EN BANC

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

REYES, *J.*:

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

The Issues

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

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

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

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

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

> The three-term limit rule was initially proposed to be an absolute bar to any elective local government official from running for the same position after serving three consecutive terms. The said disqualification was primarily intended to forestall the accumulation of massive political power by an elective local government official in a given locality in order to perpetuate his tenure in office. Corollary to this, the need to broaden the choices of the electorate of the candidates who will run for office, and to infuse new blood in the political arena by disqualifying officials running for the same office after nine years of holding the same.
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> Respondent Lonzanida never denied having held the office of mayor of San Antonio, Zambales for more than nine consecutive years. Instead, he raised arguments to forestall or dismiss the petition on the grounds other than the main issue itself. We find such arguments as wanting. Respondent Lonzanida, for holding the office of mayor for more than three consecutive terms, went against the three-term limit rule; therefore, he could not be allowed to run anew in the 2010 elections. It is time to infuse new blood in the political arena of San Antonio.
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> **WHEREFORE**, premises considered, the instant petition is hereby **GRANTED**. The Certificate of Candidacy of Respondent Romeo D. Lonzanida for the position of mayor in the municipality of San Antonio, Zambales is hereby **CANCELLED**. His name is hereby ordered **STRICKEN OFF** the list of Official Candidates for the position of Mayor of San Antonio, Zambales in the May 10, 2010 elections.
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> **SO ORDERED**.[2] (Citation omitted)

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1 *Rollo*, pp. 49-50.

2 Id. at 57-58.

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

> It is likewise worth mentioning at this point that Lonzanida has been found by no less than the Supreme Court guilty beyond reasonable doubt of ten (10) counts of Falsification under Article 171 of the Revised Penal Code. We take judicial notice of the fact that the Supreme Court, in the case of Lonzanida vs. People of the Philippines, has affirmed the Resolution of the Sandiganbayan which contains the following dispositive portion:
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> > "WHEREFORE, premises considered, judgment is hereby rendered finding accused Mayor Romeo Lonzanida y Dumlao guilty of ten (10) counts of Falsification of Public Document defined and penalized under Article 171 par. 2 of the Revised Penal Code, and in the absence of any mitigating and aggravating circumstances, applying the Indeterminate Sentence Law, said accused is hereby sentenced to suffer in each of the cases the penalty of imprisonment of four (4) years and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of pris[i]on mayor as maximum, and to pay a fine of [₱]5,000.00, in each of the cases without subsidiary imprisonment in case of insolvency."
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> Based on the above-mentioned affirmed Decision, Lonzanida shall suffer the penalty of imprisonment of four (4) years and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum. In view of the said Decision, Lonzanida is, therefore, disqualified to run for any local elective position pursuant to Section 40(a) of the Local Government Code x x x:
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> x x x x
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> Prescinding from the foregoing premises, Lonzanida, for having served as Mayor of San Antonio, Zambales for more than three (3) consecutive terms and for having been convicted by a final judgment of a crime punishable by more than one (1) year of imprisonment, is clearly disqualified to run for the same position in the May 2010 Elections.
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> **WHEREFORE**, in view of the foregoing the Motion for Reconsideration is hereby **DENIED**.
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> **SO ORDERED**.[4] (Citations omitted)

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3 Id. at 60-67.

4 Id. at 64-66.

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

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

> Pivotal in the ascertainment of the timeliness of the Dilangalen petition is its proper characterization.
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> As aforesaid, petitioner, on the one hand, argues that the Dilangalen petition was filed pursuant to Section 78 of the OEC; while private respondent counters that the same is based on Section 68 of the Code.
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> After studying the said petition in detail, the Court finds that the same is in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the OEC. The petition contains the essential allegations of a "Section 78" petition, namely: (1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election for which he filed his certificate); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible. It likewise appropriately raises a question on a candidate's eligibility for public office, in this case, his possession of the one-year residency requirement under the law.

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

> 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.
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> At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. **They are different remedies, based on different grounds, and resulting in different eventualities**. Private respondent's insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a "Petition for Disqualification," does not persuade the Court.
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> The ground raised in the Dilangalen petition is that Fermin allegedly lacked one of the qualifications to be elected as mayor of Northern Kabuntalan, *i.e.*, he had not established residence in the said locality for at least one year immediately preceding the election. Failure to meet the one-year residency requirement for the public office *is not a ground for the "disqualification" of a candidate* under Section 68. The provision only refers to *the commission of prohibited acts and the possession of a permanent resident status in a foreign country* as grounds for disqualification, x x x.[6] (Citations omitted, and emphasis and italics supplied)

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

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

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[6] Id. at 791-795.

