

**G.R. No. 193237 - Dominador G. Jalosjos, Jr., *petitioner* v. Commission on Elections and Agapito J. Cardino; and G.R. No. 193536 - Agapito J. Cardino, *petitioner* v. Dominador G. Jalosjos, Jr. and the Commission on Elections, *respondents*.**

Promulgated:

OCTOBER 09, 2012

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### **DISSENTING OPINION**

**BRION, J.:**

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

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

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

On the very day of the election, the **COMELEC resolved to grant Cardino's petition and ordered the cancellation of Jalosjos' CoC.** The

COMELEC ruled that the rules on succession would then apply. Both Cardino and Jalosjos came to the Court for redress.

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

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

I point out in this Dissenting Opinion, as I did in the cases of *Mayor Barbara Ruby C. Talaga v. Commission on Elections, et al.*<sup>1</sup> and *Efren Racel Aratea v. Commission on Elections, et al.*,<sup>2</sup> that this case is best resolved through an analytical approach that starts from a consideration of the nature of a CoC; the distinctions between eligibility or lack of it and disqualification; the effects of cancellation and disqualification; and the applicable remedies.

***The CoC and the Qualifications  
for its Filing.***

As I discussed in *Talaga* and *Aratea*, a basic rule and one that cannot be repeated often enough is that the CoC is the document that creates the

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<sup>1</sup> G.R. Nos. 196804 and 197015.

<sup>2</sup> G.R. No. 195229.

status of a candidate. In *Sinaca v. Mula*,<sup>3</sup> the Court described the nature of a CoC as follows –

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

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

Under Section 79 of the OEC, a political aspirant legally becomes a “candidate” only upon the due filing of his sworn CoC.<sup>5</sup> In fact, Section 73 of the OEC makes the filing of the CoC a condition *sine qua non* for a person to “be eligible for any elective public office”<sup>6</sup> – *i.e.*, to be validly

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<sup>3</sup> 373 Phil. 896, 908 (1999).

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

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

<sup>6</sup> Section 73 of the OEC reads:

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

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

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

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

voted for in the elections. Section 76 of the OEC makes it a “ministerial duty” for a COMELEC official “to receive and acknowledge receipt of the certificate of candidacy”<sup>7</sup> filed.

COMELEC Resolution No. 8678 provides what a CoC must contain or state:<sup>8</sup>

Section 2. *Contents of certificate of candidacy.* - The certificate of candidacy shall be under oath and shall state that the person filing it is announcing his candidacy for the office and constituency stated therein; that he is eligible for said office, his age, sex, civil status, place and date of birth, his citizenship, whether natural-born or naturalized; the registered political party to which he belongs; if married, the full name of the spouse; his legal residence, giving the exact address, the precinct number, barangay, city or municipality and province where he is registered voter; his post office address for election purposes; his profession or occupation or employment; that he is not a permanent resident or an immigrant to a foreign country; that he will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, decrees, resolution, rules

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

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

<sup>7</sup> See *Cipriano v. Commission on Elections*, 479 Phil. 677, 689 (2004).

<sup>8</sup> The statutory basis is Section 74 of the OEC which provides:

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

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: *Provided, That* when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

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

and regulations promulgated and issued by the duly-constituted authorities; that he assumes the foregoing obligations voluntarily without mental reservation or purpose of evasion; and that the facts stated in the certificate are true and correct to the best of his own knowledge. [italics supplied]

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

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

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

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

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

Notably, Section 74 of the OEC does not require any negative qualification except only as expressly required therein. A specific negative

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

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

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

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

To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further

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<sup>9</sup> *Miranda v. Abaya*, 370 Phil. 642, 658 (1999). See also *Bautista v. Commission on Elections*, 359 Phil. 1 (1998).

<sup>10</sup> Section 13 of R.A. No. 9369, COMELEC Resolution No. 8678 and Section 78 of OEC.

<sup>11</sup> 1987 Constitution, Article II, Section 26.

<sup>12</sup> See *Pamatong v. Commission on Elections*, G.R. No. 161872, April 13, 2004, 427 SCRA 96, 100-103.

competition because of violation of the rules.<sup>13</sup> It is in these senses that the term is understood in our election laws.

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

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

Sections 68 and 12 of the OEC (together with Section 40 of LGC 1991, outlined below) cover the following as traits, characteristics or acts of disqualification: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv)

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<sup>13</sup> Merriam-Webster's 11<sup>th</sup> Collegiate Dictionary, p. 655.

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

declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

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

- 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.

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

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

To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish



to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts applicable to specific individuals that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate's CoC.

When the law allows the **cancellation of a candidate's CoC**, the law considers the cancellation **from the point of view of those positive requirements that every citizen who wishes to run for office must commonly satisfy**. Since the elements of "eligibility" are common, the vice of ineligibility attaches to and affects both the candidate *and* his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the "eligibility" requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.

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

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

*As to the grounds:*

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

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

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

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

<sup>16</sup> See Section 7 of R.A. No. 6646.

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

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

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

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

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

Thus, in addition to the failure to satisfy or comply with the eligibility requirements, a material misrepresentation must be present in a cancellation of CoC situation. The law apparently does not allow material divergence

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

<sup>19</sup> *Supra*, at 386-389.

from the listed requirements to qualify for candidacy and enforces its edict by requiring positive representation of compliance under oath. Significantly, where disqualification is involved, the mere existence of a ground appears sufficient and a material representation assumes no relevance.

*As to the period for filing:*

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

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

*As to the effects of a successful suit:*

A candidate whose CoC was **denied due course or cancelled** is not considered a candidate at all. Note that the law fixes the period within

<sup>20</sup> *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760, 765-766.

<sup>21</sup> Section 5(a) of R.A. No. 6646.

<sup>22</sup> Section 4(B) of COMELEC Resolution No. 8696 reads:

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

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

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

<sup>23</sup> Section 253 of the OEC.

which a CoC may be filed.<sup>24</sup> After this period, generally no other person may join the election contest. A notable exception to this general rule is the rule on substitution. The application of the exception, however, presupposes a valid CoC. Unavoidably, a “candidate” **whose CoC has been cancelled or denied due course cannot be substituted for lack of a CoC**, to all intents and purposes.<sup>25</sup> Similarly, a successful *quo warranto* suit results in the ouster of an already elected official from office; substitution, for obvious reasons, can no longer apply.

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

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

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

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

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

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<sup>24</sup> Section 15 of R.A. No. 9369.

<sup>25</sup> *Miranda v. Abaya*, *supra* note 9, at 658-660.

<sup>26</sup> Section 77 of the OEC expressly allows substitution of a candidate who is “disqualified for any cause.”

<sup>27</sup> *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 424.

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

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

***Application of Above Rulings  
and Principles to the Case.***

While it is apparent from the undisputed facts that Cardino did indeed file a petition for denial and/or the cancellation of Jalosjos’ CoC, it is obvious as well, based on the above discussions, that the ground he cited was **not appropriate for the cancellation of Jalosjos’ CoC but for his disqualification**. Conviction for a crime involving moral turpitude is expressly a ground for disqualification under Section 12 of the OEC. **As a**

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

<sup>29</sup> *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

**ground, it applies only to Jalosjos; it is not a standard of eligibility that applies to all citizens who may be minded to run for a local political position; its non-possession is not a negative qualification that must be asserted in the CoC.** Hence, there can be no doubt that what Cardino filed was effectively a petition for disqualification. This conclusion, of course, follows the rule that the nature of a petition is determined not by its title or by its prayers, but by the acts alleged as basis for the petition.

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

**ARTURO D. BRION**

Associate Justice

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<sup>30</sup> See: discussions at pp. 14-15.

<sup>31</sup> Section 6 of R.A. No. 6646.