EN BANC

G.R. No. 250370 – MAYOR ROVELYN ECHAVE VILLAMOR, *Petitioner*, **v. COMMISSION ON ELECTIONS and ANTONIO BELLO VIERNES,** *Respondents.*

Promulgated:

October 5, 2021

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DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I dissent.

As will be explained hereunder, I disagree with the *ponencia*'s grant of the instant Petition for *Certiorari* and Prohibition filed by petitioner Mayor Rovelyn Echave Villamor (Villamor) on the erroneous notion that the Resolutions dated April 26, 2019[1] and November 27, 2019[2] of respondent Commission on Elections (COMELEC) – which granted the petition filed by respondent Antonio Bello Viernes (Viernes) to deny due course to/cancel the Certificate of Candidacy[3] (CoC cancellation petition) of Villamor – are tainted with grave abuse of discretion. Contrary to the *ponencia*, and as correctly ruled by the COMELEC, there is no sufficient evidence on record to prove that Villamor re-established her residence in Lagangilang, Abra (domicile).[4] Moreover, I maintain reservations on the *ponencia*'s finding that the COMELEC "ordered the cancellation of Villamor's [Certificate of Candidacy (CoC)] without any prior determination of whether or not she had intended to deceive or mislead the electorate."[5] As will be further expounded below, one's intent to deceive or mislead the electorate should be discontinued as a jurisprudential requisite in resolving petitions to deny due course to/cancel CoCs under Section 78 (Section 78 petition) of the Omnibus Election Code[6] (OEC).

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1 *Rollo*, pp. 43-54.
2 Id. at 36-42.
3 Id. at 81-90.
4 See *ponencia*, pp. 2-3 and 6.
5 See id. at 11.
6 Batas Pambansa Blg. 881; approved on December 3, 1985.

I.

Preliminarily, it bears pointing out that the case before this Court is a petition for *certiorari* under Rule 64, in relation to Rule 65,[7] of the Rules of Court challenging the foregoing Resolutions of the COMELEC. Hence, it must be shown that the COMELEC ***gravely abused its discretion*** in cancelling her CoC on the ground that the statement in her CoC with regard to her residency qualification for the position of Mayor of Lagangilang, Abra constitutes a false material representation. Case law provides that "**[f]or an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross**."[8] As such, any abuse of discretion short of the arbitrary and gross character that the established principle requires will not justify the issuance of a writ of *certiorari*.[9]

With this framework in mind and as will be demonstrated below, no grave abuse of discretion can be attributed to the COMELEC in finding that the erroneous statement in Villamor's CoC with regard to her residence constitutes a false material representation, which is a sufficient ground for the cancellation of her CoC.

To recapitulate, Villamor filed a CoC for Mayor of Lagangilang, Abra for the 2019 National and Local Elections (2019 NLE). Viernes then filed a Section 78 petition against Villamor, alleging that the latter made a false material representation in her CoC when she claimed that she had resided in the Philippines for 36 years and 8 months immediately preceding the 2019 NLE, when in truth, she had not. Viernes expounded that Villamor became a United States (U.S.) citizen who therefore abandoned her Philippine domicile and acquired a new domicile of choice in the U.S. as a legal and factual result. For these reasons, Villamor could not have resided in Lagangilang, Abra and in the Philippines for 36 years and 8 months prior to the 2019 NLE and is therefore not qualified to run for the mayoralty post, contrary to what she claimed in her CoC. To strengthen his argument, Viernes submitted in evidence Villamor's CoC, U.S. passport, Certificate of Naturalization, and Order of Approval by the Consulate General of the Philippines in Los Angeles, California dated June 19, 2018[10] to prove, among others, that she was naturalized as a U.S. citizen and hence, abandoned her Philippine domicile and acquired a new domicile of choice in the U.S. as a result.[11]

In defense, Villamor responded by simply arguing that while she became a U.S. citizen on October 29, 2009,[12] she nonetheless reacquired her Philippine citizenship on June 19, 2018. Thus, she insisted that it was accurate

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7 See Section 1, Rule 64, in relation to Section 1, Rule 65 of the Rules of Court.

8 See *Beluso v. COMELEC*, 635 Phil. 436, 443 (2010); *Fajardo v. Court of Appeals*, 591 Phil. 146, 153 (2008); and *People v. Sandiganbayan*, 483 Phil. 223, 230 (2004); emphasis supplied.

9 See *Miranda v. Abaya*, 370 Phil. 642, 663 (1999).

10 *Rollo*, pp. 120-121.

11 See id. at 85-89.

12 See id. at 101-102.

for her to "*[declare] in her [CoC] that her period of residence in the Philippines up to the day before the May 13, 2019 Elections was 36 years and 8 months.*"[13]

In ruling for the cancellation of Villamor's CoC, the COMELEC pointed out that since Villamor herself admitted that she became a U.S. citizen who reacquired her Philippine citizenship only on June 19, 2018, Viernes sufficiently discharged his original burden to prove that Villamor had abandoned her Philippine domicile, acquired a new domicile of choice in the U.S., and therefore could not have been a resident of Lagangilang, Abra and the Philippines for 36 years and 8 months prior to the 2019 NLE.[14] Thus, it was incumbent upon Villamor to show countervailing evidence to prove that she had re-established her Philippine domicile for the period required by law. However, as the COMELEC ruled, she failed in this respect, observing that the only evidence submitted by Villamor on the main were the following: (*a*) her CoC; (*b*) Order of Approval by the Consulate General of the Philippines in Los Angeles, California dated June 19, 2018 granting her application for reacquisition of Philippine citizenship under Republic Act No. (RA) 9225;[15] (*c*) Identification Certificate likewise issued by the Consulate General of the Philippines in Los Angeles, California;[16] (*d*) Oath of Allegiance;[17] (*e*) Affidavit of Renunciation dated September 18, 2018;[18] (*f*) Certificate of Nomination and Acceptance (ASENSO Party); (*g*) Certificate of Nomination and Acceptance (NUP); (*h*) List of Authorized Signatories;[19] (*i*) Certificate of Naturalization;[20] and (*j*) Certificate of Live Birth.[21]

Aggrieved, Villamor subsequently submitted additional documents[22] together with her **Motion for Reconsideration** to further address the issue of her residency. She also outlined therein pertinent material dates and incidents corresponding to the submitted documents – which include her registration as a voter and participation in the May 2018 Barangay Elections, purchase of lands, and acquisition of business interest – to purportedly prove that Lagangilang, Abra "remained [her residence] even after she became x x x a naturalized citizen of the U.S. [on] October 29, 2009,"[23] or, in any event, that she intended to "permanently reside [therein] and abandon her U.S. residence."[24] The *ponencia* highlights these matters in arriving at its conclusion that Villamor has "more than sufficiently [established her

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13 Id. at 106.
14 See id. at 50-53.
15 Id. at 121.
16 Id. at 122.
17 Id. at 123.
18 Id. at 117-118.
19 See id. at 127-128.
20 Id. at 120.
21 Id. at 119.
22 These pieces of evidence, as noted by the COMELEC, were: (*a*) two (2) documents entitled "*Palawag*" which appeared to convey a portion of certain farmlands to her; (*b*) Community Tax Certificate; (*c*) Deed of Absolute Sale involving a parcel of land; and (*d*) Voter Certification; see id. at 39.
23 *Ponencia*, p. 4.
24 Id. at 5.

residence in Lagangilang, Abra],"[25] which the COMELEC gravely failed to consider by affirming its earlier ruling; hence, this petition.

