EN BANC

G.R. No. 250370 — MAYOR ROVELYN ECHAVE VILLAMOR, *petitioner,* ***versus*** **COMMISSION ON ELECTIONS and ANTONIO BELLO VIERNES,** *respondents.*

Promulgated:

October 5, 2021

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DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* grants the Petition for *Certiorari* (Petition), annuls and sets aside the Resolutions dated April 26, 2019 and November 27, 2019 (collectively, assailed Resolutions) of the Commission on Elections (COMELEC), and dismisses the Petition to Deny Due Course/Cancel Certificate of Candidacy (CoC) (*Section 78 Petition*) filed before the COMELEC by Antonio Bello Viernes (Viernes) against Mayor Rovelyn Echave Villamor (Villamor).[1] It finds that the COMELEC gravely abused its discretion when it cancelled the CoC of Villamor on the ground that she committed false material representation therein when she stated that she had been a resident of Lagangilang, Abra for 36 years and 8 months prior to the May 13, 2019 elections and, thus, eligible for the office of Mayor thereof.

I dissent.

Villamor had the burden of evidence to prove that she had re-established her domicile in Lagangilang, Abra.

The COMELEC was correct in rejecting her evidence therefor prior to her re-acquisition of Philippine citizenship, and without her having been granted an immigrant or permanent resident visa. The same is supported by jurisprudence as well as our election and immigrations statutes.

Under our election laws, the term "residence" is synonymous with domicile and refers to the individual's permanent home or the place to which, whenever absent for business or pleasure, he or she intends to

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[1] *Ponencia*, p. 19.

return.[2] Jurisprudence has laid down the following guidelines in determining a person's domicile: (a) every person has a domicile or residence somewhere; (b) once established, that domicile remains until he or she acquires a new one; and (c) a person can have but one domicile at a time.[3]

It is settled that domicile, once acquired, cannot be easily lost, as it is presumed to continue, unless its abandonment and the consequent acquisition of a new one, is proven by clear and positive evidence.[4] It is likewise settled that acquisition of a foreign citizenship automatically results in the abandonment of domicile in the Philippines.[5]

Here, Villamor's domicile of origin is Lagangilang, Abra, having been born and raised there.[6] However, she became a naturalized American citizen in 2009,[7] as a consequence of which she had effectively abandoned Lagangilang as her domicile. As such naturalization in the United States of America (the US) was admitted by Villamor, she acquired the burden of evidence to prove, by clear and positive evidence,[8] that she had re-established her domicile in Lagangilang, Abra at least one (1) year prior to the 2019 elections.

Villamor failed to discharge such burden.

The documents attached to Villamor's Verified Answer relate to her re-acquisition of Filipino Citizenship under Republic Act No. (RA) 9225[9] on June 19, 2018. However, as also settled in jurisprudence, such re-acquisition of citizenship merely gives a person the *option* to, and does not *ipso facto,* establish his domicile in the Philippines.[10] Thus, even on the very gratuitous assumption that Villamor had immediately established her residence when she re-acquired her Filipino citizenship, the same is still clearly short of the one-year period required by law.[11]

In turn, the evidence adduced by Villamor under cover of her Motion for Reconsideration (*MR*) were all rejected by the COMELEC, which ruled that because these pieces of evidence, except for her Voter's Certification, were all obtained when she was still an American citizen, they could not be used as basis to prove that she had acquired domicile in the Philippines.[12] The

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2 *J.* Brion, Separate Concurring Opinion in *Caballero v. COMELEC,* G.R. No. 209835, September 22, 2015, 771 SCRA 213, 246.

3 *Jalosjos v. COMELEC*, G.R. No. 191970, April 24, 2012, 670 SCRA 572, 576.

4 See *Romualdez-Marcos v. COMELEC,* G.R. No. 119976, September 18, 1995, 248 SCRA 300, 331-332.

5 *Coquilla v. COMELEC,* G.R. No. 151914, July 31, 2002, 385 SCRA 607, 617; *Caballero v. COMELEC*, supra note 2, at 236.

6 *Ponencia*, p. 3.

7 Id.

8 *Romualdez-Marcos v. COMELEC*, supra note 4, at 331.

9 AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRE FOREIGN CITIZENSHIP PERMANENT, AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 63, AS AMENDED, AND FOR OTHER PURPOSES, approved on August 29, 2003.

10 *Japzon v. COMELEC,* G.R. No. 180088, January 19, 2009, 576 SCRA 331, 347.

11 See Sec. 39 of RA 7160, otherwise known as the LOCAL GOVERNMENT CODE OF 1991.

12 *Rollo*, p. 39.

COMELEC ruled that Villamor lacked the requisite *animus manendi et non-revertendi* to acquire domicile in the Philippines, as she was then an alien without an immigrant or permanent resident status in the Philippines, thus:

> It is too difficult to fathom how Respondent intended to permanently stay in Lagangilang, Abra when, owing to her status as an alien in this country, she had to return again to her home state after the expiration of her Philippine Visa. **It would have been a different matter had Respondent present[ed] proof that she was granted an immigrant or permanent resident status in the Philippines. In this latter scenario, the issue of residence may be totally divorced from the question of citizenship.** x x x[13] (Emphasis supplied)

Our immigration and election laws, as well as relevant jurisprudence, support the COMELEC's conclusions.

In the landmark case of *Coquilla v. COMELEC*[14] (*Coquilla*), Coquilla became an American citizen after enlisting in the United States Navy in 1965. In 1998, he returned to his domicile of origin in Oras, Eastern Samar, where he obtained a residence certificate. In 2000, his application for repatriation was approved and later, he registered as a voter in Oras. In 2001, he filed a CoC for mayor of Oras in connection with the 2001 elections, stating therein that he had been a resident of the town for two (2) years prior to said elections. He won. However, the COMELEC cancelled his CoC, which action was later affirmed by the Court, with the latter holding that, until Coquilla re-acquired his Philippine citizenship in 2000, he "was an alien without any right to reside in the Philippines[,] save as our immigration laws may have allowed him to stay as a visitor or as a resident alien."[15] Hence, like the COMELEC in the present case, the Court in *Coquilla* rejected all evidence of domicile of Coquilla prior to his re-acquisition of Filipino citizenship after finding that he had not complied with immigration laws for **waiver of his status as a non-resident alien**, thus:

> x x x it is not true, as petitioner contends, that he reestablished residence in this country in 1998 when he came back to prepare for the mayoralty elections of Oras by securing a Community Tax Certificate in that year and by "constantly declaring" to his townmates of his intention to seek repatriation and run for mayor in the May 14, 2001 elections. **The status of being an alien and a non-resident can be waived either separately, when one acquires the status of a resident alien before acquiring Philippine citizenship, or at the same time when one acquires Philippine citizenship. As an alien, an individual may obtain an immigrant visa under §13 of the Philippine Immigration Act of 1948 and an Immigrant Certificate of Residence (ICR) and thus waive his status as a non-resident. On the other hand, he may acquire Philippine citizenship by naturalization under C.A. No. 473, as amended, or, if he is a former Philippine national, he may reacquire Philippine citizenship by repatriation or by an act of Congress, in**

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13 Id. at 39-40.
14 Supra note 5.
15 Id. at 616.

> **which case he waives not only his status as an alien but also his status as a non-resident alien.**
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> x x x **It would appear then that when petitioner entered the country on the dates in question, he did so as a visa-free *balikbayan* visitor whose stay as such was valid for one year only. Hence, petitioner can only be held to have waived his status as an alien and as a non-resident only on November 10, 2000 upon taking his oath as a citizen of the Philippines under R.A. No. 8171. He lacked the requisite residency to qualify him for the mayorship of Oras, Eastern Samar.**[16] (Emphasis supplied)

Caasi v. Court of Appeals[17] (*Caasi*) likewise required from a Filipino *green card* holder, a separate and indubitable waiver of his status as a permanent resident or immigrant of the US. *Ugdoracion, Jr. v. COMELEC*[18] (*Ugdoracion*) applied the *Caasi* doctrine to another *green card* holder who contended that his American resident status was acquired involuntarily.

In *Velasco v. COMELEC*[19] (*Velasco*), the Court applied *Coquilla* in rejecting Velasco's Voter's Certificate, ruling that he could not have complied with the residency requirement for purposes of voting considering that, during the concerned period, Velasco "was an American citizen who had lost his residency and domiciliary status in the Philippines [and] whose sojourn in the Philippines was *via* a visitor's visa."[20]

In *Reyes v. COMELEC*,[21] the Court quoted, with approval, the COMELEC's finding that "[n]o amount of [Reyes'] stay in the said locality can substitute the fact that she has not abandoned her domicile of choice in the [US]."[22] The "stay" that the Court refused to consider in counting the one-year residency of Reyes was her employment as Provincial Administrator in Marinduque for almost six (6) months.

In *Caballero v. COMELEC*[23] (*Caballero*), the Court sustained the COMELEC's finding that it was only after reacquiring his Filipino citizenship that Caballero could claim that he re-established his domicile in Uyugan, Batanes, if such was accompanied by physical presence thereat, coupled with an actual intent to re-establish his domicile. His frequent visits to Uyugan from his domicile in Canada could not be considered a waiver of his abandonment of domicile in Uyugan when he became a Canadian citizen.

In the 1966 case of *Ujano v. Republic*[24] (*Ujano*), the Court affirmed the trial court's denial of Ujano's petition to re-acquire citizenship for his failure

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16 Id. at 618-620.
17 G.R. Nos. 88831 & 84508, November 8, 1990, 191 SCRA 229.
18 G.R. No. 179851, April 18, 2008, 552 SCRA 231.
19 G.R. No. 180051, December 24, 2008, 575 SCRA 590.
20 Id. at 611-612.
21 712 Phil. 192 (2013).
22 Id. at 220. Emphasis omitted.
23 Supra note 2.
24 No. L-22041, May 19, 1966, 17 SCRA 147.

to meet the six (6) months residency requirement therefor. The Court noted that Ujano was admitted into the Philippines as a temporary visitor as he failed to secure a permanent resident visa, so that his presence could not have ripened into a residence, thus:

> x x x We find it to be a correct interpretation [Section 3(1) of Commonwealth Act No. 63] which requires that before a person may reacquire his Philippine citizenship he "shall have resided in the Philippines at least six months before he applies for naturalization." The word "residence" used therein imports not only an intention to reside in a fixed place but also personal presence coupled with conduct indicative of such intention (Yen vs. Republic, L-18885, January 31, 1964; Nuval vs. Guray, 52 Phil. 645). **Indeed, that term cannot refer to the presence in this country of a person who has been admitted only on the strength of a permit for temporary residence. In other words, the term residence used in said Act should have the same connotation as that used in Commonwealth Act No. 473**, the Revised Naturalization Law, even if in approving the law permitting the reacquisition of Philippine citizenship our Congress has liberalized its requirement by foregoing the qualifications and special disqualifications prescribed therein. **The only way by which petitioner can reacquire his lost Philippine citizenship is by securing a quota for permanent residence so that he may come within the purview of the residence requirement of Commonwealth Act No. 63.**[25] (Emphasis supplied)

Indeed, as early as 1966, the Court has been consistent in aligning its interpretation of residence or domicile in other laws — especially election laws — with our immigration laws. In so doing, it has consistently applied the rule that the stay of aliens, **including former Filipino citizens**, in the Philippines, who were admitted as temporary visitors under our immigration laws, cannot be counted to determine the length of residency for purposes of complying with election requirements. This is rightfully so in light of the axiomatic statutory construction rule that a statute must be interpreted to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system.[26]

It appears from the foregoing established and well-settled jurisprudence that the prohibition against non-resident aliens from establishing domicile in the Philippines is likewise rooted on the foundational doctrine that a person may only have one domicile at a time. **Hence, until and unless he or she abandons his or her foreign domicile according to the requirements of our immigration laws, he or she cannot be deemed to have been able to acquire a domicile in the Philippines.**

Such need to abandon the foreign domicile is likewise evident from the letter of Section 68 of the Omnibus Election Code[27] (OEC), mandating a

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25 Id. at 149-150.

