), seeking the cancellation of the Former's COC on the ground of misrepresentation. Dra. Rodolfo alleged that Lonzanida made a material misrepresentation in his COC by stating that he was eligible to run as Mayor of San Antonio, Zambales when in fact he has already served for four (4) consecutive terms for the same position, in violation of Section 8, Article X of the 1987 Constitution and Section 43(b) of R.A. No. 7160.[1] After evaluating the merits of the petition, the COMELEC Second Division issued the Resolution dated February 18, 2010 granting the petition, disposing thus:

The three-term limit rule was initially proposed to be an absolute bar to any elective local government official from running for the same position after serving three consecutive terms. The said disqualification was primarily intended to forestall the accumulation of massive political power by an elective local government official in a given locality in order to perpetuate his tenure in office. Corollary to this, the need to broaden the choices of the electorate of the candidates who will run for office, and to infuse new blood in the political arena by disqualifying officials running for the same office after nine years of holding the same.

Respondent Lonzanida never denied having held the office of mayor of San Antonio, Zambales for more than nine consecutive years. Instead, he raised arguments to forestall or dismiss the petition on the grounds other than the main issue itself. We find such arguments as wanting. Respondent Lonzanida, for holding the office of mayor for more than three consecutive terms, went against the three-term limit rule; therefore, he could not be allowed to run anew in the 2010 elections. It is time to infuse new blood in the political arena of San Antonio.

WHEREFORE, premises considered,, the instant petition is hereby GRANTED. The Certificate of Candidacy of Respondent Romeo D. Lonzanida for the position of mayor in the municipality of San Antonio, Zambales is hereby CANCELLED. His name is hereby ordered STRICKEN OFF the list of Official Candidates for the position of Mayor of San Antonio, Zambales in the May 10, 2010 elections.

SO ORDERED.[2] (Citation omitted)

Upon Lonzanida's motion for reconsideration, the COMELEC en banc affirmed the ruling of the Second Division in its Resolution[3] dated August 11, 2010 further noting that Lonzanida was even more disqualified to run in the elections by reason of a final judgment of conviction against him for a crime punishable for more than one (1) year of imprisonment, thus:

It is likewise worth mentioning at this point that Lonzanida has been found by no less than the Supreme Court guilty beyond reasonable doubt often (10) counts of Falsification under Article 171 of the Revised Penal Code. We take judicial notice of the fact that the Supreme Court, in the case of Lonzanida vs. People of the Philippines, has affirmed the Resolution of the Sandiganbayan which contains the following dispositive portion:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused Mayor Romeo Lonzanida y Dumlao guilty of ten (10) counts of Falsification of Public Document defined and penalized under Article 171 par. 2 of the Revised Penal Code, and in the absence of any mitigating and aggravating circumstances, applying the Indeterminate Sentence Law, said accused is hereby sentenced to suffer in each of the cases the penalty of imprisonment of four (4) years and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of pris[i]on mayor as maximum, and to pay a fine of [P]5,000.00, in each of the cases without subsidiary imprisonment in case of insolvency."

Based on the above-mentioned affirmed Decision, Lonzanida shall suffer the penalty of imprisonment of four (4) years and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum. In view of the said Decision, Lonzanida is, therefore, disqualified to run for any local elective position pursuant to Section 40(a) of the Local Government Code x x x:

x x x x

Prescinding from the foregoing premises, Lonzanida, for having served as Mayor of San Antonio, Zambales for more than three (3) consecutive terms and for having been convicted by a final judgment of a crime punishable by more than one (1) year of imprisonment, is clearly disqualified to run for the same position in the May 2010 Elections.

WHEREFORE, in view of the foregoing the Motion for Reconsideration is hereby DENIED.