However, it must be stressed, at the onset, that these additional documents and matters were presented only in the **Motion for Reconsideration** after the parties had already argued on, and the COMELEC had considered, all the relevant issues and evidence presented. Thus, on a procedural level, and as pointed out itself by the COMELEC, these belatedly submitted documents could no longer properly be considered by it at that stage. As the COMELEC correctly noted, a "Motion for Reconsideration may be filed **only on the ground that the evidence is insufficient to justify the decision, or that such decision is contrary to law**."[26] Raising new evidence for the first time on a motion for reconsideration thus remains procedurally suspect.

In any event, even assuming that the same were submitted at the very beginning of the proceedings, these documents still do not provide sufficient basis to hold that Villamor had already re-established her residence in Lagangilang, Abra prior to June 19, 2018, when she reacquired her Philippine citizenship.

The term "residence" can be understood and construed in different forms depending on the object or purpose of the statute in which it is employed.[27] **In our election laws, it is settled that the term "residence" is *synonymous with domicile*[28]** and is considered as an **indispensable requirement** to be able to vote or be voted for in the locality chosen as the person's permanent residence. Given this characterization, it should therefore be recognized that **residence is a legal concept that has to be determined by and in connection with our Constitution and election laws, independent of or in conjunction with physical presence**. Thus, when determining a person's legal relation with the place he/she intends to be voted for, physical presence cannot be the sole basis.

Likewise, it should be recognized that since domicile is a necessary requirement for participation in governance, the establishment thereof assumes the character of a political right that must not be taken lightly, especially so since **under our Constitution and election laws, Philippine domicile and citizenship must coincide in order to participate in our electoral processes.**[29] For these reasons, persons who are not Philippine

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25 Id. at 17.

26 *Rollo*, p. 39; emphasis supplied.

27 For example, under the Articles 50 and 51 of the Civil Code, the term "residence" refers to the actual residence, or the place of abode or of habitual residence, when pertaining to the exercise of civil rights and the fulfilment of obligations.

28 See *Japzon v. COMELEC*, 596 Phil. 354, 371 (2009); and *Macalintal v. COMELEC*, 453 Phil. 586, 634 (2003).

29 Such as: (*a*) Philippine citizenship is a requirement for the exercise of the right of suffrage (see Section 1, Article V of the Constitution, Section 117 of the OEC, and Section 9 of RA 8189); (*b*) Philippine natural-born citizenship is a requirement to be a member of Congress (see Sections 3 and 6, Article VI

citizens, regardless of their Philippine residence status, cannot participate in the country's political processes in any manner, including donating to campaign funds, campaigning for or aiding any candidate or political party, and directly or indirectly, taking part in or influencing in any manner any election.[30] **An alien, therefore, who possesses permanent resident status in the Philippines does not have the right of suffrage in the Philippines, including the right to establish legal domicile for purposes of our election laws.**

Moreover, Philippine citizens who are not domiciled in the Philippines cannot likewise participate in the electoral processes. By way of exception which must be strictly construed, qualified Philippine citizens permanently residing abroad are allowed to vote under specified limited conditions, pursuant to RA 9189,[31] otherwise known as the Overseas Absentee Voting Act. **Despite this limited permission, however, he/she still cannot be voted for and is disqualified from running for elective office under Section 68[32] of the OEC**.

In addition to the aforesaid core principles, jurisprudence has laid down basic rules that must be considered in determining residence or domicile for purposes of election, as follows:

First, domicile is classified into three (3), namely: (*1*) *domicile of origin*, which is acquired by every person at birth and which continues until, upon reaching the majority age, he/she abandons it and acquires a new domicile; (*2*) *domicile of choice*, which is the new domicile acquired upon abandonment of the domicile of origin; and (*3*) *domicile by operation of law*, which the law attributes to a person independently of his/her residence or intention.[33]

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of the Constitution); (*c*) Philippine natural-born citizenship is a requirement to be President and Vice President (see Sections 2 and 3, Article VII of the Constitution); and (*d*) Philippine citizenship is a requirement to be an elective local official (see Section 3, Article X of the Constitution in relation to Section 39 of the RA 7160).

30 See Section 81 of the OEC. See also *Jalosjos v. COMELEC*, 686 Phil. 563, 567-568 (2012); and *Pundaodaya v. COMELEC*, 616 Phil. 167, 172-173 (2009).

31 Entitled "AN ACT PROVIDING FOR A SYSTEM OF OVERSEAS ABSENTEE VOTING BY QUALIFIED CITIZENS OF THE PHILIPPINES ABROAD, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES"; approved on February 13, 2003.

32 Section 68. *Disqualifications.* – Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (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.

33 *Caballero v. COMELEC*, 770 Phil. 94, 124 (2015).

Second, and more pertinent to this case, in order to effect a change of domicile, either by acquiring a first or a new domicile of choice, a person must comply with the following requirements: (*a*) residence or **bodily presence** in the new locality; (*b*) a *bona fide* **intention to remain** there or *animus manendi*; and (*c*) a *bona fide* **intention to abandon** the old domicile or *animus non revertendi*.[34]

Thus, the change of residence or domicile requires physical acts and the concurrence of the two (2) intents – **the intent to remain in the new domicile and the intent to completely abandon the old domicile**. **These must be clearly and sufficiently proven by competent evidence**. In this relation, case law settles that the (*i*) ***intent to remain*** in or at the domicile of choice must be for an indefinite period of time, (*ii*) the change of residence must be ***voluntary***, and (*iii*) the residence at the place chosen for the new domicile must be ***actual***.[35] Under these requirements, **the surrounding circumstances must necessarily be considered in determining compliance** because of the subjective character of the element of intent.[36] Overall, the applicable laws, rules, and regulations must be considered in reflecting on the question of the actions taken pursuant to the intent.

Lastly, there are three (3) staple factors that attend to residency: (*1*) a person ***must have a residence or domicile*** somewhere; (*2*) when once established, it ***remains until a new one is acquired***; and (*3*) a person can have but ***one residence or domicile at a time***.[37]

Together, the foregoing rules and established principles should be fully taken into account in appreciating questions relating to a person's residence for election purposes. Accordingly, once a Philippine citizen permanently resides in another country and subsequently becomes a naturalized citizen thereof, he/she loses his/her domicile of birth, *i.e.*, the Philippines, and establishes a new domicile of choice in that country. Consequently, he/she also loses the right to participate in our electoral processes. If such former Filipino seeks to establish domicile in our country, he/she must, as a general rule, possess the necessary citizenship to exercise this political right. Once Philippine citizenship is reacquired, he/she reacquires as well the right to reside in the Philippines. However, he/she does not automatically become a Philippine domiciliary unless he/she validly effects a change of domicile by complying with the requirements discussed above; otherwise, he/she remains a Filipino physically present in the Philippines but is domiciled elsewhere. This is because as discussed above, an individual can have only one domicile which remains until it is validly changed.[38]

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[34] See *Limbona v. COMELEC*, 619 Phil. 226, 232 (2009).
[35] See *Limbona v. COMELEC*, 578 Phil. 364, 374-375 (2008).
[36] See *Pundaodaya v. COMELEC*, supra, at 173; and *Abella v. COMELEC*, 278 Phil. 275, 288 (1991).
[37] See *Jalosjos v. COMELEC*, supra, at 568; and *Pundaodaya v. COMELEC*, id.
[38] See Associate Justice Arturo D. Brion's (Justice Brion) Dissenting Opinion in *Poe-Llamanzares v. COMELEC*, 782 Phil. 292, 1159 (2016).