26 *Philippine Economic Zone Authority v. Green Asia Construction & Development Corporation*, G.R. No. 188866, October 19, 2011, 659 SCRA 756, 764.

27 Batas Pambansa Blg. 881, OMNIBUS ELECTION CODE OF THE PHILIPPINES, December 3, 1985.

waiver of permanent residence or immigrant status *according to the periods required for residency under our election laws*, thus:

> SECTION 68. *Disqualifications*. – x x x Any person who is a permanent resident of or an immigrant to a foreign country shall **not be qualified** to run for any elective office under this Code, unless said person has **waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.** (Emphasis and underscoring supplied)

Moreover, as our immigration laws allow the alien, who had not abandoned his foreign domicile by obtaining an immigrant or permanent resident visa, to enter the Philippines as a visitor, and to stay for a limited period, he is deemed to lack, not just an intent to abandon such foreign domicile, but likewise an intent to remain in the Philippines. The Concurring Opinion of Associate Justice Arturo D. Brion (Justice Brion), in *Caballero* sheds light:

> Given the Canadian citizenship requirements, Caballero (who had been living in Canada since 1989 prior to his naturalization as Canadian citizen in 2007) would not have been granted Canadian citizenship had he not applied for it and had he not shown proof of permanent residence in that country. This is the **indicator of intent** that I referred to in considering the question of Caballero's Philippine residency and his factual claim that he never abandoned his Philippine residence.
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> Of course, existing immigration laws allow former natural-born Filipinos, who lost their Philippine citizenship by naturalization in a foreign country, to acquire permanent residency in the Philippines even prior to, or without reacquiring, Philippine citizenship under RA No. 9225.
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> x x x **The returning former Filipino can apply for a permanent resident visa (otherwise known as Returning Former Filipino Visa) which, when granted, shall entitle the person to stay indefinitely in the Philippines. Other than through such permanent resident visa, Caballero could have stayed in the Philippines only for a temporary period. Any such temporary stay, of course, cannot be considered for purposes of Section 39 of the LGC as it does not fall within the concept of "residence."**[28] (Emphasis supplied)

In *Ujano,* the Court adopted the ratio of the trial court in ruling that he failed to meet the residency requirement to re-acquire Philippine citizenship — that is, he lacked *animus manendi* because he was an alien who had been admitted into the country only as a temporary visitor, thus:

> x x x ["]**In other words, domicile is characterized by *animus manendi*.** So an alien who has been admitted into this country as **a temporary visitor**, either for business or pleasure, or for reasons of health, though actually present in this country **cannot be said to have established**

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[28] *Caballero v. COMELEC*, supra note 2, at 249-253.

> **his domicile here because the period of his stay is only temporary in nature and must leave when the purpose of his coming is accomplished.** In the present case, petitioner, who is presently a citizen of the United States of America, was admitted into this country as a temporary visitor, a status he has maintained at the time of the filing of the present petition for reacquisition of Philippine citizenship and which continues up to the present. Such being the case, he has not complied with the specific requirement of law regarding six months residence before filing his present petition."[29] (Emphasis supplied)

My colleagues in the Court make much of the fact that Villamor is not a stranger, as she is merely returning to her domicile of origin in the Philippines. However, this is beside the point as Philippine immigration laws *categorically* regard returning former Filipinos such as Villamor as non-quota immigrants, whose stay is generally limited to only one (1) year and whose admission is subject to the conditions and requirements of relevant laws. Commonwealth Act No. (CA) 613,[30] the purpose of which is clear from its title, "An Act to Control and Regulate the Immigration of Aliens Into the Philippines," provides:

> **IMMIGRANTS**
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> **Sec. 13. Under the conditions set forth in this Act**, there may be admitted into the Philippines immigrants, termed "quota immigrants" not in excess of fifty (50) of any one nationality or without nationality for any **one calendar year**, except that the following immigrants, termed **"non-quota immigrants,"** may be admitted without regard to such numerical limitations.
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> x x x x
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> **(f) A natural-born citizen of the Philippines, who has been naturalized in a foreign country, and is returning to the Philippines for permanent residence, including his spouse and minor unmarried children, shall be considered a non-quota immigrant for purposes of entering the Philippines.** (Emphasis supplied)

Moreover, the country's Balikbayan laws,[31] which provide for specific benefits and privileges to *balikbayans,* do not include as a benefit an exemption from the one-year limit to stay in the Philippines.[32] In fact, if they overstay, they are legally required to perform positive acts such as obtaining an Alien Certificate of Registration (ACR) and Certificate of Temporary

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29 *Ujano v. Republic*, supra note 24, at 149.

30 Otherwise known as the Philippine Immigration Act of 1940, accessed at <https://immigration.gov.ph/images/ImmigrationLaw/2017_Feb/1_CA613.pdf>.

31 RA 6768, entitled "AN ACT INSTITUTING A BALIKBAYAN PROGRAM," as amended by RA 9174, entitled "AN ACT AMENDING REPUBLIC ACT NUMBERED 6768 X X X BY PROVIDING ADDITIONAL BENEFITS AND PRIVILEGES TO BALIKBAYAN AND FOR OTHER PURPOSES."

32 See RA 9174, Sec. 3 on "Benefits and Privileges of the *Balikbayan*."

Residence Visa (CTRV), as well as paying the appropriate fees for extension.[33]

Hence, while it is true that the government's policy is "to attract and encourage overseas Filipinos to come and visit their motherland x x x in recognition of their contribution to the economy of the country through the foreign exchange inflow and revenues that they generate,"[34] there is nothing in our laws which dispenses with the requirement of obtaining an immigrant visa for former Filipinos who are still aliens to reside here. For the Court to confer such privilege would be nothing short of judicial legislation.

Indeed, Philippine immigration laws require returning former Filipinos to obtain immigrant or permanent resident visas if they intend to stay permanently in the Philippines. Absent such, they can only remain temporarily. Hence, it is but just and logical to treat aliens — including former Filipinos — who were admitted to the country on a temporary basis, as lacking *animus manendi*, precisely because they *chose* not to comply with the requirements of Philippine laws to permanently remain in the Philippines.

The laws' limitations on former Filipinos are not difficult to understand. Until and unless they reacquire Philippine citizenship, being citizens and residents of foreign states, they owe complete allegiance to such foreign land — as they, indeed, swore such allegiance before getting naturalized as foreign nationals — and none to the Philippines. They willfully abandoned their natural-born Philippine citizenship and domicile – and with it their loyalty and allegiance to the Philippines, when they resided abroad, and therein became foreign nationals.

Caasi had explained the policy of our election laws to exclude from public office, persons with dual loyalties and allegiance, such as Filipinos who acquired permanent residences:

> In banning from elective public office Philippine citizens who are permanent residents or immigrants of a foreign country, the Omnibus Election Code has laid down a clear policy of excluding from the right to hold elective public office those Philippine citizens who possess dual loyalties and allegiance. The law has reserved that privilege for its citizens who have cast their lot with our country "without mental reservations or purpose of evasion." The assumption is that those who are resident aliens of a foreign country are incapable of such entire devotion to the interest and welfare of their homeland for with one eye on their public duties here, they must keep another eye on their duties under the laws of the foreign country of their choice in order to preserve their status as permanent residents thereof.[35]

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33 For requirements specific to former Filipinos who became naturalized American citizens, see "Living and working in the Philippines," Non-Quota Immigrant Visa, accessed at <https://ph.usembassy.gov/u-s-citizen-services/local-resources-of-u-s-citizens/living-working-philippines/>.

34 RA 9174, Sec. 1.

35 *Caasi v. Court of Appeals*, supra note 17, at 236.

The case of a Filipino who not only renounced his Philippine domicile, but likewise his or her citizenship, is more regretful than a Filipino who merely decided to remain abroad. The former's loyalty is not even dual; it is exclusive to the foreign state where he or she elected to reside and become a citizen of. In the case of Villamor, she consciously and voluntarily opted to renounce her allegiance to the Philippines, and swore true faith and allegiance to the US, as gleaned from the Oath of Allegiance she took to become an American citizen:

> I, hereby declare, on oath, that **I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen**; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that **I take this obligation freely, without any mental reservation or purpose of evasion**; so help me God. x x x[36] (Italics omitted; additional emphasis supplied)

Hence, Villamor, being a former Filipino who had, by naturalization, become a foreign national, resulting in having abandoned her Philippine domicile, is allowed by Philippine immigration laws to establish Philippine domicile, only if she waived her foreign residence by: (1) obtaining an immigrant or permanent resident visa pursuant to CA No. 613 and its implementing rules, or (2) re-acquiring Philippine citizenship, in which case she waives, not only her status as an alien, but likewise her status as a non-resident. Absent either of these, she is only allowed to stay for a limited period in the Philippines, and therefore, lacks both *animus manendi* and *animus non revertendi*.

However, such allowance does not automatically confer domicile. As discussed, domicile is acquired only when the three (3) requisites therefor concur. Hence, I fully agree with the *ponencia*, when it quotes Associate Justice Marvic Mario Victor F. Leonen (Justice Leonen), that a Filipino who was naturalized abroad can choose, at some point thereafter, to re-establish residence in the Philippines.[37] Indeed, he can, but he must do so in compliance with Philippine immigration and election laws.

The *ponencia*'s reliance on *Frivaldo v. COMELEC*[38] (*1996 Frivaldo case*) to support the conclusion that residence may be counted from even before the returning Filipino's re-acquisition of Philippine citizenship (and even without waiving his or her foreign residency), is misplaced. The ONLY issue in the *1996 Frivaldo case* was Frivaldo's citizenship. As observed by

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36 As reproduced in *Tan v. Crisologo*, G.R. No. 193993, November 8, 2017, 844 SCRA 365, 380-381.
37 *Ponencia*, p. 15.
38 Id.; *Frivaldo v. COMELEC and Lee*, G.R. Nos. 120295 and 123755, June 28, 1996, 257 SCRA 727.

the *ponencia*, "Frivaldo's residence in the area was never put in issue."[39] Hence, the *ponencia*'s conclusion that, "[in] other words, his residence in Sorsogon, even prior to the date of effectivity of his repatriation, was considered and counted for purposes of the law's residency requirement"[40] is misleading and lacks basis. To stress, the Court did not adjudicate on Frivaldo's residence.

Indeed, there was no reason to inquire on Frivaldo's residence in the *1996 Frivaldo case* cited by the *ponencia*. Frivaldo had been living and residing in fact in Sorsogon from as early as 1987 or eight (8) years prior to the 1995 elections.[41] In fact, as explained by the Court in the *1996 Frivaldo case*, Frivaldo had been repeatedly elected as governor of Sorsogon, as early as in the 1988 elections. However, he had likewise been repeatedly disqualified by reason of his failure to comply with the citizenship requirement, thus:

> Frivaldo was naturalized as an American citizen on January 20, 1983. In G.R. No. 87193, *Frivaldo vs. Commission on Elections*, 174 SCRA 245 (June 23, 1989), the Supreme Court, by reason of such naturalization, declared Frivaldo "not a citizen of the Philippines and therefore DISQUALIFIED from serving as Governor of the Province of Sorsogon." On February 28, 1992, the Regional Trial Court of Manila granted the petition for naturalization of Frivaldo. However, the Supreme Court in G.R. No. 104654, *Republic of the Philippines vs. De la Rosa, et al.*, 232 SCRA 785 (June 6, 1994), overturned this grant, and Frivaldo was "declared not a citizen of the Philippines" and ordered to vacate his office. On the basis of this latter Supreme Court ruling, the Comelec disqualified Frivaldo in SPA No. 95-028.[42]

Notably, in the earlier *Frivaldo* cases,[43] Frivaldo's residence was likewise never questioned. In the *1989 Frivaldo case*,[44] he stated that he "returned to the Philippines after the EDSA revolution to help in the restoration of democracy."[45] This does not appear to have been contested and is, in fact, consistent with the facts of all three (3) *Frivaldo* cases, in which he asserted that he had been forced, in 1983, to seek naturalization in the US for fear of persecution during the Martial Law period.[46] This fact was also affirmed by the Court in the *1996 Frivaldo case*, and was one of its considerations when it retroactively applied Frivaldo's grant of repatriation to his application therefor. The Court, invoking "the real essence of justice," noted the remarkable loyalty and dedication of Frivaldo to the country who,

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39 Id.

