

DATU PAX ALI S. MANGUDADATU, PETITIONER, VS. THE COMMISSION ON ELECTIONS, SHARIFA AKEEL MANGUDADATU, AZEL V. MANGUDADATU, AND BAI ALI A. UNTONG, RESPONDENTS.

G.R. Nos. 260219 & 260231, April 22, 2025

Ponente: GAERLAN, J.

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GAERLAN, J.:

Does an elected public official's incumbency and continuous discharge of his or her duties in a different locality preclude him or her from validly acquiring a new domicile of choice in another locality for purposes of satisfying the residency requirement under the Local Government Code?

Before the Court is a Petition for Certiorari[1] under Rule 64 in relation to Rule 65 of the Rules of Court assailing the Resolution[2] dated January 18, 2022 of the Commission on Elections (COMELEC) First Division and the Resolution[3] dated May 2, 2022 of the COMELEC En Banc. The COMELEC En Banc canceled the Certificate of Candidacy (COC) of Datu Pax Ali S. Mangudadatu (Pax Ali) for the position of Governor of Sultan Kudarat due to false material representation.

Antecedents

On October 7, 2021, Pax Ali, who was then incumbent Mayor of the municipality of Datu Abdullah Sangki (DAS), Maguindanao, filed his COC[4] for Provincial Governor of Sultan Kudarat for the May 9, 2022 elections. In Item 5 of his COC, he indicated that his residence is Purok Garden, Tamnag, Lutayan, Sultan Kudarat. In Item 7, he declared that his period of residence in the said province up to the day before May 9, 2022 is one year and eight months.[5]

On October 13, 2021, Sharifa Akeel Mangudadatu (Sharifa), another gubernatorial candidate, filed before the COMELEC, via electronic mail, a Petition to Deny Due Course or Cancel the COC of Pax Ali[6] (Sharifa's Petition) docketed as SPA No. 21-078 (DC). She alleged that there is no way for Pax Ali to comply with items 5, 7, 11, and 21 of his COC without categorically declaring his lack of qualification, considering that he is the current mayor of DAS, Maguindanao. To qualify for the position of Governor of Sultan Kudarat, Pax Ali had to purposely lie, state, and affirm under oath that he is a resident of Sultan Kudarat. However, Pax Ali never abandoned his position as Mayor, thus, he never deserted his residence in DAS. Sharifa argued that the mere fact that Pax Ali continued to perform his duties as Mayor contradicts his declaration that he is a resident of another municipality in another province. This is a blatant mockery of the election process. Sharifa averred that there is no other reason for Pax Ali to lie relative to his residency but to mislead the electorate of Sultan Kudarat and the COMELEC as to his qualification. Pax Ali cannot feign a lack of malice or intent to deceive as he belongs to a family of politicians who know fully well the residency requirements for an elective local position.[7]

As proof, Sharifa attached to her petition printouts of (1) the directory of DAS found on the web page of the Department of Interior of Local Government (DILG) and (2) Pax Ali's Facebook page.[8]

On October 27, 2021, Azel Mangudadatu (Azel) and Bai Ali A. Untong (Bai Ali) filed before the COMELEC a Petition to Deny Due Course or to Cancel the Certificate of Candidacy of Pax Ali (Azel and Bai Ali's Petition) docketed as SPA No. 21-114 (DC).[9] They claimed that Pax Ali misrepresented in his COC that he had been residing in Sultan Kudarat for at least one year immediately preceding the elections. In truth, Pax Ali is still a resident of DAS. The acts undertaken by Pax Ali in discharging his duties, performing his functions, and exercising his rights as Mayor of DAS clearly and unmistakably negate any claim of bona fide intent to transfer his residence to Lutayan, Sultan Kudarat. Pax Ali did not resign from his position indicating that he had no intention to abandon his residence in DAS.[10] In support thereof, Azel and Bai Ali attached to their petition screenshots of photos showing Pax Ali's discharge of his functions as Mayor, such as: (1) attendance to the Municipal Peace and Order Council Meeting held in DAS on July 12, 2021 (2) attendance at the ceremonial loan signing of the municipality of DAS with Landbank of the Philippines on August 24, 2021; and (3) giving speech during the opening ceremony of the Sili Plantation in Barangay Talisawa, DAS.[11]

On December 7, 2021, Pax Ali filed his Verified Answer[12] to Sharifa's Petition stating among others, that:

(1)

his domicile of origin is Purok Garden, Tamnag, Lutayan, Sultan Kudarat where he grew up in the family's ancestral home together with family members;

(2)

he belongs to a long line of public servants, and exposure to public service made him naturally inclined to be immersed in the community and help the less fortunate;

(3)

while he temporarily transferred his residence to Barangay Talisawa, DAS, Maguindanao, in compliance with the residency requirement for the position of Mayor, he always had the inherent intention to return to his roots in Sultan Kudarat;

(4)

through a series of acts that began around July 2020, [Pax Ali] increased his bodily presence in his house and surrounding community in Purok Garden. By September 2, 2020, all his personal effects and belongings were already back in his home. Since October 2020, [Pax Ali] has gone home to Purok Garden daily and has been away only to attend to his work and official functions;

(5)

he resigned as Mayor of DAS on November 15, 2012 as yet another evidence "ultimately showing his total abandonment of his house and occupation in Maguindanao." [13]

Pax Ali attached in his Verified Answer several photos of the celebrations/occasions and socio-civic activities that he attended while growing up in his residence at Sultan Kudarat. He also submitted copies of his government-issued identification documents (e.g. Philhealth, Bureau of Internal Revenue registration, driver's license, police clearance, NBI clearance, Municipal Mayor ID, etc.) showing his address as Barangay Tamnag, Lutayan, Sultan Kudarat. Pax Ali presented a Certification from the Mayor of Lutayan declaring that he is a bona fide resident of Purok Garden, Barangay Tamnag, bearing the Community Tax Certificate No. 13127421. Similarly, the Barangay Chairperson of Tamnag issued a Certification that Pax Ali had been a resident of the said barangay since August 2020. Pax Ali showed a Certification from the Election Officer of DAS stating that he had transferred his voter's registration in Lutayan, Sultan Kudarat on May 17, 2021 and that his registration in

Maguindanao has been deleted. He submitted a copy of his resignation letter as Mayor of DAS, as well as the acceptance thereof. In addition, he presented the affidavits of his family members, barangay officials and neighbors in Purok Garden, socio-civic organizations in Sultan Kudarat, and his colleagues to prove that he has abandoned his former residence in Barangay Talisawa, DAS, Maguindanao, and re-established his residence in Purok Garden, Barangay Tamnag, Lutayan, Sultan Kudarat beginning October 2020. Pax Ali prayed that Sharifa's Petition be summarily dismissed for utter lack of merit.[14]

On December 9, 2021, Pax Ali filed his Verified Answer[15] to Azel and Bai Ali's Petition containing the same arguments and pieces of evidence as his Verified Answer to Sharifa's Petition. On even date, a preliminary conference was held wherein the COMELEC First Division directed the parties to submit their respective memoranda within three days, after which the case would be deemed submitted for resolution.[16]

Ruling of the COMELEC First Division

In its Resolution dated January 18, 2022, the COMELEC First Division granted the consolidated petitions and canceled Pax Ali's COC. The decretal portion of which reads:

WHEREFORE, premises considered, the Petition is GRANTED. Respondent DATU PAX ALI S. MANGUDADATU's Certificate of Candidacy for Governor of Sultan Kudarat for the 09 May 2022 National and Local Elections is hereby CANCELLED.

Let the records of the case be forwarded to the Law Department of this Commission for the conduct of a preliminary investigation relative to the election offense aspect of this case.

SO ORDERED.[17] (Emphasis in the original)

The COMELEC First Division held that Pax Ali failed to comply with the necessary requisites for a valid transfer of residence back to his domicile of origin in Purok Garden, Barangay Tamnag, Lutayan, Sultan Kudarat. The evidence adduced by Pax Ali, albeit numerous, lacked materiality and significance. The COMELEC First Division noted that when Pax Ali filed his COC, he was the incumbent Mayor of DAS. As a continuing requirement or qualification, he must remain a resident there for the rest of his term. The fact that Pax Ali continued to faithfully discharge the functions of his office bolsters the claim that his actual residence in DAS remains. Pax Ali's intent to remain permanently in Lutayan, Sultan Kudarat at the time he filed his COC, and to abandon his domicile in DAS, Maguindanao is negated by his constant presence in the latter.[18]

Further, the COMELEC First Division agreed with Sharifa that if indeed Pax Ali resides in Sultan Kudarat while actively reporting to work in DAS, Maguindano as Mayor, he would be subjected to travel protocols due to the COVID-19 pandemic. However, Pax Ali failed to present proof that he had been an authorized person outside of his residence. There is no trace of his supposed constant inter-regional travel. Hence, the COMELEC First Division found that Pax Ali is ineligible to run for Governor of Sultan Kudarat for his failure to comply with the residency requirement.[19]

Under Section 74 of the Omnibus Election Code (OEC), a candidate must certify under oath that he is eligible for the public office he seeks election. Pax Ali stated in his COC that he is a resident of Purok Garden, Tamnag, Lutayan, Sultan Kudarat, and eligible for public office, but it turned out that he is a non-resident thereof. Thus, he committed a false representation in his COC on a material fact, which is a ground for the cancellation of his COC under Section 78 of the OEC.[20]

The COMELEC First Division furthermore found that Pax Ali deliberately committed material misrepresentation in his COC.[21]

Meanwhile, Commissioner Marlon S. Casquejo (Commissioner Casquejo) filed a dissent, noting that the pivotal

issue in the case is whether Pax Ali's period of residence in Sultan Kudarat qualifies him to run for and be elected as Governor of the said province, not whether he could have continued to qualify as Mayor of Maguindanao. He opined that Pax Ali did not lose his domicile of origin, which is Sultan Kudarat, even though the latter was elected and served as Mayor of DAS, Maguindanao. He claimed that Pax Ali presented numerous evidence proving his intention to remain in Sultan Kudarat. He was convinced that Pax Ali satisfied the residency requirement as he remained a domiciliary of Lutayan.[22]

Ruling of the COMELEC En Banc

Pax Ali sought reconsideration of the ruling of the COMELEC First Division which was denied. In its Resolution dated May 2, 2022, the COMELEC En Banc ruled that Pax Ali merely reiterated his arguments before the COMELEC First Division. It held that the First Division correctly found that Pax Ali committed false material representation under Section 78 of the OEC. Pax Ali signed his COC, and sworn to the veracity of his declarations therein, indicating that his false representations are deliberate, and will effectively mislead the electorate on his qualifications as Governor of Sultan Kudarat.[23]

Commissioner Casquejo again filed a dissent reiterating that Pax Ali remained a domiciliary of Lutayan, Sultan Kudarat.[24]

Commissioner Aimee Torre Franca-Neri also filed a dissent, averring that Pax Ali was able to prove his change of domicile from DAS, Maguindanao to Lutayan, Sultan Kudarat. She alleged that Pax Ali is not precluded from electing a different domicile after the election, or as in this case, from reverting to his domicile of origin as long as he demonstrates his intention to reside in a fixed place by his personal presence in the place, coupled with conduct indicative of such intention. She stated that Pax Ali's tenure as Mayor alone cannot defeat the fact of actual residence proven by Pax Ali. Thus, there is no material misrepresentation on the part of Pax Ali as regards his residence.[25]

The Petition

On May 5, 2022, Pax Ali filed the present Petition for Certiorari with Extremely Urgent Application for the Issuance of a Temporary Restraining Order (TRO) or Status Quo Order and for the Conduct of a Special Raffle of this Case.[26] He pleaded the arguments found in his Verified Answers, Memorandum, and Motion for Reconsideration before the COMELEC First Division. He argued that the COMELEC En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it:

(1)

disregarded the numerous pieces of evidence proving his residency in Sultan Kudarat;

(2)

failed to apply prevailing jurisprudence on residency for election purposes including *Torayno, Sr. v. Commission on Elections*, *Sabili v. COMELEC*, et al., and *Mitra v. COMELEC*, et al. (*Mitra*);

(3)

disregarded his deep immersion in the communities in Sultan Kudarat which satisfies the rationale behind the one-year residency requirement;

(4)

granted Sharifa, Azel and Bai Ali's Petitions despite their failure to establish Pax Ali's deliberate intent to mislead the electorate which is the most important element of Section 78 of the OEC; and

(5)

denied Pax Ali's motion for reconsideration on the ground that it was a mere rehash of his arguments before the COMELEC First Division.[27]

In support of his prayer for TRO, Pax Ali alleged that the assailed Resolutions of the COMELEC will become final after five days from his receipt of the Resolutions, or on May 7, 2022. As news of the assailed Resolutions had been given much publicity by Pax Ali's political opponents, it is expected that COMELEC will immediately execute or implement the resolutions.[28]

On May 6, 2022, the Court issued a TRO enjoining the COMELEC from enforcing its assailed Resolutions. It also directed the COMELEC, Sharifa, Azel, and Bai Ali to comment on the petition within a non-extendible period of 10 days from notice.[29]

On May 16, 2022, Pax Ali filed a Manifestation[30] stating that he was proclaimed as the duly elected Governor of Sultan Kudarat by the Provincial Board of Canvassers. He alleged that all doubts in relation to his residence in Sultan Kudarat should now be resolved in his favor in view of his overwhelming victory. He invoked Our ruling in *Frivaldo v. COMELEC* that when the voters had already manifested their own judgment and verdict by electing a candidate whose disqualification had been raised prior to the elections, all doubts should be in favor of his qualifications.[31]

On May 18, 2022, Azel and Bai Ali filed a Motion for Reconsideration on the Grant of TRO and Motion to Lift the Same.[32]

On May 3, 2022, the COMELEC, through the office of the Solicitor General filed a Comment[33] on the petition. It alleged that Pax Ali changed his residence when he ran for Mayor in DAS, unmistakably pointing to the intention of abandoning Lutayan, Sultan Kudarat as his domicile of origin. Pax Ali's residence in DAS cannot be considered temporary, otherwise he could not have validly qualified for the position of Mayor which requires residency of at least one year before the elections. The COMELEC asserted that Pax Ali failed to re-acquire his domicile in Lutayan at the time of the filing of his COC. Pax Ali failed to prove his intention to remain in Lutayan and his intention to abandon DAS. Despite Pax Ali's incremental moves to transfer to Lutayan, his true intentions to abandon DAS became manifest only after his resignation as Mayor on November 15, 2021.[34]

The COMELEC maintained that Pax Ali deliberately misrepresented the duration of his residence in Sultan Kudarat to mislead the electorate that he was qualified as Governor. It insisted that Pax Ali could not be unaware that his incumbency as Mayor of DAS was an obstacle to his residency requirement for the position of Governor in Sultan Kudarat. Pax Ali's nonchalance in claiming to be a resident of Lutayan, Sultan Kudarat, as of the filing of his COC, even as he was Mayor of DAS, Maguindanao, offends standards of decency and honesty as he boldly flouts the spirit and letter of Section 39 of the Local Government Code (LGC).[35]

Subsequently, the COMELEC contended that Pax Ali's reliance on Torayno and Mitra is misplaced as the factual milieu of these cases is not on all fours with the case at bar.[36]

On May 23, 2022, Azel and Bai Ali filed their Comment[37] on the Petition, repleading the arguments in their Petition and Memorandum[38] before the COMELEC First Division. They alleged that the affidavits and documents adduced by Pax Ali do not prove his intention to abandon his residence at DAS, Maguindanao. While Pax Ali allegedly resigned from his position as Mayor, the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) certified that there is no record of the said resignation.[39] Azel and Bai Ali stated that Pax Ali was registered as voter of Lutayan, Sultan Kudarat, only on May 17, 2021. This means that Pax Ali lacks the one-year residency period to be qualified as Governor of Sultan Kudarat. Pax Ali was eight days late considering that the election was held on May 9, 2022.[40] Like the COMELEC, Azel and Bai Ali claimed that Torayno and Mitra are inapplicable in this case.[41]

On May 30, 2022, Sharifa filed her Comment/Opposition to the Petition for Certiorari with Extremely Urgent Motion to Lift TRO and to Resolve the Instant Petition.[42] She reiterated her arguments before the COMELEC First Division that Pax Ali is a domiciliary of DAS, Maguindanao. She emphasized that Pax Ali was very vocal in his resolve not to abandon his constituents in DAS as he publicly stated in his interview on October 1, 2021, "hindi ko iniwan ang Datu Abdullah Sangki." Sharifa maintained that Pax Ali uttered the foregoing words not only once but twice, which clearly reflects his state of mind at the time that he filed his COC.[43] Consequently, since Pax Ali committed false material representation, his COC should be canceled. When a COC is canceled, it is as if the person was never a candidate. Hence, Sharifa prayed that We declare her the lone candidate for the position of Governor of Sultan Kudarat.[44]

On July 28, 2022, Pax Ali filed a Consolidated Reply and Consolidated Comment on Sharifa, Azel, and Bai Ali's motion to lift the TRO.[45] Pax Ali asserted that the will of the people of Sultan Kudarat cannot be set aside on a mere summary proceeding before the COMELEC. Instead, any doubts about his qualifications should be tried and tested before the proper tribunal having jurisdiction on petitions for quo warranto. Pax Ali highlighted that no election protest was filed against him after his proclamation as Governor. He then pleaded and adopted all the allegations in his Petition and Manifestation before Us.[46]

On August 5, 2022, Sharifa filed a Counter-Manifestation,[47] arguing that the principle of the "will of the people" does not apply to Pax Ali because he was never a candidate in the first place. Pax Ali was proclaimed the winner when no TRO was received by the Provincial Board of Canvassers or any directive from the COMELEC on the alleged TRO, which was then only existing on Facebook.

On September 5, 2022, Sharifa filed a Motion for Early Resolution[48] of the case. On November 29, 2022, Azel and Bai Ali also filed a motion of similar import with an additional prayer to set the case for oral argument.[49]

In Our Resolution[50] dated February 14, 2023, We denied the motion for reconsideration on the grant of TRO filed by Azel and Bai Ali for lack of merit.

Issue

The issue in this case is whether the COMELEC committed grave abuse of discretion in cancelling Pax Ali's COC on the ground that he made a false representation as to his residency qualification.

The Court's Ruling

The Petition is dismissed for lack of merit.

Section 78 of the OEC authorizes the COMELEC to deny due course to or cancel a COC on the exclusive ground of false material representation. The provision reads:

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

In *Atty. Francisco v. COMELEC, et al.*,[51] the Court held that the material misrepresentation contemplated under Section 78 of the OEC involves a candidate's eligibility or qualification for the office to which he or she seeks election, such as the requisite residency, age, citizenship, or any other legal qualification necessary to run for elective office enumerated under Section 74 of the OEC. This must be so because the consequences imposed upon a candidate guilty of having made a false representation in his or her COC are grave – to prevent the candidate from running or, if elected, from serving, or to prosecute him or her for violation of the election laws.[52]

Although Section 78 of the OEC is silent on the element of deceit, the Court has repeatedly ruled that, false representation must also consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." [53]

Accordingly, for a petition under Section 78 of the OEC to prosper, the following requisites must concur: (1) a candidate made a material representation in his or her COC, that is, a representation relating to his or her qualification for the position he or she is vying for; (2) such representation is false; and (3) he or she made the representation with the intent to deceive the electorate that he or she is eligible to run and be voted for.

Undoubtedly, the assailed representation in this case passed the test of materiality. Sharifa, Azel, and Bai Ali Petitions are anchored on Pax Ali's alleged false representation that he complied with the residency requirement under the LGC for the position of Governor of Sultan Kudarat. Section 39(a) of the LGC provides, among others, that an elective local official must be a resident of the barangay, municipality, city, or province where he or she intends to be elected for at least one year immediately preceding the day of the election. When Pax Ali stated in his COC that he has been a resident of Purok Garden, Tamnag, Lutayan, Sultan Kudarat for one year and eight months before the May 9, 2022 National and Local Elections, he made a material representation on his eligibility to run and hold elective office. This representation, if proved false, falls within the ambit of Section 78 of the OEC. [54]

The remaining threshold issues to be resolved are (1) whether Pax Ali's declaration that he is a resident of Lutayan, Sultan Kudarat, for at least one year before the May 9, 2022 elections is false; and (2) if in the affirmative, whether Pax Ali deliberately lied on his COC to feign eligibility and misled the voters that he is qualified for Governor.

Pax Ali is a resident of DAS, Maguindanao

Well-settled is the rule that residence, for election purposes, is used synonymously with domicile. Domicile denotes a fixed permanent residence to which, when absent, one has the intention of returning. [55] It could be classified into three, namely: (1) domicile of origin, which is acquired by every person at birth; (2) domicile of choice, which is acquired upon abandonment of the domicile of origin; and (3) domicile by operation of law, which the law attributes to a person independently of his residence or intention. [56] Domicile of origin is usually the place where the child's parents reside and continues until the same is abandoned by the acquisition of a new domicile. [57]

Here, it is undisputed that Pax Ali's domicile of origin is at Purok Garden, Tamnag, Lutayan, Sultan Kudarat where he was raised in his family's ancestral home. It is also uncontroverted that Pax Ali effected a change of domicile when he ran as Municipal Mayor of DAS, Maguindanao, in 2018. Thus, per his Affidavit, Pax Ali narrated that:

9. Sometime in 2018, I decided to run as Municipal Mayor of Datu Abdullah Sangki, Maguindanao, and to comply with the residency requirement set, I transferred my residence to Barangay Talisawa, Datu Abdullah Sangki, Maguindanao on (sic) April 2018.

....

17. In 2020, I started to make known my intention to re-establish my residence at Lutayan, Sultan Kudarat to close family members and friends.

....

33. That I am executing this affidavit to attest to the truthfulness of the foregoing facts to prove that I re-established my residence in Purok Garden, Barangay Poblacion Tamnag, Lutayan, Sultan Kudarat since

October 2020.[58] (Emphasis supplied)

Prescinding from the foregoing, Pax Ali admits and acknowledges that he had abandoned his domicile of origin when he ran for Mayor of DAS, Maguindanao. Otherwise, he would not have used the word "re-establish" relative to his residence at Purok Garden. DAS, Maguindanao then became Pax Ali's domicile by choice. Also, in all of Pax Ali's pleadings and/or submissions[59] before the Court and the COMELEC, he seeks to prove that he had satisfied the requisites of valid transfer of residence from DAS, Maguindanao to Lutayan, Sultan Kudarat.

In *Limbona v. Commission on Elections, et al.*,[60] the Court held that in order to acquire a domicile by choice, there must concur: (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. A person's "domicile" once established is considered to continue and will not be deemed lost until a new one is established.[61]

If one wishes to successfully effect a change of domicile, he or she must demonstrate an actual removal or an actual change of domicile, a bona fide intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose.[62] Simply put, there must be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.[63] The quantum of proof necessary to establish a change in domicile in election cases is substantial evidence or such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.[64]

Tested through the abovementioned parameters, the Court rules that Pax Ali failed to effect a change of domicile from DAS, Maguindanao to Lutayan, Sultan Kudarat, one year immediately preceding the May 9, 2022 elections. While there is substantial evidence that Pax Ali had bodily or physical presence in Lutayan, Sultan Kudarat, his intent to remain there for an indefinite period, and to abandon DAS, Maguindanao are missing.