On a related point, a former Filipino may conceivably re-establish Philippine domicile prior to reacquisition of Philippine citizenship. A former Filipino may, for example, acquire a "permanent residence" status in the Philippines in accordance with our Immigration Laws[39] in order to legitimize any actions to re-establish Philippine domicile and lend credence to his/her *animus manendi* and *animus non revertendi*. Until then, the former Filipino legally remains a non-Philippine domiciliary whose ambivalence to legitimize his/her Philippine residence renders doubtful any claimed *animus manendi* and *animus non revertendi*.

Applying the considerations discussed, the overt acts on which Villamor premises her claims are insufficient to prove her *animus manendi* and *animus non-revertendi*. As the COMELEC correctly pointed out, and which Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) rightfully echoed, **Villamor was still a naturalized U.S. citizen who was not granted the status of an immigrant or permanent resident in the Philippines at the time she performed these acts**.[40] Prior thereto, she was still a U.S. citizen – an alien who "has to return again to her home state after the expiration of her Philippine visa"[41] and whose "*continued possession of American citizenship is reflective of her lack of intention to stay indefinitely in Lagangilang, Abra.*"[42]

Parenthetically, it should be stressed that Villamor's actual physical presence in Lagangilang, Abra during the relevant periods was not sufficiently shown so as to conclude that she re-established her domicile in the Philippines. While she highlighted certain acts and incidents which allegedly indicate her intent to re-establish Philippine domicile even prior to her reacquisition of Philippine citizenship, these are notably few and far between, rendering highly suspect any purported intent.[43] **In fact, she did not even allege nor support with evidence the date when she physically arrived in Lagangilang, Abra for purposes of re-establishing her residence there**.

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39 A former Filipino may, for example, apply for a "Visa for Returning Natural-Born Filipinos who were Naturalized as Citizens of Foreign Countries" or "Special Resident Retiree's Visa" (see Bureau of Immigration, *Returning Former Natural-Born Filipino Citizen*, available at <https://immigration.gov.ph/visa-requirements/immigrant-visa/returning-formal-natural-born-filipino-citizen> [last visited October 5, 2021]; and Philippine Retirement Authority, *The SRR Visa*, available at <https://pra.gov.ph/srrv/> [last visited October 5, 2021]). See also RA 7837 entitled "AN ACT GRANTING PERMANENT RESIDENT STATUS, OTHER RIGHTS AND PRIVILEGES TO FILIPINO VETERANS OF WORLD WAR II WHO ACQUIRED AMERICAN CITIZENSHIP UNDER THE UNITED STATES IMMIGRATION ACT OF 1990 AND ANY OTHER PRIOR ACTS FOR THESE PURPOSES"; approved on December 16, 1994.

40 See *rollo*, pp. 52-53.

41 Id. at 39-40.

42 Id. at 39.

43 As outlined in the *ponencia*, these incidents include: (*i*) one incident in 2013 where Villamor acquired a portion of a farmland situated in Sitio, Cabasaan, Brgy. Laguiben, Lagangilang, Abra from her brother, Jay E. Villamor on July 16, 2013; (*ii*) another incident in 2016 where Villamor acquired another portion of the said farmland from her sister, Luz Villamor Sayen on September 7, 2016; and (*iii*) three incidents in 2017, but which appears to refer to one transaction – Villamor was issued a CTC by the Municipality of Lagangilang, Abra on July 7, 2017, Villamor acquired a property located in Laang, Lagangilang, Abra from one Virginia E. Atmosfera (Atmosfera) where she eventually constructed her home on July 11, 2017, and Villamor caused the transfer of the tax declaration of the same property from the name of Atmosfera to her name on July 12, 2017; see *ponencia*, p. 3.

Moreover, it should be highlighted that Villamor's acquisition of real properties and business interests in Lagangilang, Abra **prior** to reacquisition of Philippine citizenship did not sufficiently prove her re-establishment of domicile therein.

To recall, Villamor alleged that she acquired three (3) lots on three (3) different dates, namely: two (2) **farmlands** from her siblings in 2013 and 2016, as shown by the documents entitled "*Palawag*," and a **lot** in 2017, as evidenced by a Deed of Absolute Sale and tax declaration.[44] Nonetheless, outside of these bare allegations, there is no evidence to show that Villamor was actually physically present and had actually proceeded to construct her permanent residential home in Lagangilang, Abra during any of these times. In fact, she did not even unequivocally claim that she had constructed her permanent home therein in 2017, nor shown any preparatory acts to show her clear and unmistakable intent to transfer her domicile to any permanent abode in such locality. At most, these pieces of evidence and incidents show that she acquired three (3) lots in Lagangilang, Abra – as a former natural-born Filipino citizen permitted to be a transferee of private lands under the Constitution[45] – the purpose of which, based on their nature, particularly of the two (2) farmlands, appears to be for agricultural/investment uses.

In the same vein, the issuance of a Community Tax Certificate (CTC) in Villamor's name in 2017 carries little to no evidentiary weight in proving her domicile in Lagangilang, Abra. A CTC is issued to every person upon payment of community tax in the place of residence of the individual.[46] In *Saludo, Jr. v. American Express International, Inc.*,[47] the Court disregarded the CTC as conclusive proof of residence in the city wherein it was issued, explaining that even assuming that a person could be considered a resident therein, the same does not preclude his/her having a residence elsewhere.[48] Further, case law regards CTCs as generally unreliable evidence given the considerable ease in securing their issuance; as such, they have been excluded from the list of competent evidence of identity that notaries public should use in ascertaining the identity of persons appearing before them.[49] On this score, it should be emphasized that, in this case, the procurement of the CTC in 2017 coincides with the 2017 Deed of Absolute Sale; hence, it is highly apparent that the same was merely procured in relation to this document's execution. Accordingly, the said CTC does not sufficiently prove Villamor's re-establishment of her domicile in Lagangilang, Abra.

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44 See id. at 4-6.

45 See Section 8, Article XII of the Constitution, which reads:

> Section 8. Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.

46 See Sections 160 and 162 of the Local Government Code.

47 521 Phil. 585 (2006).

48 Id. at 603.

49 See *Baylon v. Almo*, 578 Phil. 238, 242 (2008).

As for Villamor's Voter Certification, it is well to point out that, contrary to the *ponencia*'s assertion, Villamor's registration and participation in the May 2018 Barangay Elections **prior** to her re-acquisition of Philippine citizenship in June 2018 likewise does not support the conclusion that she had legally established permanent residence in Lagangilang, Abra. To reiterate, **a Filipino who loses Philippine citizenship also loses the right to participate in our electoral processes**. To recall, at that time, Villamor was a **non-resident foreigner** who had no right to register for and vote in the May 2018 Barangay Elections.[50] It was only on June 19, 2018 that Villamor reacquired Philippine citizenship. Under Section 10[51] of RA 8189, otherwise known as the Voter's Registration Act of 1996, the data required in the application for registration include: (*i*) citizenship; (*ii*) periods of residence in the Philippines and in the place of registration; (*iii*) exact address; and (*iv*) a statement that the applicant possesses all the qualifications of a voter. With these requirements in mind, it is highly questionable how Villamor was able to legally register as a voter notwithstanding her lack of Philippine citizenship at that time.[52] In any event, case law provides that voting is not conclusive proof of residence.[53] Thus, in *Perez v. COMELEC*,[54] the Court ruled that a person's registration as voter in one district is not proof that he/she is not domiciled in another.[55]

Lastly, Villamor's **unsubstantiated** "frequent visits" to the Philippines **prior** to her reacquisition of Philippine citizenship do not necessarily show her intention to re-establish her domicile therein as the *ponencia* suggests.[56] Neither do they amount to a waiver of her abandonment of her Lagangilang, Abra domicile upon her naturalization as U.S. citizen. At most, as case law has previously observed, these flights only show the custom of Filipinos – as shared among many other cultures – to visit their country of origin where they

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50 See Section 1, Article V of the Constitution and Section 9 of RA 8189, which provides that only those who are "citizens of the Philippines," who are "not otherwise disqualified by law," "are at least eighteen years of age," "who shall have resided in the Philippines for at least one year," and "in the place wherein they propose to vote, for at least six months immediately preceding the election" may exercise the right of suffrage.