40 Id.

41 See *Frivaldo v. COMELEC and Lee*, supra note 38, at 752.

42 Id. at 734-735, footnote no. 6.

43 *Frivaldo v. COMELEC and the League of Municipalities, Sorsogon Chapter*, G.R. No. 87193, June 23, 1989, 174 SCRA 245; *Republic v. De la Rosa,* G.R. Nos. 104654, 105715 & 105735, June 6, 1994, 232 SCRA 785.

44 *Frivaldo v. COMELEC and the League of Municipalities, Sorsogon Chapter*, id.

45 Id. at 248.

46 See *Frivaldo v. COMELEC and Lee,* supra note 38, at 747, *Frivaldo v COMELEC and the League of Municipalities, Sorsogon Chapter*, id.; *Republic v De la Rosa,* supra note 43, at 794.

"[a]t the first opportunity, x x x returned x x x and sought to serve his people once more."[47]

In fact, the Court's only mention of residence in the *1996 Frivaldo case* is to stress its conceptual *distinction* from citizenship — that the law does not require any particular date or time when the candidate must possess citizenship, unlike that for residence, which must consist of at least one year immediately preceding the election day.[48] And it is this residency requirement that is precisely the reason why Villamor's qualification was rejected by the COMELEC, and rightfully so — because even assuming *arguendo* that she had re-acquired domicile, she still failed to prove that such re-acquisition occurred at least one year prior to the 2019 elections.

The exception to the prior waiver of foreign residence rule set out in Poe-Llamanzares v. COMELEC is not applicable to Villamor.

The Court seemingly carved out an exception to the rule that aliens must waive their foreign residence before they can establish domicile in the Philippines in *Poe-Llamanzares v. COMELEC*[49] (*Poe-Llamanzares*), because Senator Poe's evidence of change of her domicile was **extensive, overwhelming, and unprecedented, so that no judicial precedent came close to the facts of said case**, thus:

> It is obvious that because of the sparse evidence on residence in the four cases cited by the respondents, the Court had no choice but to hold that residence could be counted only from acquisition of a permanent resident visa or from reacquisition of Philippine citizenship. In contrast, **the evidence of petitioner is overwhelming and taken together leads to no other conclusion that she decided to permanently abandon her U.S. residence** (selling the house, taking the children from U.S. schools, getting quotes from the freight company, notifying the U.S. Post Office of the abandonment of their address in the U.S., donating excess items to the Salvation Army, her husband resigning from U.S. employment right after selling the U.S. house) and permanently relocate to the Philippines and actually reestablished her residence here on 24 May 2005 (securing T.I.N., enrolling her children in Philippine schools, buying property here, constructing a residence here, returning to the Philippines after all trips abroad, her husband getting employed here). Indeed, coupled with her eventual application to reacquire Philippine citizenship and her family's actual continuous stay in the Philippines over the years, it is clear that when petitioner returned on 24 May 2005 it was for good.
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> **No case similar to petitioner's, where the former Filipino's evidence of change in domicile is extensive and overwhelming, has as**

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47 *Frivaldo v. COMELEC and Lee*, id. at 772.

48 Id. at 748.

49 G.R. Nos. 221697 & 221698-700, March 8, 2016, 786 SCRA 1.

> **yet been decided by the Court. Petitioner's evidence of residence is unprecedented. There is no judicial precedent that comes close to the facts of residence of petitioner.** There is no indication in *Coquilla v. COMELEC,* and the other cases cited by the respondents that the Court intended to have its rulings there apply to a situation where the facts are different. Surely, the issue of residence has been decided particularly on the facts-of-the[-]case basis.[50] (Emphasis supplied)

Hence, *Poe-Llamanzares* set the standard against which the totality of evidence of a party may be weighed, so that proof prior to his or her waiver or abandonment of foreign residence may be considered in determining his or her change of domicile. To stress, the Court did not reverse the *Coquilla* doctrine, which is likewise anchored on Philippine immigration, naturalization and election statutes. Rather, it ruled said doctrine to be inapplicable, considering the magnitude of the evidence presented by the candidate, which was enough to overturn the legal presumption that she lacked *animus manendi et non-revertendi*. Stated differently, whether the COMELEC committed grave abuse of discretion in applying the *prior waiver of foreign residence rule* to Villamor, thus, largely depends on the extent and strength of the evidence she offered to prove her change in domicile, considering the benchmark set by *Poe-Llamanzares*.

Poe-Llamanzares presented the following pieces of evidence for the Court to consider:

> Petitioner presented voluminous evidence showing that she and her family abandoned their U.S. domicile and relocated to the Philippines for good. These evidence include petitioner's former U.S. passport showing her arrival on 24 May 2005 and her return to the Philippines every time she travelled abroad; e-mail correspondences starting in March 2005 to September 2006 with a freight company to arrange for the shipment of their household items weighing about 28,000 pounds to the Philippines; e-mail with the Philippine Bureau of Animal Industry inquiring how to ship their dog to the Philippines; school records of her children showing enrollment in Philippine schools starting June 2005 and for succeeding years; tax identification card for petitioner issued on July 2005; titles for condominium and parking slot issued in February 2006 and their corresponding tax declarations issued in April 2006; receipts dated 23 February 2005 from the Salvation Army in the U.S. acknowledging donation of items from petitioner's family; March 2006 e-mail to the U.S. Postal Service confirming request for change of address; final statement from the First American Title Insurance Company showing sale of their U.S. home on 27 April 2006; 12 July 2011 filled-up questionnaire submitted to the U.S. Embassy where petitioner indicated that she had been a Philippine resident since May 2005; affidavit from Jesusa Sonora Poe (attesting to the return of petitioner on 24 May 2005 and that she and her family stayed with affiant until the condominium was purchased); and Affidavit from petitioner's husband (confirming that the spouses jointly decided to relocate to the Philippines in 2005 and that he stayed behind in the U.S. only to finish some work and to sell the family home).[51]

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50 Id. at 155-156.
51 Id. at 153-154.

Compared to the foregoing, all that Villamor presented were the following pieces of evidence to prove her change of domicile:

1) The documents entitled "Palawag" dated July 16, 2013[52] and September 8, 2016,[53] under which the she supposedly acquired portions of a farmland situated in Lagangilang from her brother and sister, respectively;

2) Deed of Absolute Sale[54] dated July 11, 2017 of a piece of land situated in Lagangilang, with Villamor as Vendee, with Tax Declaration.[55] She alleges that she eventually constructed a home on this property;

3) Community Tax Certificate (CTC) dated July 7, 2017;[56] and

4) Voter's Certificate of Villamor,[57] to prove that she was allowed to vote in the May 14, 2018 Barangay and Sangguniang Kabataan (SK) Elections (Barangay Elections).[58]

Clearly, Villamor's evidence is nowhere near as extensive as the ones presented in *Poe-Llamanzares*. Hence, I strongly take exception to Villamor's claim that "[a]pplying the *Grace Poe* doctrine, it is clear that there is an overwhelming evidence in the instant case x x x."[59] To the contrary, Villamor's case and evidence are even weaker than those obtaining in the cases where the Court observed the *waiver of foreign residency doctrine*.

Coquilla had returned and actually lived in Oras, Eastern Samar as early as in 1998 — three (3) years prior to the elections. Prior to this, he had visited the Philippines multiple times. He presented a residence certificate, his travel records, voter's registration and Community Tax Certificate (CTC) as proofs of domicile. Villamor, on the other hand, and as will be further discussed below, had not even alleged when she actually went back to the Philippines and started living in Lagangilang, Abra.

Ugdoracion became a permanent resident of the US. He presented a residence certificate, voter's registration and an *Abandonment of Lawful Permanent Resident Status*. He became the town Mayor for three (3) terms and thereafter, a Councilor. He built a house and acquired several properties, and faithfully paid real property taxes thereon.[60]

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52 *Rollo*, p. 72.
53 Id. at 73.
54 Id. at 75-76.
55 Id. at 77.
56 Id. at 74.
57 Id. at 78.
58 *Ponencia*, pp. 4-5. Villamor stated that she participated in the "May 14, 2019" Barangay Elections. However, upon checking, there were no such elections that took place in 2019.
59 As quoted in the *ponencia*, p. 5.
60 *Ugdoracion, Jr. v. COMELEC*, supra note 18, at 235, 236-237.

Villamor's sparse evidence notwithstanding, and although she did not present an immigrant or permanent resident visa, it appears, from the records, that the members of the COMELEC *en banc* still **did** evaluate the documents Villamor submitted which obtained prior to her re-acquisition of Philippine citizenship, thus:

> The Supreme Court was unequivocal in stating in the case of *Poe-Llamanzares v. Comelec and Elamparo* that it is the *fact of residence* which determines compliance with legal requirements on residency. The Supreme Court likewise stated therein that in order "*[t]o establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of the intention to make it one's fixed and permanent place of abode.*"
>
> Villamor attempted to prove change of domicile from the United States of America back to Lagangilang, Abra by evidence showing purchase of properties located in said jurisdiction and a community tax certificate. **Villamor did not however prove her actual physical presence in Lagangilang, Abra**.
>
> Aside from Villamor's bare statement in her motion that she regularly flies back and forth to the United States of America and Lagangilang, Abra, she did not adduce any other evidence to prove her actual physical presence in said locality (*e.g. travel records, affidavits of witnesses*). **The purchase of properties and securing a CTC may not be interpreted as Villamor's act of making Lagangilang, Abra her *fixed and permanent place of abode* without evidence of her *actual physical presence* therein.**[61] (Emphasis and underscoring supplied; italics in the original)

Hence, I submit that the COMELEC, in applying the *Coquilla* doctrine and rejecting Villamor's evidence when she was still a non-resident alien, did not commit grave abuse of discretion.

An evaluation of all of Villamor's evidence still leads to the conclusion that she had failed to prove, by clear and positive evidence, that she had acquired domicile in Lagangilang, Abra at least a year prior to the 2019 elections.

To be sure, a perusal of Villamor's evidence, including those obtaining prior to her re-acquisition of Philippine citizenship, still leads to a conclusion that she lacked the residency qualification.

Successfully acquiring a new domicile requires three (3) elements to concur: 1) residence or bodily presence in a new locality; 2) an intention to remain there; and 3) an intention to abandon the old domicile.[62] Only with

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[61] Separate Concurring Opinion of COMELEC Commissioner Luie Tito F. Guia in the assailed Resolution dated November 27, 2019, *rollo*, p. 42.

[62] *Poe-Llamanzares v. COMELEC*, supra note 49, at 153.

clear and positive proof of presence of all three (3) requirements can the presumption of continuity of residence or domicile be rebutted.[63] The absence of one will not result in the acquisition of new domicile.[64] Further, each element of domicile must satisfy the required length of time. [65]

Other than establishing the three (3) requisites, the date of acquisition of the domicile of choice, or the *critical date*, must be established to be within at least one year prior to the elections, using the same standard of evidence.[66]

A survey of jurisprudence shows that the Court had observed caution in examining the evidence of a winning candidate, carefully weighing the will of the electorate and the governing legal principles in change of domicile, primary of which is the presumption of continuity of present domicile.

