



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILS.  
MARIA LOURDES P. A. SERENO  
CHIEF JUSTICE

RECORDED  
OCT 30 2012  
BY: *[Signature]*  
TIME: *7:34*

EN BANC

**DOMINADOR G. JALOSJOS, JR.,**  
Petitioner,

**G.R. No. 193237**

- versus -

**COMMISSION ON ELECTIONS**  
**and AGAPITO J. CARDINO,**  
Respondents.

X ----- X

**AGAPITO J. CARDINO,**  
Petitioner,

**G.R. No. 193536**

Present:

SERENO, C.J.,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA, .  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES, and  
PERLAS-BERNABE, JJ.

- versus -

**DOMINADOR G. JALOSJOS, JR.,**  
**and COMMISSION ON ELECTIONS,**  
Respondents.

Promulgated:

**OCTOBER 09, 2012**

X ----- X

*[Signature]*  
*[Signature]*

## DECISION

### CARPIO, J.:

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

### The Facts

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

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<sup>1</sup> Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

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

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

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

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

As backgrounder, [Jalosjos] and three (3) others were accused of the crime of robbery on January 22, 1969 in Cebu City. On April 30, 1970, Judge Francisco Ro. Cupin of the then Circuit Criminal Court of Cebu City found him and his co-accused guilty of robbery and sentenced them to suffer the penalty of prision correccional minimum to prision mayor maximum. [Jalosjos] appealed this decision to the Court of Appeals but his appeal was dismissed on August 9, 1973. It was only after a lapse of several years or more specifically on June 17, 1985 that [Jalosjos] filed a Petition for Probation before the RTC Branch 18 of Cebu City which was granted by the court. But then, on motion filed by his Probation Officer, [Jalosjos'] probation was revoked by the RTC Cebu City on March 19, 1987 and the corresponding warrant for his arrest was issued. Surprisingly, on December 19, 2003, Parole and Probation Administrator Gregorio F. Bacolod issued a Certification attesting that respondent Jalosjos, Jr., had already fulfilled the terms and conditions of his probation. This Certification was the one used by respondent Jalosjos to secure the dismissal of the disqualification case filed against him by Adasa in 2004, docketed as SPA No. 04-235.

This prompted [Cardino] to call the attention of the Commission on the decision of the Sandiganbayan dated September 29, 2008 finding Gregorio F. Bacolod, former Administrator of the Parole and Probation Administration, guilty of violating Section 3(e) of R.A. 3019 for issuing a

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

falsified Certification on December 19, 2003 attesting to the fact that respondent Jalosjos had fully complied with the terms and conditions of his probation. A portion of the decision of the Sandiganbayan is quoted hereunder:

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

### **The COMELEC's Rulings**

On 10 May 2010, the COMELEC First Division granted Cardino's petition and cancelled Jalosjos' certificate of candidacy. The COMELEC First Division concluded that "Jalosjos has indeed committed material misrepresentation in his certificate of candidacy when he declared, under oath, that he is eligible for the office he seeks to be elected to when in fact he is not by reason of a final judgment in a criminal case, the sentence of which he has not yet served."<sup>6</sup> The COMELEC First Division found that Jalosjos' certificate of compliance of probation was fraudulently issued; thus, Jalosjos has not yet served his sentence. The penalty imposed on Jalosjos was the indeterminate sentence of one year, eight months and twenty days of *prisión correccional* as minimum, to four years, two months

<sup>5</sup> *Rollo* (G.R. No. 193237), pp. 50-51.

<sup>6</sup> *Id.* at 46; *rollo* (G.R. No. 193536), p. 35.

and one day of *prisión mayor* as maximum. The COMELEC First Division ruled that Jalosjos “is not eligible by reason of his disqualification as provided for in Section 40(a) of Republic Act No. 7160.”<sup>7</sup>

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

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

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

SO ORDERED.<sup>8</sup>

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

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

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

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<sup>7</sup> Id. at 47; id. at 36.

<sup>8</sup> Id. at 55-56; id. at 27-28.

<sup>9</sup> *Rollo* (G.R. No. 193237), p. 360.

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

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

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

### **The Issues**

In G.R. No. 193237, Jalosjos argues that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it (1) ruled that Jalosjos’ probation was revoked; (2) ruled that Jalosjos was disqualified to run as candidate for Mayor of Dapitan City, Zamboanga del Norte; and (3) cancelled Jalosjos’ certificate of candidacy without making a finding that Jalosjos committed a deliberate misrepresentation as to his

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<sup>10</sup> Id. at 373-393.

<sup>11</sup> *Rollo* (G.R. No. 193536), p. 178.

<sup>12</sup> Id. at 215.

<sup>13</sup> Id. at 218.

qualifications, as Jalosjos relied in good faith upon a previous COMELEC decision declaring him eligible for the same position from which he is now being ousted. Finally, the Resolutions dated 10 May 2010 and 11 August 2010 were issued in violation of the COMELEC Rules of Procedure.

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

### **This Court's Ruling**

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

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

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

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

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

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

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



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

Section 40, Local Government Code:

Sec. 40. *Disqualifications.* - The following persons are disqualified from running for any elective local position:

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

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

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

(d) Those with dual citizenship;

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

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

(g) The insane or feeble-minded.

Section 12, Omnibus Election Code:

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

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

Section 68, Omnibus Election Code:

Sec. 68. *Disqualifications.* — Any candidate who, in an action or protest in which he is a party is **declared by final decision by a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6,** shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

Revised Penal Code:

Art. 27. *Reclusion perpetua.* — x x x

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

x x x x

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

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

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

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

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

1. **The deprivation of the office**, employment, profession or calling affected.