SO ORDERED.[4] (Citations omitted)

In the foregoing dispositions, the COMELEC overlooked the distinction between the remedies presented before it. It bears stressing that while the petition filed by Dra. Rodolfo against Lonzanida was titled as a Petition to Disqualify/Deny due Course to and/or Cancel the Certificate of Candidacy, the designation pertains to two (2) different remedies: petition for disqualification and petition to deny due course or cancel a COC

In the recent case of *Fermin v. Commission on Elections*[5] this Court emphasized the distinctions between the two remedies which seemed to have been obliterated by the imprudent use of the terms in a long line of jurisprudence. In the said case, *Umbra Ramit Bayam Dilangalen*, a mayoralty candidate of Northern Kabuntalan in Shariff Kabunsuan, filed a petition for disqualification against Mike A. Fermin on the ground that he did not possess the required period of residency to qualify as candidate. This Court, speaking through Associate Justice Antonio Eduardo B. Nachura, held:

Pivotal in the ascertainment of the timeliness of the Dilangalen petition is its proper characterization.

As aforesaid, petitioner, on the one hand, argues that the Dilangalen petition was filed pursuant to Section 78 of the OEC; while private respondent counters that the same is based on Section 68 of the Code.

After studying the said petition in detail, the Court finds that the same is in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the OEC. The petition contains the essential allegations of a "Section 78" petition, namely: (1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election for which he filed his certificate); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible. It likewise appropriately raises a question on a candidate's eligibility for public office, in this case, his possession of the one-year residency requirement under the law.

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 the 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.

The ground raised in the Dilangalen petition is that Fermin allegedly lacked one of the qualifications to be elected as mayor of Northern Kabuntalan, i.e., he had not established residence in the said locality for at least one year immediately preceding the election. Failure to meet the one-year residency requirement for the public office is not a ground for the "disqualification" of a candidate under Section 68. The provision only refers to the commission of prohibited acts and the possession of a permanent resident status in a foreign country as grounds for disqualification, x x x.[6] (Citations omitted, and emphasis and italics supplied)

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 the 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.

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It bears emphasizing that while both remedies aim to prevent a candidate from joining the electoral race, they are separate and distinct from each other. One remedy must not be confused with the other lest the consequences of a judgment for one be imposed for a judgment on the other to the prejudice of the parties. They are governed by separate provisions of law, which provide for different sets of grounds, varying prescriptive periods and consequences.

As to governing law, a petition to cancel the COC of a candidate is filed under Section 78 of the OEC which 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.

As mentioned in the above-stated provision, a petition under Section 78 may be filed if a candidate made a material representation in his COC with respect to the details which are required to be stated therein under Section 74 of the OEC 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.

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 he 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.

In order to justify the cancellation of COC, 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 concluded that this refers to qualifications for

elective office, it contemplates statements regarding age, residence and citizenship or non-possession of natural-born Filipino status. Furthermore, 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 made with an intention to deceive the electorate as to one's qualification for public office.[7]

On the other hand, a petition for disqualification may be filed under Section 68 of the OEC which states:

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, c, 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 also be filed pursuant, to Section 12 of the QEC and Section 40 of the LGC which provide for other grounds for disqualification to run for public office, viz:

#### 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 or 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.

Disqualification proceedings are initiated for the purpose of barring an individual from becoming a candidate or from continuing as a candidate for public office. In other words, the objective is to eliminate a candidate from the race either from the start or during its progress. On the other hand, proceedings for the cancellation of COC seek a declaration of ineligibility, that is, the lack of qualifications prescribed in the Constitution or the statutes for holding public office and the purpose of the proceedings for declaration of ineligibility is to remove the incumbent from office.[8]

In her petition, Dra. Rodolfo alleged that Lonzanida violated Section 8, Article X of the Constitution, replicated under Section 43(b) of the LGC, which provides for the proscription against occupying the same public office for more than three (3) consecutive terms to support her action to prevent the latter from pursuing his candidacy in the May 2010 elections. The core of her petition is the purported misrepresentation committed by Lonzanida in his COC by staling he was eligible to run as Mayor of San Antonio, Zambales when in fact he has already served for the same position in 1998 to 2001, 2001 to 2004, 2004 to 2007 and 2007 to 2010. However, violation of the three-term limit is not stated as a ground for filing a petition under Section 78, Section 68 or Section 12 of the OEC or Section 40 of the LGC. In order to make a fitting disposition of the present controversy, it has to be determined whether the petition filed against Lonzanida is actually a petition for cancellation of COC or a petition for disqualification.