Hence, in *Jalosjos v. COMELEC*[67] (*Jalosjos*), the Court sustained the disqualification of Jalosjos despite the rather substantial evidence she presented, including documents of sale of real property, sketches and photographs of her house being built, Voter's Certification, as well as several affidavits from residents, the people working on the construction of her house, the incumbent Barangay Chairman and civic organizations. The Court ruled that what Jalosjos' evidence established was that she stayed in Baliangao, Misamis Occidental only whenever she wanted to oversee the construction of the resort and the house, but that she was not a resident therein.

In *Domino v. COMELEC*[68] (*Domino*), the Court rejected the contention of Domino that he had abandoned his domicile of origin, and emphasized the requirement that ALL three (3) elements of domicile must concur and satisfy the period required; otherwise, the old domicile continues. This, notwithstanding that Domino presented several affidavits and certifications from residents, certifying that he is a resident of Sarangani, a contract of lease of a real property, an extra-judicial settlement of estate with deed of sale, several official documents attesting to his transfer of voting registration and several Income Tax Returns.

Guided by the foregoing, I cannot but find the totality of Villamor's evidence lacking.

The documents supposedly showing acquisition of properties in Lagangilang do not establish change of domicile. At best, they may only be regarded as evidence of intent to undertake such

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63 See *Romualdez-Marcos v. COMELEC*, supra note 4, at 331.
64 See *Domino v. COMELEC*, G.R. No. 134015, July 19, 1999, 310 SCRA 546, 569.
65 See id. at 571.
66 *Jalosjos v. COMELEC*, G.R. No. 193314, February 26, 2013, 691 SCRA 646, 658.
67 Id.
68 Supra note 65.

change. They cannot indicate bodily presence.

First, the pieces of evidence that Villamor presented showing her acquisition of properties in 2013, 2016 and 2017 cannot suffice as clear and positive proof of change in domicile. The Court has repeatedly held that acquisition of property is not *indicia* of right to vote or be voted for,[69] explaining thus:

> To use ownership of property in the district as the determinative *indicium* of permanence of domicile or residence implies that the landed can establish compliance with the residency requirement. This Court would be, in effect, imposing a property requirement to the right to hold public office, which property requirement would be unconstitutional.[70]

Anent the supposed construction of her house in the property acquired on July 11, 2017, the same is unsubstantiated, Moreover, Villamor did not claim when she began such construction, as she only alleges that it followed the property's acquisition. In *Jalosjos,* the Court ruled that the mere acquisition of a property and the construction of a house thereon do not prove domicile. Moreover, it must be shown when such house was completed as a house under construction is further proof that its owner cannot yet reside therein.[71]

Hence, these documents and allegations of Villamor pertaining to her having acquired properties and constructed thereon, cannot suffice to prove the three (3) requisites to acquire domicile. Even on the generous assumption that they can indicate an *intent* to effect a change of domicile,[72] Villamor still failed to establish the requisite of bodily or personal presence. Logically, these documents cannot prove the bodily or physical presence that is an element of obtaining new domicile.

The CTC and Voter's Certificate cannot be given credence and evidentiary value for being incomplete and fraudulent.

Villamor, in her *MR,* specifies two (2) pieces of evidence to prove bodily presence in Lagangilang — her: 1) CTC and 2) Voter's Certificate. She states:

> 48. Meanwhile, her residence or bodily presence in Lagangilang, Abra is supported by the fact that she was allowed to vote in the recently concluded May 14, 2019 Barangay and SK Elections, as shown

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69 *Dumpit-Michelena, v. Boado,* G.R. Nos. 163619-20, November 17, 2005, 475 SCRA 290, 302; see also *Jalosjos v. COMELEC*, supra note 66, at 659 and *Fernandez v. HRET,* G.R. No. 187478, December 21, 2009, 608 SCRA 733, 759.

70 *Jalosjos v. COMELEC,* id.

71 See id. at 658-659.

72 See *Dano v. COMELEC*, G.R. No. 210200, September 13, 2016, 802 SCRA 446, 485-487.

> in her Voter Certification, considering that the basic requirements in voting are the following: (1) must be at least 18 years old; (2) a resident of the Philippines for at least one year; and (3) a resident of the city or municipality where you intend to vote for at least six months prior to the election. The same was further buttressed by the issuance of a Community Tax Certificate by the Municipality of Lagangilang, Abra.[73]

These documents simply do not suffice. A CTC and Voter's Certificate are baseline pieces of evidence in disqualification cases involving domicile. They are hardly accorded evidentiary value *vis-a-vis* the issue of residency due to the relative ease in which they can be obtained.[74] **In any case, a closer examination of these documents renders them even less credible**.

The CTC dated July 7, 2017[75] is not a complete document and contains falsities. As such, it cannot be accorded evidentiary weight. It lacks the signature of Villamor as taxpayer, her thumbprint and the signature of the Municipal/City Treasurer who supposedly issued the same, as well as some important entries such as the Taxpayer's Identification Number. Moreover, when it was issued, Villamor was still an alien, which thereby renders as false the representation on the CTC that she was Filipino.[76] In *Mitra*, the Court refused to afford credence to a CTC which lacked the signature of Mitra.

The Voter's Certificate cannot likewise be given evidentiary value. Foremost, Villamor was disqualified to vote in the May 14, 2018 Barangay elections, as she had then not yet reacquired Philippine citizenship. Hence, she was an alien with no right of suffrage under the Constitution.[77]

To recall, Villamor re-acquired her Filipino citizenship on June 19, 2018 and renounced her US citizenship on September 18, 2018.[78] Indeed, a closer perusal of the Voter's Certificate would show that Villamor's registration as a voter on September 29, 1997 was reactivated, and the Certificate was issued only on May 6, 2019.[79] Hence, she could not have voted in the Barangay elections in 2018. That she did so only means that she falsely represented she could, and that she voted illegally.

To be sure, this is not the first case that candidates facing disqualification for allegedly lacking residence requirements had interposed the defense of their having registered as a voter. Hence, the Court had long settled that such registration does not, and cannot, prove residence for

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73 As quoted in the *ponencia*, p. 5.

74 See *Mitra v. COMELEC*, G.R. No. 191938, October 19, 2010, 633 SCRA 580, where Mitra's Secretary attested that she secured Mitra's CTC due to "force of habit," id. at 614.

75 *Rollo*, p. 74.

76 Id.

77 1987 PHILIPPINE CONSTITUTION, Art. V, Sec. 1, provides:

> SECTION 1. Suffrage may be exercised by all **citizens** of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and 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. x x x (Emphasis supplied)

78 *Ponencia*, pp. 3-4.

79 *Rollo*, p. 79.

purposes of complying with the requirements for running for public office. As early as in 1954,[80] the Court already held that registration as a voter does not constitute loss of residence.[81] This was followed by a multitude of other cases which were ruled in the same manner. [82]

In *Coquilla,* similar to the present case, Coquilla tried to prove his residence by invoking his registration as a voter of Oras. This was rejected by the Court, saying that "as held in *Nuval v. Guray*, x x x registration as a voter does not bar the filing of a subsequent case questioning a candidate's lack of residency."[83]

In fact, not even a *final judgment* in the appropriate exclusion proceedings upholding the voter's registration can bar a disqualification case based on the common matter of residence.[84] In *Domino,* the Court was faced with the contention that the decision of the lower court in an exclusion proceeding, which affirmed the right of Domino to be included in the list of voters as he satisfied the residency requirement therefor, is binding upon the COMELEC in the disqualification case, likewise based on his compliance with the residency requirement. The Court rejected the argument and held that "the factual findings of the trial court and its resultant conclusions in the exclusion proceedings on matters *other than the right to vote* x x x are *not conclusive* upon the COMELEC."[85]

In *Velasco*, similar to this case, the Court, in a *Section 78 Petition* against Velasco, looked into the alleged invalidity of his registration as a voter, for lacking the citizenship requirement therefor. The Court noted that, at the time Velasco applied for registration with the COMELEC local office, he was still a dual citizen, having re-acquired his Philippine citizenship, but had not yet then renounced his American citizenship. The Court held:

> x x x We observe, however, that at the time he filed his application for registration with the COMELEC local office on October 13, 2006, Velasco was a dual citizen. The records show that Velasco renounced his American citizenship only on March 28, 2007, although he secured his dual citizenship status as early as July 31, 2006 at the Philippine Consulate in San Francisco, California. Under his dual citizenship status, he possessed the right to vote in Philippine elections through the absentee voting scheme under Republic Act No. 9189 (the Overseas Absentee Voting Law or the *OAVL*) as we ruled in *Nicolas-Lewis v. COMELEC.* **In *Macalintal v. COMELEC,* we significantly said that absentee voters are exempted from the constitutional residency requirement for regular Philippine voters. Thus, the residency requirements we cited above under**

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80 *Faypon v. Quirino,* 96 Phil. 294 (1954).

81 Id. at 298.

82 See *Co v. Electoral Tribunal of the House of Representatives*, G.R. Nos. 92191-92 & 92202-03, July 30, 1991, 199 SCRA 692; *Romualdez-Marcos, v. COMELEC*, supra note 4; *Perez v. COMELEC,* G.R. No. 133944, October 28, 1999, 317 SCRA 641; *Sabili v. COMELEC*, G.R. No. 193261, April 24, 2012, 670 SCRA 664.

83 *Coquilla v. COMELEC*, supra note 5, at 621. Citation omitted.

84 See *Nuval v. Guray*, 52 Phil. 645 (1928).

85 *Domino v. COMELEC*, supra note 64, at 564. Italics supplied.

> **the VRA and the LGC do not apply to Velasco, *assuming he registered as a dual citizen/absentee voter.***
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> **By law, however, the right of dual citizens *who vote as absentee voters* pertains only to the election of *national* officials, specifically: the president, the vice president, the senators, and party-list representatives. Thus, Velasco was not eligible to vote *as an absentee voter* in the local election of 2007. In fact, the records do not show that Velasco ever registered as an absentee voter for the 2007 election.**
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> **On the other hand, Velasco could not have registered as a regular voter because he did not possess the residency requirement of one-year stay in the Philippines and six-month stay in the municipality where he proposed to vote at the time of the election.** The records show that he arrived in the Philippines only on September 14, 2006 and applied for registration on October 13 of that year for the election to be held in May of the following year (2007). **To hark back and compare his case to a similar case, *Coquilla v. COMELEC*, Velasco, *before acquiring his dual citizenship status,* was an American citizen who had lost his residency and domiciliary status in the Philippines; whose sojourn in the Philippines was *via* a visitor's visa; and who never established permanent residence in the Philippines. Like *Coquilla* before him, Velasco could not have therefore validly registered as a regular voter eight months before the May 2007 local elections.**[86] (Italics in the original; emphasis supplied)

The relevant doctrines that can be gathered from *Velasco* are: (1) a person who had re-acquired his or her Philippine citizenship but has not yet renounced his or her foreign citizenship, hence a dual citizen who may vote only through the absentee voting scheme of RA 9189,[87] is exempted from the constitutional residency requirement for regular Philippine voters; (2) such dual citizen, if he or she registers as a voter under RA 9189, may only vote for national officials and not for local officials; and (3) a former Filipino, prior to his or her re-acquisition of Filipino citizenship, may not register as a regular voter (nor as an absentee voter[88]), hence, cannot vote in any elections.

Applying *Velasco* to the present case, Villamor was, on May 14, 2018 — the day of the 2018 Barangay elections — still an alien, as earlier explained. She had then neither re-acquired Philippine citizenship nor renounced her American citizenship. Hence, she could neither have validly registered as a voter nor validly voted in said elections. Also, even on the assumption that she was treated then as having re-acquired her Philippine citizenship, she would have then still been a dual citizen, hence disqualified to vote for the Barangay elections. Moreover, such registration cannot be taken as evidence of residence because voters under RA 9189 are exempted from the residency requirements for regular voters.