First, Pax Ali's physical presence in Purok Garden, Tamnag, Lutayan Sultan Kudarat is supported by evidence on record. Pax Ali presented the Affidavit[65] dated November 16, 2021 of Calicol M. Hadjiesmael, the Punong Barangay of Tamnag, Lutayan, Sultan Kudarat, confirming his (Pax Ali's) physical presence in Purok Garden since August 2020. The Affidavit further stated that the Punong Barangay regularly spoke with Pax Ali regarding the issues and concerns of the residents in their barangay and how he (Pax Ali) could help them. Pax Ali also submitted in evidence a Certificate of Residency[66] issued by the Barangay Secretary of Tamnag and approved by the Punong Barangay indicating that Pax Ali "has been residing in the barangay since August 2020." In *Sabili*, the Court considered a barangay's certification of residence as evidence of therein petitioner's bodily presence in the locality in which he seeks election.[67] Similarly, in *Mitra*, the Court noted that it is the business of the Punong Barangay to know who the residents are in his or her barangay.[68]

Several neighbors of Pax Ali or those living near or adjacent to his house in Purok Garden also executed sworn statements attesting to his physical presence in the area starting August 2020.[69] In *Jalosjos v. COMELEC*,[70] the Court opined that the affidavits of next-door neighbors attesting to the physical presence of therein Pax Ali are more credible than the affidavits of other people who just sporadically passed by the subject residence.

Second, Pax Ali's resolve to maintain residence in Lutayan, Sultan Kudarat, and to abandon DAS, Maguindanao became manifest only when he resigned as Mayor of DAS on November 15, 2021. The question of residence for purposes of election law is mainly one of intention.[71] This may be inferred from a person's acts, activities, and utterances.[72] Pax Ali was the incumbent Mayor of DAS, Maguindanao when he filed his COC on October 7, 2021. As such, he is deemed to be the representative of the locality and the people therein. Staying as Mayor of DAS is a positive and voluntary act reflecting Pax Ali's choice of residence. Remaining as the local chief

executive of DAS is antithetical to a claim of animus non-revertendi. Likewise, clinging to his position as Mayor meant that Pax Ali must comply with the continuing requirement of remaining a resident of DAS during his entire tenure. In *Atty. Lico, et al. v. COMELEC En Banc, et al.*,^[73] the Court declared that qualifications for public office, whether elective or not, are continuing requirements. These qualifications must be possessed not only at the time of appointment or election, or of assumption of office, but during the officer's entire tenure.^[74] This renders questionable Pax Ali's bona fide intent to remain at Lutayan, Sultan Kudarat for an indefinite period of time. Since Pax Ali failed to show that he had established a new domicile at the time of the filing of his COC, his residency in DAS continues. He remained a resident of DAS, Maguindanao as of October 7, 2021.

To the Court's mind, Pax Ali's resignation as Mayor was a mere afterthought. It was done after two (2) petitions for cancellation of his COC were filed before the COMELEC. Pax Ali resigned to foreclose any issue with his compliance with the residency requirement. Paragraph 1.3.2 of Pax Ali's Verified Answer to Azel and Bai Ali's Petition reads:

1.3.2 Respondent [herein Pax Ali] admits the allegations as regards the fact that respondent was still mayor of the Municipality of Datu Abdullah Sangki, Maguindanao at the time he filed his Certificate of Candidacy ("CoC") for Governor of Sultan Kudarat. Presently, however, respondent is no longer the Mayor of the said Municipality, as he resigned on [November 15,] 2021. This clearly shows respondent's intention to abandon his former residence and occupation as Mayor of the Municipality of Datu Abdullah Sangki, Maguindanao, and to re-establish, as he has already re-established, his domicile in Sultan Kudarat.^[75] (Emphasis supplied)

A statement of the same tenor is also found in Pax Ali's Verified Answer to Sharifa's Petition, viz.:

(g) On November 15, 2021, respondent [herein Pax Ali] tendered his resignation as Mayor of Datu Abdullah Sangki, Maguindanao, as yet another evidence ultimately showing his total abandonment of his house and occupation in Maguindanao." (Emphasis supplied)

Pax Ali is, thus, aware of the import or effect of his resignation on the question of his residency. However, his resignation was done too late. He fell short of the one-year residency requirement under the LGC. The concurrence of the three requisites for the acquisition of a new domicile of choice may be reckoned only from the time that Pax Ali resigned as Mayor of DAS or, to be exact, on November 15, 2021. Counted from said date, Pax Ali has been a resident of Lutayan, Sultan Kudarat for only five months and 22 days immediately preceding the day of the elections. His representation in his COC that he would be a resident of the province for one year and eight months the day before the May 9, 2022 elections is false. Necessarily, his declaration under oath in his COC that he is eligible for the position of Governor is false.

The Court cannot reckon the starting period of the one-year residency requirement from the time that Pax Ali made "incremental moves" to transfer his belongings to Lutayan in July/August 2020. Nor in October 2020 when he claimed to have gone home daily to the said place. This is because, during this period, Pax Ali was still fulfilling his duties and responsibilities as Mayor of DAS, Maguindanao, negating any intent to abandon DAS as his domicile.

Pax Ali questions the application in this case of the doctrine that qualifications for public office are continuing requirements that must be possessed not only at the time of appointment but during the officer's entire tenure. He argues that when an elective official loses his or her qualification, his or her eligibility to continuously hold office is simply open to challenge nothing more, nothing less.^[76]

The Court cannot subscribe to Pax Ali's theory because this would effectively undermine the continuing requirements for qualification to public office. This would also result in a ludicrous situation where a local elected official could disregard the required eligibility for his or her position so long as no one challenges him or her.

Pax Ali's reliance in the cases of Torayno, Mitra, and Sabili is misplaced

Pax Ali insists that his incumbency as Mayor of DAS does not preclude him from acquiring a bona fide domicile of choice in a different locality. He relies on the cases of Torayno and Mitra which are allegedly on all fours with his case. Pax Ali is mistaken.

In Torayno, therein respondent Vicente Emano (Emano) is the governor of Misamis, Oriental. During his incumbency, he filed a COC for Mayor of Cagayan De Oro (CDO) City, which is geographically located in the province of Misamis Oriental. Torayno and the others sought Emano's disqualification on the ground that he failed to meet the one-year residency requirement. The COMELEC denied the petition for disqualification after finding that Emano is a resident of CDO. The COMELEC explained that:

. . . private respondent and his family had actually been residing in Capistrano Subdivision, Gusa, Cagayan de Oro City, in a house he had bought in 1973. Furthermore, during the three terms (1988-1998) that he was governor of Misamis Oriental, he physically lived in that city, where the seat of the provincial government was located. In June 1997, he also registered as voter of the same city. Based on our ruling in Mamba--Perez, these facts indubitably prove that Vicente Y. Emano was a resident. of Cagayan de Oro City for a period of time sufficient to qualify him to run for public office therein. Moreover, the Comelec did not find any bad faith on the part of Emano in his choice of residence.

Petitioners put much emphasis on the fact that Cagayan de Oro City is a highly urbanized city whose voters cannot participate in the provincial elections. Such political subdivisions and voting restrictions, however, are simply for the purpose of parity in representation. The classification of an area as a highly urbanized or independent component city, for that matter, does not completely isolate its residents, politics, commerce and other businesses from the entire province — and vice versa — especially when the city is located at the very heart of the province itself, as in this case.[77] (Emphasis supplied)

The Court sustained the COMELEC's ruling and noted that CDO was at the center of the province of Misamis Oriental. CDO is itself the seat of the provincial government. The provincial officials who carry out their functions in the city cannot avoid residing therein, much less get acquainted with its concerns and interests. Emano was actually and physically residing in CDO while discharging his duties as Governor of Misamis Oriental. He owned a house in the City and resided there with his family. Thus, for all intents and purposes, he is a resident of CDO and eligible to run as Mayor thereof.[78]

In Mitra, Mitra was the incumbent representative of the Second District of Palawan, which includes Aborlan and Puerto Princesa. Before the end of Mitra's term, Puerto Princesa was reclassified as a highly urbanized city. Hence, Puerto Princesa residents became ineligible to vote for candidates for elective provincial officials. Since Mitra intends to run as Governor, he transferred his voter registration record from Puerto Princesa to Aborlan. Thereafter, he filed a COC for the position of Governor of Palawan as a resident of Aborlan. The COMELEC canceled Mitra's COC for non-compliance with the residency requirement. The Court reversed the COMELEC and held that Mitra was able to prove his required physical presence in the province of Palawan. It noted the incremental moves that Mitra undertook to establish his new domicile in Aborlan beginning in 2008, concluding his transfer in 2009. It also explained that:

. . . Mitra who is no stranger to Palawan has merely been compelled — after serving three terms as representative of the congressional district that includes Puerto Princesa City and Aborlan — by legal developments to transfer his residence to Aborlan to qualify as a Province of Palawan voter. To put it differently, were it not for the reclassification of Puerto Princesa City from a component city to a highly

urbanized city, Mitra would not have encountered any legal obstacle to his intended gubernatorial bid based on his knowledge of and sensitivity to the needs of the Palawan electorate.[79] (Emphasis supplied)

In both Torayno and Mitra, the incumbency of the elected public officials did not hinder them from transferring to another residence, simply because the new residence formed part or is a component of the province or district that they are currently representing. In Torayno, CDO is part of Misamis Oriental, the province where Emano was the incumbent Governor when he filed his COC for Mayor of CDO. Emano was actually residing in CDO during the three terms that he was a Governor of Misamis Oriental. CDO is the provincial seat of power. In Mitra, Aborlan is one of the territories included in the Second District of Palawan where Mitra was the incumbent representative when he filed his COC for Governor. Evidently, in Torayno and Mitra, the rule that the elected public official must remain a resident there for the rest of his or her tenure was complied with. Not so in the case of Pax Ali. The municipality of DAS does not form part of or is not geographically located in the province of Sultan Kudarat. DAS is in the province of Maguindanao. Pax Ali cannot comply with the residency requirement in Sultan Kudarat while discharging his duties as Mayor of DAS, Maguindanao.

Here, even if the Court considers Pax Ali's transfer of his voter's registration from DAS, Maguindanao to Sultan Kudarat as proof of his intention to change his domicile, Pax Ali would still not be able to comply with the one-year residency requirement. Counting from May 17, 2021 or the date of Pax Ali's transfer of his voter's registration, Pax Ali would be a resident of Sultan Kudarat for 11 months and 21 days before the day of the elections. In *Pundaodaya v. Commission on Elections*,^[80] the Court opined that a person's registration as a voter in one district is not proof that he or she is not domiciled in another district. The registration of a voter in a place other than his or her residence of origin is not sufficient to consider him or her to have abandoned or lost his or her residence.^[81]

Pax Ali deliberately committed misrepresentation

In the sphere of election laws, a material misrepresentation pertains to a candidate's act done with the intention to gain an advantage by deceitfully claiming possession of all the qualifications and none of the disqualifications when, in fact, the contrary is true.^[82]

Here, Pax Ali knew at the time of the filing of his COC that he could not be a resident of Sultan Kudarat as he was the incumbent Mayor of DAS, Maguindanao. The LGC requires him to be a resident of DAS during his entire tenure. As Pax Ali stated in his Verified Answer before the COMELEC, he belongs to a long line of public servants. It is impossible for him not to know the requirements under the LGC as regards residency. To rectify the situation, he resigned as Mayor. However, this belated posturing could no longer cure his material misrepresentation.

In declaring in his COC that he is a resident of Lutayan, Sultan Kudarat, despite being the incumbent Mayor of DAS, Maguindanao, Pax Ali misled the electorate of Sultan Kudarat into thinking that he is eligible for the position of Governor. The Court agrees with the observation of the COMELEC that had Pax Ali believed in good faith that he could validly transfer to his residence in Sultan Kudarat while discharging his functions as Mayor of DAS, Maguindanao, he could have maintained the position instead of resigning therefrom after two petitions to deny due course/cancel his COC was filed before the COMELEC.^[83]

An incumbent public official who continuously exercises the rights and duties of his or her office in the locality where he or she is elected cannot claim *animus non-revertendi* relative to such place and *animus manendi* in a different locality without making a mockery of the electorate who voted for him or her and deceiving the

electorate of the new locality where he or she seeks a new election.

It is the height of absurdity to continue representing a locality/place as its local chief executive and at the same time declare under oath that you are a resident of another province, that is, that you are no longer a resident of the place where you are currently at the helm of the seat of power. A person cannot have two domiciles at the same time.[84]

Section 74 of the OEC requires a candidate to state under oath in his or her COC that he or she is eligible for the office he or she seeks election. If the candidate declares that he or she is eligible to run for public office when in truth he or she is not, such misrepresentation is a ground for a Section 78 petition.[85]

In this case, Pax Ali made a false material representation in his COC when he declared that he would be a resident of Lutayan, Sultan Kudarat for one year and eight months immediately before the day of the elections. He deliberately misrepresented that he was eligible for Governor of Sultan Kudarat when in fact he was not. Thus, the COMELEC did not commit grave abuse of discretion in denying due course to or canceling Pax Ali's COC.

There is a need to revisit the second placer rule

Jurisprudence is settled regarding the effects of cancellation of, or denial of due course to, a person's COC. A cancelled COC does not give rise to a valid candidacy. It is as if the person has not filed any COC. A person whose COC is cancelled or denied due course is no candidate at all.[86]

In *Rivera III v. Commission on Elections*,[87] the Court noted that the effect of cancellation of a COC is provided under Sections 6 and 7 of Republic Act No. 6646 or The Electoral Reforms Law of 1987 in relation to Section 211 of the OEC, to wit:

SECTION 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.

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

....

SEC. 211. Rules for the appreciation of ballots. — In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

....

19. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot. (Emphasis supplied)

In *Aquino v. Commission on Elections*,^[88] the Court emphasized that, as stated in Section 7 of Republic Act No. 6646, Section 6 thereof is applicable not only to disqualification cases under Section 68 of the OEC but also to petitions to deny due course to or cancel a COC under Section 78 of the same Code.

Section 6 of Republic Act No. 6646 covers two situations. First is when the disqualification (or denial/cancellation of COC) becomes final before the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification (or denial/cancellation of COC) becomes final after the elections, which is the situation covered in the second sentence of Section 6.^[89] Under the first situation, a candidate disqualified by final judgment before an election cannot be voted for, and the votes cast for him shall not be counted^[90] and shall be considered as stray.^[91] In the second situation, since the disqualification or COC cancellation/denial case is not resolved before election day, the proceedings shall continue even after the election and the proclamation of the winner. In the interim, the candidate may be voted for and be proclaimed if he or she wins, but the COMELEC's jurisdiction to deny due course and cancel his or her COC continues.^[92] The only exception to this is in the case of congressional or senatorial candidates with unresolved disqualification or COC denial/cancellation cases after the elections. Pursuant to Article VI, Section 17 of the Constitution, the COMELEC ipso jure loses jurisdiction over these unfinished cases in favor of the respective Senate or the House of Representatives electoral tribunals after the candidates take their oath of office.^[93]

Meanwhile, Section 6 of Republic Act No. 6646 is silent as to the treatment and status of the votes cast in favor of candidate whose disqualification or denial/cancellation of COC became final only after the elections. Thus, when candidate's COC is cancelled after they have already won and assumed office, a question arises on how to fill the vacancy caused by their removal from office. A quick survey of case law yields two divergent results.

The first group advances the application of the rule on succession under Section 44 of the LGC with respect to vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor, viz.:

SECTION 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.

— (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

(b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.

(c) A tie between or among the highest ranking sanggunian members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

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

For purposes of succession as provided in this Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.

This is on the premise that the second placer (or the candidate who obtained the second highest number of votes) may not be proclaimed winner in case the candidate who receives the majority votes is disqualified ("rejection of

the second placer"). The law only authorizes a declaration of election in favor of the person who obtained a plurality of votes.[94] The jurisprudential spring of the doctrine of rejection of the second placer is allegedly *Topacio v. Paredes*[95] where the Court stated that "the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots." [96]

Quite the contrary, the second group, which is the prevailing jurisprudence, favors the proclamation of the second placer as a result of the cancellation of the winning candidate's COC. The second placer is considered as the qualified candidate who gathered the highest number of votes ("the second placer rule"). The rationale, as stated in the leading case of *Jalosjos, Jr. v. COMELEC*[97] is: "[i]f the certificate of candidacy is void ab initio [due to the cancellation of the COC], then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections."

The present case is an opportune time for the Court to revisit the second placer rule, which, as correctly observed by Associate Justice Benjamin Caguioa,[98] has no basis in law and is inconsistent with the very essence of republicanism.

A discussion of the relevant jurisprudence is in order starting with cases decided before the enactment of the OEC.

The doctrine of rejection of the second placer is supported by law and public policy

The earliest case where the Court rejected the second placer rule due to lack of legal basis is the 1929 case of *Nuval v. Guray*. [99] Nuval filed an action for quo warranto against Guray, the municipal president of Luna, on the ground that the latter lacked the one-year residency requirement under Section 2174 of the Administrative Code. The Court ruled in favor of Nuval. It declared that Nuval is "the one legally elected to the office with a right to take possession thereof, having secured the second place in the elections." Upon motion for reconsideration, the Court modified its earlier ruling, eliminating from the dispositive part the holding that Nuval is the one legally elected. It clarified that in quo warranto proceedings referring to offices filled by election, "when the person elected is ineligible, the court cannot declare that the candidate occupying the second place has been elected, even if he were eligible, since the law only authorizes a declaration of election in favor of the person who has obtained a plurality of votes, and has presented his certificate of candidacy." [100]

Nuval is followed by *Llamoso v. Ferrer*. [101] Llamoso raised the issue of whether the candidate receiving the next highest number of votes is entitled to the office when the winning candidate turns out to be disqualified. Llamoso filed a quo warranto case against Ferrer, alleging that the latter is disqualified as Mayor of Laguna for lack of legal residence. The Court of First Instance of Laguna declared the position vacant, stating that Ferrer did not have the legal requisites necessary to be validly elected. The Court of Appeals (CA) confirmed Ferrer's ineligibility but declined to proclaim Llamoso as the winner since he did not receive the popular vote. On certiorari, the Court foremost held that Section 173 of Republic Act No. 180 or the "Revised Election Code" does not provide that if the contestee is declared ineligible, the contestant will be proclaimed. The provision permits the filing of the contest by any registered candidate regardless of whether he or she occupies the next highest place or the lowest in the election returns. Citing American Jurisprudence, the Court stated that only the candidate who received the majority or plurality of votes shall be declared elected, and the ineligibility of the winning candidate results in a vacancy in the office. Thus:

It is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried, unless he or it receives a majority or a plurality of the legal votes cast in the election. Accordingly, the general rule is that the fact that a plurality or a majority of the votes are cast for an ineligible candidate at a popular election does not entitle the candidate receiving the next highest number of votes to be declared elected. In such case the electors have failed to make a choice and the election is a nullity. (29 Corpus Juris Secundum, 353.)

. . . although the candidate voted for by a majority cannot be declared elected because of his ineligibility and the majority vote is thereby rendered ineffective for such purpose, such majority vote is effective to forbid the election of the candidate having the next highest number of votes. The effect is to render the purported election nugatory and to leave a vacancy in the office thus attempted to be filled. (18 American Jurisprudence, 353.)[102] (Emphasis supplied)

The Court's ruling in *Nuval and Llamoso* was reiterated in *Vilar v. Paraiso*,[103] another quo warranto proceeding. *Vilar* argued that *Paraiso*, then mayor of *Rizal, Nueva Ecija*, is an ecclesiastic, ineligible to hold office under section 2175 of the Revised Administrative Code. After finding that *Paraiso* was indeed ineligible, the Court stated the second placer in the elections cannot be declared the winner in the absence of an express provision authorizing such declaration. "Our law not only does not contain any such provision but apparently seems to prohibit it." [104]

Subsequently, in *In re Geronimo v. Ramos*,[105] (*Geronimo*) the Court ruled that when the winning candidate is not qualified and cannot qualify for the office to which he was elected, a permanent vacancy is created, which calls for application of the rule on succession under then Section 48 of Local Government Code or then *Batas Pambansa Blg 337*. In *Geronimo*, petitioner *Geronimo* was disqualified in the mayoralty elections on the ground that he was a political turncoat. The COMELEC proclaimed the defeated candidate *Ferrera* mayor. The Court reversed the COMELEC and ordered that the vice--mayor assume the office.

Notably, the foregoing cases all involved quo warranto proceedings since the remedy of cancellation of COC was not yet provided in the Revised Election Code.

Meanwhile, after the enactment of the OEC, the Court continued to reject the second placer rule in *Frivaldo v. Commission on Elections*[106] and *Labo, Jr. v. Commission on Elections* (*Labo 1989*).[107] *Frivaldo* involved a petition for annulment of *Frivaldo's* election and proclamation on the ground that he was not a Filipino citizen. Though the Court did not discuss the second placer rule, it ordered *Frivaldo* to surrender the gubernatorial position to the duly elected Vice-Governor of *Sorsogon*.

Labo 1989 involved a quo warranto proceeding filed by *Lardizabal* against *Labo, Jr.*, the mayor-elect of *Baguio City*. *Lardizabal* argued that *Labo, Jr.* is an Australian citizen and, hence ineligible to hold public office. The Court confronted the issue of whether *Lardizabal* can replace *Labo, Jr.* as mayor. It ruled in the negative since *Lardizabal* only obtained the second highest number of votes. He was obviously not the choice of the people of *Baguio*. The Court re-examined its previous ruling in *Santos v. Commission on Elections* where the second placer won by default. It held that the earlier case of *Geronimo* represents a more logical and democratic rule. Thus, it ordered *Labo, Jr.* to vacate his office and surrender the same to the Vice--Mayor of *Baguio*.