To reiterate, the ground for filing a petition for cancellation of COC is basically a misrepresentation of the details required to be stated in the COC which, in Lonzanida's case, pertain to the basic qualifications for candidates for local elective positions provided under Section 39 of the LGC which reads:

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 (herein 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.

These basic requirements, which former Senator Aquilino Pimentel, the principal author of the LGC, termed as "positive qualifications"[9] are the requisite status or circumstances which a local candidate must have at the time of filing of his COC. Essentially, the details required to be stated in the COC are the personal circumstances of the candidate, i.e., name/stagename, age, civil status, citizenship and residency, which serve as basis of his eligibility to become a candidate faking 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.

On the other hand, the grounds for disqualification refer to acts committed by an aspiring local servant, or to a circumstance, status or condition which renders him unfit for public service. Contrary to the effect of Section 39 of the LGC possession of any of the grounds for disqualification results to the forfeiture of the right of a candidate to participate in the elections. Thus, while a person may possess the core eligibilities required under Section 39, he may Still be prevented from running for a local elective post if he has any of the disqualifications stated in Section 40. The rationale behind prescribing these disqualifications is to limit the light to hold public office to those who are fit to exercise the privilege in order to preserve the purity of the elections.[10]

Based on the foregoing disquisition on the nature of the two remedies, I find that the violation of the three-term limit cannot be a ground for cancellation of COC. To emphasize, this remedy can only be pursued in cases of material misrepresentation in the COC, which are limited to the details that must be stated therein. Moreover, Antipolo's contention that Lonzanida should be deemed to have made a misrepresentation in his COC when he stated that he was eligible to run when in fact he was not is inconsistent with the basic rule in statutory construction that provisions of a law should be construed as a whole and not as a series of disconnected articles and phrases. In the absence of a clear contrary intention, words and phrases in statutes should not be interpreted in isolation from one another. A word or phrase in a statute is always used in association with other words or phrases and its meaning may thus be modified or restricted by the latter.<sup>[11]</sup> Thus, the statement in the COC which contains a declaration by the candidate that he is "eligible to the office he seeks to be elected to" must be strictly construed to refer only to the details pertaining to his qualifications, i.e., age, citizenship or residency, among others, which the law requires him to state in his COC which he must even swear under oath to possess.

Considering that the number of terms for which a local candidate had served is not required to be stated in the COC, it cannot be a ground for a petition to cancel a COC. The question now is, can it be a ground for a petition for disqualification? I believe that it can.

Pertinently, Section 8, Article X of the Constitution states:

Sec. 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. (Emphasis ours)

As it is worded, that a candidate for a local elective position has violated the three-term limit is a disqualification as it is a status, circumstance or condition which bars him from running for public office despite the possession of all the qualifications under Section 39 of the LGC.

It follows that the petition filed by Dra. Rodolfo against Lonzanida should be considered a petition for disqualification and not a petition to cancel a CoC.

Overlooking the delineation between the two remedies presents the danger of confusing the proper disposition of one for the other. Although both remedies may affect the status of candidacy of a person running for public office, the difference lies with the breadth of the effect. In *Fermin*, we elucidated, thus:

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.<sup>[12]</sup> (Citations omitted and emphasis ours)

In its Resolution dated February 18, 2010, the COMELEC, while finding that Lonzanida is disqualified to run as Mayor of San Antonio, Zambales for having served the same position for more than three (3) consecutive terms, ordered for the cancellation of Lonzanida's COC. In effect, it cancelled Lonzanida's COC on the basis of a ground which is fittingly a ground for a petition for disqualification, not for a petition to cancel a COC. The same holds true with respect to Lonzanida's conviction for ten (10) counts of falsification which was taken up by the COMELEC in resolving Lonzanida's motion for reconsideration in its Resolution dated August 11, 2010 notwithstanding the fact that said ground was not even alleged in the petition filed by Dra. Rodolfo.