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86 *Velasco v. COMELEC*, supra note 19, at 610-612.

87 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" otherwise known as the "OVERSEAS ABSENTEE VOTING ACT OF 2003."

88 See RA 9189, Secs. 4 and 5; 1987 CONSTITUTION, Art. V, Sec. 1.

In any case, a unanimous Court in *Jalosjos* had already categorically declared that the requirement for residency for registration as a voter is different from that for acquiring a new domicile of choice for the purpose of running for public office.[89]

For the above reasons, I take exception to the *ponencia*'s ruling that "Villamor's Voter's Certification relative to the May 2018 [barangay elections] evinced that she was already in Lagangilang as of 14 May 2018, and that she had already met the minimum residence of at least six (6) months required for voting purposes."[90] To stress, these allegations of voting during the 2018 Barangay elections, despite the admission by Villamor that, at which time, she was not yet a Philippine citizen, are either blatant falsehoods or, if true, illegal.

Moreover, it does not matter that, as the *ponencia* points out, Villamor's registration as a voter or her participation in the 2018 elections was never challenged on the ground of failure to meet the residence qualification.[91] As discussed, not even a final decision upholding the validity of such registration can bar a subsequent action for the candidate's disqualification.

From a reading of the *ponencia*, its *sole basis* in concluding that Villamor had satisfied the physical presence element to obtain domicile was her Voter's Certificate and her concomitant allegation that she had voted in the May 2018 Barangay Elections. Unfortunately, as discussed, I cannot, in good conscience, agree with the conclusion. I submit that the same does not just lower the bar for proof of physical presence (again, a separate element from intent) from the quantum of clear and positive evidence, which the Court had consistently set as early as in 1995.[92] Worse, it condones the election fraud that Villamor evidently committed.

There is utter lack of evidence of Villamor's bodily presence in Lagangilang, Abra. Physical presence required to obtain a new domicile must be substantial enough to familiarize a candidate with his or her possible constituents and vice versa. This is not required to maintain a domicile because what determines loss thereof is intent.

During the deliberations for the case, Associate Justice Jhosep L. Lopez (Justice Lopez), in relation to the issue of Villamor's physical presence, raised the point that she had to travel back to Lagangilang to sign the documents of sale which she presented in evidence.

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89 *Jalosjos v. COMELEC*, supra note 66, at 659.
90 *Ponencia*, p. 16.
91 Id.
92 *Romualdez-Marcos v. COMELEC*, supra note 4.

Respectfully, I submit that such *inference* cannot constitute proof of physical or bodily presence of Villamor in Lagangilang, Abra.

First, Villamor does not even make such allegation, rendering the conclusion without basis, not to mention, *non-sequitur. Second,* there is no case law that supports the attribution of bodily presence to a contract of sale. *Third,* while uninterrupted presence is not necessary, the law requires substantial presence, as explained below. *Finally,* the conclusion appears to muddle the elements of intent and physical presence, and is not in line with the standards set by jurisprudence for clear and positive evidence.

To stress, while intent is primordial in establishing a domicile, **actual or bodily presence is likewise a requisite, distinct and separate from intent or the acts manifesting such intent, and must separately be established with clear and positive proof**. *Romualdez-Marcos v. COMELEC*[93] (*Romualdez-Marcos*) instructs:

> x x x To successfully effect a change of domicile, one must demonstrate:
>
> 1. **An actual removal or an actual change of domicile;**
> 2. **A *bona fide* intention of abandoning the former place of residence and establishing a new one; and**
> 3. **Acts which correspond with the purpose.**
>
> In the absence of **clear and positive proof** based on these criteria, the residence of origin should be deemed to continue. Only with evidence showing **concurrence of all three requirements** can the presumption of continuity or residence be rebutted, for a change of residence requires an actual and deliberate abandonment, and one cannot have two legal residences at the same time. x x x[94] (Emphasis supplied)

The requirement of bodily or physical presence is magnified when one considers the wisdom behind the minimum residential requirement – to ensure that officials are acquainted with the conditions and needs of their constituents, thus:

> The minimum requirement under our Constitution and election laws for the candidates' residency in the political unit they seek to represent has never been intended to be an empty formalistic condition; it carries with it a very specific purpose: to prevent "stranger[s] or newcomer[s] unacquainted with the conditions and needs of a community" from seeking elective offices in that community.
>
> The requirement is rooted in the recognition that officials of districts or localities should not only be acquainted with the metes and bounds of their constituencies; more importantly, they should know their constituencies and the unique circumstances of their constituents — their needs, difficulties, aspirations, potentials for growth and development, and

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93 Supra note 4.

94 Id. at 331-332.

> all matters vital to their common welfare. Familiarity or the opportunity to be familiar with these circumstances can only come with residency in the constituency to be represented.[95]

Torayno, Sr. v. COMELEC[96] (*Torayno*) adds that the requisite period is likewise intended to give the electorate the opportunity to evaluate the candidates' qualifications and fitness for the offices they seek.[97]

Logically, mere intent, without physical and bodily presence, will not familiarize the candidate with the conditions and idiosyncrasies of his or her prospective constituents, and the geographical unit he or she intends to govern. Owing to this purpose, physical presence, to successfully acquire domicile, must be substantial enough to show an intent to reside as well as to fulfill the duties of the desired office and to give him or her and the voters an opportunity to be acquainted with each other.[98] It must be of such a character as exuding the very essence of a residence.

Hence, in *Jalosjos,* the Court rejected Jalosjos' claim of change in domicile, although it was *proven* that she had regularly visited the new domicile, had transferred her voter's registration thereto and, like Villamor, had a house constructed. The Court noted that she could not have been an "actual and physical resident of Brgy. Tugas since 2008 as the house was still then being constructed".

On the other hand, in *Torayno,* the Court set aside legal technicalities and considered the purpose of the law in affirming Emano's qualifications. It noted that Emano had been physically present in the independent city of Cagayan de Oro (CdO) in the three (3) years that he was governor of the province of Misamis Oriental, so that such physical presence is "*substantial enough*" to enable him to fulfill the duties of Mayor of CdO.

In these lights, I respectfully submit that Justice Lopez's postulation cannot stand. As mentioned, the *most* that can be accorded the documents of sale is that they are proof of intent. But certainly, these documents do not establish substantial physical presence.

Further, Justice Lopez stressed that more than the physical presence, the intention must be considered. Villamor did not transfer to just another place of domicile, rather, she returned to her domicile of origin, with which she naturally shares strong ties. Hence, her intention to change domicile must be *prima facie* presumed. Justice Lopez demonstrated this point by citing *Japzon v. COMELEC*[99] (*Japzon*), wherein the Court held that a returning

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95 *Jalover v. Osmeña*, G.R. No. 209286, September 23, 2014, 736 SCRA 267, 271-272. Citations omitted.
96 G.R. No. 137329, August 9, 2000, 337 SCRA 574.
97 Id. at 577, 587.
98 See id.
99 Supra note 10.

Filipino, who was once a naturalized American citizen, had *animus manendi et revertendi* to his or her domicile of origin.[100]

With due respect, even if it be conceded that Villamor had intent to reside in Lagangilang, the fact remains that, she failed to allege, much less prove, a single instance when she physically went to Lagangilang. To excuse this failure to perform the barest minimum is to set the standards of the Court to an irrationally low level.

Moreover, while it may be said that a person retains some degree of connection to his or her domicile of origin, such fact alone does not guarantee that the purpose of the law of acquainting candidate, constituents and place will be met. Necessarily, changes happen and memories weaken over time. This is why the law, in requiring the period of minimum residence, does not distinguish between newcomers and those who are merely returning. To recall, considering the residence requirement to acquire American citizenship,[101] Villamor must have left Lagangilang around the year 2004 or fifteen (15) years from the 2019 elections. To state the obvious, so much could have already happened in Lagangilang in that span of time. It may be different if she, in fact, travelled regularly to Lagangilang in those years. However, as explained, the circumstances of this case make it difficult to lend credence to this bare allegation.

Finally, *Japzon* is not applicable in the present case. Ty left *after* he had already acquired new domicile in his domicile of origin. Hence, his mere absence did not result in the loss of such domicile. Here, the issue is whether **and when** Villamor had acquired a domicile in Lagangilang, which, as explained, cannot be determined.

On this note, it bears to stress the distinction between the character of physical presence required in acquiring domicile and one needed to maintain it after successful acquisition. Once domicile is acquired, the length of a person's physical stay in the place of domicile becomes irrelevant, for as long he has *animus revertendi*.[102] This is because domicile, once established, is presumed to continue unless a new one is acquired, with the concurrence of the three (3) requisites of *animus manendi, animus non revertendi*, and physical or bodily presence in the new domicile. In short, domicile is not easily lost because the law presumes that it continues.[103]

Hence, the Court has held that mere absence, no matter how long, as long as it is without intention to abandon, will not result in a change of

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100 See id. at 351-352.

101 See *Coquilla v. COMELEC*, supra note 5, at 617, citing Title 8, Section 1427(a) of the United States Code which requires five (5) years of continuous residence immediately preceding the filing of application for naturalization.

102 The term "domicile" denotes a fixed permanent residence to which one intends to return. *Co v. Electoral Tribunal of the House of Representatives*, supra note 82, at 714.

103 See *Romualdez-Marcos v. COMELEC*, supra note 4.

domicile.[104] This is the character of domicile in *Japzon* — as it was already acquired, physical presence became a non-issue, because intent determines loss of domicile.

On the other hand, the kind of physical presence required in acquiring a new domicile must be more substantial, although need not be uninterrupted. This is so because, at the risk of belaboring the point, domicile is presumed to continue; hence, the physical presence must be relatively considerable to rebut the presumption. Likewise, it must be meaningful enough to show that the candidate can fulfill the duties of his or her elected office, apart from showing *animus manendi et non-revertendi.*

Villamor failed to allege, much less prove, a single instance when she was bodily present in Lagangilang, Abra. Hence, assuming domicile therein was acquired, the critical point when it was so acquired cannot be determined.

Without the documents of sale, the CTC and Voter's Certificate, Villamor is left with only her bare and sweeping statement that she had been flying back and forth to Lagangilang since 2009.[105] Truly, there is nothing more, by way of evidence or allegation, that may support a finding that the element of bodily presence obtained. The "material dates" Villamor enumerated in her *MR,* which are reproduced in the *ponencia*, are utterly lacking any statement indicating that she was physically present in Lagangilang, thus:

DATE	EVENT
September 25, 1970	Respondent [Villamor] was born of Filipino mother and father.
October 29, 2009	Respondent became a naturalized US Citizen.
July 16, 2013	Respondent acquired a portion of a farmland situated in Sitio Cabasaan, Brgy. Laguiben, Lagangilang, Abra from her brother, Jay E. Villamor
September 7, 2016	Respondent acquired another portion of the said farmland from her sister, Luz Villamor Sayen.
July 7, 2017	Respondent was issued a Community Tax Certificate by the Municipality of Lagangilang, Abra.
July 11, 2017	Respondent acquired property located in Laang, Lagangilang, Abra from one Virginia E. Atmosfera where she eventually constructed her home.

[104] *Domino v. COMELEC,* supra note 64, at 570.
[105] *Ponencia,* p. 4.

July 12, 2017	Respondent caused the transfer of the tax declaration of the same property from the name of Atmosfera to her name.
June 19, 2018	Respondent re-acquired her Filipino citizenship by virtue of R.A. 9225 otherwise known as "Citizenship Retention and Reacquisition Act of 2003".
September 18, 2018	Respondent executed an Affidavit of Renunciation of her US citizenship, her allegiance to the US and the US government.
October 16, 2018	Respondent filed her CoC for the position of Mayor of Lagangilang, Abra in the upcoming May 13, 2019 Elections.[106]

It is curious why Villamor, despite her allegation of "frequent flights" to Lagangilang from 2009 to 2018, is unable to specify a single instance of those alleged trips. She did not even state the date when she departed the US and finally settled in Lagangilang for good. From the records, she was still in the US when she re-acquired her Filipino citizenship on June 19, 2018.[107]

It bears noting that Villamor is represented before this Court — and before the COMELEC — by one of the more established law firms and practitioners in election law practice in the country.[108] Hence, it is hard to imagine that the omission to specify, or even approximate, such a critical point as her physical presence in Lagangilang was due to inadvertence or ignorance of the law. Moreover, such frequency of travels as she alleges can very easily be proven by travel documents or affidavits of Lagangilang residents attesting to Villamor's presence therein. No such evidence was ever presented.

Logically, the bare and unsubstantiated allegation of "frequent travels" cannot, by any stretch of imagination, be taken to satisfy the quantum of clear and positive evidence. [109]

Moreover, such sweeping allegation does not, as it cannot, provide the Court basis to determine the critical point when domicile was acquired, because there is no specified or approximated date of when the alleged travels transpired. **In other words, the point when physical presence concurred with intent cannot be determined.** Because domicile is only acquired upon the simultaneous concurrence of all three (3) elements of *animus manendi, animus non revertendi* and physical presence, the point of acquisition of such domicile, which is critical because it shows if there was compliance with the one-year period required by law,[110] is not determinable. *Jalosjos* is unequivocal in mandating the determination of this critical point, over and above successfully establishing the three (3) elements of domicile, thus:

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106 Id. at 3-4.
107 See *rollo*, p. 12.
108 G.E. Garcia Law Office of Atty. George Erwin M. Garcia, *rollo,* pp. 31, 69.
109 *Poe-Llamanzares v COMELEC*, supra note 49.
110 See *Jalosjos v. COMELEC*, supra note 66, at 658.

> These circumstances must be established by clear and positive proof, as held in *Romualdez-Marcos v. COMELEC* and subsequently in *Dumpit-Michelena v. Boado*:
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> x x x x
>
> **Moreover, even if these requisites are established by clear and positive proof, the date of acquisition of the domicile of choice, or the critical date, must also be established to be within at least one year prior to the elections using the same standard of evidence.**[111] (Emphasis supplied)

To recall the *1996 Frivaldo case*, the law specifies a minimum period for residency of elective candidates, unlike citizenship which may be possessed at any time prior to the elections. Moreover, while the two (2) intents may precede or succeed physical presence, **domicile is only acquired at the point where all three (3) elements converge**. In the words of the Court in *Domino* — intention to acquire a domicile, without actual residence in the locality, does not result in acquisition of domicile, nor does the fact of physical presence without intention.[112]

Indeed, the Court has *always* identified a *critical point* when domicile was acquired, which always corresponded to a time when the person was *physically present* at his or her claimed domicile.[113] In other words, the Court has always 1) fixed the point of acquisition of domicile at a time when the claimant was bodily present in the new domicile; hence, identifying the point of physical presence is indispensable; and 2) determined compliance with the statutory period using the critical time when domicile was acquired. In the present case, there is absolutely nothing in the records on which a finding of such physical presence and, hence, acquisition of domicile, may be anchored. For this, Villamor's claim that she had resided in Lagangilang for at least a year before the 2019 elections must be rejected.

Intent to deceive is required for a successful petition under Section 78.

During the case deliberations, questions were raised as to the jurisprudential requirement of intent to deceive for successful Section 78

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111 *Jalosjos v. COMELEC*, id. at 657-658.

112 *Domino v. COMELEC*, supra note 64, at 569.

113 For example, in *Poe-Llamanzares v. COMELEC* (supra note 49), domicile was acquired on May 24, 2005, when Senator Poe actually and physically returned to the Philippines as proven by her passport; in *Mitra v. COMELEC* (G.R. No. 191938, July 2, 2010, 622 SCRA 744), domicile was acquired in March 2008, when Mitra started moving in his belongings to a place he leased as early as February 2008, which was also the start of his "incremental steps"; in *Dano v. COMELEC* (supra note 72), domicile was acquired on May 2, 2012, when Dano physically went to Sevilla and registered as a voter; in *Sabili v. COMELEC* (supra note 82), domicile was acquired on April 2007, when Sabili started physically residing in the locality, as certified by barangay officials; in *Jalosjos v. COMELEC* (supra note 3), domicile was acquired in November 2008 when Rommel physically went to live with his brother; in *Japzon v. COMELEC* (supra note 10), domicile was acquired on May 4, 2006 when Japzon was bodily present in the new domicile; and in *Fernandez v. HRET* (supra note 69), domicile was acquired in February 2006, when Fernandez started physically and actually residing in a townhouse in the new domicile, as certified by the President of the Homeowners Association.

petitions. Specifically, it was raised that the same may not have legal bases as it is not expressed nor implied by the law.

Intent to deceive, as an element of a Section 78 case, is firmly entrenched in jurisprudence. In a long line of cases starting with the 1995 case of *Romualdez-Marcos*, the Court had invariably upheld intent to deceive as a material element for a successful petition under Section 78.

Admittedly, Section 78 does not expressly mention the element of intent to deceive:

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

However, it mandates that the petition must be filed upon the exclusive ground that any material representation contained in the CoC, **as required under Section 74** of the law, is false. Hence, reference must be made to Section 74, which reads:

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

Section 74 requires the inclusion in the CoC of a declaration that the facts stated therein are true to the best of the candidate's knowledge. Evidently, this declaration qualifies all of the information that Section 74 requires. In other words, the law does not demand from candidates perfect accuracy and absolute certainty in the information that they supply in a CoC, but only such facts which they believe to be true to the best of their knowledge. This means that a candidate who makes a representation which is subsequently found to be false, would still be compliant with Section 74 if he

or she made such representation in good faith. What is material is that at the time that he or she made such declaration, he or she believed said information to be true to the best of his or her knowledge.

Accordingly, the reference by Section 78 to Section 74 effectively limits the scope of Section 78 to only those false material representations which were *knowingly* made, *i.e.*, those which the candidate did not know to be true to the best of his or her knowledge or which he or she downright knew to be false. A contrary interpretation of Section 78 would lead to the absurdity that a CoC of a candidate who had fully complied with the requirements under Section 74 can nonetheless be denied due course or cancelled under Section 78. To stress, Section 78 requires that the ground for the petition be the existence of a false material representation in the CoC *as required in Section 74* and Section 74 requires only facts which are true to the best of the candidate's knowledge.

Moreover, the Court has ruled that a more reasonable and just construction of Section 78 would be to limit its scope, considering its grave consequences.[114] When a candidate commits a false material representation, two (2) causes of action arise against him or her under the OEC: 1) a petition to deny due course to or cancel a certificate of candidacy under Section 78 and 2) a criminal prosecution for an election offense under Section 262,[115] for which Section 264 prescribes the penalty of imprisonment for one (1) year to six (6) years, along with accessory penalties.[116] In *Salcedo II v. COMELEC*,[117] the Court, in strictly construing the word "material" under Section 78 to refer only to qualifications for elective office, likewise looked into its serious repercussions, and ruled that the law could not have intended to deprive a person of his or her basic rights upon just any *innocuous mistake*, thus:

> As stated in the law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein pertain[s] to a material matter **for the sanction imposed by this provision would affect the substantive rights of a candidate—the right to run for the elective post for which he filed the certificate of candidacy.** Although the law does not specify what would be considered as a "material representation," the Court has interpreted this phrase in a line of decisions applying Section 78 of [B.P. 881].
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> x x x x
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> Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer[s] to qualifications for elective office. **This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in [the] certificate of candidacy are grave—to prevent**

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114 *Lluz v. COMELEC*, G.R. No. 172840, June 7, 2007, 523 SCRA 456, 471, citing *Salcedo II v. COMELEC*, G.R. No. 135886, August 16, 1999, 312 SCRA 447, 458.

115 See *Lluz v. COMELEC*, id. at 470.

116 See id. at 473.

117 Supra note 115.

> **the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.**[118] (Emphasis and underscoring supplied)

Finally, it appears that limiting Section 78 in order to restrict the powers of the COMELEC was likewise the intention of the lawmakers. Citing the deliberations of the *Batasang Pambansa* on the draft of Section 78, the Concurring Opinion of Chief Justice Maria Lourdes Sereno in *Poe-Llamanzares v. COMELEC*[119] discussed how the lawmakers feared partisanship on the COMELEC's part, which made it imperative that Section 78 be only for the strongest of reasons.[120] A reading of the quoted portions of the deliberations shows that the lawmakers even contemplated removing Section 78, for fear that it would only expand the powers of the COMELEC and because the matters treated therein are already "normal issues for protest or *quo warranto*."[121]

Lest it be misunderstood, 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 or her 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 Local Government Code (LGC), if filed before the elections, or a petition for *quo warranto* under Section 253 of the OEC, if filed after the elections.[122] It is these actions which question a candidate's eligibility and qualifications that do not require the element of intent to deceive.

Villamor had intent to deceive when she made false representations in her CoC regarding her period of residence and eligibility. Her mistake upon a question of law cannot be excused. Moreover, the records show the presence in fact of such intent.

In most decided cases, intent to deceive under Section 78 had referred to a "deliberate attempt to mislead, misinform, or hide a fact that would

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118 Id. at 455-458.

119 Supra note 49, at 163-333.

120 See Concurring Opinion of Chief Justice Maria Lourdes Sereno in *Poe-Llamanzares v. COMELEC*, id. at 168.

121 Id. at 168-172.

122 See *Fermin v. COMELEC*, G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782, 792-794.

otherwise render the candidate ineligible."[123] *Mitra v. COMELEC*[124] expounds:

> The false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.[125]

The deliberate character of the false representation stressed in *Mitra* is consistent with the qualification in Section 74 — that a candidate must state in his or her CoC only facts which are true to the best of his or her knowledge. Hence, only false material representations which were knowingly and deliberately made can be grounds to cancel a CoC under Section 78.

In the present case, Villamor made the false representation that she had been a resident of Lagangilang, Abra for a period of 36 years and 8 months prior to the 2019 elections and, hence, eligible for the office of Mayor. She arrived at this computation by adding the period of her stay in Lagangilang prior to her acquisition of American citizenship, to her period of stay therein when she returned and re-established her residence upon re-acquiring Filipino citizenship.[126] In her *MR*, she claims that this was computed in good faith and "in accordance with the prevailing laws and jurisprudence."[127]

This is, however, **evidently** erroneous and **patently** deceitful. The *ponencia* considers this misrepresentation as "a mere error or mistake x x x on a difficult question of law as to residency, which, in turn, may be the basis of good faith"[128] The *ponencia* even references my *Concurring Opinion* in *Poe-Llamanzares* in declaring that the law presumes good faith, hence, one who alleges malice is burdened to prove the same.[129]

I beg to differ, and place in its proper context, my *Concurring Opinion* referred to by the *ponencia.*

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123 See *J.* Caguioa, Separate Concurring Opinion in *Poe-Llamanzares v. COMELEC*, supra note 49, at 921; *Agustin v. COMELEC,* G.R. No. 207105, November 10, 2015, 774 SCRA 353, 365; *Mitra v. COMELEC*, supra note 113, at 769.

124 Supra note 113.

125 Id. at 769.

126 *Rollo,* pp. 63-64.

127 Id. at 63.

128 *Ponencia,* p. 14.