Following *Frivaldo* and *Labo 1989* is the case of *Abella v. Commission on Elections*. [108] *Abella* appears to be the first instance where the rejection of the second placer rule was applied in a cancellation proceeding under Section 78 of the OEC. Therein petitioners *Abella* and *Dela Cruz* claimed that private respondent *Larrazabal* misrepresented that she was a resident and a registered voter of *Kanaga, Leyte*. During the pendency of the case, *Larrazabal* won and was proclaimed governor. Thereafter, the COMELEC disqualified *Larrazabal* and disallowed the proclamation of *Abella*, the second placer in the elections, as governor of *Leyte*. In his petition before the

Court, Abella argued that the COMELEC misapplied Frivaldo and Labo 1989 in the case since those involved quo warranto proceedings under Section 253 of the OEC. The Court held that the nature of the proceedings is immaterial. What matters is that despite the ineligibility of the winning candidate, the candidate who obtains the second highest number of votes for the same position cannot assume the vacated position. This is because the latter lost in the elections and was, therefore, repudiated by the electorate. The whole text of the Court's ruling reads:

While it is true that SPC No. 88-546 was originally a petition to deny due course to the certificate of candidacy of Larrazabal and was filed before Larrazabal could be proclaimed the fact remains that the local elections of February 1, 1988 in the province of Leyte proceeded with Larrazabal considered as a bona-fide candidate. The voters of the province voted for her in the sincere belief that she was a qualified candidate for the position of governor. Her votes were counted and she obtained the highest number of votes. The net effect is that the petitioner lost in the election. He was repudiated by the electorate. In the Frivaldo and Labo cases, this is precisely the reason why the candidates who obtained the second highest number of votes were not allowed to assume the positions vacated by Frivaldo — the governorship of Sorsogon, and Labo, the position of mayor in Baguio City. The nature of the proceedings therefore, is not that compelling. What matters is that in the event a candidate for an elected position who is voted for and who obtains the highest number of votes is disqualified for not possessing the eligibility requirements at the time of the election as provided by law, the candidate who obtains the second highest number of votes for the same position can not assume the vacated position.[109] (Emphasis supplied)

Next to Abella is the 1992 case of Labo, Jr. v. COMELEC[110] (Labo 1992). Private respondent Ortega sought to cancel Labo, Jr.'s COC as mayor on the ground that he made a false representation that he is a natural-born citizen of the Philippines. Ortega presented the Court's ruling in the 1989 case of Labo that disqualified Labo, Jr. as mayor in a quo warranto proceeding upon a finding that he is an Australian citizen. Meantime, Labo, Jr. won the elections during the pendency of cancellation case. Ortega, the second placer in the elections, argued that he should be proclaimed as mayor as he was the candidate receiving the next highest number of votes. The Court ruled that a minority or defeated candidate cannot be deemed elected, notwithstanding the ineligibility of the candidate.[111] It stated that similar to Abella, Ortega lost the election. He was repudiated by the electorate. He was obviously not the choice of the people of Baguio City.

The Court further declared in Labo 1992 that it is incorrect to argue that since a candidate has been disqualified, the votes intended for him or her should, in effect, be considered null and void as this would amount to disenfranchising the electorate in whom sovereignty resides.[112] Labo 1992 furthermore laid down the exception to the doctrine of the rejection of the second placer. The exception provides that the eligible candidate obtaining the next higher of votes may be deemed elected only "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." [113] In this scenario, the electorate is considered to have waived the validity of their votes or thrown away their votes.[114]

Considering that it was not proved that the electorate knew of Labo Jr.'s ineligibility, i.e., he was an alien barred from elective office, Ortega, the second placer, was not proclaimed as mayor of Baguio City. Instead, the Court held that a permanent vacancy in the contested office has occurred, which should be filled by the vice-mayor under Section 44 of the LGC.[115]

Consequently, the Court's ruling in Abella and Labo 1992 was adopted on this string of cases involving cancellation of COC—Aquino, Reyes v. COMELEC,[116] Domino v. Commission on Elections,[117] Miranda v. Abaya,[118] Bautista v. Commission on Elections,[119] Rivera III v. Commission on Elections,[120] and Talaga v. Commission on Elections.[121]

At this juncture, it is worth mentioning that the Court applied the doctrine of rejection of the second placer not only in quo warranto and cancellation of COC proceedings but also in disqualification cases under Sections 12 and 68 of the OEC and Section 40 of the LGC.

In *Nolasco v. COMELEC*,^[122] Alarilla filed a petition to disqualify Blanco as mayoralty candidate of Meycauyan, Bulacan, on the ground of vote buying under Section 68 of the OEC. Blanco won the elections during the pendency of the case. He was thereafter disqualified by the COMELEC. Nolasco intervened in the proceedings urging that as the vice-mayor he should be declared mayor in the event that Blanco was finally disqualified. The Court sustained Nolasco's plea and relied on the case of *Reyes v. COMELEC*^[123] (a cancellation of COC suit) stating that the candidate who obtained the second highest number of votes, in this case Alarilla, cannot be proclaimed winner in case the winning candidate is disqualified.

Likewise, in *Kare v. Commission on Elections*,^[124] the Court affirmed Moll's disqualification as mayor of Malinao, Albay, under Section 40 (a)^[125] of the LGC. Citing *Aquino* and *Miranda* which are both cases on cancellation of COC, the Court ruled that it has no authority under any law to impose upon and compel the people of Malinao to accept Ceriola, the second placer in the elections as their Mayor. Hence, the law on succession under Section 44 of the LGC shall apply. When Moll was adjudged to be disqualified, a permanent vacancy was created for failure of the elected mayor to qualify for the office. In such eventuality, the duly elected vice mayor shall succeed as provided by law.^[126]

The second placer rule has no basis in law

As may be gleaned from the discussion above, the Court even before the enactment of the OEC had almost consistently held that the second placer in the elections cannot be declared winner notwithstanding the ineligibility or disqualification of the candidate receiving the majority vote. The second placer is just that, a second placer who lost the elections.^[127] However, in 2012, the Court starting with *Jalosjos, Jr.*, made a complete turnaround and declared that its previous Decisions applying the second placer rule, citing in the footnotes *Aquino* and *Labo*, should be limited to situations where the COC of the first-placer was valid at the time of the filing. Otherwise, if the COC is void ab initio, then the person who filed such was never a candidate. All the votes for the non-candidate are stray votes. The non-candidate can never be a first-placer. For ease of reference, the Court's full disquisition is quoted below:

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void ab initio, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non--candidate can never be a first-placer in the elections. If a certificate of candidacy void ab initio is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void ab initio is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void ab initio. Otherwise, a certificate of candidacy void ab initio can operate to defeat one or more valid certificates of candidacy for the same position.^[128] (Emphasis supplied, citations omitted)

Significantly, the Court, in *Jalosjos, Jr.*, did not provide any legal basis for declaring the second placer the winner upon the disqualification/ineligibility of the candidate receiving the majority votes.

Jalosjos, Jr. involves a petition to deny due course and cancel the COC of Jalosjos, Jr. as Mayor of Dapitan City, Zamboanga Del Norte, in the May 2010 elections on the ground that he falsely declared that he was eligible for the position. Cardino, another mayoralty candidate, alleged that Jalosjos, Jr. had been convicted by final judgment for robbery and sentenced to prison mayor. The Court noted that the penalty of prison mayor automatically carries with it, by operation of law, the accessory penalties of temporary absolute disqualification and perpetual special disqualification. The perpetual special disqualification against Jalosjos, Jr. arising from his criminal conviction by final judgment is a material fact involving eligibility which is a proper ground for a Section 78 petition under the OEC. Jalosjos Jr.'s COC was null and void from the start since he was not eligible to run for any public office.[129] The Court declared that Jalosjos Jr.'s ineligibility existed on the day he filed his COC and the cancellation of his COC retroacted to the day he filed it. Cardino, who was the second placer, was the only qualified candidate for Mayor in the May 2010 election. He therefore received the highest number of votes.[130]

Similar to Jalosjos, Jr. is *Aratea v. Commission on Elections*.^[131] Rodolfo filed a petition to deny due course or to cancel Lonzanida's COC as Mayor of San Antonio, Zambales. During the pendency of the case, Lonzanida and Aratea garnered the highest number of votes and were respectively proclaimed Mayor and Vice-Mayor.^[132] Thereafter, the COMELEC disqualified Lonzanida. The Court found that Lonzanida falsely represented that he was eligible for the position when, in truth, he was perpetually disqualified from being elected to public office due to his conviction by final judgment of prison mayor, and he had already been elected for the same position for four consecutive terms. The Court noted that 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 OEC or made a false material representation under Section 78 of the same Code that resulted in his COC being void ab initio, is determinative of whether Aratea or Antipolo (the second placer) is the rightful occupant to the Office of the Mayor.

Since Lonzanida's COC was cancelled due to false material representation, it meant that Lonzanida was never a candidate from the beginning. His COC is void ab initio. There was only one qualified candidate for Mayor, Antipolo, who therefore received the highest number of votes. The Court directed the COMELEC to constitute a Special Municipal Board of Canvassers to proclaim Antipolo as the duly elected Mayor of San Antonio, Zambales; while then Vice-Mayor Aratea was ordered to cease and desist from discharging the functions of the Office of the Mayor.^[133]

Interestingly, the Court promulgated *Jalosjos' Jr. and Aratea* on October 9, 2012, the same day it rendered a Decision in *Talaga*. However, in *Talaga*, the Court rejected the second placer rule and declared that the permanent vacancy in the office of Mayor of Lucena City should be filled pursuant to the law on succession under the LGC.^[134]

Following *Jalosjos, Jr. and Aratea* is *Maquiling*.^[135] *Maquiling* was originally a petition for cancellation of COC but the COMELEC First Division and En Banc treated it as one for disqualification under Section 40(d) of the LGC. It involves the disqualification of Arnaldo as a candidate for municipal mayor of Kauswagan, Lanao Del Norte, on the ground that he was a dual citizen when he filed his COC. Arnaldo's use of his United States passport after renouncing his American citizenship recanted his Oath of Renunciation. The Court held that with Arnaldo being barred from even becoming a candidate, his COC is rendered null and void from the beginning. The votes cast in his favor should not have been counted. *Maquiling*, the qualified candidate who obtained the highest number of votes, was declared the duly elected Mayor of Kauswagan. The rule on succession under the LGC shall not apply.^[136] Although *Maquiling* is a disqualification case, the Court applied the second placer rule that it created in *Jalosjos, Jr.*, a case for cancellation of COC.

The Court's ruling in *Maquiling* was reiterated in *Chua v. Commission on Elections*,^[137] which is a

disqualification case under Section 40 of the LGC, and in *Dimapilis v. Commission on Elections*[138] and *Halili v. Commission on Elections*,[139] which are both proceedings for cancellation of COC.

Maquiling found its way in a quo warranto proceeding in *Ty-Delgado v. House of Representatives Electoral Tribunal*. [140] Ty-Delgado filed a petition for disqualification under Section 12 of the OEC against Pichay on the ground that he was convicted of a crime involving moral turpitude. Pending resolution of the case, Pichay was proclaimed duly elected member of the House of Representatives (HOR) for the First Legislative District of Surigao Del Sur. Ty-Delgado, the second placer in the election, filed an ad cautelam petition for quo warranto in the HOR Electoral Tribunal (HRET). The COMELEC dismissed the petition for disqualification for lack of jurisdiction. Hence, Ty--Delgado converted the ad cautela petition into a regular petition for quo warranto, which was dismissed. On certiorari, the Court ruled that Pichay is disqualified under Section 12 of the OEC for his conviction for libel, a crime involving moral turpitude. Pichay made a false material representation when he stated in his COC that he is eligible to run for public office for the 2013 elections. Since Pichay's ineligibility existed on the day he filed his COC and he was never a valid candidate for the position of Member of the HOR, the votes cast for him are considered stray votes. Ty-Delgado, the qualified candidate who received the highest number of valid votes, is declared the winner in the elections.[141]

The second placer rule is hereby abandoned

The second placer rule laid down in *Jalosjos, Jr.* has no legal basis. No law authorizes the proclamation of the second placer in the elections in case the candidate who received the most votes is disqualified or turned out to be ineligible. The second placer rule undermines the people's choice in every election and is repugnant to the people's constitutional right to suffrage. The Court cannot impose upon the electorate to accept as their representative, the candidate whom they did not choose in the elections.[142] The Court's pronouncement in *Geronimo* is enlightening:

The importance of the people's choice must be the paramount consideration in every election, for the Constitution has vested in them the right to freely select, by secret-ballot in clean elections, the men and women who shall make laws for them or govern in their name and behalf. The people have a natural and a constitutional right to participate directly in the form of government under which they live. Such a right is among the most important and sacred of the freedoms inherent in a democratic society and one which must be most vigilantly guarded if a people desires to maintain through self-government for themselves and their posterity a genuinely functioning democracy in which the individual may, in accordance with law, have a voice in the form of his government and in the choice of the people who will run that government for him. (See also *U.S. v. Iturrius*, 37 Phil. 765). Thus, it would be extremely repugnant to the basic concept of the constitutionally guaranteed right to suffrage if a candidate who has not acquired the majority or plurality of votes is proclaimed a winner and imposed as the representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him.

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

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

should not be treated as stray, void or meaningless. This is particularly true where, as in this case, there is only one other candidate who ran for the public office. The votes for the deceased or non-qualified candidate are still expressive of a public clamor that the majority of the voters do not like the losing candidate to be their representative or to hold the reins of government for them.[143] (Emphasis supplied)

Accordingly, regardless of the nature of the proceedings, whether disqualification (under Sections 12 and 68 of the OEC and Section 40 of the LGC), denial/cancellation of COC (under Section 78 of the OEC), or quo warranto (under Section 253 of the OEC), the second placer cannot be proclaimed as winner in lieu of the disqualified first-placer. The Court's attempt to distinguish the effect of a denial/cancellation of a COC from the other remedies (i.e., disqualification and quo warranto) merely resulted in conflicting decisions. As noted by Associate Justice Caguioa in his Separate Concurring and Dissenting Opinion, the common denominator among the relevant remedies and cases is that a permanent vacancy is left by the removed elected official.[144]

Verily, in *Geronimo*, the Court ruled that a permanent vacancy is created when the winning candidate is not qualified and cannot qualify for the office to which he or she was elected.[145] For local elective officials, the permanent vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor are governed by Section 44 of the LGC, while permanent vacancies in the Sanggunian shall be filled in accordance with Section 45 of the LGC. Section 44 of the LGC enumerates the instances when a permanent vacancy arises such as when "an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office." The language of the law is clear, explicit, and unequivocal. There is no room for interpretation but merely for application.[146]

In fine, the Court hereby abandons the second placer rule and declares that the rules on succession[147] under the LGC shall apply in all cases where a permanent vacancy results from a local elective official's disqualification from office regardless of the proceedings involved.

The Vice-Governor of Sultan Kudarat shall fill up the permanent vacancy caused by the cancellation of Pax Ali's COC

As a consequence of the cancellation of Pax Ali's COC, he cannot be considered a candidate in the May 9, 2022 elections. Not being a candidate, the votes cast for him should not be counted and must be considered stray votes.[148] No amount of votes should entitle him to the elective office aspired for.[149] Due to Pax Ali's failure to qualify for the position of Governor, a permanent vacancy is created in the office of the Governor of Sultan Kudarat which shall be filled in accordance with Section 44 of the LGC, which reads:

SECTION 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.
— (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein. (Emphasis supplied)

Therefore, the duly elected Vice-Governor of Sultan Kudarat in the May 9, 2022 elections is hereby declared the Governor thereof. He or she shall serve the remaining duration of the term July 1, 2022 to June 30, 2025.

Meanwhile, in summary, the Members of the Court voted on the two issues in the case in the following manner:

- As to whether Pax Ali's COC should be cancelled on the ground of false material representation under Section 78 of the OEC, seven Members of the Court namely, Chief Justice Alexander G. Gesmundo, Senior Associate Justice Marvic M.V.F. Leonen, Associate Justices Alfredo Benjamin S. Caguioa, Rodil V. Zalameda, Samuel H. Gaerlan, Jose Midas P. Marquez, and Maria Filomena D. Singh voted in favor of affirming the assailed Resolution of the COMELEC cancelling Pax Ali's COC. The majority agrees that Pax Ali deliberately misrepresented that he was eligible for Governor of Sultan Kudarat when, in fact, he failed to comply with the one-year residency requirement under Section 39 of the LGC. Six Members of the Court namely, Associate Justices Ramon Paul L. Hernando, Amy C. Lazaro--Javier, Mario V. Lopez, Ricardo R. Rosario, Jhosep Y. Lopez, and Antonio T. Kho, Jr. disagreed and voted in favor of the reversal of the challenged Resolution of the COMELEC.

- As to who should fill the vacancy created by the cancellation of Pax Ali's COC, eight Members of the Court namely, Chief Justice Alexander G. Gesmundo, Associate Justices Alfredo Benjamin S. Caguioa, Rodil V. Zalameda, Samuel H. Gaerlan, Ricardo R. Rosario, Jose Midas P. Marquez, Antonio T. Kho, Jr., and Maria Filomena D. Singh voted in favor of applying the rules on succession under Section 44 of the LGC. The majority abandoned the second placer rule for lack of legal basis and for being inconsistent with the essence of republicanism. Five Members of the Court voted to the contrary, namely Senior Associate Justice Marvic M.V.F. Leonen, Associate Justices Ramon Paul L. Hernando, Amy C. Lazaro-Javier, Mario V. Lopez, and Jhosep Y. Lopez.

Associate Justices Henri Jean Paul B. Inting and Japar B. Dimaampao took no part in the case.

ACCORDINGLY, the Petition is DISMISSED. The Resolution dated January 18, 2022 of the COMELEC First Division and the Resolution dated May 2, 2022 of the COMELEC En Banc in SPA No. 21-078 (DC) and SPA No. 21-114 (DC) are AFFIRMED.

Petitioner Datu Pax Ali S. Mangudadatu is ORDERED to cease and desist from discharging the functions of the Office of the Governor of Sultan Kudarat and to surrender the same to the duly elected Vice-Governor of the province in the May 9, 2022 elections. The Vice-Governor shall serve the remaining duration of the term July 1, 2022 to June 30, 2025.

SO ORDERED.

Gesmundo, C.J., Zalameda, and Marquez, JJ., concur.

Leonen, SAJ., see separate concurring and dissenting opinion.

Caguioa, J., see separate opinion.

Hernando, J., see full dissenting opinion.

M. Lopez, J., I join the dissent of J. Hernando.

Rosario, J., joining the dissent of J. Hernando.

J. Lopez, J., see separate dissenting opinion.

Dimaampao,[*] J., no part.

Lazaro-Javier, J., see dissent.

Inting,[*] J., no part.

Kho, Jr., J., see separate concurring and dissenting opinion.

Singh,[**] J., on leave but left for concurring vote.

[*] No part.

[**] On leave but left her concurring vote.

- [1] Rollo (vol. 1), pp. 3-58. With Extremely Urgent Application for the Issuance of a Temporary Restraining Order or Status Quo Order and for the Conduct of a Special Raffle of this Case.
- [2] Id. at 65-75.
- [3] Id. at 86-93.
- [4] Id. at 296, Certificate of Candidacy for Provincial Governor.
- [5] Id.
- [6] Id. at 161-171.
- [7] Id. at 165-167, Sharifa's Petition.
- [8] Id.
- [9] Id. at 208-233.
- [10] Id. at 229-230. Azel and Bai Ali's Petition.
- [11] Id. at 67. Resolution dated January 18, 2022 of the COMELEC First Division. See also id. at 239-241 showing the screenshots of photographs.
- [12] Id. at 262-291.
- [13] Id. at 267-268, Verified Answer.
- [14] Id. at 269-280, Pax Ali's Verified Answer to the Sharifa's Petition.
- [15] Id. at 444-473.
- [16] Id. at 69, Resolution dated January 18, 2022 of the COMELEC First Division.
- [17] Id. at 75.
- [18] Id. at 71-72.
- [19] Id. at 72.
- [20] Id. at 73.
- [21] Id. at 74.
- [22] Id. at 78-85, Dissenting Opinion of Commissioner Casquejo.
- [23] Id. at 92, Resolution dated May 2, 2022 of the COMELEC En Banc.
- [24] Id. at 96, Dissenting Opinion of Commissioner Casquejo.
- [25] Id. at 104-105. Dissenting Opinion of Commissioner Torre Franca-Neri.
- [26] Id. at 3-58.
- [27] Id. at 15-16. Petition for Certiorari.
- [28] Id. at 56.
- [29] Rollo (vol. 2), pp. 854-855.

[30] Id. at 869-872.

[31] Id. at 871. Manifestation Re: Proclamation of Petitioner as The Duly Elected Governor of the Province of Sultan Kudarat.

[32] Id. at 882-898.

[33] Id. at 904-934.

[34] Id. at 918-922. COMELEC's Comment on the Petition.

[35] Id. at 927-929.

[36] Id. at 929.

[37] Id. at 941-978.

[38] Id. at 685.

[39] Id. at 964. Azel and Bai Ali's Comment on the Petition.

[40] Id. at 968.

[41] Id. at 965-970.

[42] Id. at 983-1019.

[43] Id. at 1015. Sharifa's Comment on the Petition.

[44] Id. at 1016.

[45] Id. at 1114-1158.

[46] Id. at 1117-118. COMELEC Division.

[47] Id. at 1166-1167.

[48] Id. at 1174-1185. Sharifa also filed a Second and Third Motion for Early Resolution of the Case, see id. at 1207-1208 and 1218-1220.

[49] Id. at 1190-1198. Motion for Early Resolution And/Or Motion to Set the Case for Oral Argument. Azel and Bai Ali filed a Second and Most Respectful Urgent Motion for Early Resolution on October 16, 2023, see id. at 1224-1232.

[50] Id. at 1205.

[51] 831 Phil. 106 (2018) [Per J. Velasco, Jr., En Banc].

[52] Salcedo II v. COMELEC, 371 Phil. 377, 389 (1999) [Per J. Gonzaga-Reyes, En Banc].

[53] Sibuma v. Commission on Elections, 934 Phil. 463, 495 (2023) [Per J. Inting, En Banc], citing Mayor Hayudini v. Commission on Elections, 733 Phil. 822, 845 (2014) [Per J. Peralta, En Banc]; Fr. Buenafe v. Commission on Elections, 924 Phil. 201 (2022) [Per Zalameda, En Banc], Atty. Francisco v. COMELEC, et al., 831 Phil. 106, 125-126 (2018) [Per J. Velasco, Jr., En Banc], Dano v. COMELEC, et al., 794 Phil. 573, 595 (2016) [Per C.J. Sereno, En Banc], see also, Salcedo II v. COMELEC, 371 Phil. 377, 389 (1999) [Per J. Gonzaga-Reyes, En Banc].

[54] Fr. Buenafe v. Commission on Elections, id.