2. The disqualification for holding similar offices or employments either perpetually or during the term of the sentence, according to the extent of such disqualification.

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

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

**The penalty of *prisión mayor* automatically carries with it, by operation of law,<sup>15</sup> the accessory penalties of temporary absolute disqualification and perpetual special disqualification.** Under Article 30 of the Revised Penal Code, temporary absolute disqualification produces the effect of “deprivation of the right to vote in any election for any popular elective office *or to be elected to such office.*” The duration of the temporary absolute disqualification is the same as that of the principal penalty. On the other hand, under Article 32 of the Revised Penal Code **perpetual special disqualification** means that “**the offender shall not be permitted to hold**

<sup>15</sup> *People v. Silvallana*, 61 Phil. 636 (1935).

**any public office during the period of his disqualification,” which is perpetually.** Both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. **A person suffering from these ineligibilities is ineligible to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run.**

In *Lacuna v. Abes*,<sup>16</sup> the Court, speaking through Justice J.B.L. Reyes, explained the import of the accessory penalty of **perpetual special disqualification**:

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

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

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

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

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133 Phil. 770, 773-774 (1968).

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

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

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

**Perpetual special disqualification** is a ground for a petition under Section 78 of the Omnibus Election Code because this accessory penalty is an ineligibility, which means that the convict is not eligible to run for public office, contrary to the statement that Section 74 requires him to state under oath. As used in Section 74, the word “eligible” means having the right to

run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for public office. As this Court held in *Fermin v. Commission on Elections*,<sup>17</sup> the false material representation may refer to **“qualifications or eligibility.”** One who suffers from perpetual special disqualification is ineligible to run for public office. If a person suffering from perpetual special disqualification files a certificate of candidacy stating under oath that “he is eligible to run for (public) office,” **as expressly required under Section 74**, then he clearly makes a **false material representation** that is a ground for a petition under Section 78. As this Court explained in *Fermin*:

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

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

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<sup>17</sup> G.R. Nos. 179695 and 182369, 18 December 2008, 574 SCRA 782.

<sup>18</sup> Id. at 792-794.

Sec. 68. *Disqualifications*. — Any candidate who, in an action or protest in which he is a party is declared by final decision by a competent court guilty of, or found by the Commission of having **(a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6,** shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Emphasis supplied)

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

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

A candidate for mayor during the 2010 local elections certifies under oath four statements: (1) a statement that the candidate is a natural born or naturalized Filipino citizen; (2) a statement that the candidate is not a

<sup>19</sup> 442 Phil. 139, 177-178 (2002).

permanent resident of, or immigrant to, a foreign country; (3) **a statement that the candidate is eligible for the office he seeks election**; and (4) a statement of the candidate's allegiance to the Constitution of the Republic of the Philippines.<sup>20</sup>

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

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

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<sup>20</sup>

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



The COMELEC properly cancelled Jalosjos' certificate of candidacy. A void certificate of candidacy on the ground of ineligibility that existed at the time of the filing of the certificate of candidacy can never give rise to a valid candidacy, and much less to valid votes.<sup>21</sup> Jalosjos' certificate of candidacy was cancelled because he was ineligible from the start to run for Mayor. Whether his certificate of candidacy is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a valid candidate from the very beginning, his certificate of candidacy being void *ab initio*. Jalosjos' ineligibility existed on the day he filed his certificate of candidacy, and the cancellation of his certificate of candidacy retroacted to the day he filed it. Thus, Cardino ran unopposed. There was only one qualified candidate for Mayor in the May 2010 elections – Cardino – who received the highest number of votes.

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible<sup>22</sup> 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.<sup>23</sup> If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate

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

<sup>22</sup> *Aquino v. Commission on Elections*, 318 Phil. 467 (1995); *Labo, Jr. v. Commission on Elections*, 257 Phil. 1 (1989).

<sup>23</sup> *Cayat v. Commission on Elections*, G.R. Nos. 163776 and 165736, 24 April 2007, 522 SCRA 23.

should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void *ab initio*. Otherwise, a certificate of candidacy void *ab initio* can operate to defeat one or more valid certificates of candidacy for the same position.

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

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

To allow the COMELEC to wait for a person to file a petition to cancel the certificate of candidacy of one suffering from perpetual special

<sup>24</sup> CONSTITUTION, Art. IX-C, Sec. 2(1).

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

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

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

**SO ORDERED.**

  
**ANTONIO T. CARPIO**  
Associate Justice

## WE CONCUR:

*Maria Lourdes P. A. Sereno*  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice

*I join the dissent of J. B. Reyes*  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice

*No part due to prior participation in a related case: Directa Simacho de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
 Associate Justice

*See my Dissenting Opinion*  
*Arturo D. Brion*  
**ARTURO D. BRION**  
 Associate Justice

*No part due to prior participation in a related case.*  
*Diosdado M. Peralta*  
**DIOSDADO M. PERALTA**  
 Associate Justice

*Please see Concurring Opinion*

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
 Associate Justice

*Mariano C. Del Castillo*  
**MARIANO C. DEL CASTILLO**  
 Associate Justice

*Roberto A. Abad*  
**ROBERTO A. ABAD**  
 Associate Justice

*Martin S. Villarama, Jr.*  
**MARTIN S. VILLARAMA, JR.**  
 Associate Justice

*Jose Portugal Perez*  
**JOSE PORTUGAL PEREZ**  
 Associate Justice

*Jose C. Mendoza*  
**JOSE C. MENDOZA**  
 Associate Justice


*with my dissenting  
opinion*

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice