practice of law for **SIX (6) MONTHS** with **WARNING** that a similar offense by him will be dealt with more severely.

Let copies of this Decision be entered in the personal record of Atty. Aquilino Mejica as a member of the Philippine Bar and furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Perez, Mendoza, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Bersamin, J., on official leave.

EN BANC

[G.R. No. 210200. September 13, 2016]

JULIET B. DANO, *petitioner, vs.* **COMMISSION ON ELECTIONS and MARIE KAREN JOY B. DIGAL,** *respondents.* **MARIA EMILY D. DAGAANG,** *petitioner-intervenor.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE APPRECIATION AND EVALUATION OF EVIDENCE BY COMELEC IS NOT ORDINARILY REVIEWED IN A PETITION FOR CERTIORARI EXCEPT WHEN THE COMELEC'S ACTION OVERSTEPS THE LIMITS OF ITS DISCRETION TO THE POINT OF BEING GROSSLY UNREASONABLE.— In *Mitra v. Comelec*, this Court explained that the appreciation and evaluation of evidence

by COMELEC is not ordinarily reviewed in a petition for *certiorari*. In exceptional cases, however, when the COMELEC's action oversteps the limits of its discretion to the point of being grossly unreasonable, this Court is not only obliged, but constitutionally mandated to intervene. This case is one such instance in which this Court has to intervene. Here, instead of evaluating the probative value of the evidence presented by petitioner, COMELEC abruptly concluded that she had failed to reestablish her domicile in Sevilla, simply because she was admittedly absent from the municipality for four months. We remind the commission that the summary nature of proceedings under Section 78 only allows it to rule on patent material misrepresentations of facts, not to make conclusions of law that are even contrary to jurisprudence.

2. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE OF 1991 (RA 7160, AS AMENDED); ELECTIVE OFFICIALS; RESIDENCY REQUIREMENT; PHYSICAL PRESENCE, ALONG WITH *ANIMUS MANENDI ET REVERTENDI,* IS AN ESSENTIAL REQUIREMENT FOR THE ACQUISITION OF A DOMICILE OF CHOICE, BUT IT IS NOT REQUIRED THAT PHYSICAL PRESENCE BE UNBROKEN.— Physical presence, along with *animus manendi et revertendi*, is an essential requirement for the acquisition of a domicile of choice. However, the law does not require that physical presence be unbroken. In *Japzon v. Comelec*, this Court ruled that to be considered a resident of a municipality, the candidate is not required to stay and never leave the place for a full one-year period prior to the date of the election. In *Sabili v. Comelec*, this Court reiterated that the law does not require a candidate to be at home 24 hours a day 7 days a week to fulfill the residency requirement.

3. ID.; ID.; ID.; ID.; ID.; THE CERTIFICATION OF THE *PUNONG BARANGAY* SHOULD BE GIVEN DUE CONSIDERATION.— COMELEC was also wrong in dismissively disregarding the affidavits of the *punong barangay* and a long-time resident of Sevilla for not being "substantiated by proof." In *Sabili*, We said that the certification of the *punong barangay* should be given due consideration. COMELEC should have likewise done so in this case. Two disinterested persons attested that even after her naturalization as an American citizen,

petitioner had regularly visited her hometown to participate in community affairs. According to the *punong barangay*, petitioner expressed, on several occasions, the latter's desire to come home. In this light, it should have been apparent to COMELEC that when petitioner returned in the first quarter of 2012, it was for good; and that when she left for the US on 10 May 2012, her purpose was to confirm her permanent abandonment of her US domicile.

4. ID.; ELECTIONS; DENIAL OF DUE COURSE TO, OR CANCELLATION OF CERTIFICATE OF CANDIDACY (COC); MUST BE ANCHORED ON A FINDING THAT THE CANDIDATE MADE A MATERIAL REPRESENTATION THAT WAS FALSE.— COMELEC's grave abuse of discretion lay in its failure to fully appreciate petitioner's evidence and fully explained absence from Sevilla. Instead, it made a legal conclusion that a candidate who has been physically absent from a locality for four out of the twelve months preceding the elections can never fulfil the residence requirement under Section 39 of the LGC. In addition, COMELEC cancelled petitioner's COC without any prior determination of whether or not she had intended to deceive or mislead the electorate. This omission also constitutes grave abuse of discretion. It must be emphasized that the denial of due course to, or the cancellation of, a COC must be anchored on a finding that the candidate made a material representation that was false. In the sphere of election laws, a material misrepresentation pertains to a candidate's act done with the intention to gain an advantage by deceitfully claiming possession of all the qualifications and none of the disqualifications when, in fact, the contrary is true. In *Mitra v. Comelec*, the cancellation of the COC was reversed, because the COMELEC "failed to critically consider whether Mitra deliberately attempted to mislead, misinform or hide a fact that would otherwise render him ineligible for the position of Governor of Palawan." Absent such finding, We cannot sustain the cancellation of petitioner's COC.

BRION, *J., concurring opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; GRAVE ABUSE OF DISCRETION;

DEFINED; FOR AN ACT TO BE STRUCK DOWN AS HAVING BEEN DONE WITH GRAVE ABUSE OF DISCRETION, THE PETITIONER MUST SHOW THAT THE COMMISSION ON ELECTIONS (COMELEC) DID NOT SIMPLY ERR IN ITS APPRECIATION OF FACTS OR IN THE APPLICATION OF THE LAW, BUT IT SO ACTED IN A PATENTLY GROSS MANNER, THEREBY ACTING OUTSIDE THE CONTEMPLATION OF THE LAW.— "Grave abuse of discretion," as defined under established rulings, means the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross. The petitioner must show under these legal requirements that the Comelec did not simply err either in its appreciation of facts or in the application of the law; it so acted in a patently gross manner, thereby acting outside the contemplation of the law.

2. ID.; ID.; ID.; THE COURT DOES NOT REVIEW IN A *CERTIORARI* PETITION THE COMELEC'S APPRECIATION AND EVALUATION OF THE EVIDENCE, EXCEPT TO DETERMINE IF THESE FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE; IF SUBSTANTIAL EVIDENCE EXISTS, THE COMELEC'S FINDINGS AND CONCLUSIONS, EVEN IF ERRONEOUS, ARE ACCORDED RESPECT, WHICH UNDER THESE CIRCUMSTANCES MERELY AMOUNT TO AN ERROR OF JUDGMENT.— Closely related to the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that the Comelec's findings of fact, supported by substantial evidence, shall be final and non-reviewable. This rule, however, is subject to the Court's power of judicial review under the jurisprudential rule – driven by the nature of *certiorari* proceedings – that findings of facts of administrative bodies (such as the Comelec) are recognized as final by the courts if supported by substantial evidence. Substantial evidence is that degree of evidence that a reasonable mind might accept to support a conclusion. Because of the Court's limited authority to review findings of fact, the

Court does not review in a *certiorari* petition the Comelec's appreciation and evaluation of the evidence, except to determine if these findings are supported by substantial evidence. If substantial evidence exists, the Comelec's findings and conclusions, even if erroneous, are accorded respect; Comelec action under these circumstances merely amount to an error of judgment. On the other hand, when factual conclusions are not based on substantial evidence or when the appreciation and conclusions of fact are attended by grave abuse of discretion, the resulting errors mutate from error of judgment to error of jurisdiction. In this latter instance, the Court is not only obliged, but has the constitutional duty to intervene and must set aside the Comelec ruling for lack of jurisdiction.

3. **POLITICAL LAW; ELECTIONS; LEGAL REQUIREMENTS FOR CANDIDACY TO PUBLIC OFFICE OF FORMER NATURAL-BORN FILIPINO UNDER REPUBLIC ACT NO. 9225 (AN ACT MAKING THE CITIZENSHIP OF THE PHILIPPINE CITIZENS WHO ACQUIRE FOREIGN CITIZENSHIP PERMANENT); FILIPINOS WITH REACQUIRED CITIZENSHIP WHO INTEND TO RUN FOR PUBLIC OFFICE MUST EXECUTE AN OATH OF RENUNCIATION, AND MEET ALL OF THE QUALIFICATIONS IMPOSED BY THE CONSTITUTION AND THE LAW FOR HOLDING THE PUBLIC OFFICE.—** R.A. No. 9225 allows former natural-born Filipino citizens, who were subsequently naturalized citizens in a foreign country, to reacquire Philippine citizenship by taking an oath of allegiance to the Republic. Once the oath of allegiance is taken, the *right to enjoy full civil and political rights* that attach to this citizenship follows, subject to compliance with other requirements of the Constitution and applicable laws for the *exercise of these rights*. Significantly, no other step is required under these laws, except for Filipinos with reacquired citizenship who intend to run for public office who must: (1) execute an oath of renunciation, and (2) meet all of the qualifications imposed by the Constitution and the law for holding the public office.

4. **ID.; ID.; LEGAL REQUIREMENTS FOR FILIPINOS WITH REACQUIRED CITIZENSHIP TO RUN FOR AND HOLD LOCAL ELECTIVE OFFICE UNDER RA NO. 9225 IN RELATION WITH SECTION 39 OF THE LOCAL**

GOVERNMENT CODE.— An examination of RA No. 9225 and Section 39 of the LGC show that they are independent statutes with substantial linkage in the *exercise* of the political right of running for elective office. RA No. 9225 deals with reacquisition of citizenship and the grant of rights attaching to Filipino citizenship, while Section 39 of the LGC relates to the residency requirement to qualify a candidate for public office. While the first *grants the political and civil rights* to reside in the Philippines and to run for public office upon reacquisition of Filipino citizenship, the other regulates the *exercise of this political right* through a residency requirement that must be fulfilled to run for and hold an elective public office. Under this relationship, RA No. 9225 does not require any residency allegation, proof, or qualification to avail of its terms. RA 9225 does not also establish residency in the Philippines. Residency is a right that can be claimed and that becomes material only when the former natural-born Filipino decides to run for public office under the terms of Section 39 of the LGC. In this light, the reacquisition of citizenship under RA No. 9225 does not – by itself – imply nor establish the fact of Philippine residency. Notably, too, the *civil and political rights* that attach to the RA No. 9225 reacquisition of citizenship are granted upon the reacquisition of citizenship. In other words, once Filipino citizenship is reacquired, the right to reside in the country as Filipinos and the right to vote and be voted for elective office immediately accrue, subject only to *limitations applicable to the exercise* of these rights.

5. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; ELECTIVE OFFICIALS; RESIDENCY REQUIREMENT; TERM "RESIDENCE" IS SYNONYMOUS WITH "DOMICILE"; DOMICILE IS CLASSIFIED INTO *DOMICILE OF ORIGIN*, *DOMICILE OF CHOICE* AND *DOMICILE BY OPERATION OF LAW*; DISTINGUISHED.— 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, one intends to return, and depends on the attendant facts and circumstances in confirming the individual's intent and actions to carry out this intent.*** Domicile is classified into three, namely: (1) ***domicile of origin***, which is acquired by every person at birth; (2) ***domicile of choice***, which is acquired upon abandonment of the domicile

of origin; and (3) ***domicile by operation of law***, which the law attributes to a person independently of his residence or intention.

6. ID.; ID.; ID.; ID.; ID.; TO EFFECT A CHANGE OF DOMICILE OR TO ACQUIRE A DOMICILE OF CHOICE, THERE MUST BE RESIDENCE OR BODILY PRESENCE IN THE NEW LOCALITY, A *BONA FIDE* INTENTION TO REMAIN THERE, AND A *BONA FIDE* INTENTION TO ABANDON THE OLD DOMICILE; JURISPRUDENTIAL BASIC FOUNDATIONAL RULES ON RESIDENCY.— In *Limbona v. Comelec,* the Court pointedly declared that to effect a change of domicile or to acquire a domicile of choice, there must concur (1) residence or bodily presence in the new locality, (2) a *bona fide* intention to remain there, and (3) a *bona fide* intention to abandon the old domicile. In other words, there must be ***animus manendi*** in new residence, coupled with ***animus non revertendi*** with respect to the former residence. Under these requirements, no specific unbending rule exists in the appreciation of compliance because of the element of intent – an abstract and subjective proposition that can only be determined from the surrounding circumstances. It must be appreciated, too, that aside from *intent* is the question of the *actions taken pursuant to the intent*, and the consideration of the *applicable laws, rules, and regulations*. Jurisprudence, too, has laid out three **basic foundational rules** in the consideration of residency issues, namely: *First,* a man must have a residence or domicile somewhere; *Second,* when once established, it remains until a new one is acquired; and *Third,* a man can have but one residence or domicile at a time.

7. ID.; ID.; ID.; ID.; ID.; PETITIONER'S *ANIMUS MANENDI* IN NEW RESIDENCE AND *ANIMUS NON REVERTENDI* WITH RESPECT TO THE FORMER RESIDENCE AS WELL AS HER ACTUAL PHYSICAL RESIDENCE IN THE NEW LOCALITY THROUGH ACTS TAKEN PURSUANT TO HER EXPRESSED INTENT WERE PROVED BY SUBSTANTIAL EVIDENCE.— Dano hinted at her intention to resettle in Sevilla as early as the first quarter of 2012, which intention she supported with overt moves that clarified this intent. On May 2, 2012, she acted on this intention by actually residing in and declaring herself as resident of Sevilla, after she reacquired her Philippine citizenship with its rights

and responsibilities. Finally, she concretized her intention and acts by severing all ties with the U.S. All these separate strands, taken together and read in relation with one another, show a ***pattern of action*** all indicating Dano's ***intent to reassume Filipino citizenship; to change her domicile to Sevilla, Bohol;*** and to ***sever her ties with the U.S.*** - business, residential, and professional. xxx. [D]ano has more than sufficiently proven by substantial evidence the ***animus manendi*** and the ***animus non revertendi*** that jurisprudence requires, as well as **her actual physical residence in Sevilla, through acts taken pursuant to her expressed intent.** To conclude that Dano has not re-established her domicile in Sevilla despite the abandonment of her US domicile would not only violate the rule that a man must have a domicile or residence somewhere. More than anything, it would result in the absurd situation where a returning and reacquiring Filipino citizen, despite having abandoned his or her foreign domicile, would not still be resident of the Philippines.

8. ID.; ID.; ID.; ID.; ID.; THE SWORN STATEMENT OF THE PUNONG BARANGAY ESTABLISHING BODILY PRESENCE SHOULD CARRY GREATER INTRINSIC WORTH SINCE IT IS THE BUSINESS THEREOF TO KNOW WHO THE RESIDENTS ARE IN HIS OWN BARANGAY.— Apart from Dano's incremental moves, the conclusion that she had re-established her domicile in Sevilla is further supported by the affidavits of Tristan Cabagnot (the Punong Barangay of Poblacion, Sevilla where Dano resides) and Praxides G. Mosqueda (a retiree and long-time resident of Sevilla). x x x. In *Mitra v. Comelec*, the Court declared that the sworn statement of the Punong Barangay should carry a lot more weight since it is the business of a punong barangay to know who the residents are in his own barangay. xxx. Compared with one another, the affidavits of Tristan Cabagnot and Praxides G. Mosqueda cannot but carry greater intrinsic worth than the affidavit of Ceferino Digal; **they speak of Dano as a person they intimately know and whose intention to return to the Philippines permanently as well as actual stay in the Philippines, they can authoritatively testify to**. These, Ceferino Digal could only deny in general terms.

9. ID.; ELECTIONS; COMMISSION ON ELECTIONS; THE COMELEC'S FINDINGS AND CONCLUSIONS CANNOT BIND THE COURT WHEN GRAVE ABUSE OF DISCRETION CLEARLY ATTENDED THE COMELEC'S DECISION, OR WHEN THE COMELEC ACTED ARBITRARILY, CAPRICIOUSLY OR WITHOUT RATIONAL BASIS, OR WHEN IT OTHERWISE GROSSLY MISAPPRECIATED THE EVIDENCE OF SUCH NATURE AS TO COMPEL A CONTRARY CONCLUSION.— Based on the law and the jurisprudential parameters, xxx the Comelec grossly misappreciated the import of the pieces of evidence the parties presented, so that it arrived at the wrong conclusions. In legalese, the Comelec **grossly erred** because ***it relied on the wrong factual and legal considerations and thereby gravely abused the exercise of its discretion.*** x x x. **When grave abuse of discretion clearly attended the Comelec's decision, or when the Comelec acted arbitrarily, capriciously or without rational basis, or when it otherwise grossly misappreciated the evidence of such nature as to compel a contrary conclusion, the Comelec's findings and conclusions cannot bind this Court.** In this situation, the Court must set these findings aside in compliance with its constitutional mandate.

10. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; ELECTIVE OFFICIALS; RESIDENCY REQUIREMENT; A PERSON'S DOMICILE ONCE ESTABLISHED IS CONSIDERED TO CONTINUE AND WILL NOT BE DEEMED LOST UNTIL A NEW ONE IS ESTABLISHED; RATIONALE.— [A] *person's domicile once established is considered to continue and will not be deemed lost until a new one is established*. The rationale behind this rule is simple: **domicile is an abstract concept that attaches to the place, not to the body of the person**. Thus, once a person, or a candidate, establishes domicile in a particular locality, that domicile continues wherever he or she may be found at any given time. Domicile does not attach to the person's body such that it will change with the change in the person's location.

11. ID.; ID.; ID.; ID.; ID.; AS LONG AS THE CANDIDATE OR WOULD-BE CANDIDATE HAS ESTABLISHED DOMICILE IN HIS OR HER CONSTITUENCY, ANY

INTERVENING ABSENCE THEREFROM, NO MATTER HOW LONG AND UNLESS A NEW DOMICILE ELSEWHERE HAS BEEN ESTABLISHED, WILL NOT AND CANNOT RESULT IN THE LOSS OF THAT DOMICILE, FOR TO REQUIRE AND INSIST ON CONTINUOUS, UNINTERRUPTED OR SUBSTANTIAL ACTUAL BODILY PRESENCE IN THE LOCALITY FOR THE ENTIRE ONE-YEAR PERIOD RUNS COUNTER TO THE LAW'S SPIRIT AND INTENT.— [T]o require continuous, uninterrupted or substantial actual bodily presence imposes on Filipinos reacquiring their Philippine citizenship under RA No. 9225, a difficult, if not an impossible, condition should they choose to run for local public office. The condition – of *continuous, uninterrupted or substantial actual bodily presence* in the locality – will effectively prevent them from engaging in any meaningful activity – whether for employment, conduct of business, recreation, or otherwise the settlement of their remaining foreign affairs – outside of their locality for at least one year immediately preceding the election date. In simple terms, the condition will effectively restrict their mobility and render them prisoners in the locality for an entire one-year period. Without doubt, Dano's four-month travel to the U.S. resulted in her physical or bodily absence in Sevilla during this period. The residence that the Constitution and our election laws, however, contemplate domicile, not mere physical or bodily presence, in the constituency where the candidate seeks to be elected. Thus, as long as the candidate or would-be candidate has established domicile in his or her constituency, any intervening absence therefrom, no matter how long and unless a new domicile elsewhere has been established, will not and cannot result in the loss of that domicile. To require and insist on this absurd condition runs counter to the law's spirit and intent.

12. ID.; ID.; ID.; ID.; ID.; THE ELECTIVE LOCAL OFFICIAL IS NOT REQUIRED TO BE IN HIS HOME LOCALITY TWENTY-FOUR (24) HOURS A DAY, SEVEN (7) DAYS A WEEK FOR THE ENTIRE ONE-YEAR PERIOD, BUT ONLY THAT THE OFFICIAL HAD BEEN A RESIDENT THEREIN FOR AT LEAST ONE YEAR IMMEDIATELY PRECEDING THE ELECTION DATE. — To quote Section 39 of the LGC for emphasis: *"[an] elective local official must*

be a citizen of the Philippines, a registered voter in the barangay, municipality, city, province or x x x the district where he intends to be elected; ***resident therein for at least one (1) year*** *immediately preceding the day of the election x x x."* Under these terms, Section 39 attaches only two conditions to the residency requirement: ***first,*** that the residency must be in the locality, *i.e.,* barangay, municipality, etc., where the elective local official intends to be elected; and ***second,*** that the residency in the locality be for at least one year immediately preceding the election date. Section 39 of the LGC, significantly, does not require the elective local official to be in his home locality twenty-four (24) hours a day, seven (7) days a week for the entire one-year period, but only that the official had been a resident therein for at least one year immediately preceding the election date; **only the intent to reside must be there, supported by facts showing actions pursuant to this intent.** To require continuous actual bodily presence or substantial physical presence in the locality during the entire one-year period, would effectively add a third condition to the statutory durational residency requirement of Section 39 of the LGC. Any contrary ruling from this Court would result in prohibited judicial legislation.

13. ID.; ID.; ID.; ID.; ID.; THE WINDING UP OF A CANDIDATE'S PROPERTY AFFAIRS IN ANOTHER COUNTRY IS NOT A QUALIFICATION REQUIREMENT UNDER THE LAW NOR IS IT A CONDITION TO THE RESIDENCY REQUIREMENT.— [W]hether proper or not, Dano's decision to wind up her property affairs later, rather than sooner, as they would have settled things, is clearly immaterial to the determination of Dano's compliance with the residency requirement: **the winding up of a candidate's property affairs in another country is not a qualification requirement under the law nor is it a condition to the residency requirement**. It should not even be a material consideration in this case as it is not contrary to our election laws or regulated by jurisprudence, and should not be taken against a candidate who has shown sufficient justification for the trip.

14. ID.; ELECTIONS; PETITION TO DENY DUE COURSE TO OR CANCEL A CERTIFICATE OF CANDIDACY; THE

FALSE REPRESENTATION MUST BE MADE WITH THE INTENTION TO DECEIVE THE ELECTORATE WITH RESPECT TO THE WOULD-BE CANDIDATE'S QUALIFICATION FOR PUBLIC OFFICE, AND IT CANNOT BE THE RESULT OF A MERE INNOCUOUS MISTAKE, NOR CAN IT EXIST IN A SITUATION WHERE THE INTENT TO DECEIVE IS PATENTLY ABSENT, OR WHERE NO DECEPTION ON THE ELECTORATE RESULTS. — A petition to cancel CoC is governed by Section 74 in relation with Section 78 of the Omnibus Election Code *(OEC)*. As these provisions operate, the would-be candidate must state only true facts in the CoC as any false representation of a material fact may lead to the cancellation or denial of the CoC. x x x. [T]he false representation must be made with the intention to deceive the electorate with respect to the would-be candidate's qualification for public office. It cannot be the result of a **mere innocuous mistake**, nor can it exist in a situation **where the intent to deceive is patently absent**, or where **no deception on the electorate results**. This must be so for, after all, any material falsity will bar a candidate who falsifies from running; even if he runs and is elected, he will likewise be barred from serving. In either case, he can be prosecuted for violation of the election laws. x x x Based on these standards, x x x Dano did not commit any false representation, deliberate or otherwise, in her CoC.

15. ID.; ID.; ID.; TO SUCCESSFULLY CHALLENGE A WINNING CANDIDATE'S QUALIFICATIONS, THE PETITIONER MUST CLEARLY DEMONSTRATE THAT THE INELIGIBILITY IS SO PATENTLY ANTAGONISTIC TO CONSTITUTIONAL AND LEGAL PRINCIPLES THAT OVERRIDING SUCH INELIGIBILITY AND THEREBY GIVING EFFECT TO THE APPARENT WILL OF THE PEOPLE WOULD ULTIMATELY CREATE GREATER PREJUDICE TO THE VERY DEMOCRATIC INSTITUTIONS AND JURISTIC TRADITIONS THAT OUR CONSTITUTION AND LAWS SO ZEALOUSLY PROTECT AND PROMOTE.— Independently of the residence requirement issue, the Court cannot and should not ignore the undeniable fact that the *people of Sevilla, Bohol made their own ruling when they elected Dano as their Mayor in the May 13, 2013 elections despite the "non-resident" label that her*

political opponents sought to pin on her. The people of Sevilla have spoken and chosen Dano as their Mayor. She received an overwhelming 3,292 votes or 54%, over her rival's meagre 2,624 votes or 43%, of the total votes cast in the May 2013 Elections. Under this situation, everyone – including this Court – should heed the majority's verdict by resolving all doubts in favor of Dano's eligibility. In the words of *Frivaldo v. Comelec,* the law and the courts, including this Court, must accord Dano every possible protection, defense and refuge, in deference to the popular will. *In any action involving the possibility of a reversal of the popular electoral choice, this Court must* ***exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority****, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the* ***ineligibility is so patently antagonistic to constitutional and legal principles*** *that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.*

16. ID.; ID.; NO ENTITY – THE EXECUTIVE, THE LEGISLATIVE, OR EVEN THE JUDICIARY – CAN RIGHTFULLY INTERFERE IN THE DEMOCRATIC DECISION-MAKING PROCESS AND DICTATE ON THE PEOPLE'S CHOICE UNLESS THERE ARE CLEAR LEGAL REASONS FOR INTERFERENCE.— The various pieces of evidence in this case convincingly show that the people of Sevilla have been well acquainted with Dano's background, character and qualifications, among others, and that she, in turn, has not been oblivious to the needs, difficulties, aspirations, and potential for growth and development of Sevilla and its people. These are the concerns that animate elections and its residency requirement. These were the issues, too, that the electorate of Sevilla voted upon when they elected Dano. Under the circumstances, deference to the electorate's choice would strengthen the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. It is only during the elections and referenda that the people can directly affect the manner by which the government should

be run; through these political exercises they decide on who they want to run the government for them. Accordingly, no entity – the executive, the legislative, or even the judiciary – can rightfully interfere in this democratic decision-making process and dictate on the people's choice unless there are clear legal reasons for interference. The existence of a doubt, particularly after the people have spoken, is not a reason for interference. Our most cherished democracy demands no less than the utmost respect for the will of the electorate.

APPEARANCES OF COUNSEL

Arnold H. Labay for petitioner.
Lagunay & Lagunay for petitioner-intervenor.
The Solicitor General for public respondent.
Menedio Thadeus P. Bernido for private respondent.
Teodoro M. Lagang, co-counsel for private respondent.

D E C I S I O N

SERENO, *C.J.:*

This petition for *certiorari*,[1] based on Rules 64 and 65 of the Revised Rules of Court, seeks to annul the following: (1) the Commission on Elections (COMELEC) First Division Resolution[2] cancelling the Certificate of Candidacy (COC) of petitioner Juliet B. Dano in the election case SPA No. 13-083 (DC); and (2) the COMELEC En Banc Resolution[3] denying petitioner's Motion for Reconsideration. The crux of the controversy is whether COMELEC committed grave abuse of

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[1] Mistakenly titled "Petition for Review"; *rollo*, pp. 3-15.

[2] Dated 8 May 2013, signed by Presiding Commissioner Lucenito N. Tagle and Commissioners Christian Robert S. Lim and Al A. Pareño; *id*. at 16-23.

[3] Dated 20 November 2013, signed by Chairman Sixto Brillantes, Jr., Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, Maria Gracia Cielo M. Padaca, Al A. Pareño, and Luie Tito F. Guia; *id.* at 24-29.

discretion in concluding that petitioner, a candidate for mayor of Sevilla, Bohol in the elections of 13 May 2013, failed to fulfill the one-year residence requirement laid down by the Local Government Code (LGC).[4]

While this Court was initially divided on whether the evidence presented before COMELEC could sustain the latter's finding of material misrepresentation in petitioner's COC because petitioner had not satisfied the one-year residency requirement in the locality in which she sought to be elected as mayor, there was eventual agreement by its Members, that it is more in keeping with the spirit of the Omnibus Election Code, and in line with jurisprudence relating the definition of "residence" with the concept of a*nimus manendi et revertendi*, that the Court concludes that COMELEC should have given petitioner sufficient benefit of the doubt, and accorded credit to her allegations and evidence.

We thus resolve to grant the Petition.

FACTS

Petitioner was a natural-born Filipino who hailed from the Municipality of Sevilla, Province of Bohol (Sevilla).[5] She worked as a nurse in the US and thereafter acquired American citizenship.[6]

On 2 February 2012, she obtained a Community Tax Certificate (CTC) from the municipal treasurer of Sevilla.[7]

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[4] Section 39. *Qualifications.* -

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

[5] *Rollo*, p. 5.

[6] *Id*.

[7] *See* CTC, records, p. 100.

On 30 March 2012, she took her Oath of Allegiance before the Vice Consul of the Philippine Consulate in Los Angeles, California.[8]

On 2 May 2012, petitioner went to Sevilla to apply for voter's registration.[9] Eight days later, she went back to the US and stayed there until 28 September 2012.[10] She claims that she went there to wind up her affairs, particularly to sell her house in Stockton, California, as well as her shares of stock in various companies.[11]

Upon returning to the Philippines, petitioner executed a Sworn Renunciation of Any and All Foreign Citizenship on 30 September 2012.[12]

On 4 October 2012, she filed her COC for mayor of Sevilla.[13] She represented herself therein as one who had been a resident of Sevilla for 1 year and 11 days prior to the elections of 13 May 2013, or from 2 May 2012.

On 10 October 2012, private respondent Marie Karen Joy Digal filed a petition with the COMELEC for the cancellation of petitioner's COC.[14] Private respondent was the daughter of Ernesita Digal, whom petitioner would later best for the mayoralty position in the 2013 elections by a margin of 668 votes.[15]

Private respondent alleged that petitioner had made material misrepresentations of fact in the latter's COC and likewise failed to comply with the one-year residency requirement under Section

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[8] *See* Oath, records, p. 79.

[9] *Rollo*, p. 5.

[10] *Id*. at 17.

[11] *Id*. at 36.

[12] *Id*. at 5.

[13] Records, p. 8.

[14] *Id*. at 2-6.

[15] *Id*. at 220.

39 of the LGC. In support of her allegation, private respondent presented the following documents:

1. Certification of the Office of the Municipal Assessor that petitioner had no real property declared under her name in Sevilla as of 30 October 2012[16]
2. Certification of the COMELEC Election Officer that petitioner had no voting record available as of 30 October 2012[17]
3. Affidavit executed by Ceferino Digal, husband of Ernesita Digal, petitioner's rival for the mayoralty position[18]

On the other hand, petitioner presented the following evidence to establish the fact of her residence in Sevilla:

1. Certification of the Office of the Civil Registrar of Sevilla issued upon the request of petitioner on 30 January 2012[19]
2. Community Tax Certificate issued on 2 February 2012[20]
3. Application for Registration as voter dated 2 May 2012[21]
4. Philippine passport issued on 27 April 2012[22]
5. Deed of Absolute Sale of parcels of land in favor of petitioner executed on 18 May 2012.[23]
6. Affidavit executed by Tristan Cabagnot, who was then the incumbent *punong barangay* of Poblacion, Sevilla[24]

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[16] *Id*. at 60.

[17] *Id*. at 61.

[18] *Id*. at 62.

[19] *Id*. at 82.

[20] *Id*. at 100.

[21] *Id*. at 59.

[22] *Id*. at 102.

[23] *Id*. at 143.

[24] *Id*. at 99.

7. Affidavit executed by Praxides Mosqueda, a retired public school teacher and member of the Parish Pastoral Council of Sevilla[25]

THE COMELEC RULING

On 8 May 2013, five days before the elections, the COMELEC First Division issued a Resolution cancelling the COC of petitioner.[26] It highlighted that even if she had reacquired her Filipino citizenship, registered as a voter in Sevilla, and executed her sworn renunciation, her prolonged absence resulted in her failure to reestablish her domicile in her hometown for the purpose of abiding by the one-year residence requirement:[27]

> [A] Filipino citizen who becomes naturalized elsewhere effectively abandons his domicile of origin. Upon reacquisition of Filipino citizenship pursuant to Republic Act No. 9225, he must still show, if running for public office, that he chose to establish his domicile in the Philippines through positive acts. The period of his residency shall be counted from the time he made it his domicile of choice and shall not retroact to time of his birth.
>
> Here, respondent had executed an Oath of Allegiance to the Philippines on March 30, 2012. However, she executed her sworn Renunciation of Allegiance on a much later date, or on September 30, 2012. During the intervening six (6) month period between taking the oath of allegiance and the renunciation under oath, no concrete acts have been done by respondent to clearly establish that she has categorically chosen Sevilla, Bohol as her domicile of choice.
>
> It must be stressed in this regard that physical presence and not mere intent is required to establish domicile which connotes actual, factual and *bona fide* residence in a given locality.
>
> The contention of respondent that she registered as a voter after she reacquired her citizenship on May 2, 2012 or about a month from March 30, 2012 is not enough. Registering as a voter may indicate the intention to fix a domicile of choice, but, by itself, is not definite enough to evince a person's intention to abandon his domicile of

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[25] *Id*. at 101.

[26] *Supra* note 2.

[27] *Rollo*, pp. 21-22.

choice and reacquire his domicile of origin. Such registration may have been done merely to comply with election law requirement.

To reckon the one-year residency period from the date of the Oath of Allegiance, respondent must show that immediately thereafter, she has taken positive steps to concretely establish her intention to truly abandon U.S.A. as her domicile of choice. But then, records show that after the submission of her Application for Registration on May 2, 2012, respondent made frequent trips in the U.S.A. and it was only upon her return sometime in September 2012 did she execute her sworn renunciation of allegiance.

Her frequent absence in the Philippines after the filing of her application for registration cannot be considered insignificant or as a mere temporary absence. This is because when respondent left for the U.S. she has yet to categorically fix Sevilla, Bohol as her domicile of choice. As it is, respondent left for the States and returned about 4 months later to accomplish the sworn renunciation of allegiance on September 30, 2012. Between the period from May 2012 to September 2012, nothing is clear as to respondent's intention insofar as the abandonment of the U.S. as her domicile and the reacquisition of Sevilla as her new residence.

Petitioner moved for reconsideration. She argued that the following acts showed that she had reestablished her domicile in Sevilla: a) she purchased parcels of land and a residential house as evidenced by a Deed of Absolute Sale executed on 18 May 2013; b) she made public her intention to run for mayor of Sevilla as early as January 2012; and c) she started to settle permanently in her ancestral home in *Barangay* Poblacion, Sevilla, starting January 2012.[28]

Pending the resolution of her motion, petitioner assumed office as mayor of Sevilla and began discharging the powers of the office upon her proclamation.[29] On 15 December 2013, however, she received the COMELEC En Banc Resolution denying her Motion for Reconsideration and upholding the cancellation of her COC.[30]

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[28] *Id*. at 26.

[29] *Id*. at 5.

[30] *Id*. at 6.

Petitioner filed the instant petition for *certiorari* with a prayer for the issuance of a temporary restraining order, assailing COMELEC's Resolutions.[31] She later filed a Supplement to Petition for Review,[32] to which she attached copies of the following documents evidencing the sale of her properties in the US:

1. California Residential Purchase Agreement[33]
2. Buyer's Inspection Advisory[34]
3. Short Sale Addendum[35]
4. Disclosure Regarding Real Estate Agency Relationship[36]
5. Trade Confirmation of Sale of Shares of Stocks[37]

Pending the resolution of the petition, Sevilla's then Vice-Mayor-Elect Maria Emily D. Dagaang (Dagaang) filed a Petition-in-Intervention. She claimed that under Section 44 of the LGC, it was she who should be proclaimed as mayor of Sevilla in case petitioner's COC were to be cancelled.[38]

ISSUES

The following are the issues for resolution:

1. Whether COMELEC committed grave abuse of discretion in holding that petitioner had failed to prove compliance with the one-year residency requirement for local elective officials; and

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[31] *Id*. at 3-15.

[32] *Id.* at 35-38.

[33] *Id*. at 39-44.

[34] *Id.* at 45-46.

[35] *Id*. at 47-48.

[36] *Id.* at 49-50.

[37] *Id*. at 51-56.

[38] *Id*. at 116-119.

2. If the cancellation of petitioner's COC is upheld by this Court, whether she should be succeeded by the qualified candidate with the next highest number of votes or by the vice-mayor.

Ruling of the Court

We dispense with the second issue for being moot in view of the expiration of the term of office of the winners of the 2013 elections.

We now resolve the primary issue of whether COMELEC committed grave abuse of discretion in holding that petitioner had failed to prove compliance with the one-year residency requirement for local elective officials.

In *Mitra v. Comelec*,[39] this Court explained that the appreciation and evaluation of evidence by COMELEC is not ordinarily reviewed in a petition for certiorari. In exceptional cases, however, when the COMELEC's action oversteps the limits of its discretion to the point of being grossly unreasonable, this Court is not only obliged, but constitutionally mandated to intervene.[40]

This case is one such instance in which this Court has to intervene. Here, instead of evaluating the probative value of the evidence presented by petitioner, COMELEC abruptly concluded that she had failed to reestablish her domicile in Sevilla, simply because she was admittedly absent from the municipality for four months. We remind the commission that the summary nature of proceedings under Section 78 only allows it to rule on patent material misrepresentations of facts, not to make conclusions of law that are even contrary to jurisprudence.

Physical presence, along with *animus manendi et revertendi*, is an essential requirement for the acquisition of a domicile of choice.[41] However, the law does not require that physical presence

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[39] 636 Phil. 753 (2010).

[40] *Id.* citing Section 1, par. 2, Article VIII of the Constitution.

[41] See *Limbona v. Comelec,* 578 Phil. 364 (2008)*; Domino v. Comelec,* 369 Phil. 798 (1999).

be unbroken. In *Japzon v. Comelec,*[42] this Court ruled that to be considered a resident of a municipality, the candidate is not required to stay and never leave the place for a full one-year period prior to the date of the election. In *Sabili v. Comelec,*[43] this Court reiterated that the law does not require a candidate to be at home 24 hours a day 7 days a week to fulfill the residency requirement.

COMELEC relied heavily on the affidavits executed by Ceferino and Marie Karen Joy Digal containing bare allegations that petitioner had never been a resident of Sevilla since she became an American citizen.[44] However, petitioner sufficiently established that she had already reacquired her Philippine citizenship when she started residing in Sevilla on 2 May 2012. It must be noted that the starting point from which her residence should be counted was not material to the deliberations before COMELEC or in any of the pleadings submitted before this Court. The only controverted issue was whether her absence from the locality for four months out of the 1 year and 11 days she had stated in her COC rendered her unable to fulfill the residence requirement.

Considering that the only material issue before COMELEC was the completeness of the period of residence, it should not have disregarded the following evidence showing specific acts performed by petitioner one year before the elections, or by 13 May 2012, which clearly demonstrated her *animus manendi et revertendi:*

1. She made public her intention to run for the mayoralty position. In preparation for this aspiration, and in order to qualify for the position, she went through the reacquisition process under Republic Act No. 9225.

2. She started to reside in her ancestral home, and even obtained a CTC, during the first quarter of 2012.

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[42] 596 Phil. 354 (2009).

[43] 686 Phil. 649 (2012).

[44] Records, pp. 62-64.

3. She applied for voter's registration in Sevilla.

4. She went back to the US to dispose of her properties located there.

COMELEC was also wrong in dismissively disregarding the affidavits of the *punong barangay* and a long-time resident of Sevilla for not being "substantiated by proof."[45]

In *Sabili*, We said that the certification of the *punong barangay* should be given due consideration. COMELEC should have likewise done so in this case. Two disinterested persons attested that even after her naturalization as an American citizen, petitioner had regularly visited her hometown to participate in community affairs.[46] According to the *punong barangay*, petitioner expressed, on several occasions, the latter's desire to come home. In this light, it should have been apparent to COMELEC that when petitioner returned in the first quarter of 2012, it was for good; and that when she left for the US on 10 May 2012, her purpose was to confirm her permanent abandonment of her US domicile.

COMELEC's grave abuse of discretion lay in its failure to fully appreciate petitioner's evidence and fully explained absence from Sevilla. Instead, it made a legal conclusion that a candidate who has been physically absent from a locality for four out of the twelve months preceding the elections can never fulfil the residence requirement under Section 39 of the LGC. In addition, COMELEC cancelled petitioner's COC without any prior determination of whether or not she had intended to deceive or mislead the electorate. This omission also constitutes grave abuse of discretion.

It must be emphasized that the denial of due course to, or the cancellation of, a COC must be anchored on a finding that the candidate made a material representation that was false.[47]

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[45] *Id*. at 132.

[46] *Id*. at 98-99.

[47] *Fermin v. Comelec,* 595 Phil. 449 (2008).

In the sphere of election laws, a material misrepresentation pertains to a candidate's act done with the intention to gain an advantage by deceitfully claiming possession of all the qualifications and none of the disqualifications when, in fact, the contrary is true.[48] In *Mitra v. Comelec,*[49] the cancellation of the COC was reversed, because the COMELEC "failed to critically consider whether Mitra deliberately attempted to mislead, misinform or hide a fact that would otherwise render him ineligible for the position of Governor of Palawan." Absent such finding, We cannot sustain the cancellation of petitioner's COC.

WHEREFORE, based on these premises, the Petition is hereby **GRANTED.**

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Caguioa, JJ.,* concur.

Brion, J., see concurring opinion.

Jardeleza, J., no part, prior OSG action.

Bersamin, J., on official leave.

CONCURRING OPINION

BRION, *J.:*

I write this **CONCURRING OPINION** to reflect the positions I have consistently taken and presented to the Court as my Dissent during the long period that this case had been pending.

I find, as the *ponencia* now finally finds, that the challenged Comelec resolutions suffered from gross errors, amounting to

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[48] See *Jalover v. Osmena,* G.R. No. 209286, 23 September 2014, 736 SCRA 267; *Maruhom v. Comelec,* 611 Phil. 501(2009); *Justimbaste v. Commission on Elections,* 593 Phil. 383(2008).

[49] *Supra* note 39.

grave abuse of discretion, that fatally affect the exercise of its jurisdiction. Contrary to the challenged Comelec resolutions, Dano satisfied the one-year residency required of candidates running for the local elective position of Mayor.

First, Dano successfully fulfilled all the requirements under Republic Act *(RA)* No. 9225, in relation with Section 39 of the Local Government Code *(LGC),* to successfully run for the position of Mayor of Sevilla, Bohol.

Second, Dano's four-month stay in the U.S., after she re-established her domicile in Sevilla with the filing of her application for voter registration, cannot be considered an interruption of the required one-year residency immediately preceding the day of the elections. Specifically, **continued and uninterrupted actual bodily presence – or even substantial physical presence –** at the local government unit where a candidate intends to run, ***is not required*** either under Section 39 of the LGC or under the Constitution.

Additionally, ***under her fully explained circumstances,*** Dano's travel to and four-month stay in the U.S. cannot be counted against her as it was necessary, unavoidable, and demanded by no less than her clear decision to settle for good in Sevilla, Bohol – her domicile of origin. Her trip to the U.S. was in fact pursuant to her *animus non revertendi* with respect to the U.S. and her *animus manendi* with respect to Sevilla. She travelled to the U.S. – as she claimed and proved – to wind up her affairs there.

Third, change of residence or domicile is ***essentially a matter of INTENT supported by ACTS confirming the existence of the intent***. All these must be appreciated under the foundational rules that jurisprudence has established, which I fully discuss below. The Comelec has particularly been remiss in appreciating these legal parameters.

Fourth, the presented evidence does not clearly show, nor lead to the conclusion, that Dano ***committed a deliberate false representation*** sufficient to grant Digal's petition to cancel Dano's CoC.

Lastly*,** given that the move to disqualify Dano was ***filed before the election and was a ***live issue before the electorate***, all doubts should have been resolved in favor of Dano's qualification after the people of Sevilla, Bohol themselves spoke in the May 13, 2013 elections.

A consequence of the Comelec's gravely abusive rulings was the disregard of the voice of the electorate of Sevilla. This is a constitutional transgression that this Court cannot and should not allow.

The Factual Antecedents

Dano was a natural-born Filipino who hailed from the Municipality of Sevilla, in Bohol province.[1] She migrated to the United States of America *(U.S.)* to work as a nurse, and later acquired American citizenship.

On **March 30, 2012**, **Dano re-acquired her Filipino citizenship** by taking her Oath of Allegiance[2] to the Republic of the Philippines before the Vice Consul, Philippine Consulate General in Los Angeles, California, U.S.A.

On **May 2, 2012**, **Dano applied for voter registration** in Sevilla, Bohol. Her application was approved on July 16, 2012.[3]

After filing her application for voter registration, Dano went back to the U.S. on **May 10, 2012** ***to wind up her affairs, specifically, to dispose of her U.S. properties and to settle her U.S. obligations*** in good faith. She returned to the Philippines on September 28, 2012.

On **September 30, 2012**, she executed a **Sworn Renunciation of Any and All Foreign Citizenships**[4] as required under R.A.

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[1] See Comelec Records, p. 82.

[2] Comelec Records, p. 79. See also Order of Approval and Identification Certificate No. LA-001162-12/2012 both dated March 30, 2012, and issued by the Consulate General of the Philippines, Los Angeles, California, U.S.A., Comelec Records, pp. 80-81.

[3] Comelec Records, p. 59.

[4] *Id*. at 42.

9225 for repatriated Filipinos who want to run for public elective office.

On **October 4, 2012**, Dano filed her Certificate of Candidacy (*CoC*)[5] to run as Mayor of Sevilla, Bohol for the May 2013 elections.

Private respondent Marie Karen Joy B. Digal *(Digal),* the *daughter of Ernesita Digal Dano's rival for the mayoralty post*— subsequently sought the cancellation of Dano's CoC on the ground that Dano falsely represented that she had been a resident of Sevilla for at least one year prior to the May 13, 2013 elections.[6]

Digal argued that Dano's trip to the U.S. before the approval of her application for voter registration interrupted her residency in Sevilla. Thus, she did not comply with the one-year residency that the law requires.

Dano won in the May 13, 2013 elections, garnering **3,292** votes against her rival's **2,623** votes.[7]

The Comelec First Division Ruling

In its resolution[8] of May 8, 2013, the Comelec First Division cancelled Dano's CoC. The Comelec recognized that Dano had reacquired her Filipino citizenship under RA No. 9225;[9] had registered as voter in Sevilla; and had executed her sworn renunciation of any and all foreign citizenships. These notwithstanding, the Comelec ruled that Dano could not validly run for public office as she failed to comply with the one-year residency required under the Local Government Code (*LGC*).

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[5] *Id.* at 58.

[6] *Id.* at 2-6.

[7] *Id*. at 220-221.

[8] *Rollo,* pp. 16-23.

[9] Entitled "An Act Making the Citizenship of Philippine Citizens Who Acquire Foreign Citizenship Permanent," approved on August 29, 2003.

In ruling against Dano, **the First Division pointed out that the affidavit of the Punong Barangay**[10] **of Poblacion, Sevilla and that of a long-time resident**[11] **of Barangay Poblacion** (which Dano presented to prove that she had in fact been residing in Sevilla) **were belied by the affidavit of her neighbor, Ceferino Digal (the father of complainant Ernesita Digal and the husband of Dano's rival for the mayoralty post).**[12]

Based on these affidavits, the First Division concluded that from the time she executed her Oath of Allegiance on March 30, 2012, up to the time she executed her sworn Renunciation of Allegiance on September 30, 2012, Dano did not undertake concrete acts to clearly establish her intention to abandon her U.S. residency and to choose Sevilla as her domicile of choice.

Dano received a copy of the Comelec First Division's May 8, 2013 resolution only on May 21, 2013.

On May 24, 2013, Dano moved before the Comelec *En Banc* for the reconsideration of the First Division's resolution.[13] She alleged the following as additional **proof of her intent to re-establish domicile in her hometown**:

(1) she **purchased parcels of land and a residential house**, as evidenced by a Deed of Sale executed on May 18, 2012;

(2) she **made public her intention to run as mayor of Sevilla, Bohol, as early as January 2012**; and

(3) she **started to permanently settle in her ancestral home** at Barangay Poblacion, Sevilla, **since January 2012**.

On June 30, 2013, pending the resolution of her motion for reconsideration, Dano was proclaimed Mayor of Sevilla.[14] She

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[10] Affidavit of Tristan Cabagnot, Punong Barangay of Poblacion, Sevilla, Bohol, executed on November 14, 2012, Comelec Records, p. 99.

[11] Affidavit of Praxides G. Mosqueda, retired public school teacher and longtime resident of Sevilla, Bohol, Comelec Records, p. 101.

[12] Comelec Records, p. 62.

[13] *Id.* at 134-140.

[14] *Id*. at 145-147.

immediately took her oath, assumed office as Mayor, and began discharging the duties of her position.

The Comelec *En Banc* Ruling

In its November 20, 2013 resolution,[15] the Comelec *En Banc* fully affirmed the First Division's ruling.

Echoing the First Division's reasons, the Comelec *En Banc* similarly reasoned that Dano's application for voter registration alone could not be considered sufficient to establish her domicile in Sevilla, since she went back to the U.S. soon after.

By so ruling, the Comelec *En Banc* effectively **agreed with the First Division's conclusion that Dano failed to prove that she had established the required one-year residency period *through her bodily presence*** in Sevilla, Bohol during the required residency period.

The Issues

The *ponencia* summarized the issues as follows:

(1) Whether the Comelec committed grave abuse of discretion in holding that petitioner (Dano) failed to prove compliance with the one-year residency requirement for local elective officials; and

(2) In the event that the cancellation of petitioner's (Dano's) CoC is upheld by this Court, whether she should be succeeded by the qualified candidate with the next highest number of votes (Ernesita Digal) or by the Vice-Mayor (intervenor Maria Emily D. Dagaang).

Reasons Supporting My Concurrence

A. The parameters of the Court's Exercise of Judicial Power in acting on this case.

The problem directly before the Court is the determination of the presence or absence of grave abuse of discretion in the Comelec's cancellation of Dano's CoC, based on the false

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[15] *Rollo,* pp. 24-29.

material representation the Comelec found in her residency qualifications for the position of Mayor of Sevilla.

Dano challenges the Comelec's rulings pursuant to Article VIII, Section 1 of the Constitution, invoking thereby the exercise of the Court's power of judicial review. Article VIII, Section I of the 1987 Constitution reads:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a **grave abuse of discretion amounting to lack or excess of jurisdiction** on the part of any branch or instrumentality of the Government.

"Grave abuse of discretion," as defined under established rulings, means the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[16]

The petitioner must show under these legal requirements that the Comelec did not simply err either in its appreciation of facts or in the application of the law; it so acted in a patently gross manner, thereby acting outside the contemplation of the law.

A(1). Findings of fact of the Comelec generally binds the Court; exceptions.

Closely related to the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that the Comelec's findings of fact, supported by substantial evidence, shall be final and non-reviewable. This rule, however, is subject to the Court's power of judicial review under the

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[16] See *Mitra v. Comelec,* 636 Phil. 753 (2010).

jurisprudential rule – driven by the nature of *certiorari* proceedings – that findings of facts of administrative bodies (such as the Comelec) are recognized as final by the courts if supported by substantial evidence.[17] Substantial evidence is that degree of evidence that a reasonable mind might accept to support a conclusion.[18]

Because of the Court's limited authority to review findings of fact, the Court does not review in a *certiorari* petition the Comelec's appreciation and evaluation of the evidence, except to determine if these findings are supported by substantial evidence. If substantial evidence exists, the Comelec's findings and conclusions, even if erroneous, are accorded respect; Comelec action under these circumstances merely amount to an error of judgment.

On the other hand, when factual conclusions are not based on substantial evidence or when the appreciation and conclusions of fact are attended by grave abuse of discretion, the resulting errors mutate from error of judgment to error of jurisdiction.[19] In this latter instance, the Court is not only obliged, but has the constitutional duty to intervene and must set aside the Comelec ruling for lack of jurisdiction.

B. Dano has successfully fulfilled all requirements under RA No. 9225 in relation with Section 39 of the LGC, to successfully run for the position of Mayor of Sevilla, Bohol.

B(1). The legal requirements for candidacy to public office of former natural-born Filipinos.

R.A. No. 9225 allows former natural-born Filipino citizens, who were subsequently naturalized citizens in a foreign country,

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[17] *Id*.

[18] Section 5, Rule 133 of the Rules of Court.

[19] See *Mitra v. Comelec, supra* note 16.

to reacquire Philippine citizenship by taking an oath of allegiance to the Republic. Once the oath of allegiance is taken, the *right to enjoy full civil and political rights* that attach to this citizenship follows, subject to compliance with other requirements of the Constitution and applicable laws for the *exercise of these rights*.

Significantly, no other step is required under these laws, except for Filipinos with reacquired citizenship who intend to run for public office who must: (1) execute an oath of renunciation, and (2) meet all of the qualifications imposed by the Constitution and the law for holding the public office.

Section 5(2) of RA No. 9225 reads on these points:

Section 5. ***Civil and Political Rights and Liabilities*** - Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

x x x x x x x x x

(2) Those seeking elective public in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

x x x x x x x x x

The qualifications for holding local elective office are found in Section 39 of the LGC which states:

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

x x x x x x x x x

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

B(2). Interaction between RA No. 9225 and Section 39 of the LGC.

An examination of RA No. 9225 and Section 39 of the LGC show that they are independent statutes with substantial linkage in the *exercise* of the political right of running for elective office.

RA No. 9225 deals with reacquisition of citizenship and the grant of rights attaching to Filipino citizenship, while Section 39 of the LGC relates to the residency requirement to qualify a candidate for public office. While the first *grants the political and civil rights* to reside in the Philippines and to run for public office upon reacquisition of Filipino citizenship, the other regulates the *exercise of this political right* through a residency requirement that must be fulfilled to run for and hold an elective public office.

Under this relationship, RA No. 9225 does not require any residency allegation, proof, or qualification to avail of its terms. RA 9225 does not also establish residency in the Philippines. Residency is a right that can be claimed and that becomes material only when the former natural-born Filipino decides to run for public office under the terms of Section 39 of the LGC. In this light, the reacquisition of citizenship under RA No.9225 does not – by itself – imply nor establish the fact of Philippine residency.

Notably, too, the *civil and political rights* that attach to the RA No. 9225 reacquisition of citizenship are granted upon the reacquisition of citizenship. In other words, once Filipino citizenship is reacquired, the right to reside in the country as Filipinos and the right to vote and be voted for elective office immediately accrue, subject only to *limitations applicable to the exercise* of these rights.

The proceeding under RA No. 9225 begins with the filing before the Bureau of Immigration and Deportation *(BID)* (or before Philippine Consulates in applications filed overseas) of the application for reacquisition of Philippine citizenship by the former natural-born Filipino. In this proceeding, the BID (or the Philippine Consulate) simply makes a finding on the applicant's compliance with the law's requirements. It is only upon approval of the application for citizenship reacquisition that the applicant's political and civil rights as a Philippine citizen are restored. The enjoyment of these restored rights, however, is *"subject to all attendant liabilities and responsibilities under existing laws of the Philippines."*

Thus, the BID (or the Philippine Consulate) simply handles the approval process that result in the restoration of the applicant's civil and political rights. *"How and whether the applicant can enjoy or exercise these political (and civil) rights are matters that are covered by other laws; the full enjoyment of these rights also depends on other institutions and agencies, not on the BID itself whose task under RA No. 9225 at that is finished."*[20]

In the present case, the Philippine Consulate's Order approving Dano's application for reacquisition of Philippine citizenship granted her the right to exercise the civil and political right to reside in the country and to vote and be voted for. Like other candidates, however, the exercise of her right to run for a local elective post may be contested, based on the qualifications she represented in her CoC.

B(3). Dano's Compliance.

Dano indisputably complied with the R.A. No. 9225 requirements to take her oath of allegiance, and *executed as well the oath of renunciation* of U.S. citizenship that allowed her to exercise her right to run for office.

The present case arose because of the third requirement – the residency qualifications set by the Constitution and by the

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[20] See *J.* Brion's Dissenting Opinion in *Poe-Llamanzares v. Comelec,* GR Nos. 221697 and 221698-700, March 8, 2016.

law in running for and holding a local elective office. The governing law on this point is Section 39 of the LGC quoted above.

B(4). Dano and the Residency Requirements.

I find that the Comelec erred and gravely abused its discretion when it:

(1) grossly misappreciated the evidence; and

(2) incorrectly analyzed and applied the jurisprudential guidelines governing the change of residence and the durational residency requirements.

B(4)(a). Legal Contemplation of Residence.

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, one intends to return, and depends on the attendant facts and circumstances in confirming the individual's intent and actions to carry out this intent.***[21]

Domicile is classified into three, namely: (1) ***domicile of origin***, which is acquired by every person at birth; (2) ***domicile of choice***, which is acquired upon abandonment of the domicile of origin; and (3) ***domicile by operation of law***, which the law attributes to a person independently of his residence or intention.

A(4)(b). Residency from the JurisprudentialPerspective

In *Limbona v. Comelec,*[22] the Court pointedly declared that to effect a change of domicile or to acquire a domicile of choice, there must concur (1) residence or bodily presence in the new

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[21] See *Macalintal v. Comelec,* 453 Phil. 586 (2003); and *Japzon v. Comelec,* 596 Phil. 354 (2009).

[22] 619 Phil. 226 (2009). See also *Macalintal v. Comelec, supra* note 21.

locality, (2) a *bona fide* intention to remain there, and (3) a *bona fide* intention to abandon the old domicile. In other words, there must be ***animus manendi*** in new residence, coupled with ***animus non revertendi*** with respect to the former residence.[23]

Under these requirements, no specific unbending rule exists in the appreciation of compliance because of the element of intent[24] – an abstract and subjective proposition that can only be determined from the surrounding circumstances. It must be appreciated, too, that aside from *intent* is the question of the *actions taken pursuant to the intent*, and the consideration of the *applicable laws, rules, and regulations*.

Jurisprudence, too, has laid out three **basic foundational rules** in the consideration of residency issues, namely:

First, a man must have a residence or domicile somewhere;

Second, when once established, it remains until a new one is acquired; and

Third, a man can have but one residence or domicile at a time.[25]

These are the jurisprudential foundational rules that, hand in hand with the established rules on change of domicile, should be fully taken into account in appreciating Dano's circumstances.

C. The Conflicting Positions on Dano's Compliance with the Residency Requirement.

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[23] *Limbona* explains that the intent to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual (*Limbona v. Comelec,* 578 Phil. 364 [2008]).

[24] See *Abella v. Commission on Elections and Larazzabal v. Commission on Elections*, 278 Phil. 275 (1991). See also *Pundaodaya v. Comelec*, 616 Phil. 167 (2009).

[25] See *Pundaodaya v. Comelec*, *supra* note 24; and *Jalosjos v. Comelec*, G.R. No. 191970, April 24, 2012.

Dano's domicile of origin is indisputably Sevilla, Bohol. When she went to the U.S. and became a naturalized American citizen, however, she abandoned her Sevilla domicile in favor of a new U.S. domicile. This new U.S. domicile was her domicile of choice.

Subsequently, she reacquired her Philippine citizenship pursuant to RA No. 9225 and decided to resettle in Sevilla, Bohol (her hometown) and to run for local public office there. For the second time, Dano chose another domicile – Sevilla, Bohol – as evidenced by her acts showing her intent to establish a new domicile and by the supporting acts toward this objective.

C(1). Respondent Digal's Evidence.

Digal faults Dano's residency claim, and posits that Dano committed misrepresentation in her CoC as she was a naturalized American citizen, and was not a resident of Sevilla because she failed to re-establish her domicile in Sevilla. To support her petition before the Comelec, Digal presented the following:

1) Affidavit of **Ceferino Digal**, ***respondent Digal's father and husband of Dano's political rival***;[26]

2) Certification of the Comelec Election Officer, dated October 30, 2012, stating that Dano has no voting record available;[27] and

3) Certification of the Municipal Assessor's Office, dated October 30, 2012, stating that Dano has no real property declared under her name in the Municipality for taxation purposes.[28]

C(2). Petitioner Dano's Evidence.

Dano, on the other hand, argued in defense that she had reacquired Philippine citizenship under RA No. 9225 and had

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[26] Comelec Records, p. 62.

[27] *Id*. at 61.

[28] *Id*. at 60.

re-established her domicile in Sevilla. To prove that she had reacquired Philippine citizenship, she presented the following documents:[29]

1) Oath of Allegiance;

2) Identification Certificate No. LA-001162-12/2012;

3) Order of Approval; and

4) Affidavit of Renunciation of Any and All Foreign Citizenship.

She also presented the following documents to prove that she duly re-established her domicile in Sevilla:

1) Application for **Voter Registration** dated **May 2, 2012** and approved on July 16, 2012;[30]

2) **Affidavits** of Tristan Cabagnot (**Punong Barangay** of Poblacion, Sevilla) and of Paxides G. Mosqueda (**a long-time resident** of Sevilla);[31]

3) **Community Tax Certificate** issued on February 2, 2012;[32]

4) **Certification of the Fact of Birth** issued by the Office of the Civil Registrar, Sevilla, Bohol on **January 30, 2012** on Dano's request;[33]

5) **Philippine Passport** issued on **April 27, 2012**;[34]

6) Acquisition of real property through a **Deed of Absolute Sale** covering **two parcels of land** and a residential building situated in Poblacion, Sevilla;[35]

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[29] *Id*. at 42 and 80-81.

[30] *Id*. at 59.

[31] Dated November 14, 2012, Comelec Records, pp. 99 and 101, respectively.

[32] Comelec Records, p. 100.

[33] *Id*. at 82.

[34] *Id*. at 102.

[35] Executed by a certain Wardarica T. Tejano, *id.* at 143-144.

7) Documents covering the **sale of Dano's residential house** in California, U.S.A. consisting of the Buyer's Inspection Advisory, Short Sale Addendum and Disclosure Regarding Real Estate Agency relationship;[36] and

8) The **Trade Confirmation covering the sale of her shares of stocks** in the U.S.[37]

C(3). Consideration of the Parties' Evidence.

Faced with these pieces of evidence, both the Comelec First Division and the *En Banc* relied on the affidavit of Ceferino Digal over the individual affidavits of Tristan Cabagnot (the Punong Barangay of Poblacion, Sevilla) and of Praxides G. Mosqueda (an old-time resident of Barangay Poblacion) in concluding that Dano failed to prove that she had established her domicile at Sevilla, Bohol.

It should be pointed out that Ceferino Digal, whose affidavit the Comelec relied upon, is the father of the complaining respondent Digal and the husband of Ernestina Digal, Dano's mayoralty opponent. Thus, **the conflict of evidence between a Digal family member,** on the one hand, **and those of the Punong Barangay and an old time resident in Sevilla, Bohol**, on the other.

In appreciating these conflicting pieces of evidence, **the Comelec apparently made no allowances for the bias and partisanship that Ceferino Digal obviously suffered from, and at the same time disregarded the many moves that Dano had taken to implement her change of residence**, particularly her application for voter registration (taken more than a year before the election) and the implications that such registration carries. The Comelec, as well, disregarded jurisprudential rulings that dwelt with the testimonies of barangay chairmen on matters within their specific competence.[38]

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[36] All dated March 11, 2013, *rollo,* pp. 39-49.

[37] *Rollo,* pp. 51-56.

[38] See *Mitra v. Comelec, supra* note 16; and *Sabili v. Comelec,*G.R. No. 193261, April 24, 2012, 670 SCRA 664.

More than all these, the Comelec's conclusion – that Dano failed to prove that she had re-established her domicile in Sevilla – was clearly supported solely by the affidavit of Ceferino Digal and none other.

That the Comelec's conclusion was supported solely by Ceferino Digal's affidavit is clear from the fact that the Certification issued by the Comelec Election Officer could not have carried any evidentiary weight beyond what it plainly states, *i.e., that Dano has no voting record available*.

Note that this Certification was issued on October 30, 2012. Dano could not have had any voting record prior to the issuance of the October 30, 2012 Certification because (1) Dano did not participate and could not have participated in the elections held prior to the May 13, 2013 Elections as she was still then a U.S. citizen residing in the U.S., and (2) she only applied for voter registration on May 2, 2012, which application the Comelec approved only in July of the same year.

Moreover, the election for position of Mayor, as with the other local elective positions, is held every three years coinciding with the Office's three-year term as provided under Article X, Section 8 of the Constitution. This means that the previous local election was held in 2010, as in fact borne by public records.

An obvious implication, too, is that in between these election years – 2010 and 2013 – Dano could have very well re-established her residence in Sevilla and complied with the one-year residence requirement, although she did not participate in the 2010 elections.

Thus, from an evidentiary perspective, the Election Officer's Certification could not have served to prove that Dano was not a resident of Sevilla, Bohol for one year immediately preceding the May 13, 2013 Elections. At most, it could have only proven that Dano did not participate in the elections held prior to October 30, 2012 (the date the Certification was issued).

D. The COMELEC's Grave Abuse of Discretion.

Based on the law and the jurisprudential parameters, I conclude that the Comelec grossly misappreciated the import of the pieces of evidence the parties presented, so that it arrived at the wrong conclusions.

In legalese, the Comelec **grossly erred** because ***it relied on the wrong factual and legal considerations and thereby gravely abused the exercise of its discretion.***

D(1). Dano's Evidence of Intent.

That Dano met the residency requirement for the mayoralty post in Sevilla under the settled jurisprudential rules and precedents is amply shown by the considerations below.

First, Dano started her resettlement moves to a new domicile of choice as early as the first quarter of 2012 when she began living in her ancestral home in Barangay Poblacion, Sevilla. Based on her intent to resettle, she secured a ***community tax certificate*** *(CTC)* on ***February 2, 2012*** and a copy of her birth certificate from the Office of the Civil Registrar of Sevilla on **January 30, 2012.**

From the perspective of intent, Dano had already made up her mind to resettle in Sevilla as early as January 2012. She began to implement her intent by making her presence felt there, not only by resettling in her ancestral home, but by securing her CTC.

Lest these discussions be misunderstood, any concrete and overt resettlement moves Dano made during the first quarter of 2012 confirms only her **intention** to re-establish her domicile in Sevilla, **NOT** the fact of her actual physical residence. Thus, I do not posit that her residence in Sevilla (for purposes of the one-year residency requirement) began on February 2, 2012 when she secured her CTC.

As of February 2, 2012, Dano was still an American citizen – as she had not yet re-acquired her Philippine citizenship –

who had no right to permanently reside in the Philippines, save only in the instances and under the conditions our Immigration laws allow to foreign citizens. Any period of stay which she may have spent in Sevilla prior to her reacquisition of Philippine citizenship cannot be counted in her favour.

Second, on ***March 30, 2012***, Dano ***reacquired her Philippine citizenship*** under the provisions of RA No. 9225. She thereafter applied for ***voter registration*** in Sevilla on ***May 2, 2012*** pursuant to the right granted her by RA No. 9225.

She followed up these moves by ***purchasing two parcels of land*** and a ***residential building*** in Sevilla on ***May 18, 2012***.

Also, in her subsequent travel to the U.S. on May 10, 2012, ***she used her Philippine passport,*** **clearly showing her self-identification as a Filipino citizen who resides in Sevilla, Bohol**.

As I fully explained above, entitlement to the civil and political rights that RA No. 9225 grants, attaches when the requirements of this law have been completed and citizenship reacquisition is approved.

Under these terms, **Dano secured the right to reside permanently in the Philippines beginning March 30, 2012 when she reacquired Philippine citizenship. On May 2, 2012, she fully exercised this right to permanently reside in Sevilla by applying for voter registration in this municipality.**

This concrete and overt act of applying for voter registration in Sevilla (after she had reacquired her Philippine citizenship), fully supported by her antecedent moves establishing her intention and by her companion moves centered on Sevilla, operates as the critical point that determined when she re-established her domicile in Sevilla – her new domicile of choice. For clarity, these companion moves were her purchase of real property in Sevilla and her use of her Philippine passport in her subsequent travels to the U.S.

In other words, these pieces of evidence supported and made clear Dano's INTENT to effect a CHANGE of

RESIDENCE from the U.S. to Sevilla, Bohol. Thus, **beginning May 2, 2012, Dano again became a resident of Sevilla.** This period – from May 2, 2012 up to the election of May 13, 2013 – more than sufficiently complied with the one-year residency requirement.

Third, Dano **started winding up her U.S. affairs in May 2012 when she went to the U.S**. This was followed by her ***renunciation of her U.S. citizenship*** and all other foreign citizenships, on ***September 30, 2012***. **Her U.S. trip in May 2012 bore fruit when her U.S. properties were sold in March 2013.**

These additional moves subsequent to May 2, 2012 concretized and made undoubtedly clear her resolve to reside for good in Sevilla. At this point, when she had finally settled all her U.S. affairs – and which effectively removed all reasons for her to return to the U.S. – all doubts as to her domicile had been settled.

To summarize: Dano hinted at her intention to resettle in Sevilla as early as the first quarter of 2012, which intention she supported with overt moves that clarified this intent. On May 2, 2012, she acted on this intention by actually residing in and declaring herself as resident of Sevilla, after she reacquired her Philippine citizenship with its concomitant rights and responsibilities. Finally, she concretized her intention and acts by severing all ties with the U.S.

All these separate strands, taken together and read in relation with one another, show a ***pattern of action*** all indicating Dano's ***intent to reassume Filipino citizenship; to change her domicile to Sevilla, Bohol;*** and to ***sever her ties with the U.S***. – business, residential, and professional.

Unfortunately, the Comelec chose to disregard all these glaring and self-explanatory evidence of intent and implementing action. This gross disregard of evidence on record cannot but be grave abuse of discretion.

D(2). The Conflicting Affidavits.

Apart from Dano's incremental moves, the conclusion that she had re-established her domicile in Sevilla is further supported by the affidavits of Tristan Cabagnot (the Punong Barangay of Poblacion, Sevilla where Dano resides) and Praxides G. Mosqueda (a retiree and long-time resident of Sevilla).

The Comelec quickly brushed these affidavits aside in favor of the affidavit of Ceferino Digal, the father of private respondent Digal and the husband of Dano's rival during the May 13, 2013 Elections. These decisional moves lay bare the **stark reality that evidence-wise, the Digals had only themselves and did not appear to have the support of others in the community to testify to Dano's residential circumstances.**

I refuse to accept as valid the challenged rulings' approach that fully recognized and gave weight to the obviously biased declaration of Ceferino Digal, in disregard of the substantively weightier, unbiased and more reliable sworn statement of the Punong Barangay.

In *Mitra v. Comelec*,[39] the Court declared that the sworn statement of the Punong Barangay should carry a lot more weight since it is the business of a punong barangay to know who the residents are in his own barangay. The Court similarly ruled in this wise in *Sabili v. Comelec*[40] as it declared that the Comelec cannot deny the strength of a barangay captain's certification establishing bodily presence.

The **affidavits of Tristan Cabagnot** and **Praxides G. Mosqueda** categorically stated, among others, that Dano had been returning to Sevilla every year, sometimes even twice a year, and stays in her ancestral house when she was still an American citizen. These affidavits also enumerated the activities that she participated in whenever she was in Sevilla, *i.e.,* pastoral

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[39] *Supra* note 16. See Section 389 in relation with Section 394 of the Local Government Code regarding the powers, duties and functions of the punong barangay.

[40] *Supra* note 38, at 696.

council meetings and the fiesta events. Tristan Cabagnot's affidavit likewise stated that during the times Dano was in Sevilla, they discussed the **future of their hometown as well as Dano's plans to return home and settle there for good.** In contrast, the **affidavit of Ceferino Digal simply generally denied these claims**.

Compared with one another, the affidavits of Tristan Cabagnot and Praxides G. Mosqueda cannot but carry greater intrinsic worth than the affidavit of Ceferino Digal; **they speak of Dano as a person they intimately know and whose intention to return to the Philippines permanently as well as actual stay in the Philippines, they can authoritatively testify to**. These, Ceferino Digal could only deny in general terms.

D(3)(a). Conclusion from the Parties' Evidence.

Based on these considerations, I find that Dano has more than sufficiently proven by substantial evidence the ***animus manendi*** and the ***animus non revertendi*** that jurisprudence requires, as well as **her actual physical residence in Sevilla, through acts taken pursuant to her expressed intent.**

To conclude that Dano has not re-established her domicile in Sevilla despite the abandonment of her US domicile would not only violate the rule that a man must have a domicile or residence somewhere.[41] More than anything, it would result in the absurd situation where a returning and reacquiring Filipino citizen, despite having abandoned his or her foreign domicile, would not still be resident of the Philippines.

In evidentiary terms, to misappreciate the substance and the import of Dano's affidavit, and to recognize the narrow Digal affidavit, is to commit grave abuse in the appreciation of these pieces of evidence.

When grave abuse of discretion clearly attended the Comelec's decision, or when the Comelec acted arbitrarily,

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[41] See *Jalosjos v. Commission on Elections, supra* note 25, at 576-577.

capriciously or without rational basis, or when it otherwise grossly misappreciated the evidence of such nature as to compel a contrary conclusion, the Comelec's findings and conclusions cannot bind this Court.[42] In this situation, the Court must set these findings aside in compliance with its constitutional mandate.

D(3)(b) The binding effect of the Comelec's factual findings, as applied in *Japzon v. Comelec*, does not apply to the present case.

In *Japzon v. Comelec,*[43] the Court did not disturb the factual findings of the Comelec because these findings were in fact fully supported by substantial evidence. Findings of facts of administrative agencies that are fully supported by substantial evidence, or such amount of relevant evidence that a reasonable mind would accept as adequate to justify a conclusion,[44] do not give rise to a grave abuse of discretion situation; these findings were therefore binding and conclusive on the Court.

As discussed, the Comelec's actions and findings in the present case were not supported by substantial evidence and in fact disregarded the substantial evidence on record. Thus, these findings were made with grave abuse of discretion. Thus, the ruling that this Court made in *Japzon* cannot apply.

E. Dano's four-month stay in the U.S. cannot be taken against her and considered an interruption of the Philippine domicile she had claimed and established.

In the same vein, I find the Comelec's observation – that Dano's departure for and four-month stay in the U.S., is evidence of her lack of ***bodily presence*** in Sevilla that belied her intention to abandon her domicile in the U.S. – to be grossly erroneous. I find this observation to be grossly incorrect for three reasons.

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[42] *Id*.

[43] *Supra* note 21.

[44] See Section 5, Rule 133 of the Rules of Court.

***First**, a person's domicile once established is considered to continue and will not be deemed lost until a new one is established*.[45]

The rationale behind this rule is simple: **domicile is an abstract concept that attaches to the place, not to the body of the person**. Thus, once a person, or a candidate, establishes domicile in a particular locality, that domicile continues wherever he or she may be found at any given time. Domicile does not attach to the person's body such that it will change with the change in the person's location.

To reiterate, for emphasis, Dano already re-established her domicile in Sevilla, reflected: in terms of intent by no less than her antecedent moves, *i.e.,* her stay in Sevilla starting from the first quarter of 2012 as well as her acquisition of a CTC within the same period; and, in terms of her actual re-establishment moves, *i.e.,* her reacquisition of Filipino citizenship on March 30, 2012 as well as her application for voter registration on May 2, 2012.

Once established, her re-established domicile in Sevilla continue and cannot be deemed lost, much less interrupted, until she replaces it with another newer domicile.

Accordingly, her four-month stay in the U.S. should not be taken against her so as to disqualify her from running for local public office; she continued to be domiciled in Sevilla although she was in fact travelling outside the Philippines. This conclusion becomes compelling when it is considered that her U.S. activities – the divestment of her U.S. properties – all pointed to her abandonment of her U.S. residency and the confirmation of her intent to assume both Filipino citizenship and residency.

Second, to require continuous, uninterrupted or substantial actual bodily presence imposes on Filipinos reacquiring their Philippine citizenship under RA No. 9225, a difficult, if not an impossible, condition should they choose to run for local public office.

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[45] See *Co v. Electoral Tribunal of the House of Representatives*, 276 Phil. 758, 792-793 (1991).

The condition – of *continuous, uninterrupted or substantial actual bodily presence* in the locality – will effectively prevent them from engaging in any meaningful activity – whether for employment, conduct of business, recreation, or otherwise the settlement of their remaining foreign affairs – outside of their locality for at least one year immediately preceding the election date. In simple terms, the condition will effectively restrict their mobility and render them prisoners in the locality for an entire one-year period.

Without doubt, Dano's four-month travel to the U.S. resulted in her physical or bodily absence in Sevilla during this period. The residence that the Constitution and our election laws, however, contemplate domicile, not mere physical or bodily presence, in the constituency where the candidate seeks to be elected.

Thus, as long as the candidate or would-be candidate has established domicile in his or her constituency, any intervening absence therefrom, no matter how long and unless a new domicile elsewhere has been established, will not and cannot result in the loss of that domicile. To require and insist on this absurd condition runs counter to the law's spirit and intent.

Third, no such intent can be gleaned from the terms of RA No. 9225 and the LGC or even from their combined reading. In other words, the *proposition imposes a condition that the law does not impose*.

To quote Section 39 of the LGC for emphasis: *"[an] elective local official must be a citizen of the Philippines, a registered voter in the barangay, municipality, city, province or x x x the district where he intends to be elected;* ***resident therein for at least one (1) year*** *immediately preceding the day of the election x x x."*

Under these terms, Section 39 attaches only two conditions to the residency requirement: ***first,*** that the residency must be in the locality, *i.e.,* barangay, municipality, etc., where the elective local official intends to be elected; and ***second,*** that the residency

in the locality be for at least one year immediately preceding the election date.

Section 39 of the LGC, significantly, does not require the elective local official to be in his home locality twenty-four (24) hours a day, seven (7) days a week for the entire one-year period, but only that the official had been a resident therein for at least one year immediately preceding the election date; **only the intent to reside must be there, supported by facts showing actions pursuant to this intent.**[46]

E(1). Supporting Jurisprudence on the Nature of the Required Residence.

As the Court pointed out in *Fernandez v. HRET*,[47] the law does not require a person to be in his home twenty-four (24) hours a day, seven (7) days a week, to fulfill the residency requirement. In fact, the absence from residence to pursue studies or practice a profession does not constitute loss of residence.[48]

In the closely similar case of *Japzon v. Comelec*,[49] the Court unanimously dismissed the petition for CoC cancellation filed by Manuel B. Japzon against the respondent candidate Jaime S. Ty. Like Dano, Ty made several trips abroad to Thailand, from July 14 to 18, 2006, and to the U.S., from October 31, 2006 to January 19, 2007.