- [55] *Romualdez-Marcos v. Commission on Elections*, 318 Phil. 329, 333 (1995) [Per J. Kapunan, En Banc].
- [56] *Mayor Ugdooracion, Jr. v. COMELEC, et al.*, 575 Phil. 253, 263 (2008) [Per J. Nachura, En Banc].
- [57] *Japzon v. COMELEC, et al.*, 596 Phil. 354, 369 (2009) [Per J. Chico-Nazario, En Banc].
- [58] *Rollo* (vol. 1), pp. 301-304. Affidavit of Pax Ali.
- [59] *Id.* at 267, Verified Answer to Sharifa's Petition; *id.* at 449-450, Verified Answer to Azel and Bai Ali's Petition; *id.* at 738 and 818, Petitioner's Memorandum; *id.* at 42, Petition for Certiorari before the SC; and *id.* at 450, Consolidated Reply before the SC.
- [60] 578 Phil. 364, 377 (2008) [Per J. Ynares-Santiago, En Banc].
- [61] *Id.* at 374.
- [62] *Pundaodaya v. Commission on Elections, et al.*, 616 Phil. 167, 172-173 (2009) [Per J. Ynares-Santiago, En Banc].
- [61] *Limbona v. Commission on Elections, et al.*, 578 Phil. 364, 374-375 (2008) [Per J. Ynares-Santiago, En Banc].
- [64] *Sabili v. Commission on Elections, et al.*, 686 Phil. 649, 670-671 (2012) [Per J. Sereno, En Banc].
- [65] *Rollo* (vol. 1), p. 592.
- [66] *Id.* at 571.
- [67] *Sabili v. Commission on Elections, et al.*, 686 Phil. 649, 678-679 (2012) [Per J. Sereno, En Banc].
- [68] *Mitra v. Commission on Elections, et al.*, 636 Phil. 753, 783 (2010) [Per J. Brion, En Banc].
- [69] *Rollo* (vol. 1), pp. 608-613.
- [70] *Jalosjos v. Commission on Elections, et al.*, 686 Phil. 563 (2012) [Per J. Abad, En Banc].
- [71] *Limbona v. Commission on Elections*, 578 Phil. 364 (2008) [Per J. Ynares-Santiago, En Banc].
- [72] *Faypon v. Quirino*, 96 Phil. 294, 298-299 (1954) [Per J. Padilla, En Banc].
- [73] 770 Phil. 445 (2015) [Per C.J. Sereno, En Banc].
- [74] *Id.* at 457-458.
- [75] *Rollo* (vol. 1), p. 446.
- [76] *Rollo* (vol. 2), p. 1126. Consolidated Reply.
- [77] *Torayno, Sr. v. Commission on Elections*, 392 Phil. 342 (2000) [Per J. Panganiban, En Banc].
- [78] *Id.* at 354-355.
- [79] *Mitra v. COMELEC, et al.*, 636 Phil. 753, 790 (2010) [Per J. Brion, En Banc].
- [80] *Pundaodaya v. Commission on Elections, et al.*, 616 Phil. 167 (2009) [Per J. Ynares-Santiago, En Banc].
- [81] *Id.* at 174.
- [82] *Dano v. COMELEC, et al.*, 794 Phil. 573, 629 (2016) [Per C.J. Sereno, En Banc].

[83] Rollo (vol. 2), p. 928. Comment of the COMELEC.

[84] Mayor Ugdoracion, Jr. v. Commission on Elections, et al., 575 Phil. 253, 264 (2008) [Per J. Nachura, En Banc].

[85] Sibuma v. Commission on Elections, 934 Phil. 463, 479 (2023) [Per J. Inting, En Banc].

[86] Rosal v. Commission on Elections, G.R. Nos. 264125, 266775, 266796 & 269274, October 22, 2024 [Per J. Caguioa, En Banc], Fr. Buenafe v. Commission on Elections, 924 Phil. 201 (2022) [Per J. Zalameda, En Banc], Mayor Hayundini v. Commission on Elections, 733 Phil. 822 (2014) [Per J. Peralta, En Banc], Aratea v. Commission on Elections, 696 Phil. 700 (2012) [Per J. Carpio, En Banc], Jalosjos, Jr. v. Commission on Elections, 696 Phil. 601 (2012) [Per J. Carpio, En Banc], Fermin v. Commission on Elections, 595 Phil. 449 (2008) [Per J. Nachura, En Banc], and Miranda v. Abaya, 370 Phil. 642 (1999) [Per J. Melo, En Banc].

[87] 551 Phil. 37 (2007) [Per J. Sandoval-Gutierrez, En Banc].

[88] 318 Phil. 467 (1995) [Per J. Kapunan, En Banc].

[89] Rev. Fr. Cayat v. Commission on Elections, 550 Phil. 209, 229 (2007) [Per J. Carpio, En Banc].

[90] Id.

[91] See Section 211 (24), OEC, which states that: Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray and shall not be counted but it shall not invalidate the ballot.

[92] Velasco v. Commission on Elections, 595 Phil. 1172, 1193 (2008) [Per J. Brion, En Banc].

[93] Id.

[94] Domino v. Commission on Elections, 369 Phil. 798 (1999) [Per C.J. Davide, Jr., En Banc].

[95] 23 Phil. 238 (1912) [Per J. Trent, En Banc].

[96] Id. But see Maquiling v. COMELEC, 709 Phil. 408 (2013) [Per C.J. Sereno, En Banc] where it was explained that this phrase in Topacio does not have any legal basis. The phrase is not even the ratio decidendi but a mere obiter dictum.

[97] 696 Phil. 601 (2012) [Per J. Carpio, En Banc].

[98] See Separate Concurring and Dissenting Opinion of Associate Justice Caguioa, pp. 23-24.

[99] 52 Phil. 645 (1928) [Per J. Villa-Real, En Banc].

[100] Id.

[101] 84 Phil. 488 (1949) [Per J. Bengzon, En Banc].

[102] Llamoso v. Ferrer, 84 Phil. 488 (1949) [Per J. Bengzon, En Banc].

[103] 96 Phil. 659 (1955) [Per J. Bautista-Angelo, En Banc].

[104] Id.

[105] 221 Phil. 130 (1985) [Per J. Gutierrez, Jr., En Banc].

[106] 255 Phil. 934 (1989) [Per J. Cruz, En Banc].

- [107] 257 Phil. 1 (1989) [Per J. Cruz, En Banc].
- [108] 278 Phil. 275 (1991) [Per J. Gutierrez, Jr., En Banc].
- [109] Id.
- [110] 286 Phil. 397 (1992) [Per J. Bidin, En Banc].
- [111] Id.
- [112] Id.
- [113] Id.
- [114] Id.
- [115] Id.
- [116] 324 Phil. 813 (1996) [Per J. Mendoza, En Banc].
- [117] 369 Phil. 798 (1999) [Per C.J. Davide, Jr., En Banc].
- [118] 370 Phil. 642 (1999) [Per J. Melo, En Banc].
- [119] 460 Phil. 459 (2003) [Per J. Carpio, En Banc].
- [120] 551 Phil. 37 (2007) [Per J. Sandoval-Gutierrez, En Banc].
- [121] 696 Phil. 786 (2012) [Per J. Bersamin, En Banc].
- [122] 341 Phil. 761 (1997) [Per J. Puno, En Banc].
- [123] 324 Phil. 813 (1996) [Per J. Mendoza, En Banc].
- [124] 472 Phil. 258 (2004). [Per J. Panganiban, En Banc].
- [125] Section 40. Disqualification. — 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; . . .
- [126] *Kare v. Commission in Elections*, 472 Phil. 258 (2004) [Per J. Panganiban, En Banc].
- [127] *Aquino v. Commission on Elections*, 318 Phil. 467 (1995) [Per J. Kapunan, En Banc].
- [128] Id.
- [129] *Jalosjos, Jr. v. Commission on Elections*, 696 Phil. 601, 610 (2012) [Per J. Carpio, En Banc].
- [130] Id.
- [131] 696 Phil. 700 (2012) [Per J. Carpio, En Banc].
- [132] Id. at 721.
- [133] Id.
- [134] *Talaga v. Commission on Elections*, 696 Phil. 786, 842 (2012).

- [135] 709 Phil. 408 (2013) [Per C.J. Sereno, En Banc].
- [136] Id. at 450.
- [137] 783 Phil. 876 (2016) [Per SAJ. Leonen, En Banc].
- [138] 808 Phil. 1108 (2017) [Per J. Perlas-Bernabe, En Banc].
- [139] 845 Phil. 728 (2019) [Per J. Carpio, En Banc].
- [140] 779 Phil. 268 (2016) [Per J. Carpio, En Banc].
- [141] Id. at 275.
- [142] In re Geronimo v. Ramos, 221 Phil. 130 (1985) [Per J. Gutierrez, Jr., En Banc].
- [143] Id.
- [144] See Justice Caguioa's Separate Concurring and Dissenting Opinion, p. 22.
- [145] In re Geronimo v. Ramos, 221 Phil. 130 (1985) [Per J. Gutierrez, Jr., En Banc]. See also Ocampo v. House of Representatives Electoral Tribunal, 476 Phil. 116, 126 (2004) [Per J. Sandoval-Gutierrez, En Banc].
- [146] Kare v. Commission on Elections, 472 Phil. 258, 276 (2004) [Per J. Panganiban, En Banc].
- [147] Section 44 of the LGC for permanent vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor and Section 45 of LGC for permanent vacancies in the Sanggunian.
- [148] See Atty. Rivera III v. Commission on Elections, 551 Phil. 37, 67 (2007) [Per J. Sandoval-Gutierrez, En Banc].
- [149] Miranda v. Abaya, 370 Phil. 642 (1999) [Per J. Melo, En Banc].

CONCURRING AND DISSENTING OPINION LEONEN, SAJ.:

This case involves a Petition for Certiorari under Rule 64 in relation to Rule 65 asserting that the Commission on Elections En Banc gravely abused its discretion in cancelling the Certificate of Candidacy of Datu Pax Ali S. Mangudadatu (Pax Ali) for the May 2022 National and Local Elections.[1]

On October 7, 2021, Pax Ali filed his Certificate of Candidacy for provincial governor of Sultan Kudarat. In his Certificate of Candidacy, he indicated that he is a resident of Sultan Kudarat and has been residing there "up to the day before May 9, 2022" or for a period of one year and eight months. At the time, he was also the mayor of the Municipality of Datu Abdullah Sangki, Maguindanao.[2]

Within the same month, two petitions were filed with the Commission on Elections to deny due course or cancel Pax Ali's Certificate of Candidacy. The petitions maintain that Pax Ali misrepresented that he is a resident of Sultan Kudarat because he is still the mayor of Datu Abdullah Sangki, Maguindanao.[3]

On November 15, 2021, Pax Ali resigned as mayor of Datu Abdullah Sangki, Maguindanao.[4]

Pax Ali indicated this in his defense against the petitions to cancel his Certificate of Candidacy. He likewise explained that his domicile of origin is in Sultan Kudarat where he grew up with his family. He narrated that he transferred his residence temporarily in Datu Abdullah Sangki, Maguindanao to comply with the residency requirement for the position of mayor, but he always intended to return to Sultan Kudarat. In July 2020, he started

increasing his physical presence in Sultan Kudarat. By September 2020, all his personal effects and belongings have been transferred there, and in the next month, he was there daily, only leaving the area to attend to his work or official functions.[5]

In a January 18, 2022 Resolution, the First Division of the Commission on Elections canceled Pax Ali's Certificate of Candidacy, holding that he failed to comply with the residency requirement.[6] The Commission on Elections En Banc affirmed this ruling.[7]

On May 5, 2022, Pax Ali filed a Petition for Certiorari before this Court. He likewise prayed for the issuance of a temporary restraining order or a status quo order, alleging that the ruling of the Commission on Elections will attain finality on May 7, 2022.[8] On May 6, 2022, this Court issued a temporary restraining order, enjoining the implementation of the Commission on Elections ruling.[9]

On May 16, 2022, Pax Ali filed a manifestation stating he was proclaimed as the duly elected governor of the province of Sultan Kudarat by the Provincial Board of Canvassers.[10]

This case seeks to resolve whether the Commission on Elections gravely abused its discretion in cancelling Pax Ali's Certificate of Candidacy and finding that he misrepresented that he is a resident of Sultan Kudarat.

The ponencia dismissed Pax Ali's petition and affirmed the Commission on Elections cancellation of Pax Ali's Certificate of Candidacy.[11]

It held that Pax Ali maintained his residency in Datu Abdullah Sangki, Maguindanao until he resigned as its mayor on November 15, 2021.[12] It ruled that his resignation as mayor is the only time it became clear that he is resolving to reside in Sultan Kudarat and is abandoning his residence in Datu Abdullah Sangki.[13] His increased bodily or physical presence in Sultan Kudarat prior to the resignation is not sufficient.[14] "Staying as Mayor of [Datu Abdullah Sangki] is a positive and voluntary act reflecting Pax Ali's choice of residence. Remaining as the local chief executive of [Datu Abdullah Sangki] is antithetical to a claim of *animus non revertendi*." [15] The ponencia also found that his resignation is a mere afterthought, done only after two petitions for cancellation of his Certificate of Candidacy were already filed.[16]

As such, he failed to comply with the residency requirement to be a candidate for Provincial Governor of Sultan Kudarat. Since he resigned as mayor only on November 15, 2021, he can only be deemed to be a resident of Sultan Kudarat for a mere five months and 22 days prior to election day.[17]

The ponencia further held that Pax Ali deliberately misrepresented his compliance with the residency requirement.[18] As the incumbent mayor of Datu Abdullah Sangki, Maguindanao, as required by the Local Government Code to be its resident for the duration of his tenure, he knew he was not a resident of Sultan Kudarat when he filed his Certificate of Candidacy.[19] It noted that Pax Ali stated he belongs to a long line of public servants and, thus, it was impossible he was unaware of the residency requirement as mayor. His belated resignation did not erase his material misrepresentation.[20]

The ponencia then ruled that the vice governor of Sultan Kudarat shall take the place of Pax Ali.[21] Under Section 44 of the Local Government Code,[22] it held that Pax Ali failed to qualify for the position of governor of Sultan Kudarat, creating a permanent vacancy in the office.[23]

The ponencia points that Pax Ali's case is an opportune time to revisit the second placer rule.[24] After painstakingly discussing the history of the doctrines of the rule on succession and the second placer rule,[25] it held that the latter has no basis in law, is inconsistent with the very essence of republicanism, and only creates conflicting decisions.[26]

No law authorizes the proclamation of the second placer in the elections in case the candidate who received the most votes is disqualified or turned out to be ineligible. The second placer rule undermines the people's choice in every election and is repugnant to the people's constitutional right to suffrage. The Court cannot impose upon the electorate to accept as their representative, the candidate whom they did not choose in the elections.[27]

It is the ponencia's position thus that in all cases where the proclaimed electoral winner is later deemed unqualified or disqualified, it results to a permanent vacancy and the next highest ranking official should take their place.[28] This is regardless of whether it resulted from a petition to disqualify,[29] or a denial or cancellation of a Certificate of Candidacy,[30] or by quo warranto.[31] The ponencia cites Section 211 of the Omnibus Election Code which provides that the intention of the election is to obtain the expression of the voter's will.[32] As such, the person who obtained a plurality of votes should be declared the winner.[33] Thus, the second placer should not take the place of the first placer,[34] because the second placer is someone who lost the elections.[35]

I concur that Pax Ali failed to comply with the residency requirement. However, I dissent from the majority's position that the rule on succession is applicable. I maintain that the second placer rule should still apply.

It is well-established that a person running for public office must not only be qualified for the position in all respects, they must also not be disqualified.[36] Missing one qualification or possessing one disqualification is sufficient to prevent a person from running for the position or from holding it.[37] A person's right to run for or to serve in an elective position may thus be questioned in several ways: (i) through a petition to deny due course or to cancel a certificate of candidacy under Section 78, in relation to Section 74 of the Omnibus Election Code; or (ii) through a petition for disqualification under Section 68 of the Omnibus Election Code; or (iii) through a petition for quo warranto under Section 253 of the Omnibus Election Code.[38]

Here, the case against Pax Ali stems from a petition to deny due course or to cancel a certificate of candidacy under Section 78 of the Omnibus Election Code, in relation to Section 39(a) of the Local Government Code. Section 78 of the Omnibus Election Code states:

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

Section 39(a) of the Local Government Code provides:

SECTION 39. Qualifications. — (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he 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.

Based on these provisions, Pax Ali is unqualified to run as governor of Sultan Kudarat because of: (i) his failure to comply with the residency requirement; and (ii) his misrepresentation in his Certificate of Candidacy that he is so qualified. Nonetheless, Pax Ali garnered the most votes on election day and was proclaimed by the Provincial Board of Canvassers as the duly elected governor of Sultan Kudarat.[39]

Clearly, Pax Ali cannot hold the position as governor of Sultan Kudarat. Thus, it is important to resolve who shall

take his place.

To determine who shall take the place of a disqualified or ineligible candidate that has already been elected and proclaimed, I opine it is best to examine when they possessed their lack of qualification or disqualification. Candidates who have been unqualified from the beginning, even before filing for candidacy, ought to be distinguished from candidates who were initially qualified, but a subsequent act made the candidate unqualified or disqualified for the position.

An ineligible candidate, who is unqualified from the very beginning, should be treated as if they did not run for office, even if they were proclaimed as duly elected. The rationale for this is that the constitutional and statutory requirements for qualifications and disqualifications of candidates should not be overridden by the votes of the electorate. Otherwise, these constitutional and statutory limitations will be rendered meaningless. In *Maquiling v. Commission on Elections*:^[40]

The ballot cannot override the constitutional and statutory requirements for qualifications and disqualifications of candidates. When the law requires certain qualifications to be possessed or that certain disqualifications be not possessed by persons desiring to serve as elective public officials, those qualifications must be met before one even becomes a candidate. When a person who is not qualified is voted for and eventually garners the highest number of votes, even the will of the electorate expressed through the ballot cannot cure the defect in the qualifications of the candidate. To rule otherwise is to trample upon and rent asunder the very law that sets forth the qualifications and disqualifications of candidates. We might as well write off our election laws if the voice of the electorate is the sole determinant of who should be proclaimed worthy to occupy elective positions in our republic.

....

What will stop an otherwise disqualified individual from filing a seemingly valid COC, concealing any disqualification, and employing every strategy to delay any disqualification case tiled against him so he can submit himself to the electorate and win, if winning the election will guarantee a disregard of constitutional and statutory provisions on qualifications and disqualifications of candidates?

It is imperative to safeguard the expression of the sovereign voice through the ballot by ensuring that its exercise respects the rule of law. To allow the sovereign voice spoken through the ballot to trump constitutional and statutory provisions on qualifications and disqualifications of candidates is not democracy or republicanism. It is electoral anarchy. When set rules are disregarded and only the electorate's voice spoken through the ballot is made to matter in the end, it precisely serves as an open invitation for electoral anarchy to set in.

....

As in any contest, elections are governed by rules that determine the qualifications and disqualifications of those who are allowed to participate as players. When there are participants who turn out to be ineligible, their victory is voided and the laurel is awarded to the next in rank who does not possess any of the disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates.^[41] (Citations omitted)

Thus, even if they garnered the most votes and were proclaimed as the winner, their lack of qualification is not cured. The invalidity of a candidacy is not converted to a valid one. In such cases, it is the proclamation that is the nullity. Thus, despite a proclamation, the position is deemed to never have been filled or occupied. No person occupied the position. Necessarily, there is no resulting removal from the office or any vacancy arising from the nullification of the proclamation. To reiterate, the position was not occupied at all.

Considering these circumstances, it would thus be a leap of logic to apply Section 44 of the Local Government

Code, which states:

SECTION 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. — (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice--mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

....

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

For purposes of succession as provided in this Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election. (Emphasis supplied)

Section 44 is clear that the person next highest in rank shall hold the office in case of a permanent vacancy to the position. It is also clear that a permanent vacancy occurs when the elective local official: (i) fills a higher vacant office, (ii) refuses to assume office, (iii) fails to qualify, (iv) dies, (v) is removed from office, (vi) voluntarily resigns, or (vii) is otherwise permanently incapacitated to discharge the functions of his office.

A commonality among these grounds is that the elective local official initially qualified for and validly occupied the position, but a later circumstance supervened. They were initially fit for the position, but a subsequent act occurred rendering them unable to hold the office, causing their removal from the position, and resulting in a permanent vacancy. This was explained in *Chua v. Commission on Elections*:^[42]

The permanent vacancies referred to in Section 45 are those arising "when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office." In these situations, the vacancies were caused by those whose certificates of candidacy were valid at the time of the filing "but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy."

The rule on succession under Section 45, however, would not apply if the permanent vacancy was caused by one whose certificate of candidacy was void ab initio. Specifically with respect to dual citizens, their certificates of candidacy are void ab initio because they possess "a substantive [disqualifying circumstance] . . . [existing] prior to the filing of their certificate of candidacy." Legally, they should not even be considered candidates. The votes casted for them should be considered stray and should not be counted.

In cases of vacancies caused by those with void ab initio certificates of candidacy, the person legally entitled to the vacant position would be the candidate who garnered the next highest number of votes among those eligible. In this case, it is private respondent Bacani who is legally entitled to the position of Councilor, having garnered the sixth highest number of votes among the eligible candidates. The Commission on Elections correctly proclaimed private respondent Bacani in lieu of petitioner.^[43] (Emphasis supplied, citations omitted)

Here, Pax Ali's residence in Datu Abdullah Sangki, Maguindanao caused him to never initially qualify for the position. Thus, this is not a case where he was initially qualified, but later, after he filed his certificate of candidacy, he failed to qualify for the position. From the very beginning, his certificate of candidacy was void ab initio because he already possessed a disqualifying circumstance prior to its filing.

Necessarily, Section 44 is not the appropriate provision to determine who will take Pax Ali's place. The rule on succession should not apply.[44] I disagree that Pax Ali should be replaced by the elected vice governor.[45]

I maintain that the position should go to the duly elected candidate who: (i) is eligible for the position; and (ii) obtained the highest number of votes.[46] Where the candidate with the most votes was ineligible from the beginning, only the qualified candidates are considered for the position. The qualified eligible candidate who obtained the highest number of votes is the true winner.[47] This is why the position must necessarily go to the "second placer." Though they obtained the second highest number of votes in relation to the unqualified or disqualified candidate, the second placer is more accurately described as the first placer among the qualified candidates. In *Maquiling v. Commission on Elections*:[48]

Maquiling is not a second-placer as he obtained the highest number of votes from among the qualified candidates.

With Arnado's disqualification, Maquiling then becomes the winner in the election as he obtained the highest number of votes from among the qualified candidates.

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

Even when the votes for the ineligible candidate are disregarded, the will of the electorate is still respected, and even more so. The votes cast in favor of an ineligible candidate do not constitute the sole and total expression of the sovereign voice. The votes cast in favor of eligible and legitimate candidates form part of that voice and must also be respected.[49] (Citations omitted)

Furthermore, I agree with Associate Justice Jhosep Y. Lopez's position that applying the law of succession results in disregarding or setting aside the votes for the specific electoral position of governor in Sultan Kudarat. The Court must be mindful that the person who ran and won for vice governor was elected as vice governor, not governor. Thus, to keep the intent of the electorate, the legitimacy of the other votes cast in the election of governor should still be upheld.[50]

In this respect, both the constitutional and statutory requirements for qualifications and disqualifications of candidates and the will of the people are accorded importance.