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

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

> Sec. 74. *Contents of certificate of candidacy.* – The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.
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> Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if he has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware or such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

In order to justify the cancellation of COC, it is essential that the false representation mentioned therein pertain to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate

– the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court concluded that this refers to qualifications for elective office. It contemplates statements regarding age, residence and citizenship or non-possession of natural-born Filipino status. Furthermore, aside from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. In other words, it must be made with an intention to deceive the electorate as to one's qualification for public office.[7]

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

> Sec. 68. *Disqualifications*. – Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having: (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, 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.

The same petition may also be filed pursuant to Section 12 of the OEC and Section 40 of the LGC which provide for other grounds for disqualification to run for public office, *viz*:

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[7] *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 775-776, citing *Salcedo II v. COMELEC*, 371 Phil. 377, 386 (1999), citing *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760, *Abella v. Larrazabal*, 259 Phil. 992 (1989), *Aquino v. Commission on Elections*, 318 Phil. 467 (1995), *Labo, Jr. v. Commission on Elections*, G.R. No. 105111, July 3, 1992, 211 SCRA 297, *Frivaldo v. COMELEC*, 327 Phil. 521 (1996), *Republic v. De la Rosa*, G.R. No. 104654, June 6, 1994, 232 SCRA 785, *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300.

Section 12 of the OEC

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

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

Section 40 of the LGC

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

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

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

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

(d) Those with dual citizenship;

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

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

(g) The insane or feeble-minded.

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

for holding public office and the purpose of the proceedings for declaration of ineligibility is to remove the incumbent from office.[8]

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

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

> Sec. 39. *Qualifications*. – (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sangguniang bayan*, the district where he intends to be elected; a resident 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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> x x x x
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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.

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

These basic requirements, which former Senator Aquilino Pimentel, the principal author of the LGC, termed as "positive qualifications"[9] are the requisite status or circumstances which a local candidate must have at the time of filing of his COC. Essentially, the details required to be stated in the COC are the personal circumstances of the candidate, *i.e.*, name/stagename, age, civil status, citizenship and residency, which serve as basis of his eligibility to become a candidate taking into consideration the standards set under the law. The manifest intent of the law in imposing these qualifications is to confine the right to participate in the elections to local residents who have reached the age when they can seriously reckon the gravity of the responsibility they wish to take on and who, at the same time, are heavily acquainted with the actual state and urgent demands of the community.

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

Based on the foregoing disquisition on the nature of the two remedies, I find that the violation of the three-term limit cannot be a ground for cancellation of COC. To emphasize, this remedy can only be pursued in cases of material misrepresentation in the COC, which are limited to the

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

[10] *People v. Corral*, 62 Phil. 945, 948 (1936).

details that must be stated therein. Moreover, Antipolo's contention that Lonzanida should be deemed to have made a misrepresentation in his COC when he stated that he was eligible to run when in fact he was not is inconsistent with the basic rule in statutory construction that provisions of a law should be construed as a whole and not as a series of disconnected articles and phrases. In the absence of a clear contrary intention, words and phrases in statutes should not be interpreted in isolation from one another. A word or phrase in a statute is always used in association with other words or phrases and its meaning may thus be modified or restricted by the latter.[11] Thus, the statement in the COC which contains a declaration by the candidate that he is "eligible to the office he seeks to be elected to" must be strictly construed to refer only to the details pertaining to his qualifications, *i.e.*, age, citizenship or residency, among others, which the law requires him to state in his COC which he must even swear under oath to possess.

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

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

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

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

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[11] *Phil. Rabbit Bus Line, Inc. v. Hon. Cruz*, 227 Phil. 147, 150 (1986), citing *Reformina v. Judge Tomol, Jr.*, 223 Phil. 472, 479 (1985).

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

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

> **While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a COC**. Thus, in *Miranda v. Abaya*, this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose COC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.[12] (Citations omitted and emphasis ours)

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

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

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[12] Supra note 5, at 796.

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

> Sec. 72. *Effects of disqualification cases and priority.* – x x x.
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> x x x x
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> Any candidate who has been **declared by final judgment** to be disqualified shall not be voted for, and the votes cast for him shall not be counted. Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, his violation of the provisions of the preceding sections shall not prevent his proclamation and assumption to office. (Emphasis ours)

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

> Sec. 6. *Effect of Disqualification Case.* – Any candidate who has been **declared by final judgment** to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Emphasis ours)