129 Id., footnotes nos. 51-53.

It is a basic legal tenet that ignorance of the law excuses no one from compliance therewith.[130] *Ignorantia juris non excusat.* Hence, one who makes a false representation on a basic matter of law is necessarily presumed to have done so knowingly and with intent to deceive. Because of this imputed knowledge, a law, to be binding, must be duly published.[131] The landmark case of *Tañada v. Tuvera*[132] succinctly explains that the requirement for publishing is grounded on the due process mandate of notice, without which the basic doctrine of *ignorantia legis* cannot be enforced, thus:

> It is not correct to say that under the disputed clause publication may be dispensed with altogether. **The reason is that such omission would offend due process insofar as it would deny the public knowledge of the laws that are supposed to govern it.** x x x
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> We note at this point the **conclusive presumption that every person knows the law, which of course presupposes that the law has been published if the presumption is to have any legal justification at all**. It is no less important to remember that Section 6 of the Bill of Rights recognizes "the right of the people to information on matters of public concern," and this certainly applies to, among others, and indeed especially, the legislative enactments of the government.[133] (Emphasis supplied)

Hence, once a law is duly published, there arises a **conclusive presumption** that all persons are aware of the same. This is necessarily so because the administration of justice would be imperiled should the courts be required to determine a man's knowledge or ignorance of the law in every case. This would entangle the courts in the assessment of virtually impossible problems, thus:

> The rule, that a mistake of law does not avail, prevails in equity as well as at common law. *Bank of U.S.* v. *Daniel*, 12 Pet. 32; *Hunt* v. *Rousman*, 1 id. 1; 8 Wheat. 174; *Mellech* v. *Robertson*, 25 Vt. 603; *Leant* v. *Palmer*, 3 Comst. 19.
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> "If ignorance of law was admitted as a ground of exemption, the court would be involved in questions which [are] scarcely possible to solve, and which would render the administration of justice next to impossible; for in almost every case ignorance of law would be alleged, and the court would, for the purpose of determining this point, be often compelled to enter upon questions of fact insoluble and interminable." Austin's Jour., vol. ii, p. 172; Kerr, 397[134]

Hence, the justice system would be rendered inutile should courts assume good faith on everyone even when there is evident violation of law. The Court has held:

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[130] CIVIL CODE, Art. 3; *David v. COMELEC*, G.R. Nos. 127116 & 128039, April 8, 1997, 271 SCRA 90, 108.

[131] See id., Art. 2.

[132] No. L-63915, April 24, 1985, 136 SCRA 27.

[133] *Tañada v. Tuvera*, No. L-6315, December 29, 1986, 146 SCRA 446, 452-453.

[134] *Upton v. Tribilcock*, 91 U.S. 45, 50-51 (1875).

> To begin with, nothing is more settled than the principle that ignorance of the law excuses no one from compliance therewith. To allow employers to conveniently claim exemptions on their purported naïveté of the provisions of the minimum wage law would be detrimental to the employees. This would certainly run afoul to the constitutional requirement to afford a strict protection to labor.[135]

Moreover, it is presumed that a person takes ordinary care of his or her concerns.[136] **For documents sworn to under oath, it has been held that, if a person chooses to swear that an act is legal when he or she is uncertain that it is in fact legal, the choice carries with it the duty of investigating the law.**[137] Hence, an aspirant is obliged to observe reasonable diligence to know the requirements for his or her particular objective and assess if he or she is able to meet the same. This is especially true when he or she is required to swear to his or her qualification under oath. The Court has ruled:

> x x x Petitioner's claim of good faith and absence of deliberate intent or willful desire to defy or disregard the rules relative to the CSPE is not a defense as to exonerate him from the charge of conduct prejudicial to the best interest of the service; under our legal system, ignorance of the law excuses no one from compliance therewith. Moreover, petitioner — as mere applicant for acceptance into the professional service through the CSPE — cannot expect to be served on a silver platter; the obligation to know what is required for the examination falls on him, and not the CSC or his colleagues in office. x x x[138]

Hence, the rule in mistakes of law is that they are not excusable by a claim of ignorance. An exception would be if the misrepresentation was a mistake made upon a **doubtful or difficult question of law**, which can be a basis of good faith.[139] This exemption is grounded on the same rationale for the requirement of publication of laws before they could be binding — due process.[140] When a law is ambiguous or affords different interpretations and has, in fact, been the subject of differing jurisprudence, the people are deprived of fair warning of what conduct is proscribed.[141]

> Fundamental fairness no doubt requires that an individual be given the opportunity to discover a statute's existence, applicability and meaning. Not every layman will read the Penal Code from cover to cover. But, if the statute in question is either clear in meaning upon reading, or sufficient to warn the layman that he should seek legal advice as to its applicability and meaning, it is proper to charge the potential violator with such knowledge of a law's applicability as he could obtain through competent legal advice . . . If a competent lawyer is consulted, he should be able to predict whether

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135 *Erning's Vaciador Shop v. Fernandez*, G.R. No. 234483, June 10, 2019, p. 8 (Unsigned Resolution), accessed at <https://sc.judiciary.gov.ph/5401/>.

136 RULES OF COURT, Rule 131, Sec. 3(d).

137 *United States v. Cianciulli*, 482 F. Supp. 585, 621 (E.D. Pa. 1979).

138 *Catipon, Jr. v. Japson*, G.R. No. 191787, June 22, 2015, 759 SCRA 557, 574.

139 See *Davao Doctors College, Inc. v. Samahan ng mga Nagkakaisang Manggagawa sa Davao Doctors College-NFL*, G.R. No. 209666, March 4, 2019 (Unsigned Resolution), accessed at <https://sc.judiciary.gov.ph/3507/>.

140 See *United States v. Cianciulli*, supra note 137, at 621-622.

141 Id. at 621.

> the statute might be used as a basis for prosecuting his client. If the words of the statute and other related law make it impossible to make such a prediction, a statute comes close to inadequate advance notice…[142]

Hence, what is required by due process is only an **opportunity to discover** the existence, applicability, and meaning of a law. This is accorded by the due publication of the law prior to its effectivity. Even if the published law is not readily clear upon reading, but sufficient to put a layman on guard that he ***may*** be at risk of violating the law and such layman still omits to seek legal advice, then *ignorantia legis* should still apply, rendering futile any defense of ignorance. However, if the layman does consult a lawyer and the latter is still unable to predict if his or her client's intended action will violate the law, based on such law's language and from other related statutes, then the law may then be said to be doubtful or difficult, so that mistake thereon should not prejudice the people. Hence, too, reliance, in good faith, on a prior decision of the Court will exculpate the offender.

Thus, when a law is doubtful or difficult so that its meaning is not discoverable upon the observance of reasonable diligence, as, for instance, its language does not warn of the potential violation thereof or that even legal experts, including the Court, differ as to its import, the person who had no fair warning, cannot be held liable for violation thereof. This is the import of my *Concurring Opinion* in *Poe-Llamanzares*, which reads:

> The rule is that any mistake on a doubtful or difficult question of law may be the basis of good faith. In *Kasilag v. Rodriguez,* this Court, citing Manresa, recognized **the possibility of an excusable ignorance of or error of law being a basis for good faith**:
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> > x x x However, a clear, manifest, and truly unexcusable ignorance is one thing, to which undoubtedly refers Article 2, and another and different thing is possible and excusable error arising from **complex legal principles and from the interpretation of conflicting doctrines**.
> >
> > x x x x
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> **If indeed a mistake was made by petitioner as to her real status, this could be considered a mistake on a difficult question of law that could be the basis for good faith. In this regard, good faith is presumed.** In the same vein, it is presumed that a person is innocent of a crime or wrong, and that the law was obeyed. Without more, the legal conclusion alleged by the respondents in the petitions for cancellation, and thereafter reached by the COMELEC, that the petitioner was not a **natural-born citizen simply because she is a foundling is not sufficient to overcome the presumption that the petitioner made the representation as to her citizenship in good faith.**[143] (Emphasis and underscoring supplied)

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[142] Id., citing *Ketchum v. Ward*, 422 F. Supp. 934, 941 (W.D.N.Y. 1976).

[143] *J.* Caguioa, Separate Concurring Opinion in *Poe-Llamanzares v. COMELEC*, supra note 49, at 928-929.

Clearly then, my statement that "good faith is presumed" is in regard to a mistake on a difficult question of law. Stated differently, when the error concerns a difficult or doubtful legal question, then good faith is presumed, and this is because, as earlier explained, the person charged of violating such law cannot be said to have been fairly warned of its meaning and application. Moreover, the citizenship of a foundling such as Senator Poe was then, undoubtedly, a complex and novel legal issue, as indeed, the Court had to resort to an elaborate discussion of general principles of international law for lack of directly applicable domestic case law and statutes. Hence, Senator Poe's alleged misrepresentation regarding her citizenship on her CoC, having been made in good faith, is excepted from the conclusive presumption of knowledge of the applicable laws under Article 2 of the Civil Code.

To stress, what is presumed is knowledge of the law. This is axiomatic and is practically a universally accepted legal doctrine. Hence, good faith – that is, lack of knowledge of the law and its meaning – is no excuse. The exception is if the mistake was made upon a difficult and doubtful question of law. The burden thus lies on the person claiming the exception, to prove that the error of law that was mistakenly applied or misunderstood is complex or not fairly discoverable as it is unclear, novel or subject of conflicting jurisprudence or statutes. Once he or she proves that the law is doubtful or difficult, a presumption of good faith arises in his favor. This is precisely the situation that faced Senator Poe and what the Court considered in her favor.

The present case, however, is totally different.

First of all, it is already well-settled in, or established jurisprudence that the length of residence or domicile of one who had abandoned his or her domicile of origin and had eventually returned thereto, is reckoned from the time he or she returned and fixed it as his or her new domicile of choice.[144] His or her period of stay therein prior to such abandonment cannot be added to his or her period of stay upon return.[145] Our jurisprudence is **replete** with cases of similar facts and issue as Villamor's — period of residence of elected candidates who are natural-born Filipino citizens, who had abandoned their domiciles of origin after obtaining foreign citizenships, and who had thereafter returned and sought public office in their place of birth.[146] **A simple survey of this substantial body of case law would readily show that the length of residence cannot retroact to the time of the returning candidate's birth**.[147] Indeed, in not one of this abundant case law has the Court retroactively counted the period of residence of a returning Filipino who had domiciled abroad.

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144 *Japzon v. COMELEC*, supra note 10; see *Caballero v. COMELEC*, supra note 2, at 237.

145 See *Caballero v. COMELEC*, id.

146 To name a few examples, *Caballero v. COMELEC*, supra note 2; *Poe-Llamanzares v. COMELEC*, supra note 49; *Japzon v. COMELEC*, supra note 10; *Caasi v. Court of Appeals*, supra note 17; *Ugdoracion, Jr. v. COMELEC*, supra note 18.

147 See *Japzon v. COMELEC*, id. at 347.

As mentioned, mistake of law is excusable only when its meaning is not ascertainable with due diligence, as when the law is difficult or doubtful. Evidently, such cannot be said in the present case. *First*, the relevant jurisprudence is well-settled — without a single case that deviated — that length of residence does not retroact to the time of the returning candidate's birth. *Second*, the jurisprudence is abundant, hence, unlike *Poe-Llamanzares*, this is not a novel question of law.

In short, had Villamor exerted the least amount of effort to ascertain the propriety of retroacting her period of residence, she would not have mistaken the same. She is all the more expected to be diligent as the declarations in her CoC were sworn to under oath, and, thus, made her vulnerable to criminal prosecution.

Hence, Villamor's manner of accounting for her period of residency cannot be excused under a good faith invocation. To the contrary, this bespeaks deceit. *Ignorantia legis non excusat.* She is presumed to have known how to properly compute her length of residence when she made the representation that she had been a resident of Lagangilang, Abra for 36 years and 8 months before the 2019 elections. Thus, there can be no other conclusion than that she made the false material representation with knowledge of its falsity and with intent to deceive.

Again, the records disclose Villamor's deliberate intent.