FOR THESE REASONS, I concur with the ponencia as to its finding that Datu Pax Ali S. Mangudadatu failed to comply with the residency requirement, but I dissent as to the application of the rule on succession. I vote to DISMISS the Petition for Review on Certiorari.

[1] Ponencia, p. 2.

[2] *Id.*

[3] *Id.* at 2-3.

[4] *Id.* at 4.

[5] *Id.* at 3-4.

[6] *Id.* at 5.

[7] Id. at 6.

[8] Id. at 7.

[9] Id. at 8.

[10] Id.

[11] Id. at 10.

[12] Id. at 12, 14.

[13] Id. at 14.

[14] Id. at 14, 15.

[15] Id. at 15.

[16] Id.

[17] Id. at 16.

[18] Id. at 19.

[19] Id.

[20] Id.

[21] Id. at 34.

[22] LOCAL GOV'T. CODE, sec. 44 provides:

SECTION 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. —
(a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein. (Emphasis supplied)

[23] Ponencia, p. 34.

[24] Id. at 20.

[25] Id. at 23-31.

[26] Id. at 23, 28, 33.

[27] Id. at 32.

[28] Id. at 33.

[29] OMNIBUS ELECTION CODE, secs. 12, 68; LOCAL GOV'T. CODE, sec. 40.

[30] OMNIBUS ELECTION CODE, sec. 78.

[31] OMNIBUS ELECTION CODE, sec. 253.

[32] Ponencia, p. 21.

[33] Id. at 23.

[34] Id. at 33.

[35] Id. at 29, 33.

[36] J. Leonen, Separate Opinion in *Buenafe v. Commission on Elections*, 924 Phil. 201, 309 (2022) [Per J. Zalameda, En Banc]. See also OMNIBUS ELECTION CODE, sec. 253:

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

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

[37] J. Leonen, Separate Opinion in *Buenafe v. Commission on Elections*, 924 Phil. 201, 311 (2022) [Per J. Zalameda, En Banc].

[38] Id. See also *Fermin v. COMELEC*, 595 Phil. 449, 469 (2008) [Per J. Nachura, En Banc].

[39] Ponencia, p. 9.

[40] 709 Phil. 408(2013) [Per C.J. Sereno, En Banc].

[41] Id. at 444-448. See also *Chua v. Commission on Elections*, 783 Phil. 876, 900-901 (2016) [Per J. Leonen, En Banc].

[42] 783 Phil. 876 (2016) [Per J. Leonen, En Banc].

[43] Id. at 899-900.

[44] Id.

[45] Ponencia, p. 41.

[46] *Chua v. Commission on Elections*, 783 Phil. 876, 900 (2016) [Per J. Leonen, En Banc].

[47] Id.

[48] 709 Phil. 408 (2013) [Per C.J. Sereno, En Banc].

[49] Id. at 447.

[50] Reflections of J. J. Lopez, p. 16.

SEPARATE CONCURRING OPINION

CAGUIOA, J.:

The ponencia:

1)

dismisses the present Petition for Certiorari^[1] (Petition) and affirms the assailed Resolutions of the Commission on Elections (COMELEC) which cancelled the Certificate of Candidacy (CoC) for Governor of Sultan Kudarat province of petitioner Datu Pax Ali S. Mangudadatu (Pax Ali) due to false material representations made therein as regards the latter's residency in the said locality and, therefore, his eligibility for office; and

2)

declares that the Vice Governor shall serve the remaining duration of the term of Pax Ali as Governor of Sultan Kudarat.

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

That said, I respectfully take exception to the ponencia's rationale that because Pax Ali was the incumbent Mayor of the Municipality of Datu Ali Sangki (DAS), Province of Maguindanao, he could not have established a new residence in Sultan Kudarat province as he lacked an intention to abandon DAS and to stay in Sultan Kudarat, while he was incumbent Mayor of DAS, and that such intentions, which are requisites in changing domiciles, could have only arisen when Pax Ali resigned as Mayor of DAS on November 15, 2021, and so it is only from this date that his domicile in Sultan Kudarat could have begun.^[2] I submit that an incumbent official may, in fact, acquire another domicile of choice outside of the locality where he serves, only that he thereby risks forfeiting his local seat for losing a continuing requirement to hold such position.

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

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

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

electorate.

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

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

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

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

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

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

Thus, in *Frivaldo v. Commission on Elections* [10] (*Frivaldo*), a petition which challenged the election of Juan G. Frivaldo (*Frivaldo*) as Governor of Sorsogon for not being a Filipino citizen, was allowed by the Court even if the same was filed beyond the periods under the Omnibus Election Code [11] (OEC) to challenge one's candidacy for the elections or for quo warranto. The Court ruled that challenges to a public official's qualifications or eligibility can be filed at any time during their tenure because their qualifications to run for and hold office are continuing requirements.

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

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

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

Moreover, the Constitution requires the taking of an oath of office of all public officers and employees before assuming their respective posts.^[17] To implement the same, the Administrative Code of 1987^[18] provides for the details of a public officer's or employee's Oath of Office, thus:

Chapter 10

OFFICIAL OATHS

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

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

Section 3, Article X of the Constitution^[19] mandates Congress to provide for a local government code that shall outline, among others, the qualifications of local officials. Pursuant to this mandate, the LGC was passed, which provides that candidates for Mayor must be a resident of the locality concerned for at least one year prior to the elections.^[20] Moreover, it is settled law that qualifications for elective positions are continuing and must be possessed not only at the time of election but likewise throughout the entire term of office of such elected official.^[21] The term of office of a local elective official is three years from his or her assumption thereto.^[22]

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

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

constituents and the oath of office that he swore to uphold.

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

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

In sum, insofar as the main issue in this case is concerned—whether Pax Ali satisfied the minimum residency of one year from the May 2, 2022 elections—I submit that he did not satisfy the requirement and therefore had falsely represented in his CoC that he was eligible for office. Pax Ali was estopped from changing his domicile from DAS to Sultan Kudarat prior to resigning as Mayor of DAS on November 15, 2021. This is regardless if the three requisites for a change of domicile under our laws are satisfied.

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

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

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

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

As expounded below, relevant jurisprudence over the years is largely characterized by judicial instability caused by seesawing rulings that go back and forth between two outcomes with respect to the question of who replaces the removed candidate: 1) the application of the rules on succession, or 2) the application of the second placer rule. The flipflopping is caused mainly by the distinction that the Court often tries to draw among the different actions to challenge an elected official's qualifications and eligibility, for the purpose of determining who must replace the disqualified or ineligible elected official who was only removed when they had already assumed office. However, making a distinction for such purpose was, to my mind, completely unnecessary and, in fact,

had, as seen in jurisprudence, only caused confusion because in each one of these cases, a permanent vacancy will always necessarily be left by the disqualified or ineligible official. Why distinguish as to the next step?

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

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

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

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

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

Existing jurisprudence holds that for a petition to deny due course to/cancel a CoC to prosper, 1) the CoC must bear a material representation of the candidate's qualification or eligibility, specifically those pertaining to the matters enumerated under Section 74[27] of the OEC, 2) such representation is false, and 3) the representation was made with a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.[28]

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

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

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

[OEC] SECTION 68. Disqualifications. — Any candidate who, in an action or protest in which he [or she] is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his [or her] candidacy; (c) spent in his [or her] election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85,

86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he [or she] has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his [or her] status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

[LGC] SECTION 40. Disqualifications. — The following persons are disqualified from running for any elective local position:

(a)

Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b)

Those removed from office as a result of an administrative case;

(c)

Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d)

Those with dual citizenship;

(e)

Fugitives from justice in criminal or non-political cases here or abroad;

(f)

Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g)

The insane or feeble-minded.

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

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

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

Third, both have markedly distinct effects: a disqualified person is merely prohibited to continue as a candidate, while the person whose certificate is canceled or denied due course is not treated as a candidate at

all. Moreover, a disqualified candidate may still be substituted if they had a valid COC in the first place. However, one whose COC was denied due course or canceled cannot be substituted because the law considers him or her to not have been a candidate at all.[30] (Emphasis supplied)

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

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

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

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

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

How winning candidates in elections become incumbent public officials

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

These three requisites are more often used to determine whether a winning candidate for positions falling under the jurisdiction of the electoral tribunals under the Constitution[33] are already holders of such positions, so as to trigger the exclusive jurisdictions of such electoral tribunals. Usual examples of these cases are those involving winning congressional candidates, to whom the three requisites are applied to determine if they have already become "Members" of the House of Representatives (HoR), thus, giving rise to the exclusive Constitutional jurisdiction of the House of Representatives Electoral Tribunal (HRET) and thereby precluding other bodies, including COMELEC and this Court, from assuming the same jurisdiction.[34]

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

Consequences of actions assailing the qualifications or eligibility of candidates

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

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

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

The rules on succession under the LGC

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

SECTION 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and [Vice Mayor].

— (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice governor or vice--mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, [vice governor], mayor, or [vice mayor], the highest ranking Sanggunian member or, in case of his [or her] permanent inability, the second highest ranking Sanggunian member, shall become the governor, [vice governor], mayor or [vice mayor], as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other Sanggunian members according to their ranking as defined herein.

(b) If a permanent vacancy occurs in the office of the Punong Barangay, the highest ranking Sanggunian Barangay member or, in case of his [or her] permanent inability, the second highest ranking Sanggunian member, shall become the Punong Barangay.

(c) A tie between or among the highest ranking Sanggunian members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

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

For purposes of succession as provided in this Chapter, ranking in the Sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.

For national elective positions, it is the Constitution which, in Sections 7 and 8, Article VII, provides specifically for the application of the rules on succession in the case of permanent vacancies in the positions of the President and the Vice President.[38]

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

The Second Placer Rule

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

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

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

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

In the 1949 case of *Llamoso v. Ferrer*,[40] the Court held that the disqualification of a winning candidate does not entitle the candidate receiving the next highest number of votes to the office. This, it appears, is the earliest case that rejected the so-called second placer rule. Citing the case of *Topacio v. Paredes*,[41] the Court maintained that the "wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots." [42] In justifying this ruling, the Court therein cited United States (US) jurisprudence which held:

It is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried, unless he[*she*] or it receives a majority or a plurality of the legal votes cast in the election. Accordingly, the general rule is that the fact that a plurality or a majority of the votes are cast for an ineligible candidate at a popular election does not entitle the candidate receiving the next highest number of votes to be declared elected. In such case the electors have failed to make a choice and the election is a nullity. (29 *Corpus Juris Secundum*, 353.)

. . . [A]lthough the candidate voted for by a majority cannot be declared elected because of his [or her] ineligibility and the majority vote is thereby rendered ineffective for such purpose, such majority vote is effective to forbid the election of the candidate having the next highest number of votes. The effect is to render the purported election nugatory and to leave a vacancy in the office thus attempted to be filled. (18 *American Jurisprudence*, 353.)[43] (Emphasis supplied)

This was the ruling adopted in the subsequent cases of *Vilar v. Paraiso*,[44] *Luison v. Garcia*,[45] and *Geronimo*

v. Ramos[46] (Geronimo). However, the Court also had outlier cases wherein the candidate with the next highest number of votes was declared entitled to the office after the disqualification of the winning candidate. These are the cases of Sandalo v. COMELEC[47] and Santos v. COMELEC.[48]

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

Upon the enactment of the OEC on December 3, 1985, jurisprudence on the matter became even more diverse. The Court began to distinguish the consequences based on the actions filed assailing the qualifications or eligibility of the winning candidate, or, in worse cases, distinguished among the grounds for each action filed, regardless if the nature of the action is the same.

In petitions for disqualification, the relevant cases that established doctrinal rulings are the cases of Frivaldo, Maquiling v. COMELEC[49] (Maquiling), and Chua v. COMELEC[50] (Chua).

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

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

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

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

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

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

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

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

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

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

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

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

The Court, in *Jalosjos*, likewise notably pronounced that the rejection of the second placer rule is "limited to situations where the [CoC] of the first placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the [CoC]."[59]

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

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

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

Meanwhile, Joel, as substitute of Pempe, won the elections. Abaya thereafter filed a petition to declare null and void the substitution of Joel in place of Pempe by virtue of the cancelled CoC of the latter. Abaya alleged that

Pempe could not have been legally substituted by Joel because he (Pempe) never became a candidate. COMELEC, acting on this latter petition by Abaya, nullified the substitution between the father and son Miranda, and proclaimed Abaya as the duly elected Mayor of Santiago City.

On appeal, the Court, while agreeing that the substitution was void, found COMELEC to have nevertheless committed grave abuse of discretion in proclaiming Abaya, the second placer in the elections which ignored the doctrines in Reyes and Nolasco. The Court declared that the election results point to the fact that Abaya was not the choice of the people and that the Court has no authority under any law to impose upon and compel the people of Santiago City to accept Abaya as their mayor. Thus, the Court applied the law on succession under Section 44 of the LGC.

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

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

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

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

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

The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he [or *she*] was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. The votes cast for a dead, disqualified, or non-eligible person may not be valid to vote the winner into office or maintain him [or *her*] there. However, in the absence of a statute which clearly asserts a contrary political and legislative policy on the matter, if the votes were cast in the sincere belief that the candidate was alive, qualified, or eligible, they should not be treated as stray, void or meaningless."^[66] (*Emphasis supplied*)

The case of *Sobejana-Condon v. Commission on Elections, et al.*^[67] (*Sobejana-Condon*) further reiterates the ruling in *Labo*. In *Sobejana-Condon*, Teodora Sobejana-Condon (*Teodora*) ran for and was proclaimed Vice Mayor of Caba, La Union in the 2010 NLE. A petition for quo warranto was thereafter filed against her before the Regional Trial Court (RTC), questioning her eligibility on the ground that she was a dual citizen for her failure to renounce her foreign citizenship. The RTC granted the petition for quo warranto and declared *Teodora* disqualified and ineligible to hold the office of Vice Mayor and proceeded to nullify her proclamation as well as

to declare the position of Vice Mayor as vacant, presumably leading to the application of the rules on succession. The RTC Decision was affirmed in toto by COMELEC. When elevated, this Court upheld COMELEC.

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

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

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

The need to abandon the practice of distinguishing among the remedies filed in determining how to fill up permanent vacancies left by elected officials found to be disqualified or ineligible after their assumption to office

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

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

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

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

As to the post-proclamation remedy of quo warranto, the confusion brought about by the Court's adherence to

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

On the other hand are those cases which applied the rules on succession: 1) exclusively as to petitions for disqualification because these actions do not involve the cancellation of one's CoC and therefore the treatment of the removed candidate as a non-candidate at the outset, or 2) to all actions that led to the removal of a sitting elective official, regardless of their nature, because of a rejection, across the board, of the second placer rule for being repugnant to the people's right of suffrage. The latter group of cases espouse the belief that the second placer can never be entitled to the office because he or she was rejected by the electorate and therefore lacks the mandate of the people.

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

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

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

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

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

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

SECTION 44. Permanent Vacancies in the Offices of the Governor, [Vice Governor], Mayor, and [Vice Mayor]. — If a permanent vacancy occurs in the office of the governor or mayor, the vice governor or [vice mayor] concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, [vice governor], mayor, or [vice mayor], the highest ranking Sanggunian member or, in case of his

[or her] permanent inability, the second highest ranking Sanggunian member, shall become the governor, [vice governor], mayor or [vice mayor], as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other Sanggunian members according to their ranking as defined herein.

(b) If a permanent vacancy occurs in the office of the Punong Barangay, the highest ranking Sanggunian Barangay member or, in case of his [or her] permanent inability, the second highest ranking Sanggunian member, shall become the Punong Barangay.

(c) A tie between or among the highest ranking Sanggunian members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

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

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his [or her] office.[69] (Emphasis supplied)

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

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

In fact, what is expressed in the OEC is that a vote cast in favor of a candidate who has been disqualified by final judgment shall be considered stray.[70] Following the language of the law, and adopting this Court's interpretation of the meaning of "stray votes," then candidates who were removed by virtue of disqualification cases—like cancellation of/ denial of due course to CoC cases—must likewise be replaced by the second placer in the elections. If we take this route, however, then the provisions of the Constitution and the LGC on succession would be rendered futile.

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

I respectfully disagree.

The language of Section 44 of the LGC clearly defines a "permanent vacancy" that should trigger the rules on succession therein provided: "a permanent vacancy arises when an elective local official fills a higher vacant

office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his [or her] office." [72] The phrase "fails to qualify" does not distinguish when such failure to qualify must have taken place.

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

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

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

The permanent vacancies referred to in Section 45 are those arising "when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his [or her] office." In these situations, the vacancies were caused by those whose certificates of candidacy were valid at the time of the filing "but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy." [74] (Emphasis in the original)

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

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

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

The electoral process is one of the linchpins of a democratic and republican framework because it is through the act of voting that government by consent is secured. Through the ballot, people express their will on the defining issues of the day and they are able to choose their leaders in accordance with the fundamental principle of representative democracy that the people should elect only those they please to govern them. Voting has an important instrumental value in preserving the viability of constitutional democracy. It has traditionally been taken as a prime indicator of democratic participation. [77] Thus, to maintain the essence of our democracy, it is important that the will of the people is given paramount consideration. This is why, over the years, the Court has

been mindful in resolving electoral controversies in a way that the will of the people as expressed in their ballots be given effect.[78]

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

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

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

To continue to subscribe to the view that the second placer is entitled to the office results in the disenfranchisement of the electorate without any fault on their part and in the undermining of the importance and meaning of democracy and the people's right to elect officials of their choice. It is repugnant to the basic concept of the constitutional right to suffrage if a candidate who clearly did not obtain the mandate of the plurality, and who, in fact, the people has rejected, is proclaimed winner.[79] In our jurisdiction, elections are won on the basis of a majority or plurality of votes cast and received by the candidates.[80] A second placer can never be the choice of the majority.

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

This, it bears repeating, expresses the more logical and democratic view. We cannot, in another shift of the pendulum, subscribe to the contention that the runner-up in an election in which the winner has been disqualified is actually the winner among the remaining qualified candidates because this clearly represents a minority view supported only by a scattered number of obscure American state and English court decisions. These decisions neglect the possibility that the runner-up, though obviously qualified, could receive votes so measly and insignificant in number that the votes [he or she] receive would be tantamount to rejection. Theoretically, the "second placer" could receive just one vote. In such a case, it is absurd to proclaim the totally repudiated candidate as the voters' "choice." Moreover, even in instances where the votes received by the second placer may not be considered numerically insignificant, voters' preferences are nonetheless so

volatile and unpredictable that the result among qualified candidates, should the equation change because of the disqualification of an ineligible candidate, would not be self-evident. Absence of the apparent though ineligible winner among the choices could lead to a shifting of votes to candidates other than the second placer. By any mathematical formulation, the runner-up in an election cannot be construed to have obtained a majority or plurality of votes cast where an "ineligible" candidate has garnered either a majority or plurality of the votes.[82] (Emphasis supplied)

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

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

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

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

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

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

The rule as applied in this case

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

However, as COMELEC correctly found, Pax Ali falsely represented in his CoC his eligibility for governor,

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

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

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

Considering the foregoing, I concur in the ponencia.

[1] With Extremely Urgent Application for the Issuance of a Temporary Restraining Order or Status Quo Order for the Conduct of a Special Raffle of this Case.

[2] Ponencia, pp. 14-16.

[3] Republic Act No. 7160.

[4] CHAPTER II

Vacancies and Succession

SECTION 44. Permanent Vacancies in the Offices of the Governor, [Vice Governor], Mayor, and [Vice Mayor].

— If a permanent vacancy occurs in the office of the governor or mayor, the [vice governor] or vice-mayor concerned shall become the governor or mayor. . .

. . . .

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

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

[6] Ponencia, p. 15. Emphasis supplied.

[7] *Id.* at 16.

[8] 921 Phil. 189 (2021) [Per J. Caguioa, En Banc].

[9] 601 Phil. 751 (2009) [Per J. Peralta, En Banc].

[10] 255 Phil. 934 (1989) [Per J. Cruz, En Banc].

[11] Batas Pambansa Blg. 881 (1985).

[12] REVISED RULES ON EVIDENCE, rule 131, sec. 3(1).

[13] Id. at sec. 3(m).

[14] Id. at sec. 3(a).

[15] CONSTITUTION, art. XI, sec. 1, provides:

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

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

[17] See CONSTITUTION, art. IX-B, sec. 4.

[18] Executive Order No. 292.

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

[20] LGC, Title Two, Chapter 1, sec. 39 provides:

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

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

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

[21] See, among others, *Piccio v. COMELEC*, supra note 8, at 198-199 and *Frivaldo v. COMELEC*, supra note 10, at 944.

[22] See LGC, sec. 43.

[23] Republic Act No. 386 (1949).

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

[25] SECTION 78. Petition to deny due course to or cancel a certificate of candidacy. — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition

may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

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

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

[28] *Gonzalez v. COMELEC*, 660 Phil. 225, 244-245 (2011) [Per J. Villarama, Jr., En Banc].

[29] 924 Phil. 201 (2022) [Per J. Zalameda, En Banc].

[30] *Id.* at 230-231.

[31] *Fermin v. COMELEC*, 595 Phil. 449, 465-467 (2008) [Per J. Nachura, En Banc].

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

[33] The Senate and House of Representative Electoral Tribunals as provided under art. VI, sec. 17 and Presidential Electoral Tribunal under art. VII, sec. 4.

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

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

[36] See OEC, secs. 72 and 78.

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

Commission.

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

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

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

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

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

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

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

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

[40] 84 Phil. 490, 492-493 (1949) [Per J. Bengzon, En Banc].

[41] 23 Phil. 238, 255 (1912) [Per J. Trent, En Banc].

[42] *Llamoso v. Ferrer*, supra note 40, at 492.

[43] *Id.* at 492-493.

[44] 96 Phil. 659 (1955) [Per J. Bautista Angelo, En Banc].

[45] 103 Phil. 453 (1958) [Per J. Bautista Angelo, En Banc].

[46] 221 Phil. 130 (1985) [Per J. Gutierrez, Jr., En Banc].

[47] 194 Phil. 122 (1981) [Per J. Aquino, En Banc].

[48] 222 Phil. 246 (1985) [Per J. Cuevas, En Banc].

[49] Supra note 39.

[50] 783 Phil. 876 (2016) [Per J. Leonen, En Banc].

[51] 278 Phil. 275 (1991) [Per J. Gurierrez, Jr., En Banc].

[52] 324 Phil. 813 (1996) [Per J. Mendoza, En Banc].

[53] 341 Phil. 761 (1997) [Per J. Puno, En Banc].

[54] 472 Phil. 258 (2004) [Per C.J. Panganiban, En Banc].

[55] SECTION 40. Disqualifications. — The following persons are disqualified from running for any elective local position:

....

(d)

Those with dual citizenship[.]

[56] Maquiling v. COMELEC, supra note 39, at 900.

[57] Supra note 39.

[58] SECTION 40. Disqualifications. — The following persons are disqualified from running for any elective local position:

(a)

Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence[.]

[59] Jalosjos v. COMELEC, supra note 39, at 633.

[60] See Reyes v. COMELEC, supra note 52, at 831; Nolasco v. COMELEC, supra note 53, at 779.

[61] 370 Phil. 642 (1999) [Per J. Melo, En Banc].

[62] 460 Phil. 459 (2003) [Per J. Carpio, En Banc].

[63] Supra note 28.

[64] 696 Phil. 786 (2012) [Per J. Bersamin, En Banc].

[65] 257 Phil. 1 (1989) [Per J. Cruz, En Banc].

[66] Geronimo v. Ramos, supra note 46, at 141-142.

[67] 692 Phil. 407 (2012) [Per J. Reyes, En Banc].

[68] 779 Phil. 268 (2016) [Per J. Carpio, En Banc].

[69] LGC, sec. 44.

[70] SECTION 211. Rules for the appreciation of ballots. — In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voters' will:

....

24.

Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray

and shall not be counted but it shall not invalidate the ballot.

[71] See J. Leonen, Concurring and Dissenting Opinion, pp. 5-9.

[72] Emphasis supplied.

[73] J. Leonen, Concurring and Dissenting Opinion, p. 7.

[74] *Id.* at 8.

[75] CONSTITUTION, art. II, sec. 1.

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

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

[78] See, among others, *Piccio v. COMELEC*, *supra* note 8, at 206-207 and *Frivaldo v. COMELEC*, *supra* note 76, at 574.

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

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

[81] 318 Phil. 467 (1995) [Per J. Kapunan, En Banc].

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

[83] *Frivaldo v. COMELEC*, *supra* note 76, at 574.

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

DISSENTING OPINION

HERNANDO, J.:

The present petition for certiorari^[1] seeks to nullify the Resolutions^[2] of the Commission on Elections (COMELEC) for allegedly being issued with grave abuse of discretion amounting to a lack or excess of jurisdiction. In the assailed Resolutions, the COMELEC cancelled petitioner Pax Ali S. Mangudadatu's (Pax Ali) Certificate of Candidacy (COC) for the position of Governor of Sultan Kudarat for the May 9, 2022 elections anchored on "false material representations" when he stated therein that he is a resident of Purok Garden, Tamnag, Lutayan, Sultan Kudarat, and that the period of his residence in Sultan Kudarat up to the day before May 9, 2022 is one year and eight months,^[3] which is contrary to the facts as found by the COMELEC.

When Pax Ali filed his COC for the position of Governor of Sultan Kudarat, he was the incumbent Mayor of the Municipality of Datu Abdullah Sangki (DAS), Maguindanao.

Sharifa Akeel Mangudadatu, Azel Mangudadatu, and Bai Ali A. Untong, separately filed before the COMELEC a Petition to Deny Due Course or to Cancel the COC of Pax Ali. They essentially argued that Pax Ali misrepresented in his COC that he had been residing in Sultan Kudarat for at least one year immediately preceding the 2022 elections when in truth, he remained as Mayor of DAS which showed his lack of intent to abandon his residence therein.^[4]

In his Answer, Pax Ali averred that his domicile of origin is Purok Garden, Tamnag, Lutayan, Sultan Kudarat

where he grew up. He merely established a temporary residence at Barangay Talisawa, DAS, Maguindanao, to comply with the residency requirement for the position of Mayor; however, he always had the inherent intention to return to his roots in Sultan Kudarat. In fact, he moved back to Lutayan, Sultan Kudarat in October 2020 and only travelled to DAS on a daily basis to perform his functions as Mayor. By the time he filed his COC on October 7, 2021, therefore, he had already complied with the one-year residency requirement under the Local Government Code. Finally, as a sign of total and complete abandonment of his residence and occupation in Maguindanao, he resigned from his position as Mayor of DAS on November 15, 2021.[5]

The ponencia denies Pax Ali's petition finding that he deliberately misrepresented that his residence is in Lutayan, Sultan Kudarat to mislead the electorate of Sultan Kudarat into thinking that he is eligible to run for the position of Governor.[6] According to the ponencia, Pax Ali failed to effect a change of domicile from DAS, Maguindanao to Lutayan, Sultan Kudarat, one year immediately preceding the May 9, 2022 elections because he remained as Mayor of DAS, Maguindanao. For the Majority, it was only after Pax Ali resigned as Mayor of DAS on November 15, 2021 that he can rightfully claim to have reestablished his domicile in Lutayan, Sultan Kudarat. The ponencia explains that remaining as the local chief executive of DAS is antithetical to a claim of *animus non-revertendi*. While there is substantial evidence that Pax Ali had bodily or physical presence in Lutayan, Sultan Kudarat, his intent to remain there for an indefinite period, and to abandon DAS, Maguindanao is lacking.[7]

The ponencia further considers Pax Ali's resignation as Mayor of DAS on November 15, 2021 as a mere afterthought to foreclose any issue with compliance with the residency requirement as the same was done only after the filing of two disqualification cases against him.[8]

The crux of the controversy therefore is whether or not Pax Ali was able to successfully prove by substantial evidence that he has indeed transferred his residence from DAS, Maguindanao to Purok Garden, Tamnag, Lutayan, Sultan Kudarat one year immediately preceding the May 9, 2022 elections. There is no question regarding Pax Ali's bodily presence in Lutayan, Sultan Kudarat since August 2020. What is being assailed is the *animus* to stay therein and to abandon his domicile in DAS, Maguindanao.

I respectfully register my dissent to the pronouncement of the Majority that Pax Ali failed to meet the *animus non-revertendi* requirement on the ground that he remained as Mayor of DAS, Maguindanao until November 15, 2021.

The ponencia's ruling that Pax Ali failed to meet the *animus non-revertendi* requirement disregards the overwhelming evidence showing that Pax Ali intended, and had in fact reestablished, his domicile in Lutayan, Sultan Kudarat. In addition, the ruling contradicts several settled jurisprudence.

In the case of *Mitra v. Commission on Elections*,[9] the Court upheld the validity of Mitra's COC and held that he did not commit any false misrepresentation when he declared in his COC that he is a resident of Aborlan, Palawan.

Mitra shares the same factual milieu as this case. To recall, the petitioner in Mitra was also the incumbent representative of the Second District of Palawan. Similarly, Pax Ali is also the incumbent Mayor of DAS, Maguindanao. During Mitra's incumbency as representative, he made several incremental moves to transfer his domicile from Puerto Princesa City to Aborlan, Palawan in order to satisfy the residency requirement for eligibility to run as Governor of the province of Palawan. Likewise, Pax Ali made incremental moves to transfer his domicile from DAS, Maguindano to Lutayan, Sultan Kudarat. Mitra and this case have almost identical set of evidence. Unfortunately, the conclusions reached in both cases are contradictory to each other. In Mitra, the Court held that Mitra has indeed been physically present in Aborlan for the required period with every intent to settle

there when he made definite, although incremental, transfer moves as shown by the undisputed business interests he has established in Aborlan in 2008; by the lease of a dwelling where he established his base; by the purchase of a lot for his permanent home; by his transfer of registration as a voter in March 2009; and by the construction of a house therein.

Like Mitra, Pax Ali's transfer of residence was accomplished, not in one single move but, through an incremental process that started in August 2020 and was in place by October 2020.

In fact, no less than the ponencia itself found that Pax Ali had duly proven his physical presence at Purok Garden, Tamnag, Lutayan Sultan Kudarat through the following: (1) The November 16, 2021 Affidavit of the Punong Barangay of Tamnag, Lutayan, Sultan Kudarat, confirming Pax Ali's physical presence in Purok Garden since August 2020 and the fact that the Punong Barangay regularly spoke with Pax Ali regarding the issues and concerns of the residents in their barangay and how he (Pax Ali) could help them; (2) Certificate of Residency issued by the Barangay Secretary of Tamnag and approved by the Punong Barangay indicating that Pax Ali has been residing in the barangay since August 2020; and (3) Sworn statements of several next-door neighbors of Pax Ali in Purok Garden attesting to his physical presence in the area starting August 2020.[10]

However, the ponencia considers the foregoing pieces of evidence only as proof of Pax Ali's bodily presence in the locality in which he seeks election, but not of his intent to remain there for an indefinite period and to abandon his domicile in DAS, Maguindanao.

I disagree. Similar to Mitra, the overwhelming proof adduced by Pax Ali, not only substantiate his physical presence in Lutayan, Sultan Kudarat, but also his intent to settle therein. Indeed, Pax Ali's intent to reestablish his residence in Lutayan, Sultan Kudarat is discernible from his acts executed beginning August 2020 as evidenced by the Affidavits of his various witnesses which the ponencia in fact considers as more credible.[11]

In addressing the residency issue, however, the ponencia, just like the COMELEC, practically focused its lens solely on Pax Ali's continued discharge of his duties as Mayor of DAS, Maguindanao until November 15, 2021. According to the ponencia, since residency is a continuing qualification for every elective official, Pax Ali's intent to remain permanently in Lutayan, Sultan Kudarat at the time he filed his COC for Governor, and to abandon his domicile in DAS, Maguindanao, is negated by his incumbency as mayor thereof.

I respectfully disagree with the above ratiocination.

I wish to point out that the issue herein is whether or not Pax Ali has sufficiently proved by substantial evidence that he had effectively transferred his domicile from DAS, Maguindanao to Lutayan, Sultan Kudarat, in order to be eligible to run for the post of Governor of Sultan Kudarat, and not whether he could have continued sitting as Mayor of DAS. The determination of an elective official's continuing qualification for his/her present position is not the objective of a petition to deny due course and/or cancel COC for the new position he/she aspires for.

At this juncture, the Court's pronouncement in *Torayno, Sr. v. Commission on Elections*, [12] is instructive:

To petitioners' argument that Emano could not have continued to qualify as provincial governor if he was indeed a resident of Cagayan de Oro City, we respond that the issue before this Court is whether Emano's residence in the city qualifies him to run for and be elected as mayor, not whether he could have continued sitting as governor of the province. There was no challenge to his eligibility to continue running the province; hence, this Court cannot make any pronouncement on such issue. Considerations of due process prevent us from adjudging matters not properly brought to us. On the basis, however, of the facts proven before the Comelec, we hold that he has satisfied the residence qualification required by law for the mayorship of the city.[13] (Emphasis supplied)

Prescinding from the foregoing, it must be stressed that in the case of Pax Ali, the issue is whether Pax Ali's residence in Purok Garden, Tamnag, Lutayan, Sultan Kudarat, makes him eligible to run for the post of governor of Sultan Kudarat. Whether his transfer of domicile to Purok Garden, Tamnag, Lutayan, Sultan Kudarat disqualified him from serving as Mayor of DAS, Maguindanao was never an issue.

In Mitra, the Court focused on the overt acts executed by Mitra indubitably showing his intent to settle in Aborlan, Palawan and to abandon his residence in Puerto Princesa City. It did not even touch on the supposed incumbency of Mitra as representative of the Second District of Palawan to disqualify or to cancel his COC for Governor. In contrast, the ponencia here focused on the fact that Pax Ali is the incumbent Mayor of DAS, Maguindanao, in establishing his animus revertendi. It barely considered the incremental overt acts committed by Pax Ali to reestablish his domicile in Sultan Kudarat. In Mitra, the Court even acknowledged that the transfer of residence is not a strange occurrence among elective officials, viz.:

This case, incidentally, is not the first that we have encountered where a former elective official had to transfer residence in order to continue his public service in another political unit that he could not legally access, as a candidate, without a change of residence.[14]

Given the foregoing, I respectfully submit that the COMELEC and the ponencia utterly erred in their appreciation of the evidence and used the wrong considerations which led to their incorrect conclusion that Pax Ali is not a resident of Lutayan, Sultan Kudarat.

Significantly, it must be noted that Mitra and Pax Ali have a similar set of evidence, i.e., Certificate of Residency issued by their respective Punong Barangays, numerous affidavits of next-door neighbors attesting to their physical presence in the localities in which they seek election, sworn statements of witnesses attesting to their intention to settle therein, various photographs showing their physical presence, as well as proof of business interests in the same locality, which the Court considered as adequate to establish Mitra's intent to settle in Aborlan, Palawan. Thus, I see no reason why the Court should not give the same weight and credit to the evidence of Pax Ali as sufficient to establish his intent to remain in Lutayan, Sultan Kudarat, and to abandon his domicile in DAS, Maguindanao, as in Mitra.

Also, in *Co. v. Electoral Tribunal of the House of Representatives*,^[15] the Court ordained that the fact that the respondent therein made periodical journeys to his home province in Laoag revealed that he always had animus revertendi. In this case, not only did Pax Ali make periodical journeys to his home province in Lutayan, Sultan Kudarat but also spent his weekends therein even while he was the Mayor of DAS, Maguindanao. Beginning October 2020, he even went home to his residence in Lutayan, Sultan Kudarat after office hours on a daily basis as evidenced by the Affidavits of the Human Resource Management Officer of the local government of DAS, Pax Ali's aide, bookkeeper, and police escort, who were with him on a regular basis.^[16]

Thus, it is inappropriate to reckon Pax Ali's acquisition of a new domicile only from the time he resigned as Mayor of DAS in the face of the compelling proof presented establishing his incremental transfer moves to Lutayan, Sultan Kudarat beginning August 2020.

More importantly, in Mitra, the Court rejected the allegation that Mitra committed any deliberate misrepresentation given what he knew of his transfer, as shown by the moves he had made to carry it out.

The Court stressed that false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no

deception on the electorate results.[17]

Applying the foregoing to the instant case, I am not convinced that Pax Ali committed any misrepresentation, much more a deliberate one, with respect to his residence. Similar to Mitra, it is my position that Pax Ali was able to present competent evidence to prove that he had indeed reestablished his domicile in Lutayan, Sultan Kudarat within a period of one year immediately preceding the May 2022 elections. Verily, it cannot be said that he made a false representation as to his residence to mislead, misinform, or hide a fact which would otherwise render him ineligible to run for Governor.

Next, according to the ponencia, remaining as Mayor of DAS is a positive and voluntary act reflecting Pax Ali's choice of residence. Remaining as the local chief executive of DAS is antithetical to a claim of *animus revertendi*. Likewise, holding on to his position as Mayor meant that Pax Ali must comply with the continuing requirement of being a resident of DAS during his entire tenure in line with the Court's ruling in *Atty. Lico v. COMELEC En Banc*. Since Pax Ali failed to show that he had established a new domicile at the time of the filing of his COC, his residency in DAS continues. He remained a resident of DAS, Maguindanao as of October 7, 2021.[18]

Apparently, the ponencia's conclusion that Pax Ali failed to establish a new domicile at the time of the filing of his COC is anchored only on the fact that he remained as the local chief executive of DAS, Maguindanao, negating any intent to abandon DAS as his domicile.

I respectfully submit that this reasoning is flawed and lacks legal support.

To conclude that Pax Ali remained to be a resident of DAS, Maguindanao, simply because he continued to discharge his duties and responsibilities as Mayor thereof, notwithstanding the evidence to the contrary, is tantamount to imposing an arbitrary limitation on Pax Ali's fundamental right to liberty of abode that is guaranteed by no less than the Philippine Constitution. Article III, Section 6, provides:

SECTION 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. . .[19]

The liberty of abode includes the right to choose one's residence and to leave it whenever he/she pleases. A person is free to choose and change their place of residence within the country without interference. It is a fundamental aspect of personal freedom. The only explicit limitation on the liberty of abode is set forth in the above-cited provision, that is, upon a lawful order of the court.

In the case of *Villavicencio v. Lukban*,[20] the Court emphasized that the liberty of abode cannot be violated without legal authority, viz.:

In other countries, as in Spain and Japan, the privilege of domicile is deemed so important as to be found in the Bill of Rights of the Constitution. Under the American constitutional system, liberty of abode is a principle so deeply imbedded in jurisprudence and considered so elementary in nature as not even to require a constitutional sanction. Even the Governor-General of the Philippine Islands, even the President of the United States, who has often been said to exercise more power than any king or potentate, has no such arbitrary prerogative, either inherent or express. Much less, therefore, has the executive of a municipality, who acts within a sphere of delegated powers. If the mayor and the chief of police could, at their mere behest or even for the most praiseworthy of motives, render the liberty of the citizen so insecure, then the presidents and chiefs of police of one thousand other municipalities of the Philippines have the same privilege. If these officials can take to themselves such power, then any other official can do the same. And if any official can exercise the power, then all persons would have just as much right to do so. And if a prostitute could be sent against her wishes and under no law from one locality to another within the country, then officialdom can hold the same club over the head of any citizen.[21]

In this case, there is nothing in the records that would show that there was a court order preventing Pax Ali from changing his residence during his incumbency as Mayor of DAS, Maguindanao. Neither is there any law expressly precluding him from acquiring a bona fide domicile of choice in a different locality. As such, Pax Ali merely exercised his constitutional right to reestablish his residence in Sultan Kudarat. To force him to maintain his residence in DAS, Maguindanao is to unduly impair his constitutional right to liberty of abode.

In addition, the ponencia submits that Pax Ali must comply with the continuing requirement of remaining a resident of DAS during his entire tenure as Mayor.

While it may be argued that residency is a continuing requirement and must be possessed not only at the time of appointment or election or assumption of office but also during the officer's entire tenure, the ponencia misses out on the controlling rule as settled by the Court in *Frivaldo v. COMELEC*,^[22] and echoed in *Maquiling v. COMELEC*,^[23] that the only consequence of an elected official's loss of any of the required qualifications during his/her tenure is that, his/her title to his/her [current position] may be "seasonably challenged". Otherwise stated, the elected official's eligibility to continuously hold office is simply open to challenge. As applied in this case, when Pax Ali decided to reestablish his domicile in Sultan Kudarat, he merely opened the possibility of being unseated as Mayor of DAS, Maguindanao, a risk he opted to take. Any challenge to his title as Mayor of DAS is an entirely different matter.

Clearly, Datu Pax Ali's continuous discharge of his functions as Mayor of DAS has nothing to do with his eligibility to run as Governor of Sultan Kudarat.

To reiterate, the pivotal issue here is whether or not Pax Ali was able to meet the required period of residency in Lutayan, Sultan Kudarat to qualify him to run for and be elected as Governor of Sultan Kudarat, and not whether he could have continued sitting as Mayor of DAS, Maguindanao. Simply stated, the contentious issue in this case relates to Pax Ali's intent to remain in Sultan Kudarat for an indefinite period. I submit that the pieces of evidence adduced by Pax Ali collectively demonstrate the conclusion that he has established an incremental transfer of domicile in Lutayan, Sultan Kudarat thereby erasing doubts as to the bona fide nature of his transfer. To my mind, Pax Ali's constant and undisputed physical presence in Lutayan, Sultan Kudarat since August 2020 speaks volume of his intent to remain therein and to abandon his domicile in DAS, Maguindanao.

Withal, I wish to point out that Pax Ali is not a stranger to Sultan Kudarat. He was raised in Lutayan, Sultan Kudarat. He had been exposed to the people of Sultan Kudarat at an early age because he belongs to a family of politicians whose lives had been dedicated to public service in their province.^[24] Therefore, Pax Ali has a significant relationship with, and intimate knowledge of, the constituency he wishes to serve.

Finally, Pax Ali has been proclaimed winner in the electoral contest and has therefore the mandate of the electorate to serve.

In light of the foregoing, the petition for certiorari ought to be granted.

[1] With Extremely Urgent Application for the Issuance of a Temporary Restraining Order or Status Quo Order and for the Conduct of a Special Raffle of this Case. Rollo, vol. 1, pp. 3-64.

[2] Rollo, vol. 1, pp. 65-76 and 86-93.

[3] Draft ponencia, p. 3.

[4] *Id.* at 4.

- [5] Id. at 4-5.
- [6] Id. at 20.
- [7] Id. at 14.
- [8] Id. at 16.
- [9] 636 Phil. 753, 794 (2010) [Per J. Brion, En Banc].
- [10] Draft ponencia, p. 15.
- [11] Id.
- [12] 392 Phil. 342 (2000) [Per J. Panganiban, En Banc].
- [13] Id. at 355-356.
- [14] *Mitra v. Commission on Elections*, 636 Phil. 753, 790 (2010) [Per J. Brion, En Banc].
- [15] 276 Phil. 758, 793-794 (1991) [Per J. Gutierrez, Jr., En Banc].
- [16] Rollo, pp. 433-440.
- [17] *Mitra v. Commission on Elections*, 636 Phil. 753, 780 (2010) [Per J. Brion, En Banc].
- [18] Draft ponencia, p. 15.
- [19] CONST., art. III, sec. 6.
- [20] 39 Phil. 778 (1919) [Per J. Malcolm, En Banc].
- [21] Id. at 786-787.
- [22] 255 Phil. 934, 944 (1989) [Per J. Cruz, En Banc].
- [23] 713 Phil. 178, 439 (2013) [Per C.J. Sereno, En Banc].
- [24] Rollo, pp. 12-13.

DISSENT

LAZARO-JAVIER, J.:

To recall, petitioner Pax Ali Mangudadatu (Pax Ali) was raised in his family's ancestral home in Purok Garden, Tamnag, Lutayan, Sultan Kudarat – his domicile of origin.[1] In 2018, he effected a change of domicile when he ran and won as Municipal Mayor of Datu Abdullah Sangki (DAS), Province of Maguindanao. On October 7, 2021, Pax Ali, then the incumbent Mayor of DAS, Province of Maguindanao, filed his Certificate of Candidacy (COC) for Provincial Governor of Sultan Kudarat for the May 9, 2022 elections.[2] On November 15, 2021, he resigned as Municipal Mayor of DAS, Province of Maguindanao.