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

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

> Clearly, the legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, *i.e.*, until judgment is rendered thereon. The word "shall" signifies that this requirement of the law is mandatory, operating to impose a positive duty which must be enforced. The implication is that the COMELEC is left with no discretion but to proceed with the disqualification case even after the election. x x x.
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> x x x A candidate guilty of election offenses would be undeservedly rewarded, instead of punished, by the dismissal of the disqualification case against him simply because the investigating body was unable, for any reason caused upon it, to determine before the election if the offenses were indeed committed by the candidate sought to be disqualified. All that the erring aspirant would need to do is to employ delaying tactics so that the disqualification case based on the commission of election offenses would not be decided before the election. This scenario is productive of more fraud which certainly is not the main intent and purpose of the law.[14] (Citation omitted)

Without a final judgment, a candidate facing disqualification may still be proclaimed the winner and assume the position for which he was voted for. In the absence of an order suspending proclamation, the winning

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13 351 Phil. 310 (1998).

14 Id. at 322-323.

candidate who is sought to be disqualified is entitled to be proclaimed as a matter of law. This is clear from Section 6 of R.A. No. 6646 which provides that the proclamation of the candidate sought to be disqualified is suspended only if there is an order of the COMELEC suspending proclamation.[15] The mere pendency of a disqualification case against a candidate, and a winning candidate at that, does not justify the suspension of his proclamation after winning in the election. To hold otherwise would unduly encourage the filing of baseless and malicious petitions for disqualification if only to effect the suspension of the proclamation of the winning candidate, not only to his damage and prejudice but also to the defeat of the sovereign will of the electorate, and for the undue benefit of undeserving third parties.[16]

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

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

Thereafter, on August 25, 2010, fourteen (14) days after the issuance of the Resolution dated August 11, 2010, Antipolo filed a motion to intervene and to admit attached petition-in-intervention. Antipolo alleged that she has a legal interest in the matter in litigation being the only remaining qualified candidate for the office of the mayor of San Antonio,

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

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

Zambales after Lonzanida's disqualification.[17] Having obtained the highest number of votes among the remaining qualified candidates for the position, she opined that she should be proclaimed the mayor of the locality.[18] Subsequently, the COMELEC *en banc* allowed Antipolo's motion to intervene in its Order dated January 12, 2011, thus:

> Acting on the "Motion for Leave to Intervene and to Admit Attached Petition-in-Intervention" filed by Estela D. Antipolo (Antipolo) and pursuant to the power of this Commission to suspend its Rules or any portion thereof in the interest of justice, this Commission hereby **RESOLVES** to:
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> 1. **GRANT** the aforesaid Motion;
> 2. **ADMIT** the Petition-in-Intervention filed by Antipolo;
> 3. **REQUIRE** the Respondent, **ROMEO DUMLAO LONZANIDA**, as well as **EFREN RACEL ARATEA**, proclaimed Vice-Mayor of San Antonio, Zambales, to file their respective Comments on the Petition-in-Intervention within a non-extendible period of five (5) days from receipt hereof; and
> 4. **SET** the above-mentioned Petition-in-Intervention for hearing on January 26, 2011 at 10:00 a.m., COMELEC Session Hall, 8th Floor, Palacio del Gobernador, Intramuros[,] Manila.[19]

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

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

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17 *Rollo*, p. 79.
18 Id. at 84.
19 Id. at 32.

> As early as February 18, 2010, the Commission speaking through the Second Division had already ordered the cancellation of Lonzanida's certificate of candidacy, and had stricken off his name in the list of official candidates for the mayoralty post of San Antonio, Zambales[.] Thereafter, the Commission En Banc in its resolution dated August 11, 2010 unanimously affirmed the resolution disqualifying Lonzanida. Our findings were likewise sustained by the Supreme Court no less. The disqualification of Lonzanida is not simply anchored on one ground. On the contrary, it was emphasized in our En Banc resolution that Lonzanida's disqualification is two-pronged: first, he violated the constitutional fiat on the three-term limit; and second, as early as December 1, 2009, he is known to have been convicted by final judgment for ten (10) counts of Falsification under Article 171 of the Revised Penal Code. In other words, on election day, respondent Lonzanida's disqualification is notoriously known in fact and in law. Ergo, since respondent was **never a candidate** for the position of Mayor, San Antonio, Zambales, the votes cast for him should be considered stray votes. Consequently, Intervenor Antipolo, who remains as the sole qualified candidate for the mayoralty post and obtained the highest number of votes should now be proclaimed as the duly[-]elected Mayor of San Antonio, Zambales.
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> We cannot sustain the submission of Oppositor Aratea that Intervenor Antipolo could never be proclaimed as the duly elected Mayor of Antipolo [sic] for being a second placer in the elections. The teachings in the cases of Codilla vs. De Venecia and Nazareno and Domino vs. Comelec[,] et al., while they remain sound jurisprudence find no application in the case at bar. What sets this case apart from the cited jurisprudence is that the notoriety of Lonzanida's disqualification and ineligibility to hold public office is established both in fact and in law on election day itself. Hence, Lonzanida's name, as already ordered by the Commission on February 18, 2010 should have been stricken off from the list of official candidates for Mayor of San Antonio, Zambales.[20] (Citations omitted)

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

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[20] Id. at 36-38.

consequence if the judgment on the petition to cancel COC became final before or after the elections since the consequences of the same retroact to the date of filing of the COC.

