

G.R. No. 195229 – Efren Racel Aratea, *petitioner* -versus- The Commission on Elections and Estela D. Antipolo, *respondents*.

Promulgated:

OCTOBER 09, 2012

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DISSENTING OPINION

BRION, J.:

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

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

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

Lonzanida moved for the reconsideration of the ruling, which motion under the Rules of the COMELEC was elevated to the COMELEC *en banc*.

¹ Rollo, p. 35.

² *Id.* at 49-59.

The motion was not resolved before elections and on May 10, 2010, Lonzanida received the highest number of votes for the mayoralty post, while petitioner Efren Racel Aratea won the vice mayoralty position; they were duly proclaimed winners.³

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

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

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

On January 12, 2011, the COMELEC *en banc* issued an Order granting Antipolo's motion for leave to intervene. In its February 2, 2012 Resolution, the COMELEC *en banc* granted Antipolo's petition in intervention; declared null and void Lonzanida's proclamation; ordered the

³ *Id.* at 93.

⁴ *Id.* at 96-97.

⁵ *Id.* at 64-66.

⁶ *Id.* at 71-72.

constitution of a special Municipal Board of Canvassers to proclaim Antipolo as the duly elected Mayor; and ordered Aratea to cease and desist from discharging the functions of Mayor of San Antonio, Zambales. This gave rise to the present petition.

The Issues

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

- (1) What is the nature of the petition filed by Dr. Rodolfo before the COMELEC;
- (2) Did the COMELEC correctly dispose the case in accordance with the nature of the petition filed;
- (3) Who should be proclaimed as Mayor of San Antonio, Zambales – the “second placer” or the duly elected Vice-Mayor?

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

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

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G.R. No. 196804.

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

A basic rule and one that cannot be repeated often enough is that the CoC is the document that creates the status of a candidate. In *Sinaca v. Mula*,⁸ 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*).⁹

Under Section 79 of the OEC, a political aspirant legally becomes a “candidate” only upon the due filing of his sworn CoC.¹⁰ 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”¹¹ – *i.e.*, to be validly

⁸ 373 Phil. 896, 908 (1999).

⁹ Prior to these laws, the applicable laws were the Revised Administrative Code of 1917, R.A. No. 2264 (An Act Amending the Laws Governing Local Governments by Increasing Their Autonomy and Reorganizing Provincial Governments); and B.P. Blg. 52 (An Act Governing the Election of Local Government Officials).

¹⁰ See, however, Section 15 of R.A. No. 8436, as amended. *Penera v. Commission on Elections*, G.R. No. 181613, November 25, 2009, 605 SCRA 574, 581-586, citing *Lanot v. COMELEC*, G.R. No. 164858, November 16, 2006, 507 SCRA 114.

¹¹ Section 73 of B.P. Blg. 881 reads:

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

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

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

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”¹² filed.

COMELEC Resolution No. 8678 provides what a CoC must contain or state:¹³

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;

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

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

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

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

¹³ The statutory basis is Section 74 of B.P. Blg. 881 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.

his post office address for election purposes; his profession or occupation or employment; that he is not a permanent resident or an immigrant to a foreign country; that he will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, decrees, resolution, rules and regulations promulgated and issued by the duly-constituted authorities; that he assumes the foregoing obligations voluntarily without mental reservation or purpose of evasion; and that the facts stated in the certificate are true and correct to the best of his own knowledge. [italics supplied]

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

Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by [any] 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. Notably, Section 74 does not *require* a would-be candidate to state that he has *not* served for three consecutive terms in the same elective position immediately prior to the present elections.**

With the accomplishment of the CoC and its filing, a political aspirant officially acquires the status of a candidate and, at the very least, the prospect of holding public office; he, too, formally opens himself up to the complex political environment and processes. The Court cannot be more emphatic in holding “that **the importance of a valid certificate of candidacy rests at the very core of the electoral process.**”¹⁴

Pertinent laws¹⁵ 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,”¹⁶ bearing in mind that the limitations on the privilege to seek public office are within the plenary power of Congress to provide.¹⁷

¹⁴ *Miranda v. Abaya*, 370 Phil. 642, 658 (1999). See also *Bautista v. Commission on Elections*, 359 Phil. 1 (1998).

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

¹⁶ 1987 Constitution, Article II, Section 26.

¹⁷ See *Pamatong v. Commission on Elections*, G.R. No. 161872, April 13, 2004, 427 SCRA 96, 100-103.

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

To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules.¹⁸ It is in these senses that the term is understood in our election laws.

Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens (Section 74 of the OEC) may be **deprived of the right to be a candidate 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*. Notably, **the breach of the three-term limit** is a trait or condition that can possibly apply *only* to those who have previously served for three consecutive terms in the same position sought immediately prior to the present elections.

In a disqualification situation, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC.¹⁹

Sections 68 and 12 of the OEC (together with Section 40 of LGC 1991, outlined below) cover the following as traits, characteristics or acts of disqualification: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting,

¹⁸ Merriam-Webster's 11th Collegiate Dictionary, p. 655.

¹⁹ If at all, only two grounds for disqualification under the Local Government Code *may* as well be considered for the cancellation of a CoC, viz.: those with dual citizenship and permanent residence in a foreign country, or those who have acquired the right to reside abroad and continue to avail of the same right after January 1, 1992. It may be argued that these two disqualifying grounds likewise go into the eligibility requirement of a candidate, as stated under oath by a candidate in his CoC.

receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

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

- 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.

While the violation of the three-term rule is properly a ground for disqualification, it is a unique ground, constitutionally anchored at that, that sets it apart from and creates a distinction even from the ordinary grounds of disqualification. The succeeding discussions incorporate these intra-disqualification distinctions on the grounds for disqualification, which in

sum refer to (i) the period to file a petition and (ii) capability of substitution and (iii) on the application of the doctrine of rejection of second placer and the doctrine's exceptions.

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

The nature of the eligibility requirements for a local elective office and the disqualifications that may apply to candidates necessarily create distinctions on the remedies available, on the effects of lack of eligibility and 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;²⁰ the governing provisions are *Sections 78 and 69 of the OEC*.²¹

In a **disqualification case**, as mentioned above, the grounds are traits, conditions, characteristics or acts of disqualification,²² individually applicable to a candidate, as provided under Sections 68 and 12 of B.P. Blg.

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

²¹ See Section 7 of R.A. No. 6646.

²² Sections 68 and 12 of B.P. Blg. 881 cover these acts: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) over spending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

881; Section 40 of LGC 1991; and, as discussed below, Section 8, Article X of the Constitution. As previously discussed, the grounds for disqualification are different from, and have nothing to do with, a candidate's CoC although they may result in disqualification from candidacy whose immediate effect **upon finality before the elections** is the same as a cancellation. If they are cited in a petition filed before the elections, they remain as disqualification grounds and carry effects that are distinctly peculiar to disqualification.

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

The only difference between the two proceedings is that, under section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for *quo warranto* under section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under section 253, a candidate is ineligible if he is disqualified to be elected to office, and he is disqualified if he lacks any of the qualifications for elective office.²³

Note that the question of what would constitute acts of disqualification – under Sections 68 and 12 of the OEC and Section 40 of LGC 1991 – is best resolved by directly referring to the provisions involved. On the other hand, what constitutes a violation of the three-term limit rule under the Constitution has been clarified in our case law.²⁴ The approach is

²³ *Salcedo II v. COMELEC*, 371 Phil. 377, 387 (1999), citing *Aznar v. Commission on Elections*, 185 SCRA 703 (1990).

²⁴ *Lonzanida v. Commission on Elections*, G.R. No. 135150, July 28, 1999, 311 SCRA 602; *Borja, Jr. v. Commission on Elections*, 295 Phil. 157 (1998); *Socrates v. COMELEC*, 440 Phil. 107 (2002); *Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601; *Montebon v. Commission on Elections*, G.R. No. 180444, April 9, 2008, 551 SCRA 50; and *Aldovino, Jr. v. Commission on Elections*, G.R. No. 184836, December 23, 2009, 609 SCRA 234..

not as straight forward in a petition to deny due course to or cancel a CoC and also to a quo warranto petition, which similarly covers the ineligibility of a candidate/elected official. In *Salcedo II v. COMELEC*,²⁵ we ruled that –

[I]n order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the **false representation** mentioned therein pertain to a **material matter** for the sanction imposed by 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 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)

²⁵ *Supra* note 23, at 386-389.

days from the filing of the CoC.²⁶ However, if the petition is brought under **Section 69** of the same law, the petition must be filed within five (5) days from the last day of filing the CoC.²⁷

On the other hand, the period to file a **disqualification case** is at any time before the proclamation of a winning candidate, as provided in COMELEC Resolution No. 8696.²⁸ **The three-term limit disqualification, because of its unique characteristics, does not strictly follow this time limitation and is discussed at length below.** At the very least, it should follow the temporal limitations of a *quo warranto* petition which must be filed within ten (10) days from proclamation.²⁹ The constitutional nature of the violation, however, argues against the application of this time requirement; the *rationale* for the rule and the role of the Constitution in the country's legal order dictate that a petition should be allowed while a consecutive fourth-termers is in office.

As to the effects of a successful suit:

A candidate whose CoC was **denied due course or cancelled** is not considered a candidate at all. Note that the law fixes the period within which a CoC may be filed.³⁰ After this period, generally no other person may join the election contest. A notable exception to this general rule is the

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

²⁷ Section 5(a) of R.A. No. 6646.

²⁸ Section 4(B) of COMELEC Resolution No. 8696 reads:

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

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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[.]

²⁹ Section 253 of the OEC.

³⁰ Section 15 of R.A. No. 9369.

rule on substitution. The application of the exception, however, presupposes a valid CoC. Unavoidably, a “candidate” **whose CoC has been cancelled or denied due course cannot be substituted for lack of a CoC**, to all intents and purposes.³¹ Similarly, a successful *quo warranto* suit results in the ouster of an already elected official from office; substitution, for obvious reasons, can no longer apply.

On the other hand, a candidate who was **simply disqualified** is merely prohibited from continuing as a candidate or from assuming or continuing to assume the functions of the office; substitution can thus take place under the terms of Section 77 of the OEC.³² **However, a three-term candidate with a valid and subsisting CoC cannot be substituted if the basis of the substitution is his disqualification on account of his three-term limitation. Disqualification that is based on a breach of the three-term limit rule cannot be invoked as this disqualification can only take place after election where the three-term official emerged as winner.** As in a *quo warranto*, any substitution is too late at this point.

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

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

To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under such circumstances.³³

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

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

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

With the disqualification of the winning candidate and the application of the doctrine of rejection of the second placer, the **rules on succession** under the law accordingly apply.

As an **exceptional situation**, however, the candidate with the second highest number of votes (*second placer*) may be validly proclaimed as the winner in the elections should the winning candidate be **disqualified** by final judgment **before the elections**, as clearly provided in Section 6 of R.A. No. 6646.³⁴ 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.³⁵

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

Violation of the three-term limit rule

a. The Three-Term Limit Rule.

³⁴ *Cayat v. Commission on Elections*, G.R. Nos. 163776 and 165736, April 24, 2007, 522 SCRA 23, 43-47; Section 6 of R.A. No. 6646.

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

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

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

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

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

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

for candidacy since that disqualifying trait began to exist only later under the 1987 Constitution.

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

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

Another reason, and an equally weighty one, is that a shortcut would run counter to **the concept of commonality that characterizes the eligibility requirements**; it would allow the introduction of an element that does not apply to all citizens as an entry qualification. Viewed from the prism of the general distinctions between eligibility and disqualification discussed above, the three-term limit is unavoidably a restriction that applies only to local officials who have served for three consecutive terms, not to all

would-be candidates at large; it applies only to *specific individuals* who may have otherwise been eligible if not for the three-term limit rule and is thus a defect that attaches only to the candidate. In this sense, it cannot but be a disqualification and at that, a very specific one.

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

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

c. Filing of Petition and Effects.

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

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

has won on the theory that it is at that point that the Constitution demands a bar?

The timing of the filing of the petition for disqualification is a matter of procedure that primarily rests with the COMELEC. Of course, a petition for disqualification cannot be filed against one who is not yet a candidate as only candidates (and winners) can be disqualified. Hence, the filing should be done after the filing of the CoC. On the matter of the time limitations of its filing, I believe that the petition does not need to be hobbled by the terms of COMELEC Resolution No. 8696³⁷ because of the **special nature and characteristics of the three-term limit rule** – *i.e.*, the constitutional breach involved; the fact that it can be effective only after a candidate has won the election; and the lack of specific provision of the election laws covering it.

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

From the point of view of eligibility, one who merely seeks to hold public office through a valid candidacy cannot wholly be treated in the same manner as one who has won and is at the point of assuming or serving the office to which he was elected; the requirements **to be eligible as a candidate** are defined by the election laws and by the local government code, but beyond these are **constitutional restrictions on eligibility to serve**. The three-term limit rule serves as the best example of this fine distinction; a local official who is allowed to be a candidate under our statutes but who is effectively in his fourth term should be considered *ineligible to serve* if the Court were to give life to the constitutional

³⁷ *Supra* note 28.

provision, couched in a strong prohibitory language, that “no such official shall serve for more than three consecutive terms.”

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

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

Unlike in an ordinary disqualification case (where a disqualification by final judgment before the elections against the victorious but disqualified candidate can catapult the second placer into office) and in a cancellation case (where the judgment, regardless of when it became final, against the victorious candidate with an invalid CoC similarly gives the “second placer” a right to assume office), a disqualification based on a violation of the three-term limit rule sets up a very high bar against the second placer unless he can clearly and convincingly show that the electorate had deliberately and knowingly misapplied their votes.

Rodolfo's petition is properly one for disqualification

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

Notwithstanding the caption of Dr. Rodolfo's petition, his petition is properly one for disqualification, since he only alleged a violation of the three-term limit rule – a disqualification, not a cancellation issue. Thus, the nature and consequences of a disqualification petition are what we must recognize and give effect to in this case. This conclusion immediately impacts on Antipolo who, as second placer and in the absence of any of the exceptions, must bow out of the picture under the doctrine of rejection of the second placer.³⁸

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

Second, likewise, it has not been shown that the electorate deliberately and knowingly misapplied their votes in favor of Lonzanida, resulting in their disenfranchisement. Since a disqualification based on a violation of the three-term limit rule does not affect a CoC that is otherwise valid, then Lonzanida remained a candidate who could be validly voted for in the

³⁸ See: discussions at pp. 16, 18 – 20.

³⁹ See: discussions at pp. 14 -15.

elections.⁴⁰ It was only when his disqualification was triggered that a permanent vacancy occurred in the office of the Mayor of San Antonio, Zambales. Under the LGC,⁴¹ it is Aratea, the duly elected Vice Mayor, who should serve as Mayor in place of the elected but disqualified Lonzanida.



ARTURO D. BRION
Associate Justice

⁴⁰ See: discussions at p. 16.
⁴¹ Section 44.