51 Section 10. *Registration of Voters.* — x x x

The application shall contain the following data:

x x x x

d) Citizenship;

x x x x

g) Periods of residence in the Philippines and in the place of registration;

h) Exact address with the name of the street and house number for location in the precinct maps maintained by the local office of the Commission, or in case there is none, a brief description of his residence, sitio and barangay;

i) A statement that the applicant possesses all the qualifications of a voter;

x x x x

52 Note that Section 261 (y) (2) of the OEC provides, "[a]ny person who knowingly makes any false or untruthful statement relative to any of the data or information required in the application for registration" – which includes the information required under Section 10 of RA 8189 – shall be guilty of an election offense.

53 *Pundaodaya v. COMELEC*, supra note 30, at 174, citing *Domino v. COMELEC*, 369 Phil. 798, 820 (1999).

54 375 Phil. 1106 (1999).

55 Id. at 1118.

56 See *ponencia*, pp. 15-16.

indisputably retain familial and social ties despite the transfer of residence to other places.[57]

All told, Villamor failed to sufficiently prove the concurrence of all the requisites in order to effect a change of domicile during the relevant period. **What is imperative is that a candidate must show that he/she had already re-established local domicile to meet the mandated residency requirement. The mere anticipatory desire or intention to re-establish domicile is not enough; actual re-establishment of domicile must be clearly and convincingly proven.** In fact, when it comes to those who have lost Philippine citizenship, I submit that stronger proof is required in the re-establishment of national domicile. Undoubtedly, a person who has been domiciled in another country has already established effective legal ties with that country that are substantially distinct and separate from ours.[58] The need for stronger proof becomes more apparent when the person involved, such as Villamor, has been domiciled in another country as part of her naturalization as a citizen therein. Note that lawful permanent residence in the U.S. (or possession of a green card) for at least five (5) years (or three [3] in special cases) is required for acquisition of U.S. citizenship.[59]

To add, while citizenship and residency are different from and independent of each other, one may invariably affect the other. To my mind, Villamor's ability to enjoy the privileges of U.S. citizenship at any time, while remaining under that status, conjures a reasonable presumption that she continues to avail of these privileges, which, among others, include the privilege to reside in that foreign country. Hence, absent compelling evidence to show that she had re-established domicile in the Philippines or in another country prior to June 19, 2018, when she reacquired Philippine citizenship, it should therefore be presumed that she continues to be domiciled in the U.S. of which she was a citizen.[60]

With all of these considerations in mind, it can hardly be concluded that the COMELEC gravely abused its discretion in finding that there was a false material representation in Villamor's CoC when she declared that she had been a resident of Lagangilang, Abra for 36 years and 8 months prior to the 2019 NLE. It should be stressed that Villamor **lost her Philippine domicile** when she became a U.S. citizen. She only reacquired her Philippine citizenship on June 19, 2018, and there is no clear and convincing evidence to show that she had re-established her Philippine domicile prior or after such

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57 See *Caballero v. COMELEC*, supra note 33, at 112-115; and *Abella v. COMELEC*, supra note 36, at 288.

58 See Associate Justice Estela M. Perlas-Bernabe's (Justice Perlas-Bernabe) Dissenting Opinion in *Poe-Llamanzares*, supra note 38, at 1298.

59 See USA Government, *How to Apply for U.S. Citizenship*, available at <https://www.usa.gov/become-us-citizen> (last visited October 5, 2021); and U.S. Citizenship and Immigration Services, *I am a Lawful Permanent Resident of 5 Years*, available at <https://www.uscis.gov/citizenship/learn-about-citizenship/citizenship-and-naturalization/i-am-a-lawful-permanent-resident-of-5-years> (last visited October 5, 2021).

60 See Justice Perlas-Bernabe's Dissenting Opinion in *Poe-Llamanzares*, supra note 38, at 1299.

time. Again, **even assuming that she indeed re-established her domicile on said date, this period is only ten (10) months and twenty-three (23) days prior to the 2019 NLE or one (1) month and seven (7) days short of the required one (1) year residence for the mayoralty post.**[61]

II.

At this juncture, I deem it apt to express my views on the prevailing doctrine on Section 78 petitions. As intimated in the beginning of this Opinion, it is my view that **intent to deceive or mislead the electorate is not necessary in order for the COMELEC to deny due course to/cancel a CoC.**

A cardinal rule of statutory construction is that "speech is the index of intention"; this rule rests on the "presumption that the words employed by the legislature in a statute correctly express its intention or will, and preclude the court from construing it differently."[62]

With this in mind, it should be underscored that "*[n]owhere in Section 78 [of the OEC] is it stated or implied that there be an intention to deceive for a [CoC] to be denied due course or be cancelled.*"[63] As I extensively explained in my Dissenting Opinion in *Poe-Llamanzares v. COMELEC* (*Poe-Llamanzares*):

> As worded, **a Section 78 petition is based exclusively on the ground that a CoC contains a material representation that is false. "The false representation contemplated by Section 78 of the [OEC] pertains to [a] material fact, and is not simply an innocuous mistake. A material fact refers to a candidate's qualification for elective office such as one's citizenship and residence."**
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> While there are decided cases wherein this Court has stated that "a false representation under Section 78 must consist of 'a deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render a candidate ineligible,'" nowhere does the provision mention this requirement. In *Tagolino v. House of Representatives Electoral Tribunal* (*Tagolino*) [706 Phil. 534 (2013)], this Court enunciated that:
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> > [T]he deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person's declaration of a material qualification in the CoC be false. In this relation, jurisprudence holds that an express finding that the person committed any deliberate misrepresentation is of little consequence in the

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61 See Justice Perlas-Bernabe's Dissenting Opinion in *Poe-Llamanzares*, which states that the falsity of a material representation concerning an eligibility requirement in a CoC will justify cancellation of the CoC for false material representation; intent to deceive is not required; id. at 1300.

62 *Philippine Amusement and Gaming Corporation v. Philippine Gaming Jurisdiction Incorporated*, 604 Phil. 547, 553 (2009).

63 See Justice Perlas-Bernabe's Dissenting Opinion in *Poe-Llamanzares*, supra note 38, at 1288, citing Justice Tinga's Dissenting Opinion in *Tecson v. COMELEC*, 468 Phil. 421, 607 (2004).

> determination of whether one's CoC should be deemed cancelled or not. What remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis of one's ineligibility and that the same be granted without any qualification. x x x

Albeit incorporating the intent requirement into their respective discussions, a survey of certain cases decided after *Tagolino* only prove to demonstrate the "bare significance" of the said requisite.

x x x x

Again, **the plain text of Section 78 reads that the remedy is based "on the ground that any material representation contained therein as required under Section 74 hereof is false." It pertains to a material representation that is false and not a "material misrepresentation." In my view, the latter is a semantic but impactful misnomer which tends to obfuscate the sense of the provision as it suggests – by employing the word "misrepresent," ordinarily understood to mean as "to give a false or misleading representation of usually with an intent to deceive or be unfair" – that intent is crucial in a Section 78 petition, when, in fact, it is not.**

Notably, the Dissenting Opinion of former Supreme Court Associate Justice Dante O. Tinga (Justice Tinga) in *Tecson v. COMELEC* (*Tecson*) [468 Phil. 421 (2004)] explains **the irrelevance of the candidate's intention or belief in ruling on a Section 78 petition**. There, he even pointed out the jurisprudential missteps in the cases of *Romualdez-Marcos v. COMELEC* (*Romualdez-Marcos*) [318 Phil. 329 (1995)] and *Salcedo II v. COMELEC* (*Salcedo II*) [371 Phil. 390 (1991)] wherein the phantom requirement of "deliberate intention to mislead" was first foisted:

> [I]n accordance with Section 78, *supra*, the petitioner in a petition to deny due course [to or] cancel a certificate of candidacy need only prove three elements. *First*, there is a representation contained in the certificate of candidacy. *Second*, the representation is required under Section 74. *Third*, the representation must be "material," which, according to jurisprudence, means that it pertains to the eligibility of the candidate to the office. *Fourth*, the representation is false.
>
> x x x x
>
> The pronouncements in *Romualdez-Marcos* and *Salcedo II*, however, are clearly not supported by a plain reading of the law. **Nowhere in Section 78 is it stated or implied that there be an intention to deceive for a certificate of candidacy to be denied due course or be cancelled**. All the law requires is that the "material representation contained [in the certificate of candidacy] as required under Section 74 x x x is false." **Be it noted that a hearing under Section 78 and Rule 23 is a quasi-judicial proceeding where the intent of the respondent is irrelevant. Also drawing on the principles of criminal law for analogy, the "offense" of material representation is *malum prohibitum* not *malum in se*. Intent is irrelevant. When the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application.**

> **The reason for the irrelevance of intent or belief is not difficult to divine. Even if a candidate believes that he is eligible and purports to be so in his certificate of candidacy, but is subsequently proven in a Rule 23 proceeding to be, in fact or in law, not eligible, it would be utterly foolish to allow him to proceed with his candidacy. The electorate would be merely squandering its votes for – and the COMELEC, its resources in counting the ballots cast in favor of – a candidate who is not, in any case, qualified to hold public office.**
>
> The Kapunan pronouncement in the *Romualdez-Marcos* case did not establish a doctrine. It is not supported by law, and it smacks of judicial legislation. Moreover, such judicial legislation becomes even more egregious[,] considering that it arises out of the pronouncement of only one Justice, or 6% of a Supreme Court. While several other Justices joined Justice Kapunan in upholding the residence qualification of Rep. Imelda Romualdez-Marcos, they did not share his dictum. It was his by his lonesome. Justice Puno had a separate opinion, concurred in by Justices Bellosillo and Melo. Justice Mendoza filed a separate opinion too, in which Chief Justice Narvasa concurred. Justices Romero and Francisco each had separate opinions. Except for Chief Justice Narvasa and Justice Mendoza, the Justices in the majority voted to grant Rep. [Marcos's] petition on the ground that she reestablished her domicile in Leyte upon being widowed by the death of former President Marcos.
>
> On the other hand, the reiteration of the *Kapunan* pronouncement in *Salcedo* is a mere *obiter dictum*. The Court dismissed the disqualification case on the ground that the respondent's use of the surname "*Salcedo*" in her certificate of candidacy is not a material representation since the entry does not refer to her qualification for elective office. Being what it is, the *Salcedo* obiter cannot elevate the *Kapunan* pronouncement to the level of a doctrine regardless of how many Justices voted for *Salcedo*. Significantly, Justice Puno concurred in the result only.
>
> Thus, in this case, it does not matter that respondent knows that he was not a natural-born Filipino citizen and, knowing such fact, proceeded to state otherwise in his certificate of candidacy, with an intent to deceive the electorate. A candidate's citizenship eligibility in particular is determined by law, not by his good faith. It was, therefore, improper for the COMELEC to dismiss the petition on the ground that petitioner failed to prove intent to mislead on the part of respondent. x x x

I could not agree more with Justice Tinga's exposition. Truly, **"[n]owhere in Section 78 is it stated or implied that there be an intention to deceive for a certificate of candidacy to be denied due course or be cancelled." At the risk of belaboring the point, the candidate's intent to mislead or misinform on a material fact stated in his/her CoC is of no consequence in ruling on a Section 78 petition**. To premise a Section 78 petition on a finding of intent or belief would create a legal vacuum wherein the COMELEC becomes powerless under the OEC to enjoin the candidacy of ineligible presidential candidates upon a mere showing that the material representations in his/her CoC were all made in good faith. It should be emphasized that "**[a] candidate's citizenship eligibility in particular is determined by law, not by his good faith.**" With this, the *Romulaldez-Marcos* and *Salcedo II* rulings which "judicially

> legislated" this requirement should, therefore, be abandoned as legal aberrations.[64] (Emphases and underscoring supplied)

Again, nowhere in Section 78 is it stated or implied that there be an intention to deceive for a CoC to be denied due course or be cancelled. As such, there is nothing on the face of the statute which will show that the candidate's intent to mislead or misinform on a material fact stated in his/her CoC is of substantial consequence in ruling on a Section 78 petition.

The *ponencia* quotes a portion of the deliberations on Section 78, which equally appears in the Concurring Opinion of former Chief Justice Maria Lourdes P. A. Sereno (Justice Sereno) in *Poe-Llamanzares*, to support the argument that the lawmakers, while not explicitly stating the requisite intent to deceive in the words of the statute, did actually intend bad faith to be an element of false material representation under Section 78.[65] **Quite the opposite, however, there is nothing in the quoted deliberations to show, whether explicitly or impliedly, that bad faith or intent to deceive was intended to be an element of false material representation**. In fact, a careful scrutiny of the deliberations reveals that such intent was not required for the COMELEC's newly vested power to deny due course to/cancel the CoC of a candidate who is found to be ineligible. This power was likened to a *quo warranto* petition, only that the same was already made available prior to proclamation. A meticulous exposition is *apropos*.

While the phrase "bad faith" was mentioned during the said deliberations, it should be noted that the same was merely part of the arguments presented by some objecting lawmakers against the proposal to legislate the COMELEC's new power under a Section 78 petition. Accordingly, the mention of "bad faith" should thus be appreciated in its proper context – to point out that the power sought to be granted to the COMELEC under the proposal is far greater than its existing power under the then-prevailing election law.

To be sure, the objecting lawmakers argued that the power to deny due course to a CoC under the prevailing election law applies only to nuisance candidates whose **CoCs facially appear irregular or had been filed in bad faith**; but, if the same appears regular and valid, it should be given due course considering the ministerial duty of the COMELEC to accept CoCs. With regard to intrinsic qualifications and disqualifications of candidates, they noted that the same should be threshed out in an ordinary protest or *quo warranto* proceeding, *viz.*:

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[64] See Justice Perlas-Bernabe's Dissenting Opinion in *Poe-Llamanzares*, id. at 1283-1289; citations omitted.

[65] The *ponencia* asserted that the lawmakers contemplated Section 78 of the OEC to cover CoCs filed in bad faith to limit the power granted to the COMELEC; see *ponencia*, pp. 12-14.

HON. ADAZA. Why should we give the Comelec power to deny or to give due course when the acceptance of the certificate of candidacy is ministerial?

HON. FERNAN. *Iyon na nga ang sinasabi ko eh.*

x x x x

HON. GONZALES. This is a very very serious question. This should be declared only in proper election contest, properly litigated but never in a summary proceedings.

x x x x

THE CHAIRMAN. No but, if you know that your opponent is not elected or suppose…

HON. ADAZA. File the proper petition like before without providing this.

THE CHAIRMAN. But in the mean time, why…

HON. SITOY. My proposal is to delete the phrase "to deny due course", go direct to "seeking the cancellation of the Certificate of Candidacy."

HON. ASOK. Every Certificate of Candidacy should be presumed accepted. It should be presumed accepted.

THE CHAIRMAN. Suppose on the basis of…

HON. SITOY. That's why, my proposal is, "any person seeking the cancellation of a Certificate of Candidacy".

HON. FERNAN. But where are the grounds here?

HON. ADAZA. Noy, let's hold this. Hold *muna ito.* This is dangerous *e*.

x x x x

HON. GONZALES. ***Ginagamit lamang ng*** **Comelec** ***ang*** **"before" if it is claimed that a candidate is an official or that his Certificate of Candidacy has been filed in bad faith,** ***iyon lang. Pero*** **you cannot go to the intrinsic qualifications and disqualifications of candidates.**

HON. DELOS REYES. Which are taken up in an ordinary protest.

HON. GONZALES. *Dito ba, kasama iyong* proceedings *sa…?* What I'm saying is: *Kagaya iyong nabanggit kay* Nonoy, natural course of margin, imagine, it will eventually reach the Supreme Court. The moment that the disqualification is pending, *lalong lalo na kung may* decision *ng* Comelec and yet pending *pa* before the Supreme Court, that already adversely affect a candidate, *mabigat na iyan.* **So, what I'm saying is, on this disqualification sub-judice,** ***alisin ito*** **except if on the ground that he is a nuisance candidate or that his Certificate of Candidacy has been filed in bad faith. But if his Certificate of Candidacy appears to be regular and valid on the basis that his certificate has been filed on time, then it should be given due course.**

x x x x

THE PRESIDING OFFICER. No. 10, the power of the Commission to deny due course to or cancel a certificate of candidacy. What is the specific *ano*, Tessie?

HON. ADAZA. Page 45.

THE PRESIDING OFFICER. Section 71.

HON. ADAZA. *Kasi kay* Neptali *ito* and it is also contained in our previous proposal, "Any person seeking to deny due course to or cancel..." our proposal here is that it should not be made to appear that the Commission on Elections has the authority to deny due course to or cancel the certificate of candidacy. I mean their duty should be ministerial, the acceptance, except in cases where they are nuisance candidates.[66] (Emphases and underscoring supplied)

However, as the supporters of the proposal pointed out, the intended remedy was **a new provision meant precisely to cover situations – beyond those of nuisance candidates – where the ineligibility of a candidate already surfaces based on the representations found in the CoCs**. It was even likened to an **electoral protest and *quo warranto* proceedings** wherein eligibility requirements are squarely put at issue, thus:

HON. ADAZA. Why should we give the Comelec power to deny or to give due course when the acceptance of the certificate of candidacy is ministerial?

HON. FERNAN. *Iyon na nga ang sinasabi ko eh.*

THE CHAIRMAN. *Baka iyong* residences, this must be summary. He is not a resident of the *ano*, why will you wait? Automatically disqualified *siya*. Suppose he is not a natural born citizen.

HON. ADAZA. No, but we can specify the grounds here. *Kasi*, they can use this power to expand.

THE CHAIRMAN. Yeah, that is under this article *nga*.

HON. ADAZA. *Iyon na nga*, but let's make particular reference. Remember, Nonoy, this is a new provision which gives authority to the Comelec. This was never there before. *Ikansel na natin yan.*

x x x x

THE CHAIRMAN. No, no, because, clearly, he is a non-resident. Oh, why can we not file a petition? Supposing he is not a natural born citizen? Why?

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[66] See Deliberations of the Committee: *Ad Hoc*, Revision of Laws dated May 20, 1985, pp. 65-68 and May 30, 1985, as cited in Justice Sereno's Concurring Opinion in *Poe-Llamanzares*, supra note 38, at 429-431.

HON. GONZALES. This is a very very serious question. This should be declared only in proper election contest, properly litigated but never in a summary proceedings.

THE CHAIRMAN. We will not use the word, the phrase "due course", "seeking the cancellation of the Certificate of Candidacy". For example, *si* Ading, is a resident of Cebu and he runs in Davao City.

HON. ADAZA. He is a resident of Cebu but he runs in Lapu-Lapu? *Ikaw*, you are already threatening him *ah.*

x x x x

THE CHAIRMAN. No but, if you know that your opponent is not elected or suppose…

HON. ADAZA. File the proper petition like before without providing this.

THE CHAIRMAN. But in the mean time, why…

x x x x

HON. ADAZA. This power from the Comelec. This is the new provision, *eh.* They should not have this. All of us can be bothered, *eh.*

HON. CUENCO. So in that case how can the Comelec cancel the certificate of candidacy when you said…

HON. ADAZA. Only with respect to the nuisance candidates. There is no specific provision.

HON. ASOK. There is already a specific provision for nuisance candidates.

HON. ADAZA. This one refers to other candidates who are not nuisance candidates, but most particularly refers to matters that are involved in protest and *quo warranto* proceedings. Why should we expand their powers? This is a new provision by the way. This was not contained in other provisions before. You know, you can get bothered.

x x x x

THE PRESIDING OFFICER. Suppose you are disqualified, you do not have the necessary qualifications, the Comelec can *motu propio* cancel it.

HON. CUENCO. On what ground, Mr. Chairman?

THE PRESIDING OFFICER. You are disqualified. Let's say, *wala kang* residence or *kuwan*…

HON. ADAZA. Ah, that's the problem.

THE PRESIDING OFFICER. That's why.

HON. ADAZA. We should not allow that thing to crop up within the powers of the Comelec because anyone can create problem for everybody. You

know that's a proper subject for protest or *quo warranto*. But not to empower the Comelec to cancel. That's a very dangerous provision. It can reach all of us.

THE PRESIDING OFFICER. *Hindi*, if you are a resident *pero iyong*, let's say a new comer comes to Misamis Oriental, 3 months before and file his Certificate of Candidacy.

HON. ADAZA. Never mind, file the necessary petition.

THE PRESIDING OFFICER. These are the cases they say, that will be involved.

HON. ADAZA. I think we should *kuwan* that *e*.

THE PRESIDING OFFICER. *Iyon talagang* non-resident and then he goes there and file his certificate, You can, how can anybody stop him, *di ba?*

x x x x

HON. ADAZA. Which one? That's right.

HON. LOOD. That's why it includes full... (Unintelligible).

HON. ADAZA. No, it's very dangerous. We will be all in serious trouble. Besides, that covered already by specific provisions. So, can we agree. Anyway it is this new provision which is dangerous."[67] (Emphases and underscoring supplied)

The fact that the law was passed without any further qualification of intent to deceive or bad faith speaks for itself; the arguments of the objecting lawmakers did not prevail, and the intended expansion of the COMELEC's power to not only deny due course to, but even to cancel a CoC, as envisioned by its proponent and its supporters, was passed into law.

Notably, the power granted to the COMELEC to refuse or cancel the CoCs of ***nuisance candidates*** has been retained under the current election law, despite the additional power granted to it under Section 78 of the OEC. However, it should be pointed out that under both the earlier election law – Presidential Decree No. 1296,[68] otherwise known as the 1978 Election Code,

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67 Id. at 429-434.