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[46] See *Papandayan, Jr. v. Commission on Elections,* 430 Phil. 754, 768-770 (2002), where the Court summarized the different principles and concepts in jurisprudence relating to the residency requirement for local elective office. Citing *Abella v. Commission on Elections and Larazzabal v. Commission on Elections* (*supra* note 24) the Court in *Papandayan* declared that "the determination of a person[s] legal residence or domicile largely depends upon the intention that may be inferred from his acts, activities, and utterances." See also *Japzon v. Comelec, supra* note 21, citing *Papandayan, Jr. v. Commission on Elections;* and *Fernandez v. HRET,* 623 Phil. 628 (2009), citing *Japzon v. Comelec.*

[47] *Fernandez v. HRET, supra* note 46.

[48] See *Faypon v. Quirino,* 96 Phil. 294 (1954).

[49] *Supra* note 21.

In denying Japzon's petition, the Court emphatically ruled: *"[t]here is no basis for this Court to require Ty to stay in and never leave at all the Municipality of General Macarthur, Eastern Samar, for the full one-year period prior to the 14 May 2007 local elections so that he could be considered a resident thereof. To the contrary, the Court has previously ruled that absence from residence to pursue studies or practice a profession or registration as a voter other than in the place where one is elected, does not constitute loss of residence."* [50]

To require continuous actual bodily presence or substantial physical presence in the locality during the entire one-year period, would effectively add a third condition to the statutory durational residency requirement of Section 39 of the LGC. Any contrary ruling from this Court would result in prohibited judicial legislation.

E(2). Dano's Trip to the U.S. was fully explained and justified.

I likewise find the Comelec's approach in appreciating Dano's four-month absence in Sevilla to be unreasonable, as it is a mechanistic approach that disregards the attendant circumstances of Dano's travel. The Comelec obviously misses the critical point that Dano's departure for the U.S. was necessary, unavoidable, and demanded no less than by her clear intention to transfer her domicile to Sevilla and to abandon her U.S. domicile.

To repeat, *Dano's intention to re-establish her domicile in Sevilla cannot but be certain:* she resettled in her ancestral home in the first quarter of 2012; later obtained a CTC; re-acquired

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[50] *Id*. at 366-367. The Court added: *"[t]he Court also notes, that even with his trips to other countries, Ty was actually present in the Municipality of General Macarthur, Eastern Samar, Philippines, for at least nine of the 12 months preceding the 14 May 2007 local elections.Even if length of actual stay in a place is not necessarily determinative of the fact of residence therein, it does strongly support and is only consistent with Ty's* ***avowed intent*** *in the instant case to establish residence/domicile in the Municipality of General Macarthur, Eastern Samar."*

her Philippine citizenship; applied for voter registration; purchased real property in Sevilla; and eventually renounced her foreign citizenship in September of 2012. All these bespeak of the intent and action to establish a new domicile in Sevilla.

In these lights, Dano clearly had to go back to the U.S. at some point to wind up her U.S. affairs and to sell the U.S. properties she would no longer need in Sevilla. Under these circumstances, her departure for and four-month stay in the U.S. was justifiable, necessary, and unavoidable.

Digal rejected this commonsensical view by stressing that Dano should have settled her U.S. property affairs before applying for voter registration in Sevilla. To her, this early move would have afforded her more time to properly fulfill the requirement set by law.

This second-guessing approach, of course, does not deserve serious legal consideration as it uses clearly subjective non-legal standards and puts forward a very personal and subjective evaluation based on what they see as the appropriate course of action to take in winding up Dano's foreign property affairs.

Note, however, that whether proper or not, Dano's decision to wind up her property affairs later, rather than sooner, as they would have settled things, is clearly immaterial to the determination of Dano's compliance with the residency requirement: **the winding up of a candidate's property affairs in another country is not a qualification requirement under the law nor is it a condition to the residency requirement**. It should not even be a material consideration in this case as it is not contrary to our election laws or regulated by jurisprudence, and should not be taken against a candidate who has shown sufficient justification for the trip.

F. Under the evidentiary situation of the case, no basis exists to conclude that Dano committed deliberate material misrepresentation sufficient to cancel her CoC .

The present petition for *certiorari*[51] arose from the petition to cancel Dano's CoC. In this context, the nature and requisites of a CoC cancellation proceeding are and should be the primary considerations in the resolution of the present petition.

F(1). The character of the false material representation required in a CoC cancellation proceeding.

A petition to cancel CoC is governed by Section 74 in relation with Section 78 of the Omnibus Election Code *(OEC)*. As these provisions operate, the would-be candidate must state only true facts in the CoC as any false representation of a material fact may lead to the cancellation or denial of the CoC. These provisions read:

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

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SEC. 78. ***Petition to deny due course to or cancel a certificate of candidacy***. A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that ***any material representation contained therein as required under Section 74 hereof is false***. The petition may be filed at any time not later than twenty-five days from the time of the

[51] *Rollo,* pp. 3-15.

filing of the certificate of candidacy and shall be decided, after due notice and hearing not later than fifteen days before the election. [Emphasis and underscoring supplied.]

In *Mitra v. Comelec*,[52] the Court explained that the false representation that these provisions mention necessarily pertains to a material fact, or those that refer to a candidate's qualification for elective office. The false representation must also be a deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible as provided under Section 78.

Thus, the false representation must be made with the intention to deceive the electorate with respect to the would-be candidate's qualification for public office. It cannot be the result of a **mere innocuous mistake**, nor can it exist in a situation **where the intent to deceive is patently absent**, or where **no deception on the electorate results**. This must be so for, after all, any material falsity will bar a candidate who falsifies from running; even if he runs and is elected, he will likewise be barred from serving. In either case, he can be prosecuted for violation of the election laws.[53]

E(2). Burden of proof in CoC cancellation proceedings.

The present private respondent Digal was the petitioner before the Comelec who sought the cancellation of Dano's CoC and she carried the burden under Section 78 to prove that Dano falsely represented her residency qualifications in her CoC. As the original petitioner, Digal had to prove what she claimed to be false representations.

Thus viewed, the main issue in the case before the Comelec was the false material representation, which essentially rested on the premises of residence – had Dano observed the requisite qualifying period of residence?

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[52] *Supra* note 16, at 753.

[53] *Id.* at 780.

E(3). Application of these standards to Dano's case.

Based on these standards, I find it clear that Dano did not commit any false representation, deliberate or otherwise, in her CoC. By stating that she was a resident of Sevilla for more than one year immediately preceding the election date, she firmly believed, backed up by her clear intention and factually proven positive actions, that she had indeed re-established her domicile in Sevilla. In other words, Dano's intent to re-establish her Sevilla domicile was qualitatively and quantitatively supported by her acts that clearly evinced her intent.

From the evidentiary perspective, the evidence confirming her residence in Sevilla decidedly tilts in her favor. Even in a worst case scenario, as the Court similarly pointed out in *Mitra,* the evidence in her favor cannot go below **the level of an *equipoise***,[54] such that the evidence of Dano's transfer and residence in Sevilla must prevail when weighed against Digal's evidence that she has maintained her residence in the U.S.

Based on these considerations, I conclude that the Comelec completely failed to consider the statutory standards that should have governed its action in the CoC cancellation proceedings. The Comelec failed to take into account Dano's submission, thus leading it to its grossly erroneous conclusions. It likewise failed to take into account the burden-of-proof standard that should have governed as it weighed Dano and Digal's presented evidence to determine whether Dano had indeed committed false material representation in her CoC when she claimed to have resided in Sevilla for at least one year immediately preceding the May 13, 2013 elections.

These glaring Comelec errors apparently resulted from its use of the **wrong considerations** and from its **gross misreading of the evidence** – *i.e.,* that Dano made a false representation and that this false representation was made with deliberate intent. This is the kind of egregious error, constitutive of grave abuse

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[54] *Id.*

of discretion, that allows this Court to step in and to invalidate the Comelec's ruling.

G. At any rate, all doubts should have been resolved in favor of Dano's qualification: the mandate of the people of Sevilla that elected Dano as their Mayor should be respected and upheld.

Independently of the residence requirement issue, the Court cannot and should not ignore the undeniable fact that the *people of Sevilla, Bohol made their own ruling when they elected Dano as their Mayor in the May 13, 2013 elections despite the "non-resident" label that her political opponents sought to pin on her.*

The people of Sevilla have spoken and chosen Dano as their Mayor. She received an overwhelming 3,292 votes or 54%, over her rival's meagre 2,624 votes or 43%, of the total votes cast in the May 2013 Elections. Under this situation, everyone – including this Court – should heed the majority's verdict by resolving all doubts in favor of Dano's eligibility. In the words of *Frivaldo v. Comelec,*[55] the law and the courts, including this Court, must accord Dano every possible protection, defense and refuge, in deference to the popular will.

In any action involving the possibility of a reversal of the popular electoral choice, this Court must ***exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority****, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the* ***ineligibility is so patently antagonistic to constitutional and legal principles*** *that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.*[56]

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[55] 326 Phil. 521, 574 (1996).

[56] *Id*. at 574-575.

The various pieces of evidence in this case convincingly show that the people of Sevilla have been well acquainted with Dano's background, character and qualifications, among others, and that she, in turn, has not been oblivious to the needs, difficulties, aspirations, and potential for growth and development of Sevilla and its people.

These are the concerns that animate elections and its residency requirement.[57] These were the issues, too, that the electorate of Sevilla voted upon when they elected Dano. Under the circumstances, deference to the electorate's choice would strengthen the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.

It is only during the elections and referenda that the people can directly affect the manner by which the government should be run; through these political exercises they decide on who they want to run the government for them. Accordingly, no entity – the executive, the legislative, or even the judiciary – can rightfully interfere in this democratic decision-making process and dictate on the people's choice unless there are clear legal reasons for interference. The existence of a doubt, particularly after the people have spoken, is not a reason for interference. Our most cherished democracy demands no less than the utmost respect for the will of the electorate.

In saying this, I clarify and stress, in the way Court did in *Mitra*,[58] that CoC defects beyond *matters of form* and which involve *material misrepresentation* cannot avail of the benefit

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[57] See *Gallego v. Verra*, 73 Phil. 453, 459 (1941), where the Court held that*: "the manifest intent of the law in fixing a residence qualification is to exclude a stranger or newcomer,unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community x x x."*

See also *Fernandez v. HRET, supra* note 46*,* where the Court similarly noted that "the residency requirement is a means to prevent a stranger or newcomer from holding office on the assumption that such stranger or newcomer would be insufficiently acquainted with the needs of his prospective constituents."

[58] *Supra* note 16, at 792-793.

of the ruling that CoC mandatory requirements before elections are considered merely directory after the people shall have spoken. "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, the Court cannot choose the electorate's will."[59]

H. Conclusion.

To finally reiterate, Dano has not committed any false representation in her CoC as she had been a resident of Sevilla for at least one year immediately preceding the May 13, 2013 election date. She could legally reside in the country as early as March 30, 2012 when she re-acquired Philippine citizenship under RA No. 9225, and she indisputably acted pursuant to this right when she applied for voter registration in Sevilla on May 2, 2012 (or more than a year before the May 12, 2013 elections). No reason, therefore, exists to nullify her CoC on the basis of false material representation.

For these reasons, I vote to **GRANT** the petition.

EN BANC

[G.R. No. 211553. September 13, 2016]

LEANDRO B. VERCELES, JR., *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

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[59] *Id.* at 793.