A final judgment of disqualification before the elections is necessary before the votes cast in favor of a candidate be considered stray.

Anent the effect of a judgment of disqualification, Section 72 of the OEC is clear. It states;

Sec. 72. Effects of disqualification cases and priority. - x x x.

x x x x

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

The foregoing provision was reiterated in Section 6 of R.A. No. 6646, pertaining to "The Electoral Reforms Law of 1987," thus:

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. (Emphasis ours)

It can be gathered from the foregoing that a judgment of disqualification against a candidate comes into full effect only upon attaining finality. Before that period, the candidate facing a disqualification case may still be voted for and even be proclaimed winner. After the judgment of disqualification has become final and executory, the effect on the status of his candidacy will depend on whether the finality took effect before or after the day of elections. If the judgment became final before the elections, he may no longer be considered a candidate and the votes cast in his favor are considered stray. On the other hand, if the judgment lapsed into finality after the elections, he is still considered a candidate and the votes cast in his name during the elections shall be counted in his favor.

The requirement for a final judgment ultimately redounds to the benefit of the electorate who can still freely express their will by naming the candidate of their choice in their ballots without being delimited by the fact that one of the candidates is facing a disqualification case. It effectively thwarts ineffectual efforts of a less popular candidate in eliminating competition with the more popular candidate by mere expedient of filing a disqualification case against him. In the same manner, it ensures that an ineligible candidate, even after he was proclaimed the winner, can still be ousted from office and be replaced with the truly deserving one. In order not to frustrate these objectives by reason of the protracted conduct of the proceedings, the Rules provide that the COMELEC retains its jurisdiction even after elections, if for any reason no final judgment of disqualification is rendered before the elections, and the candidate facing disqualification is voted for and receives the highest number of votes. Thus, in *Sunga v. COMELEC*[13] we enunciated:

Clearly, the legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, i.e., until judgment is rendered thereon. The word "shall" signifies that this requirement of the law is mandatory, operating to impose a positive duty which must be enforced. The implication is that the COMELEC is left with no discretion but to proceed with the disqualification case even

after the election, x x x.

x x x A candidate guilty of election offenses would be undeservedly rewarded, instead of punished, by the dismissal of the disqualification case against him simply because the investigating body was unable, for any reason caused upon it, to determine before the election if the offenses were indeed committed by the candidate sought to be disqualified. All that the erring aspirant would need to do is to employ delaying tactics so that the disqualification case based on the commission of election offenses would not be decided before the election. This scenario is productive of more fraud which certainly is not the main intent and purpose of the law.[14] (Citation omitted)

Without a final judgment, a candidate facing disqualification may still be proclaimed the winner and assume the position for which he was voted For. In the absence of an order suspending proclamation, the winning candidate who is sought to be disqualified is entitled to be proclaimed as a matter of law. This is clear from Section 6 of R.A. No. 6646 which provides that the proclamation of the candidate sought to be disqualified is suspended only if there is an order of the COMELEC suspending proclamation.[15] The mere pendency of a disqualification case against a candidate, and a winning candidate at that, does not justify the suspension of his proclamation after winning in the election. To hold otherwise would unduly encourage the filing of baseless and malicious petitions for disqualification if only to effect the suspension of the proclamation of the winning candidate, not only to his damage and prejudice but also to the defeat of the sovereign will of the electorate, and for the undue benefit of undeserving third parties.[16]

The candidate receiving the second highest number of votes cannot be proclaimed the winner.