68 Entitled "ENACTING 'THE 1978 ELECTION CODE'"; approved on February 7, 1978. See Section 26, which reads:

> Section 26. *Nuisance candidates.* – **The Commission may**, *motu proprio* or upon a verified petition of an interested party, **refuse to give due course to a certificate of candidacy if it is shown that said *certificate has been filed* to cause confusion among the voters** by the similarity of the names of the registered candidates **or by other circumstances which demonstrate that the candidate has no *bona fide* intention to run for the office** for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

Its predecessor provision, Section 31 of RA 6388 entitled "ELECTION CODE OF 1971"; approved on September 2, 1971, similarly provides:

> **Section 31. *Ministerial Duty of Receiving and Acknowledging Receipts.*** – x x x Provided, That in all cases the said **Commission may** *motu proprio* or upon a verified petition of an

and the OEC,[69] the COMELEC's power to deny due course to a CoC of a ***nuisance candidate*** was based on the ground that said the **CoC was *filed*** to cause confusion among the voters or under circumstances which demonstrate that the candidate has no *bona fide* intention to run for the office. It must be highlighted that this power to deny due course to a CoC of a nuisance candidate is found in a separate provision of the OEC, *i.e.*, Section 69 and not Section 78 governing petitions to deny due course to/cancel CoCs. Accordingly, the bad faith requisite harped on by the *ponencia*[70] – which was mentioned in the above-quoted deliberations and now contained in Section 69 of the OEC – pertains to the *act itself of filing a CoC*, and not to the false material representation made therein, which is a different requisite found in a separate OEC provision, *i.e.*, Section 78.

Overall, despite the fears of several lawmakers[71] against the new power to be granted to the COMELEC, the same was still passed by majority votes and made its way to our election laws. Thus, rather than support the *ponencia*'s conclusion, the deliberations[72] on Section 78, which the *ponencia* quotes and relies on, instead highlights the Congressional intent to strengthen the COMELEC's power to weed out ineligible candidates at the onset so as not to "[squander the electorate's] votes x x x and the [COMELEC's] resources in counting the ballots cast in favor [of a] candidate who is not, in any case, qualified to hold public office."[73] Indeed, this new power granted to the COMELEC, and the concomitant remedy granted to the electorate, are meant to ensure that only those who are truly eligible and who correctly represent the same in their CoCs may run for public office.

It may be wondered if the summary nature of the proceeding contradicts the intent for the provision to be a remedy to weed out ineligible candidates even before the election. However, to my mind, a Section 78 petition is a

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interested party, **refuse to give due course to a certificate of candidacy if it is shown that said certificate has been presented and filed to cause confusion among the voters** by the similarity of the names of the registered candidates **or by other circumstances which demonstrate that the candidate has no *bona fide* intention to run for the office** for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of electorate. (Emphases, italics, and underscoring supplied).

69 The COMELEC's power to deal with nuisance candidates was expanded under Section 69 of the OEC as it now includes the power to cancel the CoC, not just to deny due course as previously provided in PD 1296. It also added another ground or basis to cancel or deny due course to a CoC for being a nuisance candidate. Section 69 reads:

> Section 69. *Nuisance candidates.* – **The Commission may,** *motu proprio* or upon a verified petition of an interested party, **refuse to give due course to or cancel a certificate of candidacy if it is shown that said *certificate has been filed* to put the election process in mockery or disrepute or to cause confusion** among the voters by the similarity of the names of the registered candidates **or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office** for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. (Emphases, italics, and underscoring supplied).

70 See *ponencia*, pp. 12-14.

71 Particularly: Hon. Adaza, Hon. Gonzales, and Hon. Cuenco; see Deliberations of the Committee: *Ad Hoc*, Revision of Laws dated May 20, 1985, pp. 65-68 and May 30, 1985, as cited in Justice Sereno's Concurring Opinion in *Poe-Llamanzares*, supra note 38, at 429-434.

72 See id. at 429-431.

73 See Justice Tinga's Dissenting Opinion in *Tecson v. COMELEC*, supra note 63, at 607.

summary proceeding[74] conducted (and is meant to be resolved) prior to the elections to ensure that the issue[75] affecting the false representations on a candidate's eligibility is decided expeditiously so as to address the urgency/time-sensitive element of the impending elections. All in all, the summary nature of the proceeding coincides with the policy impetus to avert any wastage of the electorate's votes and the COMELEC's resources by permitting a candidate who is already determined to be ineligible to run for office and still be voted upon.

In any event, **there is virtually nothing in the deliberations which will clearly show that intent to deceive was a requisite that was considered in the passage of Section 78.** The deliberations likewise fail to show that Section 78 was approved upon the objecting lawmakers' compromise to limit it to a determination of bad faith/nuisance candidates, and to make the same an element for the successful prosecution of a petition to deny due course to/ cancel a CoC. As worded, the sole ground for a Section 78 petition is the making of a false material representation. Indeed, to persist with this element of bad faith or intent to deceive recognized under current case law, is not only a clear contravention of the wordings of the statute, more significantly, it further betrays the intent of the legislature by clipping the COMELEC's then-new power. In particular, it would diminish the expanded power of the COMELEC to weed out ineligible candidates even prior to their proclamation which this proceeding clearly sought to address. Furthermore, the intent to deceive requisite would render a candidate's qualifications dependent on the candidate's frame of mind, and not the COMELEC's objective assessment of all attendant factors.

At this point, it is well to clarify that when the issue directly attacks the eligibility or qualification of a candidate, **a petition for disqualification is not the proper remedy therefor**. Instead, a Section 78 petition as well as a petition for *quo warranto*[76] are the remedies that deal with the qualifications and eligibility of a candidate;[77] however, these remedies remain to be separate and distinct as discussed hereunder.

A petition to deny due course to/cancel a CoC is governed by Section 78 of the OEC. It may be filed by any person *not later than 25 days from the time of filing of the CoC* on the exclusive ground that **any material**

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74 See *Reyes v. COMELEC*, 720 Phil. 174, 204-205 (2013). See also Section 3, Rule 23 of the COMELEC Rules of Procedure.

75 See Justice Sereno's Concurring Opinion in *Poe-Llamanzares*, where it was noted that nature of a Section 78 proceeding as summary in nature implies that only simple issues are to be heard since it dispenses with long drawn and complicated litigation; supra note 38, at 434-436.

76 In response to Justice Caguioa's Dissenting Opinion, which stated "a Section 78 petition is not the proper remedy to challenge a candidate's eligibility or qualification, or to declare a candidate disqualified or ineligible. Section 78 is based on a candidate's act of falsely representing a material fact in a CoC, **and not his lack of eligibility or qualifications. The latter are proper grounds for petitions to disqualify under Sections 12 or 68 of the OEC in relation to Section 40 of the [LGC], if filed before the elections, or a petition for *quo warranto* under Section 253 of the OEC, if filed after the elections**"; emphasis supplied.

77 See id.

representation contained therein as required by Section 74 is false.[78] Section 74 provides what a CoC must contain or state; these pertain to **all the basic and essential requirements** applicable **to all citizens to qualify for candidacy**. A citizen must not only possess all these requirements; more importantly, he/she must positively represent in the CoC that he/she possesses them. **Any falsity on these requirements constitutes a false material representation that can lead to the CoC's cancellation**. Notably, with the exception of the requirement that the candidate "is not a permanent resident or an immigrant to a foreign country," all the representations that a candidate must make in the CoC are positive representations of possession of all the qualification requirements under the Constitution and the law.