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

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

> To contend that Syjuco should be proclaimed because he was the "first" among the qualified candidates in the May 8, 1995 elections is to misconstrue the nature of the democratic electoral process and the sociological and psychological underpinnings behind voters' preferences.

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[21] Supra note 7.

> The result suggested by private respondent would lead not only to our reversing the doctrines firmly entrenched in the two cases of *Labo vs. Comelec* but also to a massive disenfranchisement of the thousands of voters who cast their vote in favor of a candidate they believed could be validly voted for during the elections. Had petitioner been disqualified before the elections, the choice, moreover, would have been different. The votes for Aquino given the acrimony which attended the campaign, would not have automatically gone to second placer Syjuco. The nature of the playing field would have substantially changed. To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under such circumstances.[22] (Citation omitted)
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> We cannot, in another shift of the pendulum, subscribe to the contention that the runner-up in an election in which the winner has been disqualified is actually the winner among the remaining qualified candidates because this clearly represents a minority view supported only by a scattered number of obscure American state and English court decisions. These decisions neglect the possibility that the runner-up, though obviously qualified, could receive votes so measly and insignificant in number that the votes they receive would be tantamount to rejection. Theoretically, the "second placer" could receive just one vote. In such a case, it is absurd to proclaim the totally repudiated candidate as the voters' "choice." Moreover, even in instances where the votes received by the second placer may not be considered numerically insignificant, voters preferences are nonetheless so volatile and unpredictable that the result among qualified candidates, should the equation change because of the disqualification of an ineligible candidate, would not be self-evident. Absence of the apparent though ineligible winner among the choices could lead to a shifting of votes to candidates other than the second placer. By any mathematical formulation, the runner-up in an election cannot be construed to have obtained a majority or plurality of votes cast where an "ineligible" candidate has garnered either a majority or plurality of the votes.[23] (Citation omitted)

Apparently, in its Resolution dated February 2, 2011, the COMELEC submits to the general rule that the second placer in the elections does not assume the post vacated by the winning candidate in the event that a final judgment of disqualification is rendered against the latter. However, it posits that the notoriety of Lonzanida's disqualification and ineligibility to hold public office distinguishes the instant case from the throng of related

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22 Id. at 502-503.

23 Id. at 508-509.

cases upholding the doctrine. It anchored its ruling in the pronouncement we made in *Labo, Jr. v. Commission on Elections*,[24] to wit:

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

The exception is predicated on the concurrence of two assumptions, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but nonetheless cast their votes in favor of the ineligible candidate. These assumptions however do not obtain in the present case. The COMELEC's asseveration that the electorate of San Antonio, Zambales was fully aware of Lonzanida's disqualification is purely speculative and conjectural.[26] No evidence was ever presented to prove the character of Lonzanida's disqualification particularly the fact that the voting populace was "fully aware in fact and in law" of Lonzanida's alleged disqualification as to "bring such awareness within the realm of notoriety," in other words, that the voters intentionally wasted their ballots knowing that, in spite of their voting for him, he was ineligible.[27] Therefore, it is an error for the COMELEC to apply the exception in *Labo* when the operative facts upon which its application depends are wanting.

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

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[24] Supra note 7.
[25] Id. at 312.
[26] *Grego v. Commission on Elections*, 340 Phil. 591, 610 (1997), citing *Frivaldo v. COMELEC*, supra note 7, at 567.
[27] See *Frivaldo v. COMELEC*, supra note 7, at 567.

> Sec. 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* – If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x.

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

In view of the foregoing disquisitions, I respectfully vote to **GRANT** the petition. Necessarily, the Order dated January 12, 2011 and Resolution dated February 2, 2011 issued by public respondent Commission on Elections in SPA No. 09-158 (DC) should be **REVERSED and SET ASIDE** and private respondent Estela D. Antipolo's proclamation should be **ANNULLED**. Petitioner Efren Racel Aratea, being the duly-elected Vice-Mayor, should be proclaimed Mayor of San Antonio, Zambales pursuant to the rule on succession under Section 44 of the Local Government Code of 1991.

BIENVENIDO L. REYES
Associate Justice