It must be noted that after the issuance of the Resolution dated August 11, 2010, the COMELEC rendered two more issuances that are now being assailed in the instant petition - the Order dated January 12, 2011 and the Resolution dated February 2, 2011. During the interim period, the May 2010 election was held and Lonzanida received the highest number of votes and was proclaimed winner. Upon finality of the judgment of his disqualification, a permanent vacancy was created in the office of the mayor and Efren Racel Aratea (Aratea), the duly-elected Vice-Mayor of San Antonio, Zambales, assumed the position per authority granted to him by the DILG Secretary.

Thereafter, on August 25, 2010, fourteen (14) Days after the issuance of the Resolution dated August 11, 2010, Antipolo filed a motion to intervene and to admit attached petition-in-intervention. Antipolo alleged that she has a legal interest in the matter in litigation being the only remaining qualified candidate for the office of the mayor of San Antonio, Zambales after Lonzanida's disqualification.[17] Having obtained the highest number of votes among the remaining qualified candidates for the position, she opined that she should be proclaimed the mayor of the locality.[18] Subsequently, the COMELEC en banc allowed Antipolo's motion to intervene in its Order dated January 12, 2011, thus:

Acting on the "Motion for Leave to Intervene and to Admit Attached Petition-in-Intervention" filed by Estela D. Antipolo (Antipolo) and pursuant to the power of this Commission to suspend its Rules or any portion thereof in the interest of justice, this Commission hereby RESOLVES to:

1. GRANT the aforesaid Motion;
2. ADMIT the Petition-in-Intervention filed by Antipolo;
3. REQUIRE the Respondent, ROMEO DUMLAO LONZANIDA, as well as EFREN RACEL ARATEA, proclaimed Vice-Mayor of San Antonio, Zambales, to file their respective Comments on the Petition-in-Intervention within a non-extendible period of five (5) days from receipt hereof; end

4. SET the above-mentioned Petition-in-Intervention for hearing on January 26, 2011 at 10:00 a.m., COMELEC Session Hall, 8[th] Floor, Palacio del Gobernador, Intramuros[,] Manila.[19]

On February 2, 2011, the COMELEC en banc issued a Resolution nullifying Aratea's proclamation as acting mayor and ordering him to cease and desist from discharging the duties of the office of the mayor. Further, it ordered for the constitution of a Special Board of Canvassers to proclaim Antipolo as the duly-elected Mayor of San Antonio, Zambales, ratiocinating as follows:

It is beyond cavil that Lonzanida is not eligible to hold and discharge the functions of the Office of the Mayor of San Antonio, Zambales. The sole issue to be resolved at this juncture is how to fill the vacancy resulting from Lonzanida's disqualification. Intervenor Antipolo claims that being the sole qualified candidate who obtained the highest number of votes, she should perforce be proclaimed as Mayor of San Antonio, Zambales. Oppositor Aratea on the other hand argues that Antipolo is a mere second placer who can never be proclaimed, and that the resulting vacancy should be filled in accordance with Section 44 of the Local Government Code of 1991.

In order to judiciously resolve this issue however, we wish to emphasize the character of the disqualification of respondent Lonzanida.

As early as February 18, 2010, the Commission speaking through the Second Division had already ordered the cancellation of Lonzanida's certificate of candidacy, and had slacked off his name in the list of official candidates for the mayoralty post of San Antonio, Zambales[.] Thereafter, the Commission En Banc in its resolution dated August 11, 2010 unanimously affirmed the resolution disqualifying Lonzanida. Our findings, were likewise sustained by the Supreme Court no less. The disqualification of Lonzanida is not simply anchored on one ground. On the contrary, it was emphasized in our En Banc resolution that Lonzanida's disqualification is two-pronged: first, he violated the constitutional fiat on the three-term limit; and second, as early as December 1, 2009, he is known to have been convicted by final judgment for ten (10) counts of Falsification under Article 171 of the Revised Penal Code. In other words, on election day, respondent Lonzanida's disqualification is notoriously known in Fact and in law. Ergo, since respondent was never a candidate for the position of Mayor, San Antonio, Zambales, the votes cast for him should be considered stray votes. Consequently, Intervenor Antipolo, who remains as the sole qualified candidate for the mayoralty post and obtained the highest number of votes should now be proclaimed as the duly[-]elected Mayor of San Antonio, Zambales.