Respondents Sharifa Akeel Mangudadatu[3] (Sharifa), Azel Mangudadatu (Azel), and Bai Ali A. Untong[4] (Bai Ali) separately filed before the Commission on Elections (COMELEC) a Petition to Deny Due Course or to Cancel the Certificate of Candidacy of Pax Ali on the ground that the latter allegedly misrepresented his residency qualification. Considering that Pax Ali was the incumbent mayor of DAS, Province of Maguindanao at the time he filed his COC, Pax Ali was said to have purposely lied, stated, and affirmed under oath that he was a resident

of Sultan Kudarat to qualify for the position of Governor for the Province of Sultan Kudarat.[5]

Pax Ali countered that his domicile of origin is Lutayan, Sultan Kudarat, where their ancestral family house still stands. He merely temporarily transferred his residence to DAS, Province of Maguindanao to comply with the residency requirement for the position of Mayor, but he always intended to return to his domicile of origin. In fact, through a series of acts commencing July 2020, he started moving back to Sultan Kudarat, and by September 2, 2020, all his personal effects and belongings were already there. Since October 2020, he had been going home to Lutayan, Sultan Kudarat daily, and he only went back to DAS to perform his functions as mayor. By the time he filed his COC on October 7, 2021, therefore, he had already complied with the one-year residency requirement under the Local Government Code (LGC). Finally, as a sign of total and complete abandonment of his residence and occupation in Maguindanao, he resigned from his position as Mayor of DAS on November 15, 2021.[6]

The Majority dismissed the Petition, affirming the cancellation by the COMELEC of Pax Ali's COC on the alleged ground of false misrepresentation as regards his residency in Sultan Kudarat. The Majority ruled that Pax Ali failed to effect a change of domicile from DAS, Province of Maguindanao to Lutayan, Province of Sultan Kudarat, one year immediately preceding the May 9, 2022 elections. While there is substantial evidence that Pax Ali had bodily or physical presence in Lutayan, Province of Sultan Kudarat, his intent to remain there for an indefinite period, and to abandon DAS, Province of Maguindanao was supposedly missing.[7]

Section 78 of the Omnibus Election Code states:

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

For a petition to deny due course or cancel the COC of a candidate to prosper, the candidate must have made a material misrepresentation involving his or her eligibility or qualification for the office to which he or she seeks election, such as the requisite residency, age, citizenship, or any other legal qualification necessary to run for local elective office as provided in the Local Government Code. More, such false representation under Section 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.[8]

Meanwhile, Section 39 of Republic Act No. 7160 provides for the qualification of elective local officials:

Section 39. Qualifications. -

(a)

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

I focus on the residency requirement.

Residence is the permanent home, the place to which whenever absent for business or pleasure, one intends to return.[9] For purposes of election law, residence is synonymous with "domicile." As used in election law, it imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with

conduct indicative of such intention.[10] The question of residence is mainly one of intention. There is no hard and fast rule by which to determine where a person actually resides. Three rules are, however, well established: first, a person must have a residence or domicile somewhere; second, once established, it remains until a new one is acquired; and third, a person can have but one domicile at a time. Relevantly, in order to acquire a domicile by choice, there must concur: (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile.[11]

Notably, if one wishes to successfully effect a change of domicile, he or she must demonstrate an actual removal or an actual change of domicile, a bona fide intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose. Simply put, there must be *animus manendi* coupled with *animus non revertendi*. Pure intention to reside in that place is not sufficient, there must likewise be conduct indicative of such intention.[12]

Here, Pax Ali was raised in his family's ancestral home in Purok Garden, Tamnag, Lutayan, Province of Sultan Kudarat – his domicile of origin.[13] In 2018, he effected a change of domicile when he ran and won as Municipal Mayor of DAS, Province of Maguindanao. On October 7, 2021, Pax Ali, then incumbent Mayor of DAS, Province of Maguindanao, filed his COC for Provincial Governor of Sultan Kudarat for the May 9, 2022 elections, and indicated therein that he had been residing in Sultan Kudarat for at least one year immediately preceding the elections.[14]

Pax Ali avers that he merely temporarily transferred his residence to Barangay Talisawa, DAS, Maguindanao, but he always had the inherent intention to return to Sultan Kudarat.[15]

The next question — at which point do we reckon his intent to abandon his domicile of DAS, Province of Maguindanao?

I am of the view that Pax Ali was able to establish both physical residence or bodily presence in the new locality, an intention to remain there, and an intention to abandon the old domicile.

Pax Ali's case is akin to *Mitra v. Comelec*.^[16] In that case, when Mitra's COC for the position of Governor of Palawan was declared cancelled, he was the incumbent Representative of the Second District of Palawan. This district then included, among other territories, the Municipality of Aborlan and Puerto Princesa City. He was elected Representative thereof as a domiciliary of Puerto Princesa City, and represented the legislative district for three terms immediately before the elections of 2010. On March 26, 2007 (or before the end of Mitra's second term as Representative), Puerto Princesa City was reclassified as a "highly urbanized city" and thus ceased to be a component city of the Province of Palawan. The direct legal consequence of this new status was the ineligibility of Puerto Princesa City residents from voting for candidates for elective provincial officials.^[17]

On March 20, 2009, with intent to run for the position of Governor, Mitra applied for the transfer of his Voter's Registration Record from Precinct No. 03720 of Barangay Sta. Monica, Puerto Princesa City, to Sitio Maligaya, Barangay Isaub, Municipality of Aborlan, Province of Palawan. He subsequently filed his COC for the position of Governor of Palawan as a resident of Aborlan.^[18]

Mitra explained that he gradually transferred his residence in 2008. He added that his residence was located inside the premises of the Maligaya Feedmill and Farm (Maligaya Feedmill) which the owner, Carme Caspe, leased to him; and that he purchased a farm and has an experimental pineapple plantation and a cock farm.^[19]

Mitra submitted the following: (a) the Sinumpaang Salaysay of elective officials attesting that he resided in their locality; (b) photographs of the residential portion of the Maligaya Feedmill where he claimed he transferred residence, and of his Aborlan experimental pineapple plantation, farm, farmhouse, and cock farm; (c) the lease

contract over the Maligaya Feedmill; (d) the community tax certificate (CTC) he claimed he himself secured, stating that Aborlan was his residence; and (e) an updated identification card issued by the House of Representatives stating that Aborlan was his residence.[20]

Ultimately, the Supreme Court held that Mitra did not falsely misrepresent his domiciliary qualification, viz.:

Mitra's domicile of origin is undisputedly Puerto Princesa City. For him to qualify as Governor — in light of the relatively recent change of status of Puerto Princesa City from a component city to a highly urbanized city whose residents can no longer vote for provincial officials — he had to abandon his domicile of origin and acquire a new one within the local government unit where he intended to run; this would be his domicile of choice.[21]

Notably, in Mitra, the Court did not give any attention to the fact that Mitra was still the incumbent Representative of Puerto Princesa City at the time he filed his COC for the gubernatorial post in Palawan. The Court even acknowledged that this is not an uncommon phenomenon among elective officials, and what is important is that a candidate complies with the requirements for a transfer of residence/domicile within the period required by law. Thus, in Mitra, the Court additionally found that the case is not the first that the Supreme Court has encountered, where a former elective official had to transfer residence to continue his public service in another political unit that he could not legally access, as a candidate, without a change of residence.

Like Mitra, not only did Pax Ali completely move his physical belongings back to Lutayan, Sultan Kudarat in September of 2020 (one year and eight months before the May 2022 elections), by October 2020, he even started going home to his residence in Lutayan, Sultan Kudarat daily after office hours, as supported by sworn statements of neighbors, aide, bookkeeper, police escorts, and the affidavits of the Human Resource Management Officer of the local government of DAS.[22]

To be sure, while Pax Ali admitted in his Verified Answer that he tendered his resignation as Mayor of DAS, Maguindanao only on November 15, 2021, he also stated that this was "yet another evidence ultimately showing his total abandonment of his house and occupation in Maguindanao." Evidently, this was simply the strongest if not the final indication of his intent to abandon his domicile in DAS; but not the only indication of such total abandonment, as laid down in the ponencia:

Pax Ali attached in his Verified Answer several photos of the celebrations/occasions and socio-civic activities that he attended while growing up in his residence at Sultan Kudarat. He also submitted copies of his government-issued identification documents (e.g. Philhealth, Bureau of Internal Revenue registration, driver's license, police clearance, NBI clearance, Municipal Mayor ID, etc.) showing his address as Barangay Tamnag, Lutayan, Sultan Kudarat. Pax Ali presented a Certification from the Mayor of Lutayan declaring that he is a bona fide resident of Purok Garden, Barangay Tamnag, bearing the Community Tax Certificate No. 13127421. Similarly, the Barangay Chairperson of Tamnag issued a Certification that Pax Ali had been a resident of the said barangay since August 2020. Pax Ali showed a Certification from the Election Officer of DAS stating that he had transferred his voter's registration in Lutayan, Sultan Kudarat on May 17, 2021 and that his registration in Maguindanao has been deleted. He submitted a copy of his resignation letter as Mayor of DAS, as well as the acceptance thereof. In addition, he presented the affidavits of his family members, barangay officials and neighbors in Purok Garden, socio-civic organizations in Sultan Kudarat, and his colleagues to prove that he has abandoned his former residence in Barangay Talisawa, DAS, Maguindanao, and re-established his residence in Purok Garden, Barangay Tamnag, Lutayan, Sultan Kudarat beginning October 2020.[23]

Indeed, Pax Ali was able to establish a clear series of consistent acts showing both his bona fide intention to reside in Lutayan, Sultan Kudarat, as well as his personal presence therein, coupled with conduct indicative of such intention.

Additionally, the Court, in the following cases, considered as sufficient the same pieces of evidence that Pax Ali, in this case, offered in evidence before the COMELEC to establish his domicile of origin, his intention to return thereto, and the abandonment of his temporary residence, to wit:

In *Japzon v. COMELEC*,^[24] the Court considered the candidate's government identification cards, showing the address of the candidate's domicile, as strong proof of his transfer of residence.

Too, in *Jalosjos v. COMELEC*,^[25] the Court gave weight to the affidavits of the candidates' neighbors as proof of actual physical presence in the locality.

In *Sabili v. COMELEC*,^[26] citing *Mitra*, the Court recognized that the transfer of domicile can be gradual, done through an incremental process. The Court gave credence to the Affidavit executed by leaders of organizations as regards support and participation in local activities and as evidence of physical presence in a residence and intention to permanently remain therein.

In *Fernandez v. HRET*,^[27] the Court also gave credence to the candidate's Department of Trade and Industry Certificate showing ownership of business in the subject locality as proof of his physical presence and his intention to remain therein and abandon his old residence.

Meanwhile, in *Romualdez-Marcos v. COMELEC*,^[28] the Court held that it cannot be correctly argued that petitioner therein, Imelda Romualdez- Marcos (Romualdez-Marcos), lost her domicile of origin of Tacloban, Leyte, by operation of law as a result of her marriage to the late President Ferdinand E. Marcos in 1952. Although Romualdez-Marcos was obliged by law to follow her husband's actual place of residence, what she gained was actual residence, but she did not automatically lose her domicile of origin. Even assuming that Romualdez-Marcos did, in fact, gain a new domicile after her marriage and only acquired a right to choose a new one after the death of her husband, the following acts following her return to the country clearly indicated that she expressly chose her domicile of origin as her domicile: (1) she expressed in her letters to the Chairman of the Presidential Commission on Good Government (PCGG) when she sought the PCGG's permission to "rehabilitate (our) ancestral house in Tacloban and Farm in Olot, Leyte. . . to make them livable for the Marcos family to have a home in our homeland;" and (2) Romualdez-Marcos obtained her residence certificate in 1992 in Tacloban, Leyte, while living in her brother's house.

In *Dano v. COMELEC*,^[29] the Court ruled on the issue of compliance with the one-year residency requirement for local elective officials. There, the COC of Juliet B. Dano (Dano) was sought to be cancelled because she allegedly made material misrepresentations of fact in her COC and likewise failed to comply with the one-year residency requirement under Section 39 of the LGC. Dano countered that on February 2, 2012, she obtained a CTC from the municipal treasurer of Sevilla. Thereafter, she took her Oath of Allegiance before the Vice Consul of the Philippine Consulate in Los Angeles, California on March 30, 2012. On May 2, 2012, she applied for voter's registration in Sevilla. Eight days later, she returned to the United States (US) and stayed there until September 28, 2012 to wind up her affairs, particularly to sell her house in Stockton, California, as well as her shares of stock in various companies. Upon her arrival in the Philippines, she executed a Sworn Renunciation of Any and All Foreign Citizenship on September 30, 2012. She filed her COC for mayor of Sevilla on October 4, 2012. In her COC, she represented herself as one who had been a resident of Sevilla for one year and 11 days prior to the May 13, 2013 elections, or from May 2, 2012.

The COMELEC legally concluded that a candidate who has been physically absent from a locality for four out of the 12 months preceding the elections can never fulfill the residence requirement under Section 39 of the LGC.^[30]

The Court nonetheless did not agree. Instead, it held that although physical presence, along with *animus manendi et revertendi*, is an essential requirement for the acquisition of a domicile of choice, the law does not require that physical presence be unbroken. It added that the COMELEC should not have disregarded the following evidence showing specific acts performed by Dano one year before the elections, or by May 13, 2012, which clearly demonstrated her *animus manendi et revertendi*: 1) She made public her intention to run for the mayoralty position. In preparation for this aspiration, and in order to qualify for the position, she went through the reacquisition process under Republic Act No. 9225; 2) She started to reside in her ancestral home, and even obtained a CTC, during the first quarter of 2012; 3) She applied for voter's registration in Sevilla; and 4) She went back to the US to dispose of her properties located there.

It should have been apparent to the COMELEC that when Dano returned in the first quarter of 2012, it was for good; and that when she left for the US on May 10, 2012, it was for the sole purpose of confirming her permanent abandonment of her US domicile.[31]

In *Torayno Sr. v. COMELEC*,[32] where a sitting governor of Misamis Oriental in his third term vied for a mayoral seat for Cagayan De Oro City, a high urbanized city, the Court found Vicente Y. Emano (Emano) qualified to run for the position. The Court concurred in the findings of the COMELEC that Emano and his family had actually been residing in Capistrano Subdivision, Gusa, Cagayan de Oro City, in a house he had bought in 1973. Further, during the three terms (1988-1998) that he was governor of Misamis Oriental, he physically lived in that city, where the seat of the provincial government was located. In June 1997, he also registered as voter of the same city. These facts indubitably proved that Emano was a resident of Cagayan de Oro City for a period of time sufficient to qualify him to run for public office therein. More, the COMELEC did not find any bad faith on the part of Emano in his choice of residence.[33]

The Court disregarded therein petitioners' argument that since Cagayan de Oro City is a highly urbanized city, its voters cannot participate in the provincial elections. According to the Court, political subdivisions and voting restrictions, are simply for the purpose of parity in representation. At any rate, Cagayan de Oro City was once an integral part of Misamis Oriental and remains a geographical part of the province. Not only is it at the center of the province; more important, it is itself the seat of the provincial government. As a consequence, the provincial officials who carry out their functions in the city cannot avoid residing therein; much less, getting acquainted with its concerns and interests. Emano, having been the governor of Misamis Oriental for three terms and consequently residing in Cagayan de Oro City within that period, could not be said to be a stranger or newcomer to the city in the last year of his third term, when he decided to adopt it as his permanent place of residence. Emano was actually and physically residing in Cagayan de Oro City while discharging his duties as governor of Misamis Oriental. He owned a house in the city and resided there together with his family. He even paid his 1998 community tax and registered as a voter therein. For all intents and purposes of the Constitution and the law, he is a resident of Cagayan de Oro City and eligible to run for mayor thereof.[34]

True, the requirement of residency cannot be overemphasized. After all, it is rooted in the recognition that officials of districts or localities should not only be acquainted with the metes and bounds of their constituencies; importantly, they should know their constituencies and the unique circumstances of their constituents – their needs, difficulties, aspirations, potentials for growth and development, and all matters vital to their common welfare. Familiarity, or the opportunity to be familiar, with these circumstances can only come with residency in the constituency to be represented.[35] The minimum requirement for candidates' residency in the political unit they seek to represent, therefore, was never intended to be an empty formalistic condition. It carries with it a very specific purpose: to prevent strangers or newcomers who are wholly unacquainted with the conditions and needs of a community from seeking elective office in such community.[36]

To be sure, residency can readily be appreciated as a requirement that goes into the heart of our democratic system. It highlights the very purpose of representation – electing only those who can best serve the community because of their knowledge and sensitivity to its needs.[37]

Here, Pax Ali is no stranger to the Province of Sultan Kudarat as he grew up there and it is his domicile of origin. Too, he had physically been present in Purok Garden, Barangay Tamnag, Lutayan, Sultan Kudarat, and regularly going home to his residence therein since October 2020. The Punong Barangay of Tamnag, Lutayan, even attested that he regularly spoke with Pax Ali regarding the issues and concerns of the residents and how Pax Ali can help them.[38]

As the Court concluded in *Mitra*, we cannot also deny that the people of Sultan Kudarat have spoken in an election where residency qualification had been squarely raised and their voice has erased any doubt about their verdict on Pax Ali's qualifications.[39]

With the position I espouse in this case, I vote that there is no sufficient reason to revisit, much less, abandon, the second placer rule.

The Majority found Pax Ali to have made a false representation in his COC when he declared that he was resident of Lutayan, Sultan Kudarat for one year and eight months immediately before the day of the elections. He deliberately misrepresented that he was eligible for Governor of Sultan Kudarat when in fact he was not. As a result, the COMELEC denied due course or cancelled his COC.[40]

The Majority proceeded to discuss the effect of the denial of due course to or cancellation of the COC of Pax Ali and who would succeed him in the office. For the majority, the rejection of the second placer rule is supported by law and public policy. When a COC is denied due course or cancelled, a permanent vacancy occurs. Regardless of the nature of the proceedings, whether disqualification (under Sections 12 and 68 of the Omnibus Election Code [OEC] and Section 40 of the LGC), denial/cancellation of COC (under Section 78 of the OEC), or quo warranto (under Section 253 of the OEC), the second placer cannot be proclaimed as winner in lieu of the disqualified first-placer. Rather, the rules on succession under the Local Government Code shall apply in all cases where a permanent vacancy results from a local elective official's disqualification from office regardless of the proceedings involved.[41]

I respectfully disagree.

If a COC is denied due course or cancelled, then the person who filed such COC was never a candidate in the first place. The second placer, therefore, is considered as the qualified candidate who garnered the highest number of votes. We are guided by the leading case of *Jalosjos, Jr. v. COMELEC*: [42]

If the certificate of candidacy is void ab initio, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void ab initio is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void ab initio is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void ab initio. Otherwise, a certificate of candidacy void ab initio can operate to defeat one or more valid certificates of candidacy for the same position.[43]

Even then, the Court, speaking through then Senior Associate Justice Antonio T. Carpio clarified in the same case that decisions of this Court holding that the second placer cannot be proclaimed winner if the first placer is disqualified or declared ineligible should be limited to situations where the COC of the first placer was valid at

the time of filing but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy.[44]

Here, Pax Ali, a qualified candidate, garnered the most votes on election day and was proclaimed by the Provincial Board of Canvassers as the duly elected Governor of Sultan Kudarat. There is, therefore, no reason to revisit the second placer rule.

True, the abandonment of doctrines here — the Mitra et al. doctrine and the second placer rule, is wholly within the prerogative of the Court. Its own jurisprudential creation may, therefore, pursuant to its mandate to uphold and defend the Constitution, revoke it notwithstanding supervening events that render the subject of discussion moot.[45]

But the abandonment of doctrines is not without its limitations. Article 8 of the Civil Code states that judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. Although decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that laws shall have no retroactive effect unless the contrary is provided. This is expressed in the familiar legal maxim *lex prospicit, non respicit* — the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.[46] While the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as good law prior to its abandonment. Consequently, the people's reliance thereupon should be respected.[47]

Thus, the abandonment of the Mitra and second placer doctrines must be applied prospectively for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation.[48]

We are guided by *People v. Jabinal*[49] where the Court settled that when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

In *Carpio-Morales v. Court of Appeals*[50] the Court found no legal authority to sustain the condonation doctrine in this jurisdiction, it nonetheless clarified that the Court's abandonment of the condonation doctrine should be prospective in application. As explained in *De Castro v. Judicial Bar Council*,[51] judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation.

Too, in *Tañada v. Tuvera*,[52] the Court declared that presidential issuances of general application, which have not been published, shall have no force and effect. Without such notice and publication, there would be no basis for the application of the maxim "*ignorantia legis non excusat*." It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one.

In ruling so, the Court adopted the pragmatic and realistic course set forth in *Chicot County Drainage District v. Baxter Bank*,[53] thus:

The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects-with respect to particular

conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

Similarly, in this case, the implementation/enforcement of presidential decrees prior to their publication in the Official Gazette is "an operative fact which may have consequences which cannot be justly ignored. The past cannot always be erased by a new judicial declaration . . . that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified. (Emphasis in the original)

Meanwhile, a doctrine which is considered a good law until abandoned finds application in *Madreo v. Bayron*.^[54] In that case, Aldrin Madreo charged Lucilo Bayron (Lucilo) and Karl Bayron with the administrative offenses of grave misconduct, serious dishonesty; conduct unbecoming of a public officer and conduct prejudicial to the best interest of the service, docketed as OMB-L-A-13-0564; and criminal offenses of nepotism, perjury, falsification of public documents, and violation of Section 3(e) of Republic Act No. 3019, docketed as OMB-L-C-13-0500 before the Ombudsman. On May 8, 2015 and during the pendency of the proceedings in OMB-L-A-13-0564 and OMB-L-C-13-0500, a recall election was held for the position of city mayor of Puerto Princesa and Lucilo was proclaimed as the winner and duly elected mayor of Puerto Princesa City. On June 22, 2015, Lucilo, through his counsel, filed an Entry of Appearance with Motion to Dismiss, praying for the dismissal of the administrative complaint in light of his proclamation as the winner of the recall election. He asserted that re-election to office operates as a condonation of the officer's misconduct to the extent of cutting off the right to remove him therefrom. During the May 2016 local elections, and while the proceedings in OMB-L-A-13-0564 and OMB-L-C-13-0500 were ongoing, Lucilo was re-elected as mayor of Puerto Princesa City.^[55]

As to whether the condonation doctrine still applied to Lucilo's case, the Court clarified that the defense of condonation doctrine is no longer available if the public official's re-election happens on or after April 12, 2016. With the abandonment of the condonation doctrine in *Carpio-Morales*, which became final on April 12, 2016, any re-elections of public officials on said date and onwards no longer have the effect of condoning their previous misconduct. The Court ratiocinated:

In view of the foregoing disquisitions, the Court rules that the doctrine of condonation is applicable to the case of Lucilo by reason of his re-election, as the term is understood in the application of the doctrine, during the recall election on 8 May 2015. It is undisputed that Lucilo's re-election took place prior to the finality of *Carpio-Morales*, which abandoned the condonation doctrine, on 12 April 2016. Considering that the doctrine of condonation is still a good law at the time of his re-election in 2015, Lucilo can certainly use and rely on the said doctrine as a defense against the charges for prior administrative misconduct on the rationale that his re-election effectively obliterates all of his prior administrative misconduct, if any at all. Further, with his re-election on 8 May 2015, Lucilo already had the vested right, by reason of the doctrine of condonation, not to be removed from his office, which may not be deprived from him or be impaired by the subsequent abandonment in *Carpio-Morales* of the aforesaid doctrine, or by any new law, doctrine or Court ruling. Accordingly, his re-election on 8 May 2015 rendered moot and academic the administrative complaint filed against him on 22 November 2013 for misconduct allegedly committed on 1 July 2013, hence, must be dismissed.

The doctrine of condonation, however, cannot be extended to Lucilo's re-election during the May 2016 elections. By then, the doctrine had already been abandoned, and his re-election no longer had the effect of condoning his previous misconduct.

So must it be in the present case.