First, her explanation on how she arrived at the period stated in her CoC — that she added her period of stay in Lagangilang prior to her acquisition of American citizenship, to her period of stay therein when she returned — is mathematically implausible. Villamor was born in Lagangilang on September 25, 1970 and became a naturalized American citizen on October 29, 2009.[148] Hence, her period of stay in Lagangilang before becoming an American citizen already amounts to 39 years. Evidently, it is impossible to arrive at the 36 years and 8 months she stated in her CoC using her explanation.

Second, as earlier demonstrated, she maliciously misrepresented that she voted in the last barangay elections and offered such misrepresentation as evidence of her bodily presence. As earlier explained, Villamor was still an alien without any right of suffrage on May 14, 2018, having re-acquired Filipino citizenship only on June 19, 2018.[149]

Third, she misrepresented in her CTC dated July 7, 2017[150] that she was Filipino when, again, she only re-acquired her Philippine citizenship in 2018.

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148 *Ponencia*, p. 3.
149 Id.
150 *Rollo*, p. 74.

Fourth, Villamor's propensity to deliberately assert falsehoods is likewise manifest from her Voter's Certificate, where she entered in the space for period of residence in Lagangilang, "39 Year(s) and 00 Months."[151] This is obviously inconsistent and irreconcilable with the information she wrote on her CoC. If she truly believed, in good faith, the period she had entered in her CoC, she would not have entered another period in her Voter's Certification, just a few months later.

In *Poe-Llamanzares,* the Court considered as evidence of Senator Poe's good faith, the fact that her explanation of her false entry was reasonable. Here, as mentioned, Villamor's explanation is mathematically impossible. Worse, she appears to have tried to deceive both the Court and the COMELEC, repeatedly, by introducing into evidence documents and statements which are dubious, false and irreconcilable. There can be no other conclusion than that she knowingly made the false material representations on her CoC.

There is no legal basis to fault the COMELEC for its failure to stay Villamor's proclamation

The *ponencia* finds that the COMELEC's failure to exercise its power under Section 6 of RA 6646,[152] and stay Villamor's proclamation is inconsistent with its finding that Villamor failed to prove her eligibility;[153] that it should not have allowed Villamor to be proclaimed (much less assume) the position of Mayor if it truly believed that Villamor was disqualified.[154]

Section 6 of RA 6646 provides:

> 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 and underscoring supplied)

As held in *Grego v. COMELEC,*[155] and as evident from its language, the power of the COMELEC to suspend a proclamation under Section 6 is discretionary; hence, the exercise of such discretion cannot be interfered with

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151 *Rollo,* p. 79.

152 AN ACT INTRODUCING ADDITIONAL REFORMS IN THE ELECTORAL SYSTEM AND FOR OTHER PURPOSES, otherwise known as the "ELECTORAL REFORMS LAW OF 1987," January 5, 1988.

153 See *ponencia,* p. 17.

154 Id.

155 G.R. No. 125955, June 19, 1997, 274 SCRA 481.

unless upon a showing that it was with grave abuse of discretion.[156] There is no such showing in the present case and neither is this raised as an issue. Hence, respectfully, I submit that faulting the COMELEC for being "inconsistent" because it failed to suspend Villamor's proclamation despite finding her disqualified, offends the discretionary nature of Section 6.

Moreover, it appears that no motion to suspend the proclamation was filed,[157] but only a motion to annul such proclamation. But it does not show that Section 6 may be used to annul a proclamation that was already made.

Finally, there is jurisprudence supporting the view that Section 6 is not applicable in a Section 78 petition, as it applies only to Section 68 Petitions for Disqualification.[158] According to this view, there is no provision in the law governing the effects of Section 78 petitions. Hence, unlike a winning candidate who is disqualified by judgment of the COMELEC under Section 68, who must be proclaimed unless such proclamation is suspended, such candidate whose CoC is canceled under Section 78 by executory judgment of the COMELEC must not be proclaimed.[159] As noted by the *ponencia*, Section 13, Rule 18 of the COMELEC Rules of Procedure renders immediately executory decisions of the COMELEC after five (5) days from promulgation unless restrained by the Court.[160]

In other words, the COMELEC did not need to annul the proclamation of Villamor after finding her disqualified because its decision is not stayed by the present petition before the Court. Indeed, from the records, the COMELEC issued a Certificate of Finality,[161] citing the Court's non-issuance of a restraining order.

On this note, I observe that Villamor had asked the Court at least three (3) times for the issuance of a Writ of Preliminary Injunction (WPI) and/or Temporary Restraining Order (TRO), starting as early as on November 29, 2019.[162] The Court did not act on these motions, nor did it issue an injunctive order. The *ponencia,* however, is granting the Petition, and finding that Villamor is qualified to sit as Mayor of Lagangilang, Abra. In other words, the Court appears to be just as guilty of its imputation of "inconsistency" as

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156 See id. at 497.

157 *Ponencia*, p. 17 refers to *rollo*, p. 15.

158 See *Fermin v. COMELEC*, supra note 122, at 802 in relation to the Separate Dissenting Opinion of *J.* Davide, Jr. in *Aquino v. COMELEC*, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 445-452; Also see *Hayudini v. COMELEC*, G.R. No. 207900, April 22, 2014, 723 SCRA 223 and the Separate Concurring Opinion of *J.* Brion, id. at 265-292.

159 See *Hayudini v. COMELEC*, id. and the Separate Concurring Opinion of *J.* Brion, id.

160 See *ponencia,* p. 7.

161 *Rollo*, pp. 239-241.

162 *Most Urgent Reiterative Motion For the Immediate Issuance Of Writ Of Preliminary Injunction And/Or Temporary Restraining Order And/Or Status Quo Ante Order* dated December 4, 2019 (id. at 225-230); *Another Most Urgent Reiterative Motion [To Resolve The Application For The Issuance Of Injunctive Writ In View Of A Supervening Event]* dated December 17, 2019 (id. at 231-238); *Most Urgent Petition For Certiorari And Prohibition* filed on November 29, 2019, with the urgent prayer that a *Writ of Preliminary Injunction and/or Temporary Restraining Order and/or Status Quo Ante Order* (id. at 8-35).

the COMELEC — if not worse because, as mentioned, the COMELEC's Decision is executory, hence, there was no need to annul Villamor's proclamation. There does not likewise appear to be multiple motions for suspension of proclamation filed before the COMELEC, per the records, including the *ponencia*'s relevant citation.[163]

As Villamor utterly failed to prove that she had timely re-established her domicile in Lagangilang, Abra, the COMELEC was correct in cancelling her CoC. Hence, while it can be said to have erred when it failed to include in its assailed Resolutions a determination of whether intent to deceive is present, such error cannot be tantamount to grave abuse of its discretion.

Moreover, as Villamor committed false material representation in her CoC, such CoC was correctly cancelled. That she was elected by the people of Lagangilang does not cure her disqualification, and cannot defeat the force of our election laws.

Associate Justice Amy C. Lazaro-Javier places utmost importance to the electoral's choice, and opines that the Court is bound to exert the highest effort to resolve a disqualification case in a manner that preserves and gives effect to the will of the people.

In *Velasco*, the Court assessed the will of the people as a factor in disqualification proceedings against its possible effects to the rule of law, which is likewise a manifestation of the will of the Filipino people, as well as to the integrity of the elections. **In the end, the Court held that the balance must always tilt in favor of the law**, thus:

> The first requirement that may fall when an unqualified reading is made is Section 39 of the LGC which specifies the basic qualifications of local government officials. Equally susceptive of being rendered toothless is Section 74 of the OEC that sets out what should be stated in a COC. Section 78 may likewise be emasculated as mere delay in the resolution of the petition to cancel or deny due course to a COC can render a Section 78

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[163] *Ponencia*, p. 17 refers to "*Rollo*, p. 15," which, upon examination, relevantly contains statements in the Petition regarding Viernes' *Urgent Motion to Nullify the Proclamation of Rovelyn Echave Villlamor with Prayer to Expedite Proceedings* dated May 17, 2019 and *Urgent Motion to Resolve [Villamor's MR] with Prayer for Issuance of Cease and Desist Order*. It appears that Viernes filed two (2) motions — to nullify Villamor's proclamation and for a Cease and Desist Order against her assumption to office. As mentioned, from Sec. 6 of RA 6646, the COMELEC's power is only to stay a proclamation, not nullify the same after it has been done.

> petition useless if a candidate with false COC data wins. To state the obvious, candidates may risk falsifying their COC qualifications if they know that an election victory will cure any defect that their COCs may have. Election victory then becomes a magic formula to bypass election eligibility requirements.
>
> In the process, the rule of law suffers; the clear and unequivocal legal command, framed by a Congress representing the national will, is rendered inutile because the people of a given locality has decided to vote a candidate into office despite his or her lack of the qualifications Congress has determined to be necessary.
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> x x x x
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> x x x A mandatory and material election law requirement involves more than the will of the people in any given locality. Where a *material COC misrepresentation under oath* is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate['s] will. The balance must always tilt in favor of upholding and enforcing the law. To rule otherwise is to slowly gnaw at the rule of law.[164] (Italics in the original)

In sum, I cannot but affirm the COMELEC's cancellation of Villamor's CoC. The COMELEC was not incorrect in finding that her period of residence in Lagangilang, Abra could not have started before she re-acquired her Philippine citizenship, and without any showing that she was granted an immigrant or permanent resident status in the Philippines. In any case, even from an evaluation of all of her evidence, including the ones which obtained prior to such re-acquisition of Philippine citizenship, she still failed to discharge her burden of evidence to prove that she had ***timely*** acquired a new domicile in Lagangilang, and rebut the presumption of continuity of her US domicile.

The evidence she presented, including her bare allegations, was gravely inadequate to prove the requisite *animus manendi, animus non revertendi,* and bodily presence. Of particular note is her utter lack of evidence and allegation to support her claim of bodily presence. The Voter's Certificate – the sole basis of *ponencia*'s finding that she satisfied this element of physical presence – is tainted with fraud and illegality, hence, cannot be given evidentiary value. Likewise, she is imputed with knowledge of how her period of residence must be computed. Nevertheless, her repeated misrepresentations to the Court and the COMELEC sufficiently evince her intent to deceive in fact.

It bears to note that, as the *ponencia* had pointed out, the COMELEC's assailed Resolutions lack any finding on whether Villamor had intended to deceive when she made the material misrepresentation in her CoC. However, under the circumstances, I cannot ascribe upon the COMELEC, on this sole

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[164] *Velasco v. COMELEC*, supra note 19, at 614-615.

basis, grave abuse of its discretion which is nothing less than a "capricious and whimsical exercise of judgment, x x x the [exercise of power] in an arbitrary x x x manner[, where the abuse is] so patent and gross as to amount to [an] evasion of positive duty."[165]

A perusal of the assailed Resolutions shows that the COMELEC had properly considered all the evidence of the parties and judiciously applied the relevant laws. Even if the COMELEC can be said to have erred in failing to include in its Resolutions a discussion on Villamor's intent to deceive, the same is not tantamount to a grave abuse of discretion. In the end, far from having exercised its judgment in a capricious and whimsical manner, the COMELEC was correct in ruling that Villamor failed to prove that she had been a resident of Lagangilang, Abra for at least one (1) year prior to the 2019 elections, and that she is guilty of false material representation in her CoC, for which the same must be cancelled pursuant to Section 78.

Finally, the law must be upheld, lest the grave dangers contemplated in *Velasco* ensue. In the end, the law is, itself, a manifestation of the will of the Filipino people, expressed through their duly-elected legislators; hence, the balance must necessarily tilt in its favor even as against the will of the electorate in Lagangilang, Abra.[166]

In light of the foregoing, I vote to **DISMISS** the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[165] *Vinzons-Chato v. House of Representatives Electoral Tribunal*, G.R. No. 204637, April 16, 2013, 696 SCRA 573, 587.

[166] See *Velasco v. COMELEC*, supra note 19, at 615.