In contrast to a CoC denial of due course/cancellation case, a petition for disqualification essentially seeks to "deprive [a person] of a power, right, or privilege" or to "make ineligible x x x for further competition because of violations of the rules."[79] It shall be filed *any day after the last day for filing CoCs but not later than the date of proclamation* of the winning candidate.[80] The grounds are based on (*i*) possession of permanent resident status in a foreign country or (*ii*) violation of specified provisions of the OEC or commission of election offenses, as provided under Section 68[81] of the OEC.[82] It may likewise be premised on the grounds provided under Section 12[83] of

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78 See Section 78 of the OEC. However, Section 2, Rule 23 of the COMELEC Rules of Procedure provides that "[t]he petition must be filed within five (5) days following the last day for the filing of [CoC]."

79 See Merriam-Webster Online Dictionary. *Disqualify*, available at <https://www.merriam-webster.com/dictionary/disqualify> (last visited October 5, 2021).

80 See Section 3, Rule 25 of the COMELEC Rules of Procedure.

81 Section 68. *Disqualifications.* – Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (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.

82 See *Munder v. COMELEC*, 675 Phil. 300, 312 (2011).

83 Section 12. *Disqualifications.* – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he 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.

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

the OEC,[84] or Section 40[85] of the Local Government Code.[86] **Together, these provisions, for which a petition for disqualification is anchored on, refer to the *traits/acts* imputable to a particular candidate, that are separate from the general qualifications that every citizen who wishes to run for a local public office must commonly satisfy.** These general qualifications go into the eligibility of the candidate and are threshed out in a Section 78 petition or, as will be explained below, a *quo warranto* petition.

Thus, in a disqualification proceeding, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens may nonetheless **lose the right to be a candidate** or if elected, may be deprived of the chance to serve, if he/she possesses any of the grounds for disqualification. But (save for possession of foreign permanent residence or immigrant status), his/her lack of substantive qualifications is not a ground for disqualification,[87] nor his/her possession of any of the disqualifying traits, acts, or characteristics, a ground for cancellation of his/her CoC.[88]

Meanwhile, a petition for *quo warranto* is filed under Section 253 of the OEC[89] *within ten (10) days after the proclamation of the results of the election*[90] to **oust an elected official** from his/her office on the ground of **ineligibility or disloyalty to the Republic of the Philippines.**[91] Although *quo warranto* and CoC cancellation share the same ineligibility grounds, they differ by the fact that, as noted above, the former directly attacks a candidate's eligibility regardless of reference to the CoC, while the latter squarely pertains to the candidate's false representations on these material qualifications (not mere innocuous mistakes) as reflected in the CoC. Moreover, a *quo warranto* petition can only be filed after the person is elected, while a Section 78 petition, as intended by the lawmakers, is filed prior to the

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84 See *Jalosjos, Jr. v. COMELEC*, 696 Phil. 601, 632 (2012); *Munder v. COMELEC*, supra, at 312; and *Fermin v. COMELEC*, 595 Phil. 449, 468-469 (2008).

85 Section 40. *Disqualifications.* - The following persons are disqualified from running for any elective local position:
(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
(b) Those removed from office as a result of an administrative case;
(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;
(d) Those with dual citizenship;
(e) Fugitives from justice in criminal or non-political cases here or abroad;
(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
(g) The insane or feeble-minded.

86 See *Jalosjos, Jr. v. COMELEC*, supra, at 632; *Munder v. COMELEC*, supra, at 312; and *Fermin v. COMELEC*, supra, at 468-469. See also Justice Brion's Dissenting Opinion in *Aratea v. COMELEC*, 696 Phil. 700, 748-750 (2012).

87 See *Munder v. COMELEC*, id. at 313.

88 See Justice Brion's Dissenting Opinion in *Aratea v. COMELEC*, supra, at 752.

89 Section 253 hereof with respect to *quo warranto* petitions filed in election contests affecting municipal officers, the aggrieved party may appeal to the Commission within five days after receipt of a copy of the decision. No motion for reconsideration shall be entertained by the court. The appeal shall be decided within sixty days after the case has been submitted for decision. (See Section 196, Art. XVIII of the 1978 Election Code).

90 See Section 253 of the OEC and Rule 21 of the COMELEC Rules of Procedure.

91 See *Halili v. COMELEC*, G.R. No. 231643, January 15, 2019; *Tagolino v. House of Representatives Electoral Tribunal*, 706 Phil. 534, 551 (2013); *Jalosjos, Jr. v. COMELEC*, supra, at 630; *Gonzalez v. COMELEC*, 660 Phil. 225, 251-252 (2011); and *Fermin v. COMELEC*, supra, at 465-467.

elections to prevent a clearly ineligible candidate from running for public office as reflected in his/her representation in the CoC.

To conclude, bearing all the above disquisitions in mind, it is thus high-time that this Court rectify the mistaken impression in case law that intent to deceive or mislead the electorate is necessary for a CoC to be denied due course to/cancelled. Maintaining this doctrine does not only clip the COMELEC's mandate and power, it also denigrates the constitutional/ statutory requirements prescribed for public office and in the process, taints the democratic process of elections. Verily, to premise a Section 78 petition on a finding of intent or belief would create a legal vacuum wherein the COMELEC becomes powerless under the OEC to enjoin the candidacy of ineligible candidates upon a mere showing that the material representations in his/her CoC were all made in good faith. Further, on a practical level, it remains a great operational quandary how the COMELEC can determine bad faith or good faith, which is a highly circumstantial question of fact, in a summary proceeding wherein no hearings for direct or cross examinations are made. Be that as it may, and operational parameters aside, the requisite of intent to deceive strikes against one bedrock principle in constitutional law: **a candidate's eligibility is determined by law; hence it should not be premised upon one's good or bad faith, or his/her own mistaken perceptions of fact or misunderstandings of the law**.[92]

III.

The foregoing notwithstanding, it should be recognized that prevailing jurisprudence, at the time this case was filed, still requires intent to deceive as an integral element of the false material representation under Section 78 of the OEC. Due to the public's reliance on the Court's decisions that form part of the law of the land, this doctrinal shift – in the interest of fairness – must be made **prospective** in application.

As such, having been constrained to operate under Section 78's existing (albeit erroneous) jurisprudential framework, I concur with Justice Caguioa that Villamor had an intent to deceive or mislead the electorate when she made a false material representation in her CoC that she had been a resident of Lagangilang, Abra for a period of 36 years and 8 months prior to the 2019 NLE and hence, eligible for the office of Mayor.[93] As he aptly pointed out, jurisprudence settles that "the length of residence or domicile of one who had abandoned his domicile of origin and had eventually returned thereto, is reckoned from the time he returned and fixed it as his new domicile of choice."[94] Any "period of stay therein prior to such abandonment" should not

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92 See *Tecson v. COMELEC*, supra note 63, at 608-609.

93 See Justice Caguioa's Dissenting Opinion.

94 Id., citing *Caballero v. COMELEC*, supra note 33, at 116; and *Japzon v. COMELEC*, supra note 28, at 370.

be counted "to his period of stay upon return."[95] Considering that the computation of the length of residence of returning Filipinos is well-settled and hence, is in no way an unresolved complex question of law, it can be reasonably concluded that Villamor's false material representation in her CoC that she had been a resident of Lagangilang, Abra for a period of 36 years and 8 months prior to the 2019 NLE was made with an intent to deceive or mislead the electorate.

For all these reasons, I therefore tender this dissent against the majority's ruling that the COMELEC committed grave abuse of discretion in denying due course to/cancelling the CoC of Villamor.

I vote to **DISMISS** the petition.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

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[95] Id., citing *Caballero v. COMELEC*, supra note 33, at 115.