Thus, I vote to GRANT the petition of Pax Ali and reverse the Resolution dated January 18, 2022 of the COMELEC First Division and the Resolution dated May 2, 2022 of the COMELEC En Banc in SPA No. 21-078 (DC) and SPA No. 21-114 (DC).

Respectfully submitted.

[1] Draft ponencia, p. 13.

[2] Id. at 3.

[3] Id.

[4] Id. at 4.

[5] Id. at 3.

[6] Id. at 4-5.

[7] Id. at 14.

[8] See *Villafuerte v. Commission on Elections*, 728 Phil. 74 (2014) [Per J. Peralta, En Banc].

[9] See *Hyatt Elevators and Escalators Corp. v. Goldstar Elevators Phils., Inc.*, 510 Phil. 467 (2005) [Per J. Panganiban, Third Division], citing *Evangelista v. Santos*, 86 Phil. 387 (1950) [Per J. Reyes].

[10] See *Saludo, Jr. v. American Express International, Inc.*, 521 Phil. 585 (2006) [Per J. Callejo, Sr. First Division], citing *Papandayan, Jr. v. COMELEC*, 430 Phil. 754, 770 (2002) [Per J. Mendoza, En Banc].

[11] See *Limbona v. COMELEC*, 619 Phil. 226 (2009) [Per J. Nachura, En Banc].

[12] Id.

[13] Draft ponencia, p. 13.

[14] Id. at 3.

[15] Id.

[16] See 648 Phil. 165 (2010) [Per J. Brion, En Banc].

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] See *Reflections of J. Hernando*, p. 5.

[23] Draft ponencia, p. 5.

[24] See 596 Phil. 354 (2009) [Per J. Chico-Nazario, En Banc].

- [25] See 711 Phil. 414 (2013) [Per J. Perlas-Bernabe, En Banc].
- [26] See 686 Phil. 649 (2012) [Per J. Sereno, En Banc].
- [27] See 623 Phil. 628 (2009) [Per J. Leonardo-De Castro, En Banc].
- [28] See 318 Phil. 329 (1995) [Per J. Kapunan, En Banc].
- [29] See 794 Phil. 573 (2016) [Per C.J Sereno, En Banc].
- [30] Id.
- [31] Id.
- [32] See 392 Phil. 342 (2000) [Per J. Panganiban, En Banc].
- [33] Id.
- [34] Id.
- [35] See Jalover, et al., v. Osmeña and COMELEC, 743 Phil. 825 (2014) [Per J. Brion, En Banc].
- [36] See Torayno v. COMELEC, 392 Phil. 342 (2000) [Per J. Panganiban, En Banc].
- [37] See Mitra v. COMELEC, 648 Phil. 165 (2010) [Per J. Brion, En Banc].
- [38] Draft ponencia, p. 15.
- [39] See Mitra v. COMELEC, 648 Phil. 165 (2010) [Per J. Brion, En Banc].
- [40] Ponencia, p. 20.
- [41] Id. at 33.
- [42] See 696 Phil. 601 (2012) [Per J. Carpio, En Banc].
- [43] Id.
- [44] Id.
- [45] See Carpio-Morales v. Court of Appeals, 772 Phil. 672 (2015) [Per J. Perlas-Bernabe, En Banc].
- [46] See Gauvain v. Court of Appeals, 282 Phil. 530 (1992) [Per J. Gutierrez, Jr., Third Division].
- [47] See Carpio-Morales v. Court of Appeals, 772 Phil. 672 (2015) [Per J. Perlas-Bernabe, En Banc].
- [48] Id.
- [49] See 154 Phil. 565 (1974) [Per J. Antonio, Second Division].
- [50] See Carpio-Morales v. Court of Appeals, 772 Phil. 672 (2015) [Per J. Perlas-Bernabe, En Banc].
- [51] See 629 Phil. 629 (2010) [Per J. Bersamin, En Banc].
- [52] See 220 Phil. 422 (1985) [Per J. Escolin, En Banc].

[53] 308 U.S. 371, 374

[54] See 888 Phil. 768 (2020) [Per J. Delos Santos, En Banc].

[55] Id.

DISSENTING OPINION

LOPEZ, J., J.:

This Court faces an interesting question, as opened by the draft ponencia: "[d]oes an elected public official's incumbency and continuous discharge of his or her duties in a different locality preclude him or her from validly acquiring a new domicile of choice in another locality for purposes of satisfying the residency requirement under the Local Government Code?"[1]

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

An incumbent public official who continuously exercises the rights and duties of his or her office in the locality where he or she is elected cannot claim animus non-revertendi relative to such place and animus manendi in a different locality without making a mockery of the electorate who voted for him or her and deceiving the electorate of the new locality where he or she seeks a new election.

It is the height of absurdity to continue representing a locality/place as its local chief executive and at the same time declare under oath that you are a resident of another province, that is, that you are no longer a resident of the place where you are currently at the helm of the seat of power. A person cannot have two domiciles at the same time.[2] (Emphasis supplied, citation omitted)

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

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

Domicile of Origin is Easily Regained

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

Section 39. Qualifications. — (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the Sangguniang panlalawigan, Sangguniang panlungsod, or Sangguniang bayan, the district where he intends to be elected; a

resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other language or dialect. (Emphasis supplied)

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

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

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

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

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

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

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

First, Pax Ali's physical presence in Purok Garden, Tamnag, Lutayan Sultan Kudarat is supported by evidence on record. Pax Ali presented the Affidavit dated November 16, 2021 of Calicol M. Hadjiesmael, the Punong Barangay of Tamnag, Lutayan, Sultan Kudarat, confirming his (Pax Ali's) physical presence in Purok Garden since August 2020. The Affidavit further stated that the Punong Barangay regularly spoke with Pax Ali regarding the issues and concerns of the residents in their barangay and how he (Pax Ali) could help them. Pax Ali also submitted in evidence a Certificate of Residency issued by the Barangay Secretary of Tamnag and approved by the Punong Barangay indicating that Pax Ali "has been residing in the barangay since August 2020." In *Sabili*, the Court considered a barangay's certification of residence as evidence of therein petitioner's bodily presence in the locality in which he seeks election. Similarly, in *Mitra*, the Court noted that it is the business of the Punong Barangay to know who the residents are in his or her barangay.^[11]

Several neighbors of Pax Ali or those living near or adjacent to his house in Purok Garden also executed sworn statements attesting to his physical presence in the area starting August 2020. In *Jalosjos v. COMELEC*, the Court opined that the affidavits of next-door neighbors attesting to the physical presence of therein Pax Ali are more credible than the affidavits of other people who just sporadically passed by the subject residence.^[12] (Emphasis supplied, citation omitted)

This physical presence was supported by the fact that Pax Ali returned to his domicile of origin daily since October 2020.^[13] Further, the ponencia found that indeed, the domicile of origin of Pax Ali is in Sultan Kudarat, the province where he ran for governor:

Here, it is undisputed that Pax Ali's domicile of origin is at Purok Garden, Tamnag, Lutayan, Sultan Kudarat where he was raised in his family's ancestral home[.][14] (Emphasis supplied)

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

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

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

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

Domicile of origin is not easily lost. The underlying principle behind this rule is that domicile of origin is acquired at birth and is considered to have a strong adhesive character. The place where a person is born and raised typically shapes their core identity—their cultural values, social circles, family ties, and overall worldview are all influenced by this domicile of origin. More, there is often a psychological bond to one's place of origin that persists even after long absences. Thus, in the same way that a domicile of origin is not easily lost, it can easily be regained even if a domicile of choice was preferred by a person, especially if coupled with evidence of a positive act of a return to the domicile of origin, as in this case.

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

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

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

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

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

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

mayor.

If such office shall have been abandoned in order to evade the discharge of the duties of preventing, prosecuting or punishing any of the crime falling within Title One, and Chapter One of Title Three of Book Two of this Code, the offender shall be punished by prision correccional in its minimum and medium periods, and by arresto mayor if the purpose of such abandonment is to evade the duty of preventing, prosecuting or punishing any other crime.

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

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

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

. . . .

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

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

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

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

Pax Ali's incumbency therefore is only one of continuing status quo—continuing the existing state of affairs. It is being done especially considering the potential consequences of not continuing the faithful discharge of his duties. On the contrary, his actual and physical actions to revert his residency to his domicile of origin constitute a conscious and deliberate positive act that deserves respect. Pax Ali has been physically present in his domicile of origin at least since August 2020.^[21] Further, all of his personal belongings had already been returned to his home. Since October 2020, Pax Ali has been returning to Purok Garden daily and has only been away for work and official duties.^[22] Thus, at the point Pax Ali actually returned to his domicile of origin in Sultan Kudarat and regained it, his continuous discharge of the office of Mayor of DAS cannot negate his animus non revertendi in DAS. His non--resignation and non-abandonment of his position as Mayor of DAS, considering the potential consequences, is of less consequence as compared to his actions and intention to regain his domicile of origin. To stress, the domicile of origin, once lost, is easily regained.

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

Therefore, in instances where a person returns to his or her domicile of origin—supported by substantial evidence of regaining the domicile of origin—the continuous exercise of the rights and duties of his or her office in the locality, not the domicile of origin where he or she is elected by an official, does not negate the official's claim of

animus non revertendi relative to that locality. With a strong feeling of attachment to one's place of birth, it must be recognized that the domicile of origin is easily regained.

In this case, Pax Ali clearly made positive acts of returning to his domicile of origin. As even concluded by the ponencia, "Pax Ali's physical presence in Purok Garden, Tamnag, Lutayan Sultan Kudarat is supported by evidence on record." [23] Specifically, Pax Ali presented an affidavit from Calicol M. Hadjiesmael, the punong barangay of Tamnag, Lutayan, Sultan Kudarat, which confirmed his physical presence in Purok Garden since August 2020. It further stated that the punong barangay regularly discussed the issues and concerns of the residents with Pax Ali, seeking his assistance in addressing their needs. Additionally, Pax Ali submitted a certificate of residency issued by the barangay secretary of Tamnag, which was approved by the punong barangay. The certificate indicated that Pax Ali had been residing in the barangay since August 2020. Further, several neighbors of Pax Ali, or those living near or adjacent to his house in Purok Garden, also executed sworn statements attesting to his physical presence in the area from August 2020 onwards. [24]

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

On the First Qualified Placer Rule

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

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

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

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

(a)

Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b)

Those removed from office as a result of an administrative case;

(c)

Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d)

Those with dual citizenship;

(e)

Fugitives from justice in criminal or non-political cases here or abroad;

(f)

Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g)

The insane or feeble-minded. (Emphasis supplied)

Similarly, Section 12 of the OEC provides:

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

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

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

Section 68. Disqualifications. — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having [. . .] shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Emphasis supplied)

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

The practical consequence of this interpretation imposes upon the COMELEC an affirmative duty to enforce these

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is

disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void ab initio, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void ab initio is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void ab initio is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void ab initio. Otherwise, a certificate of candidacy void ab initio can operate to defeat one or more valid certificates of candidacy for the same position.[38] (Emphasis supplied, citation omitted)

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

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

....

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

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

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

The permanent vacancies referred to in Section 45 are those arising "when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office." In these situations, the vacancies were caused by those whose certificates of candidacy were valid at the time of the filing "but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment' that took effect, after the filing of the certificate of candidacy."

The rule on succession under Section 45, however, would not apply if the permanent vacancy was caused by one whose certificate of candidacy was void ab initio. Specifically with respect to dual citizens, their certificates of candidacy are void ab initio because they possess "a substantive [disqualifying circumstance]. . . [existing] prior to the filing of their certificate of candidacy." Legally, they should not even be considered candidates. The votes casted for them should be considered stray and should not be counted.[41] (Emphasis supplied, citations omitted)

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

In both *Jalosjos, Jr. v. Commission on Elections* and *Aratea v. Commission on Elections*, we proclaimed the second placer, the only qualified candidate who actually garnered the highest number of votes, for the position of Mayor. We found that since the certificate of candidacy of the candidate with the highest number of votes

was void ab initio, he was never a candidate at all, and all his votes were considered stray votes.

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

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

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

Even when the votes for the ineligible candidate are disregarded, the will of the electorate is still respected, and even more so. The votes cast in favor of an ineligible candidate do not constitute the sole and total expression of the sovereign voice. The votes cast in favor of eligible and legitimate candidates form part of that voice and must also be respected.[43]

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

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

Hence, if the First Qualified Placer is disregarded and succession rules found in the LGC are applied, the election contest for the specific electoral position is, in effect, disregarded and tossed to the side. Elevating the next person in the line of succession—a person who ran for a different office—would disregard the specific choices voters made for a specific office, for the Governorship in the present case. Applying the First Qualified Placer Rule more directly reflects the voters' intent for that office as it considers the election contest as valid and existing. It considers the voice of the electorate in choosing among the qualified and eligible candidates, upholding its legitimacy. It gives effect to the votes cast on election day. On the other hand, the application of succession rules

would tend to delegitimize the votes cast for the specific position as it would no longer even consider counting the valid votes cast for the Governorship contest. More, the successor was never even a direct choice for that position. The elevation of the successor over the First Qualified Placer overrides voter intent rather than preserving it.

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

[1] Ponencia, p. 1.

[2] Id. at 20.

[3] Ponencia, pp. 4-5, 14.

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

[5] Id. at 352-353.

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

[7] Id. at 768.

[8] Id.

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

[10] Id. at 372.

[11] Ponencia, p. 14.

[12] Id. at 14-15.

[13] Id. at 5.

[14] Id. at 13.

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

[16] Id. at 466.

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

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

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

[20] BLACK'S LAW DICTIONARY 27, 1280 (9[th] ed., 2009).

[21] Ponencia, p. 14.

[22] Id. at 4-5, 14.

[23] Id. at 14.

[24] Id. at 14-15.

[25] See LOCAL GOV'T CODE, secs. 44-46.

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

- [27] Id. at 1195.
- [28] *Maruhom v. COMELEC*, 611 Phil. 501, 516 (2009) [Per J. Chico-Nazario, En Banc].
- [29] *Miranda v. Abaya*, 370 Phil. 642, 658 (1999) [Per J. Melo, En Banc].
- [30] *Sinaca v. Mula*, 373 Phil. 896, 908 (1999) [Per C.J. Davide, Jr., En Banc].
- [31] *Monsale v. Nico*, 83 Phil. 758, 761 (1949) [Per J. Ozaeta, En Banc].
- [32] BLACK'S LAW DICTIONARY 1709 (9th ed., 2009).
- [33] Id.
- [34] See *Jalosjos, Jr. v. COMELEC*, 696 Phil. 601, 632 (2012) [Per J. Carpio, En Banc].
- [35] 709 Phil. 408 (2013) [Per C.J. Sereno, En Banc].
- [36] Id. at 447-448.
- [37] 696 Phil. 601 (2012) [Per J. Carpio, En Banc].
- [38] Id. at 633-634.
- [39] *Maquiling v. Commission on Elections*, 709 Phil. 408, 447-448 (2013) [Per C.J. Sereno, En Banc].
- [40] 783 Phil. 876 (2016) [Per J. Leonen, En Banc].
- [41] Id. at 899-900.
- [42] 779 Phil. 268 (2016) [Per J. Carpio, En Banc].
- [43] *Maquiling v. Commission on Elections*, 709 Phil. 408, 447 (2013) [Per C.J., Sereno, En Banc].
- [44] ROBERT A. DAHL, *ON DEMOCRACY* 37 (1998); ROBERT A. DAHL, *DEMOCRACY AND ITS CRITICS* 109 (1989)

SEPARATE CONCURRING AND DISSENTING OPINION

KHO, JR., J.:

The ponencia raised this question in the majority ruling in this case, to wit:

Does an elected public official's incumbency and continuous discharge of his or her duties in a different locality preclude him or her from validly acquiring a new domicile of choice in another locality for purposes of satisfying the residency requirement under the Local Government Code?

As a brief background, petitioner Datu Pax Ali S. Mangudadatu (Pax Ali), then incumbent Mayor of Datu Abdullah Sangki (DAS) in the province of Maguindanao, filed his Certificate of Candidacy (CoC) for Governor of the province of Sultan Kudarat in the 2022 National and Local Elections (NLE), wherein he declared that his period of residence in Sultan Kudarat up to election day is one year and eight months.[1]

Private respondents, namely: Sharifa Akeel Mangudadatu, who also filed a CoC for Governor of Sultan Kudarat; Azel Mangudadatu; and Bai Ali A. Untong, filed separate petitions with public respondent the Commission on Elections (COMELEC) to cancel or deny due course to Pax Ali's CoC alleging that he committed a material misrepresentation therein, particularly his residency qualification. Essentially, private respondents are claiming that Pax Ali could not have been a resident of Lutayan, Sultan Kudarat for at least one year immediately preceding election day because he was serving as mayor of DAS, Maguindanao, and was actively discharging his

duties as such.[2]

The COMELEC's First Division, which the COMELEC En Banc affirmed, ruled that Pax Ali materially misrepresented his residency in Lutayan, Sultan Kudarat because of Pax Ali's incumbency as mayor of DAS, Maguindanao.[3] In effect, the COMELEC ruled that Pax Ali cannot acquire a new residency in a locality while serving as mayor in another locality. Thus, Pax Ali elevated the matter to the Court.

To give further context regarding the above-posed question, it is well to stress that in *Limbona v. Commission on Elections*,[4] the Court explained that for purposes of election law, the question of residence or domicile is mainly one of intention. It is well established that a person has only one domicile at any given time, and that where once established it remains until a new one is acquired. In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile.[5]

Thus, to successfully effect a change of domicile, one must demonstrate an actual removal or an actual change of domicile; a bona fide intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose. In other words, there must be both *animus manendi* and *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.[6]

Given these, the ponencia answered the afore-described question by ruling that Pax Ali misrepresented his residency qualification and that COMELEC was correct in canceling his CoC as Governor for the Province of Sultan Kudarat. While I agree with the ponencia's finding that there is substantial evidence that Pax Ali had bodily or physical presence in Lutayan, Sultan Kudarat, I respectfully disagree with the ruling that Pax Ali's intention to remain at Lutayan, Sultan Kudarat for an indefinite period, and to abandon DAS, Maguindanao, are missing.[7] The ponencia advances the view that because Pax Ali is still a mayor in DAS when he filed his CoC for governor of Sultan Kudarat, his choice of residence is clear, that is, in DAS.[8]

Thus, I respectfully register this dissent, and consequently, submit that Pax Ali may obtain new residency in Lutayan, Sultan Kudarat. The quantum of evidence in election law is only substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,[9] even if other minds, equally reasonable, might conceivably opine otherwise.[10] In the hierarchy of evidentiary values, proof beyond reasonable doubt is placed at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order. Thus, in the hierarchy of evidence, substantial evidence is the least demanding.[11]

Taking in mind the quantum of evidence necessary to prove one's residency or domicile, I am of the opinion that Pax Ali was able to clearly establish his bodily or physical presence in Lutayan, Sultan Kudarat, as well as his intent to reacquire residency at his former residence for an indefinite period, and to abandon DAS, Maguindanao.

Intent is purely a mental act and for the court to know such intention, the court must look through overt acts of Pax Ali. Here, Pax Ali's physical presence in Lutayan since August 2020 is already established. To my mind, his physical presence in his former residence, is one of his overt acts to show his intent to return to it. In fact, affidavits are abound that starting in October 2020, Pax Ali started going back to Lutayan on daily basis after work. Thus, Pax Ali's efforts are already substantial enough to show his intention to re-acquire his former residence. Moreover, his transfer of his voter's registration in Lutayan on May 17, 2021 is another overt act to show his intent to reacquire his former residency. Thus, the requirements of physical presence in his former residence, intention to reacquire residency at his former residence and to abandon his previous residence were

established by Pax Ali by substantial evidence.

What is then the effect on the part of Pax Ali serving as mayor in DAS, Maguindanao in relation to his effort to transfer his residency to Lutayan, Sultan Kudarat? Should incumbent public officials be prevented from acquiring residency in a new locality while serving as public officials in another locality?

Being a high-ranking elected official, Pax Ali is aware that residency is a continuing requirement as a mayor. In fact, this incumbency as a mayor, as what the ponencia holds, is what prevents Pax Ali from acquiring a new residence in another locality. However, I offer a different view; the way I see it, Pax Ali's transferring his residence carries with it the risk of losing his position as a mayor.

It is true that one's residency is a question of fact. I therefore submit that considering that it is settled that a person can only have one residency or domicile at any given time and that residency of an elected public official is a continuing requirement, once an incumbent elected official make his intention to transfer his residence definitively unequivocal, he should be considered to have ipso facto resigned from his position.

For avoidance of doubt, I submit the adoption of the following rules:

- An incumbent elected official who transferred his or her voter's registration to another locality thereby violating the residency rule as a continuing requirement for his or her incumbency, shall be considered ipso facto resigned from his or her current position from the date when he or she filed his or her application for transfer of voter's registration – the overt act wherein he or she is deemed to have unequivocally transferred residency. Said elected official may be exposed to criminal, civil, and/or administrative liabilities, in case he or she continues to serve in his or her current position despite the approval of the transfer of his or her voter's registration.
- An incumbent elected official who filed his or her certificate of candidacy for an elected position in another locality without transferring his or her voter's registration shall be considered ipso facto resigned from his or her current position upon filing of his or her certificate of candidacy. Said elected official may be exposed to criminal, civil, and/or administrative liabilities, in case he or she continues to serve in his or her elected position despite filing of his or her certificate of candidacy in another locality.

Applying the foregoing rules to this case, it is submitted that Pax Ali is deemed ipso facto resigned from his position as Mayor of DAS, Maguindanao from the moment he filed his application for transfer of voter's registration to Lutayan, Sultan Kudarat.

On the issue on the second placer rule, I agree with the ponencia that the second placer rule has no basis in law and should be abandoned. I also agree that the rules on succession under the Local Government Code shall apply in situations where a permanent vacancy occurs as a consequence of the disqualification from office of a local elective official.

ACCORDINGLY, I VOTE to GRANT the petition.

[1] See ponencia, p. 2.

[2] Id. at 2-3.

[3] Id. at 5-6.

[4] 578 Phil. 364 (2008) [Per J. Ynares-Santiago, En Banc].

[5] Id. at 374. See also ponencia, p. 13.

[6] Ponencia, p. 13.

[7] Id., citations omitted.

[8] Id. at 14.

[9] Sabili v. Commission on Elections, 686 Phil. 649, 670-671 (2012) [Per J. Sereno, En Banc]. See also Rule 133, Section 6 of the Rules on Evidence, as amended.

[10] See Philippine Long Distance Telephone Co., Inc. v. Tiamson, 511 Phil. 384, 395 (2005) [Per J. Callejo, Sr., Second Division]; and JR Hauling Services v. Solamo, 886 Phil. 842, 859 (2020) [Per J. Hernando, Second Division].

[11] JR Hauling Services v. Solamo, 886 Phil. 842, 858-859 (2020) [Per J. Hernando, Second Division].

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