We cannot sustain the submission of Oppositor Aratea that Intervenor Antipolo could never be proclaimed as the duly elected Mayor of Antipolo [sic] for being a second placer in the elections- The teachings in the cases of *Codilla vs. De Venecia* and *Nazareno and Domino vs. Comelec*[,] et al, while they remain sound jurisprudence find no application in the case at bar. What sets this case apart from the cited jurisprudence is that the notoriety of Lonzanida's disqualification and ineligibility to hold public office is established both in fact and in law on election day itself. Hence, Lonzanida's name, as already ordered by the Commission on February 18, 2010 should have been stricken off from the list of official candidates for Mayor of San Antonio, Zambales.[20] (Citations omitted)

The foregoing ratiocination is illustrative of the complication that can result from the inability to distinguish the differences between a petition for disqualification and a petition for cancellation of COC. It bears emphasizing that in terms of effect, a judgment on a petition to cancel a COC touches the very eligibility of a person to qualify as a candidate such that an order for cancellation of his COC renders him a non-candidate as if he never filed a COC at all. The ripple effect is that all votes cast in his favor shall be considered stray. Thus, the candidate receiving the second highest number of votes may be proclaimed the winner as he is technically considered the candidate who received the highest number of votes. Further, it is of no consequence if the judgment on the petition to cancel COC became final before or after the elections since the consequences of the same retroact to

the date of filing of the COC.

On the other hand, the breadth of the effect a judgment on a petition for disqualification is relatively less extensive. First, the effect of a judgment thereon is limited to preventing a candidate from continuing his participation in the electoral race or, if already proclaimed, to unseat from public office. Second, the judgment takes effect only upon finality which can occur either before or after the elections. If the judgment became final before the elections, the effect is similar to the cancellation of a COC. However, if the judgment became final after the elections, he is still considered an official candidate and may even be proclaimed winner should he receive the highest number of votes in the elections. In the event that he is finally ousted out of office, Section 44 of the LGC will govern the succession into the vacated office.

Relating the foregoing principle to the instant case, Lonzanida is still considered an official candidate in the May 2010 elections notwithstanding the pendency of the disqualification case against him. The mere pendency of a disqualification case against him is not sufficient to deprive him of the right to be voted for because the law requires no less than a final judgment of disqualification. Consequently, the COMELEC should not have ordered for the proclamation Antipolo as Mayor of San Antonio, Zambales. It is well-settled that the disqualification of the winning candidate does not give the candidate who garnered the second highest number of votes the right to be proclaimed to the vacated post. In *Aquino v. Commission on Elections*,<sup>[21]</sup> we had the occasion to explicate the rationale behind this doctrine. Thus:

To contend that Syjuco should be proclaimed because he was the "first" among the qualified candidates in the May 8, 1995 elections is to misconstrue the nature of the democratic electoral process and the sociological and psychological underpinnings behind voters' preferences. The result suggested by private respondent would lead not only to our reversing the doctrines firmly entrenched in the two cases of *Labo vs. Comelec* but also to a massive disenfranchisement of the thousands of voters who cast their vote in favor of a candidate they believed could be validly voted for during the elections. Had petitioner been disqualified before the elections, the choice, moreover, would have been different. The votes for Aquino given the acrimony which attended the campaign, would not have automatically gone to second placer Syjuco. The nature of the playing field would have substantially changed. 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.<sup>[22]</sup> (Citation omitted)

x x x x

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

plurality of the votes.[23] (Citation omitted)

Apparently, in its Resolution dated February 2, 2011, the COMELEC submits to the general rule that the second placer in the elections does not assume the post vacated by the winning candidate in the event that a final judgment of disqualification is rendered against the latter. However, it posits that the notoriety of Lonzanida's disqualification and ineligibility to hold public office distinguishes the instant case from the throng of related cases upholding the doctrine. It anchored its ruling in the pronouncement we made in *Labo, Jr. v. Commission on Elections*,[24] to wit:

The rule would have been different if the electorate fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case, the eligible candidate obtaining the next higher number of votes may be deemed elected.[25]

The exception is predicated on the concurrence of two assumptions, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but nonetheless cast their votes in favor of the ineligible candidate. These assumptions however do not obtain in the present case. The COMELEC's asseveration that the electorate of San Antonio, Zambales was fully aware of Lonzanida's disqualification is purely speculative and conjectural." No evidence was ever presented to prove the character of Lonzanida's disqualification particularly the fact that the voting populace was "fully aware in fact and in law" of Lonzanida's alleged disqualification as to "bring such awareness within the realm of notoriety," in other words, that the voters intentionally wasted their ballots knowing that, in spite of their voting for him, he was ineligible." [27] Therefore, it is an error for the COMELEC to apply the exception in *Labo* when the operative facts upon which its application depends are wanting.

Finally, as regards the question on who should rightfully fill the permanent vacancy created in the office of the mayor, Section 44 of the LGC explicitly 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.

The law is couched without equivocation. In the event that a vacancy is created in the office of the mayor, it is the duly-elected vice-mayor, petitioner Aratea in this case, who shall succeed as mayor. Clearly then, the COMELEC gravely abused its discretion in disregarding the law and established jurisprudence governing succession to local elective position and proclaiming private respondent Antipolo, a defeated candidate who received the second highest number of votes, as Mayor of San Antonio, Zambales.

In view of the foregoing disquisitions, I respectfully vote to GRANT the petition. Necessarily, the Order dated January 12, 2011 and Resolution dated February 2, 2011 issued by public respondent Commission on Elections in SPA No. 09-158 (DC) should be REVERSED and SET ASIDE and private respondent Estela D. Antipolo's proclamation should be ANNULLED. Petitioner Efren Racel Aratea, being the duly-elected Vice-Mayor, should be proclaimed Mayor of San Antonio, Zambales pursuant to the rule on succession under Section AA of the Local Government Code of 1991.

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[1] Rollo, pp. 49-50.

[2] Id. at 57-58.

[3] Id. at 60-67.

[4] Id. at 64-66.

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

[6] Id. at 791-795.

[7] *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 775-776, citing *Salcedo II v. COMELEC*, 371 Phil. 377, 386 (1999), citing *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760, *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, *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300.

[8] *Supra* note 5, at 799, citing the Separate Opinion of Justice Vicente V. Mendoza in *Romualdez-Marcos v. Commission on Elections*, *id.* at 397-398.

[9] Aquilino Q. Pimentel, Jr., *THE LOCAL GOVERNMENT CODE OF 1991*, p. 136.

[10] *People v. Corral*, 62 Phil. 945, 94H (1936).

[11] *Phil. Rabbit Bus Line, Inc. v. Hon. Cruz*, 227 Phil. 147, 150 (4986), citing *Reformina v. Judge Tomol, Jr.*, 223 Phil. 472, 479 (1985).

[12] *Supra* note 5, at 796.

[13] 351 Phil. 310 (1998)

[14] *Id.* at 322-323.

[15] *Bagatsing v. COMELEC*, 378 Phil. 585, 601 (1999).

[16] *Id.* at 602, citing *Singco v. Commission on Elections*, 189 Phil. 315, 322-323 (1980).

[17] *Rollo*, p. 79.

[18] *Id.* at 84.

[19] *Id.* at 32.

[20] *Id.* at 36-38.

[21] *Supra* note 7.

[22] *Id.* at 502-503.

[23] *Id.* at 508-509.

[24] *Supra* note 7.

[25] *Id.* at 312.

[26] *Grego v. Commission on Elections*, 340 Phil. 591, 610 (1997), citing *Frivaldo v. COMELEC*, *supra* note 7, at 567.

[27] See *Frivaldo v. COMELEC*, *supra* note 7, at 567.

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